

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - ESSEX COUNTY
INDICTMENT NO. 148-1-90
AD#-A-667689TY

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STATE OF NEW JERSEY, :
Plaintiff, : STENOGRAPHIC TRANSCRIPT
vs. : OF
DEREK MOULTRIE, : WADE PROCEEDINGS

Defendant
REC'D
APPELLATE DIVISION

DEC 26 1991

R. Sanchez
Clerk

Monday, May 21, 1990
Essex County Courthouse
Newark, New Jersey 07102

B E F O R E:
THE HONORABLE ANTHONY J. IULIANI, J.S.C.

TRANSCRIPT ORDERED BY: FRANK J. SOLTIS, ESQ.
(Office of the Public Defender -
Essex Region)

A P P E A R A N C E S:
MARY ELLEN FURLONG, ESQ.
Assistant Prosecutor
Attorney for the State
FRANK GONZALEZ, ESQ.
Attorney for the Defendant

FILED
APPELLATE DIVISION

DEC 26 1991

R. Sanchez
Clerk

LYDIA FUCCI, C.R.R.
Official Court Reporter
License No. KEO1359

1 MS. FURLONG: Judge, may I --

2 THE COURT: We're waiting for the Defendant.

3 MS. FURLONG: Judge, in the meantime, I think
4 there's something we can clear up.

5 THE COURT: All right.

6 MS. FURLONG: I have three witnesses who's been
7 here since this morning. It's my understanding we're
8 not going to get to them. I'd just ask the Court to release
9 them and have them report back tomorrow morning at nine
10 o'clock.

11 MR. GONZALEZ: Judge, I was going to request
12 that we only -- that we do the preliminaries and pick
13 a jury today and start fresh tomorrow. That was going
14 to be my request to the Court if we get past the jury
15 selection at all today.

16 Judge, I also have a toothache, that's why.

17 THE COURT: I have no problem with the witnesses
18 for tomorrow, put on the record their names, please.

19 MS. FURLONG: Ianthia Mott Lewis, Tykesha Mott
20 and Richard Mott.

21 THE COURT: All right. Those three names that
22 were called, they'll be here tomorrow morning at nine
23 o'clock.

24 THE COURT OFFICER: He's not up yet, Judge.

25 THE COURT: Pardon?

1 THE COURT OFFICER: He's not up yet, a couple
2 more minutes.

3 THE COURT: Make sure you get a pink slip on
4 him for tomorrow morning and the rest of the time.

5 THE COURT CLERK: They already did it.

6 THE COURT: All right.

7 Sequestration order, Mr. Gonzalez?

8 MR. GONZALEZ: Yes, Judge, please.

9 THE COURT: All right. Get a copy of that.

10 MS. FURLONG: Judge, are we waiting for the
11 Defendant?

12 THE COURT: He should be over in a minute.

13 MS. FURLONG: Judge, are we going to go to 12:30
14 or --

15 THE COURT: Yes.

16 MS. FURLONG: Because I was going to ask for
17 my detective to be released for the hour so that he can --
18 he's in the middle of working on another homicide. Maybe
19 he could get some of that paperwork away. If I need him, I
20 can call him.

21 THE COURT: Do whatever you want.

22 (Pause)

23 (Whereupon, the Defendant Derek Haultala is
24 present.)

25 THE COURT: All right, are we ready to proceed?

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You are Mr. Moultrie, Derek Moultrie?

THE DEFENDANT: Yes.

THE COURT: And we have a Wade motion to take care of, number one: two, you have indicated --

MR. GONZALEZ: I'm sorry, Judge.

THE COURT: Ms. Furlong, Mr. Gonzalez, a sequestration order?

MR. GONZALEZ: Yes, Judge.

THE COURT: All right, it will be marked C-1 and both of you will inform your respective witnesses. You specifically, your client, because he'll be here during the entire time of the examination of the nature of the sequestration order and of course, if it is breached, what the results will be. So, that will be marked C-1 and you'll have that.

As to -- I'd like to inform you, Mr. Moultrie, that of course, when the jury is here, during the jury selection process, the handcuffs will be removed from you, understand, sir, but keep in mind that of course, if you make any type of movement at all which my officers will think may be some attempt to do whatever you have in mind, then not knowing it, they immediately will restrain you and put you down and put the cuffs back on you. Do you understand?

THE DEFENDANT: Yes.

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1 THE COURT: So your behavior in this trial is
2 up to you whether the jury will know or will not know
3 that you're in custody. That's up to you.

4 Is that clear, Mr. Gonzalez?

5 MR. GONZALEZ: Yes, Judge.

6 THE COURT: Anything else you can inform him
7 as to that.

8 As to specific dress, I see today you're dressed
9 in a shirt, tie or sweater and if you'd like to have any
10 change of clothes, of course, that's up to you to make
11 arrangements with your family and friends to have them
12 brought over during the specific time. Not during the
13 day because the Court Officers for security have to go
14 through those articles, you understand?

15 THE DEFENDANT: Yes.

16 THE COURT: So, let me know during the course
17 of the trial if you'd like to have some form of an article
18 of clothing that afternoon or that morning and make your
19 necessary arrangements.

20 Anything further?

21 MR. GONZALEZ: No, Judge.

22 THE COURT: All right.

23 Ready to proceed on the Wade, Mr. Farlong?

24 MR. GONZALEZ: Judge, I assume you're going
25 the Sands after the Wade?

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1 THE COURT: Whichever way you'd like to do it.
2 I thought we were going to do the Wade first and then
3 the Sands.

4 MR. GONZALEZ: Okay, no problem.

5 THE COURT: Call your first witness.

6 MS. FURLONG: Judge, I'm making an argument
7 that Defense hasn't put forth anything before the Court --

8 THE COURT: I don't know what argument.

9 MS. FURLONG: State v. Ortiz. I mean, I'm not --

10 THE COURT: Are you asking under State v. Ortiz?

11 MS. FURLONG: Correct, your Honor.

12 THE COURT: Well, if you don't tell me, I don't
13 know it.

14 MS. FURLONG: That's what I'm telling you.

15 THE COURT: Fine. I asked you to proceed, you're
16 making this argument?

17 MS. FURLONG: Well, Judge, I believe the Defense
18 has the first burden to prove that there's some threshold
19 showing of some --

20 THE COURT: State v. Ortiz?

21 MS. FURLONG: Correct, of some impermissible
22 suggestivity.

23 THE COURT: All right, I'll hear you, sir.

24 MR. GONZALEZ: Judge, I know in State v. Ortiz
25 it was the burden put on the Defendant to show some

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1 suggestibility; however, in Ortiz, unlike this case, Judge,
 2 I believe the defendant's picture was picked out of a
 3 numerous amount of pictures, a hundred, I believe, or
 4 three hundred pictures. I can't recall exactly and in
 5 this case as I understand it, two or three people selected
 6 the picture of Mr. Moultrie from a photo array but according
 7 to the statements of these individuals in which they talk
 8 about the picture selection, it appears that only three
 9 or four pictures were shown, Judge, and unlike Ortiz,
 10 the chances of suggestibility where you have a limited
 11 amount of pictures such as in this case, the chances of
 12 suggestibility are quite high; so, I would say that this
 13 case differs from Ortiz.

14 THE COURT: Well, this is a photo array?

15 MR. GONZALEZ: Yes, correct.

16 THE COURT: Oh, I didn't know.

17 MR. GONZALEZ: For instance, Judge, in one of
 18 them, just to give the Court an idea of what I'm talking
 19 about, in one --

20 THE COURT: Well, State v. Ortiz I believe was
 21 also a photo viewed in some volumes.

22 MR. GONZALEZ: Correct, Judge.

23 THE COURT: So, when you say it's different,
 24 that is not -- also, it was a photo array.

25 MR. GONZALEZ: Yes, it is like in that it was

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1 a photo array in Ortiz such as here where pictures were
 2 also shown but the difference that I'm expressing, Judge,
 3 is that there, there were quite a lot of pictures shown.
 4 I believe that it was in the hundreds or three hundred
 5 pictures and after looking at all of that, the victim
 6 in that case picked out the photo. In this case, it's
 7 a little different.

8 Let me just give you an example, Judge, and
 9 I'm looking at the statement of one Nathaniel Montgomery
 10 who's one of the lay witnesses in this case who selected
 11 the picture of Mr. Moultrie. In that case, as I look
 12 at the statement dated September 11, 1989, of Mr. Nathaniel
 13 Montgomery, as I read it, I believe only one photo was
 14 shown to Mr. Nathaniel Montgomery. That's just only one
 15 of the photo arrays. I believe there was another lay
 16 witness in which only five pictures or six pictures were
 17 shown and from there, they selected the photo of Mr. Mountrie,
 18 so, I think this case differs from the Ortiz case.

19 THE COURT: Ms. Furlong.

20 MS. FURLONG: Yes, Judge, I intend to address
 21 Mr. Gonzalez' remarks.

22 Judge, first, we have to proceed in a fashion
 23 that there are five photographs that were identified initially
 24 and I'll give you the individual names and this is why
 25 the State is arguing how the photo was presented to the

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1 I'll first start with Kathy Woods.

2 Now, Kathy Woods, your Honor, and I say this
3 in light of State v. Ortiz, and I also cite Watkins v.
4 Saunders, 449 U.S. 350; and, United States v. Driver (ph),
5 546 F.2d (1822). The reason I point this out, Judge,
6 is because I think we can dispose of a few of these.

7 There were several witnesses who made photo
8 I.D.s. The first individual which is the State's position
9 there is no Wade issue is a girlfriend of the Defendant,
10 Kathy Woods. In her statement, it's a four-page statement,
11 she indicates in that statement she knew the Defendant
12 Derek Moultrie for a year. The Defendant was apprehended,
13 arrested at her home on the day of this incident, taken
14 from her home in custody. She knew him, she knew his
15 physical characteristics. She gave a statement admitting
16 that she'd been with him all day. One photograph was
17 shown to her and I don't believe there's any suggestibility
18 to point out in a girlfriend/boyfriend relationship, that
19 there would be any taint by the police officer in showing
20 one photograph of a person who just moved in with Kathy
21 Woods and she had been seeing him for a year.

22 MR. GONZALEZ: Judge, we concede as to Ms. Woods.

23 THE COURT: All right.

24 MS. FURLONG: That's Ms. Woods. I'm trying
25 to eliminate

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1 THE COURT: All right, that takes care of that.

2 MS. FURLONG: -- one by one.

3 Next, your Honor, we get to Tykesha Mott.

4 THE COURT: Mott?

5 MS. FURLONG: Mott, M-O-T-T. She also in her
6 statement indicated, if I may, that she knew and was very
7 familiar, it's on the first page of her statement, she
8 gave a two-page statement and she indicates that she had
9 a conversation with the Defendant, she knew him prior
10 to this incident, she knew him as Knight Rider, that he
11 was a go-go dancer in a club that they went to.

12 THE COURT: That he was a go-go dancer?

13 MS. FURLONG: Yes.

14 THE COURT: Speaking of the Defendant?

15 MS. FURLONG: Yes, Judge, and that the name
16 he used was Knight Rider.

17 THE COURT: Knight Rider?

18 MS. FURLONG: Yes, Judge.

19 Now, based on

20 THE COURT: Go ahead, please.

21 MS. FURLONG: And she knew him from the Eleganza
22 (ph) and other clubs and also from the neighborhood so,
23 she had a substantial period of time that she was familiar
24 with this Defendant and the State argues, again, that
25 this one photograph that was shown to --

1 THE COURT: Did she ever see him perform?

2 MS. FURLONG: Correct, your Honor, she saw him
3 at the club. She indicated in her statement that she
4 knew him as his --

5 THE COURT: The Knight Rider.

6 MS. FURLONG: As Knight Rider, so, there was
7 that familiarity and the State argues again --

8 THE COURT: Both as to facial features and otherwise?

9 MS. FURLONG: Correct, your Honor. She was
10 aware of him, she knew who he was, she was shown the
11 photograph, she said yes, that's Derek Moultrie.

12 THE COURT: All right. Shown one photo?

13 MS. FURLONG: Correct, your Honor, and I don't
14 feel there's any taint when a person indicates that they
15 knew the Defendant previously from dancing at go-go clubs.

16 THE COURT: What about that, Mr. Gonzalez?

17 MR. GONZALEZ: Judge, just because somebody
18 knows an individual does not mean that the police did
19 not act improperly when they showed the one photo array
20 and whether they did or not is something that has to be
21 established through a hearing. We have to get Mr. Thomas
22 up there and

23 THE COURT: So you will not concede as to Ms. Hett?

24 MR. GONZALEZ: Right, I don't.

25 THE COURT: What's the next one, please?

1 MS. FURLONG: Well, Judge, if I may, the facts
2 aren't going to change. We could get Detective Thomas.
3 I mean, the State's position is one photograph was shown
4 to Ms. Mott, she indicated that's him, she knew him for
5 a substantial period of time --

6 THE COURT: So, those are the facts. In other
7 words, there's no photo array, there's no question about
8 it being laid out or spread out or books being thumbed
9 through. Apparently, information was obtained so what
10 more can be heard at a hearing?

11 MR. GONZALEZ: Well, Judge, first of all, I
12 would submit to the Court they just showed her one photo --

13 THE COURT: In itself, all right, that's an
14 argument that you may have.

15 Now, you said you're going to indicate one,
16 two, three, four --

17 MS. FURLONG: Yes, well, Judge --

18 THE COURT: Who else do we have?

19 MS. FURLONG: We have three more, Judge.

20 THE COURT: All right.

21 MS. FURLONG: The next one, your Honor, is Pearl
22 Harrell.

23 THE COURT: What's the first name, please?

24 MS. FURLONG: Pearl, P-E-A-R-L.

25 THE COURT: And the last name?

1 MS. FURLONG: Harrell, H-A-R-R-E-L-L.

2 THE COURT: All right.

3 MS. FURLONG: Now, Ms. Harrell, contrary to
4 the other two individuals which the State presented, was
5 given a photograph spread by --

6 THE COURT: Given an array?

7 MS. FURLONG: Yes.

8 THE COURT: How many photos?

9 MS. FURLONG: Seven, your Honor, by Investigator
10 Henry Ferrer. It's documented in her two-page statement
11 on the second page about the fourth question from the
12 bottom where Investigator Ferrer said:

13 Q "I'm giving you seven photographs."

14 He gives the numbers of the photographs.

15 "Can you identify any of them?"

16 And she picks out one photograph and indicates
17 that number.

18 In addition to that, the reason the State argues
19 that there's no threshold showing by Defense under Ortiz
20 is that prior to her looking at the photograph, Ms. Harrell
21 gave a very accurate description of the suspect.

22 Q "Describe the man to me.

23 A Short, heavy-set, light complexion, mustache and
24 looked like a beard and curly hair."

25 I just ask the Court to take note of the defendant

1 here in court.

2 Then she was given the photo array and she selected
3 one. She was asked to sign it on the back by the investigator
4 which she did and the numbers, for the record, the galley
5 numbers are in the report of the other six that she did
6 not identify.

7 THE COURT: But this was as to the others?

8 MS. FURLONG: Correct, your Honor.

9 THE COURT: She was given seven or eight photos?
10 Seven photos.

11 MS. FURLONG: And the State asserts that again,
12 the Defense shows no --

13 THE COURT: That's what the State may assert.

14 MS. FURLONG: Well, Judge, I'm just arguing
15 our position so you can make a decision.

16 THE COURT: Okay, next, please.

17 MS. FURLONG: The next individual was Nathaniel
18 Montgomery.

19 THE COURT: Montgomery?

20 MS. FURLONG: Correct, your Honor.

21 THE COURT: The first name?

22 MS. FURLONG: Nathaniel.

23 THE COURT: All right.

24 MS. FURLONG: Now, Nathaniel Montgomery, again,
25 in his report indicated that he saw the Defendant

1 MS. FURLONG: By Detective Thomas.

2 He was asked if he could identify anyone and
3 he said, Yes, the guy with the gun looking for Victor.

4 THE COURT: All right. He was given a series
5 of photographs, thank you.

6 I'll hear from you, Mr. Gonzalez, as to Ms. Woods.

7 MR. GONZALEZ: Judge, we conceded on Ms. Woods.

8 THE COURT: I'm sorry, just one second.

9 (Pause)

10 THE COURT: I meant to say, Ms. Harrell and
11 Wilkerson. I'll hear you as to Harrell and Wilkerson,
12 they're the two that apparently were given a photo array
13 and then selected from there.

14 MR. GONZALEZ: Well, Judge, the Prosecutor keeps
15 mentioning Ortiz. I've already indicated for the record
16 why I feel this case is different from Ortiz.

17 The problem that I'm having, Judge, is that
18 although there were some pictures shown to the lay witnesses
19 in this case, there were more than one, there were five,
20 six, whatever. The problem that I have is that we don't
21 know how they were -- based on the statements and the --
22 and what Ms. Furlong had to say on the record, we don't
23 know how it was done by the police department and until
24 we get somebody who conducted the photo array on that
25 stand and he tells us under oath how it was done, we won't

1 know if there is some suggestibility or not.

2 In Ortiz, the reason why they felt that the
3 defendant had to meet the threshold is because so many
4 pictures were shown but in this case, there was a limited
5 amount of pictures and once again, I repeat that the chances
6 for suggestibility under these circumstances are much
7 greater than that in Ortiz; so, this case is a little
8 different from that and just because the individual knows
9 Mr. Moultrie such as I believe it was Mr. Wilkerson, doesn't
10 mean that the cops acted properly at the hearing. We
11 won't know until we put Mr. Thomas or whomever the Prosecutor
12 is going to use.

13 THE COURT: All right.

14 MS. FURLONG: Judge, I just want to say on the
15 record that the standard that Mr. Gonzalez is stating,
16 I differ as to what the standard is.

17 Under Ortiz, we don't just -- the whole thing
18 is whether or not we're going to conduct a Wade hearing.
19 Once it's determined that a Wade hearing should be conducted,
20 then the suggestibility comes in as far as whether or
21 not these photographs, these out-of-court identifications
22 are going to be allowed in trial; so, we have to go through
23 the first step as far as Wade and under Ortiz, the Judge
24 is to take the totality of the circumstances.

25 Now, in this particular case, it wasn't an out-of-

1 suspect, it was a known suspect. Statements were taken,
2 the individuals, all of the individuals except Pearl Harrell
3 knew this Defendant for certain periods of time and in
4 Pearl Harrell's statement, she was given the photo spread.
5 She was given seven photographs and she picked one out.

6 Now, Defense is saying well, we've got to have
7 the Wade so we can see if I can meet that threshold showing
8 that there was some suggestibility but if you read the
9 lack in Ortiz, the threshold showing has to come before
10 the Wade hearing. We don't just routinely call people
11 in and say, Well, how were the photographs shown?

12 THE COURT: The threshold showing has to be
13 shown before you're entitled to a full-blown hearing,
14 that's what Ortiz is.

15 MR. GONZALEZ: Judge, I --

16 THE COURT: You have to show some evidence that
17 there was some suggestibility or some taint involved here.
18 So, what you have so far is that the statement only by
19 you, Mr. Gonzalez, indicating whether there were photos
20 that were shown, photo arrays to two specific witnesses
21 and that's Montgomery and Harrell.

22 MR. GONZALEZ: Judge, let me just say this if
23 I may. I don't know if -- I'm sorry if you're not finished.

24 THE COURT: What is there that you're offering
25 some evidence --

1 MR. GONZALEZ: Well --

2 THE COURT: However slight it may be that something
3 was totally unfair about the photo array that was conducted?

4 MR. GONZALEZ: Well, Judge, I would submit to
5 the Court that the one photo --

6 THE COURT: No, no.

7 MR. GONZALEZ: All right.

8 THE COURT: Forget about -- you have five
9 individuals, I'm concerned about two.

10 MR. GONZALEZ: All right.

11 THE COURT: At the moment.

12 MR. GONZALEZ: Yes, your Honor.

13 THE COURT: For your argument.

14 MR. GONZALEZ: Judge, I believe that before
15 Ortiz, whenever there was a photo array in which the defendant
16 was picked out and the Defense attorney requested, a hearing
17 was given. After Ortiz, the Court determined that some
18 type of threshold had to be met before a Wade hearing was
19 necessary.

20 Now, Ortiz, as I indicated, was quite a bit
21 different from the situation here. In other words, the
22 point I'm making is that in order for Ortiz to be applied
23 in this case, there had to have been a situation similar
24 to Ortiz in which quite a bit of pictures were shown to
25 the Defendant -- I mean, to the victim -- I mean, to the

1 witnesses and the witnesses picked up the pictures from
2 a large amount of photos.

3 What I'm saying to you, your Honor, is that
4 Ortiz does not apply in this case because there was a
5 limited amount and therefore, I'm bringing this case back
6 to pre-Ortiz where no threshold had to be met.

7 Now, I would agree with Ms. Furlong that if
8 it were similar to Ortiz, then we have to show -- we have
9 to show some type of threshold but this case is not the
10 Ortiz case.

11 THE COURT: Ms. Furlong.

12 MS. FURLONG: Judge, I think what Mr. Gonzales
13 is saying is looking at just the factual basis in Ortiz
14 and not applying to any other case and that you have to
15 meet that standard and I don't think that's what the Ortiz
16 Court was saying. What the Ortiz Court was saying is
17 you have to look at what was actually done and it does
18 cite language to the effect of, you know, what the parties
19 knew in that particular case. The victim in Ortiz knew
20 the defendant that was appealing whether or not a Wade
21 should have or -- should have been heard and the Court
22 gives weight to the fact that the victim in the Ortiz
23 case knew the defendant, knew him from the neighborhood,
24 recognized who these people were that recognized him at
25 the time and that in light of what was done in Ortiz.

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COTTON CONTENT

1 here we have the same situation. We have one individual
2 who knows this person for four years.

3 THE COURT: I'm not concerned about that.

4 MS. FURLONG: And you have to look at the totality
5 of the circumstances to see if that's suggestive, Judge.

6 THE COURT: I'm not really concerned at the
7 moment for this particular argument about a threshold
8 showing in Ortiz and some evidence of some impropriety.

9 MS. FURLONG: Well, Judge --

10 THE COURT: What I'm -- as to the three who
11 knew, I am concerned as to the two and that's Harrell
12 and Montgomery. Were they shown a photo array, approximately
13 seven photos and whether or not their --

14 MS. FURLONG: Excuse me, your Honor, that's
15 Harrell and Wilkerson.

16 THE COURT: Well, Wilkerson.

17 MS. FURLONG: Well, Judge, I went over that --

18 THE COURT: The ones under those circumstances.

19 MS. FURLONG: Both individuals were able to
20 give physical descriptions prior to being shown the photo
21 spread.

22 THE COURT: I understand that.

23 MS. FURLONG: So, there's no taint there, Judge,
24 because they gave a description, they're given a spread.
25 So, Judge, what I'm trying to get at is that it's not

--COTTON CONTENT--

1 Ortiz, if you have the reliability, the Judge is supposed
 2 to look at the totality of the circumstances. You have
 3 a woman who's giving a physical description which I read
 4 into the record, Ms. Harrell, and then she's looking at
 5 seven photographs and then she's picking an individual
 6 out. Where's the threshold showing of any suggestibility
 7 at that point that we need to go into a Wade?

8 THE COURT: Well, that's one of the problems.
 9 All Ortiz indicated is that they had to proffer some evidence
 10 of impermissible suggestiveness and then they refer you
 11 to Watkins v. Saunders and other United States cases to
 12 make a determination as to what the suggested threshold
 13 may be for Federal constitutional purposes.

14 In Ortiz itself, they didn't give us any particular
 15 guideline as to what threshold showing must be made, it
 16 just states that you should have some sort of a showing
 17 before you're entitled to a full-blown Wade hearing and
 18 what I think and I'm somewhat a little bit confused about
 19 that, it would seem to be that I have no problem considering
 20 the identification by Kathy Woods, that's been conceded,
 21 it would seem to me that I have no problem with
 22 Mr. Montgomery; apparently, you indicated in the statement
 23 that he knew the Defendant for a period of four years
 24 and one photo was shown.

25 As to Harrell, Pearl Harrell, she was shown

- COTION CONTENT -

1 seven photos and picked out one and I understand your
 2 argument, Ms. Furlong, that, you know, Harrell gave a
 3 description. Well, that is not in and of itself no reason
 4 for a hearing. I mean, just giving a description doesn't
 5 mean you're not entitled to a Wade hearing if there is
 6 some form of a suggestion or suggestibility or impermissible
 7 taint and we don't know that until we have a hearing.
 8 I can't just rely upon a statement by the Prosecutor saying,
 9 Well, so-and-so gave a statement and gave a very good
 10 description and Judge, you can take that description as
 11 being accurate because Defendant is before me. That's
 12 not a purpose of making a determination of impermissibility
 13 and taint.

14 MS. FURLONG: No, Judge, but it goes to the
 15 totality of the circumstances in which you make your decision.

16 THE COURT: Well, you may argue that but I think
 17 that otherwise and I would think that the same thing would
 18 apply to --

19 MS. FURLONG: Joseph Wilkerson, Judge?

20 THE COURT: Well --

21 MS. FURLONG: That's the other individual with
 22 seven.

23 THE COURT: Let me just make sure where I have
 24 these names but I believe it was Wilkerson also that was
 25 shown.

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1 MS. FURLONG: Photo spread, Judge.

2 THE COURT: Wilkerson, right, also a series
3 of photos.

4 As to the other three persons, apparently, they
5 knew the Defendant for some years. One knew the Defendant
6 not only the physical or facial characteristics, but also
7 physical characteristics because she -- or he, obviously,
8 is a go-go dancer, Mr. Moultrie, so you know, by giving
9 one photo to somebody only to corroborate identity doesn't
10 necessitate a Wade under those circumstances and if I
11 find otherwise, it would seem to me that we should have
12 a Wade under the circumstances considering the two individuals
13 that we just mentioned. And that's what I would conclude
14 at this point and as to the other three, it doesn't seem
15 that we have to go over all that at a full-blown Wade where
16 it's conceded as to one who knew, the first one and as
17 to the other two who knew the Defendant and could identify
18 him and only one photograph, the photo is necessitated
19 and it's really not for identification by and of itself
20 but it's more for corroboration of the other individuals
21 and so therefore, we will not have to have a Wade on those
22 three. Is that clear?

23 MR. GONZALEZ: Sure, Judge.

24 THE COURT: Fine.

25 So, you'll be ready to proceed with the Wade

1 hearing after lunch, you have to go before Judge Falcone
2 at 1:30.

3 MR. GONZALEZ: Yes.

4 THE COURT: And here we are almost a quarter
5 of; so, our lunch hour will be one hour from a quarter
6 of one to a quarter of two.

7 MS. FURLONG: Judge, can I make a suggestion
8 and it may expedite things. I have two officers I'll
9 be calling for the Wade, Investigator Ferrer and Thomas.
10 I just let Thomas go. Because of the time, wouldn't it
11 be easier to start picking the jury today?

12 THE COURT: Whatever you'd like to do.

13 MS. FURLONG: Finish tomorrow because we'll
14 both be here tomorrow --

15 THE COURT: All right, whatever you want to
16 do.

17 MR. GONZALEZ: I have no problem.

18 THE COURT: All right, as long as we select
19 the jury.

20 MR. GONZALEZ: Okay.

21 THE COURT: Let me indicate this. Once we have
22 a jury selected and we do have them selected, I will swear
23 them.

24 - COPIED CONTENT -
25 MR. GONZALEZ: Judge, well, we'll deal with
26 that bridge when we get to it.

1 THE COURT: That's why I brought it out, all
2 right.

3 (Whereupon, Court in luncheon recess.)

4 (Whereupon, partial jury selection is conducted.)

5 THE COURT: Yes.

6 MR. GONZALEZ: Judge, about two o'clock this
7 afternoon, more or less, I received from Ms. Furlong a
8 report from an Investigator Ray E. Marshall.

9 THE COURT: You received a report?

10 MR. GONZALEZ: Yes, a report from one Ray E.
11 Marshall.

12 THE COURT: Just one second, please.

13 THE COURT OFFICER: Those are members of his
14 family.

15 THE COURT: Oh, all right.

16 Who was it, a State investigator?

17 MR. GONZALEZ: Yes.

18 THE COURT: Ray --

19 MR. GONZALEZ: Ray Marshall.

20 THE COURT: Marshall?

21 MR. GONZALEZ: Correct, Judge.

22 THE COURT: Yes, sir.

23 MR. GONZALEZ: Mr. Marshall apparently is a
24 fingerprint expert from the Prosecutor's Office or in
25 one way or another related to the Prosecutor's Office.

1 or related with the Prosecutor's Office.

2 Judge, it's a two-paragraph report and in that
3 report, Mr. Marshall indicates that he compared certain
4 fingerprints, one of the fingerprints being that of
5 Mr. Moultrie from a gallery and he compared that fingerprint
6 with a latent impression recovered from a telephone book
7 that I believe is going to be used during the trial as
8 evidence. Apparently, the gun was found in this telephone
9 book by the Newark -- by Detective Thomas of the Newark
10 Police Department. A comparison was made by this Detective
11 Marshall and his opinion is that the fingerprints match.

12 THE COURT: Now, where was this fingerprint
13 lifted from?

14 MR. GONZALEZ: Okay. The fingerprint was lifted
15 from a telephone book.

16 THE COURT: A telephone book?

17 MR. GONZALEZ: Let me just backtrack, Judge.

18 THE COURT: Yes, please.

19 MR. GONZALEZ: The allegations are that the
20 gun which was used in the homicide was put in a hollowed-out
21 telephone book.

22 THE COURT: Yes.

23 MR. GONZALEZ: In other words, the inside was
24 cut out and the gun was placed inside of this -- the hollow
25 portion of the telephone book. Fingerprints --

1 that.

2 The telephone book was obtained, it was, I guess,
3 looked at for fingerprints. Certain fingerprints were
4 lifted and those fingerprints or that fingerprint, according
5 to this report, compares with the fingerprint of Mr. Moultrie
6 which was taken from a prior arrest.

7 My problem is this, Judge. I know that it's
8 not Ms. Furlong's fault; however, it seems to me that
9 these reports should have been prepared and have been
10 submitted to me a long time ago.

11 Judge, identification may be an issue in this
12 case and whether or not these fingerprints do match, it's
13 an essential issue during this trial. When I received
14 the report, I right away got in contact with my investigative
15 unit in the P.D.'s office to ascertain whether we had
16 access to a fingerprint expert. It turns out that we
17 have somebody from the Passaic office. I contacted that
18 individual, his name is Bruce Murphy. I spoke --

19 THE COURT: Incidentally, did you give that
20 name to the potential jurors?

21 MR. GONZALEZ: Yes, I did, Judge.

22 THE COURT: All right. And the name is --

23 MR. GONZALEZ: Bruce Murphy.

24 Just briefly, Judge, you were in your chambers
25 and Ms. Furlong was there when I was speaking to Mr. Murphy.

1 Judge, what I requested from Mr. Murphy was
2 the mechanics of Mr. Murphy at least checking whether
3 these fingerprints do match. In other words, what do
4 we need for him to look at both the latent impressions
5 recovered from the telephone book and that from the gallery
6 so that he could make an independent determination whether
7 these things are -- match. He indicated to me that he
8 needed a photostatic copy of fingerprints on Mr. Moultrie's
9 gallery.

10 Judge, what I have and which was given to as
11 part of the discovery is a Xeroxed copy of the fingerprints.

12 MS. FURLONG: Judge, I hate to interrupt
13 Mr. Gonzalez, but since the hour is late, I can make this
14 real short. I represented to Mr. Gonzales that the State
15 has no problem with his expert physically looking at the
16 actual prints instead of going to make photographs and
17 whatever. We have that available. I gave Mr. Gonzales
18 the address, it's 31 Green Street. We will contact
19 Mr. Marshall, the identification officer. He will have those
20 records available for Mr. Murphy to examine anytime he
21 can go and see them.

22 MR. GONZALEZ: Well, Ms. Furlong has been very
23 helpful, Judge, and I really appreciate that. The problem
24 is, I don't -- when I spoke to Mr. Murphy, what he wanted
25 was for us to send these copies to the Passaic office.

1 Now, I don't know whether he'll be available
2 tomorrow and to be frank with you, I have not discussed
3 that matter with him, whether he will be able to come
4 down tomorrow and talk to Marshall or somebody from
5 Ms. Furlong's office and look at these matters and see
6 what he can do but I've got a secondary problem that I
7 think is even more -- a bigger problem, Judge, as I see
8 it and that is in light of the fact that these fingerprints
9 were found on the book.

10 It seems to me that in fairness to Mr. Moultrie
11 that my expert take a look at the other parts of the book
12 and see if the fingerprints of somebody else --

13 THE COURT: Well, of course --

14 MR. GONZALEZ: -- were also on that book.

15 MS. FURLONG: Fine, Judge. Mine will be on
16 there because I touched it.

17 MR. GONZALEZ: Besides Ms. Furlong's and --

18 THE COURT: Well, what he's looking for and
19 I think it's fair that he should be able to compare the
20 fingerprints from the hollowed-out telephone book as well
21 as the photocopy print and some gallery photo of the Defendant
22 and I will assume also that Mr. Murphy could be given
23 the opportunity and under his own guidance as to how he
24 would like to conduct his examination.

25 MS. FURLONG: Well, Judge, I think we're going

1 to have another hearing on it because with the particular
2 phone book which has been in evidence, I myself touched
3 it. I mean, my prints are there. I wasn't there on
4 September 11th, 1989.

5 THE COURT: No, I mean --

6 MS. FURLONG: I mean, this is -- I understand
7 Mr. Gonzalez' dilemma, but this telephone book, it's not
8 new. If this report had been --

9 THE COURT: Wait a minute, wait a minute. We're
10 starting to get away from, you know, what's being presented.

11 The first thing is, and I don't know, Mr. Gonzalez
12 indicated that the first time he knew of anything --

13 MS. FURLONG: No, Judge, he had a report, he
14 just didn't know the results of the report. He was given
15 in discovery a report by Investigator Marshall and that
16 report was part of the discovery. On that report, it
17 indicates the time, place of examination, the time completed
18 and that one telephone book and a .22-caliber --

19 THE COURT: When did you have this information,
20 Mr. Gonzalez?

21 MS. FURLONG: -- and that the results on it
22 were that it developed latent prints on the telephone
23 book and on the hand grip of the pistol.

24 THE COURT: When did you have this, Mr. --

25 MS. FURLONG: Months ago, Judge.

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THE COURT: Well, let me ask him.

MR. GONZALEZ: Judge, I don't recall having that.

THE COURT: Well, you better get it resolved because that's most important.

MS. FURLONG: Judge, I have the request right here.

THE COURT: If you have that information, Mr. Gonzalez, then you had ample opportunity. If you just received it for the first time at two o'clock this afternoon, that makes a -- that's another point.

(Pause)

THE COURT: Do you have discovery that was sent out? I have a copy of it apparently dated March 28, 1990, Item No. 9, fingerprint report dated 5-28-86 and 8-27-86 and that letter was directed to you, Mr. Gonzalez. Do you see it?

MR. GONZALEZ: Judge, I don't -- no, I know what letter you're referring to, I don't --

THE COURT: I'm referring to a letter from Ms. Furlong with a copy to me. That's how I have it, addressed to you. In request for discovery.

MR. GONZALEZ: In request for my discovery?

THE COURT: Yes, it was dated February 6th, '90, and she responded March 28th.

1 MR. GONZALEZ: Right.

2 THE COURT: Now, if you have that and you know
3 of that, that puts a different light on it.

4 MR. GONZALEZ: Judge, well, what -- I don't
5 have the --

6 THE COURT: She stated something about a fingerprint
7 report.

8 MR. GONZALEZ: Oh, I stated that, correct, Judge.

9 THE COURT: Pardon?

10 MR. GONZALEZ: I stated something about a fingerprint
11 report.

12 THE COURT: No --

13 MS. FURLONG: Judge, I did.

14 THE COURT: She sent to you a copy of a fingerprint
15 report, one dated 5-28-86 and the other dated August 27,
16 '86. You have copies of those fingerprint reports.

17 MR. GONZALEZ: No, I don't, Judge.

18 MS. FURLONG: Well, Judge, it was sent. If
19 you read my letter, one to Mr. Dwyer and then additionally
20 it was resent to Mr. Gonzalez.

21 MR. GONZALEZ: Judge, maybe I'm not --

22 THE COURT: All right.

23 MR. GONZALEZ: -- understanding.

24 THE COURT: All right. You have a letter addressed
25 to you dated March 28, 1986, from Ms. Furlong, dated

1 to me.

2 MR. GONZALEZ: Correct, Judge.

3 THE COURT: Okay. And in that she said in response
4 to your request for discovery dated February 26th, 1990,
5 "I have enclosed the following -- do you have that?"

6 MR. GONZALEZ: Yes.

7 THE COURT: And if you go down to Item No. 9
8 it states, "Fingerprint report." Does it state that?

9 MR. GONZALEZ: Yes, it does, Judge.

10 THE COURT: And there are two reports, one dated
11 5-28-86 and the other August 27th, '86. Do you have those
12 reports?

13 MR. GONZALEZ: No, I don't, Judge.

14 THE COURT: That's the dilemma because if you
15 did have them and they were attached to that letter, then
16 you're aware of the fingerprints.

17 MR. GONZALEZ: Well, I don't know what is on
18 that letter, Judge, referring to your March 28th, 1990 --

19 THE COURT: No. 9, fingerprint report dated
20 5-28-86 and 8-27-86. Do you have those reports?

21 MR. GONZALEZ: I don't have them, Judge.

22 THE COURT: Ms. Furlong, did you attach them,
23 too? Do you have them?

24 MS. FURLONG: Judge, if you notice in my letter,
25 I say, "Please note discovery items 1 through 10 were

1 given to John Dwyer." And I reattached --

2 THE COURT: Oh --

3 MS. FURLONG: -- I gave them again.

4 THE COURT: Look, you have to resolve --

5 MS. FURLONG: Judge, if you read --

6 THE COURT: -- if John Dwyer had them.

7 MR. GONZALEZ: Well, Judge, John Dwyer -- just
8 let me make one more point. At the end of the letter
9 which is more important than the actual earlier one is
10 the results of these reports and I'll read the last portion --

11 THE COURT: Of the same letter?

12 MR. GONZALEZ: Yes, of the same letter.

13 THE COURT: Get my copy.

14 Let me get my copy.

15 MS. FURLONG: Judge, there's no dispute that
16 it's in there that I was awaiting results. I didn't have
17 them at that time and I just received them today.

18 MR. GONZALEZ: That's the point. So, the results
19 were received today and I received them from Ms. Furlong,
20 the results, Judge.

21 MS. FURLONG: My point, Judge, is that the phone
22 book has been there with the records saying that latent
23 prints were lifted since the inception of this case.
24 Whether or not these prints actually match the Defendant's
25 was the issue in question. To go and have the book

1 fingerprinted at this late date, I mean --

2 THE COURT: But the point is, when did you receive
3 you just stated something that you received only today?

4 MS. FURLONG: No, I received -- the prints were
5 taken back when this crime was committed.

6 THE COURT: That I understand.

7 MS. FURLONG: The very day. I received the
8 result that the print that they took actually matched
9 the Defendant.

10 THE COURT: When did you receive that?

11 MS. FURLONG: Today.

12 MR. GONZALEZ: That's my problem Judge.

13 THE COURT: Well --

14 MR. GONZALEZ: And I think that it's not
15 Ms. Furlong's fault.

16 THE COURT: Well, it may not be her fault but
17 there's a problem.

18 MR. GONZALEZ: I know that.

19 THE COURT: If she just received it today, you
20 know, I mean, here we are this case has been called several
21 times, it's been listed, we had pretrials, it's been on
22 two weeks and Mr. Gonzales, you were here indicating that
23 you were ready to go and if you were ready to move it
24 then you wouldn't have had those reports then and the
25 State wouldn't be able to use it and they may not be able

1 to use it now.

2 MS. FURLONG: Well, Judge, I can only say that
3 they can only do whatever they do as fast as they do whether
4 you light a bonfire or not.

5 THE COURT: Pardon, bonfire? I don't know what
6 that has to do with it. The question here is if you don't --
7 if you just received it today and he hadn't got it, he
8 may not be able to use it.

9 MS. FURLONG: Judge, what -- there was no violation
10 of the discovery rule here.

11 THE COURT: It's not the violation, it's late
12 discovery. How do you expect the Defendant --

13 MS. FURLONG: How can it be late discovery,
14 Judge, we only discovered it today.

15 THE COURT: You may not be ready to use it,
16 thank you. I'll see you at nine o'clock.

17 I mean, that's what we have. How am I to resolve
18 it? Thank you, nine o'clock.

19 MS. FURLONG: I don't understand it.

20 (Whereupon, proceedings are concluded.)
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C E R T I F I C A T E

I, LYDIA FUCCI, a Certified Shorthand
Reporter and Official Court Reporter of the State
of New Jersey, do hereby state that the foregoing
is a true and accurate transcript of my stenographic
notes.

ERASABLE
- COTTON CONTENT -

Lydia Fucci, CSR
LYDIA FUCCI, C.S.R.
Official Court Reporter

Dated: 12-18-91

I N D E X

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AS TO WADE HEARING:

WITNESS

DIRECT

CROSS

INV. HENRY FERRER
By Ms. Furlong
By Mr. Gonzalez

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DET. WILLIAM THOMAS
By Ms. Furlong
By Mr. Gonzalez

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HEMLOCK
ERASABLE

6971

PENGAD CO., BAYONNE, N.J. 07002 - FORM FEB-55

1 (Whereupon, jury selection continues from
2 6-11-90.)

3 (Whereupon, jury is sworn.)

4 (Whereupon, court instructs jury.)

5 (Whereupon, the following takes place outside
6 the presence of the jury.)

7 THE COURT: All right, are we ready to go forward
8 with the Wade?

9 First of all, what we should do is -- do you want
10 a sequestration order?

11 MS. FURLONG: Yes.

12 MR. GONZALEZ: Correct, your Honor.

13 THE COURT: Have the sequestration order marked
14 C-1 and you'll have copies of that sequestration order and
15 please, notify and inform all the witnesses of the nature
16 and consequences of the breach of the sequestration order.

17 Do you have a copy of that?

18 THE COURT CLERK: Yes, sir, right here.

19 THE COURT: C-1.

20 THE COURT CLERK: C-1.

21 THE COURT: Thank you.

22 (Whereupon, exhibit is marked C-1 into Evidence.)

23 THE COURT: All right, that takes care of that.

24 All right, can we go forward here?

25 MS. FURLONG: Correct, your Honor.

MEMLOOK
ERASABLE

1 Your Honor, at this time, the State calls
2 Investigator Henry Ferrer.

3 THE COURT: Henry Ferrer?

4 MS. FURLONG: Yes, F-E-R-R-E-R.

5 (Whereupon, witness enters.)

6 INVESTIGATOR H E N R Y F E R R E R, sworn.

7 THE COURT: Good morning, sir.

8 Direct examination, please.

9 MS. FURLONG: Thank you, your Honor.

10 DIRECT EXAMINATION BY MS. FURLONG:

11 Q Investigator Ferrer, are you familiar with the
12 matter, State of New Jersey versus Derek Moultrie?

13 A Yes, I am.

14 Q And did you have occasion to investigate this
15 matter?

16 A Yes, I did.

17 Q And did you also have occasion to take a
18 statement from one Pearl Harrell?

19 A Yes.

20 Q And do you have your report or a copy of the
21 report of that statement with you today in court?

22 A I have a copy of the statement.

23 Q Now, Investigator, could you please, for the
24 record, state the date on which the statement was taken
25 from Pearl Harrell?

HEMLOCK
ERASABLE

COTTON CONTENT-

6971

FED-23

PENGAD CO., BAYONNE, N. J. 07002 - FORM

1 A September 11th, 1989.

2 Q what was that date, please, September --

3 A September 11th, 1989.

4 Q And Investigator, where was this statement taken?

5 A It was taken at the Newark Police Headquarters in the
6 Homicide Squad.

7 Q Now, in the course of taking this statement from
8 your memory, do you remember whether or not Ms. Harrell gave
9 a physical description of the suspect in this case?

10 A Yes, she did. I asked her for a description, she gave
11 me one.

12 Q And Investigator, can you, from your memory or
13 do you need to refer to your report to tell the Court the
14 physical description that Ms. Harrell gave in her statement?

15 A I'd have to check the statement.

16 MS. FURLONG: Your Honor, at this time, I'd like
17 to have the statement of Pearl Harrell marked as State's
18 Exhibit S-1.

19 THE COURT: All right, thank you.

20 (Whereupon, exhibit is marked S-1 for Identification.)

21 (Whereupon, Prosecutor shows Defense Counsel the
22 statement.)

23 Q Now, Investigator, I'm now showing you what's
24 been marked as State's Exhibit S-1. If you could, just
25 take a chance to look at that for a moment and let us know

- COPY ON CONTENT -

891

FED-25

PENGAD CO., BAYONNE, N.J. 07002 - FORM

1 when your memory is refreshed as far as the description
2 Pearl Harrell gave of the suspect.

3 (Whereupon, witness reviews report.)

4 A Yes.

5 Q Could you please tell the Court what that
6 description was?

7 A It's a short heavysset, light-skinned complexion male,
8 moustache and something that looked like a beard and he had
9 curly hair.

10 Q Now, at any point in time while taking that
11 statement, did you ask Ms. Harrell if she would be able to
12 identify the suspect in this case?

13 A Yes, I did.

14 Q And what was her response?

15 A She said she could, yes.

16 Q And did there come a point in time where
17 photographs were shown to Ms. Harrell?

18 A Yes.

19 Q And could you please indicate to the Court in
20 what manner those photographs were presented to Ms. Harrell?

21 A There were a group of photographs, individual
22 photographs and -- including one of the suspect.

23 MS. FURLONG: Your Honor, at this time, I'd like --

24 THE COURT: How many photographs?

25 THE WITNESS: I believe there were seven at the

Ferrer - direct

7

1 time.

2 THE COURT: All right.

3 MS. FURLONG: Your Honor, at this time --

4 THE WITNESS: Seven.

5 MS. FURLONG: -- I'd like to have the following
6 seven photographs marked for identification.

7 THE COURT: Are they in an envelope or will they
8 be marked individually?

9 MS. FURLONG: Your Honor, I'll just have them
10 marked as State's Exhibit S-2.

11 THE COURT: S-2?

12 MS. FURLONG: E through G -- I mean, A through G,
13 excuse me.

14 THE COURT: Okay.

15 (Whereupon, exhibit is marked S-2A through G for
16 Identification.)

17 (Whereupon, Prosecutor shows Defense Counsel
18 photographs.)

19 Q Now, Investigator, I'm now showing you what's
20 been marked as State's Exhibit S-2A through G for
21 Identification. Could you please indicate for the record,
22 first all, what they -- those photographs are of?

23 (Whereupon, witness reviews photographs.)

24 A This was the group of photographs that were shown to
25 Ms. Pearl Harrell.

HEMLOCK

1 Q Now, Investigator, I'm going to ask you so that
2 we have it on the record, is there any place within the
3 body of the statement taken from Ms. Harrell that you
4 indicated the numbers of photographs? By that, I mean the
5 gallery numbers?

6 A Yes, I did.

7 Q And could you please compare those gallery
8 numbers that you have in your report to the photographs that
9 you have? Giving to you an example, say Exhibit S-2A so
10 that we have the corresponding numbers.

11 A Yes, I have checked the statement that I took from her,
12 the numbers correspond to the group of photographs that
13 you've given me.

14 Q And for the record, Investigator, could you
15 indicate the numbers with the corresponding State exhibit
16 number?

17 If you turn over the photograph --

18 A State's 2G, 2F, 2E, 2D, 2C, 2B, 2A.

19 Q Okay.

20 Now, of those seven photographs, which photograph
21 is of the Defendant in this case?

22 A It's 2G.

23 Q And is that the photograph that Ms. Harrell
24 indicated was the Defendant at the time you took her
25 statement?

NOTION CONTENT-

Ferrer - direct

9

1 A That's correct.

2 Q And are there any indications or markings on that
3 photograph that indicate that it was in fact the photograph
4 that Ms. Harrell selected?

5 A Yes, I had her place her name, the date of September 11,
6 1989, and a time which this took place.

7 Q Now, could you go into a little bit of the
8 specifics as to how Ms. Harrell was actually looking at
9 those pictures; where she was seated?

10 A She was seated at the Newark Homicide Squad at one
11 of the desks. I handed her a group of photographs, I asked
12 her to check photographs and see if she recognized anyone
13 in those photographs and she picked out the photograph of
14 the Defendant.

15 Prior to giving her the photographs, all the photographs
16 used in the lineup were -- had to have black magic marker put
17 on each and every photograph because the subject's only
18 photo that we had available to us had a white bandage
19 around his head.

20 Q And Investigator, just so the record is clear,
21 that was done in every photograph?

22 A Yes, that's correct.

23 Q Okay.
24 ERASABLE
25 Now --

THE COURT DID NOT SAY THAT THE ...

891

PENGAD CO., BAYONNE, N.J. 07002 - FORM FEB-85

1 are on all the others?

2 THE WITNESS: Yes.

3 THE COURT: Black markings?

4 THE WITNESS: Black markings from the forehead
5 to the back of the head area was placed on each and every
6 photograph. We did that in order to cover up the bandage
7 on the subject.

8 Q I understand, all right, thank you.

9 Now, Investigator --

10 THE COURT: Did you fix a date? I'm sorry.

11 MS. FURLONG: Judge, this was done at the time
12 the statement was taken, September 11th.

13 THE COURT: Okay.

14 BY MS. FURLONG:

15 Q Now, Investigator, at any point in time, did you
16 ever suggest or make any statements to Ms. Harrell while
17 she was looking through the photographs?

18 A No, I did not.

19 Q Did you engage in any conversation with
20 Ms. Harrell while she was looking through the photographs?

21 A No, I did not.

22 Q At what point in time did you engage in a
23 conversation with Ms. Harrell at the time she was looking
24 at the photographs?

25 A After she indicated who the subject was.

Ferrer - direct/cross

11

1 Q And this was documented in the statement you
2 took from Ms. Harrell?

3 A That's correct.

4 MS. FURLONG: Your Honor, I have no further
5 questions of this witness.

6 THE COURT: Cross-examination, please.

7 CROSS-EXAMINATION BY MR. GONZALEZ:

8 Q Officer --

9 THE COURT: Before you do that, let me address
10 the next matter.

11 (Whereupon, Court addresses a separate matter.)

12 THE COURT: All right, sorry for the interruption.

13 MR. GONZALEZ: No problem.

14 THE COURT: Cross-examination, please.

15 CROSS-EXAMINATION BY MR. GONZALEZ:

16 Q Officer, Ferrer, good morning.

17 A Good morning.

18 Q Officer Ferrer, this identification took place
19 at 22 Franklin Street?

20 A Yes, police headquarters.

21 Q And do you recall the time that Ms. Harrell
22 came to police headquarters?

23 A It was early that morning. I don't recall the
24 exact time, it may be in my report.

25 Q If that refreshes your recollection, do you want

1 to look at your report?

2 THE COURT: When you say "your report," your
3 report? Did you say your report?

4 THE WITNESS: Yes, sir.

5 THE COURT: All right. Do you have it there?

6 THE WITNESS: Yes, sir.

7 THE COURT: Do you have it marked?

8 MR. GONZALEZ: Well, Judge, we have the statement
9 marked, correct?

10 THE COURT: That's S-1.

11 MR. GONZALEZ: All right.

12 BY MR. GONZALEZ:

13 Q Maybe if you look at S-1, that will refresh your
14 recollection, Officer.

15 A Well, the statement has a starting time of 9:02.

16 Q All right. So, is it fair to say that the
17 identification occurred around 9:02 a.m.; that is in the
18 morning?

19 A Yeah, she was brought to police headquarters prior to
20 that and she made the identification while I was taking the
21 statement.

22 Q Okay. Do you recall if Ms. Harrell came to the
23 station with anybody else?

24 A I drove quite a few witnesses in, it's possible that
25 I did transport her; but I wouldn't know unless I reviewed

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1 my reports.

2 Q Okay. And when you transported Ms. Harrell,
3 did you transport her by herself or was anybody else with
4 her when you transported her?

5 A As I said, I can't recall unless I look at my report
6 if I did, in fact, transport her; but when I did transport
7 the witnesses that I had, I had quite a few of them in the
8 vehicle, I would have to look at my report to tell you
9 which witnesses I did transport.

10 Q Okay, let's move on.

11 When you told us that she pointed out the picture
12 of Mr. Moultrie, how did she do it? Did she point to it
13 and tell you who it was? How did she do it?

14 A She had been leafing through the group of photographs,
15 she stopped at his photograph and she said, This is the one.

16 Q And you, at no time, suggested to her who
17 Mr. -- the photo of Mr. Moultrie was?

18 A No, I did not.

19 MR. GONZALEZ: No further questions, thank you.

20 THE COURT: Was there anyone around her at the
21 time?

22 THE WITNESS: No, it was just -- I was at the desk
23 taking her statement on a typewriter, she was on the side
24 of the typewriter. I gave it to her, she was just leafing
25 through the group and said, This is the one.

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THE COURT: Did you place them in any particular fashion?

THE WITNESS: It was in the group of photographs. I usually put it in the middle, I don't recall exactly what spot this one was in.

THE COURT: And she was at the desk by herself?

THE WITNESS: With me, at the typewriter.

THE COURT: But who was with her physically?

THE WITNESS: Just herself.

THE COURT: Okay. and she announced to you as to when she picked one out?

THE WITNESS: That's correct.

THE COURT: And there was no one around her at the time?

THE WITNESS: No, sir.

THE COURT: All right, thank you.

Anything further?

MR. GONZALEZ: No, Judge.

MS. FURLONG: No, your Honor.

THE COURT: You may step down, thank you.

THE WITNESS: Thank you.

THE COURT: Anything else?

MS. FURLONG: No, your Honor.

I don't know if Detective Thomas is outside, he would be the next witness. We put a call through to

1 Judge Perretti's.

2 (Whereupon, Investigator Henry Ferrer exits.)

3 MR. GONZALEZ: Judge, we do have a Sands.

4 THE COURT: I understand.

5 What is Thomas --

6 MS. FURLONG: Thomas is on the other Wade matter,
7 your Honor, in reference to Joseph Wilkerson.

8 THE COURT: All right.

9 MS. FURLONG: Your Honor, I'll call down and see
10 what the status is on Mr. Thomas?

11 THE COURT: All right.

12 (Pause.)

13 MS. FURLONG: Your Honor, Detective Thomas should
14 be on his way down.

15 THE COURT: All right. In the meantime, do you
16 have a Sands that we can do?

17 MS. FURLONG: Yes, Judge.

18 Judge, in reference to the Sands matter, I
19 supplied Defense Counsel a copy of our first deal with the
20 Defendant's convictions.

21 THE COURT: All right. What do we have by way
22 of Judgment of Conviction, please?

23 MS. FURLONG: Judge, in reference to the Defendant,
24 I have a copy of it here.

25 THE COURT: All right, I have a copy of the

1 Judgment of Conviction on Accusation No. 10607 of the '86
2 term. The Defendant was sentenced on October 3rd, 1986,
3 count one, possession of a gun without a permit and received
4 a sentence of three years with a fine of a hundred dollars
5 and a penalty of \$30 and on count two, theft of an
6 automobile, probation three years concurrent to count one
7 and a penalty of \$30.

8 That Judgment of Conviction was entered, as
9 indicated, 10-3-86 by Judge Freedman, correct?

10 MS. FURLONG: Yes, your Honor.

11 THE COURT: Anything else?

12 MS. FURLONG: No, your Honor, as far as the
13 Defendant, no.

14 THE COURT: All right.

15 MR. GONZALEZ: Judge, I concede on the issue of
16 Sands.

17 THE COURT: All right. And therefore, it will
18 be limited -- rather, the limitation, as you well know
19 from the Sands is conceded that it will be used only in
20 the event that the Defendant does testify as to credibility
21 only and, of course, a limited instruction will be given
22 at that time.

23 MS. FURLONG: Thank you, your Honor.

24 THE COURT: Anything further?

25 MS. FURLONG: Your Honor, we do have a further

1 matter. I would just like to pull out the Judgment of
2 Conviction on one of the State's witnesses. Just give me
3 a second.

4 (Pause.)

5 THE COURT: All right, what's next, please?

6 MS. FURLONG: Your Honor, next is in reference to
7 one of the State's witnesses, Ianthia Mott; the conviction
8 goes back to 1976.

9 THE COURT: Who's the name here? I can't pronounce
10 it.

11 MS. FURLONG: Ianthia. For the record, I-A-N-T-H-
12 I-A, Mott, M-O-T-T, Lewis, L-E-W-I-S.

13 THE COURT: This was a retraxit plea, possession
14 of CDS, is it?

15 MS. FURLONG: Correct, your Honor.

16 THE COURT: And she received 18 months in the
17 Essex County Corrections Center; suspended, placed on
18 probation for one year.

19 I can't make out the judge's name, Judge Walsh,
20 I believe.

21 MS. FURLONG: Judge, I believe they're both
22 Judge Walsh.

23 Judge, thre's two matters I --

24 THE COURT: And that was January 13, 1977, when
25 the retraxit plea was entered?

1 MS. FURLONG: Correct, your Honor.

2 THE COURT: All right.

3 MS. FURLONG: I believe, for the purposes of
4 sentencing, it was a consolidated plea offer and as you'll
5 note, there's two individual matters. She pled guilty on
6 both -- on the same date, January 3rd, 1977, to two counts
7 of possession, one on each and she was sentenced on
8 February 8th, 1977.

9 THE COURT: All right, I'll hear you on that.

10 MS. FURLONG: Judge, in light of the fact that
11 this woman, Ms. Mott-Lewis stems back to 1977, it's over
12 13 years as far as a period of time. I would agree that
13 there's no relationship between that and the necessity to
14 use it to impeach her credibility.

15 THE COURT: What is she being offered as?

16 MS. FURLONG: I'm not offering it but I have to
17 present it, Judge, because --

18 MR. GONZALES: Judge --

19 THE COURT: Who is this person?

20 MS. FURLONG: She's going to be a witness for
21 the State, the decedent's sister.

22 THE COURT: Oh, related to the decedent, sister,
23 all right.

24 MR. GONZALES: Correct, Judge.

25 Under Sands, as you well know, remoteness is only

1 one prong. As I understand it, there are three prongs.
2 Number one is remoteness; number two, whether the conviction
3 in any way related to the possibility that the potential
4 witness may rely; the nature of the offense, Judge.

5 It appears to me, Judge, even under Sands, it
6 doesn't say that after ten years or after eleven years or
7 after twelve years, the remoteness makes it irrelevant.
8 It appears to me that somebody who has been taking drugs,
9 as you can see from the conviction, she was convicted of
10 possession of CDS, two counts; that someone who was
11 convicted of taking drugs is definitely not a law-abiding
12 individual and as is pointed out in Sands, a person who is
13 not law-abiding, Judge, would most likely, when he takes
14 the stand, not consider the oath of not lying on the
15 stand with the same degree of sincerity as someone who is
16 law-abiding.

17 As I indicated, there's no time frame at all.
18 We generally use the ten-year time frame but that's not
19 something that's cemented in our law.

20 Judge, in light of the fact that the credibility
21 of Ms. Lewis is going to be essential in this case;
22 apparently, Ms. Lewis will testify that she saw Mr. Moultrie
23 force Mr. Mott into the car which was later used in the
24 kidnapping, the alleged kidnapping of Mr. Mott. I think
25 her credibility will be very very essential and the fact

1 that she's been a violator of the law in the past, this
2 is essential to determine whether she's telling us the
3 truth during this trial and I think the jury should know
4 about it.

5 THE COURT: All right, let me ask you this.

6 At the time that she entered a guilty plea to
7 possession, what was her age, do you know?

8 MS. FURLONG: It should be on here.

9 (Pause.)

10 MS. FURLONG: I can give you an estimation,
11 Judge.

12 MR. GONZALEZ: Judge, in September 11, '89, she
13 was 38.

14 MS. FURLONG: Thirty-eight.

15 THE COURT: When?

16 MR. GONZALEZ: September 11th of 1989 when she
17 gave --

18 THE COURT: '89?

19 MR. GONZALEZ: '89, she was 38 so that would make
20 her --

21 MS. FURLONG: Twenty-four.

22 MR. GONZALEZ: Twenty-six.

23 THE COURT: At the time, correct.

24 MR. GONZALEZ: Correct, Judge.

25 THE COURT: She wasn't a 19- or 18-year-old.

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1 At the same time, of course, we do have that
2 she did plead guilty to one count possession and I believe --
3 they're both possession of CDS and the one with intent to
4 distribute, was that --

5 MR. GONZALEZ: Judge, I believe they were both
6 straight possession of CDS on two different indictments.

7 THE COURT: I see.

8 MR. GONZALEZ: There was Indictment 3961-75,
9 possession of CDS and then there's Indictment 599-76 where
10 she once again pled to straight possession of CDS. We have
11 two different indictments.

12 THE COURT: All right, anything else?

13 MR. GONZALEZ: No, Judge.

14 THE COURT: Miss Furlong, do you have anything
15 further?

16 MS. FURLONG: No, your Honor.

17 THE COURT: All right.

18 Well, as you well know, the question of remoteness --
19 I would say the key to exclusion is remoteness, no question
20 about that; however, the Judge may omit evidence unless,
21 as you well know, the direct discretion of the Judge he
22 finds that it's probative value, because of remoteness, is
23 substantially outweighed so that its admission would create
24 undue prejudice; I refer you to State v. Sands. The
25 passage of time alone cannot determine remoteness. That

1 we have to consider is that the serious crimes to be
 2 considered as having a greater effect than, for example,
 3 a conviction of death by reckless driving and the question
 4 here, the prior conviction has to be considered by this
 5 Court as to whether or not it was of serious nature.

6 Now, if this was a distribution, I suppose it
 7 would be considered more serious than straight possession.
 8 Possession of CDS back in 1977, at the time when she was
 9 26 years of age to this time, would seem to me would not
 10 fit within a Sands type of hearing.

11 In other words, I know that credibility is going
 12 to be an important issue; however, even if it was the
 13 Defendant with such a record and had only that and nothing
 14 more, I think I would come to the same conclusion, that I
 15 will not allow it to go before a jury. I have to consider,
 16 you know, the serious crimes also in addition to the
 17 remoteness; so, when I put the both of them together,
 18 query, Is the possession on an 18-month suspended sentence
 19 placed on probation for one year and nothing seems to have
 20 violated that probation thereafter, should that be brought
 21 out to make a determination of credibility? I think not,
 22 Mr. Gonzalez.

23 MR. GONZALEZ: Judge, can I also point out that
 24 there are two separate incidents, apparently, from as I
 25 read this, there are two separate incidents of possession

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1 of CDS.

2 THE COURT: One is June 30th, 1976, and the
3 other's October 21, 1976.

4 MR. GONZALEZ: But the point I'm making is that
5 it's not one isolated possession of CDS, there are two of
6 them.

7 THE COURT: Yes.

8 MR. GONZALEZ: And I think we not only have to
9 look at the nature of the offense, but also how often has
10 this person been law-abiding or not and I think that Sands
11 also points that out.

12 MS. FURLONG: Judge, if I may?

13 I see what Mr. Gonzalez is driving at but this
14 is a relatively short period of time, 1976, within a few
15 months of each other it's possession of CDS. I think Sands
16 speaks to crimes of veracity or, you know, the burden is
17 a strong one if the person has an extensive record to
18 exclude it.

19 You have an individual without an extensive
20 record; over 14 years ago this incident occurred and has
21 been law-abiding since and I believe that the nature of
22 that and the prejudice of any, as though we would be
23 arguing in the inverse here, it should not be allowed.

24 MR. GONZALEZ: Judge, and just one more point
25 if I may, Judge?

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1 You indicated that if the tables were turned
2 around and it was the Defendant with the prior record,
3 you would exclude it and you would do it under the concept
4 enunciated in Sands but I think one further prong that we
5 consider as to the Defendant, and that is whether using
6 the prior conviction would prejudice the Defendant. We
7 don't have that when it comes to a lay witness who's not
8 on trial; so, I think it's not the same thing as if you
9 were testing it under Sands for the Defendant as you would
10 be for a lay witness such as we have in this case. There's
11 something additional that we have to look at when we're
12 looking at it from the point of view of the Defendant, that
13 is whether using -- allowing the State to use that prior
14 conviction would it be prejudicial? In this case, we
15 don't have that with lay witnesses or at any time do we
16 have that with lay witnesses.

17 **THE COURT:** What about that, Ms. Furlong?

18 **MS. FURLONG:** Your Honor, I believe just taking
19 that additional element out of Sands addresses it in the
20 sense that there has to really be some type of nexus here
21 with the crime that's committed and I think though you
22 highlight that with serious crimes, crimes of veracity,
23 theft crimes and on and on and here we don't have that
24 other prong that there's a prejudice as we do when the
25 Defendant is here. We're looking for somebody who exhibits

1 a contempt for the balance of behavior that's placed on
2 all citizens and I don't think that criteria's met here
3 with Ms. Mott-Lewis.

4 Two isolated incidents back in 1976 dealing
5 with possession of CDS and I believe your Honor has a copy
6 of it in front of you where the Judge even indicates,
7 "Hope that the threat of incarceration will keep her from
8 using drugs," and I think that that is something that the
9 Court should seriously consider as opposed to th is situation
10 where we have here with the Defendant with a theft crime
11 which goes to the heart of what we're doing in a Sands,
12 to get the veracity and credibility of the witness.

13 THE COURT: Well, I've indicated here, the
14 question in this is a State's witness who will testify
15 and whether the witness is still a witness who appears
16 before the jury and determination, of course, on all these
17 matters of prior convictions would allow the jury, if it's
18 admitted, to make a determination as to what weight they
19 want to give as to credibility of that particular witness
20 and we have to be guided by the guidelines. I indicated,
21 the key to exclusion is remoteness and we have to go by
22 a question of remoteness.

23 Now, when we have just remoteness alone, the
24 normal federal rule or guideline is something like ten
25 years and here we're much beyond that, but the point is,

1 do we have that question of remoteness and remoteness is
 2 one key issue and then have to balance it also with the
 3 nature or the serious nature of that particular crime that
 4 we're speaking about; otherwise, we just can't say
 5 remoteness, period. There has to be a nexus between one
 6 and the other and as I indicated, straight possession of
 7 CDS back in 1977 where a defendant pleaded guilty and,
 8 you know, a retraxit plea as to two counts, the Court is
 9 mindful that that in itself cannot --

10 Where the sentence is a suspended sentence, one-
 11 year probation, not two or three or four years and nothing
 12 more to indicate that there was a violation of that
 13 probation, it would seem to me that one-year probation,
 14 the nature of that crime, when I relate it all together
 15 in fairness is not the type of crime or crimes that should
 16 go before a jury to let the jury consider the weight of
 17 credibility.

18 MR. GONZALEZ: Judge --

19 THE COURT: And I -- that's what I think.

20 MR. GONZALEZ: That's fine, but I just want the
 21 record to be --

22 THE COURT: Clear.

23 MR. GONZALEZ: -- clear when we talk about
 24 Sands so I just want you to be aware of this first element,
 25 Judge, and the Prosecutor has put emphasis on remoteness.

1 and I think you also mentioned the Federal Guidelines
2 which is not binding but is something that we go by, ten
3 years. The conviction here was on 2-8-77, she was given
4 18 months and then she was put on probation for an
5 additional year.

6 THE COURT: Suspended.

7 MR. GONZALEZ: Now, it's my understanding as I
8 read the law regarding Sands, that you must measure the
9 remoteness time at the end of the sentence.

10 In other words, we should not consider the year
11 of 1977, but when she completed the probation.

12 THE COURT: 1978, one-year probation.

13 MR. GONZALEZ: Correct, Judge, but the point is,
14 she also got 18 months as a condition of probation. Is
15 that correct? That's my --

16 THE COURT: No, no, it was suspended. She was
17 placed on probation for one year, the conditions were --

18 MR. GONZALEZ: Fine, Judge.

19 THE COURT: -- to submit to analysis.

20 Now, if it was for three -- that's why I
21 mentioned if it was for three years or four years, yes,
22 then you can bring in the question of remoteness say within
23 the guidelines of ten, but even taht alone, the key is,
24 as I stated, the exclusion is remoteness so we start off
25 with that premise. If it is --

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1 MR. GONZALEZ: All right.

2 THE COURT: -- something that is rather remote,
3 it's excluded then the other key is, if it is that remote,
4 ten, twelve years, thirteen years; in this case twelve
5 years, then you have to measure the nature of the crime
6 and that's why I brought in the question of seriousness
7 of the crime for which she was convicted of.

8 And my analysis is that on CDS charge back then
9 and nothing more and one-year probation without violation
10 of that probation and nothing between then and now, it's
11 my conclusion that under Sands, this would be a proper
12 subject matter to have excluded and not be brought before
13 a jury and as I indicated, if it was the Defendant with the
14 same type of record under the same circumstances, I
15 certainly will exclude that also. I think in fundamental
16 fairness, that's the way it is and that's how I conclude
17 it and I've given you my reason for it.

18 Anything further?

19 MR. GONZALEZ: Judge, I also request that a
20 record-check on the other lay witnesses, Joseph Wilerson --

21 THE COURT: Well, of course --

22 MS. FURLONG: Oh, Judge, I could just put that
23 on the record so we don't have a problem.

24 All the other witnesses --

25 THE COURT: First of all, let me do it this way.

1 Do we have a jury out there?

2 THE COURT OFFICER: Fourteen.

3 THE COURT: We might as well bring them in and
4 do we have your witness here?

5 MS. FURLONG: Judge, we're ready to go with
6 Detective Thomas. He's out back.

7 THE COURT: There's no reason to keep the jury
8 there, I'm going to excuse them and have them come back at
9 1:30.

10 MR. GONZALEZ: Fine, Judge.

11 THE COURT: So, let's do that and we can go
12 forward with the witness.

13 In the meantime, once I do that, I'll speak to
14 Mr. Driskell and Ms. Mack and see what they have.

15 I may indicate that any other witnesses that
16 you're going to bring in, Ms. Furlong, that you have a
17 record-check or Judgment of Conviction.

18 MS. FURLONG: Judge, I can indicate for the
19 record that Ms. Pearl Harrell, I have it here, she has no
20 record. Tykesha Mott, no record.

21 THE COURT OFFICER: Judge, okay?

22 THE COURT: Yes, just bring them here, they
23 don't have to go in.

24 THE COURT OFFICER: Do you want them in the box?

25 THE COURT: No, no, it's not necessary.

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1 (Whereupon, the following takes place within
2 the presence of the jury.)

3 THE COURT: All right. Ladies and gentlemen,
4 we have all 14 here, I realize that you were outside in
5 the hallway, ladies and gentlemen, I'm sorry about that
6 and we may have a few more minutes here to do something
7 that we'd like to take care of before you hear the openings
8 by both attorneys. So, I do not believe that we will be
9 ready for you by twelve. So, with that in mind, why we'll
10 excuse you and give you some extra time on your lunch hour.

11 It's a nice day out there and then we'll expect
12 you back here at 1:30. Do not discuss this matter in any
13 way, shape or form, as you well know. Sorry for the
14 inconvenience and we'll see you here at 1:30, thank you.

15 A JUROR: Excuse me, your Honor, what time did
16 you say?

17 THE COURT: 1:30, Ms. Williams, correct?

18 A JUROR: Yes.

19 THE COURT: All right, 1:30.

20 Did you hear me loud and clear? Thank you.

21 (Whereupon, jury is excused for the luncheon
22 recess.)

23 THE COURT: All right, can we continue with
24 who is it, Thomas?

25 MS. PURLONG: Yes, Judge, the State calls

1 Detective William Thomas to the stand. I think he's out
2 in the hallway.

3 While we're waiting for Detective Thomas, in
4 addition to the other witnesses, I have a record-check on
5 Richard Mott. The only prior he has is a conditional
6 discharge for CDS.

7 THE COURT OFFICER: He doesn't appear to be out
8 there, Judge.

9 THE COURT: Where did he go?

10 MS. FURLONG: Judge, he has been going back and
11 forth unless he didn't get down. He was in Perretti's
12 and then he went to Cooper's and he was supposed to be
13 outside.

14 THE COURT: Do you want to find out where he
15 went, please? There's got to be a way to set down these
16 Wade hearings.

17 (Pause.)

18 MS. FURLONG: Judge, he's still on the stand in
19 Judge Cooper's, they had some more supplemental questions.

20 THE COURT: He's what?

21 MS. FURLONG: He's on the stand, he's supposed
22 to be finished but apparently they had more questions of
23 him and I spoke to Judge Cooper's secretary who indicated
24 Judge Cooper's aware of it. He has a note and as soon as
25 he's finished, he doesn't know how long, he'll come down.

1 THE COURT: What else do we have besides
2 Detective Thomas?

3 MS. FURLONG: That's it.

4 Did you have anything else?

5 MR. GONZALEZ: No, Judge, I just -- I just wanted
6 to make sure that nobody else has a prior record.

7 THE COURT: Detective Thomas is here for what
8 purpose?

9 MS. FURLONG: The --

10 MR. GONZALEZ: Wade, Judge.

11 MS. FURLONG: Continuation --

12 THE COURT: I know it's a Wade, but for what?

13 MS. FURLONG: On Joseph Wilkerson, your Honor,
14 the same situation we had with Investigator Henry Ferrer.

15 THE COURT: Joseph who?

16 MS. FURLONG: Wilkerson.

17 THE COURT: Can you spell the last name?

18 MS. FURLONG: W-I-L-K-E-R-S-O-N.

19 THE COURT: In the sense that he also made an
20 identification from the same photo array?

21 MS. FURLONG: Correct, your Honor.

22 THE COURT: Other than that, that's it?

23 MS. FURLONG: Ready to open, Judge.

24 Your Honor, the only other things that --

25 THE COURT: Then I will direct that Mr. --

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1 Thomas be here at 1:30 sharp. If he's nto here, we're going
2 to have openings and I'm not going to delay this jury and
3 have them come back and wait again. If he's here, fine.

4 I can hear you as to the identification at this
5 time while we still have some time before lunch hour as to
6 the identification procedure by, who is it, Pearl Harrell?

7 MR. GONZALEZ: Judge, I concede that.

8 THE COURT: It would seem under the circumstances
9 that there was nothing impermissive here or the procedure
10 was not incorrect --

11 MR. GONZALEZ: Judge, just so --

12 THE COURT: -- so, therefore, if you concede it,
13 then I don't have to give any factual basis as to my reasons
14 of finding.

15 MR. GONZALEZ: Judge --

16 THE COURT: Now, that would take care of that;
17 we took care of the two Sands. All we have is Detective
18 Thomas as to an identification procedure there of the
19 Defendant, correct?

20 MR. GONZALEZ: Judge, just so I could be clear
21 in my mind in terms of the Wade hearing, I believe that
22 there were a few other people who also picked out the
23 picture of Mr. Moultrie. The last time you heard this
24 issue I think you ruled as to the other people that I had
25 not met the Ortiz standard. Is that correct, Judge?

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THE COURT: The reason -- yes, I did.

MR. GONZALEZ: Okay.

THE COURT: And if you'd like, I can just go over that again.

MR. GONZALEZ: No, Judge, it's not really necessary.

THE COURT: I believe there the ruling, as I recall, was that somebody was a girlfriend of the Defendant, Kathy Woods specifically.

MS. FURLONG: Correct, your Honor.

THE COURT: And --

MS. FURLONG: And Ms.Mott, Tykesha Mott knew him.

THE COURT: Yes, and she stated something about he -- that is, the Defendant, was a go-go dancer, the Knight Rider, or known as the Knight Rider. Am I right?

MR. GONZALEZ: Correct.

MS. FURLONG: Correct, Judge.

THE COURT: And I did rule on that because apparently, it was really just a corroboration rather than -- of identity rather than selection of an identification procedure and therefore, I didn't think there was any offer by you, Mr. Gonzalez, to meet the threshold showing of some impermissible conduct or taint or for that matter, the procedure that was used and that was my ruling because of that. So that took care of those two.

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OPTIONAL CONTENT

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1 The one here, we just gone over and you knew
2 very wisely to save a lot of time, conceded that there was
3 nothing wrong with the procedure that was used or that
4 there was anything impermissibly suggestive to show
5 irreparable damage and as you well know, we have a two-prong
6 system and if you don't get over the first, you don't get
7 over the second.

8 MR. GONZALEZ: Fine.

9 MS. FURLONG: Judge, to take advantage of the
10 time we have right now, in light of the fact that your
11 Honor ruled that we didn't meet -- Defense Counsel didn't
12 meet the State v. Ortis in reference to the Kathy Woods
13 identification, as well as Tykesha Mott, I'd like to have
14 them marked for identification now so that when we use
15 them in the trial --

16 THE COURT: Well, isn' that the same photo?

17 MS. FURLONG: They weren't marked, Judge, to my
18 recollection.

19 THE COURT: Oh, I see.

20 MR. GONZALEZ: I have no problem with that.

21 THE COURT: All right, so then that would be
22 marked as --

23 MS. FURLONG: S-2,

24 THE COURT: No, wait a minute. Were they in the
25 S-2A to G series?

HEMLOCK
UNABABLE
- COTTON CONTENT -

1 MS. FURLONG: No, Judge.

2 We can make them -- the identification by Kathy
3 Woods, S-3.

4 THE COURT: S-3, photo.

5 MS. FURLONG: And the identification by Tykesha
6 Mott, S-4.

7 THE COURT: Just one second.

8 S-4 is a photo by what's her first name?

9 MS. FURLONG: Kathy Woods, Judge.

10 THE COURT: No, no.

11 MS. FURLONG: Tykesha Mott, T-Y --

12 THE COURT: Okay, Mott.

13 MS. FURLONG: And additionally, Judge, I'd like
14 to have the photograph identified by Nathaniel Montgomery
15 marked as S-5.

16 THE COURT: That's a photo of whom, Montgomery?

17 MS. FURLONG: It's the one signed by him, Judge,
18 of the Defendant; but it actually goes to the Wade that he
19 actually initialed and signed.

20 THE COURT: A photo of what?

21 MS. FURLONG: The Defendant.

22 THE COURT: Signed by Montgomery, all right.

23 So, we have S-3, S-4 and S-5. Is that it?

24 MS. FURLONG: Yes, Your Honor.

25 THE COURT: And then we'll hear from Detective

-COTTON CONTENT

1 Thomas promptly at 1:30, if he is here. If he is not here,
2 we're going to go forward under the circumstance, with
3 the openings.

4 MS. FURLONG: That's fine, Judge.

5 THE COURT: Is that clear? And that matter of
6 Detective Thomas can always be taken care of at the
7 appropriate time with a Rule 8.

8 MR. GONZALEZ: Fine, Judge.

9 THE COURT: I don't want to hold the jury so --
10 in fact --

11 MS. FURLONG: Judge, I can proceed without that.

12 THE COURT: You can proceed without that?

13 MS. FURLONG: No, I can proceed with my opening
14 without Detective Thomas.

15 THE COURT: And I think you can also; so, why
16 don't we go into that and have your witnesses available
17 and we can always get to the Rule 8 later.

18 MR. GONZALEZ: Fine.

19 THE COURT: All right, with that, we'll see you
20 promptly at 1:30.

21 (Whereupon, Exhibits S-3, S-4 and S-5 are marked
22 for identification.)

23 (Whereupon, Court in luncheon recess.)

24 (Whereupon, the following takes place outside
25 the presence of the jury.)

-COTTON CONTENT-

1 THE COURT: Good afternoon, please, be seated.

2 MS. FURLONG: Your Honor, at this time, the State
3 calls Detective William Thomas to the stand.

4 (Whereupon, witness enters.)

5 THE COURT: Now, I understand that we have one
6 juror yhet who hasn't come in?

7 THE COURT OFFICER: Yes, I have somebody watching
8 outside.

9 DETECTIVE W I L L I A M T H O M A S, sworn.

10 THE COURT: Good afternoon, sir.

11 THE WITNESS: Good afternoon.

12 THE COURT: Direct examination, please.

13 MS. FURLONG: Thank you, your Honor.

14 DIRECT EXAMINATION BY MS. FURLONG:

15 Q Detective, are you familiar with the State of
16 New Jersey versus Derek Moultrie?

17 A Yes.

18 Q And were you given that assignment back in
19 September of 1988?

20 A Yes.

21 Q And during the course of that investigation,
22 did you have occasion to take a statement from one Joseph
23 Wilkerson?

24 A Yes, I did.

25 MS. FURLONG: Your Honor, at this time, I'd like

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ORIGINAL
ERASABLE
- COTTON CONTENT -

1 to have Joseph Wilkerson's statement marked as State's
2 Exhibit S-6.

3 (Whereupon, exhibit is marked S-6 for
4 Identification.)

5 Q Detective, at this time, I'm now showing you
6 what's been marked for identification as State's Exhibit
7 S-6. Can you identify that for the record?

8 A It's a statement taken from Joseph Wilkerson on
9 September 12th, 1989, by myself.

10 Q And Detective, can you please state at what time
11 the statement was started?

12 A 4 p.m.

13 Q And at what time did the statement conclude?

14 A 4:30 p.m.

15 Q Now, during the course of taking that statement,
16 did there come a time that you presented to Mr. Wilkerson
17 some photographs?

18 A Yes.

19 Q Now, can you, for the record, explain what type
20 of photographs? Was it a photo gallery? Was it a stack
21 of photographs? What did you give Mr. Wilkerson to look at?

22 A I gave him a stack of photographs, approximately six
23 or seven. I'm not sure of the exact number.

24 Q Now, did Mr. [unclear] strike that from the record,

25 Where was Mr. Wilkerson sitting at the time that

1 you handed him the photographs?

2 A Probably an interview room.

3 THE COURT: Did you say probably?

4 THE WITNESS: Yes. He was at the Homicide Squad,
5 it could have been in the main office or the side room.

6 Q And during the time that you presented the
7 photographs to Mr. Wilkerson, did you, at any time, make
8 any suggestions or point anything out to him while he was
9 viewing photographs?

10 A No.

11 Q Now, I show you this group of photographs, they're
12 marked State's Exhibit B-2A through G and can you identify
13 these for the record?

14 (Whereupon, witness reviews photographs.)

15 A Yes.

16 Q and can you please state what they are?

17 A The photographs shown to Mr. Wilkerson.

18 Q Now, included in that group --

19 MS. FURLONG: Your Honor, at this time, I believe
20 it's State's Exhibit B-7. It's a photograph of the Defendant.
21 I'd like to have that marked for identification.

22 (Whereupon, exhibit is marked B-7 for
23 Identification.)

24 (Whereupon, Prosecutor shows Defense Counsel
25 photo.)

1 Q Now, Detective, did there come a point in
2 time when Mr. Wilkerson indicated that Mr. Moultrie was,
3 in fact, the suspect in this investigation?

4 A No.

5 Q All right, let me rephrase the question.

6 Did there come a point in time where Mr. Wilkerson
7 picked out a photograph of the person he saw with a gun on
8 September 11th -- 10th, 11th, 1989?

9 A Yes.

10 Q And did he do anything to that photograph?
11 Did he sign it, did he date it?

12 A He signed the back and put a date on it; his initials.

13 Q Now, I'm now showing you what's been marked as
14 State's Exhibit B-7. Can you identify that for the record?

15 A It's a photograph of Derek Moultrie signed by Joseph
16 Wilkerson on 9-12-89, at 3:45 p.m.

17 THE COURT: 9-12 at what time, please?

18 THE WITNESS: 3:45 p.m.

19 Q Thank you.

20 Now, Detective, in the body of the statement that
21 you took from Mr. Wilkerson, was it ever indicated in that
22 statement that photographs were shown and that Mr. Wilkerson
23 had made an identification?

24 A Yes.

25 Q And is that documented in the statement?

1 A Yes, it is.

2 Q And who did Mr. Wilkerson indicate, if you can
3 from memory, the picture that he picked out who was this
4 individual?

5 A A Derek Moultrie.

6 Q And did he say how he was able to identify him,
7 what his involvement was in this investigation?

8 THE COURT: I didn't get that question, please.
9 What was involved and what?

10 Q Did Mr. Wilkerson indicate when he made the
11 identification, did he make any type of a statement about
12 this individual?

13 A Yes.

14 Q And what did he say?

15 A Do you want me to read the entire question?

16 Q If you need to refer to your report, let me have
17 the statement --

18 THE COURT: Let me ask you, is that relevant to
19 this Wade as to what maybe Wilkerson said?

20 MS. FURLONG: Well, Judge, no, I can withdraw
21 that question and save it for the trial.

22 THE COURT: Thank you. If there's an objection
23 sir, I'll rule.

24 MR. GONZALES: Yes, Judge.

25 MS. FURLONG: Judge, I have no further questions.

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1 of this witness.

2 THE COURT: Thank you.

3 Cross-examination?

4 CROSS-EXAMINATION BY MR. GONZALEZ:

5 Q Mr. Thomas, did you, in any way, suggest to
6 Mr. Wilkerson what picture to pick out?

7 A No, I didn't.

8 Q Was there anybody else around when Mr. Wilkerson
9 picked out the picture of Moultrie, was there anybody else
10 around?

11 A No.

12 MR. GONZALEZ: No further questions.

13 THE COURT: Did you set up this photo array or
14 stack?

15 THE WITNESS: I put the photo array together,
16 yes.

17 THE COURT: You did?

18 THE WITNESS: Yes, sir.

19 THE COURT: And you say he was probably in an
20 interview room or another room there at the Homicide Squad?

21 THE WITNESS: It could have been my desk or the
22 back room, I'm not sure which one I was at.

23 THE COURT: And where did you place Mr. Wilkerson?

24 THE WITNESS: Well, if he was at my desk, he
25 would have been sitting next to the desk, if he was in a

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1 room, he would have been in a room alone.

2 THE COURT: Well, do you know if he was in a
3 room or alone?

4 THE WITNESS: He was next to me. I mean, if he
5 was at my desk, he was next to me. The room is a small room,
6 eight-by-eight.

7 THE COURT: And what did you tell him to do?

8 THE WITNESS: I gave him the photographs and asked
9 if he could identify anybody in those photographs.

10 THE COURT: And what did he do, do you know?

11 THE WITNESS: He went through the pictures and he
12 stopped at the photo of Derek Moultrie and made the statement,
13 as far as Derek Moultrie is concerned.

14 THE COURT: Did he then call you over or what?

15 THE WITNESS: He showed me a photograph.

16 THE COURT: Were you near him at all, standing
17 over him or anything like that?

18 THE WITNESS: I wasn't standing over him, I was
19 in the same approximate area.

20 THE COURT: Was there anybody else around besides
21 yourself?

22 THE WITNESS: No, sir.

23 THE COURT: All right, anything further.

24 MR. GONZALES: No, Judge.

25 MS. FURLONG: No.

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REPRODUCED FROM ORIGINAL CONTENT

1 THE COURT: You may step down, thank you, sir.

2 (Whereupon, Detective William Thomas exits.)

3 MS. FURLONG: Your Honor, if I may, I'd --

4 Detective Thomas has to go to Judge Cooper and then he'll
5 be back.

6 THE COURT: No problem.

7 MS. FURLONG: He's available, Judge

8 THE COURT: One minute before I hear you on this
9 matter.

10 Is the juror in?

11 THE COURT OFFICER: He's not back yet.

12 THE COURT: Did you make an inquiry downstairs?

13 THE COURT OFFICER: I haven't had a chance.

14 THE COURT: Which juror is it?

15 THE COURT OFFICER: Gray from Essex County College.

16 THE COURT: Oh,

17 MS. FURLONG: Which number?

18 THE COURT OFFICER: I believe it's five.

19 THE COURT CLERK: It is.

20 THE COURT: Juror No. 5?

21 THE COURT CLERK: Yes.

22 MS. FURLONG: Judge, I have a motion if you're
23 going to entertain it. Unless there's some emergency, we
24 can't have this kind of delay with the jurors. It's like
25 25 minutes that he's delayed.

1 THE COURT: Well, we'll find out.

2 MR. GONZALEZ: Judge, we still have time.

3 THE COURT: We'll see what develops when he gets
4 here.

5 MR. GONZALEZ: I'm saying -- well, strike that,
6 nothing, Judge.

7 THE COURT: I understand that there shouldn't be
8 a delay but we'll find out when he gets here to see exactly
9 what it was.

10 In the meantime, I'd just like to go over this
11 other matter with Ms. Mack and Mr. Driskell.

12 MS. FURLONG: Judge, do you want make a ruling
13 on the Wade?

14 THE COURT: I will, just one moment.

15 (Whereupon, Court hears a separate matter.)

16 THE COURT: Bring the juror in, please, and then
17 I'll hear the Wade motion and then we'll see.

18 (Whereupon, Juror No. 5, Mr. Gray, enters.)

19 THE COURT: Sir, Mr. Gray, is it?

20 JUROR NO. 5: Correct.

21 THE COURT: 1:30. Can you tell me the reason for
22 the delay? I know it's a nice day out there, but that
23 shouldn't interfere.

24 JUROR NO. 5: Yeah.

25 THE COURT: What happened?

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1 JUROR NO. 5: No, I got caught in traffic coming
2 back. I had went home.

3 THE COURT: You got caught in traffic?

4 JUROR NO. 5: Yeah.

5 THE COURT: Well, from now on, please, we would
6 like to have you here on time if you don't mind so don't
7 take any extended tours.

8 JUROR NO. 5: Yes.

9 THE COURT: All right?

10 JUROR NO. 5: Yes.

11 THE COURT: Thank you very much, we'll be with
12 you shortly.

13 (Whereupon, Juror No. 5, Mr. Gray, exits.)

14 THE COURT: All right, I'll hear you on the
15 motion.

16 MR. GONZALES, Judge, I concede on the issue of
17 Wade.

18 THE COURT: Thank you, that takes care of that.
19 I think you did so rightfully because as you could see, why
20 there was no impermissible suggestion here or taint. In
21 fact, the procedure apparently from the questions of
22 everyone concerned, even myself, would seem that it was in
23 good order and not getting over the first prong of a Wade
24 test of Simmons and so forth and therefore, there's no
25 further comment to be made or fact finding by this Court.

1 Bring the jury out.

2 We're now ready for openings, right?

3 Bring the jury out, please.

4 1:55 p.m.

5 (Whereupon, the following takes place within
6 the presence of the jury.)

7 THE COURT: All right. Ladies and gentlemen, I
8 already indicated to Mr. Gray, although it's a very nice day
9 out there, why we can't take advantage of that nice day and
10 so forth so that we would appreciate, in fact, we will
11 request that when you do have a time to come back here, we'd
12 like you to come back here so that we can proceed. You may
13 have to wait for me but that's the way the game is played.
14 Is that clear?

15 JUROR NO. 5: Yes, sir.

16 THE COURT: I mean, that's the way the game is
17 played in that I may have you come back here at 1:30 and you
18 may have to wait, you know, 15, 20 minutes because I have
19 something else to do but we can't have -- wait for one of
20 the jurors to be late because then we're here and ready to
21 go. So, that's what I meant when I said that that's the
22 way we have to run our court and we would ask you to
23 cooperate. Therefore, we'll save some delay and then of
24 course, it's courteous to the other jurors.

25 All right, with that, we'll then continue, thank

1 you.

2 Opening, Miss Furlong, please.

3 MS. FURLONG: Thank you, your Honor.

4 Mr. Gonzalez, good afternoon, ladies and gentlemen.

5 Again, for the record, my name is Mary Ellen
6 Furlong and I'll be representing the case to you for the
7 State. Some of you were with us yesterday, others of you
8 joined us today as prospective jurors and you've seen the
9 process that we've gone through to select each and every one
10 of you to sit and hear this case so now that you're here,
11 the question is, what is your job and what are you going to
12 do over the next couple of days?

13 Well, the thing I'd like to remind you of is
14 the Judge pointed this out, this case is important to the
15 State and it's important for the Defendant so I'm asking
16 you to follow one big rule, keep an open mind, listen to
17 each and every witness that comes in; do not make your minds
18 up until you have all the evidence.

19 In addition to that, I just want to highlight a
20 little bit -- I believe some of you have already been on
21 jury duty before, some of you haven't. You all have
22 different jobs, some of you are retired. What makes you
23 as a group chosen by the State and Defense to decide this
24 case and what tools you need as a juror? Well, the Judge
25 is going to point out to you that you are the triers of the

1 fact, the Judge is the trier of the law. He will give
2 you legal rulings, he will tell us, he will make rulings.

3 Now, as triers of the fact, what your job is to
4 do is to judge credibility, taking in all of the evidence
5 and to come to a conclusion. So, what basically is it
6 that you're going to do? There's no special training to be
7 a juror, the biggest key to this case and any case is
8 credibility. You're going to have the opportunity to see each
9 and every witness the State calls and again, the State has
10 the burden of proof on all these issues.

11 The witnesses are going to come in, they're going
12 to take the witness stand and they're going to tell you
13 what happened during the course of this incident and you're
14 going to get an opportunity to view them and make judgments
15 and that is what your job is. It sounds simple but it's a
16 difficult task because you're going to hear from a lot of
17 witnesses. I did call a list of 42 witnesses, potential
18 witnesses and names in this case. I can assure you that
19 they are not going to all be called but it's necessary to
20 mention their names in case any of you know them.

21 Now, why does this case involve so many witnesses
22 and what actually occurred here? You know it's a homicide
23 and that's about it. You know there's a kidnapping charge
24 and you know that there's a gun charge so where do we go
25 from here and where are you going to be going over the next

1 couple of days? Well, this case, I'm going to highlight
2 it for you because in order for you to follow it, I'd like
3 you to see where we're going and I don't want to stand up
4 here and testify because the witnesses are going to come in.
5 I wasn't there that night, the Judge wasn't there, Defense
6 Counsel wasn't there so it's better left that the testimony
7 come from the witnesses; but I'd be remiss in doing my job
8 if I didn't give you an outline of what occurred on
9 September 10th, 11th, 1989.

10 Why do I say 10th or 11th? Because ^{when} this incident
11 occurred, the body wasn't discovered until a later point
12 in time.

13 Now, we started out with two individuals, the
14 decedent, the victim, Lamont Mott, and the Defendant,
15 Derek Moultrie.

16 Now, I want to hone in on a few things because
17 you've heard names but you haven't heard relationships.
18 Who is Victor Lamont Mott and what is his relationship
19 to Derek Moultrie? Well, by the time this case is over,
20 it's gonna surprise you what the relationship was and you're
21 probably going to walk away from this case saying, why, why,
22 why, would somebody's friend, the Defendant, Derek Moultrie,
23 put seven bullets into his friend over a gold chain? That's
24 not a question, the State doesn't have any burden to prove
25 motive; but I'm gonna tell you, that's what it's about.

1 You're going to hear the witnesses come in and
2 say that the day, September 10th, 1989, started uneventful.
3 The Defendant and Victor Lamont Mott were moving the
4 Defendant from his mother's home in Newark to his
5 girlfriend's home in Plainfield. Mr. Mott helped the
6 Defendant all day in moving his stuff to Plainfield. When
7 it was done, they decided to go back to the Defendant's
8 mother's house. They had a few drinks, a few rum and cokes,
9 the move was over but it doesn't end there. The move was
10 over, but it doesn't end there.

11 The victim in this case, Mr. Mott, went home,
12 the Defendant went to his new home down in Plainfield with
13 his girlfriend, Samantha Woods. While he was unpacking,
14 he discovered that a \$500 gold chain was missing and why
15 do I emphasize \$500? Because Mr. Moultrie took Victor
16 Mott's life for a \$500 chain. When he discovered that it
17 was missing, he said, I'm going to Newark and I'm going
18 to get it but he didn't just say, I'm going to get it, he
19 armed himself with a gun that he kept hidden in a hollowed-
20 out phone book.

21 He drove to Newark, he made telephone calls to
22 the victim's house indicating, I'm looking for Derek (sic),
23 he took my gold chain, I'm going to get him. And not only
24 did he say, I'm going to get him, but he actually rode
25 around the neighborhood where the victim lived and he

1 mistakenly stopped two gentlemen who he thought was the
2 victim, jumped out of a car armed, showed the handgun and
3 when he realized it wasn't the victim, his friend, that
4 he was looking for, he indicated, Send a message, when I
5 see him, I'm gonna kill him.

6 But it doesn't end there, ladies and gentlemen,
7 and it's interesting to note that the Defendant at the time
8 was a go-go dancer in a club and his name was Knight Rider
9 and this was a night that the victim never had a chance to
10 relive because Victor Lamont Mott is not here. The Defendant
11 saw to that and not only did he see to that, he didn't give
12 up once he saw the two gentlemen, he continued in his
13 search. He went to the victim's house, he spoke to the
14 victim's niece, she indicated he wasn't there. He went
15 up to a liquor store, he got out, he went in and at
16 gunpoint, he took the victim in this case in a vehicle;
17 but lo and behold, he for got one thing, it was all observed
18 by the victim's sister and a friend and they, fortunately,
19 were able to get down the license plate number of the car
20 driven by the Defendant's girlfriend and they went home
21 and they sat and they waited because they knew something
22 was up when the police arrived at their doorstep and
23 informed them that Victor was dead.

24 Now, where do we go from here? We have the police
25 officers running a check on the license plate, coming back

1 to Kathy Woods in Plainfield, the Defendant's girlfriend.

2 You'll hear from Kathy Woods, the police going
3 down to Plainfield, apprehending the Defendant in Plainfield
4 in the car driven by Kathy Woods that was used to commit
5 this homicide and not only did they apprehend the Defendant,
6 the gun was discovered in the hollowed-out phone book and
7 when the Defendant was transported to the Newark Homicide
8 Unit he was determined; he was determined that he did what
9 he sought out to do that night but he was determined that
10 no one was going to call him in to face his judgment. He
11 wasn't going to have a judgment day, he took away Victor's
12 judgment day and took it in his own hands the day that he
13 put seven bullets in him; but he was determined when he
14 was in the Newark Homicide Unit that he wasn't going to
15 pay for this.

16 He had a right, he took his chain. So, he
17 escaped from the Newark Homicide Unit in handcuffs,
18 telephoning a friend and then a second chase began for the
19 Defendant where he was finally apprehended hiding under a
20 bed in Passaic and he sits here today in court.

21 Now, you're going to have the evidence, you're
22 going to have the gun, you're going to have the hollowed-out
23 phone book, you're going to have the testimony of Kathy
24 Woods who was with the Defendant the night that Victor
25 Lamont Mott was executed.

1 Now, I use that word "executed" and I think that
2 after you hear this case, this isn't a homicide, this is
3 an execution. Seven bullets, ladies and gentlemen, seven
4 bullets this Defendant put in Victor Lamont Mott's body and
5 not only did he put seven bullets in him, but he had the
6 audacity, the nerve to make Kathy Woods go back and see if
7 he was down, make sure he got him and leave. He didn't
8 just shoot him and leave, he had Kathy Woods do a drive-by
9 to make sure he was down and he wasn't going anywhere.

10 Please, take time in this case, a man's life is
11 gone over a \$500 gold chain. Thank you.

12 MR. GONZALEZ: Thank you, Judge.

13 THE COURT: Mr. Gonzalez, please.

14 MR. GONZALEZ: May it please the Court, Judge
15 Iuliani and Ms. Furlong.

16 Members of the jury, good afternoon. Once again,
17 my name is Frank Gonzalez and I represent Mr. Derek Moultrie.
18 By now, many of you should know you're no longer private
19 citizens of the State of New Jersey, you are now jurors,
20 jurors in a criminal case and there won't be many more
21 important things that you will perform as a public citizen
22 than to serve as jurors in a criminal case.

23 It is a very very important endeavor for the
24 fine citizens of the State of New Jersey, but it is also
25 a very important endeavor for this young man, this 26-year-old

1 young man, Mr. Derek Moultrie. Keep that in mind, ladies
2 and gentlemen.

3 Members of the jury, at this point in time, I'd
4 like to take a few minutes to remind you after a few basic
5 fundamental concepts, concepts that the Judge talked about
6 yesterday during the voir dire, concepts that are so
7 fundamental that they are at the core of the American
8 criminal justice system, a concept we have historically
9 chosen to guide us and what are those concepts? There
10 are three.

11 The first one, members of the jury, is that
12 Mr. Derek Moultrie is presumed innocent until proven guilty
13 beyond a reasonable doubt. Those four magic words, "beyond
14 a reasonable doubt," that's the standard that we use. That's
15 the standard that we impose on the Prosecutor, the Prosecutor
16 must prove every element of these crimes beyond a reasonable
17 doubt. They must prove that Mr. Derek Moultrie pulled that
18 trigger, they must prove that to you beyond a reasonable
19 doubt.

20 Members of the jury, that's a very strict standard
21 that we impose on the Prosecutor and we do it purposely.
22 Other countries use less strict standards but we, the
23 Americans, believe in personal liberty for every single
24 individual no matter who you may be, no matter your economic
25 or social status and we do it purposely. It is a very

1 strict standard, the "beyond a reasonable doubt" standard.
2 That's concept number one.

3 Concept number two, the burden of proof. Members
4 of the jury, keep in mind that the only person with a burden
5 of proving anything throughout this whole trial is Miss
6 Furlong. I, as Defense Counsel, do not have to prove a
7 thing, I do not have to put one soul on that stand, I do not
8 have to elicit one iota of evidence. The burden of proof
9 stays and remains on the Prosecutor throughout this whole
10 trial. We do not have to prove that Derek Moultrie didn't
11 pull that trigger; the State has to prove that it was Derek
12 Moultrie who put those seven bullets in his friend, Victor
13 Mott, over a gold chain. The State has to prove that, we
14 do not have to disprove that, that's the burden of proof.

15 Concept number three, the presumption of innocence.
16 You see, Mr. Moultrie sitting there by me, he's been charged
17 with a very very serious offense, homicide. The murder of
18 an individual, the execution as it was termed by the
19 Prosecutor of Mr. Victor Mott. He was accused of that,
20 he was indicted but that -- but notwithstanding that,
21 members of the jury, Mr. Moultrie at one point in time
22 came before a judge and said to the judge, I didn't do it.
23 He pled not guilty and members of the jury, under our
24 system, despite the fact that you're charged with a crime,
25 you are presumed innocent. That's called the presumption

1 of innocence and that presumption remains throughout this
2 whole trial up to and if the Prosecutor is able to meet its
3 burden of proving that it was Derek Moultrie who pulled
4 that trigger, that it was Derek Moultrie who kidnapped
5 Mr. Mott, that it was Derek Moultrie who possessed that
6 weapon. They have to prove all of that beyond a reasonable
7 doubt.

8 That presumption stays until they're able to meet
9 their burden of proof and I submit to you, members of the
10 jury, that the evidence will show that Mr. Moultrie was not
11 the person who pulled that trigger.

12 Now, who was it? Who pulled that trigger?
13 Obviously, we have a body, the body of Mr. Mott. Somebody
14 killed him. Who was it who pulled the trigger? The
15 Prosecutor asked you a very poignant question when she
16 said, Why would a friend shoot another individual over a
17 \$500 gold chain? And I submit to you she said that to you,
18 she asked you that question because it doesn't make any
19 sense and the reason it doesn't make any sense, members of
20 the jury, is because the evidence will show that it is not
21 Victor Mott who -- I mean, it was not Derek Moultrie who
22 pulled that trigger, it was Kathy Woods.

23 Kathy Woods was the person who pulled that
24 trigger on Victor Mott, the girlfriend of Mr. Derek Moultrie.
25 It was Kathy Woods who was driving around Derek Moultrie and

1 it was Kathy Woods' car and the license plate that was
2 obtained by the relatives of Mr. Mott that was given to
3 Detective Thomas who later on traced it to Kathy Woods.
4 It was Kathy Woods who was first confronted by Detective
5 Thomas and Investigator Ferrer from homicide and when
6 they said to her, Look, you're under suspicion for a
7 homicide and we're going to take you into headquarters and
8 we're going to tow away your car, then and only then did
9 she say, I didn't do it, Derek Moultrie did.

10 But the evidence will show that she was the one,
11 members of the jury, and at this point, I ask you to please
12 withhold any judgment that you had made on this case thus
13 far. Please, withhold any thought, any judgment until you've
14 heard the testimony of every single witness. Not only direct
15 testimony, but also, members of the jury, cross-examination
16 of these witnesses and I'm confident that when you look at
17 the evidence, look at the testimony of Kathy Woods, then
18 look at some of the other evidence apart from her testimony
19 and when you put that all together, you will render the
20 only verdict possible, the verdict of not guilty as to the
21 homicide.

22 And members of the jury, right from the beginning,
23 we concede that Mr. Moultrie did in fact escape. He did
24 escape but members of the jury, Mr. Moultrie did not kidnap
25 Mr. Mott, was not in possession of a weapon and did not

1 kill Mr. Mott. Thank you very much.

2 THE COURT: Thank you, Mr. Gonzalez.

3 MR. GONZALEZ: You're quite welcome, Judge.

4 THE COURT: Ms. Furlong, do you have a witness
5 available?

6 MS. FURLONG: Your Honor, Detective Thomas was
7 the next witness. I don't know what his status is, he's
8 testifying at Judge Cooper's.

9 THE COURT: Can we make a phone call to see his
10 availability?

11 MS. FURLONG: Excuse me, your Honor, may I have
12 a minute with my investigator?

13 THE COURT: Certainly.

14 MS. FURLONG: We'll see if maybe we can call
15 another witness.

16 (Pause)

17 THE COURT: All right. I'm going to, ladies and
18 gentlemen, excuse you into the jury room for a short period
19 of time. If it's going to be any lengthy period of time,
20 why, I'll call you out.

21 Do not discuss the matter, as you well know, and
22 we'll get back to you shortly. Thank you.

23 (Whereupon, jury is excused.)

24 MS. FURLONG: Judge, in an effort to accommodate
25 the Court, I was just informed that we can put a witness

1 who should be here in eight minutes if Thomas isn't
2 available. He's coming from the Youth House; so, I could
3 put him on so we can work around Thomas.

4 THE COURT: All right, we'll see what happens.

5 MS. FURLONG: Judge, I would also like, I believe
6 Officer Hughes brought it to my attention, he needs to check
7 the weapon in this case.

8 THE COURT: Fine. Would you like to have that
9 marked now?

10 MS. FURLONG: We can do that in the interim,
11 Judge.

12 (Whereupon, Court Officer Hughes checks to see
13 that weapon is cleared.)

14 THE COURT: Officer, the report is?

15 THE COURT OFFICER: It's safe.

16 THE COURT: Safe?

17 THE COURT OFFICER: I was gonna say fairly safe,
18 but --

19 THE COURT: All right. Suppose while we're
20 waiting for Detective Thomas, maybe we could have some of
21 these matters or items marked.

22 MS. FURLONG: I have tons of stuff to be marked.
23 We can start, your Honor, with the property in
24 evidence sheet of Detective Thomas.

25 THE COURT: What is that, property in evidence

1 sheet?

2 MS. FURLONG: Of William Thomas.

3 THE COURT: That will be S-8?

4 MS. FURLONG: Yes. And then I'll physically go
5 through the items on that sheet.

6 (Whereupon, exhibit is marked S-8 for
7 Identification.)

8 THE COURT: In the meantime, Mr. Gonzalez, will
9 you take a look at each one of these as you have been as
10 they are being marked as exhibits?

11 MR. GONZALEZ: Yes, Judge.

12 THE COURT: All right. We have S-8, property
13 sheet of Detective Thomas.

14 Next?

15 MS. FURLONG: Yes. On that sheet, Judge, I'll
16 go through the things that I have. If I could -- no,
17 there's nobody here. If I could solicit one of the Court
18 Officers, it might make it easier.

19 I have blue dungaree pants on the property in
20 evidence sheet to be marked as State's Exhibit S-9.

21 THE COURT: All right, S-9 is dungaree pants.

22 (Whereupon, exhibit is marked S-9 for
23 Identification.)

24 THE COURT: S-10?

25 MS. FURLONG: Blue cap.

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1 (Whereupon, exhibit is marked S-10 for
2 Identification.)

3 THE COURT: Of?

4 MS. FURLONG: The victim.

5 THE COURT: All right. Next item?

6 MS. FURLONG: The next item, your Honor, is the
7 decedent's, Victor Mott's socks, that will be S- --

8 THE COURT: Socks?

9 MS. FURLONG: Yes, S-11.

10 (Whereupon, exhibit is marked S-11 for
11 Identification.)

12 THE COURT: Are the socks going to be taken out?

13 MS. FURLONG: Yes, Judge.

14 THE COURT: Are we marking the bag that contains
15 the socks?

16 MS. FURLONG: Yes, your Honor, to make it easier.

17 THE COURT: All right, I just wanted to know.

18 MS. FURLONG: The next item, your Honor, is the
19 victim's sneakers, a pair of the victim's sneakers, S-12.

20 THE COURT: Also in the bag?

21 MS. FURLONG: Correct, your Honor.

22 THE COURT: Mr. Gonzalez, look into the bag
23 afterwards.

24 MR. GONZALEZ: Yes, Judge.

25 (Whereupon, exhibit is marked S-12 for

1 Identification.)

2 MS. FURLONG: The next item, your Honor, is a
3 plaid shirt, that's S-13.

4 THE COURT: Of the victim also?

5 MS. FURLONG: Yes, Judge.

6 THE COURT: Is that in a bag?

7 MS. FURLONG: Correct, your Honor, the shirt's
8 contained in there.

9 THE COURT: All right.

10 (Whereupon, exhibit is marked S-13 for
11 Identification.)

12 MS. FURLONG: The CC number for the record in
13 all the identification is on the outside of the bag.

14 THE COURT: You can get to that after as you go
15 through it.

16 MS. FURLONG: The next item is the wallet of the
17 victim, S-14.

18 THE COURT: Is that in a bag or is that --

19 MS. FURLONG: It's in a bag, your Honor.

20 THE COURT: Small manila envelope.

21 (Whereupon, exhibit is marked S-14 for
22 Identification.)

23 MS. FURLONG: In addition, your Honor, S-15
24 includes the following miscellaneous items: 35 cents in
25 coins, two books of matches, one key to an auto, one ring

1 and that's all contained in a small envelope.

2 THE COURT: Manila envelope, change, keys,
3 et cetera.

4 (Whereupon, exhibit is marked S-15 for
5 Identification.)

6 THE COURT: S-16 -- ready, Lydia?

7 THE COURT REPORTER: Yes, Judge.

8 THE COURT: S-16 is what?

9 MS. FURLONG: S-16, your Honor, would be the
10 nail clippings from the victim, right and left hand nail
11 clippings.

12 (Whereupon, exhibit is marked S-16 for
13 Identification.)

14 MS. FURLONG: The next one, your Honor, I believe
15 was S-17 and that is a white cap of the victim's.

16 THE COURT: White cap in a bag?

17 MS. FURLONG: Yes.

18 (Whereupon, exhibit is marked S-17 for
19 Identification.)

20 MS. FURLONG: Next, your Honor, is a report by
21 Detective Thomas, it's another property in evidence sheet
22 and these are items recovered from the suspect.

23 THE COURT: Property sheet? Who's that,
24 Detective Thomas also?

25 MS. FURLONG: Yes.

1 THE COURT: Items from Defendant?

2 MS. FURLONG: Correct, your Honor.

3 THE COURT: Moultrie.

4 (Whereupon, exhibit is marked S-18 for
5 Identification.)

6 MS. FURLONG: Your Honor, the first item on that
7 property in evidence sheet is the weapon in this case.

8 THE COURT: The gun.

9 MS. FURLONG: I'd like to have it marked as
10 State's Exhibit S-19.

11 THE COURT: That's S-19?

12 MS. FURLONG: S-19.

13 (Whereupon, exhibit is marked S-19 for
14 Identification.)

15 MS. FURLONG: The next item, your Honor, is
16 S-20, four spent bullets contained in a package with the
17 CC markings on it.

18 (Whereupon, exhibit is marked S-20 for
19 Identification.)

20 MS. FURLONG: Next, your Honor, is I'd like to
21 mark the Cincinnati phone book as State's Exhibit S-21
22 and make a 21A and B because they're in the same bag,
23 it has jacket and phone book, 21B being the blue sleeveless
24 jacket.

25 THE COURT: You have S-21, phone book --

1 MS. FURLONG: Can I make that as A and then
2 the jacket as B because they're in the same brown bag.

3 THE COURT: Oh, the jacket, I see. The jacket
4 belonging to, allegedly belonging to whom?

5 MS. FURLONG: The Defendant, your Honor.

6 THE COURT: Okay, what's the color of that
7 jacket?

8 MS. FURLONG: Blue, your Honor. Blue denim
9 sleeveless jacket.

10 (Whereupon, exhibit is marked S-21A and S-21B
11 for Identification.)

12 MS. FURLONG: Next for identification, I'd like
13 to have marked as State's Exhibit S-22, \$190 confiscated
14 from the Defendant, Mr. Moultrie.

15 THE COURT: A hundred and how much?

16 MS. FURLONG: Ninety, Judge.

17 THE COURT: 190, sorry.

18 (Whereupon, exhibit is marked S-22 for
19 Identification.)

20 MS. FURLONG: Your Honor, the next item I'd like
21 to have marked for identification is a .25-caliber expended
22 shell received by Investigator Ferrer from Kathy Woods.

23 THE COURT: A .25 expended shell.

24 (Whereupon, exhibit is marked S-23 for
25 Identification.)

1 MS. FURLONG: Next, your Honor, there's a series
2 and they're all contained in one envelope, they're as
3 follows: There's four envelopes.

4 THE COURT: Four small manila envelopes?

5 MS. FURLONG: Correct.

6 THE COURT: Taken from S -- larger envelope and
7 are you going to mark the four envelopes individually, or --

8 MS. FURLONG: Your Honor, on each one of the
9 packets, it has bullet No. 1, so I'd like to have that
10 marked, I believe --

11 THE COURT: Are these the bullets that may have
12 been recovered --

13 MS. FURLONG: These were the bullets that were
14 recovered during the autopsy.

15 THE COURT: -- autopsy?

16 MS. FURLONG: Yes. So, with S-24, I'd like to
17 have packet number marked bullet 1 retrieved from the
18 right occipital lobe marked as State's Exhibit S-24.

19 MR. GONZALEZ: You're going to mark each bullet?

20 MS. FURLONG: Yes, because I want to refer to
21 them.

22 (Whereupon, exhibit is marked S-24 for
23 Identification.)

24 THE COURT: S-25?

25 MS. FURLONG: Bullet No. 2, your Honor, also

1 recovered from the occipital area.

2 THE COURT: Right, you said the right lobe in
3 the other one.

4 MS. FURLONG: I -- does it say right or -- it
5 just says occipital on the outside, Judge, it doesn't
6 indicate right or left.

7 (Whereupon, exhibit is marked S-25 for
8 Identification.)

9 MS. FURLONG: The next is bullet No. 3 recovered
10 from the mala region and that's State's Exhibit S-26.

11 THE COURT: Recovered from where?

12 MS. FURLONG: The mala, maxilla.

13 (Whereupon, exhibit is marked S-26 for
14 Identification.)

15 MS. FURLONG: The next is bullet No. 4 and it's
16 recovered from the chest between the tenth and eleventh
17 rib.

18 THE COURT: That would be S-27?

19 MS. FURLONG: Right.

20 (Whereupon, exhibit is marked S-27 for
21 Identification.)

22 MS. FURLONG: The next, your Honor, is one
23 hacksaw and blade and that's going to be marked as State's
24 Exhibit S-28.

25 THE COURT: And what is that?

1 MS. FURLONG: One hacksaw and blade.

2 THE COURT: A hacksaw and blade.

3 (Whereupon, exhibit is marked S-28 for
4 Identification.)

5 THE COURT: Any more bullets? We have four
6 recovered from the autopsy.

7 MS. FURLONG: And we have the spent shells, Judge.

8 THE COURT: All right, but --

9 MS. FURLONG: There's no other bullets right now.

10 THE COURT: I thought you had mentioned in your
11 opening there were seven.

12 MS. FURLONG: I know, your Honor, but some of
13 them --

14 THE COURT: I just asked.

15 MS. FURLONG: We have the First Fidelity, that
16 would be S-29.

17 THE COURT: No, 30.

18 No, no, it says 29 there.

19 MS. FURLONG: Oh, I'm sorry, you're right.

20 The First Fidelity Bank envelope has directions
21 to pick him up after he escaped.

22 THE COURT: The bank envelope?

23 MS. FURLONG: It's a First Fidelity Bank envelope
24 containing directions written on it by a witness during the
25 escape.

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1 THE COURT: It's a First Fidelity Bank envelope
2 but will be developed as something else.

3 (Whereupon, exhibit is marked S-29 for
4 Identification.)

5 THE COURT: Can we make another inquiry to see
6 if Mr. Thomas is coming down and if not, a Mr. --

7 MS. FURLONG: Armour, Lawrence Armour.

8 THE COURT: All right.

9 Next is S-30.

10 MS. FURLONG: The next one, Judge, is a pair of
11 metal cutters, plier cutters.

12 MR. GONZALEZ: What is it?

13 MS. FURLONG: Cutter pliers.

14 THE COURT: It's a metal cutter.

15 (Whereupon, exhibit is marked S-30 for
16 Identification.)

17 THE COURT OFFICER: Thomas is outside.

18 THE COURT: Okay, have him ready to go after
19 this.

20 Do these have to do with the escape charge?
21 Let's mark the handcuffs now and then we can stop and the
22 reason for that is although there's been an admission of
23 guilt here, there still has to be --

24 MS. FURLONG: I know, and this is S-31, the
25 handcuffs, handcuffs with an eye bolt.

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THE COURT: Handcuffs with what?

MS. FURLONG: An eye bolt.

THE COURT: Oh, eye bolt, S-31.

(Whereupon, exhibit is marked S-31 for Identification.)

THE COURT: All right. Mr. Gonzalez, be sure that you go over all these items that were just marked as exhibits.

MR. GONZALEZ: Judge, I have them.

THE COURT: Oh, you have?

MR. GONZALEZ: Yes, Judge.

THE COURT: S-1 all the way down to S-31?

MR. GONZALEZ: Judge, we need one minute before Thomas comes in.

THE COURT: Sure.

MR. GONZALEZ: Thank you.

THE COURT: Go ahead.

(Pause)

THE COURT: All right, are we ready? We're going to go about twenty of and then we'll break.

MR. GONZALEZ: Judge, that means we're going to break on Thomas' cross.

THE COURT: Why?

MR. GONZALEZ: Because I think Ms. Furlong is going to be --

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1 MS. FURLONG: Long.

2 THE COURT: I don't know, we'll see where we go.
3 We're going to --

4 MS. FURLONG: Judge, these --

5 THE COURT: I understand. We're going to go --
6 well, we'll see where we go and then if the cross is to
7 start somewhere at a quarter of, I'll break then. I have
8 to break at least by twenty minutes to four.

9 MR. GONZALEZ: Okay.

10 THE COURT: All right. With that, then if we're
11 ready to go, let's bring the jury out.

12 All right, all those items are set, they're all
13 there, bring the jury out, please, and then we'll get
14 started.

15 2:50 p.m.

16 (Whereupon, the following take place within
17 the presence of the jury.)

18 THE COURT: Ladies and gentlemen, we have our
19 14 jurors in the jury box and Ms. Furlong, have the witness
20 brought in, please.

21 MS. FURLONG: Your Honor, at this time, the
22 State calls Detective William Thomas to the stand.

23 THE COURT: All right.

24 (Whereupon, witness enters.)

25 DETECTIVE W I L L I A M T H O M A S, sworn.

1 THE COURT: All right. Good afternoon, sir.

2 THE WITNESS: Good afternoon.

3 THE COURT: Direct examination, please.

4 MS. FURLONG: Thank you, your Honor.

5 DIRECT EXAMINATION BY MS. FURLONG:

6 Q Detective Thomas, would you please tell the
7 Court and jury by whom you're employed?

8 A Newark Police Homicide Division.

9 Q And how long have you been employed in that
10 capacity?

11 A Twenty-one years.

12 Q Now, are you familiar with an investigation of
13 State versus New Jersey -- I mean, State of New Jersey
14 versus Derek Moultrie?

15 A Yes.

16 Q And is that your -- was that assigned to you
17 directly, Detective?

18 A Yes, it was.

19 Q And what time did you become involved with this
20 particular investigation, on what date?

21 A I need the reports to refresh as far as dates and
22 times are concerned.

23 MS. FURLONG: Your Honor, at this time, I'd like
24 to have Detective Williams' report marked as State's
25 Exhibit, I believe we're up to 8-12.

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THE COURT: Have you seen that report,
Mr. Gonzalez?

MR. GONZALEZ: Yes, I have, Judge.

THE COURT: How many pages is it, please?

MS. FURLONG: Five -- excuse me, four, for the
record.

THE COURT: Four, thank you.

(Whereupon, exhibit is marked S-32 for
Identification.)

Q Now, Detective, I'm now showing you what's been
marked as State's Exhibit S-32 and I ask you if you can
identify that for the record?

A Yes.

Q And could you please indicate to the Court and
jury what S-32 is?

A It's a report concerning the incident prepared by
myself.

Q Now, does this report document your investigation?

A Yes.

Q And does it start with when you were first
assigned?

A Yes, it does.

Q Now, could you please indicate at what point in
time you arrived at the scene of this incident?

A Approximately 12 a.m., 9-11-89.

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1 Q And upon your arrival on the scene, could you
2 please highlight for the Court and jury what observations
3 you made of that area?

4 A The area itself was a desolate area. It runs adjacent
5 to the highway, I believe it's 78, I'm not sure. It's
6 three or four homes in the area, mainly it's a lot of
7 vacant lots.

8 Q And when you arrived at the scene, were there
9 other police officials on the scene?

10 A One unit, Police Officer Shaine (ph); the medical
11 examiner arrived after I did, along with the photographer.

12 Q And at the point in time that you arrived, did
13 you make any physical observations about the body at this
14 time?

15 A Yes. It was the body of a black male, partially lying
16 on the sidewalk with his feet into the street. At that
17 time, he appeared to have two gunshot wounds to the chest
18 area.

19 Q And were you in a position to make any observations
20 about the area, the physical area around where the body was
21 at that time?

22 A Well, like I said, it was a grassy area, sidewalk but
23 he was laying on the sidewalk in the street.

24 Q Did you recover any spent cartridges or casings?

25 A Well, we searched, we found two at that time.

1 MS. FURLONG: Your Honor, at this time, I'd like
2 to have a series of photographs, for the record, one, two,
3 three, four, five, six, seven, eight photographs marked
4 as State's Exhibit S-33, the crime scene.

5 THE COURT: S-33, photos. Are they in an
6 envelope or are they to be marked separately?

7 MS. FURLONG: I believe S-33A all the way would
8 be the best.

9 THE COURT: All right.

10 (Whereupon, exhibit is marked S-33A through H
11 for Identification.)

12 Q Now, Detective, I'm going to show you a series
13 of photographs --

14 THE COURT: Let the record reflect for a moment,
15 Mr. Gonzalez, you did view all the photos?

16 MR. GONZALEZ: Yes, I have, Judge.

17 THE COURT: All right, thank you.

18 Please, proceed.

19 Q -- a series of photographs marked State's Exhibit
20 S-33A through H and I want you to indicate, do these pictures
21 accurately depict the crime scene of how it looked at the
22 time of your arrival?

23 (Whereupon, witness reviews photograph.)

24 A Yes, it does.

25 Q And were you present when those photographs were

1 taken?

2 A Yes.

3 Q And could you please tell the Court and jury by
4 whom, if you know, took them? What office they were taken
5 by?

6 A Unit 50, I believe it's Marshall, I'm not sure.
7 Unit 50, the assigned photographer of that particular night.

8 Q Now, Detective, did there come a point in time
9 where you were able to make an identification of the body
10 and learn of his identity?

11 A Yes.

12 Q And would you please tell the Court and jury the
13 identity of the individual?

14 A Victor Lamont Nott.

15 Q And did there come a point in time where the
16 medical examiner arrived in your presence?

17 A Yes.

18 Q And did there come a point in time where the
19 medical examiner indicated whether he was deceased or do
20 you have personal knowledge at the time you arrived, was
21 the individual deceased?

22 A He was dead when the medical examiner arrived, yes.

23 Q Thank you.

24 Now, at that point in time, did you have occasion
25 to notify the victim's family?

1 A Yes, we did.

2 Q And could you please tell the Court and the jury
3 where you responded to, to notify Mr. Mott's family?

4 A We went to 235 Goldsmith Avenue.

5 Q When you arrived at Goldsmith Avenue, to whom
6 did you speak with at that time?

7 A His mother, a niece and a brother.

8 Q For the record, Detective, could you please
9 indicate the niece's name?

10 A Tykesha Mott.

11 Q And at that time, Detective, did Ms. Mott,
12 Tykesha Mott, provide you with any information about an
13 earlier incident in the evening?

14 A Yes, she did.

15 Q And as a result of that information, did you have
16 occasion to go to Plainfield?

17 A Yes, I did.

18 Q And when you went to Plainfield, who was with
19 you at the time you went to Plainfield?

20 A Tykesha Mott, the brother and an Officer Ferrer, Henry
21 Ferrer, from the Prosecutor's Office.

22 Q And could you please tell the Court and the jury
23 where you went in Plainfield?

24 A We went to 1433 Wiliever Street in Plainfield.

25 Q And could you please tell the Court and jury why

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you went back to that address?

A The information we had developed indicated that the driver --

MR. GONZALEZ: Your Honor, objection, hearsay.

THE COURT: As a result of certain information, you got to Plainfield. Is that correct?

THE WITNESS: Yes.

THE COURT: What's the next thing that --

MS. FURLONG: Thank you, your Honor.

Q And when you arrived --

THE COURT: Objection sustained.

Q When you arrived in Plainfield, what did you do?

A I notified the Plainfield Police to have them meet us at a certain location and we went to 1433 Willever Street.

Q And at the time you arrived there, what happened when you arrived at that address?

A Well, the individuals in our auto spotted a car and said that was the auto in question.

MR. GONZALEZ: Judge, objection, hearsay.

THE COURT: No, there was an individual in the auto.

THE WITNESS: In our car, yes, sir.

THE COURT: All right, next question.

Q Now, at that point in time, did you have occasion to speak to one Kathy Woods?

1 A Yes.

2 Q And could you please tell the Court and jury,
3 did you advise Ms. Woods of an identification of her
4 vehicle?

5 A Yes, we did.

6 Q Made at that time?

7 A Yes, we did.

8 Q And did you advise her --

9 MR. GONZALEZ: Judge, objection, leading.

10 THE COURT: Sustained.

11 Well, it's leading, however, it's attempting to
12 elicit some information.

13 MS. FURLONG: Judge, I can rephrase it, it's just
14 a matter of style.

15 THE COURT: All right.

16 What did you do as far as Ms. Woods is concerned,
17 if anything?

18 THE WITNESS: We spoke with Ms. Woods, advised
19 her --

20 THE COURT: Don't tell us what she indicated to
21 you but you did speak to her?

22 THE WITNESS: Yes.

23 THE COURT: As a result of -- next question, I'm
24 sorry.

25 BY MS. FURLONG:

1 Q Now, at that particular point in time, did you
2 ascertain where the Defendant, Derek Moultrie, was at that
3 time?

4 A At that time, no.

5 Q And did there come a point in time where you
6 found out where Mr. Moultrie was?

7 A Yes.

8 Q And from whom did you learn that information?

9 A Ms. Woods.

10 Q And did there come a point in time where Ms. Woods
11 signed a consent to search her car and home at that time?

12 A Yes, she did.

13 Q And could you please indicate to the Court and
14 the jury, did there ever come a point in time once you
15 ascertained where the Defendant, Mr. Moultrie was, that you
16 informed him that he was being brought in for a homicide?

17 A Yes.

18 Q And could you please tell the Court and jury --
19 describe Mr. Moultrie's apprehension in Plainfield?

20 A Well, when we found out where he was concealing himself,
21 we brought Ms. Woods into the home and she showed us an
22 area leading from the bathroom to the attic, hole in the
23 ceiling. She stated that Mr. Moultrie had -- was hiding
24 in the attic. In other words, we could hear him walking
25 around but he wouldn't come down and we didn't know if he

1 was armed at that time or not; so, we tried to have her
2 talk to him to come down and after approximately an hour,
3 an hour and a half, he came out of the ceiling.

4 MS. FURLONG: Your Honor, at this time, I'd
5 like to have two pictures marked for identification, State's
6 Exhibit S-34A and S-34B.

7 (Whereupon, exhibits are marked S-34A and S-34B
8 for Identification.)

9 Q Detective, I'm now showing you what's been marked
10 State's Exhibit S-34A and B. Can you please identify those
11 photographs for the record?

12 A One's a photograph leading into the bathroom, the
13 other shows a photograph of the opening in the ceiling
14 leading to the attic.

15 THE COURT: Which one shows the bathroom, A or B?

16 THE WITNESS: B, your Honor.

17 THE COURT: All right, thank you.

18 Q Now, Detective, could you go into a little more
19 specifics of what those photographs actually depict as far
20 as the Defendant's involvement of where he was in relation
21 to those photographs?

22 A All right. It shows a little small hallway at the top
23 of the stairs. There's a hallway with two -- three rooms.
24 When you come up the steps, there's three rooms. The second
25 hallway leads into the bathroom which is the long hallway

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PENCAD CO., BAYONNE, N.J. 07002 - FORM

1 here and it shows --

2 THE COURT: No, no, no, no, put those photos
3 down, sir. They're only marked as exhibits, they're not
4 in evidence yet.

5 THE WITNESS: Yes, well, whatever --

6 Q Detective, could you just physically describe
7 them without displaying the photographs?

8 A And the second one shows an opening in the ceiling
9 that leads into the attic.

10 Q And Detective, is that the area I believe in
11 State's Exhibit S-34A where you actually apprehended the
12 Defendant coming out of the ceiling on the 11th of
13 September?

14 A Yes.

15 Q Now, could you please clarify one thing?

16 Approximately what was the time that it took for
17 you to apprehend the Defendant from that area?

18 A We were there for approximately two to three hours.

19 Q And was that whole time encompassing getting the
20 Defendant out of the attic crawl-space area?

21 A The better part of it was.

22 Q Now, at that point in time, was the Defendant,
23 to your knowledge, arrested?

24 A I didn't hear the last part of that question.

25 Q At that point in time, was the Defendant arrested?

1 A Yes, he was.

2 Q And do you know where he was transported to?

3 A He was taken to the Plainfield Police Department.

4 Q Now, did you also transport someone else at that
5 particular time from that address?

6 A Yes, we did.

7 Q And who was that individual?

8 A Kathy Woods.

9 Q And where was Ms. Woods taken to?

10 A She was taken to the Newark Homicide Division.

11 Q And at that point in time, did you have occasion
12 to take a statement from Ms. Woods?

13 A We took a statement but it wasn't at that time.

14 Q Did you give Ms. Woods her Miranda rights?

15 A Yes, she was given them.

16 Q And was she aware that she was identified as the
17 driver of that particular vehicle that evening?

18 A Yes, she was.

19 Q And did there come a point in time where you
20 questioned her about her knowledge of the weapon?

21 A Yes.

22 Q And did there come a point in time where she
23 indicated what that knowledge was?

24 MR. GONZALEZ: Your Honor, objection, leading
25 questions. There's been two or three of them.

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THE COURT: Well --

MS. FURLONG: Judge, I believe I'm not leading him, I'm asking knowledge of, I'm not supplying --

THE COURT: Well --

MR. GONZALEZ: Judge, she's supplying the information of the answer in the question.

THE COURT: Yes. In essence, it may be but it's also a leading question -- well, let me explain this to you now, ladies and gentlemen, so you know what the nature is that we're talking about.

Leading questions are not permitted during the direct-examination of witnesses and a leading question, ladies and gentlemen, is a type of question that either suggests the answer to the witness or it may have the answer contained in the question and therefore, it's not allowed. It is allowed on cross-examination, but not on direct examination and that's what this is all about.

Is that clear?

THE JURY: Yes.

THE COURT: Now, maybe you can rephrase the question.

MS. FURLONG: Judge, I'll proceed on a different avenue.

THE COURT: All right.

BY MS. FURLONG:

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EDITORIAL CONTENT

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FED-23

PENGAD CO., BAYONNE, N.J. 07002 - FORM

1 Q Detective, as a result of the arrest of Derek
2 Moultrie, did you have occasion to fill out any property
3 in evidence sheets?

4 A Yes, we did.

5 Q I'm now showing you what's been marked as State's
6 Exhibit S-18. Can you identify this for the record?

7 (Whereupon, witness reviews report.)

8 A Yes.

9 Q And can you please tell the Court and jury what
10 that document is?

11 A It's a property sheet executed by myself of items
12 received from 1433 Willever Street in Plainfield.

13 Q Could you please, from your own recollection,
14 Detective, indicate to the Court and jury what items were
15 actually recovered?

16 A Six bullets, .35-caliber automatic pistol, four spent
17 shells, a Cincinnati phone book that was hollowed out from
18 the inside, the interior, one clip from the automatic, one
19 live round, a blue sleeveless shirt and \$190 in currency.

20 Q Thank you,

21 Now, how did you come to recover the weapon that
22 you mentioned on that property evidence sheet?

23 A From information --

24 MR. GONZALES: Judge, objection.

25 MS. FURLONG: Judge, the witness has said, from

1 information, he hasn't --

2 MR. GONZALEZ: Judge --

3 THE COURT: Yes, Mr. Gonzalez, just one second.

4 What is the objection, please?

5 MR. GONZALEZ: Judge, it is leading.

6 THE COURT: Pardon?

7 MR. GONZALEZ: It's a leading question.

8 THE COURT: A --

9 MS. FURLONG: Judge, can I be heard, Judge?

10 To ask someone a question, how did you recover
11 a weapon, he's already indicated it was recovered. I'm
12 only asking him to explain how. I don't think that's
13 leading.

14 THE COURT: Under what circumstances was it
15 recovered?

16 MR. GONZALEZ: I mean, he can do that without
17 getting into what other people told him.

18 THE COURT: Oh, of course.

19 MR. GONZALEZ: Well, that's --

20 MS. FURLONG: Judge, I believe there's an
21 exception to the hearsay rule because it's a declaration
22 against interest.

23 THE COURT: We don't know what interest yet at
24 this point.

25 MR. GONZALEZ: There's no foundation.

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PENGAD CO., BAYONNE, N.J. 07002 - FORM

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COTTON CONTENT

1 THE COURT: I'll sustain the objection but you
2 can ask him under what circumstances were these items
3 recovered and where.

4 First of all, who did it, who did recover them?
5 Did you recover these items yourself?

6 THE WITNESS: Yes, sir.

7 THE COURT: Personally?

8 THE WITNESS: Yes, sir.

9 THE COURT: All right, go ahead, please.

10 BY MS. FURLONG:

11 Q Could you please tell the Court and the jury
12 where the weapon was recovered, physically recovered?
13 Where was it when you recovered it?

14 A At the foot of the bed of Kathy Woods' apartment
15 inside of a telephone book that was hollowed out.

16 Q Now --

17 THE COURT: Foot of a bed?

18 THE WITNESS: Excuse me, sir?

19 THE COURT: Foot of the bed?

20 THE WITNESS: Foot of the bed, yes, sir.

21 MS. FURLONG: Judge, at this time, I'd like to
22 have the following photographs marked as State's Exhibit
23 S-35A, B, C, D, E and F.

24 (Whereupon, Exhibits are marked S-35A through F
25 for identification.)

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FED-25

PENGAD CO., BAYONNE, N.J. 07002 - FORM

1 THE COURT: Did Mr. Gonzalez see those photos,
2 please?

3 MR. GONZALEZ: It's all right.

4 MS. FURLONG: I've shown them to him before,
5 Judge.

6 MR. GONZALEZ: Yes, I have seen them before.

7 THE COURT: All right.

8 (Whereupon, Defense Counsel reviews photos.)

9 THE COURT: All right.

10 Q Detective, I'm now showing you a series of
11 photographs marked as State's Exhibit S-33A through F.
12 Can you please indicate for the Court and the jury what
13 those pictures depict and how you're able to identify them?

14 (Whereupon, witness reviews photographs.)

15 A These pictures show the bedroom of Kathy Woods.

16 THE COURT: Did you say S-33 or S-35?

17 MS. FURLONG: I think the back of the picture
18 says S-33, that's why I --

19 THE COURT: No, S-33 are of the alleged crime
20 scene.

21 MS. FURLONG: Correct, your Honor.

22 THE COURT: Is that what you're showing him now?

23 MS. FURLONG: No, Judge.

24 THE COURT: S-35A through F depicts the bedroom
25 or something of that type, is that correct?

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NOT IN CONTENT

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FENGAD CO., BAYONNE, N.J. 07002 - FORM FED-25

1 MS. FURLONG: Correct, your Honor. It's just a
2 matter where it says S-33.

3 THE COURT: Well, make sure we have them corrected.
4 Would you please correct them now?

5 MR. GONZALEZ: Judge, is it S-33 or 35?

6 MS. FURLONG: It's S-35.

7 MR. GONZALEZ: Correct.

8 THE COURT: That's what I want to have -- I knew
9 I was right but I just wanted to be sure that I was right.

10 MR. GONZALEZ: Yes, Judge.

11 (Whereupon, markings on exhibits are changed from
12 S-33 to S-35A through F for Identification.)

13 THE COURT: All right, S-35A, B, C, D, E and F,
14 all right, thank you.

15 BY MS. FURLONG:

16 Q Now, Detective, I'm now showing you what's been
17 marked as State's Exhibit S-35A through F. Can you please
18 identify these for the record?

19 A These are photographs taken in the bedroom of Kathy
20 Woods. It shows a phone book that when opened shows a
21 concealed automatic weapon.

22 Q Now, Detective, were you present when those
23 photographs were taken?

24 A Yes.

25 Q And do those photographs depict physical

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PENGAD CO., BATONNE, N.J. 07002 - FORM FED-25

1 observations made by you at the time that the weapon was
2 recovered?

3 A Yes.

4 MS. FURLONG: Your Honor, at this time, I'd like
5 to have the following marked as State's Exhibit S-36, a
6 Cincinnati phone book -- oh, I'm sorry, it was previously
7 marked as State's Exhibit S-21A.

8 THE COURT: That's correct.

9 Q Detective, I'm now showing you what's been marked
10 as State's Exhibit S-21A. Can you please identify this for
11 the record?

12 A Yes. It's a phone book that was recovered from Kathy
13 Woods' room.

14 Q And is that the phone book that is depicted in
15 the photographs that I showed you which were marked as
16 State's Exhibit S-35A through F?

17 A Yes, it is.

18 THE COURT: All right.

19 Now, specifically, is it A, B, C, D, E, F?
20 What is it? S-21A which you have just seen? What does
21 it relate to, S-35, what letter?

22 MS. FURLONG: Judge, the phone book is in the
23 pictures, I just asked him.

24 THE COURT: Well, I don't know which picture.
25 He just indicated they were just marked S-35A, B, C, D, E, F.

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PENGAD CO. BAYONNE, N.J. 07002 - FORM FEB-15

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1 We don't know specifically each letter.

2 Q Detective, could you please look at Exhibit S-35A
3 through F and on the back of the picture, indicate the
4 numerical or alphabet of each picture that the phone book
5 is actually depicted in?

6 A Every one with the exception of F.

7 THE COURT: It's in all of them except F?

8 THE WITNESS: Yes.

9 THE COURT: Okay.

10 Q Now, Detective, could you take a moment to look
11 at the Cincinnati phone book in front of you and examine it
12 and tell me, is it in the same condition as it was at the
13 time you recovered it?

14 A Yes.

15 Q And could you examine it and is there a hollowed-
16 out portion in that particular --

17 THE COURT: Well, why don't you ask him instead
18 of is there, that's leading.

19 MR. GONZALEZ: I --

20 THE COURT: Example.

21 Objection sustained.

22 MR. GONZALEZ: Thank you, Judge.

23 THE COURT: Would you please take a look at it
24 and examine and describe what it looks like to you, sir?

25 BY MS. FURLONG:

1 Q Detective, could you please examine that and
2 physically describe that phone book?

3 A It's the phone book of Cincinnati with the interior
4 hollowed out.

5 Q And is that the same photo -- excuse me. Is
6 that the same telephone book that you recovered in Plainfield?

7 A Yes, it is.

8 Q Now, in addition to those items recovered, were
9 you present when Kathy Woods gave a statement?

10 A Yes.

11 Q And did you take the statement from Kathy Woods?

12 A I'm not sure, I'll have to look. I took so many
13 statements that night.

14 THE COURT: Do you want to look at the statement
15 that may have been taken from Ms. Woods?

16 THE WITNESS: Yes.

17 Q Do you have that statement with you, Detective?

18 A No, I don't have the statements.

19 MS. FURLONG: Your Honor, at this time, I'd like
20 to have Ms. Woods' statement marked for identification as
21 State's Exhibit S-36.

22 (Whereupon, exhibit is marked S-36 for
23 Identification.)

24 MS. FURLONG: For the record, your Honor, it's
25 a five-page document, four pages encompassing the statement

1 and one page encompassing the Miranda.

2 THE COURT: All right.

3 (Whereupon, Defense Counsel reviews statement.)

4 MR. GONZALEZ: Thank you.

5 THE COURT: Let the record reflect that
6 Mr. Gonzalez has seen S-36.

7 MR. GONZALEZ: That's correct, your Honor.

8 THE COURT: Four pages of the statement, one page
9 of Miranda. Is that correct, sir?

10 MR. GONZALEZ: That's correct.

11 THE COURT: Thank you.

12 BY MS. FURLONG:

13 Q Detective, I'm now showing you what's been marked
14 as State's Exhibit S-36. Can you identify it for the
15 record, please?

16 A It's a statement taken by Investigator Ferrer from
17 Kathy Woods.

18 Q And were you present, Detective, at the time that
19 that statement was taken?

20 A Yes.

21 Q And is there any indication from you on that
22 statement that you were present at the time the statement
23 was taken?

24 A The fact that I witnessed the Miranda signing.

25 THE COURT: The what?

- BOTTOM CONTENT -

1 THE WITNESS: Miranda, preamble.

2 THE COURT: You were a witness?

3 THE WITNESS: Yes.

4 THE COURT: That's the first page. The question
5 was, were you present when the statement which consists of
6 four pages was taken?

7 THE WITNESS: Yes.

8 THE COURT: Were you present?

9 THE WITNESS: Yes.

10 THE COURT: How do you know that?

11 THE WITNESS: Because I witnessed the preamble,
12 it was taken at the same time the statement was taken.

13 THE COURT: Next question.

14 BY MS. FURLONG:

15 Q Now, Detective, at the time that the statement
16 was taken, you indicated that Ms. Woods was given her
17 Miranda Warnings?

18 A Yes.

19 Q And could you please explain to the Court and
20 jury what that involves when you give the Miranda Warnings?

21 A It's advising her of her rights to an attorney, that
22 she doesn't have to give us any statements unless one is
23 present and if she couldn't afford one, that the Court
24 could appoint one to her. Also, the fact that she could
25 stop answering any questions or give any statements at any

1 time she wished and asked for an attorney.

2 Q Now, during the course of --

3 THE COURT: Any other rights given to her?

4 THE WITNESS: With that exception, no.

5 THE COURT: Pardon?

6 THE WITNESS: No.

7 Anything she said would be used against her in a
8 court of law.

9 THE COURT: May I see Counsel at sidebar for a
10 moment?

11 (Whereupon, there is a sidebar discussion.)

12 THE COURT: The reason why I asked you at sidebar
13 was because I think the initial question by you, Ms. Furlong,
14 was whether or not showing him that would indicate, could
15 you recall some -- that he was present or fix a time when
16 it was taken.

17 Now, you're starting to get into a statement and
18 I'm wondering whether or not there was a question here of
19 should we have a Rule 8 hearing regarding the Miranda rights
20 and whether or not all the rights were given.

21 MS. FURLONG: Judge, she's a witness, not a
22 defendant.

23 THE COURT: I'm just bringing it out.

24 MS. FURLONG: And she already testified before
25 the Grand Jury, so where are we going?

- COTTON CONTENT -

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PENGAD CO., BAYONNE, N.J. 07002 - FORM FED-23

1 THE COURT: What do you have on it, she's a
2 witness?

3 MS. FURLONG: She's a witness.

4 THE COURT: The reason why I bring that out is
5 because the Defense seems to be --

6 MS. FURLONG: They can do whatever they want.

7 THE COURT: -- from the opening --

8 MR. GONZALEZ: Judge, I have no problem with that.

9 THE COURT: Okay.

10 MS. FURLONG: She's not the Defendant, Judge.

11 MR. GONZALEZ: The only thing I do have a problem
12 with is anything he may say that she said, that would be
13 hearsay. I don't think what he's doing right now --

14 THE COURT: What he has advised her, up to this
15 point --

16 MR. GONZALEZ: It's okay.

17 THE COURT: The reason why I brought you over is
18 because in the opening, I heard Mr. Gonzalez say it was
19 Kathy Woods --

20 MS. FURLONG: Yeah, but --

21 THE COURT: -- who pulled the trigger.

22 MS. FURLONG: Yeah, but --

23 THE COURT: I don't know, I just want to be
24 cautious, that's all.

25 (Whereupon, sidebar discussion is concluded.)

MEMLOCK
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1 MS. FURLONG: Thank you, your Honor.

2 BY MS. FURLONG:

3 Q Detective, at the time that this statement was
4 taken, would you please describe for the Court and the jury
5 under what circumstances the statement was actually taken?
6 Where was the statement taken?

7 A The statement was taken at police headquarters, Homicide
8 Division.

9 Q And did you make any observations about Ms. Woods
10 at the time that the statement was taken?

11 A Yes.

12 Q And could you please explain to the Court and
13 jury what observations you made of her at that time?

14 A The fact that she was giving a statement, she wasn't
15 under any pressures of any sort.

16 Q And did she ever, at any point, indicate to you
17 that she wished --

18 MR. GONZALEZ: Judge, objection, hearsay.

19 THE COURT: This is a statement of Ms. Woods?

20 MR. GONZALEZ: Yes.

21 THE COURT: And are you starting to get in to some
22 matters there that --

23 MS. FURLONG: Judge, I'm not going --

24 THE COURT: And if so, it can't come through this
25 witness, can it?

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PENGAD CO., BAYONNE, N.J. 07002 - FORM FEB-75

1 MS. FURLONG: Judge, I believe that we're in the
 2 same situation that we're normally in and whether or not
 3 given, Miranda, voluntary or not, I can ask this detective
 4 whether --

5 THE COURT: I indicated to you at sidebar and you
 6 indicated she's a witness; so therefore, what's the
 7 voluntariness --

8 MS. FURLONG: Well, Judge, it is at issue.

9 MR. GONZALEZ: Judge, may I just say if we are
 10 going to have an extended discussion, that we do it at
 11 sidebar?

12 THE COURT: I understand that, but at this posture
 13 now, to ask this witness what Ms. Woods may or may not have
 14 said in a statement, I will not allow it.

15 MS. FURLONG: Judge, that -- excuse me, that's not
 16 the question.

17 THE COURT: Well, then let me hear your question.

18 MS. FURLONG: The question is whether or not --

19 MR. GONZALEZ: Judge --

20 THE COURT: Hold it, let me hear the question.

21 MS. FURLONG: -- she ever indicated that she
 22 wished not to proceed with giving a statement.

23 THE COURT: I don't think that that has any
 24 probative value at this posture with this witness.

25 MS. FURLONG: Judge, it has a lot of probative

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FEB-25

PENGAD CO., BAYONNE, N.J. 07002 - FORM

1 value with this witness.

2 THE COURT: You mean later on.

3 MS. FURLONG: Because the detective --

4 MR. GONZALEZ: Judge, with all due respect --

5 THE COURT: Hold it, I understand.

6 MR. GONZALEZ: Judge --

7 THE COURT: Let me see you at sidebar because
8 we've got about another ten minutes or so before I excuse
9 the jury.

10 (Whereupon, there is a sidebar discussion.)

11 THE COURT: Yes, go ahead.

12 MR. GONZALEZ: Judge, if I may.

13 I think what Ms. Furlong is trying to get out
14 through his observations is, did she look pressured.

15 THE COURT: He's testified, he said she was okay.
16 That was taken care of.

17 MS. FURLONG: But Judge, the Miranda rights say --
18 I'm asking because Kathy Woods takes the stand, this is my
19 last shot. I'm not --

20 THE COURT: Wait. You did ask and then I brought
21 you to sidebar.

22 MS. FURLONG: I'm asking the procedure as to how
23 the statement was taken, I'm allowed to go into that.

24 THE COURT: You did, you asked did you observe
25 her demeanor. He said, okay.

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FEB-55

PENGAD CO., BAYONNE, N.J. 07002 - FORM

1 MS. FURLONG: I could ask him whether or not she
2 ever indicated that she wanted to stop giving the statement
3 or not.

4 MR. GONZALEZ: That's hearsay.

5 MS. FURLONG: That's not hearsay.

6 THE COURT: That's a statement given by her.
7 See, that's the problem.

8 MS. FURLONG: Judge, it's not. I don't know
9 where you're coming from, it's not hearsay.

10 THE COURT: Hold it. I know where you're coming
11 from, you're not going to get that in through this witness,
12 bring her in. If you want to ask him ^{how} /did she appear to you,
13 can you describe her demeanor, ask him that which you already
14 did.

15 MS. FURLONG: Judge, what I don't understand
16 though is why, if we just reflect a little bit back in any
17 situation where we have any type of hearing or cross-
18 examination about a Miranda, I have never had a case where
19 I'm not allowed to ask the officer whether they ever
20 indicated at any time whether they wished to go through
21 with the statement.

22 THE COURT: We went through this at sidebar, you
23 said this is a witness.

24 MS. FURLONG: Judge, just because a person is a
25 witness doesn't mean that a person can't turn and become a

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1 hostile witness later on. I've got an obligation to put
2 my case in.

3 THE COURT: If she becomes a hostile witness,
4 you can always call him back as a rebuttal.

5 MS. FURLONG: Judge, let me finish.

6 THE COURT: I made my ruling, that's it. Let's
7 go on with this witness.

8 (Whereupon, sidebar discussion is concluded.)

9 THE COURT: All right.

10 MS. FURLONG: Judge, if you want to proceed,
11 Detective Thomas is going to be on for quite some time.

12 THE COURT: We can go forward, let's do as much
13 as we can. Every minute is precious.

14 BY MS. FURLONG:

15 Q Now, Detective, as a result of the statement that
16 you took from Ms. Woods what was the Defendant charged with
17 at that time?

18 A Murder.

19 MR. GONZALEZ: Your Honor, objection.

20 THE COURT: Just one second. That -- not as a
21 result, was the Defendant ever charged at any time?

22 THE WITNESS: Yes, he was.

23 THE COURT: Thank you, next question.

24 Q And what was the Defendant charged with at that
25 time?

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THE COURT: At which time?

MS. FURLONG: The time that he was arrested,
Judge.

THE COURT: Oh, when was he arrested?

THE WITNESS: He was arrested in Plainfield.

THE COURT: Was he charged then in Plainfield?

THE WITNESS: Yes.

THE COURT: All right, next question.

Q And was the Defendant transported to Newark and
charged in Newark at any point in time?

A Yes, he was.

Q And when was the Defendant charged in Newark?

A After his arrival back in Newark.

Q And could you please tell the Court and jury at
that time, what charges were lodged against Mr. Moultrie?

A Homicide and possession of a dangerous weapon, unlawful
possession.

Q Now, Detective, bear with me for one minute.

(Pause)

Q Detective, I now show you what's been marked as
State's Exhibit S-19. Would you please examine the contents
of this envelope and tell me if you can identify it?

A It's the revolver recovered at 1433 Willever Street
with the one clip.

THE COURT: With what?

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PENGAD CO., BAYONNE, N.J. 07002 - FORM

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THE WITNESS: One clip.

THE COURT: One clip.

Q And Detective, in what condition was that item you just indicated in when you found it?

A It was loaded with the one round.

Q And where was it found?

A In the Cincinnati phone book at the foot of the bed.

Q And are there any markings on it that you can identify that that is, in fact, the gun that you recovered?

A My initials, the date, 9-11-89.

Q And those are on the -- what part of that gun, Detective?

A On the barrel.

Q And they're your initials?

A Yes.

Q And did you itemize that item on a property in evidence sheet?

A Yes, I did.

Q And could you please explain to the Court and jury what type of weapon that is?

A It's an automatic pistol, .35 caliber.

Q Now, in addition to the handgun -- excuse me, I'm going to refer you to State's Exhibit 8-8. Can you identify that exhibit for the record, 8-8?

A It's a property sheet executed by myself.

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1 Q And can you indicate to the Court and jury what
2 that property in evidence sheet actually documents?

3 A It documents a pair of blue dungaree pants, blue cap,
4 white socks, miscellaneous items taken from the pocket, one
5 ring and personal papers.

6 Q Now, Detective --

7 MS. FURLONG: Judge, this is going to be at least
8 15 minutes or more, I don't know if you want me to proceed.

9 THE COURT: I'll cut you off, Ms. Furlong.

10 Q Now, Detective, I'm going to show you a series
11 of exhibits and ask you if you can identify them? The
12 first exhibit has been marked as State's Exhibit S-15.
13 Please, examine that and identify it for the record?

14 A This is item 6 --

15 THE COURT: Item what?

16 THE WITNESS: Item 6 on the property sheet.

17 THE COURT: Oh, relates to, I see.

18 A Thirty-five cents, two matchbooks along with a key.

19 Q Okay. And were those items recovered --

20 MR. GONZALEZ: Judge, could I see them?

21 THE COURT: Just one second.

22 Yes, that's S-15, an envelope with keys, et cetera,
23 is it?

24 THE WITNESS: Yes.

25 THE COURT: Anything else?

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FED-33

PENNSAID CO., BAYONNE, N.J. 07002 - FORM

MEMORANDUM

1 MR. GONZALEZ: I just want to check the contents.
2 (Whereupon, Mr. Gonzalez checks exhibits.)

3 Q Now, Detective, were these items recovered by
4 yourself?

5 A Yes.

6 Q And do you know where they were recovered from?

7 A They came from the victim.

8 Q Now, I'm showing you what's been marked as State's
9 Exhibit S-14 for Identification. Can you identify that for
10 the record?

11 A It's No. 9 on the property sheet, a wallet belonging
12 to the victim.

13 THE COURT: What number was that, please?

14 THE WITNESS: No. 9 on the property sheet.

15 THE COURT: No, no, did you show him S-14?

16 MS. FURLONG: Yes, your Honor.

17 THE COURT: All right. With that, we're going to
18 stand in recess at this point.

19 All right. Ladies and gentlemen, we'll ask you
20 to be back here tomorrow morning at nine o'clock. Do not
21 discuss this matter, just keep an open mind. Talk about
22 everything and anything except this case, is that clear?
23 In other words, you don't speak to other people, members
24 of your family and we wish you all a pleasant night and
25 we'll be here tomorrow at nine o'clock.

1 (Whereupon, jury is excused.)

2 THE COURT: Just one second.

3 S-16 I thought were nail clippings.

4 MS. FURLONG: That's 14.

5 THE COURT: Look at it again.

6 MR. GONZALEZ: S-16 I got as nail clippings.

7 THE COURT: I do, too, that's why I interrupted.

8 Now, let's go over it and let's see. I have S-16,
9 nail clippings from the victim.

10 MS. FURLONG: That's correct, Judge. I showed --

11 THE COURT: I have it in my notes, S-16. Now,
12 if you're showing him S-14, unless I don't have it marked,
13 I skipped one, that could be. What do you have marked as
14 S-14?

15 THE COURT REPORTER: The victim's wallet, Judge.

16 THE COURT: I thought you indicated S-16 but
17 it's S-14 that you're showing him?

18 MS. FURLONG: Correct, your Honor.

19 THE COURT: All right. Did I have that right?

20 All right, so that's the wallet, very good.

21 Now, whatever you want to do now we're going to
22 stand in recess.

23 Sir, nine o'clock tomorrow. What's your problem?

24 THE WITNESS: I got my daughter's graduating at
25 ten o'clock.

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THE COURT: What did I do, we have a problem?

THE WITNESS: Yeah, I know.

THE COURT: You should have indicated that and made the arrangements. I suppose --

THE WITNESS: I indicated it.

THE COURT: With the Prosecutor's Officer or told them?

THE WITNESS: I did.

THE COURT: I didn't know about it and this is the first time we heard about it and I have a jury and with all due respect, unless all these arrangements are made ahead of time or told to the Court through somebody, you can't spring it on at the last minute at this time. Nine o'clock tomorrow morning.

THE WITNESS: All right.

THE COURT: If you feel you want to excuse him and continue with somebody else you may, Ms. Furlong.

MS. FURLONG: I'd ask Defense Counsel if he has an objection.

MR. GONZALEZ: I didn't hear the problem of Mr. Thomas.

THE COURT: He has a graduation of his daughter at ten.

Where?

THE WITNESS: Linden.

1 THE COURT: Once you go there, you're not going
2 to come back here.

3 THE WITNESS: No, it's over, she's only going
4 into high school so it's only an hour and a half. Whatever
5 you want to do.

6 MS. FURLONG: If Mr. Gonzalez doesn't have a
7 problem, I can proceed with my other witnesses and then
8 finish with him.

9 MR. GONZALEZ: And then do the cross when he
10 comes back?

11 THE COURT: If you'd like to interrupt tomorrow --

12 MS. FURLONG: Fine, Judge.

13 THE COURT: -- and continue, I have no problem,
14 but I'm not going to delay because you just told me the
15 last minute and I understand.

16 THE WITNESS: No, I understand, sir, I mean --

17 THE COURT: I understand that you want to be
18 there.

19 THE WITNESS: I told the Prosecutor but I didn't
20 tell the Judge.

21 MR. GONZALEZ: Judge, I have no problem with
22 letting him go and then coming back.

23 THE COURT: I don't run the clocking and timing
24 of the witnesses and I don't want to get into it.

25 MS. FURLONG: You don't have a problem, do you?

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MR. GONZALEZ: No.

THE COURT: I just want to know, who do we have lined up for the morning so we keep this jury busy and we keep going here? That's my -- who do we have lined up?

MS. FURLONG: I have other witnesses that we can call at nine and I have another witness out in the hallway, too, so --

THE COURT: Speak to the investigator, how many witnesses do you have?

MS. FURLONG: I have four coming for tomorrow morning plus Mr. Armour who's going to have to come back; so, I believe we have enough time to give him until 1:30.

THE COURT: How about the pathologist, that will take up a lot of time.

MS. FURLONG: So, you can come back at 1:30.

THE COURT: You can't rush him down by ten and then be here and there's no reason to come here at nine for half an hour and then go because you'll have to come back anyway; so, we're trying to accommodate you, Detective.

THE WITNESS: I can be here.

THE COURT: It's up to you.

MS. FURLONG: You can come at 1:30.

THE WITNESS: Okay.

MS. FURLONG: If you clear it with the other courts, it's fine.

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THE WITNESS: All right.

MS. FURLONG: Because I'll put the other people on and continue with you in the afternoon.

MR. GONZALEZ: So, you're going to finish up his direct and then come back at 1:30?

MS. FURLONG: No, he's going to go.

MR. GONZALEZ: It's up to you.

MS. FURLONG: So I'll see you at 1:30.

THE COURT: All right. Do you want to get here first?

THE WITNESS: I'll be here by 1:30.

THE COURT: You'll be here by 1:30?

THE WITNESS: Yes, sir.

THE COURT: Okay, we'll count on that. In the meantime, we'll explain to the jury we have an interruption and we'll have to go with something else.

THE WITNESS: Thank you, your Honor.

THE COURT: And then you'll have other witnesses for us to go right through 12:30, all right, thank you.

(Whereupon, proceedings are concluded.)

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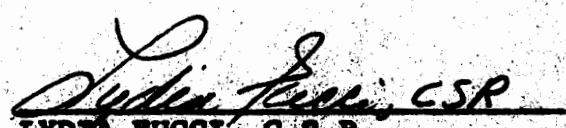
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STATE OF NEW JERSEY
OFFICE OF THE CLERK OF SUPERIOR COURT

C E R T I F I C A T E

I, LYDIA FUCCI, a Certified Shorthand Reporter and Official Court Reporter of the State of New Jersey, do hereby state that the foregoing is a true and accurate transcript of my stenographic notes.


LYDIA FUCCI, C.S.R.
Official Court Reporter

Dated: January 15, 1991



State of New Jersey

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REC'D
APPELLATE DIVISION

January 31, 1992

JAN 31 1992

R. Emille
Clerk

Emille R. Cox, Esq.
Clerk, Superior Court of New Jersey
Appellate Division
CN 006
Trenton, New Jersey 08625

RE: State v. Derek Moultrie
Docket No. A-6676-89T4

Dear Mr. Cox:

Enclosed please find two copies of the transcript of June 13, 1990 (Trial) being sent to you that are relevant to the above-captioned matter.

Very truly yours,

Stephen A. Caruso
STEPHEN A. CARUSO
Assistant Deputy
Public Defender

SAC/mlj
Enclosures

A'6676-8974

SUPERIOR COURT OF NEW JERSEY
ESSEX COUNTY - LAW DIVISION
INDICTMENT NO. 140-1-90

STATE OF NEW JERSEY,

Plaintiff,

vs.

DEREK MOULTRIE,

Defendant.

STENOGRAPHIC TRANSCRIPT

OF

TRIAL PROCEEDINGS

REC'D
APPELLATE DIVISION

FEB 25 1991

R. [Signature]
Clerk

Wednesday, June 13, 1990
Essex County Courthouse
Newark, New Jersey

B E F O R E:

THE HONORABLE ANTHONY J. IULIANI, J.S.C., and a jury

TRANSCRIPT ORDERED BY: FRANK J. SOLTIS, ESQ.
Office of the Public Defender
Appellate Division - Newark

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

MARY ELLEN FURLONG, ESQ.
Assistant Prosecutor
Attorney for the State

FRANK GONZALEZ, ESQ.
Attorney for the Defendant

FILED
APPELLATE DIVISION
FEB 25 1991

R. [Signature]
Clerk

LYDIA FUCCI, C.S.R.
Official Court Reporter
License No. XI01559

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AW

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
LAWRENCE ARMOUR				
By Ms. Furlong	5		9	
By Mr. Gonzalez		9		10
IANTHIA MOTT-LEWIS				
By Ms. Furlong	16		31	
By Mr. Gonzalez		21		
TYKESHA MOTT				
By Ms. Furlong	33			
By Mr. Gonzalez		45,55		
NATHANIEL MONTGOMERY				
By Ms. Furlong	56		79	
By Mr. Gonzalez		66		80
JOSEPH WILKERSON				
By Ms. Furlong	82		113	
By Mr. Gonzalez		97		
PEARL HARRELL				
By Ms. Furlong	118			
By Mr. Gonzalez		129		
DET. WILLIAM THOMAS				
By Ms. Furlong	134		174	
By Mr. Gonzalez		149		177

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>IDENTIFICATION</u>
S-37	Statement of Mott-Lewis	19
S-38	Statement of Tykesha Mott	42
S-39	Statement of Montgomery	59
S-40	Diagram	91
S-41	Incident Report	146
S-42A & B	Teletype and Printout	147
D-1	Diagram	32
D-2	Report	169
D-3	Report	171

- COTTON CONTENT -

1 (Whereupon, the following takes place outside
2 the presence of the jury.)

3 THE COURT: We have your client up, Mr. Gonzalez,
4 we're going to proceed on this matter and I'll offer the
5 explanation to the jury that you're going with another
6 witness; okay, Ms. Furlong?

7 MS. FURLONG: Correct, your Honor.

8 THE COURT: All right, bring Mr. Moultrie in and
9 let's proceed.

10 MS. FURLONG: Judge, I just want to -- my
11 investigator called about the status of the witnesses, let
12 me just call down.

13 THE COURT: All right.

14 (Pause)

15 (Whereupon, Defendant is present.)

16 MS. FURLONG: Judge, we're speaking about Exhibit
17 S-33 for Identification, the exhibit was marked S-33A through
18 H.

19 THE COURT: Right.

20 MS. FURLONG: Inadvertently, F was omitted on one
21 of the back of the photos and there's two H's instead of
22 following in sequence A through H. I'm having the one H
23 made to an F, I'm showing Defense Counsel now.

24 MR. GONZALEZ: No objection, Judge.

25 MS. FURLONG: In other words, instead of having

1 A, B, C, D, E, F was not put in and it was G, H, H instead
2 of F.

3 THE COURT: Okay, and it's going to be F now, the
4 way it should have been done?

5 MS. FURLONG: Yes.

6 THE COURT: Okay, any problem with that?

7 MR. GONZALEZ: No.

8 (Whereupon, S-33H is marked S-33F for
9 Identification.)

10 THE COURT: All right, are we ready?

11 MS. FURLONG: Ready, Judge.

12 THE COURT: Ready, all right.

13 Mr. Gonzalez, are you ready?

14 MR. GONZALEZ: Yes, Judge.

15 THE COURT: All right, bring out the jury, please.

16 9:30 a.m.

17 (Whereupon, the following takes place within
18 the presence of the jury.)

19 THE COURT: Good morning, ladies and gentlemen,
20 good morning.

21 THE JURY: Good morning.

22 THE COURT: All right, number one, Mr. Bennett,
23 I believe you have a note somewhere that you may have to
24 call your employer; so, when we have a recess, you may make
25 that call.

Armour - direct

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1 A JUROR: Fine, Judge.

2 THE COURT: That's number one.

3 With that, we're going to proceed; however, the
4 State is going -- will not continue with Detective Thomas,
5 he had some personal matters to take care of; I think a
6 graduation, whatever it was today; so, the State will proceed
7 with the consent of Mr. Gonzalez with another witness and
8 Detective Thomas will be back, I suppose, either late
9 this afternoon or tomorrow morning. Is that right?

10 MS. FURLONG: Correct, your Honor.

11 THE COURT: All right.

12 MS. FURLONG: Your Honor, at this time, the State
13 calls Lawrence Armour.

14 (Whereupon, witness enters.)

15 L A W R E N C E A R M O U R, sworn.

16 THE COURT: Good morning, sir.

17 THE WITNESS: Good morning, sir.

18 THE COURT: Direct examination, please.

19 MS. FURLONG: Thank you, your Honor.

20 DIRECT EXAMINATION BY MS. FURLONG:

21 Q Mr. Armour, could you please tell the ladies
22 and gentlemen of the jury by whom you're employed?

23 A Essex County Youth House.

24 Q And were you on duty on September 10th, 1989?

25 A Yes, I was.

1 THE COURT: Keep your voice up, please, so
2 everyone can hear you.

3 A Yes, I was.

4 Q And do you remember approximately the hours you
5 worked on September 10th, 1989?

6 A Three to eleven.

7 Q And at eleven o'clock, could you please tell
8 the Court and jury if you made any observations that were
9 unusual at that period?

10 A Well, at that time, I was leaving work, I was going
11 to see my girlfriend. I picked her up and we went on, I
12 can't recall the street, but we ride the street and observed
13 a body laying on the street.

14 MR. GONZALES: Judge, can Mr. Armour --

15 THE COURT: Please, you have to keep your voice up
16 so everyone can hear you. Do you understand that?

17 A I observed a body layin' across the sidewalk.

18 THE COURT: Ms. Jones, do you have any problem
19 hearing?

20 JUROR NO. 8: No.

21 Q Now, Mr. Armour, let me stop you right there.

22 Where were you at the time you made an observation
23 of a body, the street again, please?

24 A I don't recall the street. I don't know the name of
25 the street, I just know the street when I see it.

1 Q At the time that you observed the body, what
2 observations did you make?

3 A I then pulled over, I called from my car phone, I
4 called for a radio car.

5 Q And at any time, did you move anything at the
6 scene?

7 A No, I didn't.

8 Q I'm now going to show you a series of eight
9 photos marked State's Exhibit S-33A through H for
10 Identification. Would you take a minute to look at those
11 and tell me if you can identify those photographs?

12 (Whereupon, witness reviews photographs.)

13 A Yes.

14 Q And could you please tell the ladies and gentlemen
15 of the jury how you can identify those photographs?

16 A By the way the body was situated -- by the body laying
17 on the sidewalk and the curb.

18 Q Do those pictures accurately depict what you
19 observed on September 10th, 1989?

20 A Yes.

21 Q And are the pictures in the same condition as
22 the observations you made of the body on that evening?

23 A Yes.

24 Q And if you can, can you give us an approximate
25 time of when you first observed the body?

1 A It had -- I left work at 11:30; so, it had to be
2 between -- had to come way over Chancellor Avenue. So, it
3 had to be between the hours of say about 12:00, 12:15,
4 somethin' like that.

5 Q And after you notified the police, what did you
6 do, if anything, after that?

7 A I stood by and waited until they came to the scene.

8 Q And after the police arrived at the scene, did
9 you speak to anyone at that time?

10 A Yes, I did.

11 Q And do you remember who you spoke with?

12 A I don't remember the officer's name offhand, I don't
13 remember the officer's name.

14 Q And what did you relate to the officer?

15 A I just stated to him, I found the body right there,
16 layin' in the middle of the street, layin' halfway off the
17 curb and the street.

18 Q And was that the end of your involvement in this
19 case?

20 A Yes.

21 MS. PURLONG: Judge, I have no further questions
22 of this witness.

23 THE COURT: Cross?

24 MR. GONZALEZ: Yes, Judge.

25 CROSS-EXAMINATION BY MR. GONZALEZ:

1 Q Mr. Armour, are you familiar with the area at
2 which the body was found? That is, Watson and Ridgewood
3 Avenue in Newark, are you familiar with the area?

4 A Well, I ride through there, I'm not familiar with the
5 area, I just ride through there.

6 Q Isn't it a fact that on Ridgewood Avenue, there
7 are houses where people live?

8 A Well, there's a few houses there, that's where I
9 observed there was a few houses.

10 MR. GONZALEZ: No further questions, thank you.

11 Nothing further, Judge, thank you.

12 THE COURT: All right, any redirect?

13 MS. FURLONG: Yes, Judge.

14 REDIRECT EXAMINATION BY MS. FURLONG:

15 Q Mr. Armour, in the area of where you first observed
16 the body, could you describe what's on the -- that area
17 where the body was actually laying?

18 A It's a lot of grass and I think, I'm not sure, I
19 think there was a house on the corner right there. I think
20 there was a house sittin' there and across the street from
21 there is a highway, 78.

22 Q So, are there any houses across from where the
23 body was in that area of 78 where you indicated?

24 A On the same side where the body was at, there's
25 houses there. On the other side, it's 78, the highway runs

1 straight up alongside there.

2 THE COURT: The question was, are there any
3 houses across the street from where the body was found?

4 THE WITNESS: Across the street, no, it's 78.

5 MS. FURLONG: Thank you, no further questions,
6 your Honor.

7 RE-CROSS-EXAMINATION BY MR. GONZALEZ:

8 Q But Officer, you're sure that on the side of
9 which the body was found there are houses, correct?

10 A Yes.

11 Q And when you say "houses," you mean where people
12 live in?

13 A Yes, people live in, yes.

14 Q All right.

15 MR. GONZALEZ: No further questions, thank you.

16 MS. FURLONG: No further questions, your Honor.

17 THE COURT: Sir, you may step down.

18 THE WITNESS: Thank you, your Honor.

19 (Whereupon, Lawrence Armour exits.)

20 THE COURT: Ms. Furlong, do you have another
21 witness?

22 MS. FURLONG: Yes, your Honor. At this time,
23 the State calls Ianthia Mott to the stand.

24 THE COURT OFFICER: Apparently, she's not out
25 there, Judge.

1 MS. FURLONG: Judge, maybe there's an inadvertence
2 that she's down on the floor, she was told to come up.

3 THE COURT: Would you make a call and see?

4 MS. FURLONG: Yes, excuse me.

5 (Pause)

6 MS. FURLONG: Judge, if I may, I just spoke to
7 my investigator. It seems that one of the other Mott family
8 is here who's not testifying and Ianthia Mott, along with
9 the other witnesses have a transportation problem.

10 THE COURT: Do you have another witness?

11 MS. FURLONG: And they're making arrangements.

12 No, Judge, there were four of them that were
13 coming together. They should be here in about 15 minutes,
14 they had to make alternative arrangements.

15 THE COURT: All right. We'll excuse the jury
16 then rather than go into the jury room, if you'd like,
17 you may go downstairs. You have to make your phone call,
18 so you can do that now and please, be back here in 15 minutes.

19 Do not discuss the case, as you well know, we'll
20 see you here in 15 minutes, thank you.

21 (Whereupon, jury is excused.)

22 THE COURT: All right. What witnesses do you
23 have coming, Ms. Furlong?

24 MS. FURLONG: I have Ianthia Mott, Tykesha Mott,
25 Pearl Harrell, Nathaniel Montgomery.

1 THE COURT: Are they all coming?

2 MS. FURLONG: They're all coming together, that's
3 the problem.

4 THE COURT: The doctor?

5 MS. FURLONG: The doctor's not testifying today,
6 Judge. I have Detective Thomas this afternoon at 1:30 to
7 finish with him.

8 THE COURT: Okay, after that?

9 MS. FURLONG: I have Mr. Dobak, Mr. Marshall.

10 THE COURT: Is he available?

11 MS. FURLONG: They're available on Thursday.

12 THE COURT: That's tomorrow morning.

13 MS. FURLONG: I have the pathologist.

14 THE COURT: Tomorrow morning?

15 MS. FURLONG: Yes.

16 THE COURT: Okay, at least we know where we're
17 going; so, I'll take a break for 15 minutes.

18 Mr. Moultrie, do you want to keep him here or
19 what?

20 THE COURT OFFICER: We have to, yeah.

21 THE COURT: See you in approximately 15 minutes
22 or less.

23 (Whereupon, Court in short recess.)

24 THE COURT: All right, you said Mr. Bennett,
25 Juror No. 4, has a question?

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1 THE COURT OFFICER: Yeah, he wants to talk to
2 you.

3 THE COURT: All right. As soon as Mr. Moultrie
4 gets back, we'll bring him out.

5 MR. GONZALEZ: He probably has to go back to work.

6 THE COURT: We'll hear what he has to say when
7 he comes out.

8 10:35 a.m.

9 THE COURT: All right, Mr. Moultrie is here.

10 Should we bring out Mr. Bennett and see what he
11 has to say?

12 (Whereupon, Mr. Bennett, Juror No. 4, is present.)

13 THE COURT: Mr. Gonzalez, Ms. Furlong, it may be
14 best to see him at sidebar.

15 MR. GONZALEZ: Yes.

16 (Whereupon, there is a sidebar discussion.)

17 THE COURT: Yes, Mr. Bennett.

18 JUROR NO. 4: Judge, my employer called.

19 THE COURT: Why is he bothering you?

20 JUROR NO. 4: He seems to think he's going away
21 and I'm essential to his --

22 THE COURT: Didn't he know that you had jury duty?

23 JUROR NO. 4: Yes, he did.

24 THE COURT: All right.

25 JUROR NO. 4: The only thing is --

1 THE COURT: If you'd like, I'll speak to him and
2 call him and tell him you're here.

3 JUROR NO. 4: That's fine with me, but --

4 THE COURT: Okay.

5 JUROR NO. 4: -- he said that he gave me a letter
6 when I first came, you know, and they told me that it was
7 supposed to be delivered ten days in advance which it wasn't
8 and --

9 THE COURT: I have no --

10 JUROR NO. 4: -- and now he's panicking because --

11 THE COURT: Well, we'll take care of it, okay?

12 JUROR NO. 4: Okay.

13 THE COURT: You just relax and if you'll give me
14 his name and his telephone number?

15 JUROR NO. 4: Yes, I will.

16 THE COURT: Let me have it and I'll call him at
17 the recess and explain to him your civic duty and that
18 you're here and his name is what?

19 JUROR NO. 4: Sirillio (ph), Anthony Sirillio.

20 THE COURT: And what's this business?

21 JUROR NO. 4: Madden Plastics.

22 THE COURT: Where is that located?

23 JUROR NO. 4: Cranford.

24 THE COURT: Okay, I'll tell him that you're here.

25 JUROR NO. 4: Fine.

1 THE COURT: And you'll be here with us for a
2 few days.

3 JUROR NO. 4: He said he spoke to someone --

4 THE COURT: I don't care who he may have spoke to.

5 JUROR NO. 4: And said it's going to be a month.

6 THE COURT: A month here? No, we'll explain it
7 to him.

8 JUROR NO. 4: Okay.

9 THE COURT: And then I'll let you know later on,
10 all right? You just relax, all right? Thank you.

11 (Whereupon, sidebar discussion is concluded.)

12 THE COURT: All right, you can bring the jury out,
13 please.

14 10:30 a.m.

15 (Whereupon, the following takes place within
16 the presence of the jury.)

17 THE COURT: All right. Ladies and gentlemen,
18 sorry for the delay.

19 Ms. Furlong, are you ready to call your next
20 witness?

21 MS. FURLONG: Yes, your Honor. At this time,
22 the State calls Ianthia Mott to the stand.

23 THE COURT: All right.

24 MS. FURLONG: Judge, for the Officer's benefit,
25 they're in the witness waiting room.

1 THE COURT: Oh, on the side there, all right.

2 (Whereupon, witness enters.)

3 I A N T H I A M O T T - L E W I S, sworn.

4 THE COURT: Good morning.

5 THE WITNESS: Good morning.

6 THE COURT: Direct examination, please.

7 MS. FURLONG: Thank you, your Honor.

8 DIRECT EXAMINATION BY MS. FURLONG:

9 Q Ms. Mott, could you please state your relationship
10 for the jury to Victor Mott?

11 A He was my brother.

12 THE COURT: Keep your voice up, please.

13 A He was my brother.

14 THE COURT: All right.

15 Q Now, Ms. Mott, on September 10th, 1989, I'm going
16 to ask you what observations did you make about your brother
17 that evening?

18 A My daughter had came up on Lyons Avenue and told me
19 that --

20 MR. GONZALEZ: Judge, objection, hearsay.

21 THE COURT: You can't indicate what your brother --
22 your late brother may have said to you.

23 THE WITNESS: No, not my brother, my daughter.

24 MR. GONZALEZ: Judge, hearsay.

25 THE COURT: Even that.

1 THE WITNESS: Okay.

2 A Well, anyway, later on that night about 9:30, I seen
3 my brother like bein' forced into this car, but I didn't
4 know what kind of car it was. I knew it was an orange or
5 rust color car, a small car and the girl that was with me,
6 you know, she knew what kind of car, so we got the license
7 plate number and wrote it down.

8 Q Okay, let me stop you there, Ms. Mott.

9 You wrote the license plate number down? Where
10 did you write the license plate number down?

11 A In Lyons Farm Bar.

12 Q And what did you write it down on?

13 A One of the Pick-It tickets.

14 THE COURT: What kind of tickets, Pick-It?

15 THE WITNESS: Yes.

16 Q And were you able to see who was in the car
17 besides your brother?

18 A All I could see was this fellow from the behind when
19 he first got out the car 'cause my girlfriend was checkin'
20 out his buns, right, so when he got back in, all I could
21 see is a stocky, you know, someone stocky and I seen my
22 brother tryin' to express himself like somethin' was wrong,
23 that's what made me take that license plate number.

24 Q Now, Ms. Mott, you expressed yourself and
25 you had your hands up. Could you describe that a little

1 more, what you actually saw your brother doing at the time
2 he was going into the car?

3 A Like, um, he looked -- first of all, he tried to get
4 in the front seat and the boy made him get in the back and
5 when he got in, all he was doin', you know, I could keep
6 seein' it because he's my brother, I could see somethin's
7 wrong. That's what made me go get the license plate number,
8 me and Faleshia and I dialed my daughter and she said
9 that's the same people that was lookin' for him.

10 MR. GONZALEZ: Judge, objection.

11 THE COURT: You cannot say, Ms. Mott, I'll make
12 it easier for you, what someone told you, follow?

13 THE WITNESS: Yes, sir.

14 THE COURT: Because that's not permitted, it's
15 a form of hearsay because that person is not here to be
16 crossed.

17 THE WITNESS: Yes.

18 THE COURT: Do you understand? So, you can only
19 indicate what you saw.

20 THE WITNESS: Okay.

21 THE COURT: And what you observed and what you
22 know directly. Is that understood?

23 THE WITNESS: Yes, sir.

24 THE COURT: All right.

25 MS. FURLONG: Your Honor, at this time, I'd like

1 THE COURT: About 2 a.m.?

2 THE WITNESS: Uh-huh.

3 Q And at what time did you learn that your brother
4 was deceased?

5 A When I came home.

6 Q And at that point in time, what did you do at
7 that point?

8 A I just sat there, I couldn't even cry because I felt
9 somethin' before it happened.

10 Q And the license plate number that you took down,
11 did you communicate that number to anyone?

12 A I gave it to my daughter.

13 Q And did you give the number to anyone else?

14 A No, I didn't.

15 Q Did you speak to the police and indicate to them
16 what the license plate number was?

17 A No, I didn't because my daughter--when they came to
18 the house, my daughter had gave it to them.

19 MR. GONZALEZ: Judge, I --

20 THE COURT: What's that, the daughter had given
21 it to him?

22 MR. GONZALEZ: Fine, Judge, I'll withdraw the
23 objection, Judge.

24 THE COURT: All right.

25 Q Ms. Mott, did you see your brother at any time

1 after you saw him getting into the car?

2 A No, I didn't.

3 Q So, the last time you saw your brother that
4 evening was the time that you saw him getting into the
5 car?

6 A Yes.

7 MS. FURLONG: Judge, I have no further questions
8 of this witness.

9 THE COURT: Now, what was the date of that
10 evening, please?

11 MS. FURLONG: September 10th, your Honor, 1989.

12 THE COURT: Is that the date, September the 10th?

13 THE WITNESS: Yes.

14 THE COURT: All right.

15 Cross-examination?

16 MR. GONZALEZ: Yes, Judge, thank you.

17 CROSS-EXAMINATION BY MR. GONZALEZ:

18 Q Ms. Mott, good morning.

19 A Good morning.

20 Q Ms. Mott, now, you indicated that Mr. Victor Mott
21 was your brother, correct?

22 A Yes.

23 Q And do you know a Richard Mott?

24 A That's my brother, too.

25 Q Do you know Nathaniel Montgomery?

1 A Yes, he's a neighbor.

2 Q Do you know the address of Mr. Montgomery?

3 A I live 235, I think his number is 231.

4 Q You know Tykesha Mott, correct?

5 A That's my daughter.

6 Q Do you know Pearl Harrell?

7 A Yes, that's -- well, she's my brother's wife's sister.

8 Q All right. So -- but she's related to you,
9 correct?

10 A Yes.

11 Q All right.

12 Now, when you came here today, did you come here
13 in the same car with all these people?

14 A Did I come here with all these people?

15 Q Yes.

16 A No, Tykesha's not here.

17 Q All right, but you came with Nathaniel Montgomery,
18 Tykesha Mott and Richard Mott, correct?

19 A No, Richard is not here.

20 MS. FURLONG: Judge, I'm going to object, it's
21 beyond the scope.

22 THE COURT: Just a second, just a second.

23 When there's an objection, I know you don't know
24 the procedures --

25 MS. FURLONG: On two --

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THE COURT: Just one second.

When there's an objection, do not answer the question unless I've ruled. Understand?

THE WITNESS: Okay.

MS. FURLONG: On two grounds, Judge, one is relevancy and two, it's beyond the scope of direct examination.

MR. GONZALEZ: Judge --

THE COURT: It is beyond the scope but let me hear you as to -- I can understand what you're asking, did she come down with these other persons?

MR. GONZALEZ: Yes, it goes to credibility.

THE COURT: I'll just allow it, yes or no.

BY MR. GONZALEZ:

Q Did you come in with these other individuals here today?

A Yes, because it was a ride.

THE COURT: All right.

Q And during the ride with these other individuals to the courtroom, did you discuss this case with them?

A No, we didn't.

Q All right. I mean, you were all aware that you were coming to testify in the matter of your brother. Is that correct?

A That's true.

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COTTON CONTENT

1 THE COURT: Well, wait. All aware or was she
2 aware? How does she know what the others were aware of?

3 MR. GONZALEZ: All right.

4 Q Were you aware that you were coming to testify
5 in the matter of your brother?

6 A Yes.

7 Q And do you know if the other individuals were
8 aware that they were coming to testify in the matter of
9 your brother?

10 A Only Nathaniel.

11 Q Nathaniel was the only one aware of that?

12 A Uh-huh, and my daughter.

13 Q And your daughter Tykesha, but you didn't discuss
14 the case at all when you were coming in the car?

15 A No, all we talked about was the boy, he just got a
16 new job and that's all we talked about.

17 Q Okay.

18 Now, Ms. Mott, you indicated that you saw your
19 brother being forced into this car. Is that correct?

20 A When I say forced, I know he didn't want to get in
21 that car.

22 Q So, what do you mean when you say "forced"?

23 A Because I know my brother and I know if he did anything
24 wrong, he wouldn't have got in that car.

25 MR. GONZALEZ: Judge, I would ask --

1 THE COURT: No, no, strike that, please, as far
2 as that if he did anything wrong.

3 MR. GONZALEZ: I'll rephrase the question.

4 THE COURT: Rephrase the question.

5 BY MR. GONZALEZ:

6 Q Did you see your brother being pushed into the
7 car? You didn't see that, correct?

8 A Not pushed.

9 Q All right.

10 A But I seen him gettin' in.

11 Q All right. You saw your brother getting into
12 the car but you didn't see him getting pushed in the car?

13 A Not pushed but I did see him get in unwillingly, I
14 know my brother.

15 Q Were you there?

16 A I was sittin' right there.

17 Q But did you see your brother being handled by
18 anybody and being pushed into the car?

19 You've got to answer yes or no.

20 A No, sir.

21 Q All right.

22 Now, did you see the individual that was with
23 your brother when he got into the car? Did that individual
24 have a gun?

25 A I didn't see no gun.

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COTTON CONTENT

1 Q All right.

2 Now, when you saw your brother get into the car,
3 did the individual who was with him touch him at all so that
4 he had to get into the car?

5 A All I could see, he tried to get in the front and the
6 brother made him get into the back.

7 Q All right. When you say he made him get in the
8 back, he told him to get in the back?

9 A That's right.

10 Q All right. But he didn't force him into the back,
11 correct?

12 A No, he didn't push him or nothin', he just told him
13 to get in the back.

14 Q All right. Can you tell us when you saw this car,
15 where exactly were you?

16 A Yes.

17 Q You can use the graph in the back if you want to
18 draw where you were in relationship to where the car was
19 in which your brother was put in.

20 A It was parked right on the corner, right off on the
21 corner where we sit at.

22 Q All right. When you say "corner," what corner
23 is that?

24 A Lyons and Clinton Place.

25 Q And is there anything at Lyons and Clinton Place.

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1 any establishment?

2 A What you mean?

3 Q Is there a bar there?

4 A Yes, there is.

5 Q On the corner of Lyons and Clinton Place?

6 A That's what we were doin', sittin' and drinkin' beer.

7 Q You were drinking beer?

8 A Yes, I was.

9 Q And was Faleshia Harrell also there drinking beer
10 with you?

11 A She was standing there, right there with me.

12 Q And she was also drinking beer?

13 A Uh-huh.

14 Q Ma'am, if you're able to, could you draw for us
15 where you were? Can you draw Clinton Place and Lyons Avenue
16 and put an X where the establishment is, Lyons Farm if you're
17 able to do it?

18 (Whereupon, witness steps up to diagram.)

19 THE COURT: You mentioned the name, ask her if
20 she knows the name of the place.

21 THE WITNESS: This is the bar.

22 MR. GONZALEZ: Fine, Judge.

23 THE COURT: In other words, you're testifying.

24 You mentioned that and that's not pertinent.

25 MR. GONZALEZ: I agree, I agree.

- COTTON CONTENT -

1 THE COURT: I'm sorry, go ahead, please.

2 A This is the bar, there's a little stoop right here
3 where we all sit at but the bar's here.

4 Now, the car pulled up --

5 Q Would you draw -- would you put an X where the
6 bar is, ma'am?

7 A Right here on the corner.

8 THE COURT: First of all, Ms. Mott, turn your
9 back to me. That's it.

10 This way -- come closer, that's it. If you can
11 do it that way, because this way the jury can see what
12 you're doing.

13 THE WITNESS: Oh.

14 A This is the bar and this is Clinton Place and there's
15 a stoop right here where we sit at. The car came around and
16 it parked, it's a big tree on the corner there and it parked
17 right there.

18 Q All right.

19 Now, you indicated there was a bar on the corner
20 of Clinton Place and Lyons?

21 A Yes.

22 Q What's the name of that bar?

23 A Lyons Farm.

24 Q And where exactly were you when you made those
25 observations?

COTTON CONTENT

1 A On this stoop right here, me and -- there was like
2 about ten of us out there.

3 Q Okay. Can you put an X where you were, where
4 you were sitting? Do you know?

5 A About right along here.

6 Q Okay. And can you put an X on the corner to show
7 where the Lyons Farm is?

8 A Right here.

9 Q Okay.

10 Now, and you were sitting --

11 A This is --

12 Q -- at this location?

13 A Uh-huh.

14 Q With Faleshia Harrell, correct?

15 A Yes.

16 Q And you both were drinking?

17 A Yes, sir.

18 Q And where was the car?

19 A It's a big tree --

20 Q That your brother was put in, please?

21 A It's a big tree right here and the car was right here.

22 Q And how far was that car from you when you made
23 these observations? In other words, how far were you?

24 A About right where you at.

25 Q Okay.

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COTTON CONTENT

1 THE COURT: All right. That would be what?

2 MS. FURLONG: Eight feet, Judge?

3 THE COURT: Approximately eight feet, is that
4 right, Mr. Gonzalez?

5 MR. GONZALEZ: Eight feet's fine, Judge.

6 THE COURT: All right.

7 (Whereupon, witness resumes stand.)

8 Q Now, where was Faleshia Harrell at when you made
9 these observations, was she right there sitting with you?

10 A Uh-huh, 'cause it was some more people seein' that my
11 brother was being forced in that car.

12 Q No, but -- I want to know what you saw?

13 A I'm tellin' you.

14 Q And you told us that you didn't see anybody force --

15 A I didn't see him being pushed but I can see him goin'
16 unwillingly.

17 Q But all that was said by the individual was, Get
18 in the back seat?

19 A Yeah, because he tried to get in the front.

20 Q The guy didn't say, Look, get in there or I'm
21 gonna kill you. You didn't hear that, correct?

22 A No, I didn't hear nothin' like that.

23 Q And you were only eight feet away, correct?

24 A I didn't see nothin' like that.

25 Q And you didn't see this individual push your

1 brother into the car?

2 A I didn't see this individual push my brother into
3 the car.

4 Q Now, you told us that you got the license plate
5 number of the car, correct?

6 A Yes, me and Faleshia.

7 Q And you gave this license plate number to your
8 daughter?

9 A Yes, I called her. I went in the bar and called her
10 and that's when she told me that was the people that went
11 looking for him.

12 MR. GONZALEZ: Judge --

13 Q I just asked, is that the number that you gave to
14 your daughter, ma'am?

15 A Yes.

16 MR. GONZALEZ: No further questions, thank you.

17 THE COURT: Redirect?

18 MS. FURLONG: Thank you, your Honor.

19 REDIRECT EXAMINATION BY MS. FURLONG:

20 Q Ms. Mott, why did you give the license plate
21 number to your daughter?

22 A Because my daughter had just left me and told me
23 somebody was lookin' for him.

24 MR. GONZALEZ: Judge, objection.

25 THE COURT: Do not -- don't indicate what your

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- COTTON CONTENT -

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1 daughter told you, please.

2 THE WITNESS: Okay.

3 A The main reason was something I felt wasn't right.
4 Somethin' wasn't right. I seen my brother tryin' to express
5 himself and I felt that something wasn't right. That's what
6 made me really take the license plate number down.

7 MS. FURLONG: Thank you, Ms. Mott.

8 No further questions, your Honor.

9 MR. GONZALEZ: Nothing further, Judge.

10 THE COURT: All right.

11 THE WITNESS: Is that it now?

12 THE COURT: Have this diagram marked D-1, please.

13 MR. GONZALEZ: Thank you, Judge.

14 THE COURT: All right, ma'am, you may step down.

15 THE WITNESS: Thank you.

16 (Whereupon, Ianthia Mott-Lewis exits.)

17 (Whereupon, exhibit is marked D-1 for
18 Identification.)

19 THE COURT: Do you have another witness?

20 MS. FURLONG: Yes, your Honor.

21 Your Honor, at this time, the State calls
22 Tykesha Mott to the stand.

23 (Whereupon, witness enters.)

24 T Y K E S H A M O T T, sworn.

25 THE COURT: All right, please be seated.

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Good morning.

THE WITNESS: Good morning.

THE COURT: Direct examination, please.

MS. FURLONG: Thank you, your Honor.

DIRECT EXAMINATION BY MS. FURLONG:

Q Now, Tykesha, before you begin your testimony, I'm going to ask you to keep your voice up a little bit and speak to the jury so that everyone in the jury box, as well as in the courtroom, can hear you and if you don't understand a question, you can ask me to repeat it, okay?

A Yes.

Q Now, would you please tell the Court and the jury what your relationship is to Victor Mott?

A I'm his niece.

Q Now, I'm going to ask you to go back to September 10th, 1989, and I'm going to ask you at that point in time, what you remember about the early part of that evening at 7:00, 7:30 that evening?

A You mean --

MR. GONZALEZ: Judge, if I may?

So we don't get into the problems that we've been having with the other witness, can we have the question be a little bit more direct so we don't get into hearsay problems?

MS. FURLONG: Judge, I'll ask the question now.

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Mott - direct

1 direct so we don't.

2 THE COURT: Very good, thank you.

3 Q Ms. Mott, on September 10th, 1989, did you have
4 any contact with a Derek Moultrie?

5 A Yes.

6 Q And could you please explain to the Court and
7 jury the first time you actually had contact with him,
8 be it by phone, physically in his presence? When was the
9 first time you had contact with Derek Moultrie?

10 A He called my house lookin' for my uncle.

11 Q All right. And do you remember about what time
12 he called your house looking for your uncle?

13 A About 7:00, 7:30, eight o'clock.

14 Q And at that time, what did Mr. Moultrie indicate
15 to you why he was looking for your uncle?

16 A I don't recall.

17 THE COURT: Keep your voice up, please, so that
18 everyone can hear you.

19 A I don't recall.

20 Q And did Mr. Moultrie leave any information for
21 you, at that time?

22 A He left his phone number.

23 Q And did you write that phone number down?

24 A Yes, I did.

25 Q Now, after you received this phone call, what did

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1 you do?

2 A When he called, he said that he was looking for my
3 uncle. I went to Lyons Avenue to look for my uncle and
4 I didn't see him. When I came back, that's when Derek was
5 there.

6 THE COURT: That's when what?

7 THE WITNESS: Derek Moultrie was there.

8 THE COURT: Where?

9 THE WITNESS: On my block, on Goldsmith Avenue.

10 THE COURT: Next question.

11 Q Okay.

12 Now, let me stop you right there. Do you see
13 this individual you're referring to as Derek Moultrie
14 anywhere in the courtroom?

15 A Yes, I do.

16 Q And could you please point him out for the Court
17 and the jury?

18 A Right there.

19 THE COURT: What's he wearing, please, for the
20 record? Can you describe what he's wearing?

21 THE WITNESS: What's that, black and white stripes
22 shirt, tie, glasses.

23 THE COURT: Mr. Gonzalez, please?

24 MR. GONZALEZ: No objection, Judge.

25 THE COURT: Thank you.

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1 Q Now, prior to seeing Mr. Moultrie, you said on
2 your block, had you ever seen Mr. Moultrie before?

3 A Yes, I have.

4 Q And could you please tell the Court and the jury
5 where you had seen Mr. Moultrie before?

6 A From the neighborhood and he's a male dancer.

7 Q And did you say male dancer?

8 A Yes.

9 Q And where's he a male dancer?

10 A If I'm not mistaken, Club Eleganza (ph) and the
11 Club Kye (ph) and --

12 Q And do you know him by any other name?

13 A Yes.

14 Q What name is that?

15 A Knight Rider.

16 Q Now, the time that you saw Mr. Moultrie on your
17 block, could you give us a specific address where you
18 actually saw him?

19 A On the corner of Clinton Place and Goldsmith on the
20 right-hand side.

21 Q And did you make any observations about what type
22 of car he was in?

23 A No, I couldn't identify the car.

24 Q Okay. And did you have an opportunity to see who
25 was driving the car?

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A Yes, I did.

Q And could you please tell the Court and the jury who was driving the car?

A A young lady.

Q And were you able to make out her physical characteristics?

A Yes, I was.

Q Now, how long did you speak to Mr. Moultrie at that point in time?

A About ten minutes.

Q And where were you when you were speaking with Mr. Moultrie?

A Standin' on the corner outside of his car.

Q And was this woman that you saw there at the time, was she in the car, was she out of the car?

A She was sittin' in the car.

Q Did there ever come a point in time where she got out of the car?

A No.

Q And could you please tell the Court and jury what Mr. Moultrie said to you at that time as far as your uncle?

A I went up to the car, he asked me was I Victor's uncle, I said, Yes. I told him that I didn't see Victor and asked him was he gonna sit outside and he said he was gonna sit out there and wait for my uncle to come and I left, I went

HEMLOCK

1 back into the house.

2 Q Did he say anything to you about why he was looking
3 for your uncle?

4 A No.

5 MR. GONZALEZ: Judge, objection.

6 THE COURT: Just a second.

7 MR. GONZALEZ: I think she answered already what
8 he told her as to why he was there. I think that's been
9 asked and answered already.

10 THE COURT: It's direct examination, do we need
11 to have it repeated, Ms. Furlong?

12 MS. FURLONG: Judge, I asked the witness if he
13 indicated anything of why he was looking for his uncle -- her
14 uncle, excuse me.

15 THE COURT: Did you say yes or no?

16 THE WITNESS: No.

17 THE COURT: What?

18 THE WITNESS: No.

19 THE COURT: Next question.

20 BY MS. FURLONG:

21 Q Now, Ms. Mott, how many times that evening would
22 you say you had an opportunity to see Mr. Moultrie and the
23 car that he was in?

24 A Before my uncle was killed?

25 Q Uh-huh.

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1 A Once.

2 Q And did there come a point in time where you
3 learned that your uncle was killed?

4 A Yes.

5 Q And do you remember what time that was?

6 A If I'm not mistaken, it was ten -- I mean, 12:00, 12:30,
7 something like that.

8 Q Now, prior to learning that your uncle was killed,
9 did you have any other phone conversations with Derek
10 Moultrie that evening?

11 A I didn't, no.

12 Q Okay.

13 Now, did there come a point in time where you
14 telephoned Mr. Moultrie?

15 A Yes.

16 Q And could you please tell the Court and jury
17 what happened at the time that you telephoned Mr. Moultrie?

18 A When I came back to the house after my mother had
19 called and said that they picked up --

20 MR. GONZALES: Judge, objection.

21 THE COURT: Hold it.

22 Who are you speaking to now, your mother, when
23 you say after your mother called?

24 THE WITNESS: Yes.

25 THE COURT: Are you now -- how did you speak to

HEMLOCK

1 her, on the telephone?

2 THE WITNESS: Yes.

3 THE COURT: And you object to what the mother
4 said to her?

5 MR. GONZALEZ: Yes, under the hearsay ground,
6 Judge.

7 THE WITNESS: Okay.

8 BY MS. FURLONG:

9 Q After you received the phone call --

10 A After I received the phone call, I called him and I
11 asked to speak to -- I called his girlfriend and asked to
12 speak to Derek Moultrie. She said that Derek wasn't there
13 and I said, Is there any way that I could get in contact
14 with him? She said, No, and I said, Well, did she see my
15 uncle and she said, No. She said somethin' about she
16 dropped Derek off at the Penn Station or somewhere and,
17 um, I hung up. Then I called back 'cause that's when I
18 had the license plate number and I asked her what her
19 license plate number was and she told me -- she gave me
20 985-YNI somethin', somethin', and she was giving me some
21 of the right numbers and some of the wrong ones and the
22 way she gave it to me, I knew she was lyin'. So, I hung
23 up and then that's when I went outside and I was tellin'
24 my uncle that somethin' was wrong.

25 Q And about how much longer -- what time passed

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1 before you actually learned that your uncle was killed
2 from the time of that phone call?

3 A About two hours.

4 Q And when you learned that your uncle was killed,
5 did you have occasion to speak to any police officers?

6 A Yes.

7 Q And did you communicate to them the information
8 you just told us today in court?

9 A Yes.

10 Q And did they take you anyplace at that point in
11 time?

12 A Yes.

13 Q And where did they take you?

14 A To Plainfield to his girlfriend's house.

15 Q And --

16 THE COURT: When you say, his girlfriend, who are
17 you talking about?

18 THE WITNESS: Derek Moultrie's girlfriend's house.

19 Q And when you arrived in Plainfield, Miss Mott,
20 who were you with?

21 A Detective Thomas, I'm not sure of the other detective's
22 name, and my uncle, Richard Mott.

23 Q And could you please give us your uncle's name
24 for the record?

25 A Richard Mott.

Mott - direct

1 Q Now, when you arrived in Plainfield, did you
2 make any observations at the address that you arrived at?

3 A Yes.

4 Q And what observations did you make?

5 A I identified the young lady that was driving the car.

6 Q And were you able to make an identification of
7 the car at that point in time?

8 A No.

9 Q Now, at that point in time, were you transported
10 anyplace from Plainfield?

11 A Yes.

12 Q Where did you go when you left Plainfield?

13 A To, um, I guess the court buildin', downtown Newark.

14 Q And do you remember speaking with a Detective
15 Thomas, at that time?

16 A Yes.

17 Q Do you remember giving Detective Thomas a
18 statement?

19 A Yes.

20 MS. FURLONG: Your Honor, at this time, I'd
21 like to have Ms. Mott's statement marked as State's Exhibit
22 S-38.

23 THE COURT: All right.

24 (Whereupon, exhibit is marked S-38 for
25 Identification.)

1 Q Now, Ms. Mott, I'm showing you what's been
2 marked as State's Exhibit S-38. Take a minute to look at
3 it and can you identify it for the record?

4 (Whereupon, witness reviews statement.)

5 A Yes.

6 Q And how can you identify it?

7 A This is the statement that I typed up -- that was
8 typed up.

9 Q Keep your voice up.

10 THE COURT: Keep your voice up.

11 A This was the statement that was typed up.

12 Q And is your signature on the statement?

13 A Yes, it is.

14 Q And when was the statement dated?

15 A September, 1989.

16 THE COURT: September what?

17 A 1989.

18 THE COURT: What's the day, September --

19 THE WITNESS: Oh, September 11th, 1989.

20 THE COURT: All right.

21 Q And this statement is, in fact, the statement
22 that you gave to Detective Thomas?

23 A Yes.

24 Q Now, while you were in headquarters, were you
25 shown any photographs?

1 A Yes.

2 Q And were you able to identify anyone from those
3 photographs?

4 A Yes.

5 Q Do you remember what you did when you identified
6 the photograph?

7 A I don't understand.

8 Q Okay, let me rephrase the question.

9 What I'm asking you is, were you shown photographs?

10 A Yes.

11 Q Did you have an opportunity to look through them?

12 A Yes.

13 Q Did you identify --

14 A Yeah.

15 Q Did you recognize anyone in those photographs?

16 A Yes.

17 Q And did you indicate that to anyone?

18 A Yes.

19 Q And when you indicated that, who did you indicate
20 that to?

21 A Detective Thomas.

22 Q And at that point in time, did Detective Thomas
23 have you do anything to the photograph?

24 A Yes.

25 Q And what did Detective Thomas have you do?

1 A Give my signature.

2 Q Now, I'm showing you what's been marked as
3 State's Exhibit for Identification, S-4. Can you identify
4 this as your signature?

5 A Yes.

6 Q And could you please tell the Court and jury, is
7 it dated and is there a time on the back of that photograph?

8 A Yes.

9 Q And what words are on the back of this photograph?

10 A This is Derek Moultrie.

11 Tykesha Mott, 9-11-89, 8:50 a.m.

12 Q Now, Miss Mott, is that the photograph you
13 identified in police headquarters?

14 A Yes.

15 Q Now, Ms. Mott, after you gave your statement to
16 Detective Thomas, was that the end of your involvement in
17 this case?

18 A Yes.

19 MS. FURLONG: Judge, I have no further questions
20 of this witness.

21 THE COURT: Cross-examine?

22 MR. GONZALEZ: Yes, thank you, Judge.

23 CROSS-EXAMINATION BY MR. GONZALEZ:

24 Q Good morning, Ms. Mott.

25 A Good morning.

1 Q Ms. Mott, you told us you received a phone call
2 from Derek Moultrie around 7:00, 7:30, correct?

3 A Yes.

4 Q And you were at your house when you received
5 this phone call from Mr. Moultrie?

6 A Yes.

7 Q And Mr. Moultrie indicated to you that he was
8 looking for your uncle?

9 A Yes.

10 Q Correct?

11 And I believe you told us that you told Moultrie
12 that he was not around or not home, correct?

13 A Yes.

14 Q And at that time, Mr. Moultrie gave you a phone
15 number?

16 A Yes.

17 Q At which he could be reached?

18 A Yes.

19 Q Now, it turned out that that number he gave you
20 was, in fact, the number that you could reach him at? In
21 other words, when you called later on that evening, you
22 were able to reach where Mr. Moultrie was at, correct?

23 A I don't understand.

24 Q In other words, the number that he gave you was a
25 real number?

1 A Yes.

2 Q I mean, he didn't give you a fake number, did he?

3 A Yes, yes; no.

4 Q All right. And in fact, later on you used that
5 number and you reached the girlfriend of Mr. Moultrie?

6 A Yes.

7 Q Correct?

8 Now, you told us that sometime after the phone
9 call, Mr. Moultrie came to where -- to the vicinity where
10 you lived at?

11 A Yes.

12 Q Correct?

13 And what is that, what is the number where you
14 lived at?

15 A 235 Goldsmith Avenue.

16 Q And 235 Goldsmith Avenue is the same number in
17 which Victor Mott lived at?

18 A Yes.

19 Q And does Ianthia Mott, your mother, also live at
20 235?

21 A Yes.

22 Q Goldsmith Avenue?

23 Now, you told us that you had a conversation with
24 Mr. Moultrie at 235 Goldsmith Avenue, correct, or in that
25 area?

1 A Yes.

2 Q And Mr. Moultrie, once again, asked for Victor
3 Mott, is that so?

4 A No.

5 Q What did he ask you?

6 A He didn't ask me anything, he just asked me was I
7 Victor Mott's niece.

8 Q And did he mention anything about Victor Mott?

9 A No, he just --

10 Q Did he say to you, I'm gonna kill Victor Mott?

11 A No.

12 Q All right. Did he say to you, I'm gonna harm
13 Victor Mott?

14 A No.

15 Q All right. And now you told us that while you
16 were talkin' to Moultrie, there was another individual in
17 the car?

18 A Yes.

19 Q And this was a brown Oldsmobile?

20 A Yes.

21 Q And later on, you came to learn that the person
22 in the car was the girlfriend of Mr. Moultrie?

23 A Yes.

24 Q For how long did you and Mr. Moultrie have this
25 conversation outside of the car?

1 A No more than ten, fifteen minutes.

2 Q Mr. -- while you were having this conversation,
3 Mr. Moultrie was, in fact, outside of the car, correct?

4 A Yes.

5 Q And the girlfriend of Mr. Moultrie was inside
6 the car by herself?

7 A Yes.

8 Q And she was the driver?

9 A Yes.

10 Q Now, you told us, Ms. Mott, that later on that
11 evening, you used the number and you called Mr. Moultrie
12 or you reached Mr. Moultrie's girlfriend?

13 A Yes.

14 Q Correct?

15 And when you spoke to Ms. -- to Mr. Moultrie's
16 girlfriend, you asked her whether she had seen Victor Mott?

17 A Yes.

18 Q And she told you that she didn't?

19 A Yes.

20 Q All right. You also asked her for Derek Moultrie,
21 correct?

22 A Yes.

23 Q And she told you that Mr. Moultrie -- strike that.
24 She told you that she had dropped Mr. Moultrie
25 off at Penn Station?

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COPIED CONTENT

1 A Yeah.

2 Q All right. During this conversation, did she
3 say to you that Mr. Moultrie was in the apartment?

4 A No.

5 Q Now, sometime after that, I believe you testified
6 that you spoke to the girlfriend of Mr. Moultrie concerning
7 her license plate?

8 A Yes.

9 Q Correct?

10 Now, do you recall the plate number you had
11 received earlier? Do you recall what that number was from
12 the car, the license plate of the car?

13 A License plate number she gave me?

14 Q No, no, the first number that you received?

15 A No, I don't.

16 Q Earlier that day?

17 A 985-YNI, somethin' like that.

18 Q All right. If you want to, I believe you have
19 S-38 in front of you?

20 A No.

21 THE COURT: I have it.

22 MR. GONZALEZ: No, Judge --

23 THE COURT: You mean, it's been marked as an
24 exhibit?

25 MR. GONZALEZ: Yes.

UNRECORDED
ERASABLE
CONTENTS

1 Q Ms. Mott, I show you what has been marked S-38
2 for Identification. This is your statement, correct?

3 A Yes.

4 Q And I ask you to look at the top of page two
5 and ask you if that refreshes your recollection as to the
6 number you received initially?

7 (Whereupon, witness reviews statement.)

8 Q Of the car in which your brother or your uncle
9 was in?

10 A I'm not sure.

11 Q Huh?

12 A I'm not sure.

13 Q Okay. If you read right here, what number is
14 that?

15 A 985-YNI.

16 Q Is that the first number that you received?

17 A Yes.

18 Q Who did you receive that number from?

19 A My mother.

20 Q All right.

21 Now, do you recall the number that was given to
22 you by the girlfriend of Mr. Moultrie later on that evening
23 as her license plate number?

24 A To be exact, no.

25 Q All right. I ask you to look at S-38 for

10500

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ERASABLE
CONTENT

1 Identification one more time and ask you, do you see --

2 A Yes.

3 Q -- a number there? You do?

4 A Yes.

5 Q And what is that number?

6 A 784-KTI.

7 Q So, when you spoke to the girlfriend of Ms. --
8 of Mr. Moultrie, she gave you a completely different number?

9 A Yes.

10 Q Than that given to you by your mother?

11 A Yes.

12 Q Earlier that day?

13 A Uh-huh.

14 Q And she also told you that she had not seen
15 Mr. Mott, correct?

16 A Yes.

17 Q And she also told you that she had dropped off
18 Mr. Moultrie at Penn Station?

19 A Yes.

20 MR. GONZALEZ: Judge, I have no further questions.
21 Thank you, Ms. Mott.

22 THE COURT: Is there anything by --

23 MS. FURLONG: No further questions, Judge.

24 THE COURT: -- redirect?

25 All right, you may step down, please.

--COTTON CONTENT--

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(Whereupon, Tykesha Mott exits.)

THE COURT: Do you have another witness available?

MS. FURLONG: Judge, I do, but I'd ask for a short recess. I believe there's --

THE COURT: All right, there's something else that I can take care of.

Ladies and gentlemen, I'm going to excuse you until 11:30 so that gives us about twenty minutes, all right. You can go downstairs, have coffee or whatever and be back here in about twenty minutes. As you well know, just keep an open mind, thank you.

(Whereupon, jury is excused.)

(Whereupon, Court hears other calendar matters.)

(Whereupon, the following takes place outside the presence of the jury.)

MR. GONZALEZ: Judge, I'd like to recall Tykesha Mott for one question.

MS. FURLONG: I have no objection, Judge, I just have to run to the ladies' room.

THE COURT: Is she here?

MS. FURLONG: Yes, Judge, she's all set to go.

THE COURT: Okay, what's the question?

MR. GONZALEZ: I'm just going to ask her the telephone number, that's all.

- COTTON CONTENT -

1 THE COURT: All right, that takes care of that
2 one.

3 (Pause)

4 MR. GONZALEZ: Judge, I'll ask the Court in
5 front of the jury to recall Tykesha Mott.

6 THE COURT: All right, no problem.

7 All right, let's call the jury out and I'll
8 inform Mr. Bennett that I did speak to Mary Ann, I believe
9 it was.

10 11:40 a.m.

11 (Whereupon, the following takes place within
12 the presence of the jury.)

13 THE COURT: Mr. Bennett, I did speak, I believe,
14 to a Mary Ann at your company.

15 JUROR NO. 4: Uh-huh.

16 THE COURT: I explained that you're here for a
17 few days, all right?

18 JUROR NO. 4: Okay, fine.

19 THE COURT: Thank you.

20 MR. GONZALEZ: Judge, at this time, I'd like to
21 recall Tykesha Mott for an additional question.

22 MS. FURLONG: The State has no objection.

23 THE COURT: All right.

24 MR. GONZALEZ: Thank you.

25 Tykesha Mott)

1 (Whereupon, witness enters.)

2 T Y K E S H A M O T T, previously sworn.

3 THE COURT: Please, be seated.

4 I just want to remind you, you're still under
5 oath. Is that clear?

6 THE WITNESS: Yes.

7 THE COURT: All right, please, Mr. Gonzalez.

8 MR. GONZALEZ: Thank you, Judge.

9 CONTINUED CROSS-EXAMINATION BY MR. GONZALEZ:

10 Q Ms. Mott, do you recall the telephone number
11 given to you by Mr. Moultrie?

12 A No.

13 Q All right. I show you what has been marked
14 S-38 for Identification and ask you if that would help
15 refresh your recollection as to the number given to you
16 by Mr. Moultrie?

17 A Yes.

18 Q Telephone number and what is that number?

19 A 757-3576.

20 THE COURT: What was that number?

21 THE WITNESS: 757-3576.

22 MR. GONZALEZ: Thank you.

23 THE COURT: Anything further?

24 MR. GONZALEZ: No further questions.

25 THE COURT: Any questions?

Montgomery - direct

1 MS. FURLONG: No, your Honor.

2 THE COURT: All right, you may step down.

3 Thank you.

4 (Whereupon, Tykesha Mott exits.)

5 THE COURT: Do you have another witness?

6 MS. FURLONG: Yes, your Honor, I do.

7 Your Honor, at this time, the State calls

8 Nathaniel Montgomery to the stand.

9 (Whereupon, witness enters.)

10 NATHANIEL MONTGOMERY, sworn.

11 THE COURT: Please, be seated.

12 Good morning, sir.

13 THE WITNESS: Good morning.

14 THE COURT: Direct examination, please.

15 MS. FURLONG: Thank you, your Honor.

16 DIRECT EXAMINATION BY MS. FURLONG:

17 Q Mr. Montgomery, I'm going to ask you to keep your
18 voice up so that all of the jurors and everyone in the
19 courtroom can hear your testimony, okay?

20 Now, what is your relationship, if any, to
21 Victor Mott?

22 A Nothin'.

23 Q Now, on September 10th, 1989, did you have
24 occasion to speak to one Derek Moultrie?

25 A Yes.

1 Q And do you see Derek Moultrie anywhere in the
2 courtroom?

3 A Yes.

4 Q And could you point to where Mr. Moultrie's
5 sitting in the courtroom?

6 (Whereupon, witness points to the Defendant.)

7 THE COURT: And would you also describe something
8 that he may be wearing?

9 THE WITNESS: Black and white stripes.

10 THE COURT: Mr. Gonzalez?

11 MR. GONZALEZ: No objection, your Honor.

12 THE COURT: All right, thank you.

13 MS. FURLONG: Thank you, your Honor.

14 Q Now, Mr. Montgomery, how long up until the time
15 of September 10th, 1989, had you known Mr. Moultrie?

16 A Say about four years.

17 Q And how did you know him over the period of four
18 years?

19 A Through the neighborhood.

20 Q And were you aware of him having the name of
21 Knight Rider?

22 A Yes.

23 Q Now, on September 10th, 1989, would you please
24 tell the Court and the jury when you first saw Mr. Moultrie?

25 A On Goldsmith Avenue.

1 Q And do you have an approximate number of about
2 where that was on Goldsmith Avenue?

3 A Between Goldsmith and Ordeen.

4 Q And could you please tell the Court and the jury
5 was Mr. Moultrie on foot, was he in a car, where did you
6 see him at that time?

7 A He was in a car.

8 Q And could you describe the car for the Court and
9 the jury?

10 A It was a little -- I think it was brown, a little like
11 tannish car.

12 Q And at that point in time, did you see Mr. Moultrie
13 in the company of anyone else?

14 A Yes.

15 Q And whom did you see?

16 A A female.

17 Q And where was this female, at that time?

18 A She was driving.

19 Q And are you able to describe this female?

20 A No.

21 THE COURT: What's your answer?

22 THE WITNESS: No, sir.

23 THE COURT: All right, keep your voice up just a
24 little bit so that all the jurors can hear you, please.

25 Q Now, Mr. Montgomery --

1 MS. FURLONG: Your Honor, at this time, I'd
2 like to have Mr. Montgomery's statement marked as State's
3 Exhibit S-38.

4 THE COURT: S-38 or 9?

5 THE COURT REPORTER: 39.

6 MS. FURLONG: It's 39, okay, thank you.

7 (Whereupon, exhibit is marked S-39 for
8 Identification.)

9 Q Now, Mr. Montgomery, I'm now showing you what's
10 been marked as State's Exhibit S-39. Can you take a minute
11 to look at it and tell me if you can identify this for the
12 record?

13 (Whereupon, witness reviews statement.)

14 A Yes.

15 Q Okay. And can you tell the ladies and gentlemen
16 of the jury what this exhibit is?

17 A What you mean by exhibit?

18 Q Okay. Can you tell me what this is? Is this
19 a statement --

20 A Yes.

21 Q -- is it a letter?

22 A It's a statement.

23 Q Okay. And is it your statement?

24 A Yes, ma'am.

25 Q And how do you know it's your statement?

1 A Because it's everything I said in it.

2 Q Okay. And is your signature on the statement?

3 A Yes.

4 Q Okay. Mr. Montgomery, going back to when I
5 asked you the description of the woman in the car, you
6 indicated you weren't able to tell. I'm going to ask you
7 to read this part of your statement and ask you if that
8 refreshes your memory?

9 MR. GONZALEZ: Judge, may I ask what part is
10 Ms. Furlong referring to?

11 THE COURT: Where are you?

12 MS. FURLONG: The second page at the top.

13 MR. GONZALEZ: Thank you.

14 THE COURT: All right.

15 THE WITNESS: My reading is not too good.

16 THE COURT: Read it to yourself first, please.

17 (Whereupon, witness reads statement.)

18 THE WITNESS: Yes.

19 THE COURT: All right, now the question.

20 BY MS. FURLONG:

21 Q Does that refresh your memory?

22 A Yes.

23 Q Can you please describe for the Court and the
24 jury the description of the woman you saw that evening with
25 Mr. Moultrie?

1 A She had on glasses, she had, I think, it was a white,
2 like a beach hat or somethin'.

3 THE COURT: Like a what?

4 THE WITNESS: White beach hat.

5 THE COURT: Beach hat?

6 THE WITNESS: Yeah.

7 Q What type of complexion did the woman have?

8 A Like tannish.

9 THE COURT: Did you hear that?

10 THE JURY: Yes.

11 THE COURT: I didn't hear it.

12 THE WITNESS: Tannish,

13 Q Now, did you have occasion to have a verbal
14 conversation with Mr. Moultrie on September 10th, 1989?

15 A Yes.

16 Q And could you tell the Court and jury how you
17 became involved in a conversation with Mr. Moultrie?

18 A He called me over to the car and he asked me did I
19 see Victor and I said, No, why, what's up? He said, Well,
20 he helped me move today and he stole my chain and he said,
21 If you see him, tell him that I'm lookin' for him and I
22 want my chain and he said, I hope he didn't sell it because
23 if he did, he's finished.

24 Q And did you make any observations at that point
25 in time of Mr. Moultrie while you were speaking to him?

1 A Yes, I did.

2 Q And what observations did you make?

3 A That's when he showed me a gun.

4 Q What type of a gun from your memory, can you
5 remember what type of gun it was?

6 A Yes.

7 Q And what type of gun was it?

8 A A nickel-plated .25.

9 (Whereupon, Court Officer checks gun for safety.)

10 A And it had a white handle, too.

11 MR. GONZALEZ: Your Honor, I would ask that the
12 Defendant -- I mean, the witness not volunteer --

13 THE COURT: Do not volunteer any information, sir.

14 THE WITNESS: Okay.

15 THE COURT: Or any answers unless there's a
16 question to you because it's question-and-answer form.
17 Thank you.

18 MS. FURLONG: Thank you, your Honor.

19 THE COURT: You're welcome.

20 BY MS. FURLONG:

21 Q Now, Mr. Montgomery, I'm showing you what's
22 been marked as State's Exhibit S-19 for identification.
23 Can you identify this object for the record?

24 A That's the way it looked.

25 Q When you say "that's the way it looked," --

1 A It was shiny.

2 Q Excuse me?

3 A It was shiny.

4 Q Shinier?

5 A Yes.

6 Q And where did you observe this gun on Mr. Moultrie's
7 person?

8 A In the palm of his hand.

9 Q And do you remember what hand it was in?

10 A This one, the right one.

11 Q And did you see Mr. Moultrie place that gun
12 anyplace?

13 A Back between his lap.

14 Q And how long would you say you were speaking to
15 Mr. Moultrie at that time, in minutes?

16 A Three.

17 Q And after Mr. Moultrie said to you that if he
18 sold the chain, he was finished, what did you do?

19 A I went down the street and told his mother.

20 Q And who was with you that night when you were
21 speaking to Mr. Moultrie, was anyone else with you?

22 A My cousin, Jimmy.

23 Q And what is your cousin's full name, for the
24 record?

25 A Jimmy Lee--James Montgomery.

1 Q Now, when you were down at police headquarters
2 giving a statement, do you remember if you were shown
3 photographs?

4 A Yes.

5 Q And do you remember when you looked at the
6 photographs if you picked any one out of those photographs?

7 A Yes.

8 Q I'm now going to show you what's been marked as
9 State's Exhibit S-2A through F for Identification. Could
10 you tell me, are these the photographs that you looked at
11 at the time you were at police headquarters? Take a minute
12 to look at them.

13 (Whereupon, witness reviews photographs.)

14 A Only one.

15 Q And how do you know that's the photograph that
16 you identified?

17 A I know the picture.

18 Q And did the officer have you write anything or
19 mark anything on the back of the photograph, if you
20 remember?

21 A No, not that I remember.

22 Q Can you turn it over and see if it refreshes
23 your memory?

24 A Yes.

25 Q And is that your signature, Mr. Montgomery?

1 A Yes, ma'am.

2 Q And is there a date on it?

3 A Yes.

4 Q And could you please state the date for the
5 jury?

6 A 9-11-89.

7 Q And the time?

8 A 8:44.

9 Q Thank you.

10 Now, are you sure that this picture that you
11 picked out and Derek Moultrie is the same individual you
12 saw with a gun that night?

13 A Yes.

14 Q Now, the woman that was with Mr. Moultrie, did
15 she say anything to you?

16 A No.

17 Q Did she have a gun that night, to your knowledge?

18 A No.

19 Q Did she ever say anything to anyone in your
20 presence?

21 A No.

22 Q Did you engage in any type of conversation with
23 her?

24 A No.

25 Q Had you ever seen her prior to that evening?

1 A No.

2 MS. FURLONG: Judge, I have no further questions
3 of this witness.

4 THE COURT: Cross-examine, please.

5 MR. GONZALEZ: Yes, Judge, thank you.

6 CROSS-EXAMINATION BY MR. GONZALEZ:

7 Q Good afternoon -- good morning, Mr. Montgomery.

8 A Good morning.

9 Q Mr. Montgomery, you reside at 231 Goldsmith
10 Avenue in Newark. Is that correct?

11 A Yes, sir.

12 Q And for how long have you been residing at
13 231 Goldsmith Avenue?

14 A About 14 years.

15 Q All right.

16 Now, you indicated that you -- strike that.

17 You know Victor Mott?

18 A Yes.

19 Q And isn't it a fact that Victor Mott lives
20 at 235 Goldsmith Avenue?

21 A Yes.

22 Q All right. Do you know --

23 MS. FURLONG: Judge, I hate to be so technical
24 and object to who lives there, but Victor Mott, so the jury
25 is not confused, is the victim in this case and Mr. Gonzalez

1 said that he lives there. Just so there's no confusion.

2 THE COURT: All right.

3 MR. GONZALEZ: Judge, I'll rephrase it, the
4 Prosecutor is absolutely correct.

5 BY MR. GONZALEZ:

6 Q On September 11th, 1989, Victor Mott lived at
7 235 Goldsmith Avenue, correct?

8 (Whereupon, witness nods head in affirmative.)

9 Q And the Mott family lived and still lives at
10 235 Goldsmith Avenue, correct?

11 A Yes.

12 Q And you know the Mott family. Is that correct?

13 A Yes, uh-huh.

14 Q You know the mother, you know Tykesha --

15 A I know the whole family.

16 Q You know the whole family?

17 A Uh-huh.

18 Q For how long have you known the Mott family?

19 A Ever since I've been livin' on Goldsmith Avenue.

20 Q For 14 years you know the Mott family?

21 A Yes.

22 Q And you knew Victor Mott for 14 years?

23 A Yes.

24 Q Did you hang out with Victor Mott?

25 A Yes, occasionally.

1 Q Occasionally?

2 A Yes.

3 Q Would you consider Victor Mott a friend of yours?

4 A Yes.

5 Q You hung out on the street with Victor Mott,
6 correct?

7 A No.

8 Q Have you been to the house of Victor Mott when
9 he was living there, 235 Goldsmith Avenue?

10 A Yes.

11 Q And I assume you would consider Victor Mott a
12 good friend of yours?

13 A You could assume.

14 Q And he's a good friend, passed away, and you're
15 angry at that, isn't that right, Mr. Montgomery?

16 A Excuse me?

17 Q You're angry at the fact that somebody killed
18 Mr. Mott?

19 A No.

20 Q You're not, okay.

21 Now, you told us that you were on Goldsmith
22 Avenue and you saw Mr. Derek Moultrie?

23 A Yes, I did.

24 Q All right. And you told us that Derek Moultrie
25 was in a car, correct?

1 A Yes.

2 Q And there was a female also in the car?

3 A Yes.

4 Q Is that so?

5 And the female was driving the car?

6 A Yes.

7 Q Mr. Moultrie called you over?

8 A Yes.

9 Q Now, when he called you over, you came over to
10 the car, correct?

11 A Yes.

12 Q And when he -- Mr. Moultrie had certain
13 conversations with you, correct?

14 A Right.

15 Q Is it fair to say that he had these conversations
16 with you from inside the car?

17 A He was inside the car.

18 Q He was inside the car?

19 A Yes.

20 Q When he was speaking to you?

21 A Yes.

22 Q And at this point in time when he was speaking
23 to you, was the female in the car?

24 A Yes.

25 Q And when you were speaking to Mr. Moultrie, were

1 you looking through the window or -- where were you, were
2 you standing right there next to the car?

3 A Yes.

4 Q All right. And you were not too far when you
5 were speaking to Mr. Moultrie from the female, correct?

6 A I was right behind the door.

7 Q All right.

8 Now, you told us that you know Mr. Moultrie?

9 A Yes.

10 Q You know him from the neighborhood?

11 A Yes.

12 Q And you know him as Knight Rider, correct?

13 A Yes.

14 Q And you know that's his dancing name?

15 A Yeah.

16 Q Is that correct?

17 All right. Have you ever had -- strike that.

18 Had you ever been out socially with Mr. Moultrie?

19 A No.

20 Q Have you ever hung out with Mr. Moultrie?

21 A No.

22 Q Have you ever had any conversations with
23 Mr. Moultrie before that date?

24 A Sure.

25 Q You spoke to Mr. Moultrie before September 1967?

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1 A Yes.

2 Q All right. But is it fair to say that Mr. Moultrie
3 isn't a friend of yours, correct?

4 A Yes.

5 Q He's a friend of yours?

6 A Yes.

7 Q How often have you hung out with Mr. Moultrie?

8 A I haven't.

9 Q You haven't?

10 A Uh-uh.

11 Q But you consider him still a friend of yours?

12 A That's right.

13 Q Now, had these times you had the conversations
14 with Mr. Moultrie, I'm not talking about September 11th,
15 the other times that you mentioned, has Victor Mott been
16 there with you when you had this conversation with
17 Mr. Moultrie?

18 A Let me think. Not that I remember.

19 Q All right. Has Mr. Mott been with you and
20 Mr. Moultrie at any time? In other words, have you been
21 together, all three of you?

22 MS. FURLONG: Judge, I'm going to object on the
23 grounds of relevancy, at this point.

24 MR. GONZALES: It's cross-examination.

25 THE COURT: Well, what -- is there any relevancy?

1 MR. GONZALEZ: Judge, it goes to the friendship
2 with Mr. Mott which has to do with interest which has to do
3 with credibility.

4 THE COURT: Have you ever been in the company of
5 Mr. Moultrie or Mr. Mott at any time?

6 MR. GONZALEZ: Together.

7 THE COURT: At any time prior to September, '89?

8 MR. GONZALEZ: Together.

9 THE WITNESS: No.

10 BY MR. GONZALEZ:

11 Q All right. So, is it fair to say that since
12 you've never been in the company of Mr. Mott and Mr. Moultrie,
13 that Mr. Moultrie would have no way of knowing that you know
14 Victor Mott? Is that fair to say?

15 A No, it's not fair to say.

16 Q Now, you told us that Moultrie spoke to you and
17 asked for Victor Mott, correct?

18 A Uh-huh.

19 Q And he told you that he had stolen -- that
20 Victor had stolen his chain and that if he sold it, the
21 guy was finished. Is that what he said to you?

22 A Yes.

23 Q Now, this is a guy that you had very few
24 conversations with in the past and he's telling you this,
25 that he's gonna do somethin' to the guy, is that what you're

1 trying to say? That Moultrie told you that?

2 A Yes.

3 Q Now, you told us that at that point in time,
4 while you had this conversation, Mr. Moultrie showed you a
5 gun?

6 A Yes.

7 Q Correct?

8 Now, when he showed you this gun, was he in the
9 car?

10 A Yes, he was.

11 Q And the driver of the car was still there when
12 he showed you this gun?

13 A Yes, she was.

14 Q All right. And I believe that you stated to us
15 when Ms. Furlong asked you a question, I believe you told
16 us prior to seeing the gun here today, that the gun you saw
17 on that day was nickel-plated?

18 A It was shiny, nickel-plated.

19 Q Isn't it a fact that you said it was nickel-plated?

20 A I said it was nickel-plated.

21 Q Isn't it a fact that you said it was nickel-plated?

22 A Yes.

23 Q All right. A nickel-plated gun would be a silver
24 gun, correct?

25 A Yes.

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1 Q All right. So, the gun that you saw on that day
2 was a nickel-plated silver gun?

3 A That's the way I seen it.

4 Q All right.

5 A With a white handle.

6 THE COURT: With a what?

7 THE WITNESS: White handle.

8 THE COURT: White handle?

9 (Whereupon, witness nods head in affirmative.)

10 Q Oh, 'et's get into the white handle.

11 Isn't it a fact that you mentioned the white
12 handle, Mr. Montgomery, when Ms. Furlong took out the gun
13 here today?

14 A I mentioned the white handle --

15 Q And you saw the gun?

16 A I mentioned the white handle when I was downtown when
17 they questioned me.

18 Q Oh, you told them that the gun was nickel-plated
19 and also had a white handle?

20 A That's right.

21 Q All right. Mr. Montgomery, I show you what has
22 been marked Exhibit S-39 for Identification and ask you
23 once again if you recognize that? Do you recognize that,
24 Mr. Montgomery?

25 A Yes, I do.

1 Q That's the statement that you gave, correct?

2 A Yes.

3 Q And you signed that statement?

4 A Yes.

5 Q It's a two-page statement, two-page statement?

6 A Uh-huh.

7 Q And you signed both pages?

8 A Yes.

9 Q And I want you to refer --

10 MR. GONZALEZ: Ms. Prosecutor, I'm referring to
11 the second page.

12 Q There's a question there. If you want to look up,
13 Mr. Montgomery, so you can see.

14 THE COURT: Second page where?

15 MR. GONZALEZ: Second page at the bottom, one,
16 two, three, four -- fifth sentence up from the bottom.

17 Q "After you read this statement and find that it
18 contains that which you have told me, will you sign it?"

19 Do you see that?

20 A Uh-huh.

21 Q And your answer is, "Yes." Correct?

22 A Uh-huh.

23 Q So, you read the statement?

24 A Uh-huh.

25 Q Is that true?

1 Okay. Now, you told us here that the Judge --

2 MS. FURLONG: Judge, excuse me. We have to have
3 a sidebar because I would ask that Mr. Gonzalez also read
4 the next part because --

5 MR. GONZALEZ: Judge --

6 MS. FURLONG: -- because this --

7 MR. GONZALEZ: She has a chance at redirect to do
8 that.

9 THE COURT: He's questioning now as to --

10 MS. FURLONG: Well, Judge, there's a reason
11 because if I can be heard at sidebar, this witness has a
12 problem with reading and I think that should be brought out,
13 it's in the statement.

14 THE COURT: You may bring that out.

15 MR. GONZALEZ: Yes, on redirect.

16 BY MR. GONZALEZ:

17 Q Mr. Montgomery, isn't it also a fact that in the
18 statement, you -- Detective Ferrer, Investigator Ferrer also
19 asked you, "Since you have stated to me that you don't read
20 too well, is it all right if Detective Bill Thomas reads
21 this statement out loud to you?"

22 And do you remember answering, "Yes."?

23 A Uh-huh.

24 Q So, the statement was read to you out loud?

25 A Yes.

1 Q Correct?

2 Now, Mr. Montgomery, do you remember being
3 asked in the statement --

4 MR. GONZALEZ: And I'm referring to the middle
5 part of the statement, Ms. Furlong.

6 Q "What kind of a gun did Derek Moultrie --
7 strike that.

8 "What kind of a gun did Derek show you?"

9 Do you remember being asked that? It's right
10 here.

11 A Uh-huh.

12 Q And do you remember giving the answer, "It
13 looked like a nickel-plated .25 automatic."?

14 Do you see that here?

15 A Uh-huh.

16 Q And there's a period at the end, correct?

17 A Right.

18 Q All right. And then the following question is,
19 "What time did you see Derek?" Correct?

20 A Uh-huh.

21 Q All right.

22 Now, when he asked you, "What type of gun did
23 Derek show you?" You told him that it was a nickel-plated
24 .25 automatic, period. There's nothing there about it
25 being -- it having a white handle?

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1 A Well, he didn't put it in there.

2 Q He didn't put it in there?

3 A I guess not.

4 Q Mr. Montgomery --

5 MR. GONZALEZ: Where's the gun?

6 MS. FURLONG: Right here.

7 Q Showing you S-19 for Identification, is this a
8 nickel-plated gun?

9 A No.

10 Q This is black.

11 A Put it up under the light. See what color it looks
12 to you when you got bad eyes.

13 Q Oh, you got bad eyes?

14 A Sure I do.

15 Q And now you saw -- your eyes can't be that bad
16 because you saw the white handle now.

17 A I seen the white handle then.

18 Q You didn't tell that to the detective, did you?

19 A I told him.

20 Q You told him it was silver and you mentioned
21 nothing about a white handle. Isn't it a fact, Mr. Montgomery,
22 you didn't see any gun? He didn't show you any gun?

23 A Yes, he did show me a gun.

24 Q That's why you said it was silver and that's why
25 you're telling us now that there's a white handle.

1 Now, when he showed you this gun, I believe you
2 told us that after he showed you the gun, he put it on his
3 lap or between his legs?

4 A Yes.

5 Q And at this point in time, the driver was still
6 in the car, the female, correct?

7 A Yes.

8 MR. GONZALEZ: No further questions, thank you.

9 THE COURT: Redirect?

10 MS. FURLONG: Thank you, your Honor.

11 REDIRECT EXAMINATION BY MS. FURLONG:

12 Q Mr. Montgomery, prior to September 10th, 1989,
13 had you ever had any confrontations with the Defendant,
14 Derek Moultrie?

15 A Excuse me?

16 Q Any confrontations, I mean, fights, arguments,
17 anything with the Defendant?

18 A Never.

19 Q Now, when you indicated in your statement, I
20 believe Mr. Gonzalez asked you about the description of
21 the gun, do you remember what your answer was in the
22 statement?

23 A Yes.

24 Q That your answer is this, correct, "That it
25 looked like a nickel-plated .25 automatic." Is that correct?

1 A Yes.

2 Q And the next question Mr. Gonzalez asked you,
3 "What time did you see Derek?" Is that correct?

4 A Yes.

5 Q Now, were you ever asked, from your recollection,
6 anywhere in the statement to give more of a description of
7 the gun at that time, to your recollection?

8 A No.

9 Q Do you have any interest here at seeing Derek
10 Moultrie convicted of murder?

11 A No.

12 MS. FURLONG: No further questions, Judge.

13 THE COURT: Mr. Gonzalez, anything further?

14 RE-CROSS-EXAMINATION BY MR. GONZALEZ:

15 Q You told us that when you gave the description of
16 the gun to Detective Thomas and Investigator Henry Ferrer
17 from the Prosecutor's Office, that you mentioned that it had
18 a white handle, correct?

19 A Yes.

20 Q All right. And they just failed to put it in
21 your statement?

22 A I guess he did.

23 Q All right.

24 Now, when the Prosecutor was asking you questions
25 about the gun and she asked you to tell us that type of gun

1 it was, you said that it was a nickel-plated gun?

2 A I said, it looked like --

3 Q Nickel-plated gun, correct?

4 A I said, It looked like a nickel-plated.

5 Q But that you didn't mention anything about the
6 white handle, Mr. Montgomery, did you?

7 A When, just now?

8 Q No, no, when the Prosecutor first asked you what
9 type of gun it was, you said it was a nickel-plated gun,
10 nothing about the white handle?

11 A She didn't ask me nothin' else about it.

12 Q Well, she asked you what type of gun it was.

13 Isn't it a fact that after she took it out of
14 the bag and showed you the gun, then you said, Oh, it was
15 a white handle, it was a white-handled gun?

16 No gun was ever shown to you, was it, sir?

17 A Yes, it was.

18 Q That's a fact?

19 THE COURT: Is that a question or a statement?

20 MS. FURLONG: Judge, is Mr. Gonzales testifying

21 or --

22 THE COURT: Hold it.

23 Is that a question or is that a statement by you?

24 MR. GONZALES: I said to him --

25 THE COURT: Rephrase the question.

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1 Q Isn't it a fact that no gun was shown?

2 THE COURT: Pardon?

3 THE WITNESS: There was a gun shown.

4 THE COURT: Anything further?

5 MR. GONZALEZ: No, Judge.

6 MS. FURLONG: I have no further questions.

7 THE COURT: Sir, you may step down.

8 THE WITNESS: Thank you.

9 THE COURT: Do we have another witness?

10 MS. FURLONG: Yes, Judge, we do.

11 THE COURT: All right.

12 (Whereupon, Nathaniel Montgomery exits.)

13 MS. FURLONG: Your Honor, at this time, the State
14 calls Joseph Wilkerson to the stand.

15 (Whereupon, witness enters.)

16 J O S E P H W I L K E R S O N, sworn.

17 THE COURT: All right, good afternoon, sir.

18 THE WITNESS: Good afternoon.

19 THE COURT: Direct examination, please.

20 MS. FURLONG: Thank you, your Honor.

21 DIRECT EXAMINATION BY MS. FURLONG:

22 Q Mr. Wilkerson, would you please keep your voice
23 up so that everyone in the courtroom can hear you?

24 Now, on September 10th, 1989, did you have
25 occasion to speak to one Derek Moultrie?

1 A Yes.

2 Q Okay. Prior to that evening, had you known
3 Mr. Moultrie?

4 A No.

5 Q And could you please tell the Court and the jury
6 where you were when you first spoke to this individual
7 named Derek Moultrie?

8 A On Goldsmith Avenue.

9 Q And can you give me more --

10 THE COURT: Keep your -- where were you, please?

11 THE WITNESS: Goldsmith Avenue.

12 THE COURT: Keep your voice up so that everyone
13 can hear you on the jury.

14 Q Mr. Wilkerson, maybe if you sit up, everybody
15 from the jury can hear you, thank you.

16 Now, do you have a number from where you were
17 on Goldsmith Avenue?

18 A On the corner.

19 Q And were you there alone, were you there with a
20 group of people?

21 A A group of friends.

22 Q And what happened that you met Mr. Moultrie at
23 that point in time?

24 A He came up and I was standin' on the corner, my back
25 faced to the street and, uh, he was like me and Vic have on

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1 the same shirt, I had on a white shirt. He was like
2 approaching me like I was Vic askin' me have I seen Vic
3 and I said, No, he was up -- Vic was up on -- I seen him
4 earlier up on Goldsmith Avenue and he say he was lookin'
5 for Vic 'cause Vic had helped him move and he was missin'
6 some gold chains and so he asked have I seen him and I said,
7 Last I seen him he was up on Goldsmith and after that, he
8 said he have a -- he was lookin' for Vic.

9 Q Did there come a point in time when Mr. Moultrie
10 thought you were Victor?

11 A Yes.

12 THE COURT: What was that?

13 THE WITNESS: Yes.

14 Q And did he say anything to you at that point in
15 time? Did he call you by any name? Did he say anything to
16 you?

17 A Like, yeah, Vic, I got you now; but when I turned
18 around, he noticed that I wasn't Vic.

19 Q Now, did you make any other observations at that
20 time about Mr. Moultrie?

21 A No.

22 Q Did he show you anything at that time?

23 A On the side, he had somethin' stickin' out of the vest
24 he had on.

25 Q Okay.

1 Now, I'm going to show you what's been marked
2 State's -- for identification as S-21B. Can you identify
3 this for the record? Take your time and look at it.

4 (Whereupon, witness reviews clothing.)

5 A Yes.

6 Q And can you tell the Court and the jury what
7 that actually is?

8 A It's a vest, denim vest.

9 Q And when did you see that denim vest?

10 A He had it on that night.

11 Q And when you say "he," who do you mean?

12 A Derek.

13 Q And --

14 THE COURT: Who?

15 Q And do you see Derek Moultrie anywhere in the
16 courtroom?

17 A Yes.

18 Q Can you point to him, please?

19 A Right there.

20 Q And can you describe what he has on?

21 A Stripe shirt.

22 THE COURT: Mr. Gonzalez, please.

23 MR. GONZALEZ: No objection.

24 Q Now, Mr. Wilkerson, do you remember giving a
25 statement to police officers about what you observed that

1 night?

2 A Yes.

3 Q And do you remember the police officer showing
4 you a group of photographs?

5 A Yes.

6 Q And I'm going to show you right now what's been
7 marked as State's Exhibit S-2A through F and State's
8 Exhibit S-7. Can you please tell me if you can identify
9 these photographs?

10 (Whereupon, witness reviews photographs.)

11 A Yes.

12 Q And did you, out of that group of photographs,
13 select any of the photographs as the individual who
14 approached you and thought you were originally Victor?

15 A Yes.

16 Q And could you pick that photograph out, please?

17 (Whereupon, witness picks out photograph.)

18 Q And do you remember if the officers asked you
19 to do anything if this was the photo that you selected?

20 Okay. I'm going to ask you to turn this over
21 and does that refresh your memory when you look in the
22 back of the photograph?

23 A Yes.

24 Q And is this your signature?

25 A Yes.

1 Q And could you please tell the Court and the
2 jury the date and the time that's on that photograph?

3 A 9-12-89, 3:45 p.m.

4 Q Thank you.

5 Now, in addition to that, you gave a statement
6 to the officers --

7 MS. FURLONG: I believe, your Honor, at this time,
8 I'd like to have Mr. Wilkerson's statement marked as State's
9 Exhibit S-40.

10 THE COURT: I think --

11 MS. FURLONG: Excuse me, your Honor, it's been
12 marked as State's Exhibit S-6.

13 THE COURT: Six, correct.

14 Q Now, Mr. Wilkerson, I show you this document
15 and ask you, is this the statement that you gave to
16 Detective Thomas at the police headquarters?

17 A Yes.

18 Q And is your signature on this statement?

19 A Yes.

20 Q Both pages?

21 A Yes.

22 Q Okay.

23 Now, at the time that you gave this statement,
24 do you remember giving the detective a description of the
25 gun?

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1 A Yes, it was a --

2 Q And could you please tell the Court and the jury
3 the description of the gun that you saw Mr. Moultrie with
4 that evening?

5 A It was a black handle on the side stickin' out.

6 Q Okay. And do you remember what kind of a car?
7 Did you see a car that evening?

8 A It was a brown two-door car.

9 Q And did you see anyone else in the car besides
10 Mr. Moultrie?

11 A It was a lady driver.

12 Q And could you describe what she looked like?
13 Were you able to see her?

14 A No.

15 Q And did this woman say anything to you?

16 A No.

17 Q And where was she while Mr. Moultrie was speaking
18 to you?

19 A She was in the car, the middle of the street when
20 the car came up; so, she turned around and went down and
21 came back up.

22 Q Now, you're speaking to Mr. Moultrie. Maybe
23 you can get up and do a diagram for me and show me on
24 Goldsmith Avenue where you were standing speaking to
25 Mr. Moultrie, where the car was and draw an arrow for the

1 direction the car made when you said it turned around.

2 (Whereupon, witness steps up to diagram.)

3 Q Now, Mr. Wilkerson, I'm going to ask you to
4 explain the diagram to the Court and jury and can you use
5 another colored crayon as you explain it?

6 A On the corner of Goldsmith --

7 Q Excuse me. You're going to have to stand that
8 way if you can, okay.

9 A Okay.

10 THE COURT: Let's indicate that the diagram was
11 in red and now he's using the black one. Go ahead.

12 A On the corner of Goldsmith there's a tree on the
13 corner. Her car was there and me and my friends was sittin'
14 on the car in front of my car and the car Derek Moultrie
15 came in was parked on the side; he jumped out. We was on
16 the front, he came and like tapped me on the back and said,
17 Yeah, Vic, I got you now; but when I turned around, I
18 wasn't Vic and he asked me, have I seen Vic, and I said,
19 Last time I seen him, he was up on the corner of Goldsmith.

20 Q Now, let me stop you there, Mr. Wilkerson.

21 Did he indicate to you whether or not he had
22 been with Victor that day, anything about what he had been
23 doing with Victor that day?

24 A Yes.

25 Q Can you tell the Court and the jury what he

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1 indicated to you?

2 A Victor helped him move and as he was takin' the van
3 back, he had noticed that some of his chains was missin'
4 and he asked have I seen Vic and I told him I seen him
5 earlier up on the corner of Goldsmith.

6 Q Okay.

7 Now, where did this car -- put an arrow in the
8 direction the car was originally going on the street that
9 Mr. Moultrie got out on.

10 (Whereupon, witness indicates.)

11 Q Okay.

12 Now, you said that the car while you were talking
13 to Mr. Moultrie had to move. Where did that car move to?

14 A She went up, made a U-turn, came back down, came back
15 up Goldsmith and it divides in the middle of the street.

16 Q Can you draw a broken line for the path the car
17 took when it had to move and where it stopped?

18 (Whereupon, witness indicates.)

19 A This is the divider right here, she turned through
20 the divider and came back up.

21 Q Okay. And did the woman that was in the car
22 ever get out of the car at that point?

23 A No.

24 Q Now, when did Mr. Moultrie leave and where did
25 he go when he left you?

1 A I think it was straight up Goldsmith.

2 Q What I mean is, did Mr. Moultrie physically get
3 in the car, did he walk away, what did he do?

4 A He walked away and got back in the car.

5 Q And did you see him leave with the woman still
6 driving the car?

7 A Yes.

8 Q And then what direction did they leave, up
9 Goldsmith Avenue again?

10 A Up Goldsmith.

11 Q Did you see in which direction they turned?

12 A No.

13 Q Okay. You can have a seat, thank you.

14 (Whereupon, witness resumes witness stand.)

15 THE COURT: Before we go any further, let's have
16 that diagram marked S-40, please.

17 Any more questions on direct?

18 MS. FURLONG: Judge, I have --

19 THE COURT: Just one or two, all right.

20 (Whereupon, exhibit is marked S-40 for
21 Identification.)

22 THE COURT: Or we can continue after luncheon
23 recess.

24 MR. GONZALEZ: No problem, Judge.

25 THE COURT: All right, it's been marked S-40.

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MS. FURLONG: I have one more question, Judge.

THE COURT: Yes, go ahead.

BY MS. FURLONG:

Q Now, Mr. Wilkerson, to be clear for the record, prior to September 10th, 1989, you had never had any contact with Derek Moultrie?

A No.

Q The first time you ever saw him was on that evening?

A Yes.

Q Now, where do you live in relationship to Goldsmith Avenue?

A Around the corner on Vassar Avenue.

Q And you never went out socially with Mr. Moultrie, you never partied with him, hung out on the street?

A No.

Q Before that night?

A No.

Q So, the first time you saw Mr. Moultrie was that evening on Goldsmith Avenue when he thought you were Victor?

A Yes.

Q And you saw the gun under his vest?

A Yes.

MS. FURLONG: I have no further questions, Judge.

THE COURT: All right, we're going to break for

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1 lunch and you can start your cross-examination.

2 MR. GONZALEZ: Fine, Judge.

3 THE COURT: May I see my Court Officer for a
4 moment?

5 (Whereupon, there is a sidebar discussion off
6 the record.)

7 THE COURT: All right. Ladies and gentlemen,
8 we'll ask you to be back here at 1:30. Then we'll continue
9 and of course, you do not discuss the case, as you well know,
10 and keep an open mind. We wish you all a pleasant lunch,
11 see you at 1:30, thank you.

12 (Whereupon, jury is excused for the luncheon
13 recess.)

14 THE COURT: Mr. Wilkerson, you must be back here
15 at 1:30. You're directed not to speak to anybody between
16 the lunch hour and now until you're cross-examined. Is
17 that understood?

18 THE WITNESS: Yes.

19 THE COURT: All right, thank you.

20 MR. GONZALEZ: Thank you, Judge.

21 (Whereupon, Court in luncheon recess.)

22 (Whereupon, the following takes place outside
23 the presence of the jury.)

24 THE COURT: Good afternoon, please, be seated.

25 Is Detective Thomas here yet?

1 MS. FURLONG: Judge, he's up in Judge Perretti's.

2 THE COURT: I know, I got a call and she was
3 rather upset and she didn't know where he was and he is
4 there now and he will be here shortly.

5 MS. FURLONG: It's my understanding that he will
6 testify there and then come here.

7 THE COURT: It should be only five minutes.

8 MS. FURLONG: He's just reading a statement, I
9 believe.

10 THE COURT: Okay.

11 MS. FURLONG: Judge, Mr. Gonzalez has a question
12 about the sequestration order.

13 MR. GONZALEZ: Yes, Judge.

14 I see that Tykesha and Ianthia --

15 THE COURT: Who has testified already, they're in
16 court.

17 MR. GONZALEZ: Right.

18 THE COURT: No problem.

19 MR. GONZALEZ: According to your order, it says,
20 "A witness who has testified may not sit in court."

21 THE COURT: No, they may sit in court.

22 MS. FURLONG: It's a typographical error, Judge.

23 MR. GONZALEZ: It's wrong then, Judge.

24 MS. FURLONG: I think it's if they're going to
25 be rebuttal they can't sit.

1 THE COURT: If they're going to be rebuttal,
2 they cannot.

3 MR. GONZALEZ: That's not what it reads here,
4 Judge.

5 THE COURT: But they're here. Are they going to
6 be rebuttal witnesses?

7 MS. FURLONG: No, Judge.

8 MR. GONZALEZ: That's not what it reads there,
9 Judge, but I will accept any corrections that you may want
10 to make on the order, Judge, but we just want the record to
11 be clear.

12 THE COURT: "Oh, witnesses who have testified and
13 who are to be used as rebuttal witnesses may sit in the
14 courtroom if they're going to be used as rebuttal."

15 MR. GONZALEZ: Right. It's my understanding that
16 they're not going to be used as rebuttal witnesses.

17 THE COURT: No, well, if they're going to be used,
18 then they may not sit.

19 MS. FURLONG: That's what I was trying to explain
20 to Mr. Gonzalez.

21 MR. GONZALEZ: Is that what it reads on there?

22 THE COURT: It states as it is now, "Witnesses
23 who have testified and who are going to be used as rebuttal
24 witnesses may sit in the courtroom."

25 MR. GONZALEZ: Right. But if you testify, please

1 number one, and prong number two you're going to be used
2 as a witness.

3 THE COURT: They should not sit in court.

4 MR. GONZALEZ: Is that what it says on there?

5 THE COURT: No, it doesn't say that. It should
6 say, may not --

7 MR. GONZALEZ: Oh, you're saying that the order's
8 wrong?

9 THE COURT: It should be, "may not", it's
10 discretionary.

11 MR. GONZALEZ: All right. Just to be clear in my
12 mind, you're saying that the order as written is wrong?

13 THE COURT: We should insert in there, "may not."

14 MR. GONZALEZ: Okay.

15 THE COURT: Just "not".

16 MR. GONZALEZ: All right.

17 THE COURT: But it's discretionary, anyway,
18 because it doesn't say, shall not.

19 MR. GONZALEZ: No.

20 THE COURT: So, it's still discretionary.

21 MR. GONZALEZ: Okay.

22 THE COURT: It all depends what they're going to
23 be a rebuttal witness for and so forth, but it should be
24 may not.

25 MR. GONZALEZ: Okay, Judge.

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THE COURT: All right.

Now, shall we call the -- the witness may be called again and we can proceed with cross-examination.

MR. GONZALEZ: Fine, Judge.

(Whereupon, Joseph Wilkerson enters.)

(Whereupon, witness resumes witness stand.)

THE COURT: All right, call the jury out, please.

1:45 p.m.

(Whereupon, the following takes place within the presence of the jury.)

THE COURT: All right. Good afternoon, ladies and gentlemen of the jury, good afternoon.

Sir, you're still under oath as you realize.

THE WITNESS: Yes.

THE COURT: Cross-examination, please.

MR. GONZALEZ: Yes, Judge, thank you.

CROSS-EXAMINATION BY MR. GONZALEZ:

Q Good afternoon, sir.

A How you doin'?

Q Mr. Wilkerson, what's your age?

A Twenty-three -- twenty-two.

Q Twenty-two years of age?

A Yes.

Q Back on September the 11th, 1989, did you wear your hair the way you have it now, sir?

1 A Yes.

2 Q And that would be, is it fair to describe in
3 a low-cropped manner?

4 A Yes.

5 Q Close to the skull?

6 A Yes.

7 Q Now, you told us that when you were stopped by
8 this person on September 11th, 1989, you were by Victor's
9 house?

10 A Yes.

11 Q When you say Victor's house, you mean Victor
12 Mott?

13 A Victor Mott, yes.

14 Q And would that be at 235 Goldsmith Street?

15 A Yes.

16 Q In Newark?

17 A Yes.

18 Q Do you recall around what time this happened?

19 In other words, when were you approached by this individual?

20 A Between 10:30 and 11:00.

21 Q Around 10:30, eleven o'clock at night?

22 A Yes.

23 Q Now, when you were -- strike that.

24 Were you with anybody else when you were approached
25 from behind that day? Were you with somebody else, was

1 A Friend of the family.

2 THE COURT: Keep your voice up, please, so
3 everyone can hear you.

4 A Friend of the family.

5 Q You are a friend of the family?

6 A Yes.

7 Q And for how long have you known the Mott family?

8 A Five years.

9 Q And for how long have you known Victor Mott,
10 specifically?

11 A Three and a half years.

12 Q And when you say you know Victor Mott's family,
13 does that mean his mother, his brother, his sister Ianthis
14 Mott and do you know Tykesha Mott, too?

15 A Yes.

16 Q All right. Do you know Richard Mott, too?

17 A Richard Mott?

18 Q Yes. Isn't Richard Mott the brother of Victor
19 Mott?

20 A Oh, yes, okay.

21 Q All right. And when you say you know the Mott
22 family, does that mean that you know them intimately? Do
23 you go in and out of their house?

24 A Yes.

25 Q And have you socialized with Mr. — with Victor

1 Mott?

2 A Yes.

3 Q Often?

4 A Yes.

5 Q You hung out with him all the time, correct?

6 A Every now and then.

7 Q What?

8 A Every now and then.

9 Q Would you consider Victor Mott a good friend of
10 yours?

11 A Yes.

12 Q Now, you indicated that this happened around
13 10:30, eleven o'clock when you were approached by this
14 person. When did you find out that Victor Mott had been --
15 had died?

16 A 1 a.m.

17 Q 1 a.m. that evening?

18 A 1 a.m. that night but it's that morning, though.

19 Q All right. The morning of September 11th, 1989 --

20 A Yes.

21 Q -- you found out?

22 A Yes.

23 Q And where were you when you found out about the
24 death of Victor Mott?

25 A Still on Goldsmith Avenue.

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ERASABLE
COTTON CONTENT

1 Q Were you sitting -- strike that.

2 When you say you were sitting on Goldsmith Avenue,
3 were you sitting at 235 Goldsmith?

4 A No, I was sitting on my car.

5 Q And who told you that Victor Mott died?

6 A Somebody had came around and told us, I don't remember
7 who it was.

8 Q And this was at 1 a.m., somebody told you that
9 Victor Mott had died?

10 A Yes.

11 Q Do you recall that that somebody was one of the
12 Mott family?

13 A No.

14 Q Do you recall if the individual who told you this
15 was a law enforcement officer; was he a cop?

16 A No.

17 Q Upon learning that Victor had died at 1 a.m. on
18 September 11th, 1989, did you go to the -- did you go to
19 speak to the Mott family?

20 A No, not that night, not that same night, no.

21 Q Not that same night, all right.

22 When did you go speak to the Mott family after
23 Victor's death?

24 A The following morning about -- the following morning
25 about ten o'clock.

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COTTON CONTENT

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1 Q When you say the following morning, you mean
2 the next day?

3 A Yes, after, after the night he got shot, the morning.

4 Q All right. So, it was on the 11th, on September
5 11th, that morning around ten o'clock are you saying?

6 A The night he got shot --

7 Q Right.

8 A -- the next morning.

9 Q Around what time in the morning did you go see
10 them?

11 A About ten o'clock.

12 Q All right. So, at ten o'clock, the morning that
13 Victor Mott got shot, you went and you spoke to the Mott
14 family, correct?

15 A Yes.

16 Q Now, do you recall the circumstances that led
17 you to go to the Mott family's house? In other words, did
18 somebody invite you there, you went there on your own or
19 you --

20 A I went there on my own.

21 Q And did you speak to people in the Mott family
22 when you went there at ten o'clock?

23 A Yes.

24 MS. FURLONG: Judge, I'm going to object at this
25 time on the basis of relevancy.

1 MR. GONZALEZ: Judge, this is cross-examination.

2 MS. FURLONG: It's beyond the scope of direct
3 examination and where it's actually leading to, whom spoke
4 to whom --

5 THE COURT: Well, of course, leading questions
6 are somewhat permitted on cross-examination, that's number
7 one. Number two, the relevancy, I really don't see at this
8 point except maybe some relevancy to the issue that's
9 involved here.

10 MR. GONZALEZ: Judge, it's relevant --

11 THE COURT: Not only is it as to credibility --

12 MR. GONZALEZ: Right.

13 THE COURT: -- but it's as to the issue that's
14 here and I'll allow it for that reason for a while yet and
15 then we'll see where we go.

16 MR. GONZALEZ: Well, Judge, it's --

17 THE COURT: I say, for a while yet we'll see where
18 we go.

19 MR. GONZALEZ: Okay, fine.

20 THE COURT: I don't know yet what other questions
21 you have in mind.

22 BY MR. GONZALEZ:

23 Q When you spoke to the Mott family that morning,
24 10 a.m. that morning, did you tell them what you had seen?

25 A What you mean, what you seen?

1 Q Well, when you spoke -- I'm sorry.

2 When you spoke to the Mott family, did you tell
3 them about you seeing this person who had a gun who was
4 looking for Victor Mott?

5 A No.

6 Q You didn't say anything to the Mott family?

7 A No.

8 Q When you saw this individual who tapped you in
9 the back and said, Vic, I finally got you and this
10 individual showed you a gun, did you go and tell that to
11 the Mott family?

12 A No.

13 Q When you saw this individual that was looking
14 for Victor Mott with a gun at 10:30, 11 p.m. that evening,
15 did you go to the police?

16 A No.

17 Q Did you tell the police about what you had seen
18 about this guy having a gun, did you tell the police this?
19 On the day that you spoke to the cop, did you tell the
20 police anything about this?

21 A Yes, when I went Monday to the police station.

22 Q When you went Monday was the first time you told
23 anybody about this, correct?

24 A Yes.

25 Q And that was after you had spoken to the Mott

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family?

A Yes.

Q Now, Mr. Wilkerson, I show you what has been marked Exhibit S-6 for Identification. Is this your statement?

A Yes.

Q And you signed it at the bottom?

A Yes.

Q And it's a two-page statement, correct?

A Yes.

Q And you read the statement before you signed it, Mr. Wilkerson?

A Yes.

Q All right.

Now, do you recall on what day you gave this statement to Officer William Thomas of the Newark Police Department?

A The date?

Q Yeah.

A It was a Monday but I don't remember what date it was.

Q Well --

A Well, it say September 12th.

THE COURT: Keep your voice up, please.

A It say, September 12th, 1968, at four o'clock.

Q At four o'clock on September 12th, 1968 --

1 A Yes.

2 Q -- you gave the statement?

3 A Yes.

4 Q Okay.

5 Now, you heard about the death of Victor Mott
6 at 1 a.m. on September 11th, correct?

7 A Yes.

8 Q Why, Mr. Wilkerson, didn't you go to the police
9 department before 4 p.m. on September 12th to tell them
10 of what you had seen?

11 A Because I work in the morning.

12 Q You had work -- you were working at the time?

13 A Yes.

14 Q And you didn't have the time to go to the police
15 department?

16 A No, I didn't.

17 MS. FURLONG: Judge, I object to the tenor of
18 the question.

19 THE COURT: You didn't have time to go there,
20 you went to work?

21 THE WITNESS: Yes.

22 THE COURT: Did you go to the police station?

23 THE WITNESS: After I got out of work.

24 THE COURT: After.

25 Next question.

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1 Q Now, you indicated that you didn't know
2 Mr. Moultrie at all, correct, you never seen him in the
3 past?

4 A No.

5 Q That day was the first time?

6 A Yes.

7 Q Now, you told us that Moultrie, when he approached
8 you, you had your back to him, correct?

9 A Yes.

10 Q He approached from behind and said to you, Vic,
11 I finally got you?

12 A Yes.

13 Q Now, this is an individual -- strike that.

14 And after telling you that, he told you that he
15 was looking for Victor Mott, correct?

16 A Yes.

17 Q And that Victor Mott had taken a chain from him?

18 A Yes.

19 Q And that he was after Victor Mott?

20 A Yes.

21 Q Now, this is an individual that doesn't know you
22 from Adam, correct?

23 A Yes.

24 Q Never seen you before?

25 A Never seen me.

1 Q And he's telling you these things?

2 A Yes.

3 Q In the middle of Goldsmith Avenue?

4 A Yes.

5 Q Now, Mr. Moultrie, is it fair to say, had no
6 way of knowing that you knew Mr. Victor Mott, did he?

7 A No.

8 Q You told us that Mr. Moultrie showed you a gun?

9 A It was on the side of his vest, on the side.

10 Q Was it in the side of his vest or inside the
11 pants?

12 A Inside on the side on the pants.

13 Q I didn't hear you.

14 A Inside on the pants side.

15 Q So, the gun was sticking --

16 A Down.

17 Q Down?

18 A On the side.

19 Q Down?

20 A Yes.

21 Q All right. You indicated earlier that there was
22 no lighting in that area, correct?

23 A No.

24 Q And you saw this gun sticking from inside -- from
25 outside the waist of his pants, is that what you saw?

1 A Yes.

2 Q Did you actually see the gun or did you see
3 something sticking out?

4 A I seen something sticking out on the side.

5 Q All right. So, you saw something sticking out,
6 you're not sure that it was a gun, correct?

7 A No, it was like a black handle or something.

8 Q It was a black handle?

9 Whatever he had there had a black handle, correct?

10 A Yeah.

11 Q And I think you indicated that you weren't really
12 sure it was a gun?

13 A No.

14 MS. FURLONG: Objection, Judge, I don't think
15 that was the witness' testimony.

16 MR. GONZALEZ: Let him answer.

17 THE COURT: No, no, whatever the witness' testimony
18 was, as you well know, that's the jury's province and let
19 me indicate that to you now. It's your recall as to what
20 the testimony was, Ms. Furlong may think he may have said
21 this or may have said that; Mr. Gonzalez may think the
22 same thing, even I but unless it coincides with your own
23 recollection, ladies and gentlemen, then of course, why,
24 you can accept that. If it does not, you have a different
25 recollection, your recollection is the controlling

1 recollection regardless of who may say I think that so-and-so
2 said that or this. Is that clear?

3 THE JURY: Yes.

4 THE COURT: All right.

5 MR. GONZALEZ: Okay.

6 THE COURT: I'll allow the question.

7 MR. GONZALEZ: Thank you, Judge.

8 BY MR. GONZALEZ:

9 Q So, whatever you saw sticking from his pants
10 had a black handle?

11 A Yes.

12 Q And you're sure of that?

13 A Sure.

14 Q So, Mr. Wilkerson, this could not have been what
15 you saw sticking out of his -- sticking out of his pants.
16 Is that correct? Does this have a white handle, pearl?

17 A Yeah, white handle on it.

18 Q Sorry?

19 THE COURT: You have to keep your voice up,
20 please, don't let it fade away.

21 A That has a white handle on it.

22 Q This has a white handle on it?

23 A Yes.

24 Q What you saw on that day had a what, a black
25 handle on it?

1 A Yes.

2 Q And it was dark at the time, correct?

3 A Well, you sayin' like dark, it ain't really dark, it's
4 light on Goldsmith but it's not on the corner.

5 Q Didn't you just say before that there was no
6 light?

7 A Not on the corner, it's on another corner where
8 there's still light from the whole -- you could see from
9 both corners.

10 Q Oh, so, now, you're saying that you're able --
11 there's light enough that you're able to see?

12 A Yes.

13 Q But before there was no light?

14 A You asked, was there a light on the corner. Not on
15 that corner where we was standin' at.

16 Q All right. So, the light that helped you see
17 what you saw was across the street. Is that what you're
18 saying?

19 A Yes.

20 Q All right. And you were able to see that what
21 he had was a black handle, whatever he had but it had a
22 black handle?

23 A Yes.

24 Q And this has a white handle. Is that correct?

25 A Yes.

1 Q So, it could not have been this, by the process
2 of elimination?

3 A Yes.

4 MR. GONZALEZ: No further questions, thank you.

5 THE COURT: Redirect?

6 MS. FURLONG: Thank you, your Honor.

7 REDIRECT EXAMINATION BY MS. FURLONG:

8 Q Now, Mr. Wilkerson, in reference to what's been
9 marked as State's Exhibit S-19, could you position this on
10 your person how you observed Mr. Moultrie with the item under
11 his vest for the jury?

12 (Whereupon, witness indicates.)

13 Q And is that the position that you saw --

14 A Yes.

15 Q -- the item on him?

16 Do you remember --

17 THE COURT: Can the jury see that?

18 THE JURY: Yes.

19 THE COURT: Mr. Gonzalez, can you see that?

20 MR. GONZALEZ: Yes, Judge.

21 THE COURT: May I see that?

22 (Whereupon, witness faces the Court.)

23 THE COURT: All right. In other words, for the
24 record, what it is, the way you lifted up your shirt now
25 but that the gun was in the belt part or waistband of the

1 individual?

2 THE WITNESS: Waist part.

3 THE COURT: And what was sticking up was the
4 handle?

5 THE WITNESS: Yeah.

6 THE COURT: All right.

7 MS. FURLONG: Now, leave that right there.

8 THE COURT: That gun was checked, wasn't it,
9 gentlemen?

10 THE COURT OFFICER: Yes.

11 MS. FURLONG: Yes, Judge.

12 MR. GONZALEZ: Yes, Judge, I believe so.

13 BY MS. FURLONG:

14 Q Could you please slip this on, Mr. Wilkerson?

15 (Whereupon, witness puts on dungaree vest.)

16 Q Now, I'm going to ask you, was the Defendant,
17 Mr. Moultrie's shirt tucked in? Not like yours, because
18 if it was, I want you to put your shirt however it was on
19 that evening, Mr. Moultrie's shirt?

20 A I don't remember that.

21 Q Now, you said that you saw the vest go back, and
22 you saw the gun. Did you see all of the gun?

23 A No, just the part like this, the handle.

24 Q Okay. Is it possible when you saw it, that you
25 only observed this part of the gun?

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MR. GONZALEZ: Judge, objection, leading.

THE COURT: Sustained. Is it possible, sustained.

Q How much of the gun did you actually see?

A This, like the piece right here.

THE COURT: Turn around, would you please, so I could see?

(Whereupon, witness faces the Court.)

THE COURT: The piece right here and what you have out there is the handle and part of the --

THE WITNESS: Back part.

THE COURT: Well, the barrel of the gun, I suppose, okay.

And incidentally, what you put on him was the blue dungaree jacket?

MS. FURLONG: Yes, for the record, Judge.

THE COURT: And what was that marked as?

MS. FURLONG: It's marked as State's Exhibit, I believe, 21B.

THE COURT: All right.

BY MS. FURLONG:

Q You can take off the vest, please.

(Whereupon, witness removes dungaree vest and gun.)

Q Now, Defense Counsel asked you about conversations with the Mott family. Did the Mott family, and I'm including

1 any member, the mother of Victor Mott, Tykesha Mott,
2 Ianthia Mott, Richard Mott, Shieem Mott, did any of the
3 Mott family members tell you to give a statement indicating
4 you saw a gun on Mr. Moultrie's person that evening?

5 A. No.

6 Q. Did they tell you to come in here in a court and
7 to indicate that Mr. Moultrie was wearing this blue vest?

8 A. No, he had the vest on the night I seen him.

9 Q. Did anybody in the Mott family tell you anything
10 about Mr. Moultrie prior to you giving a statement to the
11 detective?

12 A. No.

13 Q. And you're sure, prior to that evening, that you
14 never saw Mr. Moultrie before?

15 A. No.

16 Q. And you're positive that the photograph that you
17 picked out from the array of photographs was, in fact, the
18 person that you saw that evening on Goldsmith Avenue?

19 A. Yes.

20 Q. And while you were selecting that photograph,
21 were any suggestions made for you to select that photograph
22 by any of the officers?

23 A. No.

24 Q. Now, I'm referring back to your statement,
25 Mr. Wilkerson, that you gave to the detective on September

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1 12th at four o'clock, it's been marked as State's Exhibit
2 S-6. Do you remember when --

3 Before you look at this, do you remember Detective
4 Thomas asking you, "Are you positive that you saw a gun in
5 the waist of the man you saw?" Do you remember what your
6 response was?

7 A Yes, I'm not sure.

8 Q Okay. I ask you to refer to the statement and
9 I'm referring to the second page of what's been marked as
10 State's Exhibit S-6, question No. 13 by Detective Thomas
11 and I'm asking you to read your response to yourself to
12 the question, "Are you positive that you saw a gun in the
13 waist of the man you saw?" And I want you to read your
14 answer to yourself and tell me if that refreshes your
15 memory?

16 (Whereupon, witness reads statement.)

17 A Yes.

18 Q And I'm going to ask you the question again, are
19 you positive that on that night what you saw in the
20 waistband of Mr. Moultrie was, in fact, a gun?

21 A Yes.

22 Q And have you, at any other time -- at any time,
23 had any run-in with any of Mr. Moultrie's family members
24 or have you had a fight, a confrontation with Mr. Moultrie?

25 A No.

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1 MS. FURLONG: No further questions, your Honor.

2 THE COURT: Anything further?

3 MR. GONZALEZ: Nothing further.

4 THE COURT: All right, you may step down.

5 (Whereupon, Joseph Wilkerson exits.)

6 THE COURT: All right, Ms. Furlong, anybody else?

7 MS. FURLONG: Your Honor, at this time, the State
8 calls Ms. Harrell to the stand.

9 THE COURT: All right.

10 MS. FURLONG: Pearl Harrell.

11 (Whereupon, witness enters.)

12 P E A R L H A R R E L L, sworn.

13 THE COURT: Please, be seated.

14 Good afternoon.

15 Direct examination, please.

16 MS. FURLONG: Thank you, your Honor.

17 DIRECT EXAMINATION BY MS. FURLONG:

18 Q Good afternoon, Ms. Harrell. I'm going to ask
19 you to keep your voice up so that everyone in the court can
20 hear your responses.

21 Now, could you please tell the Court and jury
22 your relationship to Victor Mott?

23 A He's my brother-in-law.

24 Q And --

25 THE COURT: He's your what?

1 THE WITNESS: He was my brother-in-law.

2 Q Brother-in-law, okay.

3 And how is he your brother-in-law, can you give
4 me the --

5 A My sister married his brother.

6 Q Now, on September 10th, 1989, did you have
7 occasion to see Victor Mott on that evening?

8 A Yes.

9 Q And where did you see Victor Mott, where were
10 you at the time that you saw him?

11 A On Lyons Avenue.

12 Q And could you approximate for the Court and the
13 jury about what time that was?

14 A It was about somethin' to ten.

15 Q And where was Victor at the time that you saw
16 him?

17 A When I saw him, he was standing at the car talkin'
18 to this guy.

19 Q And what observations did you make about him,
20 at that time?

21 A Because the guy was makin' him get in a car.

22 Q When you say, the guy was making him get in the
23 car, do you see the gentleman that was making him get in
24 the car in the courtroom?

25 A Yes.

1 Q Could you point him out for the record, please?

2 A Yeah, right over there.

3 Q Can you describe what he's wearing for the record?

4 A That night?

5 Q No, no, not that night.

6 A Oh, he's wearing a black tie with a black and white
7 shirt and black pants.

8 THE COURT: All right. For the record,

9 Mr. Gonzalez, it's Mr. Moultrie, thank you.

10 MR. GONZALEZ: Yes, Judge, no objection.

11 THE COURT: All right.

12 Q Now, this gentleman that you saw, I believe you
13 explained as forced Victor to get into the car, can you
14 describe what you saw actually, saw yourself?

15 A Well, Victor was comin' from around the corner with
16 this guy and then the guy made Victor get in the car.
17 He was pushin' Victor in the car. Victor went to get in
18 the front but he told -- made him get in the back.

19 Q Could you hear any conversation between Derek
20 Moultrie and Victor, at that time?

21 A No, not really, but Victor was tryin' to explain
22 something to him.

23 Q Did you observe any hand gestures, did you
24 observe any other physical movements by either Mr. Moultrie
25 or Victor that night?

1 A Just by him shovin' Victor, you know, makin' him get
2 in the back. He was shovin' Victor into the back of the car.

3 Q And at that point in time, did you make any
4 observations about the vehicle?

5 A Yes.

6 Q And what observations did you make about the
7 vehicle at that time?

8 A I saw it was a brown Oldsmobile and we got the license
9 plate number.

10 Q Okay. How did you know it was a brown Oldsmobile?

11 A Because my father has an Oldsmobile similar to that.

12 Q Now, you said you got the license plate number.
13 Was that number communicated to anyone later on in the
14 evening?

15 A Yes, it was communicated back to the Oldsmobile.

16 Q Okay. What I mean by communicated, did you tell
17 anybody that you had gotten the --

18 A Yeah.

19 Q -- license plate number?

20 A Yes, me and Ianthia had got the license plate number
21 'cause she had asked me to help her remember the license
22 plate number.

23 MR. GONZALES: Judge, objection, hearsay.

24 THE COURT: Well, whether she asked her or not,
25 who was present with you at the time?

1 THE WITNESS: Ianthia,

2 THE COURT: Who took the number?

3 THE WITNESS: Ianthia wrote the number down on
4 a Pick-It ticket.

5 THE COURT: She wrote it down?

6 THE WITNESS: Yes.

7 THE COURT: Who gave it to her?

8 THE WITNESS: Well, we saw it and got it off of
9 the car.

10 THE COURT: No, no, what did you see?

11 THE WITNESS: I saw the license plate number.

12 THE COURT: All right, next question, please.

13 MS. FURLONG: Thank you, Judge.

14 BY MS. FURLONG:

15 Q Now, do you remember at some point in time being
16 informed that Victor Mott was killed?

17 A Yes.

18 Q And do you remember speaking to the officers
19 about what you've just told us today in court?

20 A Yes.

21 Q And do you remember giving a statement?

22 A Yes.

23 Q Do you remember the officers asking you if you
24 could physically describe this individual you saw pushing
25 Victor into the car?

1 A Yes.

2 Q And do you remember what the description was?

3 A Yes.

4 Q Okay. Can you please tell the Court and the
5 jury the description that you gave the police from the
6 best of your recollection?

7 A It was a brown complexion with curly hair. He had
8 a moustache and beard and he was, you know, heavysset wearin'
9 some blue jeans. They was cut-up jeans with a tank top
10 shirt, iike T-shirt top.

11 Q Was there anything else you remember about him
12 at that point in time?

13 A No.

14 Q Did you see whether or not this individual was
15 driving the car or was a passenger in the car?

16 A He was a passenger.

17 Q And were you able to see who was driving the
18 vehicle that night?

19 A No.

20 Q Could you determine the sex of the person?

21 A It was a lady.

22 Q And do you remember the police officers asking
23 you whether or not you would be able to identify the
24 individual who was pushing Victor into the car?

25 A Yes.

1 Q And do you remember what your response was?

2 A Yes.

3 Q And do you remember being asked if you could
4 identify this female? Do you remember what your response
5 was?

6 A Yes.

7 Q And what was your response?

8 A No.

9 Q Thank you.

10 Now, I'm going to show you what has been marked
11 for identification as State's Exhibit 2A through F and also,
12 2G and I'm going to ask you to take a moment to look at these
13 photographs and tell me if you're able to identify any of
14 them and if they've ever been shown to you before?

15 (Whereupon, witness reviews photographs.)

16 Q Ms. Harrell, were you shown those photographs
17 by a Detective Ferrer?

18 A Yes.

19 Q And were you able to identify the individual who
20 you saw pushing Victor into the car?

21 A Yes.

22 Q Out of that group of photographs?

23 A Yes.

24 Q And at the time that you looked at those
25 photographs, did you indicate to Investigator Ferrer that

1 you could identify one of those photographs?

2 A Yes.

3 Q And from your memory, do you remember Investigator
4 Ferrer asking you to do something to the photograph to
5 indicate that that was, in fact, the picture you had
6 selected?

7 A Yes.

8 Q And what did Investigator Ferrer ask you to do?

9 A Take this number out of the pictures --

10 Q And did he ask you to do anything to the back?

11 A -- and sign it, sign my name on the back of it.

12 Q I'm going to ask you to turn over the picture --
13 what's Exhibit S-G and ask you, does it bear your signature?

14 A Yes, it does.

15 Q And is there a date on the back of that
16 photograph?

17 A Yes.

18 Q And what is the date on the photograph?

19 A 9-11-89.

20 Q And what time is on the back of the photograph?

21 A 10:01.

22 Q Thank you. And this is, in fact, the photograph
23 you picked out of the --

24 A Yes.

25 Q -- other photos?

1 A That's the one.

2 Q And you're sure that this is the individual that
3 you saw that evening?

4 A Yes.

5 Q Now, after you gave a statement which has been
6 marked as State's Exhibit S-1, I'm going to show that to
7 you for a minute and ask you if you can identify this
8 exhibit; is this your statement?

9 A Yes, it is.

10 Q And is your signature on both pages of the
11 statement?

12 A Yes.

13 Q And when is the statement dated?

14 A 9-11-89.

15 Q And the statement was started at what time?

16 A 9:02.

17 THE COURT: Are you looking at the statement now
18 or --

19 MS. FURLONG: Yes.

20 THE COURT: You're not testifying from your own
21 memory, are you?

22 THE WITNESS: No.

23 MS. FURLONG: No, Judge, I'm asking her to identify
24 this document.

25 THE COURT: Well --

1 Q All right.

2 Now --

3 THE COURT: Looking at it to refresh her memory
4 is one thing if she's testifying, of course, it's a
5 statement and refreshing the memory is one thing but not
6 testifying from it.

7 Q Ms. Harrell, there's no doubt in your mind that
8 this is your statement?

9 A It is my statement.

10 Q At any time since September 10th of 1989, did
11 anyone ever tell you to come here in court and to give
12 testimony that is not truthful?

13 A No.

14 THE COURT: That is not true?

15 MR. GONZALEZ: Judge, objection.

16 THE COURT: That's a question for -- jury, that's
17 what they're here for, objection sustained.

18 MR. GONZALEZ: Thank you.

19 Q Has anyone told you to come into court and say
20 anything contrary to what you observed that night?

21 THE COURT: Let me ask you this. What's the
22 probative value of that question?

23 MS. FURLONG: Judge, the probative value is that
24 Defense Counsel has been, with each witness, indicating
25 that --

1 THE COURT: Not with this witness, wait until --
2 if anything, on cross, objection sustained.

3 MR. GONZALEZ: Thank you, Judge.

4 THE COURT: That's why we have a jury, they're
5 the searchers for truth.

6 BY MS. FURLONG:

7 Q Ms. Harrell, the information contained in your
8 statement -- is that statement what you actually observed
9 that evening of September 10th, 1989?

10 A Yes.

11 THE COURT: The document, that's not in evidence,
12 objection sustained.

13 MS. FURLONG: Judge, I didn't -- I don't understand
14 the objection, Judge.

15 THE COURT: You're asking her about a document
16 that's not here.

17 MS. FURLONG: Judge, it's --

18 THE COURT: She's testifying in front of this
19 jury, objection sustained, next question.

20 MR. GONZALEZ: Thank you, Judge.

21 MS. FURLONG: Judge, I have no further questions.

22 THE COURT: Thank you.

23 Cross-examination?

24 MR. GONZALEZ: Yes, Judge, thank you.

25 CROSS-EXAMINATION BY MR. GONZALEZ:

1 Q Ms. Harrell, good afternoon.

2 You told us that you're related to the decedent,
3 correct, Mr. Mott?

4 A Yes.

5 Q And he's your brother-in-law?

6 A Yes.

7 Q And you know the Mott family well?

8 A Yes.

9 Q And you know Mrs. Mott, the mother of the decedent,
10 correct?

11 A Yes.

12 Q And you know Ianthia Mott?

13 A Yes.

14 Q And Tykesha Mott?

15 A Yes.

16 Q And Richard Mott?

17 A Yes.

18 Q And for how long have you known or did you know
19 Victor Mott?

20 A It's a long time.

21 Q Now, on the day when you saw Mr. Moultrie
22 allegedly pushing Victor Mott in the car, were you with
23 Ianthia Mott?

24 A Yes.

25 Q All right. And isn't it a fact that you were

1 with Ms. Mott sitting down on Lyons Avenue?

2 A Yes.

3 Q And isn't it a fact that you were also having a
4 few beers, drinking at the time?

5 A Yes.

6 Q You told us that you saw Mr. Moultrie push
7 Mr. Mott into the car?

8 A Yes.

9 Q Now, before -- strike that.

10 I think you indicated that you saw them walking
11 out from the back?

12 A From around the corner.

13 Q From around the corner?

14 A Yeah.

15 Q Now, when they were walking from around the
16 corner, was Mr. Moultrie pushing Victor Mott at all?

17 A They was comin' around there together.

18 Q They were just walking though, correct?

19 A Yeah, but when Victor got to the car, that's when he
20 tried to -- he made him get in the back.

21 Q All right.

22 Now, before that, did you see Mr. Moultrie as
23 they were walking, pushing Mr. Mott or grab Mr. Mott at all?

24 A When he got to the car he grabbed him.

25 Q No, as --

1 A As they was walkin', no.

2 Q Now, the only time, according to -- is it your
3 testimony that you saw a pushing and grabbing when Mr. Mott
4 and Mr. Moultrie got to the car?

5 A Yes.

6 Q Correct?

7 Now, when you made these observations, Ianthia
8 Mott was right there with you?

9 A Yes.

10 Q All right. Was there anything in the way of
11 Ianthia Mott?

12 MS. FURLONG: Objection, your Honor.

13 MR. GONZALEZ: Judge --

14 THE COURT: Let him finish. Was there anything
15 in the way?

16 Q Between Ms. Mott and where Mr. Moultrie and
17 Victor Mott were standing that would get in her way?

18 THE COURT: Don't answer.

19 Yes, what's the objection?

20 MS. FURLONG: Objection, your Honor, because it
21 goes to what Ms. Mott's senses were and what she was able
22 to see.

23 THE COURT: Well --

24 MS. FURLONG: She testified already, Mr. Gonzalez
25 could have asked her that question.

1 THE COURT: Was there anything in the way as
2 far as this witness is concerned?

3 MR. GONZALEZ: Correct, Judge.

4 THE COURT: Yes, as to anybody else, objection
5 sustained.

6 MR. GONZALEZ: All right.

7 BY MR. GONZALEZ:

8 Q In other words, Ms. Mott, Ianthia Mott, was right
9 there with you?

10 A Yes.

11 Q And she was just as close to the car as you were?

12 A Yes.

13 Q Correct?

14 But you saw pushing and grabbing of Mr. Mott
15 into the car?

16 A Yeah.

17 Q All right.

18 Now, I think you told us that you heard Mr. Moultrie
19 tell Mr. Mott to get in the back seat?

20 A Yes.

21 Q Now, you could hear that, correct?

22 A Yes.

23 Q All right.

24 Now, did you see a gun at all?

25 A No.

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1 Q No gun?

2 A No.

3 MR. GONZALEZ: No further questions, thank you.

4 THE COURT: Redirect?

5 MS. FURLONG: No questions, your Honor.

6 THE COURT: All right, you may step down.

7 (Whereupon, Pearl Harrell exits.)

8 THE COURT: Do you have another witness?

9 MS. FURLONG: Your Honor, my next witness, as
10 you're aware, is Detective Thomas who's in Judge Perretti's
11 court.

12 THE COURT: Give him a call, let's find out if
13 he's available.

14 MS. FURLONG: Thank you, your Honor.

15 (Pause)

16 MS. FURLONG: Your Honor, it's my understanding
17 he's just finishing his testimony and he'll be on his way
18 down.

19 THE COURT: All right. Why don't we send the
20 jury in for about five minutes or so into the jury room.
21 If it will be any longer, I'll call you out, ladies and
22 gentlemen.

23 Do not discuss the case, as you well know, keep
24 an open mind, the matter is not concluded, thank you.

25 (Whereupon, jury is excused.)

1 THE COURT: All right. I will make a call to
2 see how long they will be so keep everyone here.

3 (Whereupon, Court in short recess.)

4 THE COURT: All right, let's go.

5 THE COURT OFFICER: Bring them out, Judge?

6 THE COURT: Well, Detective Thomas I think was
7 up here.

8 MS. FURLONG: He can resume, Judge.

9 THE COURT: I think he was on the witness chair,
10 let him resume there and then we can bring the jury out.

11 (Whereupon, Detective William Thomas resumes
12 the witness stand.)

13 2:35 p.m.

14 (Whereupon, the following takes place within the
15 presence of the jury.)

16 THE COURT: All right. Ladies and gentlemen, we
17 have our 14 jurors, thank you.

18 Detective Thomas, as you realize, you're still
19 under oath from yesterday.

20 THE WITNESS: Yes, sir.

21 THE COURT: All right, would you resume your
22 direct examination?

23 MS. FURLONG: Thank you, your Honor.

24 CONTINUED DIRECT EXAMINATION BY MS. FURLONG:

25 Q Now, Detective, I'm going to show you a picture

1 of a group of photographs I've already shown you of the
2 crime scene and I'm going to ask you to look at these that
3 have been marked as State's Exhibit S-33A through H.

4 (Whereupon, witness reviews photographs.)

5 Q Now, Detective, I'm going to ask you to describe
6 in detail to the Court and the jury the physical surrounding
7 of where the body was found on September 10th, 1989?

8 MR. GONZALEZ: Judge, objection.

9 THE COURT: I didn't hear the question, I'm sorry.
10 Read that question back, please.

11 Q Detective, I'm going to ask you to physically
12 describe the area of where the body was found and the
13 surroundings?

14 THE COURT: Objection?

15 MR. GONZALEZ: It was done yesterday.

16 THE COURT: I think it was done, repetitive.

17 If you recall, he has already testified somewhat
18 yesterday on direct.

19 MS. FURLONG: Well, Judge, I'm leading to a
20 question because I'm going to follow-up to kind of have
21 some continuity.

22 THE COURT: Well, ask that first and let's see,
23 but objection sustained.

24 BY MS. FURLONG:

25 Q Detective, in the area where the body was found,

1 did you retrieve any evidence?

2 A Yes.

3 Q And could you please tell the Court and jury
4 what evidence you retrieved at that location?

5 A Two spent shell casings.

6 Q And at the time that you retrieved the spent
7 shell casings, in conjunction with the exhibits that I
8 just showed you, the photographs, are those shell casings
9 depicted in those photographs that I just showed you?

10 A Yes.

11 Q Could you please look through that grouping of
12 photographs and select the photograph that depicts the
13 shell casings?

14 A 33H, 33E -- F.

15 Q Now, 33H and 33F, the pictures of the shell
16 casings in those photographs, are those shell casings in
17 the location of where they were when you arrived on the
18 scene?

19 A Yes.

20 Q Were they moved at any time to your knowledge?

21 A No.

22 Q Were they removed once the photographs were
23 taken?

24 A Yes, they were.

25 Q And what did you do with the shell casings once

1 you removed them from the scene?

2 A They were marked and put into evidence along with the
3 other items.

4 Q Detective, I'm now going to show you what's been
5 marked as State's Exhibit S-20 for Identification and can
6 you tell me if you can identify these two objects and what
7 they are?

8 A These are the two shell casings.

9 Q And were they submitted by you into evidence?

10 A Yes.

11 Q In addition to the shell casings that you found,
12 did you find anything else in that area where the body was
13 located?

14 A Just the victim's hat.

15 Q And was that item also put into evidence?

16 A Yes.

17 Q I'm now showing you what's been marked as State's
18 Exhibit S-10 for Identification. Can you tell me what this
19 is and how you found it?

20 A It's the victim's hat, it was laying on the ground
21 near the body.

22 Q Now, again, I'm going to ask you to look at
23 these photographs and indicate whether or not the hat is
24 portrayed in any of those photographs and if so, which
25 ones?

1 (Whereupon, witness reviews photographs.)

2 A It's portrayed in two photographs, S-33H and 33G.

3 Q Thank you, Detective.

4 Now, after the evidence was collected from that
5 location, what was the next thing you did, yourself?

6 A We removed the victim's wallet for identification
7 purposes and went to notify the family.

8 Q Detective, I'm now showing you what's been marked
9 as State's Exhibit S-14 for Identification. I'm going to
10 ask you to open it and indicate whether or not you can
11 identify that exhibit?

12 (Whereupon, witness reviews exhibit.)

13 A The victim's wallet.

14 Q And did you also submit that on your property in
15 evidence sheet?

16 A Yes.

17 Q Now, once you learned the identity of the victim,
18 what was the next thing that you did?

19 A We went to the address given on his driver's license.

20 Q And once you obtained the address, what did you
21 do with the address?

22 A We went to that location.

23 Q And when you arrived at that location, to whom
24 did you speak with?

25 A The brother, a niece and a grandmother, I believe.

1 Q Now, Detective, did you also log in, physical
2 pieces of clothing that were the victim's?

3 A Yes.

4 Q Now, I'm now showing you what's been marked as
5 State's Exhibit S-9. I'm going to ask you to open it and
6 tell me if you can identify what's contained in this bag?

7 (Whereupon, witness reviews exhibit.)

8 A It's the pants of the victim.

9 Q And was that logged and tagged by yourself for
10 identification on your property in evidence sheet?

11 A Yes, it was.

12 Q Now, in addition to that, I'm showing you what's
13 been marked as State's Exhibit S-13 and I'm asking you if
14 you can identify that for the record?

15 A The plaid shirt of the victim.

16 Q Now, Detective, I'm going to ask you to -- from
17 your knowledge, Detective, was there any evidence of bullet
18 penetrations on the victim's shirt?

19 MR. GONZALEZ: Judge, my only objection is the
20 characterization of evidence and the word "evidence." I
21 think that's something that has to be determined by a jury.
22 My objection is to the nature --

23 THE COURT: Sustained. The items marked here are
24 only exhibits, they're not in evidence as yet.

25 MS. FURLONG: All right.

1 THE COURT: They may not be, they may be, that's --
2 recall when I referred that to you, ladies and gentlemen?

3 THE JURY: Yes.

4 THE COURT: You'll hear about things that may be
5 marked but you may not have them in evidence because they
6 served its purpose, they were exhibits. That's what we
7 have; so, at this point, they're only exhibits so it's not
8 in evidence. Is that clear?

9 THE JURY: Yes.

10 THE COURT: Thank you.

11 BY MS. FURLONG:

12 Q Detective, did you make any physical observations
13 of the clothing of the victim at the time you arrived on
14 the location?

15 A Yes.

16 Q And what observations did you make about the
17 victim's clothing?

18 A They appeared to have holes in the fronts of them.

19 Q Did you make any other observations about his
20 clothing?

21 A Bloody.

22 Q And did you make any observations of where the
23 blood was on the clothing?

24 A Front. When they turned him, he had blood on the rear.

25 Q And how would you characterize the amount of

1 blood when you arrived on the scene, what you saw?

2 A There was --

3 Q From your training and experience?

4 A There was quite a bit of blood.

5 Q Now, did there come a point in time where the
6 victim was removed from the scene?

7 A Yes.

8 Q And where was the victim taken?

9 A Taken to the County Morgue.

10 Q And did you go to the morgue at that point in
11 time?

12 A No.

13 Q After you went to the location, I believe the
14 other day we ran through the testimony of -- up to the
15 point where you were already in Plainfield.

16 A Yes.

17 Q Am I correct?

18 At the time that you arrived in Plainfield, did
19 you at any time -- what did you do when you first arrived
20 in Plainfield as far as going to Kathy Woods' home?

21 A I went to 1433 Willever, that's the address we were
22 given and I knocked on that door.

23 Q And what happened when you knocked on that door?

24 A Kathy Woods' mother answered the door, told us it was
25 a duplex and she lived in the apartment next door.

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1 Q And did you, at any time, indicate to Kathy
2 Woods' mother why you were there?

3 A We told her we wanted to talk to her.

4 Q Did you identify yourselves as police officers?

5 A Yes.

6 Q And did Ms. Woods' mother accompany you next
7 door?

8 A Yes, she went to the back door and knocked on the
9 back door of the location.

10 Q And when you -- did you make any announcement at
11 the time that you were at Ms. Woods' door?

12 A Well, she was talkin' to her daughter. Evidently,
13 the daughter was on the second floor and she was telling
14 her the police wanted to talk to her.

15 MR. GONZALEZ: Strike that.

16 THE COURT: Yes?

17 MR. GONZALEZ: Judge, nothing, Judge.

18 Q And how long would you approximate did it take
19 for Ms. Woods to actually come to the door from the time
20 that her mother notified her that you were there?

21 A Before she knocked on the door, she called next door
22 and told her we were there and when she answered the phone,
23 it took maybe ten minutes for her to open the door.

24 Q And do you remember or did you make any
25 observations of Ms. Woods at the time that she opened the

MEMORANDUM
WRASABLE

-COTTON CONTENT-

1 door, how she looked, what she was wearing?

2 A Yes.

3 Q And what were those observations, Detective?

4 A She was in night clothes.

5 Q And how about her emotional state, did you make
6 any observations about that?

7 A Well, she acted a little angry as if we were disturbing
8 her for something.

9 Q Did you make any other observations?

10 A Not really. At that time, no.

11 Q Now, if you can remember, what was the first
12 thing you said to Ms. Woods at the time that you spoke --
13 the initial time you spoke to her? Did you explain to her
14 why you were there?

15 A I told her we were police officers, that we were
16 looking for Derek Moultrie.

17 Q And did you indicate to her why?

18 A I don't know if we told her at that point, but when
19 she gave us an answer we told her what the situation was
20 and why we were looking for him and that her car that was
21 parked in the driveway had been identified.

22 Q And at what point in time did you find out that
23 Derek Moultrie was, in fact, at that residence?

24 A After she kept telling us that she hadn't seen him.
25 She said that she had seen him earlier in the night and she

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-GOTTEN CONTENT-

1 didn't know where he was at. We told her she would be
2 taken to police headquarters and that her car would be
3 towed and when she found this to be a fact, she told us
4 that he was hiding in the ceiling.

5 Q And how long would you say this conversation
6 with Kathy Woods took before she actually told you about
7 Mr. Moultrie hiding in the attic?

8 A Ten to fifteen minutes.

9 Q And not to go into it, I believe yesterday you
10 went into the testimony about the apprehension in the attic
11 but I did want to ask you one specific question.

12 What was Mr. Moultrie wearing at the time he came
13 out of the attic?

14 A He had on a bathrobe and underpants.

15 Q And at that point in time, did you communicate
16 to Mr. Moultrie why you wanted him?

17 A Yes. He was given his Miranda Warnings at that time
18 being advised that he was being arrested.

19 Q And did Mr. Moultrie make any statement at that
20 time?

21 A Denials. I believe he stated that he hadn't been in
22 Newark.

23 Q Other than stating that he originally wasn't in
24 Newark, was there any other discussion with Mr. Moultrie
25 at that time?

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Thomas - direct

1 A He changed the conversation to something in the past
 2 and he was discussing it with the Plainfield police officer.
 3 I didn't hold a discussion with him anymore.

4 Q Now, to the best of your recollection up to this
 5 present time, has Mr. Moultrie indicated anything to you?

6 A No, he hadn't.

7 MR. GONZALEZ: Judge, objection.

8 THE COURT: Sustained.

9 Q Now, Detective, did there come a point in time
 10 where Mr. Moultrie was transported to the Newark Homicide
 11 Unit?

12 A Yes.

13 Q And to your knowledge, did anything unusual happen
 14 when Mr. Moultrie was in the Newark Homicide Unit?

15 A Yes.

16 Q Could you please tell the Court and the jury what
 17 happened?

18 A Sometime during the course of him being at the Homicide
 19 Squad, he managed to escape from the Homicide Squad.

20 Q And do you remember when you were made aware of
 21 his escape?

22 A When I returned from Plainfield.

23 Q And did you at some point in time prepare any
 24 documents concerning Mr. Moultrie's escape?

25 A Yes.

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1 Q Could you please tell the Court and the jury
2 what documents you prepared?

3 A I put a teletype out for an escape, an 802, advising
4 the district that an escape had been made.

5 Q To the best of your recollection, Detective,
6 do you remember at what time Mr. Moultrie was apprehended
7 after his escape?

8 A I don't know the benefit of that report, I wasn't
9 present when he was apprehended.

10 Q Could you please explain to the Court and jury
11 what information is contained in the teletype when it's
12 sent out?

13 A CC number, which is the case number of the incident
14 itself, a physical description of the suspect in question
15 and probably classification of his fingerprints.

16 Q And to your -- to the best of your knowledge,
17 do you know where Mr. Moultrie was apprehended?

18 A In Passaic.

19 Q And were you present when he was apprehended?

20 A No, I wasn't.

21 MS. FURLONG: Your Honor, at this time, I'd like
22 to have the following exhibit marked, State's Exhibit I
23 believe we're up to S-41. It's a one-page document.

24 (Whereupon, exhibit is marked S-41 for
25 Identification.)

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ERASABLE

1 Q Detective, I'm now showing you what's been marked
2 as State's Exhibit S-41. Can you identify that report for
3 the record?

4 A It's an incident report made on September 11th, '89,
5 at 1345.

6 Q And --

7 THE COURT: Would you translate that military
8 time for the benefit of the jury?

9 THE WITNESS: That's 1:45 in the afternoon.

10 THE COURT: 1:45 p.m.?

11 THE WITNESS: Yes.

12 Q And was that report prepared by yourself?

13 A Yes, it was.

14 Q And what does that report document, Detective?

15 A An escape from 22 Franklin Street, Homicide Squad.

16 MS. FURLONG: Your Honor, I'd like the next
17 exhibit to be marked State's Exhibit S-42A and B. It's
18 the teletype information and the Wanted Persons file record.

19 (Whereupon, Defense Counsel reviews exhibits.)

20 (Whereupon, exhibit is marked S-42A and B for
21 Identification.)

22 Q Detective, I'm now showing you what's been
23 marked as State's Exhibit S-42A and B and can you please
24 identify those documents for the record?

25 A One is a teletype and the other is the printout for a

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1 teletype.

2 Q And are those reports prepared by you to obtain
3 the teletype, Detective?

4 A Yes.

5 Q And could you please indicate to the jury what
6 information those contain?

7 MR. GONZALEZ: Judge, Judge, objection. Could
8 I see you at sidebar?

9 THE COURT: Is this in reference to --

10 MR. GONZALEZ: The reports.

11 THE COURT: -- the reports as to the escape?

12 MR. GONZALEZ: Well, as to the contents of --
13 if I get the number, I'll --

14 THE COURT: Why not take a look at it, please.

15 (Pause)

16 MR. GONZALEZ: As to the contents of both reports.

17 THE COURT: Yes.

18 MR. GONZALEZ: Judge --

19 THE COURT: Well, it's being marked only as an
20 exhibit.

21 MR. GONZALEZ: Right, but I think he's gonna --

22 THE COURT: We didn't get into that yet.

23 MR. GONZALEZ: The question by the Prosecutor --
24 okay.

25 BY MS. FURLONG:

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1 Q Detective, could you please explain to the Court
2 and jury why those reports are prepared?

3 MR. GONZALEZ: Okay.

4 A These are prepared because they go through the other
5 police departments in the event Mr. Moultrie is arrested
6 anywhere else, that he has a record for escape and to be
7 held for Newark authorities.

8 Q And did that also include the teletype that goes
9 out?

10 A Yes.

11 MS. FURLONG: I have no further questions of this
12 witness.

13 THE COURT: Cross-examine?

14 CROSS-EXAMINATION BY MR. GONZALEZ:

15 Q Officer Thomas, good afternoon.

16 A Good afternoon.

17 Q Officer Thomas, you spoke to Tykesha Mott on that
18 evening, correct?

19 A Yes.

20 Q And she told you that she had gotten a plate
21 number of the vehicle in which Mr. Mott, Victor Mott, was
22 put in?

23 A I believe her mother Ianthia had gotten the plate
24 number.

25 Q Right, okay.

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1 But then isn't it a fact that Ianthia Mott gave
2 that number to Tykesha Mott?

3 A Yes, and she gave it to us.

4 Q And she was the person that gave it to you,
5 correct?

6 A Yes.

7 Q And based on the information given to you by
8 Tykesha Mott, the license plate number, did you check that
9 out?

10 A Yes.

11 Q And it came out as the plate number of Kathy
12 Woods?

13 A Correct.

14 Q And also when you checked it out, you got the
15 information that Ms. Kathy Woods lived in Plainfield?

16 A That's correct.

17 Q Correct?

18 Now, when you went to Plainfield, isn't it a
19 fact that you had this information that it was Kathy Woods'
20 car that was identified in the taking of Mr. Mott?

21 A The taking of Mr. Mott?

22 Q In other words, that Mr. Mott was put in that
23 car?

24 A Correct.

25 Q All right. And had you received the information

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HEMLOCK

1 that it was Ms. Kathy Woods who was driving that car?

2 A At the time, we received information it was a female
3 driving it and she hadn't been identified.

4 Q But when you checked the license plate, you found
5 out that the license plate belonged to Kathy Woods, correct?

6 A Kathy Woods, correct.

7 Q And you had received information that it was a
8 female who was driving the car?

9 A That's correct.

10 Q All right. And based on that information, you
11 went to 1433, I believe it is, Willever Street?

12 A That's correct.

13 Q In Plainfield and that's the home of Kathy Woods?

14 A That's correct.

15 Q Now, when you went to 1433 Willever Street, you
16 spoke to Kathy Woods, correct?

17 A I spoke to her mother.

18 Q First to the mother, then you spoke to Ms. Woods?

19 A When I went to 1431, I spoke to Kathy Woods.

20 Q All right. And you told Ms. Woods of why you
21 were there, correct?

22 A That's correct.

23 Q All right.

24 THE COURT: Well, which one?

25 MR. GONZALES: Kathy Woods.

MEMORANDUM

1 THE COURT: All right, he first spoke to the
2 mother?

3 MR. GONZALEZ: Well -- strike that. I'll be
4 more specific.

5 BY MR. GONZALEZ:

6 Q Did you tell Kathy Woods as to why you were
7 there?

8 A Yes.

9 Q All right. And you told her about the information
10 you had received, that is, that her car was seen as the car
11 that Victor Mott was put in?

12 A Yes, we did.

13 Q All right. And you saw her vehicle outside of
14 her apartment, correct?

15 A That's correct.

16 Q And that -- strike that.

17 Was Tykesha Mott with you when you went to
18 1433 Willever Street?

19 A Yes, she was.

20 Q All right. And did Tykesha Mott identify the
21 vehicle of Kathy Woods as the vehicle used earlier?

22 A That was either her or the brother, they were both
23 in the rear. I'm not sure which one identified the car.

24 Q But one of them did identify --

25 A Yes, that's correct.

1 Q -- the car? All right.

2 When you spoke to Ms. Kathy Woods, you told her
3 that you were looking for Derek Moultrie, correct?

4 A That's correct.

5 Q All right. And you were looking for Derek
6 Moultrie based on the information you had received from
7 some of the witnesses that you had spoken to earlier,
8 correct?

9 A That's correct.

10 Q Namely, Tykesha Mott? In other words, after
11 receiving that information --

12 When you went to arrest Mr. Moultrie, you were
13 arresting him based on the information you received from
14 Tykesha Mott, Richard Mott, Ianthia Mott and Pearl Harrell.
15 Is that correct?

16 A That's correct.

17 Q All right.

18 Now, when you spoke to Ms. Kathy Woods, she told
19 you that she had not seen or that she had seen Mr. Moultrie
20 earlier that day?

21 A That's what she stated, yes.

22 Q What did she tell you exactly?

23 A Originally, she hadn't seen him, then she had been
24 with him earlier that evening in Newark but that she had
25 left him in Newark.

1 Q Now, after that, you told her that you were gonna
2 take her into custody?

3 A Yes.

4 Q For questioning?

5 A Yes.

6 Q And you also told her at that point in time that
7 you were towing her car?

8 A That's correct.

9 Q Correct?

10 Now, prior to taking Ms. Kathy Woods -- strike
11 that.

12 Prior to telling Ms. Kathy Woods that you were
13 taking her into custody, did Ms. Woods say to you Mr. Moultrie
14 was upstairs and he was the one that killed Victor Mott?

15 A No, she didn't.

16 Q So, it was after you told her that you were taking
17 her into custody was when she told you about Victor Mott,
18 correct?

19 A She wasn't told she was being taken into custody, she
20 was told she was being taken to police headquarters for
21 investigation and her car was being towed.

22 Q For investigation and her car was being towed?

23 A That's correct.

24 Q All right. When you told Ms. Kathy Woods about
25 this investigation, did you advise Kathy Woods of her rights?

1 A Definitely.

2 Q You told her that she had the right to remain
3 silent?

4 A That's a fact.

5 Q Correct?

6 And the reason why you do that, Mr. Thomas, is
7 because she was a potential suspect or a suspect in this
8 case?

9 A That's correct.

10 Q So, at the point in time when you took Ms. Kathy
11 Woods in, she was a suspect?

12 A As far as I was concerned, yes.

13 Q And that's why you read her her rights?

14 A That's correct.

15 Q All right. And one of the rights that you read
16 her, Mr. Thomas, was the right that she had the right to
17 remain silent?

18 A That's correct.

19 Q And that anything she may say may be held against
20 her?

21 A That's also correct.

22 Q In a court of law later on?

23 A That's also correct.

24 Q And she was well aware of that, correct?

25 A She was well aware of it.

1 Q All right. When you spoke to Kathy Woods at the
2 house, did you tell her that she had been seen as the
3 driver of the car, specifically?

4 A She knew she had been identified.

5 Q When you were at the -- at 1433 Willever Street
6 in Plainfield, did you search Kathy Woods' home?

7 A We had a consent to search signed by Kathy Woods.

8 Q She signed it, and did you search the house?

9 A We searched -- we didn't do a thorough search, we
10 searched the attic where Moultrie was found hiding at.

11 Q All right. Did you search anywhere else?

12 A We searched the bedroom.

13 Q You searched the bedroom?

14 A That's correct.

15 Q All right.

16 Now, when you were searching the bedroom and
17 other areas, did Ms. Woods tell you where the gun was?

18 A No, she didn't.

19 Q Did she tell you at the time that there was a
20 phone book and I'm referring to the time when you were in
21 the house?

22 A Uh-huh.

23 Q 1433 Willever Street, did she tell you there
24 was a phone book underneath her bed with a gun in it?
25 Did she tell you at that time?

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A No, she didn't.

Q At one point in time, you took her back to headquarters, correct?

A Correct.

Q Or you took her to headquarters and did you also take Mr. Moultrie with you?

A No.

Q You didn't take him?

How did that happen, you took Woods first --

A No, he was taken to Plainfield.

Q Oh, he was taken to Plainfield?

A Yes.

Q And Ms. Woods was taken to Newark?

A That's correct.

Q Now, before taking Mr. Moultrie to Plainfield, Plainfield Police Headquarters --

A That's correct.

Q -- did you advise him of his rights?

A He was advised of his rights when he first came out of the ceiling.

Q All right. And he knew as far as you could determine, Officer, that he had the right to remain silent, correct?

A That's correct.

Q At one point in time, Mr. Moultrie, when he was

1 taken to Newark Police Headquarters, he escaped from there,
2 correct?

3 A That's correct.

4 Q All right. When this happened, was Ms. Woods
5 also at Newark? Was Ms. Woods also at Newark Police
6 Headquarters?

7 A No, she wasn't.

8 Q Well, when Mr. Moultrie escaped from the Newark
9 Police Department Headquarters, was -- were you interviewing
10 Ms. Woods at the time?

11 A No.

12 Q Was any of your officers interviewing Ms. Woods
13 at the time?

14 A No.

15 Q In other words, were Ms. Woods and Mr. Moultrie
16 there at Newark Police Headquarters at the same time?

17 A No.

18 Q When you had Mr. Moultrie in custody at the
19 Newark Police Headquarters, I believe it was the Homicide
20 Squad?

21 A That's correct.

22 Q All right. Did you have any of the other
23 witnesses there present when Mr. Moultrie was there?

24 A Well, I'll repeat to you again, I went to Plainfield
25 with Ms. Woods to retrieve a gun. Mr. Moultrie was being

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1 transported back to Newark, I was never in Newark at the
2 same time Mr. Moultrie was in headquarters.

3 Q So, you really don't know?

4 A So, I don't know who was in there when he was there.

5 Q Fine, fine.

6 Now, the first time that Ms. Woods told you
7 about the gun was when she was in police headquarters,
8 correct?

9 A That's correct.

10 Q In Newark?

11 A Yes.

12 Q When she told you about the gun, in Newark
13 Police Headquarters, she had not yet given a formal
14 statement, correct?

15 A I don't know, you have to look at the report. I
16 can't recall whether she told us before the statement or
17 after the statement.

18 Q All right. But she did tell you about the
19 gun once she was in custody at the Newark Police Headquarters?

20 A Yes.

21 Q All right. And she told you where the gun could
22 be found, correct?

23 A Yes, she did.

24 Q And she told you that the gun could be found at
25 the foot of the bed in her room?

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1 A No, she didn't.

2 Q In a phone book?

3 A No, she didn't.

4 Q What did she tell you?

5 A She told us she had seen a gun in the phone book,
6 she had seen it on the kitchen table and she was asked
7 if it was not on the kitchen table, where would it be and
8 she said probably in the bedroom and when she told me that,
9 I recalled seeing a phone book under the bed but we never
10 thought of looking inside the phone book and she said there
11 was a phone book at the foot of the bed and that's probably
12 where the gun is in.

13 Q All right. So, after you got that information
14 from Ms. Woods, you went there, she gave you the consent
15 to search and you found the book underneath the bed?

16 A That's correct.

17 Q All right. And do you know whose bed that was?

18 A That was Kathy Woods' and Mr. Moultrie, I guess.

19 Q When you retrieved the gun and also you retrieved
20 a phone book, Cincinnati phone book --

21 A Yes.

22 Q All right. -- and did you preserve that for
23 fingerprints?

24 A Yes, we did.

25 Q Both the gun and the phone book?

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1 A That's correct.

2 Q Now, did you, Mr. Thomas, do a check on the gun
3 to see who it belonged to?

4 A A check was done by someone in the office, I'm not
5 sure who did the check; the check was done on him.

6 Q All right. Is it fair to say that the check
7 did not come back as to the gun being Mr. Moultrie's?

8 A I don't recall anyone saying that, I'm not going to
9 be specific on that.

10 Q Do you know if after the check or the trace of
11 the gun, that the gun came out of the name of Ms. Kathy
12 Woods?

13 A I don't know that either, I haven't heard anything
14 to that effect.

15 Q But you don't know for certain that it did not,
16 correct?

17 A It's a matter of records, I just don't have the
18 records in front of me.

19 Q But at this point in time, you don't know without
20 looking at the records?

21 A No, I don't.

22 Q Okay. Mr. Thomas, I -- Detective Thomas, excuse
23 me. I show you what's been marked Exhibit 36 for
24 identification and ask you, do you recognize that?

25

(Whereupon, witness reviews report.)

ERASABLE

1 A It's a statement taken from Kathy Woods by Investigator
2 Ferrer from the Prosecutor's Office.

3 Q Now, in looking at the statement, does it state
4 on the statement when and at what time the statement was
5 given by Ms. Woods to Investigator Ferrer?

6 A 12:48 p.m.

7 Q On what day?

8 A The 11th, September 11th.

9 Q 12:48 p.m. on September 11th?

10 A Yes.

11 Q Do you know if you had searched the apartment
12 and gotten the weapon from underneath the bed of Ms. Kathy
13 Woods prior to 12:48 on September 11th? Had you already
14 been to the house?

15 A Yes, we had.

16 Q All right. So, this statement was given after
17 you had retrieved a gun from underneath her bed, correct?

18 A Yes.

19 Q Thank you.

20 Now, you told us that certain spent bullets were
21 found, is that true?

22 A Yes.

23 Q All right. They were found at the scene?

24 A Yes, they were.

25 Q They were found where the body was located?

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ERASABLE

1 A Yes, they were.

2 Q And I believe you told us that two spent bullets
3 were found, two shell casings?

4 A Yes, they were.

5 Q How far from the body were these two shell
6 casings found?

7 A I really don't know, it was in the immediate area but
8 as far as how many feet, inches or whatever, I don't know.

9 Q Now, apart from the two spent bullets found at
10 the scene, did you also recover any other spent bullets or
11 bullets from the body of Victor Mott?

12 A From the body itself?

13 Q Yes, from the body itself?

14 A I believe there was something removed from his body
15 by the morgue.

16 Q I didn't hear that.

17 A I believe that the morgue removed bullets from him,
18 I'm not sure of that.

19 Q Do you recall if four bullets were obtained from
20 the morgue?

21 A No, I don't. Investigator Ferrer went to the autopsy,
22 I didn't attend the autopsy.

23 Q Now, do you know if the bullets obtained from the
24 body of Mr. Mott match the gun that was found underneath

25 Kathy Woods' --

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FEDERAL BUREAU OF INVESTIGATION

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FEB-35

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1 MS. FURLONG: Judge, I'm going to have to object
2 on two grounds. It's beyond the scope, Mr. Gonzalez is
3 aware, I'll be calling the ballistics expert and I don't
4 believe --

5 THE COURT: I don't think this witness could be
6 qualified unless he was present or --

7 MR. GONZALEZ: Well --

8 THE COURT: You may ask him that but if not,
9 I'll --

10 MR. GONZALEZ: I'll continue on.

11 BY MR. GONZALEZ:

12 Q Officer, what is a spent bullet?

13 A It's a bullet that's been fired.

14 Q And what is the casings?

15 A The casing is the part that holds the gunpowder.

16 THE COURT: The shell?

17 THE WITNESS: The shell, yes, sir.

18 Q All right.

19 Now, when you shoot a gun such as the type that
20 was found here from the bed of Ms. Woods, does the casing
21 drop to the ground?

22 A Yes, it does.

23 Q Officer, at one point in time, Kathy Woods came
24 to you with a casing, a bullet casing that was found in
25 her car, correct?

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1 A No.

2 Q She never gave you a bullet casing that was
3 found in the car sometime in September?

4 A No, she gave a casing to Investigator Ferrer.

5 Q All right. To Investigator Ferrer, are you
6 aware of that?

7 A I'm aware of that, yes.

8 Q And did she tell Investigator Ferrer where she
9 found that casing?

10 A Yes, she did.

11 Q And where did she find it?

12 A I believe she said she found it somewhere in the car,
13 I'm not sure of the location of the car.

14 Q All right. And when she says -- when she
15 referred to the car, she's referring to her car, correct?

16 A Her car, yes.

17 Q All right. And once again, a casing is that part
18 of the bullet that drops when you shoot the gun?

19 A That's correct.

20 Q And do you recall how much time after this
21 incident that Ms. Woods gave you that casing that was found
22 or gave Detective Ferrer that casing that was found in her
23 car?

24 A No, I don't. I know I received a call but I don't
25 know when it was Investigator Ferrer saying that he had

HEMLOCK

1 been given a bullet. I think he went to Plainfield and
 2 received the bullet, I'm not sure. I'm pretty sure he
 3 went to Plainfield and picked it up.

4 Q Now, the bullet, as far as you know that was
 5 found in the car by Ms. Woods, that was not a bullet, it
 6 was a spent casing, correct?

7 A I'm pretty sure that's what it was.

8 Q A spent casing?

9 A Yes.

10 Q In other words, the part that is ejected by the
 11 gun?

12 A That's correct.

13 Q Now, earlier you testified, Detective Thomas,
 14 that you sent some items to the Identification Bureau for
 15 fingerprints. Is that so?

16 A The telephone book, you're speaking of?

17 Q Yeah, more specifically, the telephone book,
 18 correct?

19 A Yes.

20 Q And did you also send the pistol?

21 A Yes.

22 Q And -- who did you send these items to?

23 A The police lab, the print room.

24 Q Are you familiar with the name Roy A. Marshall?

25 A Yes.

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Q And who is Ray E. Marshall?

A One of the people that work in the print room.

Q Okay. And what does Ray E. Marshall do?

MS. FURLONG: Judge, I'm going to object again, beyond the scope because Mr. Marshall's going to be testifying and we're going into having one person testify in what someone else qualifies in when he'll be here in person and the State didn't go into that on direct examination.

MR. GONZALEZ: Judge, I'm not going into Ray Marshall's qualifications, I'm just asking if he's familiar with this person.

THE COURT: Well, for whatever it's worth, I'll allow it just for that purpose.

BY MR. GONZALEZ:

Q Are you familiar with who Ray E. Marshall is?

A Yes, I am.

Q And who is he?

A He works in the print room.

Q Now, isn't it a fact that you sent the phone book and the gun to be tested, dusted for fingerprints to Ray Marshall?

A No, I took them to him.

Q But you gave these items to Mr. Marshall to see if he could locate fingerprints on both the phone book and

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-COTTON CONTENT-

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1 the gun. Is that correct?

2 A Yes.

3 Q And did Mr. Marshall return to you developed
4 latent prints?

5 A I recall speaking to Mr. Marshall and he informed me
6 that he did have latent prints from the phone book and
7 the gun.

8 Q All right. So, Mr. Marshall found latent prints
9 from the phone book and from the --

10 MS. FURLONG: Objection, your Honor, this is
11 going into hearsay now. I mean, it's been going on. I
12 mean, he's testifying to something that someone else told
13 him, this is hearsay.

14 THE COURT: Is Mr. Marshall coming in?

15 MR. GONZALEZ: Judge, no, I'll be more specific
16 with the question.

17 MS. FURLONG: Mr. Marshall will be here tomorrow
18 to testify, Judge.

19 THE COURT: Just one second.

20 MR. GONZALEZ: Sorry.

21 THE COURT: Is Marshall coming in? Why are you
22 asking this gentleman, the detective, as to what
23 may or may not have been found by someone else?

24 MR. GONZALEZ: Well, I'll be more specific.

25 THE COURT: You may ask him if it's in his pocket.

- COTTON CONTENT -

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MR. GONZALEZ: I'll rephrase the question.

THE COURT: You know, you have to be somewhat careful so the objection's sustained.

MR. GONZALEZ: I agree with that, Judge, thank you.

BY MR. GONZALEZ:

Q Mr. Thomas -- Officer Thomas, didn't you receive latent prints from Mr. Marshall?

A I didn't receive latent prints, I received a report. Whatever prints he had, he would have on his reports.

Q But you received the reports?

A I received reports two or three weeks ago, maybe a little longer than that.

MR. GONZALEZ: Judge, can I have this marked for Identification?

THE COURT: D-2.

MR. GONZALEZ: Could I have the original?

MS. FURLONG: I have to see what it is.

MR. GONZALEZ: I'm sorry.

(Whereupon, exhibit is marked D-2 for Identification.)

THE COURT: Have you seen that report, Ms. Furlong?

MS. FURLONG: Yes, Judge, I have.

THE COURT: All right.

Q Detective Thomas, I know you what has been marked

- COTTON CONTENT -

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1 D-2 for Identification. Do you recognize that?

2 (Whereupon, witness reviews report.)

3 A I haven't seen this report before, but I remember
4 the conversation.

5 THE COURT: You had not seen that?

6 THE WITNESS: No, I haven't.

7 THE COURT: All right, next question.

8 Q Detective Thomas, you indicated earlier when I
9 asked you whether you had received prints, latent --
10 developed latent prints from the telephone book and the
11 hand grip of the pistol or the handle of the pistol and
12 you told me that you had not received the actual latent
13 prints, but had received a report?

14 A Well, I received a report and I got that from Marshall
15 over the phone. He told me a report would be coming through,
16 we discussed findings of prints by him.

17 Q Well, did you ever receive the report?

18 A No, I don't remember -- no, I don't -- I would have
19 read that report and I haven't seen it before.

20 MS. FURLONG: Judge, I object, because there's
21 two reports; so, can we have a clarification? There's an
22 initial report that prints were listed and then there's
23 another report that there was a comparison made.

24 MS. GONZALEZ: Judge, I'm referring to D-2 for
25 Identification.

1 THE COURT: D-2 for Identification is a report
2 which Detective Thomas said he never saw before. He recalls
3 a conversation, if my memory recalls, but ladies and
4 gentlemen, your recollection is what controls.

5 BY MR. GONZALEZ:

6 Q All right. But as far as you know, Officer
7 Thomas, latent prints were developed from the telephone
8 book and the pistol, correct?

9 A Yes.

10 Q Now, on May 17th, 1990, not too far ago, did
11 you contact Mr. Ray Marshall concerning comparison of these
12 prints?

13 A I probably did, yes.

14 MR. GONZALEZ: Judge, can I have this marked,
15 please?

16 MS. FURLONG: Judge, may I see what it is?

17 (Whereupon, Prosecutor looks over report.)

18 (Whereupon, exhibit is marked D-3 for
19 Identification.)

20 Q Now, Detective Thomas, I show you what has been
21 marked Exhibit D-3 for Identification and ask you does
22 this report refresh your recollection of whether you spoke
23 to Ray Marshall concerning comparison of prints?

24 A Yeah, I spoke to him on May 17th, according to this
25 report.

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CONTENT

1 THE COURT: Did you say, May 17th?

2 THE WITNESS: Yes, sir.

3 THE COURT: What year?

4 THE WITNESS: '90, 1990.

5 THE COURT: All right.

6 Q And when you spoke to Officer Ray Marshall on
7 May 17th about the prints, did he tell you or did you
8 discuss what prints he compared and whether they matched?

9 A As far as I can recall, which I haven't seen this
10 report until now, I called him and asked him had he compared
11 the prints and he told me prints had been listed and either
12 he or his supervisor were going to go over the prints again
13 and get back to me. The next I heard was a phone call
14 telling me that the prints were identical to Derek Moultrie
15 and the report would come through. That report hasn't
16 reached me yet.

17 Q Now, when you heard that the prints were
18 identical, they were the prints taken from the phone book,
19 not the gun?

20 A Well --

21 Q Isn't that correct, sir?

22 A He didn't say which one, he just told me prints. So,
23 I assume -- I assume it came from the gun or the book. He
24 told me a report would come through.

25 Q Well, let me show you once again --

MEMLOOK
ERASABLE
COTTON CONTENT

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1 MS. FURLONG: Judge, excuse me. I'm going to
2 object and place this on the record. We're using a report
3 that Detective Thomas indicated he had never seen until
4 today. Again, Officer Marshall is coming in to testify
5 tomorrow. We're going, Judge, way beyond the scope of my
6 direct examination, we're going into evidence that Marshall
7 did.

8 THE COURT: Well, there's nothing here on direct
9 examination either yesterday or today of this witness,
10 Mr. Gonzalez, about any reports of fingerprints. Isn't
11 that so?

12 MR. GONZALEZ: Judge, well --

13 THE COURT: I mean, I don't recall anything
14 about --

15 MR. GONZALEZ: All right.

16 THE COURT: -- that on direct and as you know --

17 MR. GONZALEZ: Okay.

18 THE COURT: -- it's limited and therefore, you
19 may get into it tomorrow or whenever.

20 MR. GONZALEZ: Fine, Judge, I'll wait for
21 Mr. Marshall.

22 THE COURT: All right. Anything further of this
23 witness?

24 MR. GONZALEZ: Thank you, Mr. Thomas.

25 THE WITNESS: Thank you.

- COTTON CONTENT -

1 THE COURT: You're thanking him for what, you're
2 finished?

3 MR. GONZALEZ: Yes, I'm finished, Judge.

4 THE COURT: Oh.

5 MR. GONZALEZ: I'm sorry.

6 THE COURT: That's all right.

7 Ms. Furlong, do you have any redirect?

8 MS. FURLONG: Just briefly, Judge.

9 THE COURT: All right.

10 REDIRECT EXAMINATION BY MS. FURLONG:

11 Q Detective, when you arrived in Plainfield and
12 you first spoke to Kathy Marshall --

13 THE COURT: Kathy who?

14 Q I'm sorry, Kathy Woods, did you, at any time,
15 make any threats to her when you arrived in Plainfield?

16 A Oh, no.

17 Q And when you took her back and you went back to
18 the Newark Homicide Unit to speak with her about the
19 investigation, did you threaten her in any manner or say
20 anything to her prior to her telling you where the gun was
21 located in Plainfield?

22 A No.

23 Q How would you characterize her, did she volunteer
24 that information?

25 MR. GONZALEZ: Judge, objection, leading.

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- COTTON CONTENT -

1 THE COURT: Well, how would you characterize it,
2 period.

3 MS. FURLONG: How would you characterize?

4 THE COURT: Period. How would you characterize
5 her?

6 THE WITNESS: She was nervous and she was afraid
7 and we had convinced her that nobody was gonna bother her
8 and I think she was more afraid of Mr. Moultrie finding out
9 what the situation was.

10 Q Did she indicate to you about what that fear was
11 in reference to Mr. Moultrie?

12 MR. GONZALEZ: Judge, objection.

13 THE COURT: Sustained.

14 MS. FURLONG: Judge, if I may be heard?

15 Mr. Gonzalez went into many statements made by
16 Kathy Woods to Detective Thomas and I'm just doing a
17 redirect as far as cleaning up.

18 THE COURT: I understand, but you're getting
19 into something that may not be relevant here, it may be
20 something that's not an issue before this jury about
21 Ms. Woods or Mr. Moultrie or whatever. For that reason,
22 I'm going to sustain it.

23 MS. FURLONG: Fine, your Honor.

24 Q At any point in time --

25 THE COURT: In other words, maybe, you know,

-COTTON CONTENT-

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1 character or something that's not for this jury.

2 Q During your investigation when you spoke to
3 Ms. Woods, could you just explain a little bit how your
4 conversation started with her once you were back at the
5 Newark Homicide Unit? Was she questioned right away,
6 was she put in a room, what transpired when you went back
7 initially to the Newark Homicide Unit?

8 A Initially, she wasn't put in a room, she was placed
9 out front with a desk. She was seated at the rear desk
10 and I don't recall exactly how long she was sitting there
11 before we started talking to her because other reports were
12 being made at that time and Henry Ferrer was talking to
13 her and between the two of us, we were talking to her.
14 I believe she was given breakfast or something to that
15 effect, I think someone sent out for food and she was
16 eating at that time.

17 Q And Detective, it's your testimony today that
18 she signed a consent to search her home, a second consent
19 to search her home prior to giving a statement?

20 A Yes.

21 MS. FURLONG: I have no further questions of this
22 witness, your Honor.

23 THE COURT: Is that at the police station when
24 she gave that consent?

25 THE WITNESS: The second consent, yes, sir.

1 THE COURT: Recross?

2 RE-CROSS-EXAMINATION BY MR. GONZALEZ:

3 Q She signed that second consent to search the
4 home after she had told you about the gun, correct?

5 A Yes, and she told us that she would take us back to
6 retrieve the gun and during the course of that, she gave
7 us the consent to search the second time.

8 Q Fine.

9 MR. GONZALEZ: Nothing further.

10 THE COURT: Anything further?

11 MS. FURLONG: No, sir.

12 THE COURT: All right, sir, you may step down.

13 THE WITNESS: Thank you, sir.

14 (Whereupon, Detective William Thomas exits.)

15 THE COURT: All right, fine.

16 Ladies and gentlemen, I think we'll recess until
17 nine o'clock tomorrow morning. We'll see what we have here
18 for tomorrow.

19 MS. FURLONG: Judge, may I be --

20 THE COURT: Who do you have coming tomorrow
21 morning at nine?

22 MS. FURLONG: Judge, I have numerous witnesses,
23 but I just wanted to bring to the Court's attention, did you
24 want to give the jury maybe fifteen minutes or so and read
25 the calendar and reschedule the sentencing for tomorrow?

1 THE COURT: No, no, I'll take care of it, it
2 has nothing to do with this jury.

3 MS. FURLONG: Okay.

4 THE COURT: That has to do, ladies and gentlemen,
5 with other business that has nothing to do with you. You
6 know we're active every day here and there are many matters
7 that go on as you well know; however, that has nothing to do
8 with you. My scheduling has nothing to do with you, so you
9 just disregard those remarks that were made.

10 MS. FURLONG: Judge, will we be proceeding at
11 nine? I want to make sure the witnesses are here then.

12 THE COURT: Yes, you have them here at nine.

13 MS. FURLONG: Good.

14 THE COURT: And we'll go at nine and then if we
15 have to break for awhile for me to take care of other
16 business, why, we'll inform you, ladies and gentlemen, and
17 hopefully it will be a nice day and you can take a short
18 walk for coffee or tea and we'll have you here at nine,
19 all right?

20 THE JURY: Yes.

21 THE COURT: We wish you a pleasant night.

22 THE JURY: Thank you.

23 THE COURT: And I may say this also, do not
24 discuss this matter, as you well know, just keep an open
25 mind. Do not allow anyone to speak to you, members of jury.

1 own family or speak to them or friends.

2 Have a good night and we'll see you at nine
3 o'clock tomorrow morning.

4 THE JURY: Good night.

5 (Whereupon, proceedings are concluded.)
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C E R T I F I C A T E

I, LYDIA FUCCI, a Certified Shorthand Reporter and Official Court Reporter of the State of New Jersey, do hereby state that the foregoing is a true and accurate transcript of my stenographic notes.

Lydia Fucci, CSR
LYDIA FUCCI, C.S.R.

Dated: January 18, 1971

HEMLOCK

ERASABLE

- BOTTOM CONTENT -

A6670-874

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - ESSEX COUNTY
INDICTMENT NO. 148-1-90

STATE OF NEW JERSEY,

Plaintiff,

vs.

DEREK MOULTRIE,

Defendant.

:
: STENOGRAPHIC TRANSCRIPT
:
: OF
: TRIAL PROCEEDINGS
:

REC'D

APPELLATE DIVISION

Thursday, June 14, 1990
Essex County Courthouse FEB 25 1991
Newark, New Jersey

R. K. Miller
Clerk

B E F O R E:

THE HONORABLE ANTHONY J. IULIANI, J.S.C., and a Jury

TRANSCRIPT ORDERED BY: FRANK J. SOLTIS, ESQ.
Office of the Public Defender
Appellate Division - Newark

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

MARY ELLEN FURLONG, ESQ.
Assistant Prosecutor
Attorney for the State

FRANK GONZALEZ, ESQ.
Attorney for the Defendant

FILED
APPELLATE DIVISION

FEB 25 1991

R. K. Miller
Clerk

LYDIA FUCCI, C.S.R.
Official Court Reporter
License No. XT01559

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Woods - direct

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THE COURT: All right, we all set to go?

THE COURT OFFICER: Yes.

THE COURT: Get the jury out.

9:20 a.m.

(Whereupon, the following takes place within the presence of the jury.)

THE COURT: Good morning, ladies and gentlemen, good morning.

THE JURY: Good morning.

THE COURT: Ms. Furlong, do you have your first witness?

MS. FURLONG: Yes, Judge.

THE COURT: Thank you.

MS. FURLONG: Your Honor, the State calls Kathy Marshall to the stand.

MR. VALEZ: Who?

MS. FURLONG: I mean, Kathleen Woods..

(Whereupon, witness enters.)

KATHLEEN WOODS, sworn.

THE COURT: Good morning, Ms. Woods. Please, be seated.

Ms. Furlong, direct examination, please.

MS. FURLONG: Thank you, your Honor.

DIRECT EXAMINATION BY MS. FURLONG:

Q Ms. Woods, could you please call the Court's attention to...

1 jury where you're presently living?

2 A 1431 Willever Street in Plainfield.

3 Q Thank you.

4 And on September 10th, 1989, were you living at
5 that address?

6 A Yes.

7 Q And could you tell the Court and the jury what
8 type of residence that is? Can you explain, is it a duplex,
9 is it an apartment, is it a one-family?

10 A It's a duplex.

11 MR. GONZALEZ: Can you speak a little louder,
12 please?

13 MS. FURLONG: Judge, maybe she can move closer.

14 THE COURT: Yes, you have to speak a little bit
15 louder so everyone can hear.

16 Do you want to repeat that answer, the kind of
17 house it is?

18 THE WITNESS: It's a duplex.

19 THE COURT: Did you hear that, sir?

20 MR. GONZALEZ: Yes, sir.

21 Q And in September 1989, did you know an individual
22 by the name of Derek Moultrie?

23 A Yes.

24 Q Could you please tell the Court and the jury how
25 you knew Derek Moultrie?

1 A My boyfriend.

2 Q And how long was he your boyfriend, Ms. Woods?

3 A We had just gotten back together.

4 Q And how long would you say you had known

5 Mr. Moultrie as of September 10th, 1989?

6 A A year.

7 THE COURT: How long, please?

8 THE WITNESS: One year.

9 THE COURT: One year.

10 Keep that voice up. Can you hear all right?

11 JUROR NO. 14: Just barely.

12 THE COURT: Just barely, all right.

13 Well, we have the little jets out there, too, so,
14 that gives us a little competition. The window will be
15 closed, all right.

16 Do you want to repeat that last answer, please,
17 Ms. Woods?

18 THE WITNESS: One year.

19 THE COURT: Did you hear that?

20 JUROR NO. 14: Yes.

21 THE COURT: All right, thank you.

22 BY MS. FURLONG:

23 Q And on September 10th, 1989, did Mr. Moultrie
24 move into your duplex?

25 A Yes.

1 Q And on that particular day, did you yourself
2 help Mr. Moultrie move?

3 A Yes.

4 Q And who else helped Mr. Moultrie move on that
5 day?

6 A Victor.

7 Q And do you know Victor's last name?

8 A I think it's Mott.

9 Q And how long had you known Victor at that point
10 in time?

11 A I just met him that day, I don't know him.

12 Q And had you ever met Victor before?

13 A No.

14 Q And do you remember where you were when you first
15 ran into Victor that day?

16 A I was in Newark with Derek.

17 Q And do you remember where specifically? Was it
18 an address, did you pick him up someplace?

19 A His house.

20 Q Now, how long would you say Victor was with you
21 and Derek while you were moving Derek's things on
22 September 10th? How long did the move actually take?

23 A It took about a few hours.

24 Q And did there come a point in time where you
25 finished moving and Victor went home?

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1 A Yes.

2 Q Okay. And can you tell me when that happened?

3 A After they had rested for a little while, they sat
4 down and they were drinking and lookin' at T.V. and then we
5 left and went -- we went to Derek's house and then Victor
6 just left.

7 Q Okay. And where did you leave from? Is that
8 Derek's mother's house that you left from?

9 A Yeah.

10 Q And where was that, if you remember?

11 A In Newark.

12 Q And do you remember the street?

13 A I think it's Park View.

14 Q Now, when you got back to Plainfield, what did
15 you and Derek do?

16 A Nothing really.

17 Q Did there come a point in time where you left
18 Plainfield?

19 A Yeah.

20 Q And could you tell this Court and the jury why
21 you left Plainfield?

22 A He said his chain was taken.

23 Q And where were you when Derek told you that his
24 chain was taken?

25 A Next door over my mother's.

1 Q And when you say next door to your mother's,
2 could you explain, is that attached to where you live?

3 A Yeah, it's a two-family house.

4 Q And did Derek come over to your mother's house?

5 A Yeah.

6 Q And did he tell you what he was going to do
7 about his gold chain?

8 A He had called his house, Victor's house, and asked
9 about his chain or was he there and then he said he was
10 gonna go over there and talk to him.

11 Q And did Vic -- did Derek ask you to go with him?

12 A Yeah.

13 Q And did you go with him?

14 A Yeah, but I didn't want to. I told him I was tired
15 and I wanted to stay home.

16 Q And do you remember exactly what time you left
17 to go to Victor's house?

18 A No.

19 Q And whose car did you take to go to Victor's
20 house?

21 A My car.

22 Q And what kind of car is that?

23 A It's an '85 Oldsmobile.

24 Q And what color is it?

25 A It's light brown.

1 Q Now, when you drove to Newark --

2 By the way, are you familiar with the Newark
3 area?

4 A No.

5 Q Have you lived in Plainfield most of your life?

6 A Yes.

7 Q How many years have you lived in Plainfield?

8 A Just about all my life, I grew up there.

9 Q And how many years, Kathy, would you say that is?

10 A About 24, about 24 years.

11 Q And how old are you now?

12 A I'm 28.

13 Q Did you ever, at any time, live in Newark?

14 A Never.

15 Q Now, when you got in the car with Derek, did he
16 tell you where he wanted you to drive?

17 A Yeah.

18 Q And where did you drive to?

19 A First, we drove to a liquor store in Newark.

20 Q Do you remember where that liquor store was or
21 anything about the liquor store, the street, the name?

22 A I don't know the name of it, it's on Lyons Avenue.
23 What else, I don't know.

24 Q And at that point in time, did either one of
25 you get out of the car?

1 A Derek did, I didn't.

2 Q And did there come a point in time when Derek got
3 back in the car?

4 A Yeah.

5 Q And did you drive to any other destinations after
6 you had gone by the liquor store?

7 A We was just ridin' around.

8 Q And did there come a point in time where you drove
9 near Victor's residence?

10 A Yes.

11 Q And what happened then when you were in that
12 area?

13 A We were lookin' around to see if he seen him walking
14 down the street or standin' out talkin' and he drove by
15 his house and he got out and I guess his mother was sittin'
16 on the step or somethin'.

17 Q Now, let me go back a little bit.
18 Prior to him talking to Victor's mother, did you
19 see him speaking to any males?

20 MR. GONZALEZ: Judge, objection, leading.

21 THE COURT: Well, there's been some leading
22 questions, Mr. Gonzalez.

23 MR. GONZALEZ: I'm aware of that, your Honor.

24 THE COURT: All right, sustained.

25 Well, try not to lead her.

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1 Q Kathy, prior to your arriving on Victor's
2 street, what happened?

3 A He got out the car and was askin' people did they
4 see him.

5 Q And where were these people?

6 A Standin' over by a car.

7 Q And where were you, at the time?

8 A In the car.

9 Q And how far away were you from where Derek
10 was speaking to these people?

11 A I don't know, I was like on the other side of the
12 street.

13 Q And at what point in time -- well, what
14 happened next after Derek was speaking to those people?

15 A He got back in the car and then we just drove. He
16 said, Turn, turn here.

17 Q Okay. **MEMLOCK**
18 Now, prior to Derek getting back in the car, what
19 were you doing with the car? **FRASABILE**

20 A I had to turn around because I was blocking the
21 street and there was a car comin' and there was a thing
22 dividing the street; so, I had to go down the street and
23 then turn around and come back up the street. I was on the
24 opposite side of the house -- from the house, across from
25 the house.

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Q And how far away would you say that was from the corner where you originally were parked?

A I don't know.

Q If you can, can you approximate how many feet? Was it the middle of the block, the end of the block?

A How far I was?

Q Where the car was from the corner where you were originally parked?

A I don't know.

Q Okay.

Now, after you said there came a point in time when Derek got back in the car, what did you do when Derek got back in the car?

A We drove around back over to the liquor store.

Q And did there come a point in time when you went back to Victor's street?

A Yeah, later.

Q And what happened there?

A He got out of the car and was talkin' to this girl.

Q And could you hear their conversation?

A No.

Q And how long would you say he was talking to the girl?

A For a good while.

Q Did you ever learn who she was?

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A Yeah.

Q And who was she, Kathy?

A His niece.

THE COURT: Whose niece?

THE WITNESS: Victor's niece.

Q Now, Ms. Woods, after you spoke -- excuse me, I withdraw that question.

After Derek spoke to Victor's niece, what happened next?

A Oh, he walked over to the window, gave me a kiss and said, Don't worry, he just wanted to talk to him about his chain and that was that.

Q And did you observe anything on Derek's person at that time?

A No.

Q Did you see a gun at any time?

MR. GONZALEZ: Judge, leading.

THE COURT: Sustained.

Q Ms. --

THE COURT: Now, Ms. Furlong, you know you can't lead. Let's not do it intentionally --

MS. FURLONG: Judge, I'm not trying to do it intentionally.

THE COURT: Question and answer, it is not permitted to lead the witness on direct examination now.

Woods - direct

14

1 please.

2 Q Prior to Derek stopping and speaking with
3 Victor's niece, did anything unusual happen, Kathy, in
4 your presence in the car?

5 A Yeah. He said, Here, hold this and I said, What are
6 you doin' with that? And it was a gun.

7 Q And can you describe what the gun looked like?

8 A It was little, it was black and white.

9 Q Now, at that point in time, when Derek said to
10 you, Hold this, what happened next?

11 A I said -- I just said, What are you doin' with that?
12 You're gonna get yourself in trouble and he put it underneath
13 my seat.

14 Q And is that the point in time when he got out of
15 the car to speak to the niece?

16 A It was after he talked to her.

17 Q Kathy, I now show you what's been marked as
18 State's Exhibit S-19. Is this the gun that you saw Derek
19 with on September 10th, 1989?

20 A Yes.

21 Q You're sure of it?

22 A Yes.

23 Q What was that, the first time that you had seen
24 the gun when Derek asked you to hold this?

25 A Uh-huh.

1 Q Had you ever seen it before?

2 THE COURT: You have to answer, please.

3 A No.

4 Q Did you know whether or not Derek had the gun
5 when he left Plainfield?

6 A No, I didn't know that.

7 Q Now, after that, what happened next after Derek
8 got back in the car?

9 A After he put the gun underneath the seat?

10 Q Uh-huh.

11 A We just started drivin' again and then a few minutes
12 later, he asked me for the gun but I wouldn't give it to
13 him. I said, I was drivin', I can't drive and hand him --
14 and reach underneath the seat.

15 Q And did you do anything at that point in time?

16 A I pushed it back to the back.

17 Q And when you say you pushed it back, how did you
18 push it back?

19 A I reached underneath and pushed it back with my hand.

20 Q Now, did there come a point in time where you
21 stopped again?

22 A Yes.

23 Q Okay. And what happened at that point in time?

24 A He got out of the car. It was at the liquor store
25 and he was in there for a long time; so, I just went on

1 sleep.

2 Q And what happened next?

3 A He was gone for a long time 'cause I think I was in
4 to a long nap and I heard him later sort of muffled, tellin'
5 him to -- somebody to get in the car and then when I turned
6 over and I looked, that was Victor.

7 Q And what else, if anything, did you hear Derek
8 say to Victor at that point in time?

9 A He just said, Get into the car.

10 Q And do you remember hearing anything else at
11 that point in time?

12 A And Victor asked him where was he goin' and he said,
13 you're goin' to look for my chain.

14 Q Do you remember Derek saying anything else to
15 Victor?

16 A To not sit behind him 'cause he couldn't see what he
17 was doin'.

18 Q And who did Derek say this to, Victor?

19 A Yes.

20 Q What happened next?

21 A I turned the car around and then we went down 78
22 and went back to Plainfield.

23 Q And what happened when you arrived in Plainfield?

24 A I looked on the shelf and through these books that was
25 on the floor to look and see if the chain had fall or

1 somethin' and they were lookin' around this chair to see
2 if it was in there, in the cushions, then we got ready to
3 leave and then they went down to the corner and I was lookin'
4 in the car, they went down to the corner, I looked through
5 the car to see if I could find the chain and then that's
6 when Derek called me and then told Victor to pull his shirt
7 up and pull out his pants, the pockets, to see if the chain
8 was in his pocket or in his socks.

9 Q Now, where did this happen, Kathy, what you're
10 telling us now about Derek asking Victor to pull up his
11 shirt and whatever, where were you when this actually
12 happened?

13 A In Plainfield.

14 Q And where in Plainfield?

15 A On the corner of Park View and Willever.

16 Q And could you tell me a little about the
17 surroundings there when this happened?

18 A It was dark.

19 Q And where was Victor -- where was Victor and
20 Derek standing at that point?

21 A Victor was under the street light on the right and
22 Derek was on the left near the stop sign, near the side
23 of the street.

24 Q And did Victor comply with what Derek asked
25 him to do?

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A Yeah.

Q And did you hear Victor saying anything at that point?

A That he didn't have his chain.

MR. GONZALEZ: Judge, I'm having a problem hearing. Can we ask --

THE COURT: As to what the last answer was?

MR. GONZALEZ: Yeah.

THE COURT: Would you repeat that, please?

THE WITNESS: That he didn't have his chain.

Q Did Victor ever at any point in time, to your knowledge, have Derek's chain?

A Not that I know of. I know it was there on the shelf when I left out of the room, but it was gone, definitely.

Q Now, did there come a point in time when you eventually went back to Newark?

A Yes.

Q And what happened when you went back to Newark?

A Just ridin' around.

Q How long would you say you were riding around?

A For about maybe, I don't know, 25 minutes.

Q And what happened after you were riding around in Newark?

A We turned down this dark street and it had like a junk yard or something and he told me to pull the car over

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1 and they got out of the car and they were talking.

2 Q Did you hear -- when you say "they," who got out
3 of the car?

4 A Derek and Victor.

5 Q And could you hear what they were talking about?

6 A I heard them mention the chain a couple of times, but
7 other than that, no.

8 Q And did you notice anything else at that point
9 in time?

10 A No.

11 Q What happened after that?

12 A They got back in the car and we drove to -- he said,
13 Drive and I said, Where? You know, and we drove to the
14 street near the highway. I don't know the name of it, and
15 he told me to pull over and I did.

16 Q What happened when you pulled over, Kathy?

17 A They got back out of the car again.

18 Q And when they got back out of the car, what was
19 happening?

20 A They was still arguin' and talkin' about the chain.

21 Q And during this whole time that you were with
22 Derek and Victor, did you ever hear Victor say anything
23 about the chain?

24 A The only thing I heard him say is he didn't have it
25 and he didn't know where it was and he said he wouldn't

1 go lookin' through the house for any reason.

2 Q Now, is this Victor who was saying this? I
3 didn't hear your last answer.

4 A Yeah, that was Victor, he did say that.

5 Q Now, what happened next, Kathy?

6 A I kind of like didn't pay him any attention and I
7 dozed off for a little while and then I heard him sayin'
8 something about -- I heard Derek say, You mean to say with
9 this you're still sayin' that you still don't have the
10 chain, showin' you this? And I didn't hear his -- I didn't
11 hear Victor's reply and I got nervous.

12 Q What happened next, Kathy?

13 A I just -- I don't know, I just turned away, I just
14 turned away from him.

15 Q And did you make any observations at that point
16 in time of what happened next?

17 A No, I could still hear them talking.

18 Q Could you hear what they were saying?

19 A No.

20 Q And what happened next at that point?

21 A I dozed back off and I don't think I was asleep that
22 long because all of a sudden, I just heard this pop and
23 then I jumped and I just started screaming because it
24 sounded like a firecracker.

25 Q And what did you do when you heard this sound?

1 A I just jumped and just looked, looked straight.
2 The car started rollin' down the hill because when I had
3 dozed off, I didn't have the car in park and it was in
4 drive; so, the car was going and when I jumped, I threw
5 my hands up and when I grabbed the wheel, I was like
6 halfway down the hill and when I looked back, I didn't
7 see him standin' there no more.

8 Q Did you, at any time, see them standing outside
9 the car?

10 A Before I dozed off, I saw them standin' by the car;
11 but afterwards, I didn't see them.

12 Q How -- you said you heard a popping sound. How
13 many popping sounds did you hear?

14 A Then I heard two, two after that one.

15 Q So, all together, you heard three?

16 A Yes.

17 Q And could you see the positions at any point in
18 time of Derek and Victor? Were they facing each other,
19 were they to the side of your car, where were they when
20 you saw them outside of your car?

21 A To my right like on the passenger side.

22 Q And what could you see of that?

23 A Before the car was moving or --

24 Q Before the car was moving?

25 A The side -- not really, sort of like the side view

1 and -- of both of them, they were like facing each other.

2 Q And what did you observe after they were facing
3 each other?

4 A When he had the gun in his hand and it was layin'
5 flat like and he said, You mean after you see this; I
6 think he was -- Victor was leaning with his back against
7 the car and he was in between the door. I think Derek was
8 in between the door.

9 Q When you say "in between the door," you mean the
10 car door?

11 A The door was open some, he was standin' in between it.

12 Q And what happened at that point, did Victor say
13 anything to Derek that you were able to hear?

14 A No.

15 Q What happened next?

16 Where were they when you heard the popping sounds?

17 A Outside.

18 Q And did you make any observations of where they
19 were at that point when you first looked around?

20 A When I first looked around, the car was moving and
21 they weren't over there, they weren't at the door. All I
22 saw was the back of them and that was that.

23 Q Do you remember if you ever saw Victor after that?

24 A No.

25 Q And what happened after that when the car was

1 rolling back?

2 A I stopped it, then I reached over to close the door
3 and as soon as I closed it, that's when he opened it and
4 got in.

5 Q And what happened when Derek got in the car?

6 A He said, Turn the car around.

7 Q And did you say anything to Derek at that point
8 in time?

9 A I said, For what?

10 Q And what happened next, Kathy?

11 A I was drivin' up the hill and he said, Slow down.

12 Q And what did he say next?

13 A He was lookin' over to the side, across me.

14 Q Could you explain that a little bit to the Court
15 and jury, what you mean by that?

16 A I guess he was lookin' to see if he could see Victor.

17 Q Did Derek ask you to do anything at that point in
18 time, at that point in time when he got back into the car?

19 A Yeah, drive down the hill and turn.

20 Q And did he tell you why he wanted you to do that?

21 A 'cause he was lookin' again, over there, to see if
22 he saw him but I never saw him.

23 Q To see what, Kathy?

24 A I never saw Victor.

25 Q When you say that Derek asked / ^{you} to do something

1 with the car, to clarify, what did Derek ask you to do?

2 A Turn it around again.

3 Q And did he tell you why he wanted you to turn
4 the car around?

5 A 'cause I didn't think he knew that he had -- he just
6 wanted to check and see if the guy, if he shot him, was
7 he there.

8 Q And did you turn around the car and do that?

9 A Yeah.

10 Q And did Derek say to you anything after you did
11 that?

12 A Yeah, he told me he had shot him.

13 Q Did he ever tell you why he shot him, Kathy?

14 A No.

15 Q Did you say anything to Derek at that point in
16 time?

17 A No.

18 Q And what was your state of mind at that time?

19 A Scared, I couldn't think.

20 Q And were you able to drive anywhere after that?

21 A I did but I think I was goin' slow, I think I heard
22 him say, Any other time you drive fast, why you drivin'
23 so slow?

24 Q And where did you go, if you went anywhere, after
25 you turned around?

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POSITION CONTENT

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A To a phone.

Q And what did you do when you went to the phone?

A Stopped the car and he got out and made a phone call.

Q And do you know who he called?

A I asked him who he called, he said he called his house to see if they have seen him. That I couldn't figure out.

Q Now, you're sayin' Derek said he called whose house, Kathy?

A Victor's house.

Q Victor's house?

A Yeah.

Q Now, this was right after Derek had told you that he had shot Victor?

A Yes.

MR. GONZALEZ: Judge, objection. I don't know if that was the testimony, Judge.

THE COURT: Pardon?

MS. FURLONG: Judge, the witness, I believe said --

THE COURT: Defendant, that's what she stated. She said, Defendant said that he shot him.

Q Now, how long after that was this phone call placed, if you remember, how much time passed?

A When I turned the car around the second time and then we went down the hill and we just made a right and then he said, Make another right, and then he got out of the car.

1 Q And what did you do once Derek came back to the
2 car?

3 A Nothin', he just told me to -- let's go home.

4 Q And did you go home?

5 A No.

6 Q Where did you go next?

7 A To a store on 7th Street and Plainfield, grocery
8 store.

9 Q And why did you go to that store?

10 A Because first of all, I was nervous and I didn't want
11 to go home and I just went in the store and just bought
12 some things, I don't know what I bought but I just bought
13 the stuff. I said I needed it because I was afraid.

14 Q Was Derek with you in the store at that time?

15 A Yes.

16 Q And what did you do after you left the store?

17 A Went home.

18 Q And what happened when you went home?

19 A I was sitting down at the kitchen table lookin' at
20 this book on the kitchen table, it was a phone book and I
21 never saw it before. I thought it was a Newark phone book,
22 I said, Oh, I said, This book is just like ours, you know,
23 lookin' through it and then I had made a comment to him
24 about it. I forgot what it was and when I turned through
25 the pages, you know, just looked like an ordinary phone

1 book to me and then I seen like some stuff was missing
2 out of the book. It had a hole in it, square hole. I
3 said, Why is this book like this? And I don't know where
4 he had pulled the gun from but he put it in there, in the
5 book.

6 Q Now, Kathy, I'm going to show you what's been
7 marked as State's Exhibit S-21A. Can you identify this for
8 the record? Take your time to look at it.

9 Is this what you're referring to that you saw
10 on the kitchen table?

11 A Yes.

12 Q And did you see what happened to the book after
13 it was on the kitchen table?

14 A He put it at the bottom of the bed.

15 Q And did you say anything to Derek at that time
16 about the book and the gun?

17 A Before I went upstairs I said to him, I said, What are
18 you gonna do, shoot me, too? And then he said, No, I could
19 never hurt you.

20 Q And then what happened after that, Kathy?

21 A He went in the bathroom and was washin' up and the
22 phone rang and it was this girl askin' me about my car.
23 She asked me what was my plate number and I gave her the
24 wrong plate number, I said, this is crazy and I was just
25 sayin' in my mind, Oh, God, help me. So, then I went out.

1 I knocked on the bathroom door, I said, Somebody just
2 called here and asked for my plate number 'cause I said
3 to the girl, How did you get this phone number, it's
4 unlisted? And she made a smart remark, somethin' like,
5 Don't worry about it, or somethin'.

6 Q And did you communicate that information to
7 Derek?

8 (Whereupon, witness nods head in affirmative.)

9 Q And did Derek say anything to you?

10 A I don't remember what he said. I was just nervous
11 and shaking, he was just sayin', Lay down and go to sleep.

12 Q And what happened next, Kathy?

13 A I had got in the bed. I got up and then I went into
14 the bathroom, I took two Actifeds. I kept sayin', I can't
15 sleep, I can't sleep. I was nervous, I was in the bathroom.
16 I was pacin' back and forth and finally, I went in the
17 room and got into bed.

18 Q And what happened next?

19 Where was Derek at that point, Kathy?

20 A In the room.

21 Q And where was he in the room?

22 A He was in the bed.

23 Q And did anything unusual happen after that?

24 A I went to sleep and I just heard all this banging
25 noise, loud noise.

1 Q When you heard the banging noise, could you tell
2 where it was coming from?

3 A No. The house was dark and I was groggy and I didn't
4 know what was goin' on.

5 Q Did you ever discover what that banging noise
6 was?

7 A Sounded like somebody up over my head, like there was
8 another floor, like somebody was but I wasn't sure then,
9 it was like noises to my left, a lot of noises and I heard
10 him callin' me and I also heard like noises downstairs
11 but I wasn't sure which direction to go; so, I asked him
12 where he was and he says, I'm in the bathroom and he was
13 like -- I went in the bathroom and I looked, then I seen
14 him like on the wall, climbin' up the wall.

15 Q You said you heard noises downstairs, too. Can
16 you tell us a little bit more about that?

17 A Loud banging. I kept sayin', Who is it? It was the
18 police, they was at both doors.

19 Q And did there come a point in time when you
20 went to the door?

21 A Yes. I went to the front door, somebody else answered
22 the back door and they were comin' in the back door and
23 in the front door.

24 Q And what happened when you opened the door?

25 A The detective came through the door and asked me what

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1 was my name and do I know Derek Moultrie.

2 Q And what did you tell the detective, Kathy?

3 A I said, Yeah, but he's not here.

4 Q And why did you tell the detective that Derek
5 wasn't there?

6 A Because I was afraid.

7 Q And what happened next, Kathy?

8 A They was searchin' through the house.

9 Q Now, had they asked permission to search through
10 the house?

11 A After they started lookin' around downstairs, then
12 they asked me.

13 Q And did you give them permission?

14 A Yeah.

15 MS. FURLONG: Your Honor, at this time, I'd like
16 to have an exhibit marked as S-43, a two-page consent form.

17 (Whereupon, exhibit is marked S-43 for
18 Identification.)

19 Q Kathy, I'm now showing you what has been marked
20 as State's Exhibit S-43 for Identification. Can you take
21 a minute to look at this and tell me if you can identify
22 this exhibit?

23 (Whereupon, witness reviews exhibit.)

24 Q Can you tell the Court and jury what document
25 this is?

1 MR. GONZALEZ: Judge, can we have -- I believe
2 there are two forms. Can we have them marked separately?
3 Because I don't know which one --

4 THE COURT: We have S-43 now that she's speaking
5 about.

6 Can you identify that by looking at it, do you
7 know what it is?

8 THE WITNESS: Yeah, it's paper, he said he didn't
9 have the forms, he just had paper.

10 THE COURT: Where -- did you sign it?

11 THE WITNESS: Yeah.

12 THE COURT: Where did you sign it, do you
13 remember?

14 THE WITNESS: Yeah, right there after --

15 THE COURT: No, no, where, where was it, where?

16 THE WITNESS: Where was the paper?

17 THE COURT: Where was the place that you signed
18 it?

19 THE WITNESS: In my kitchen.

20 THE COURT: In the kitchen, all right.

21 MR. GONZALEZ: Judge, what I'm saying is I
22 believe the Prosecutor is showing that two consent forms.

23 THE COURT: Well, we're getting one first.

24 MR. GONZALEZ: Okay.

25 THE COURT: This is in the kitchen where, is

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1 Plainfield?

2 THE WITNESS: Yeah.

3 THE COURT: And that's S-43, okay.

4 BY MS. FURLONG:

5 Q And this second one, Kathy -- let me ask you this
6 question.

7 There are two consent forms before you that have
8 been marked as State's Exhibit S-43. Can you explain what
9 they're for and whether or not you signed them?

10 A Yeah. After my family signed it, then I signed it.
11 It was for them to search the house.

12 Q And was there also a form to search anything else
13 that you signed?

14 MR. GONZALEZ: Judge, objection.

15 THE COURT: Pardon? You have a comment?

16 MR. GONZALEZ: Judge, there was a comment from
17 the audience.

18 THE COURT: I know it was from the audience, I
19 didn't hear the comment, though. I heard a noise but I
20 don't know what the comment was.

21 Did you hear a comment, ladies and gentlemen?

22 THE JURY: Yes.

23 THE COURT: What was the comment? You heard it,
24 what was it?

25 A JUROR: Someone said a car.

1 THE COURT: Car?

2 A JUROR: Yeah, just car.

3 THE COURT: Yes, I'll hear you at sidebar.

4 (Whereupon, there is a sidebar discussion.)

5 THE COURT: What is this in relation to the
6 second search warrant about the search of a car?

7 MS. FURLONG: Judge --

8 MR. GONZALEZ: No, no.

9 THE COURT: Let me hear you.

10 MR. GONZALEZ: I have no problem because
11 Ms. Furlong is correct, it's going to come out anyway, I
12 just had an objection to this lady who I believe is a
13 family member.

14 MS. FURLONG: It's her mother.

15 THE COURT: Well, she's not going to testify
16 because she's here now; so the sequestration order --

17 MR. GONZALEZ: No, no, I know that.

18 THE COURT: But the question is about prompting,
19 is that what you're talking about?

20 MR. GONZALEZ: Exactly.

21 MS. FURLONG: I've no objection to requesting her
22 not to --

23 THE COURT: We'll take care of it.

24 MR. GONZALEZ: And also that they are to disregard
25 that comment made from the audience.

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THE COURT: Oh, sure.

(Whereupon, sidebar discussion is concluded.)

THE COURT: Apparently what happened, ladies and gentlemen, there was a comment by someone in the audience, well, the gallery in the court, and at sidebar it was determined that that person was your mother. Is that correct, Ms. Woods?

(Whereupon, witness nods head in affirmative.)

THE COURT: And I just want you to know, ladies and gentlemen, that you must disregard whatever may have been said there, it's improper, it should not have been said; however, sometimes things take place that no one has any control over but you are not to consider that in any way, shape or form as any part of the testimony. Is that clear?

THE JURY: Yes.

THE COURT: And simply put, the testimony that you will hear, unless I ruled it was not admissible, is the testimony that is given by someone who takes the stand and takes the oath and that's why we always emphasize upon you at all times, ladies and gentlemen, that the case must be decided according to the evidence and the evidence is what you hear and see in the courtroom from witnesses under oath, not comments by anybody else whether they're questions or statements or anything of that type. Is that clear?

THE JURY: Yes.

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1 THE COURT: Otherwise, you get into things which
2 are not relevant or material, have any probative value here;
3 so, you must disregard that. Is that clear?

4 THE JURY: Yes.

5 THE COURT: Any problem with that?

6 THE JURY: No.

7 THE COURT: All right.

8 MS. FURLONG: Judge, I have a request and I'd
9 like to be seen at sidebar.

10 THE COURT: A request in conjunction with this?

11 MS. FURLONG: Yes, your Honor.

12 THE COURT: I'll hear you.

13 (Whereupon, there is a sidebar discussion.)

14 THE COURT: Yes?

15 MS. FURLONG: Your Honor, it's come to my attention
16 that Ms. Woods' mother has been shown out of the courtroom.
17 I don't think that her behavior was that disruptive.

18 THE COURT: No, tell her to come back.

19 MS. FURLONG: And I don't think that --

20 THE COURT: I just don't -- tell her not to make
21 any comments.

22 MS. FURLONG: I just asked the Officer and he
23 just said no, she can't come back in and I think it's
24 unnecessary.

25 THE COURT: No, no.

1 (Whereupon, sidebar discussion is concluded.)

2 THE COURT: The young lady who was here, the
3 mother of the witness was escorted out, have her come back
4 in.

5 MR. GONZALEZ: We have no objection, Judge.

6 (Whereupon, Mrs. Woods enters the courtroom.)

7 THE COURT: All right. Are you the mother?

8 MRS. WOODS: Yes.

9 THE COURT: All right. I just want to indicate
10 to you, ma'am, just listen, do not say anything. Is that
11 clear? Did you hear me?

12 I can't hear you now.

13 MRS. WOODS: Yes.

14 THE COURT: All right. I think that takes care
15 of that, ladies and gentlemen, so you'll disregard any of
16 that as far as that is concerned about any evidence at all
17 and we can go forward.

18 BY MS. FURLONG:

19 Q Ms. Woods, I'm now showing you again what's been
20 marked as State's Exhibit S-43. There are two pages
21 together, can you tell me, did you sign these two documents?

22 A Yes.

23 Q And do you remember what the request was, why
24 the investigator asked you to sign these?

25 A The first one was to search my house and take the

1 next one was for my car.

2 Q And is your signature on both of these documents?

3 A Yes.

4 Q And is it dated?

5 A Yes.

6 Q And can you tell the Court and jury the date?

7 A September 11th, '89.

8 Q And is there also a time here?

9 A 4:39 a.m.

10 Q After these two forms were signed, could you please
11 tell the Court and jury what happened next, Ms. Woods?

12 A They started searching my house. They took me outside
13 and they asked me if I knew Victor's family or have they
14 seen me before and they asked me if they could have the keys
15 to my car and I asked them for what? And they said, to
16 search it.

17 Then we went back inside and they asked me was Derek
18 upstairs and I said later, I said, Yeah.

19 Q Now, Ms. Woods, when you told them that Derek
20 was there and he was upstairs, where was he?

21 A It's an attic, but it didn't have any stairs there.

22 Q And how do you get into this attic?

23 A Well, we don't usually go up there but we use a
24 ladder or a chair.

25 Q I'm now going to show you what's been marked as

1 State's Exhibit S-34A and S-34B. Can you identify these
2 photographs? This is A, first, can you identify A?

3 A This is the bathroom. There's a little white stand
4 there, I think he stood on that to get upstairs because it
5 was all broken up, it wasn't like that when I went to bed.

6 Q And what about S-34B?

7 A And that's the hole where you have to move the wood
8 to go upstairs.

9 Q Now, how -- what room do you go in to get into
10 this?

11 A The bathroom.

12 Q The bathroom.

13 And when, if you can remember, at what point in
14 time did the investigators discover that Derek was up in
15 the attic crawl space?

16 A When I told them that.

17 Q And did there come a point in time where you went
18 up near the attic crawl space?

19 A When I was on my way downstairs to answer the door,
20 that's when he was saying, Get me somethin' to stand on
21 and I said, Somethin' to stand on, like what, like that?
22 And they were banging. I went downstairs. There were holes
23 in the wall where he had put his feet but I went downstairs.

24 After I let them in and everything, they was asking
25 me was he in the house and I said, No. I went outside.

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1 came back inside, I didn't go back upstairs after that. I
2 was downstairs at the bottom of the stairs and they was
3 askin' him to come downstairs and he wouldn't come. So,
4 they said for me to tell him to come downstairs or they
5 was gonna start shooting.

6 Q And how long would you say Derek was up in the
7 attic crawl space?

8 A I think about an hour at the most.

9 Q And were you present when he was removed from
10 that attic crawl space?

11 A They pushed me outside 'cause I didn't see him when he
12 came out.

13 Q Do you remember what Derek was wearing that night?

14 A It was a vest.

15 Q Okay. Kathy --

16 A And some jeans.

17 Q Let me clarify my question.

18 At the point in time when he was in the attic
19 crawl space, do you remember what Derek had on?

20 A Oh, when he came down?

21 Q Uh-huh.

22 A He had on a robe.

23 Q Now, prior to that, do you remember what Derek
24 had on while you were driving around looking for Victor?

25 A A pair of pants and a vest.

1 Q I'm now going to show you what's been marked
2 as State's Exhibit S-21B and ask you if you can identify
3 this for the record? Can you identify this vest?

4 A Yes, that's his vest.

5 THE COURT: What is it?

6 THE WITNESS: That's Derek's vest.

7 THE COURT: Vest, allright.

8 Q And Ms. Woods, was this the same vest that Derek
9 was wearing on September 10th, 1989?

10 A Yes.

11 Q Now, after the police took you outside, what
12 happened next, Ms. Woods?

13 A Then we went next door to my mother's side and they
14 was talkin' to me.

15 Q Now, did there come a point in time where you
16 were taken to the Newark Homicide Unit?

17 A Later.

18 Q And do you remember what time that was?

19 A No.

20 THE COURT: Do you remember who took you to the
21 Newark Homicide Unit?

22 A Detective Thomas and the Prosecutor.

23 Q Now, at the point in time that you were in
24 Plainfield, did you see anyone else there at your Plainfield
25 home?

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1 A Yes.

2 Q Who else did you see?

3 A Victor's niece and this man, we rode in the same car.

4 Q When you say you rode in the same car, you mean
5 back to the Homicide Unit?

6 A Yeah, they were in the back seat and I was in the
7 front.

8 Q Now, when you arrived at the Newark Homicide
9 Unit, did you give a statement?

10 A Like hours later, hours. It was a long time.

11 Q What happened prior to you giving the statement?

12 A Prior?

13 Q Uh-huh.

14 A They put me in this room and they just kept comin' in
15 with things, tellin' me that I could get locked up for the
16 rest of my life if I didn't tell the truth and my brother
17 kept callin' to talk to me.

18 MR. GONZALEZ: Your Honor, objection, hearsay.

19 THE COURT: Well, the brother kept calling but
20 we didn't get anything more than that.

21 MR. GONZALEZ: Well, okay, true.

22 THE COURT: Don't indicate anything that anybody
23 else said, thank you.

24 Q Kathy, did there come a point in time where you
25 went back to Plainfield?

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1 A About nine o'clock that night I drove -- they dropped
2 me off at the Blue Star Shopping Center and told my brother
3 to pick me up there.

4 MS. FURLONG: Your Honor, at this time, I'd like
5 to have the following consent form marked as State's
6 Exhibit S-44.

7 THE COURT: Okay, mark S-44 as the consent form
8 for the car and S-45 as the consent form.

9 MR. GONZALEZ: Yes, Judge, that's what I would
10 request.

11 THE COURT: All right.

12 (Whereupon, exhibits are marked S-44 and S-45
13 for Identification.)

14 (Whereupon, Defense Counsel reviews exhibits.)

15 Q Kathy, I'm now showing you what's been marked as
16 State's Exhibit S-45. Could you tell me whether or not
17 you can identify that for the record?

18 (Whereupon, witness reviews exhibits.)

19 A Yes.

20 Q And could you please tell the Court and the jury
21 how you could identify this form?

22 A Detective Thomas, Bill Thomas.

23 THE COURT: Tell the jury, please.

24 A Detective Thomas brought it in that room.

25 Q And does it bear your signature?

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1 A Yes.

2 Q And after signing, do you remember what type of
3 form this was that you signed?

4 A No.

5 Q But you signed it?

6 (Whereupon, witness nods head in affirmative.)

7 Q I'm going to ask you to look at it again and see
8 if it refreshes your memory as to what type of form it is
9 after you look at it again, that's S-45.

10 A Okay, it's a consent form.

11 Q Does this refresh your memory after looking at it?

12 A Yeah.

13 Q And what type of form is this, Kathy?

14 A A consent to search.

15 Q And when did you sign this second form?

16 A After I got back to Newark to the police station.

17 Q And do you remember why you signed that form?

18 A Yes, so they could search my house and my car and he
19 didn't have the original.

20 Q And did you go back with Investigator Ferrer
21 and Thomas to Plainfield at that point in time?

22 A Yeah.

23 Q And why did you go back with them to Plainfield?

24 A He kept sayin' I knew where the gun was and that they
25 wasn't gonna let me go until I told them, they was gonna

1 lock me up.

2 Q And did you tell them where the gun was?

3 A Yes.

4 Q I'm now going to show you a series of pictures
5 which were marked S-35A through F and ask if you can identify
6 these photographs? Take your time and look through them.

7 (Whereupon, witness reviews photographs.)

8 THE COURT: Next question, please.

9 Q After looking through those photographs which
10 have been marked as S-35A through F, can you identify those
11 photographs?

12 A They took these when they went back to the house to
13 get the gun.

14 Q And were you present when they were taken?

15 A Yes.

16 Q The photographs?

17 And could you tell the Court and the jury what
18 they're pictures of?

19 A They're pictures of my room where the gun was underneath
20 the bed.

21 Q Now, Kathy, after you went to Plainfield and the
22 gun and the phone book were obtained, where did you go
23 after that?

24 A Back to Newark.

25 Q And at that point in time, did you give a

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1 statement to Investigator Henry Ferrer?

2 A Yes.

3 Q I'm now showing you what's been marked as
4 State's Exhibit S-36. Can you tell me if you can identify
5 this as your statement?

6 (Whereupon, witness reviews statement.)

7 A Yes.

8 Q And does it bear your signature on each page?

9 A Yes.

10 Q And did you have an opportunity to read this
11 before you signed it?

12 A Yes.

13 Q After your statement was completed, Kathy, what
14 did you do if anything?

15 A What did I do? I sat there and slept.

16 Q Did there come a point in time when you left the
17 Newark Homicide Unit?

18 A Hours later because they told me I couldn't leave.

19 Q And while you were there, was Mr. Moultrie in
20 the Newark Homicide Unit?

21 A I don't know.

22 Q Do you have -- you have no knowledge of whether
23 or not Mr. Moultrie was in the --

24 A They said he was there but I kept askin' them if
25 he was but they never said where he was but then evidently,

1 he had gotten out or somethin' and they told me I couldn't
2 leave. They said, You can't leave because he's gonna --

3 MR. GONZALEZ: Your Honor, objection, hearsay.

4 THE WITNESS: It's not hearsay, it's the truth.

5 THE COURT: No, hold it. No, no, I don't think
6 you know what hearsay is, you don't make any conclusions,
7 you just answer the questions unless I ruled otherwise,
8 understand?

9 Objection sustained, next question.

10 Q Ms. Woods, at any point during the evening of
11 September 10th, 1989, did you ever possess the handgun
12 that I showed you today in court?

13 A No.

14 Q Did you shoot Victor Mott?

15 A No, I didn't even know him.

16 MS. FURLONG: I have no further questions of this
17 witness, your Honor.

18 THE COURT: Cross-examine, please.

19 CROSS-EXAMINATION BY MR. GONZALEZ:

20 Q Ms. Woods, good morning.

21 A Good morning.

22 Q Ms. Woods, you told us that you knew Mr. Moultrie
23 back on September 11th, 1989, for about a year?

24 A Yeah.

25 MS. FURLONG: Objection, your Honor, can we see

1 the correct dates here?

2 MR. GONZALEZ: September 11, '89.

3 THE COURT: Isn't that the date in the
4 indictment?

5 MS. FURLONG: Excuse me, '89, September '89.
6 The question was, did you know him about a year before that.

7 MR. GONZALEZ: I'll rephrase it.

8 THE COURT: All right.

9 MR. GONZALEZ: Do you want me to go on, Judge?
10 I'll rephrase it.

11 THE COURT: I don't see any reason for the
12 objection but however --

13 MR. GONZALEZ: I agree, but I'll just rephrase
14 the question.

15 THE COURT: Go ahead.

16 BY MR. GONZALEZ:

17 Q Prior to this incident occurring, you knew
18 Mr. Moultrie for about a year?

19 A Yes.

20 Q All right. He was your boyfriend?

21 A Yes.

22 Q Correct?

23 And you cared for Mr. Moultrie quite a bit as
24 your boyfriend, did you not?

25 A Yes.

1 Q In fact, you cared for Mr. Moultrie so much
2 that you had Mr. Moultrie move into your apartment, correct?

3 A Yes.

4 Q All right.

5 Now, you told us that on the day when Victor Mott
6 helped you and Mr. Moultrie move into your apartment, you
7 had seen the chain in your apartment, correct?

8 A Yes.

9 Q And do you recall the amount of money the chain
10 was worth?

11 A He told me it was worth \$500.

12 Q Now, you also told us that at one point in time,
13 you saw that the chain was missing, correct?

14 A Yes. That was --

15 Q And it was missing during the time when
16 Mr. Victor Mott was in the apartment, correct?

17 THE COURT: You have to answer, please.

18 A After Victor came back, the chain was gone -- that's
19 when we noticed it was gone.

20 Q You noticed it was missing?

21 A Yeah.

22 Q All right.

23 Now, how did you feel that this chain was missing?
24 Did you feel angry?

25 A Was I angry?

1 Q Yeah.

2 A I was upset but I wasn't angry.

3 Q But you were upset about the fact that the \$500
4 chain was missing from the apartment, correct?

5 A Yeah, because when we woke up they were there, his
6 jewelry was there and so was mine.

7 Q And was your jewelry missing, too?

8 A No.

9 Q But Victor -- Mr. Moultrie's jewelry was missing?

10 A His watch was there, his diamond earring was there,
11 his gold chain was gone.

12 Q All right. And who did you think took the gold
13 chain?

14 MS. FURLONG: Objection, your Honor, that's
15 speculation.

16 MR. GONZALEZ: Judge -- well, I'm asking her for
17 her opinion.

18 THE COURT: Well --

19 MS. FURLONG: Your Honor, it's not relevant to the
20 case who took the chain or not, it's a homicide. I mean,
21 it has no bearing on what her thoughts are.

22 MR. GONZALEZ: Judge, this is cross-examination.

23 THE COURT: No, no, it's cross-examination and
24 the question is whether or not she may have an interest or
25 any bias, I'll allow it for that purpose only.

1 Q Who did you think took the chain from your
2 apartment, Mr. Moultrie's chain?

3 A I only know what he told me, okay? He was the only
4 person that I've never been around in my life that was a
5 stranger and that was in the room.

6 Q And when you say "he," you mean --

7 A Victor.

8 Q -- Mr. Mott?

9 A Yes. I never saw Victor before, he was the only
10 different person that was there in my house. I don't allow
11 strange people around in my room.

12 Q And after Victor Mott was there, this strange
13 person, after that the chain was missing, correct?

14 A I didn't discover it, Derek discovered the chain was
15 missing.

16 Q No, I didn't say who discovered it, I'm saying,
17 after this Victor Mott, this strange person was in your
18 apartment, then this chain was missing?

19 A Yes.

20 Q All right.

21 Now, while you and Mr. Mott and Mr. Moultrie
22 were moving to your apartment, were you drinking?

23 A No, I was not.

24 Q You were not drinking?

25 A No.

1 Q All right. Was Mr. Victor Mott and Derek
2 Moultrie drinking?

3 A Yes.

4 Q But you were not?

5 A Yes, that's correct.

6 Q May I see the statement?

7 Ms. Woods, I show you what has been marked for
8 identification S-36 and ask you, do you recognize that
9 statement?

10 A Yes.

11 Q And that's your statement, correct?

12 A Yes.

13 Q With your signature at the bottom?

14 A Yes.

15 Q And what is it, a four-page statement?

16 A Yes.

17 Q And in each and every page, you signed it at the
18 bottom. Is that so, Ms. Woods?

19 A Yes.

20 Q And you read the statement before you signed it,
21 correct?

22 A Yes.

23 Q Now, you told us a minute ago that you were not
24 drinking on that day.

25 MR. GONZALES: It's about a quarter of the way

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1 from the bottom, Ms. Furlong.

2 Q On the first page of this statement, doesn't it
3 say on your statement, "We had been drinkin' beer and
4 rum and coke."

5 A I told them that it was they, okay, and he said,
6 Don't worry -- they said, Don't worry about it. They were
7 drinking, I didn't drink.

8 Q Oh, so it was the error of Henry Ferrer who
9 wrote this, not yours?

10 A That's right; that is correct.

11 Q But it does say there, "We"?

12 A I know what that says, but I'm tellin' you, they were
13 drinkin' rum. and coke.

14 Q Oh, you told that to Officer Ferrer?

15 A I told them that, yes.

16 Q Well, didn't you read the statement before you
17 signed it?

18 A I told them that and it was up to them to correct that.

19 Q No, no, I'm asking you, did you read this before
20 you signed it?

21 A Yeah.

22 Q And didn't you read that it says that "We had
23 been drinking"?

24 A I know what it says there, but I'm tellin' you they
25 were drinking.

1 Q After you read it the second time or after you
2 signed it and you re-read it and you saw that it said,
3 "We," instead of "they," did you tell them, Look --

4 A I even told them --

5 Q -- Detective Ferrer, you made an error?

6 A I even told the Prosecutor that this was wrong, it
7 should be they had been drinking.

8 Q Well, did you tell Ferrer on that day that this
9 was wrong, it should be they?

10 A I told him. I can't help it if they don't listen.

11 Q Now, Ms. Woods, I believe you told us that after
12 you and Moultrie went back to Plainfield, you found out the
13 chain was missing, correct?

14 A Yes.

15 Q And at that point in time, Mr. Moultrie called
16 Victor's niece's house?

17 A Uh-huh.

18 Q And asked them about Victor Mott, correct?

19 You have to answer, ma'am.

20 A Yes.

21 Q After that, you went down to the area where
22 Victor Mott lived, correct?

23 A From the house, he went up to the liquor store.

24 Q And from the liquor store, you went to Columbia
25 Avenue, correct?

1 A I don't know what the name of the street is but we
2 went to his house, yes.

3 Q Now, before going to Victor's house, did you --
4 strike that.

5 Do you know somebody by the name of Nat Montgomery?

6 A No.

7 Q All right.

8 Now, while in the area of Victor Mott's house,
9 did there come a time when a man came up to your car and
10 spoke to Derek Moultrie?

11 A No, not that I know of.

12 Q All right. Do you recall a man coming up to the
13 car and Mr. Moultrie in the car had shown a gun to this man?

14 A No.

15 Q And did you see Mr. Moultrie after showing a gun
16 to this man, put the gun between his legs while the guy
17 was looking through the window of the car? Did you see
18 that at all?

19 A No.

20 Q And did you see Mr. Moultrie or did you hear
21 Mr. Moultrie tell this individual that if Mr. Moultrie
22 got rid of the chain -- I mean, that if Mr. Mott got rid
23 of the chain, he was finished? Did you hear Mr. Moultrie
24 say that to this individual, Nat Montgomery?

25 A No.

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Q That never happened, correct?

A I don't know a Nat Montgomery, I never saw him, never heard of him before.

Q And you never saw a guy come next to your car and Moultrie show him a gun and then Moultrie put it between his legs, the gun, you never saw that?

A No, I did not.

Q It never happened while you were there, correct?

A I didn't see it.

Q All right. Let me ask you this. While you and Mr. Moultrie were looking for Victor Mott, at all times when Mr. Moultrie was in the car, you were in the car also, correct? Since you were the driver?

A Yeah, I stayed in the car, I never got out, except when I got home.

Q So, is it fair to say that you were in the car and Mr. Moultrie was in the car and if a guy came to the car and Mr. Moultrie showed him the gun, you would have been there to see this, correct?

A But I didn't see him show nobody no gun.

Q Now, did there come a time when Mr. Moultrie spoke to Victor Mott's mother?

A Yes.

Q And were you in the car at this time?

A Yes, I was.

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PENGAD CO. BAYONNE, N.J. 07002 - FORM

1 Q And for how long was Mr. Moultrie speaking to
2 Victor Mott's mother?

3 A For a little while.

4 Q For how long, ten minutes, a half hour?

5 A Maybe about 20, 25 minutes.

6 Q All right. And this was in front of Victor
7 Mott's house?

8 A I wasn't directly in front of the house.

9 Q But --

10 A I was in the car but I was like near the corner.

11 Q All right. I'm sayin --

12 A He walked --

13 Q When Mr. Moultrie was speaking to Victor Mott's
14 mother, was this at Victor Mott's house, if you know?

15 A As far as I know, yeah.

16 Q Now, you told us that while you were driving,
17 Mr. Moultrie showed you a gun, didn't you say that on
18 direct examination, that Mr. Moultrie showed you a gun
19 at one point in time in the car?

20 A Yes.

21 Q All right. And where did Mr. Moultrie have this
22 gun before showing you the gun?

23 A I have no idea.

24 Q I meant, did he have it in his pants pocket?

25 A I don't know.

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FED-35

PENGAD CO., BAYONNE, N.J. 07002 - FORM

UNRECORDED
ERASABLE

NOT FOR CONTENT

1 Q Describe for me how he showed you the gun.
 2 Did he take it out of his pants pocket and said, Look,
 3 Kathy Woods, here's a gun? How did it happen?

4 A I don't know how he took the gun out.

5 Q Well, how did he show it to you, do you know that?

6 A I just seen the gun comin' over to me, I don't know
 7 where he got it from.

8 Q Do you remember Mr. Moultrie taking the gun from
 9 his pants pocket and putting it in his vest?

10 MS. FURLONG: Objection, your Honor.

11 A No.

12 MS. FURLONG: The witness already said she didn't
 13 know and he keeps asking the same question.

14 MR. GONZALEZ: Well, I'm asking a different
 15 question.

16 THE COURT: No, it's cross-examination, I'll
 17 allow it. A little leeway is admissible.

18 BY MR. GONZALEZ:

19 Q You don't remember Mr. Moultrie taking a gun
 20 from his pants pocket and putting it in his vest?

21 A No.

22 Q That never happened?

23 A How do I know where he got the gun from?

24 Q You also told us that Mr. Moultrie spoke to
 25 a young lady?

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FED-15

PFAGAD CO., BAYONNE, N.J. 07002 - FORM

HEMLOCK

REPRODUCIBLE

-COTTON CONTENT-

1 A Yes.

2 Q The niece of Mr. Victor Mott?

3 A Yes.

4 Q Correct?

5 And when Mr. Moultrie spoke to the niece of
6 Victor Mott, were they outside of the car?

7 A Yes, they were.

8 Q All right. And you were in the car by yourself,
9 correct?

10 A Yes.

11 Q All right.

12 Now, just now you told us that Mr. Moultrie had
13 showed you this gun. When he showed you this gun in the
14 car, was that prior to speaking to the niece of Victor
15 Mott or after speaking to the niece of Victor Mott?

16 A Before he spoke to her.

17 Q All right. So, before speaking to the niece of
18 Victor Mott was the time when he showed you the gun,
19 correct?

20 A Uh-huh.

21 Q And that's when he gave you the gun for you to
22 hold?

23 A He didn't give it to me, he put it right underneath
24 the seat.

25 Q Okay. He put it underneath your seat or...

1 underneath his seat?

2 A The driver's seat.

3 Q He put it underneath the driver's seat which is
4 your seat, correct?

5 A Yes.

6 Q And then he went out and spoke to this girl?

7 A Yes.

8 Q All right. And for how long was he speaking to
9 this girl outside of the car?

10 A For a while.

11 Q Well, what's a while, half an hour, ten minutes?

12 A I don't know.

13 Q All right. But all this time you were in the car?

14 A Yes.

15 Q All right.

16 Now, did you at any time -- strike that.

17 You never seen this gun before, correct?

18 A No.

19 Q I mean, you know nothing about guns?

20 A No.

21 Q All right. But you do know that guns are illegal.

22 Is that correct?

23 A Yes.

24 Q All right. Well, did you at any time, when

25 Mr. Moultrie gave you this gun to put underneath your seat?

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PENGAS CO. BAYONNE, N.J. 07002 - FC

1 say, I'm not gonna touch that gun, you keep it?

2 A I said, What are you doing with that, do you know
3 that you can get in trouble? That's what I said.

4 Q Well, when he was putting the gun underneath
5 your seat, did you take it out from underneath your seat
6 and said to Mr. Moultrie, No, no, no, you're not gonna put
7 this in my car, you're gonna take it out, that's illegal?

8 A No.

9 Q Well, when Mr. Moultrie was outside speaking to
10 this girl and you were in the car by yourself, did you
11 decide to leave and bring the gun to a cop or somebody
12 because you knew that you would get in trouble? Did you
13 do that?

14 A No.

15 Q So, all this time Mr. Moultrie gave you this
16 gun, put it underneath your seat and you didn't do anything,
17 you just accepted it. Is that what you're saying?

18 A I didn't like it, no.

19 Q Now, after Moultrie spoke to Victor Nott's
20 niece, he came back into the car, correct?

21 A Yes.

22 Q And from there, you started driving to the location
23 where you found Victor Nott. Is that correct?

24 A Yes.

25 Q And I believe you testified that as you were

1 driving, Mr. Moultrie asked you for the gun?

2 A Yes, he did.

3 Q And in fact, you tried to reach underneath the
4 seat to try and get the gun, correct? Is that true?

5 A Yes.

6 Q And I believe you told us that as he was reaching
7 for the gun that was underneath your seat, you kept pushin'
8 it back?

9 A Yes.

10 Q Is that : ?

11 A Uh-huh.

12 Q All right.

13 Now, at one point in time you reached the point
14 where you found Victor Mott. Is that true?

15 A Yes.

16 Q All right. And when you found -- strike that.

17 When you got there, Mr. Moultrie, what did he do?
18 Did he go inside and look for Victor Mott inside a bar?
19 How did he find Mr. Mott?

20 A I don't know, I never left the car.

21 Q All right, But you were watching Mr. Moultrie
22 as he left the car?

23 A I saw him get out but after that, he disappeared.

24 Q Okay. When he disappeared, did he disappear into
25 a house or an establishment or --

Woods - cross

1 A I don't know.

2 Q -- or what?

3 A I don't know.

4 Q He just disappeared?

5 A Yeah.

6 Q Now, at that point in time when Mr. -- strike
7 that.

8 For how long did Mr. Moultrie disappear?

9 A For a long time.

10 Q Well, what's a long time, half an hour, ten
11 minutes?

12 A About a half -- it was long, it was about a half an
13 hour, maybe an hour.

14 Q So, you were there for maybe about an hour or
15 half an hour?

16 At that point in time, did you do anything about
17 what was going on?

18 A No.

19 Q You didn't summon a cop, did you?

20 A No.

21 Q You didn't leave the scene, did you?

22 A No.

23 Q Now, when they were coming back, you didn't --
24 when I say "they," I mean Mr. Moultrie and Mr. Nett, you
25 didn't see Mr. Moultrie pushing or grabbing or forcing

1 Mr. Mott to get into the vehicle, did you?

2 A No, I did not.

3 Q What you heard was Mr. Moultrie saying to
4 Mr. Mott, Get in the back seat so I could see what you're
5 doin' or somethin' to that effect. Is that correct?

6 A Yes.

7 Q At that point in time when Mr. Mott got into the
8 car, Mr. Mott asked Mr. Moultrie what he was doing. Is that
9 true, what he was gonna do?

10 A Yes.

11 Q And Mr. Moultrie told him, I'm taking you to find
12 the chain?

13 A Yes.

14 Q And he told him that he was takin' -- he told
15 Mr. Mott that he was taking Mr. Mott to Plainfield to find
16 the chain?

17 A Yes.

18 Q So, at this point in time, his intention was to
19 go to Plainfield to see if he could find the chain with
20 Mr. Mott?

21 A Yes.

22 Q After that, you reached Plainfield, your
23 apartment, is that true?

24 A Yes.

25 Q Along the way to Plainfield, did you try to

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PENGAD CO. BAYONNE, N.J. 07002 - FORM

IRASABLE

-OPTIONAL CONTENT-

1 summon a cop , a police person or anybody to do something
2 about this situation?

3 A He had a gun, you think I'm crazy?

4 Q You didn't stop a cop or anything?

5 A Would you?

6 Q No, I'm asking you.

7 A But would you?

8 THE COURT: No, no, the question is, did you or
9 did you not?

10 THE WITNESS: No, I did not.

11 THE COURT: All right, next question.

12 Q Now, at one point when you reached Plainfield,
13 you went into your apartment, correct?

14 A Yes.

15 Q And you went in there to look for the chain?

16 A Yes.

17 Q Did you -- do you have a phone in your apartment?

18 A Yes.

19 Q All right.

20 Now, did you call the cops at that point in time
21 and tell them about this gun incident?

22 A No. The gun is in the room where the chain was and
23 I am not crazy, I told you, I'm not crazy. Somebody got
24 a gun, you think I'm gonna jump on the phone, Oh, somebody
25 got a gun? I'm not gonna get shot.

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FEB-23

PENGAD CO. BAYONNE, N.J. 07002 - FORM

1 Q Was Mr. Moultrie with you all the time when you
2 were looking for the chain?

3 A Yes.

4 Q How long were you in Plainfield lookin' for this
5 chain?

6 A I don't know.

7 Q Were you there for two minutes or a half an hour?

8 A I think we were in Plainfield for about an hour.

9 Q So, in this hour, you're tellin' me that
10 Mr. Moultrie was right by your side all this time, that
11 you couldn't reach a phone and call the police and tell
12 them what's going on here?

13 A Yes, that's true.

14 Q Let me ask you this question. Your mother lives
15 right next door, correct?

16 A Yeah.

17 Q Now, did you tell her what was going on?

18 A No.

19 Q At that point in time?

20 A No.

21 Q Now, after you left your home in Plainfield, you
22 decided to go back to Newark, is that true, you and
23 Mr. Moultrie and Mr. Mott?

24 A Yes.

25 Q And once again, you got into the car, Mr. Moultrie

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got into the car and Mr. Mott got into the car, is that true?

A Yes.

Q All right.

Now, when they were -- when Mr. Mott and Mr. Moultrie were getting into the car, did you see Mr. Moultrie at any time push or shove Mr. Mott into this car?

A No.

Q Did he force you to get into this car to go back to Newark?

A No, but I said to him that I didn't want to go and he said, Well, I want you to come.

Q Okay. Ms. Woods, you told us that as you were riding to Newark, you stopped at a place near some junk yard?

A Yes.

Q All right. Mr. Moultrie told you to pull over?

A Yes.

Q All right. And Mr. Moultrie at that time got out of the car and also, Mr. Mott got out of the car, is that true?

THE COURT: You have to answer, please.

A Yes.

Q All right. And is it -- isn't it a --

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PENGAD CO., BAYONNE, N.J. 07002 - FORM

NEWLOCK
ERASABLE
-COTTON CONTENT-

1 the conversation at the time when Mr. Moultrie and
2 Mr. Mott got out of the car was that Mr. Mott wanted to
3 know whether Mr. Moultrie was gonna make him walk home?

4 A Yes.

5 Q Wasn't that the conversation?

6 A That's what he said.

7 Q When you say "he," you mean Mr. Mott?

8 A Yes.

9 Q All right. He was concerned about Mr. Moultrie
10 leaving him and not taking him back home?

11 A Yes.

12 Q Do you remember Victor saying while they were
13 outside of the car to Mr. Moultrie, I know what you're
14 going to do, Derek, so you might as well go ahead and do it?
15 Do you remember Mott sayin' that to Derek Moultrie?

16 A Yes.

17 Q All right. And you remember Mr. Derek Moultrie
18 responding, No, I'm just going to take you home. Do you
19 remember that response?

20 A Uh-huh.

21 Q All right. So, the concern at that time was
22 whether Victor Mott was going to be left there or not,
23 wasn't that the gist of the conversation between Mr. Mott
24 and Mr. Mott?

25 A Yes.

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PENGAD CO. BAYONNE, N.J. 07002 - FCBN

HEMLOCK
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-COTTON CONTENT-

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Q And is it fair to say that at that point in time, the intention of Mr. Moultrie was to leave Mr. Mott at that location?

MS. FURLONG: Objection, your Honor.

Q In other words, to abandon him?

MS. FURLONG: Objection, your Honor.

THE COURT: Just one second.

MS. FURLONG: To what Mr. Moultrie's intention was.

MR. GONZALEZ: No, I said, is it fair to say?

THE COURT: No, no, is it fair to say from what she saw and heard and observed. Would that be fair to say that? I'll allow it.

Do you understand the question?

THE WITNESS: No.

MR. GONZALEZ: I'll rephrase it.

THE COURT: Then rephrase it, please.

Q From what you told me, Ms. Woods, when they were outside the car, the conversation led up to whether Mr. Moultrie was gonna abandon Mr. Mott at that location and not take him home, do you remember that?

A Yes, I remember it.

Q All right.

Now, based on that, is it fair to say that the intention of Mr. Moultrie at that time was to leave

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MEMORANDUM
REASABLE

EXHIBIT CONTENT

1 Mr. Mott at that location?

2 A You're sayin', do I think --

3 Q No, is it fair to say, ma'am?

4 MS. FURLONG: Again, Judge, note my objection.

5 THE COURT: Well, I understand.

6 MR. GONZALEZ: Well, let me just rephrase it,
7 I'll withdraw that question.

8 Q Well, did the conversation run into a situation
9 where Mr. Moultrie said, Okay, I'm gonna kill you, Mr. Mott,
10 if you don't give me that chain, did you hear that?

11 A No.

12 Q Now, you told us that Mr. Moultrie told you to
13 pull over a second time, is that so?

14 A Yes.

15 Q And when he told you to pull over and you did,
16 Derek and -- Derek Moultrie and Mr. Mott got out of the car,
17 correct?

18 A Yes.

19 Q And do you remember if when they got out of the
20 car, the car door was left open?

21 A Uh-huh.

22 Q Yes?

23 A Yes, it was.

24 Q And you were in the car, correct?

25 A Yes.

HEMLOCK

WRASABLE

-COTTON CONTENT-

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1 Q At the time?

2 And when they got out of the car, they, meaning
3 Mr. Mott and Mr. Moultrie, how far were they from the car?

4 A It was close, just like they were standin' --

5 THE COURT: Like what?

6 THE WITNESS: Like those two officers are
7 standing, they were close.

8 THE COURT: Like they're standing now?

9 THE WITNESS: Yes.

10 THE COURT: Hold it right there, Officer Sally.

11 How close would you say that the taller gentlemen
12 is towards the one in the back?

13 THE WITNESS: Oh, they were a lot closer than that,
14 I mean like they were a few minutes ago.

15 THE COURT: All right. Would you step back a few
16 inches and tell him when to stop?

17 (Pause)

18 THE WITNESS: Stop.

19 THE COURT: All right. Would you say they were
20 about that close?

21 THE WITNESS: About that close.

22 THE COURT: Would you say it's about, two feet,
23 three feet, something like that?

24 MR. GONZALES: Yes, Judge.

25 MS. FURLONG: No, not feet, it's inches.

COTTON CONTENT

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1 THE COURT: Turn around, please. Maybe not even,
2 almost face to face?

3 THE WITNESS: Yes.

4 BY MR. GONZALEZ:

5 Q All right. So, they were face to face?

6 A Almost.

7 THE COURT: Almost face to face.

8 MR. GONZALEZ: All right.

9 THE COURT: Thank you, Officer Sally.

10 Q All right. When they were positioned face to face,
11 how far were they from your car?

12 A They were right next to it.

13 Q Right next to your car?

14 A Uh-huh.

15 Q And the door was open?

16 So, they were within hearing distance, you could
17 hear what they were saying, is that so? Is that fair to say?

18 A Some, some words you could hear, some things you
19 couldn't.

20 Q All right. Were they arguing with each other
21 when they were out there?

22 (Whereupon, witness nods in affirmative.)

23 Q And you could hear arguing, is that correct?

24 A Yellin'.

25 Q Huh?

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BRASABLE
-COTTON CONTENT-

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A They were yelling.

Q And you could hear the yelling?

A A little bit.

Q Now, before you told us that at that point in time, Victor Mott -- Derek Moultrie showed a gun to Victor Mott and told him, After showin' you this, you're still not givin' me the chain? Or something to that effect, do you recall saying that?

A Yes.

Q All right. Do you recall at that time when they were next to the car face to face with each other, Mr. Mott tellin' Mr. Moultrie, What do you want me to do, walk? Do you remember Mr. Mott telling that to Mr. Moultrie while they were there face to face?

MS. FURLONG: Judge --

THE COURT: Pardon?

MS. FURLONG: Never mind, Judge.

THE COURT: All right.

A No.

Q You don't remember that?

Well, let me ask you this. Do you remember -- strike that.

Once again, I show you what has been marked S-36 for Identification, your statement, Ms. Needs, and I'll draw your attention -- Ms. Furlong, it's about a third

- COTTON CONTENT -

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1 of the way from the bottom of the page of the statement.

2 Do you see what it says on there, Ms. Woods?

3 "Victor said, What do you want me to do, walk? Then Derek
4 said --

5 MS. FURLONG: Objection, Judge, we have a
6 question and --

7 MR. GONZALEZ: I'm going to ask a question.

8 MS. FURLONG: But he's reading the statement,
9 Judge.

10 THE COURT: What are you doing now, are you
11 reading that out loud or are you asking her to read it?

12 MR. GONZALEZ: No, I'm reading it and then I'm
13 going to ask her whether she recalls it.

14 THE COURT: No, no, let her read it first.

15 MR. GONZALEZ: All right, fine.

16 BY MR. GONZALEZ:

17 Q Ms. Woods, read that there and see if it refreshes
18 your recollection as to what was said by Mr. Mott to
19 Mr. Moultrie at that time?

20 (Whereupon, witness reads statement.)

21 THE COURT: Did you read it?

22 THE WITNESS: Yes.

23 Q All right. And do you see that?

24 A Yes.

25 Q Do you see where it says, "What do you want me

-BOTTOM CONTENT-

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1 to do, walk?"

2 A Yes.

3 Q All right. And do you see where Derek states
4 after that --

5 MS. FURLONG: Excuse me, Judge, objection.

6 THE COURT: No, no, does that refresh your
7 recollection now that you've read it?

8 THE WITNESS: Yes.

9 MS. FURLONG: But do we have a question?

10 MR. GONZALEZ: I'm going to ask a question, Judge.

11 THE WITNESS: Oh, boy.

12 THE COURT: No question.

13 Q Was that what was told by Mott to Mr. Noultrie
14 at the time, what you read on that statement?

15 A Yes.

16 Q And also, I refer you to the statement on the
17 line after that and ask you if you recall when Derek
18 responds, "Are we near where my chain is?"

19 A Yeah, he said that.

20 Q All right. And I ask you to look again at the
21 statement and ask you, Do you recall when Derek says, "You're
22 still not answering me?" Do you see that on the statement?

23 (Whereupon, witness reads statement)

24 A Uh-huh.

25 Q You see that on the statement?

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A Yes.

Q And then after that, you told the investigator who took the statement, "Then Derek reached for the gun." Do you see that?

A Uh-huh.

Q All right.

Now, when you gave that statement to the investigator and you told him about that time when they were face to face, did you tell that investigator that Derek Moultrie showed him the gun and said, After showing you this, are you still not gonna give me my chain? Is that in that statement?

A Yeah.

Q That's there?

A Yeah.

Q Well, show me where it is in that statement, ma'am, when they were face to face with each other next to your car the second time that he pulled over?

(Whereupon, witness reviews statement.)

A I told them that.

THE COURT: No, no, the question is, is it in the statement?

THE WITNESS: No.

THE COURT: What?

THE WITNESS: No, but I told them.

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1 Q It's not in there?

2 THE COURT: No, no, the question is, is it in
3 the statement?

4 THE WITNESS: No.

5 THE COURT: All right, next question.

6 Q But you're saying you told the investigator that?

7 A Yeah.

8 Q All right. But once again, you read the statement,
9 didn't you, before you signed it?

10 A Yes, I did but you know how long ago that was?

11 Q Well, when you read the statement and you read
12 that part, did you say to the investigator, Look, sir, I
13 also told you that Moultrie told him, After showing you
14 this, meaning the gun, you're not gonna give me the chain?
15 Did you tell that to the investigator, I told you that and
16 you didn't put it in the statement?

17 A I told him.

18 Q Now, you told us before you heard the shot or
19 the poppin' sound, you had nodded out. In other words,
20 you were sleeping?

21 A Tired, yes.

22 Q And what were you, sleeping or did you have your
23 eyes closed or were you awake?

24 A Yes, I had my eyes closed.

25 Q All right. And did you see when the gun was

1 actually pulled?

2 A No.

3 Q All right. All you heard was the popping sound?

4 A Uh-huh.

5 Q And when you heard the popping sound the first
6 time, they were still face to face and in close proximity,
7 correct?

8 A As far as I know.

9 Q Meaning, Mott and Moultrie?

10 A As far as I know.

11 Q They were right there next to the car, next to
12 the car face to face?

13 A Yes.

14 Q When you heard the popping sound?

15 A When I heard the popping sound, yes. Whether they
16 were standing close to each other, I don't know that.

17 Q But you said they were standing face to face at
18 one time?

19 A Yes, but I did close my eyes, yes.

20 Q But you're saying after you closed your eyes,
21 you don't know what happened after that, whether they
22 separated or stayed apart or whether they stayed in the
23 same position, is that what you're saying?

24 A Yes.

25 Q Now, after you saw them face to face and you

1 closed your eyes and then you heard the popping sound, how
2 much time had elapsed? Was it instantaneous or did a long
3 time pass by before the popping sound after you closed your
4 eyes?

5 A It was a long -- it was a while, it was definitely
6 a while.

7 Q Well, did you hear them arguing next to the car
8 during the time that you were nodding out?

9 A No.

10 Q You didn't hear any arguments?

11 A Just like muffling but I really couldn't -- I was
12 asleep.

13 Q But my question was -- I know that you were
14 asleep, but did you hear them talking to each other or
15 yelling at each other?

16 A No.

17 Q Now, Ms. Moultrie, I ask you to use the chart
18 in the back, the paper and draw for me the car and where
19 the two individuals were in relationship to the car, if
20 you can?

21 MS. FURLONG: Judge, can we have a point in time?

22 Q Can you do that?

23 THE COURT: Well, we'll fix that right away.

24 The first thing is, can she do that?

25 THE WITNESS: No.

1 THE COURT: Can you do that, draw a car where
2 they were standing and specifically --

3 THE WITNESS: No.

4 THE COURT: You cannot draw?

5 THE WITNESS: No.

6 THE COURT: You can't make a diagram?

7 THE WITNESS: No.

8 THE COURT: Can't do it?

9 BY MR. GONZALEZ:

10 Q All right. If you can't draw the diagram, when
11 you heard the popping sound, you don't really know where
12 they were, is that what you're saying? When you heard the
13 first popping sound since you were sleeping, you didn't
14 really know where they were?

15 A I had my back to them, I was layin' over on my left
16 side, okay? I tend to do that a lot, sleep.

17 Q But the last time, Ms. Woods, you saw them
18 together, they were face to face meaning Mr. Mott and
19 Mr. Moultrie, is that true, before you went to sleep?

20 A Uh-huh.

21 Q What?

22 A Yes.

23 Q Okay. And then you heard the popping sound?

24 A That's right.

25 Q Okay. When you're saying face to face, you mean

1 they were facing each other, is that what you mean?

2 THE COURT: Is that what you mean? Don't look
3 at me, I can't help you.

4 THE WITNESS: Yes, that's what face to face means.

5 THE COURT: Well, then just answer the question.

6 Q I just wanted to make sure, I just wanted to make
7 sure.

8 THE COURT: If you don't understand the question,
9 just say you don't understand it.

10 THE WITNESS: He keeps askin' me the same thing
11 over and over again.

12 THE COURT: That's his right, is that clear?

13 THE WITNESS: No.

14 THE COURT: Please, proceed.

15 MR. GONZALEZ: Thank you, Judge.

16 Q Now, Ms. Woods, after you heard the popping sound,
17 did you see Moultrie and Mr. Mott run?

18 A When I woke up --

19 Q When you woke up?

20 A -- I just started screamin'. I had tears in my eyes.
21 When I turned, they were not there.

22 Q Well, did you see them run?

23 A I happened to look back, I couldn't -- the car was
24 goin' at the same time I happened to look back, all I saw
25 was their back, their back.

1 Q Okay. When you saw their back, were they
2 running?

3 A Yeah.

4 Q And did you hear any popping sounds at that
5 time?

6 A I turned around and grabbed the wheel, I heard two
7 popping sounds after that.

8 Q How many popping sounds did you hear in total?

9 A Three.

10 Q All right. Is it fair to say that you heard
11 one while they were by the car and then two as they were
12 running, is that fair to say?

13 A Yeah.

14 Q Did you hear any other popping sounds?

15 A No.

16 Q When you saw them running and you heard these
17 two popping sounds, was Mr. Mott ahead of Mr. Moultrie as
18 they were running or how were they, how were they running?

19 A He was in front of Derek, sort of.

20 Q Mr. Mott was in front of Derek?

21 A Sort of, yeah.

22 Q What do you mean, "sort of"? Either he was in
23 front or not in front.

24 A I don't know, Derek was like sort of behind, sort of
25 behind the car, not exactly and he was like over but he was

1 in front of him.

2 Q Who was in front of him, Mr. Mott?

3 A Yes.

4 Q And did he have his back to you?

5 A Yeah, 'cause I didn't really -- I didn't see nothin'
6 but just a little bit of his clothes.

7 Q All right.

8 Now, did Mr. Moultrie have his back to you?

9 A Uh-huh.

10 Q All right. So, they both had their back to you
11 and they were running, correct? They were running away
12 from you?

13 A Yes.

14 Q Is that correct?

15 All right. And I believe you told us that at
16 this point in time, the car started rolling downhill?

17 A It was all happenin' at the same time.

18 Q The car started rollin' downhill?

19 A Yeah.

20 Q All right.

21 Now, you were in the car and the car started
22 rolling downhill?

23 A The car was not in park, it was in drive.

24 Q All right. Well, did you have your foot on
25 the brake?

1 A Yes, I did.

2 Q And the car continued to roll anyway?

3 A I took my -- my foot, I took it off the brake and
4 the car just went.

5 Q Did you get out of that car at any time?

6 A No.

7 Q The car didn't roll down because you got out of
8 the car for a minute?

9 A No, the car did not roll because I got out from behind
10 the wheel, I was there.

11 THE COURT: I would think that you're going to be
12 a little bit longer?

13 MR. GONZALEZ: Not that much longer, Judge.

14 THE COURT: All right, then I'll let you finish.

15 MR. GONZALEZ: Well, if you want to take a break,
16 that would be fine.

17 THE COURT: Well, I was thinking that maybe it
18 would be time to.

19 MR. GONZALEZ: Fine, I have no problem with that
20 whatsoever.

21 THE COURT: Fine. If you do not, then we'll
22 take a recess, ladies and gentlemen, at this point. I'll
23 ask you, ladies and gentlemen, to be back here say in about
24 45 minutes or so because I have something else I want to
25 take care of that has nothing to do with this case.

1 think maybe I'll try to do some of that and then we'll
2 continue with this matter.

3 You're directed, of course, to be back here and
4 also, not to speak to anyone during this recess because
5 you're still under cross-examination. Do you understand
6 that, Ms. Woods?

7 THE WITNESS: Yeah.

8 THE COURT: All right, thank you.

9 And of course, ladies and gentlemen, as you well
10 know, you will go down to have coffee or whatever and we'll
11 see you in about 45 minutes and of course, be mindful, do
12 not think how this case should be decided one way or the
13 other, as you well know, the matter is not completed.
14 Thank you very much.

15 (Whereupon, jury is excused.)

16 THE COURT: I think you can leave everything as
17 it is, just give a little room -- all right.

18 Mr. Tossi, Mr. Hardaker, Mr. Bannis, if they're
19 ready, why, we'll proceed, just give me about five minutes.

20 (Whereupon, Kathy Woods exits.)

21 (Whereupon, Court takes care of other calendar
22 matters.)

23 THE COURT: All right, tell her to call our
24 witness, please.

25 (Whereupon, Kathleen Woods enters.)

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THE COURT: Please, be seated.

All right. With that, Mr. Gonzalez, are you ready to proceed?

MR. GONZALEZ: Yes.

THE COURT: All right, call the jury out, please, and I'll indicate that we're going to go through the lunch -- well, part of the lunch hour until the examination of Ms. Woods has been completed.

MS. FURLONG: Thank you, Judge.

THE COURT: And I'll inform the jury -- no, I'm not going to inform the jury, we'll just go ahead.
12:20 p.m.

(Whereupon, the following takes place within the presence of the jury.)

THE COURT: All right, we have all our 14 jurors in the jury box.

Ms. Woods, may I remind you that you are still under oath?

THE WITNESS: Yes.

THE COURT: Continue with your cross-examination, Mr. Gonzalez.

MR. GONZALES: Thank you, your Honor.

CONTINUED CROSS-EXAMINATION BY MR. GONZALES:

Q Ms. Woods, did you at any time actually see Derek Moultrie shoot the victim?

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1 A No.

2 Q As you were observing the victim and Mr. Moultrie
3 running and you heard the two pops, do you recall seeing
4 the victim fall to the ground?

5 A No.

6 Q When Mr. Moultrie and the victim were running,
7 did you see the gun in the hand of Mr. Moultrie at that
8 point?

9 A No.

10 Q But you told us that you saw the gun when -- in
11 Mr. Moultrie's hand when they were by the car?

12 A Yes.

13 Q And that's when you heard the popping sounds,
14 correct?

(Whereupon, witness nods in affirmative.)

15 Q All right.

16 Now, at that point in time, when you saw the gun
17 in Mr. Moultrie's hand and you heard the popping sounds and
18 they started to run, did you decide to drive off at all at
19 that time?
20

21 A No.

22 Q Now, you told us that after Mr. Moultrie returned
23 to the car, he told you that he had shot Mr. Mott?

24 A Yes.

25 Q Okay. And that was the first time you heard that

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1 Mr. Mott had been shot?

2 A Yes.

3 Q Now, after you learned this from Mr. Moultrie,
4 I believe you told us that Mr. Moultrie stopped somewhere
5 to make a phone call, correct?

6 A Yes.

7 Q Do you recall the location at which Mr. Moultrie
8 made this phone call?

9 A It's around the corner from there.

10 Q All right. When -- was it a public phone?

11 A Pay phone, yeah.

12 Q Was the pay phone in the street or inside of a
13 store or what?

14 A On the side.

15 Q On the side of what?

16 A A building.

17 Q On the side of a building out on the street?

18 A Yeah.

19 Q Okay. When you made this phone call did you
20 remain in the car?

21 A Yes.

22 Q And how long was he out making this phone call?
23 Was it quick or was it a long conversation that he had?

24 A It wasn't -- evidently, it was a quick conversation
25 because he was back in the car.

1 Q Okay. When Mr. Moultrie left the car and was
2 making this conversation -- making this phone call, did
3 you have the windows to the car open or closed?

4 A They were closed.

5 Q When Mr. Moultrie was outside the car, did you
6 decide to just leave him there and do something else, get
7 away from all of this mess?

8 A No.

9 Q You just remained there, correct?

10 A I just sat there.

11 Q Now, at this point in time, you did know from
12 the words of Mr. Moultrie that Mr. Moultrie had shot Victor
13 Mott, correct, you knew it because he told you?

14 A That's what he told me, yes.

15 Q And when Mr. Moultrie had left to make this phone
16 call and you were in your car by yourself, did you have the
17 keys to the car?

18 A Yeah.

19 Q And you were able to, if you wanted to, just
20 leave, correct?

21 A Yes.

22 Q And you didn't?

23 A No.

24 Q Now, you told us that when Mr. Moultrie returned
25 to the car, he told you he had called the Mott household,

1 I believe you said? The Mott residence?

2 A Yes, and I said, for what?

3 Q And he told you?

4 A Yes, he did.

5 Q And what did he tell you again, what did he say
6 he said?

7 A What did he say?

8 Q Yeah, what did he say to this Mott family?

9 A He said he asked them if Victor had gotten home yet
10 and I said, Why did you do that? Like that.

11 Q Backtracking a little bit, when you first picked
12 up Victor Mott, do you recall the time that this was?

13 A No, I do not.

14 Q Was it light out or was it dark out?

15 A It was light out.

16 Q Fine. Is it fair to say since it was light out
17 and this happened on September 11th of '89, that it was
18 before nine o'clock?

19 A That we picked him up?

20 Q Yeah.

21 A Yes.

22 Q So, when you picked up Moultrie and -- when you
23 and Mr. Moultrie picked up Victor Mott, it was around nine
24 o'clock, more or less or before nine?

25 A I can't say that.

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1 Q Now, do you know if it was after nine?

2 A I don't know, I never looked at no clock.

3 Q Okay. Well, was it before ten o'clock, if you
4 can recall?

5 MS. FURLONG: Judge, I'm going to object. The
6 witness said she can't recall the time and Mr. Gonzalez
7 keeps asking her, was it this time, was it that time and
8 she's already answered the question, she doesn't know what
9 time it was.

10 THE COURT: No, the question was, was it light
11 out or not? And I'll allow it for that purpose.

12 MS. FURLONG: Judge, I believe she answered it was
13 light out.

14 THE COURT: Fine. Now he's asking September it's
15 light out. I'll allow the cross-examination.

16 MS. FURLONG: Judge, if I just may --

17 THE COURT: I'll allow the cross-examination to
18 continue, I think it's proper.

19 BY MR. GONZALEZ:

20 Q Was it before ten o'clock?

21 A Yes, I believe it was.

22 Q You told us on direct examination by Ms. Furlong
23 that as you were riding you decided to stop at a store,
24 correct?

25 A Yes.

1 Q All right. And do you recall what this was?

2 A I'm not sure of the name but I think it's a Fanfare,
3 I don't usually --

4 Q You think it's a what?

5 A A Fanfare.

6 Q And was that -- was it in Newark?

7 A No.

8 Q Where was it?

9 A In Plainfield.

10 Q All right. Did you get out of the car and did
11 Moultrie stay in the car when you went to the store?

12 A No.

13 Q Did Moultrie go with you?

14 A Yes.

15 Q So, you both went into the car -- into the store?

16 A Yes.

17 Q And what did you go to the store for?

18 A I don't remember.

19 Q But I think you told us that you were very upset
20 and you just went in there to buy anything, correct?

21 A Yes.

22 Q Now, Ms. Woods, when you returned back to
23 Plainfield after the incident, isn't it a fact that you
24 received a phone call from Victor's niece?

25 A She didn't say who she was.

1 Q Well, did you receive a phone call?

2 A Yes, I did.

3 Q All right. And isn't it a fact that this
4 individual asked you for Derek?

5 A No.

6 Q This individual didn't ask you for Derek?

7 A No, they did not.

8 Q All right. Isn't it a fact that you were asked --
9 that this individual did ask you for Derek and you said he
10 was not home? You don't remember that conversation with
11 this person?

12 A No.

13 Q And isn't it a fact that this person also asked
14 you, have you seen Victor Mott, her uncle?

15 A No.

16 Q And you said, We didn't see him. You don't
17 remember that conversation?

18 A No, I do not.

19 Q You don't remember that conversation with
20 Tykesha Mott?

21 A No.

22 Q What was your telephone number back in September 11,
23 1989, if you can recall, Ms. Woods?

24 A No, I don't recall it.

25 Q Does 757-3576 ring a bell?

1 A Yeah.

2 Q That was your telephone number, correct?

3 A Yeah.

4 Q Now, isn't it a fact that when you got back,
5 you received a second phone call from the niece of Victor
6 Mott, Tykesha Mott and she asked you for your license plate
7 number, correct?

8 A I only got one phone call, somebody askin' me what
9 was my plate number, that was it.

10 Q But they didn't identify themselves?

11 A No, they did not. I asked the person what was their
12 name, they said don't worry about it.

13 Q And you gave them what, a false number?

14 A Plate number?

15 Q Yes.

16 A Yeah.

17 Q Well, when you asked them who they are and they
18 said, don't worry about it, did you hang up on them?

19 A Yeah.

20 Q But you gave them a number before that, didn't
21 you?

22 A Yeah.

23 Q And you gave them a false number?

24 A Yeah, I did.

25 Q And you're tellin' us that you didn't know it

1 was Tykesha Mott that was calling?

2 A I didn't know who the person was.

3 Q So, if you didn't know who the person was, why
4 did you give them the -- even the false plate number?

5 Why didn't you just hang up? You knew who she was,
6 Ms. Woods.

7 A I didn't know who she was.

8 Q Now, at one point in time that evening or that
9 morning, police officers came to your home, correct?

10 A Yes.

11 Q Do you recall the name, Detective Thomas?

12 A Yes.

13 Q And do you recall the name, Investigator Henry
14 Ferrer?

15 A Yes.

16 Q You spoke to both of them, correct?

17 A Yes.

18 Q All right.

19 Now, when they came to your door, one of the
20 officers advised you of the investigation, correct? In
21 other words, he told you why he was there?

22 A Yes, he did.

23 Q All right. And he told you that your car had
24 been seen -- strike that.

25 He told you that your car was seen as the car in

1 which Victor Mott was put in?

2 A Yes.

3 Q And they also asked you for Derek Moultrie at
4 that time, correct?

5 A Yes.

6 Q And when they asked you for Derek Moultrie, isn't
7 it a fact that you told him that you -- you told the
8 officers that you had seen him earlier but you had no
9 knowledge of his whereabouts?

10 A Yes.

11 Q All right. So, you lied to the officers?

12 A Yes.

13 Q Now, in fact, they had to tell you that they
14 would take you into custody and tow your car before you
15 said anything concerning this incident, correct?

16 A They didn't say that at first.

17 Q You didn't say what at first?

18 A They didn't say they was gonna tow the --

19 Q But at one point in time, did they tell you
20 they were going to take you in and tow your car?

21 A Or padlock my house.

22 Q Or padlock your house?

23 A Yes.

24 Q All right. And at that point in time, you told
25 them that Derek was up in the attic?

1 A Yes.

2 Q Now, when you were in the house and they were in
3 there looking for Derek, you didn't tell the officers what
4 had happened, any details of what happened yet, did you?

5 A No.

6 Q You had not told them about the gun, that it
7 was underneath the bed at that point in time?

8 A No.

9 Q You did not tell them about the details of the
10 shooting at that point in time?

11 A No.

12 Q After they searched your apartment and I believe
13 you said on direct examination that you allowed them to
14 search your apartment, they took you to the police department,
15 the homicide squad?

16 A They took me out front to --

17 Q All right. They took you out front?

18 A To the car.

19 Q The car?

20 A To their car where Victor's family was outside.

21 Q And you were identified as the person driving
22 the vehicle, correct?

23 A Yeah.

24 Q But after that, they took you to the headquarters,
25 is that so?

1 A Yeah.

2 Q Police headquarters?

3 Was that here in Newark?

4 A Yes.

5 Q All right.

6 Now, while you were driving--while the officers
7 were driving you to the Newark Police Department, did you
8 give them any details about the shooting? Did you say,
9 Derek Moultrie did the shooting, at that point in time?

10 A No.

11 Q You finally got at one point in time to the
12 police station itself, correct?

13 A Yes.

14 Q Now, you told us that one of the officers, while
15 you were in the police department, mentioned to you that
16 you would be locked up, I think you said something like,
17 you'd be locked up for a long time or for the rest of your
18 life if you didn't cooperate. Is that what they told you?

19 A They said that I would be charged with murder or
20 conspiring. They also showed me records sayin' that didn't
21 you know he had a record? A lot of things.

22 MR. GONZALEZ: Your Honor, I ask that she --

23 THE COURT: Well --

24 MR. GONZALEZ: I asked a question.

25 THE COURT: Don't indicate and volunteer, the

1 question is, what did they do to you or say to you
2 regardless what they may have said about the other gentleman
3 which you don't even know if it's true or not, correct?

4 The question is, what did they say to you?

5 MR. GONZALEZ: Exactly.

6 THE COURT: That's the point.

7 Anything else?

8 THE WITNESS: That's what they said.

9 THE COURT: Ladies and gentlemen, what may have
10 been said --

11 BY MR. GONZALEZ:

12 Q Well, did they say --

13 THE COURT: Just one second, please, let me
14 clarify something to the jury.

15 Whatever may have been said to this lady about
16 the police and Mr. Moultrie, ladies and gentlemen, you just
17 disregard that because that is strictly hearsay and that is
18 not admissible at all. Is that understood?

19 THE JURY: Yes.

20 THE COURT: So, you just disregard that, she
21 doesn't know -- in other words, she can't testify as to
22 what somebody told her unless those individuals will be
23 here subject to cross-examination. It's hearsay, therefore,
24 it is not permissible and now you can start to understand
25 the rationale and the logic of all the rules that we have

1 where you have to decide the case according to the evidence
2 presented in this courtroom and not what may be on the
3 outside. Is that clear?

4 THE JURY: Yes.

5 THE COURT: All right, thank you.

6 Q I'll ask you again, Ms. Woods, didn't they tell
7 you you would get locked up for the rest of your life if
8 you didn't cooperate?

9 A Yes.

10 Q And they also told you that you had to tell them
11 where the gun was?

12 A Yes.

13 Q And they told you that if you didn't tell them
14 about the incident, you couldn't leave the precinct, correct?

15 A Yes.

16 Q Now, after they told you all of this, at that
17 point in time, you told them that you -- where the gun was
18 in your house, correct?

19 A Yes.

20 Q And in fact, you took them there?

21 A Yes.

22 Q Now, prior to the officers telling you all these
23 things that I just mentioned to you and you were in the
24 Newark Police Department, did you say to them, look, Derek
25 Moultrie pulled that trigger, Derek Moultrie had the gun?

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1 You didn't, correct?

2 A I believe I did.

3 Q You did tell them that before?

4 A Yes.

5 Q Before they told you that you'd be locked up for
6 the rest of your life?

7 A Yes.

8 Q Now, was that during the time they were taking
9 your statement or before?

10 A Before.

11 Q Do you --

12 A When they came --

13 Q Do you --

14 MS. FURLONG: Judge, can the witness finish her
15 answer?

16 Q I'm sorry, go ahead.

17 A They kept sayin' that I was gonna be charged with
18 murder if I didn't tell them what happened and I told them
19 the truth, that he did do it and then later on, that's when
20 I took the statement but I did tell them, yes.

21 Q But before they started tellin' you this, you
22 didn't say to them that Derek did it?

23 A I didn't tell them anything.

24 Q But once you knew that you were in trouble, that's
25 when you started blaming it on Derek Moultrie?

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FE8-25

PRINCETON, N. J. 07002 - FORM

1 A I didn't blame him, it's the truth.

2 Q Now, the gun was found underneath -- in a phone
3 book underneath your bed, correct?

4 A Yes.

5 Q Do you know a Douglas McCormick?

6 A Yes.

7 Q And who's Douglas McCormick?

8 A It's my brother's best friend.

9 Q Does he also live in your apartment?

10 (Whereupon, witness nods in affirmative.)

11 Q With you?

12 A He has a room there.

13 Q Was he there the evening when the police went in
14 and got the gun?

15 A I don't believe he was.

16 Q Didn't Douglas McCormick answer the door with you
17 when the officers came to your house?

18 A That night?

19 Q Yeah.

20 A Yes.

21 Q So, he was there that night?

22 A Yes.

23 Q Now, sometime after September 11, 1989, you
24 brought to the attention of the police that you found a
25 spent shell in your car, correct?

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1 A Yes.

2 Q And you returned this spent shell to the police
3 department, to Detective Thomas or Ferrer?

4 A Yes.

5 Q Now, I believe you told us that you gave a
6 statement in this case, correct, Ms. Woods?

7 A Yes.

8 Q All right. And do you have your statement in
9 front of you which is for -- do you have -- well, I show
10 you your statement marked 8-36 for Identification and I
11 ask you --

12 THE COURT: Is that 30?

13 MR. GONZALEZ: Well, I have 36, Judge.

14 THE COURT: All right, thank you.

15 Q I ask you, does the statement indicate what time
16 you gave it?

17 A Yes.

18 Q What time is that?

19 A It says, 12:48 p.m.

20 Q On what day?

21 A Up here, it says, September 11th.

22 Q September 11, 1989?

23 A Yeah.

24 Q 12:48 p.m., is that what it says on there?

25 A Yeah.

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PRINCE GEORGE COUNTY, MARYLAND - FORM FD-302

1 Q And when you gave the statement, did you give it
2 at the police department, at the police headquarters?

3 A Yes.

4 Q And when you gave the statement, it was after
5 the police officers had already been to your house and had
6 obtained the weapon, correct?

7 A Yes.

8 MR. GONZALEZ: No further questions.

9 THE WITNESS: Good.

10 THE COURT: Redirect?

11 MS. FURLONG: Thank you, your Honor.

12 REDIRECT EXAMINATION BY MS. FURLONG:

13 Q Ms. Woods, I want you to go back to the point
14 in time where you indicated you were on Victor's street
15 and my question to you, so that we know what time we're
16 talking about, the time that Derek got out of the car to
17 speak to some individuals on the corner, I'm going to ask
18 you at that point in time, how far were you away from
19 Derek when he was speaking to these individuals on the
20 corner in feet?

21 I can -- you can tell me to keep moving back or
22 forward.

23 A I was on the other side of the street, I don't know
24 how many feet it was.

25 Q And where were these individuals on the corner?

1 Were they like diagonal to you, straight across from you?

2 A Sort of diagonal.

3 Q And at that point in time, you indicated you
4 moved your car. Could you explain the movement of your
5 car in relationship to where Derek was with the individuals
6 on the corner?

7 A I had to go down to make a left around the divider
8 to come up so they were behind me.

9 Q So, is it fair to say that you weren't able to
10 hear what their conversation was on the corner?

11 A Yes, that's true.

12 Q And did there ever come a point in time when you
13 got out of the car and went with Derek with those
14 individuals on the corner?

15 A I never got out of the car.

16 Q Now, on cross examination, Mr. Gonzalez asked
17 you if you ever saw Victor fall. I'm going to ask you to
18 review and I'm referring to Exhibit S-36, the third page
19 towards the bottom and I'm going to ask you to read this
20 to yourself and ask you if this refreshes your memory?

21 MR. GONZALEZ: Judge, as to what?

22 THE COURT: I don't know.

23 MS. FURLONG: As to whether or not she saw Victor
24 fall, Judge.

25 THE COURT: Well, there was something brought out

1 about, on cross-examination -- I'll let her read it and
2 S-36 is her statement, ladies and gentlemen.

3 MR. GONZALEZ: Judge, she's not gonna read the
4 whole statement, is she?

5 THE COURT: No, no.

6 MS. FURLONG: No, I'm referring to page three,
7 the third question up from the bottom, the fourth line up
8 from that, right here.

9 (Whereupon, witness reads statement.)

10 BY MS. FURLONG:

11 Q Ms. Woods, after refreshing your memory and
12 reading your statement, I'm going to ask you, did you at
13 any point see Victor fall?

14 A No.

15 Q Do you remember being asked by Investigator Ferrer
16 whether or not in your statement you saw Victor fall?

17 A Yeah.

18 Q Do you remember what you said in your statement?

19 A Yes.

20 Q And what did you say in your statement?

21 A I said that I saw him fall but I didn't.

22 Q At any point in time from the time that you
23 heard the popping sounds, did you ever see Victor after
24 that?

25 A No.

1 Q Do you remember prior to the popping sounds any
2 conversation that Victor had immediately prior to the popping
3 sounds that Victor had with Derek?

4 A No.

5 Q Do you remember Derek saying, I'm tired of people
6 taking advantage of me?

7 MR. GONZALEZ: Judge, objection, leading.

8 THE COURT: Isn't it?

9 MS. FURLONG: Well, Judge, I'll withdraw the
10 question, I'll try to say it in another way.

11 Q Do you ever remember Derek expressing any feelings
12 of how he felt about his chain missing?

13 A Yes.

14 Q And what did Derek say to you about how he felt
15 about his chain being gone?

16 A He said he was tired of people taking advantage.

17 Q And did he say that -- at what point in time did
18 he say that to you, if you remember?

19 A I don't remember.

20 THE COURT: What's your answer, please?

21 THE WITNESS: I don't remember.

22 THE COURT: Okay, next question.

23 MS. FURLONG: Judge, I have no further questions
24 of this witness.

25 MR. GONZALEZ: Judge, I have none.

1 THE COURT: None?

2 MR. GONZALEZ: Nothing.

3 THE COURT: All right, you may step down, thank
4 you.

5 (Whereupon, Kathleen Woods exits.)

6 THE COURT: May I see Counsel at sidebar to see
7 how we can schedule this for this afternoon?

8 Your lunch hour, ladies and gentlemen, will start
9 from one hour from whatever time we recess. Don't be
10 concerned about the time.

11 (Whereupon, there is a sidebar discussion off the
12 record.)

13 THE COURT: All right. Ladies and gentlemen,
14 what we will do as far as you're concerned is, you'll be
15 excused for lunch and we'll ask you to be back here
16 approximately 2:15 at which time there may be another
17 witness or two or whatever and then we'll recess until
18 tomorrow morning, just to keep you advised as to what's
19 going on and then I think the State has another witness
20 or two tomorrow morning, a medical witness and a ballistics
21 expert, a gun expert.

22 So, we're getting there and after that, we'll
23 see where we go and that's how we're moving along on the
24 case. I just like to keep you apprised so that you know
25 what's going on. See you at 2:15 and please, do not discuss

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1 the case with anyone, other jurors or allow them to talk
2 to you or speak to anyone or friends or anyone like that.
3 Keep an open mind, the matter's not completed. We'll
4 wish you all a pleasant lunch and we'll see you here at
5 2:15, thank you.

6 (Whereupon, jury is excused for the luncheon
7 recess.)

8 THE COURT: All right, I'll hear you. What is
9 this question about?

10 MS. FURLONG: Judge, I supplied Mr. Gonzalez
11 with a report from Identifications Officer Ray Marshall
12 way back when this case was supposed to go in May. From
13 that, Mr. Gonzalez indicated he wanted to have time for
14 his expert to examine the prints. Those arrangements were
15 made, the evidence was turned over to an investigator who
16 provided them to his --

17 THE COURT: Who is your investigator?

18 MR. GONZALEZ: My investigator?

19 THE COURT: Yes, who was the one that was
20 supposed to go there, as you recall, to look at the photos
21 or to speak with the expert?

22 MR. GONZALEZ: Murphy, S. Murphy, that's the
23 name.

24 THE COURT: What about him?

25 MS. FURLONG: And to give, your Honor, that was

1 accomplished. It's my understanding that over a week ago,
2 more specifically, last Wednesday as a matter of fact,
3 that was provided to Defense Counsel. To date, I haven't
4 received a report which would give me the opportunity to
5 review with my expert.

6 THE COURT: Where is it?

7 MR. GONZALEZ: Judge, before I can turn over a
8 report, I have to have it.

9 THE COURT: Well, where is it?

10 MR. GONZALEZ: I said to Ms. Furlong that I don't
11 have a report.

12 THE COURT: Are you getting one?

13 MR. GONZALEZ: Yes, I'm supposed to get one in
14 the mail.

15 Now, Judge, I think the remedy, if I could
16 suggest, respectfully --

17 THE COURT: Certainly.

18 MR. GONZALEZ: -- to Ms. Furlong is that if, in
19 fact, there is a report or I want to use Mr. Murphy as a
20 rebuttal witness and I have not turned over something that
21 I should turn over, then you could keep me from using that
22 person or that report.

23 THE COURT: Well --

24 MR. GONZALEZ: As of now, but let me just --

25 THE COURT: Let me ask you this. The reason why

1 this came up is so that you know how to handle Mr. Marshall
2 as a witness?

3 MS. FURLONG: Correct, your Honor.

4 THE COURT: You're going to call Mr. Marshall?

5 MS. FURLONG: And I think he should have an
6 opportunity to review it.

7 MR. GONZALEZ: Judge, there's no report. Can I
8 be frank with you, Judge? I doubt very much there's going
9 to be a report and can I say one more thing, Judge? I doubt
10 very much I'm going to be using Bruce Murphy.

11 THE COURT: Good, because he hasn't ever been
12 qualified. I don't think he can even be qualified as an
13 expert. Isn't that the question in Passaic County?

14 MR. GONZALEZ: Correct.

15 THE COURT: In fact, this case was started in
16 May, in fact, we had a jury and so that the record is clear,
17 the jury was sworn and for the untimely death of your wife,
18 Mr. Gonzalez, that's why it was continued until now.

19 MR. GONZALEZ: Judge, let me say it is a valid
20 question by Ms. Furlong and --

21 THE COURT: It is. If you don't have it and she
22 brings him in and therefore, she doesn't have the benefit
23 of that report, you're not going to be able to question
24 Mr. Marshall on it. It's not --

25 MR. GONZALEZ: But Judge, I am --

1 THE COURT: You can ask him on his expertise
2 as if he didn't have any report.

3 MR. GONZALEZ: Well, Judge, I can check my office
4 and let you know.

5 THE COURT: Don't let me know, let Ms. Furlong
6 know within the half hour.

7 MR. GONZALEZ: Judge, I don't know if I'm going
8 to use Bruce Murphy.

9 (Whereupon, Court in luncheon recess.)

10 (Whereupon, the following takes place outside
11 the presence of the jury.)

12 THE COURT: Before we bring out the jury, is
13 there any other question with Mr. Murphy?

14 MS. FURLONG: Judge, I haven't gotten a report.

15 MR. GONZALEZ: Judge, I'm going to be honest with
16 you, I forgot to call.

17 THE COURT: It's up to you.

18 Apparently, you are convinced that he couldn't
19 help you one way or the other; in fact, he may do more harm
20 than help.

21 MR. GONZALEZ: Correct.

22 THE COURT: Did you explain that to Mr. Moultrie?

23 MR. GONZALEZ: Yes, Mr. Moultrie and I had a
24 conversation.

25 THE COURT: All right. Can we call the jury in

1 now?

2 MR. GONZALEZ: Judge, there's only one thing
3 that I'd like to put on the record so everything's clear.
4 I received, just now from Ms. Furlong, and she has indicated
5 that she just received the report; a report, two-page report
6 narrating what happened when Mr. Moultrie was arrested in
7 Passaic.

8 THE COURT: Where, Passaic?

9 MR. GONZALEZ: Passaic, New Jersey.

10 THE COURT: Oh, that's dealing with the last
11 count, escape.

12 MR. GONZALEZ: Well, it's the apprehension after
13 the escape.

14 I got the report, I read it, I just got it,
15 Ms. Furlong says she just got it and I take her word for it,
16 she's been trustworthy thus far.

17 THE COURT: Well, it's a late report even though
18 the Rules of Discovery would indicate at this moment, the
19 last report you submitted -- I don't know, when you get
20 into it, let me know, you may not be able to use it.

21 MR. GONZALEZ: Fine, Judge.

22 THE COURT: All right, call the jury out but don't
23 get into any reports concerning the escape.

24 MS. FURLONG: Well, Judge, then I can't call
25 my witness.

1 THE COURT: I don't know what he's going to be
2 called for.

3 MS. FURLONG: Well, Judge, let me explain one
4 thing so the record is clear. In providing discovery, I
5 had provided an original 802 from Detective Thomas, as well
6 as a report from Detective Symbol which Mr. Gonzalez
7 has.

8 MR. GONZALEZ: Yes, Judge.

9 MS. FURLONG: Who is a Passaic officer; so, he
10 had those parts of the escape report.

11 Detective Gonzalez is also here to testify, he
12 had gone -- they all worked in conjunction together; so,
13 there's a separate report basically, documenting the same
14 thing but I wasn't aware that each set of officers had
15 done a report until I met with -- we can call him in because
16 the first time I've ever seen or spoken to Detective
17 Gonzalez was this afternoon.

18 Upon learning this, I immediately furnished
19 Mr. Gonzalez with the reports. It's nothing that hasn't --
20 that Defense Counsel isn't aware of, that he accepted, that
21 he was apprehended in Passaic. There was a surveillance,
22 it was in Symbol's reports; so, I don't see where --

23 MR. GONZALEZ: I don't see any potential damage.

24 THE COURT: All right, is there anything
25 additional thereto? I think in your opening, you already

1 indicated to the jury that he admits to the escape.

2 MR. GONZALEZ: Correct, Judge.

3 THE COURT: In fact, it's like pleading guilty
4 before the jury on the escape charge only.

5 MR. GONZALEZ: Yes.

6 THE COURT: However, even though that is a fact,
7 the jury will still have to be instructed on that.

8 MR. GONZALEZ: Judge, what I say is not evidence.

9 THE COURT: And they have to make a finding, yes
10 or no.

11 MR. GONZALEZ: Correct.

12 THE COURT: Regardless of what your admission may
13 be.

14 MR. GONZALEZ: Correct.

15 THE COURT: All right, with that --

16 MR. GONZALEZ: I don't see any potential objection.

17 THE COURT: All right, let's go forward.

18 MS. FURLONG: Judge, I just need Defense exhibits
19 D-3 and 4.

20 MR. GONZALEZ: Yes, they're right here.

21 THE COURT: You need what?

22 MR. GONZALEZ: Defense Exhibits 3 and 4.

23 THE COURT: Oh.

24 MR. GONZALEZ: I've handing them to Ms. Furlong.

25 MS. FURLONG: Thank you.

1 Q Could you please, before we proceed with that,
2 tell the Court and jury by whom you are employed?

3 A I am employed by the Newark Police Department and
4 presently assigned to the Homicide Squad.

5 Q And how long have you been employed in that
6 capacity?

7 A I have been employed with the Newark Police Department
8 since 1973, I've been at the Homicide Squad since August
9 of last year.

10 Q Now, on September 10th, 1989, did you have
11 occasion to become involved in the investigation of the
12 death of Victor Mott?

13 A Yes.

14 Q And could you please tell the Court and jury
15 what your involvement was as far as that investigation?

16 A Upon arriving at work on the 10th, the 11th of
17 September, I met with Detectives in the Homicide Squad
18 and they advised me of the homicide of Victor Mott and
19 that a suspect was in Plainfield. Myself and Detective
20 Jack Eutsey responded to Plainfield Police Department
21 where we picked up the suspect who was identified as
22 Derek Moultrie.

23 Q And at that point in time, did you transport
24 Derek Moultrie anywhere?

25 A Yes, we transported him back to Newark Police

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PENNS. CO. DIVISION N. J. 07-02 - 10990

1 Headquarters, 22 Franklin Street.

2 Q And could you please tell the Court and the jury
3 what occurred when you arrived at the Newark Homicide Unit?

4 A When we arrived at the Newark Police Homicide Squad,
5 on the third floor of 22 Franklin Street, Detective Jack
6 Eutsey and myself was escorting the prisoner, Derek Moultrie,
7 into the office. We then placed him into an interview room
8 where Detective Eutsey handcuffed him to a wall.

9 Q Now, Sergeant, can you go into a little more
10 specifics of the handcuffing procedure of Derek Moultrie?

11 A Derek Moultrie was handcuffed at the wrist with my
12 handcuffs to a wooden shelf that comes along the side of
13 the wall. The part where he was handcuffed, there was an
14 eyebolt there and one end of the handcuff was attached to
15 that and the other end to his wrist. It was -- he was
16 handcuffed, secured to that particular location.

17 Q Did there come a point in time, Sergeant, when
18 you were advised that something unusual occurred in the
19 area where Derek Moultrie was handcuffed?

20 A Yes. Later on during that day, upon checking that
21 location, that room, I found the prisoner gone. The
22 handcuffs was gone also in addition to the eyebolt attached
23 to the handcuff.

24 Q Now, Sergeant, at this time, I show you what's
25 been marked as State's Exhibit S-31 for identification and

1 can you please take a moment to open it and examine it
2 and tell the Court and jury whether or not you can identify
3 that exhibit?

4 (Whereupon, witness reviews exhibit.)

5 A Yes, I can.

6 Q And how can you identify that exhibit, Sergeant?

7 A My name is on it, Sergeant Lucas, along with my last
8 four digits of my Social Security number, 7140.

9 Q And could you please describe for the record
10 what you're examining at this point in time?

11 A Okay. This is part of the handcuff, you might call
12 the cuff and this one was attached to the wrist, the other
13 one was inserted through about an inch-thick wood shelf
14 board that came along the side of the wall with a bolt on
15 this side. This was attached, I believe, to his right
16 wrist.

17 THE COURT: When you say "this," can you describe
18 this for the record, please?

19 THE WITNESS: This part of the cuff and it's
20 not intact, it's also cut or broken.

21 THE COURT: You referred to the other part also?

22 THE WITNESS: This part --

23 THE COURT: No. That's the handcuff, what's it
24 onto?

25 THE WITNESS: Oh, this is an eyeball.

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THE COURT: Eyebolt?

THE WITNESS: Eyebolt, yes.

THE COURT: All right.

BY MS. FURLONG:

Q Now, Sergeant, did there come a point in time where you went to Passaic?

A Yes.

Q Could you please tell the Court and jury why you went to Passaic?

A After learning that the suspect -- the prisoner had escaped, we sought out information as to where he might be. We gained information that he -- there's a possibility that he was in Passaic because we knew that his previous address was in Passaic and I alerted Passaic authorities.

I knew Detective Gonzalez who had worked with me in D.A. and I contacted him and explained the situation. We sent a teletype to Passaic alerting them. I then later on went to Passaic and consulted with Detective Gonzalez and the other Passaic detectives and police officers. Detective Gonzalez agreed to set up a surveillance on the house in Passaic and keep us informed if there was any activity or if the suspect was observed at that location.

Q Now, Sergeant, at what point in time, if you can remember, did you physically arrive in Passaic?

A The first time, I believe, was early, around noon.

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PENGAD CO. BAYONNE, N.J. 07002 - FORM 710-23

1 o'clock and we subsequently left that location after
2 Detective Gonzalez agreed to put his surveillance in
3 operation.

4 Q And at any point in time, did you return to the
5 Passaic area?

6 A Yes. We received a call from Passaic and we did
7 respond immediately to that location.

8 Q And at the time you responded to that location,
9 what happened, if anything?

10 A Okay. We responded to Passaic Police Headquarters
11 where we were apprised of what was going on and we -- they
12 kept us informed as to what was happening at the house where
13 the suspect was supposed to be and subsequently, we were
14 told that a black male had left the location in a car and
15 that they were following this car and this car was
16 subsequently stopped and the person in the car was Aldo
17 Smith, I believe it was, and upon questioning Mr. Smith we
18 learned that the suspect was at the location -- I forget
19 the street number or the street name but he was reportedly
20 at that location.

21 Q Now, Sergeant, did there come a point in time
22 where you responded to that location?

23 A Yes, we did.

24 Q And at what point in time did you respond
25 physically to that location?

1 A Well, after the car was stopped with Mr. Aldo there --
2 then and there, my handcuffs were recovered in the trunk
3 of the car and we were pretty much sure that the suspect
4 was at the location then, along with the information that
5 we had from Passaic policemen that responded to the location.

6 Officers went to the rear, some went to the front and
7 entered the house. Inside the house they discovered the
8 suspect, Derek Moultrie, hiding under a bed.

9 Q Now, Sergeant, were you physically present when
10 Derek Moultrie was discovered?

11 A I was inside the house when he was discovered but I
12 was downstairs.

13 MS. FURLONG: Judge, I have no further questions
14 of this witness.

15 THE COURT: Cross-examine?

16 MR. GONZALEZ: Yes.

17 CROSS-EXAMINATION BY MR. GONZALEZ:

18 Q Good afternoon, Sergeant.

19 A Good afternoon.

20 Q Do you recall the time when Mr. Moultrie was
21 brought from Plainfield to Newark?

22 A Do I recall the time?

23 Q Yes.

24 What time was he in the Newark Headquarters when
25 he escaped?

1 A I asked him --

2 Q Did you write a report, Sergeant?

3 A Did I write the report? Yes, I did.

4 Q Did you write a report?

5 A Did I write a report? My detectives wrote a report.

6 MR. GONZALEZ: Judge, may I have this marked?

7 THE COURT: D-4.

8 (Whereupon, exhibit is marked D-4 for
9 Identification.)

10 Q Sergeant, I show you what has been marked D-4
11 for Identification and ask you, do you recognize that?

12 A Yes, it's an arrest report which was submitted by
13 myself.

14 Q All right. And on that report, does it tell you
15 or does it indicate at what time Mr. Moultrie was brought to
16 Newark when he escaped -- wherefrom he escaped?

17 A This is not -- this report is the arrest for the
18 homicide and it indicates the time that he was arrested at
19 Newark which is eleven o'clock.

20 Q Would that be the time that he was in Newark?

21 A I think it would be the time that he was -- that we
22 drew the Central Complaint Number -- I mean, the Central
23 Arrest Number at Newark Police Headquarters sometime after
24 he arrived there from Plainfield.

25 Q All right. And that time was what, around eleven

1 o'clock?

2 A Eleven o'clock.

3 Q On what date?

4 A On September the 11th.

5 THE COURT: That's A.M.?

6 THE WITNESS: Yes, your Honor.

7 THE COURT: All right.

8 Q And you arrived with Mr. Moultrie to Newark,
9 correct?

10 A That's correct.

11 Q All right. Do you recall if when you arrived
12 with Mr. Moultrie, there were other witnesses being
13 interviewed involved with the Moultrie case?

14 A I don't recall if there were witnesses being interviewed
15 with the Moultrie case, but there were witnesses there and
16 we had other cases that detectives were working on.

17 Q All right, thank you.

18 MR. GONZALEZ: No further questions.

19 MS. FURLONG: No further questions.

20 THE COURT: Anything further?

21 MR. GONZALEZ: No, Judge.

22 THE COURT: Pardon? Anything further?

23 MR. GONZALEZ: No. Thank you, Sergeant.

24 THE COURT: All right, you may step down.
25 you.

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THE WITNESS: All right.

(Whereupon, Sergeant Edward Lucas exits.)

THE COURT: Do you have another witness?

MS. FURLONG: Yes, your Honor. At this time,
the State calls Detective Symbol to the stand.

(Whereupon, witness enters.)

DETECTIVE SERGEANT H O W A R D S Y M B O L, sworn.

THE COURT: Good afternoon, sir. Direct
examination.

THE WITNESS: Good afternoon.

MS. FURLONG: Thank you, your Honor.

DIRECT EXAMINATION BY MS. FURLONG:

Q Detective Sergeant Symbol, by whom are you
employed?

A Passaic Police Department.

Q And on September 10th, 1989, by whom were you
employed?

A Passaic Police Department.

Q And how long have you been employed by the
Passaic Police Department?

A Fourteen years.

Q And at the time of September 10th, 1989, were
you assigned to any specific unit?

A Yes, I was in the Vice Narcotics Bureau.

Q And also, on September 11th, 1989, did you...

1 time yourself assist Newark in the apprehension of Derek
2 Moultrie?

3 A Yes, I did.

4 Q And could you please tell the Court and the jury
5 what your involvement was in that apprehension?

6 A I was assisting the Newark Police Department and our
7 own Detective Bureau and I was involved in a surveillance
8 of an apartment at 274 Chestnut Street. While I was on that
9 surveillance, I observed a black male come out of the
10 apartment that was in question at that time and he went
11 to a Honda car. He was wearing a white T-shirt and white
12 shorts. He went into the trunk of the car and then he
13 closed the trunk and got into the car and drove away.
14 Myself and the other detectives that were with me, there
15 were two other ones from my squad, we followed the car north
16 on Main Avenue in Passaic and subsequently, we went into
17 Clifton because we radioed to the Passaic Police Headquarters
18 to send us a marked radio car to pull over this car and
19 by the time that car arrived, we had already crossed into
20 Clifton and the car was stopped at Main Avenue and Union
21 Avenue in Clifton.

22 Q Now, did you, at that point in time ascertain
23 the identity of this male individual?

24 A Yes, I did, he was Aldo Smith.

25 Q And did you, at any time, inform us Aldo Smith

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1 why he was stopped?

2 A Not at the beginning but when we stopped him, he got
3 out of the car and we searched him and while we were
4 searching him, he blurted out something to the effect --

5 MR. GONZALEZ: Judge, objection.

6 THE COURT: Sustained.

7 Q As a result of what Mr. Aldo Smith told you, what
8 did you do, if anything?

9 A We returned to the apartment at 274 Chestnut Street.

10 Q Prior to returning there, was anything else done
11 at that time?

12 A Yes. We looked in the trunk of the car and in that
13 trunk I observed a pair of black handcuffs with Sergeant
14 Lucas' name engraved on it.

15 Q And were there any other items that you observed
16 at that time?

17 A There were, I believe, a pair of pliers and a hacksaw
18 also in the trunk of the car.

19 Q At this time, Detective Sergeant, I now show
20 you what's been marked as State's Exhibit S-31 for
21 Identification. Would you please open this and tell me
22 if you can identify that object?

23 (Whereupon, witness reviews exhibit.)

24 A These are the handcuffs that I observed in the trunk
25 of the car.

1 Q Thank you.

2 In addition, would you please take a moment to
3 look at what's been marked as State's Exhibit S-30 for
4 Identification and tell me if you can identify this object?

5 (Whereupon, witness reviews exhibit.)

6 A These look similar to the ones that I observed in the
7 car.

8 Q Detective, can you also take a moment to open
9 what's been marked for identification as Exhibit S-28 for
10 Identification and explain whether or not you can identify
11 that object?

12 (Whereupon, witness reviews exhibit.)

13 A This appears to be similar to the one that I -- hacksaw
14 that I observed in the trunk of the car.

15 Q Now, Detective, after observing these objects,
16 can you please tell the Court and jury what was the next
17 thing that you did at that point in time?

18 A We immediately returned to 274 Chestnut Street.

19 Q And when you arrived at 274 Chestnut Street,
20 what happened, if anything, at that point in time?

21 A Subsequently, we gained admittance to the apartment
22 and we went into the apartment and I had gone to the second
23 floor with other detectives and when I was on the second
24 floor, there was a young boy there and I asked him if
25 anybody up here and he said, No.

1 MR. GONZALEZ: Your Honor, objection, hearsay.
2 THE COURT: Don't indicate what anybody told you,
3 sir.

4 THE WITNESS: Yes, sir.

5 Q As a result of what this young man said, did you
6 do anything as a result of that?

7 A Well, we looked in the bedroom and --

8 Q And when you looked in the bedroom, what
9 observation did you make?

10 A We found a black male hiding under the bed and he was
11 subsequently identified as Derek Moultrie.

12 Q And Detective Sergeant, do you see that
13 individual today here in court?

14 A Yes, I do.

15 Q And would you please indicate for the Court and
16 the record where this individual is sitting in the courtroom?

17 A He looks like the gentleman sitting at the table
18 there with the light gray suit.

19 THE COURT: All right, thank you. Mr. Gonzalez?

20 MR. GONZALEZ: No objection.

21 Q And as a result of the discovery of this
22 individual, what happened next?

23 A He was placed under arrest and he was conveyed to the
24 Passaic Police Department, Detective Bureau.

25 Q And to your knowledge, was he ever transported

1 from Passaic?

2 A Yeah, I believe he was returned to Newark.

3 Q And do you have personal knowledge of who
4 transported him back to Newark?

5 A It was the Newark Homicide Squad.

6 MS. FURLONG: Thank you, Detective, I have no
7 further questions.

8 MR. GONZALEZ: Judge, I have no questions.

9 THE COURT: All right, sir, you may step down.

10 THE WITNESS: Thank you.

11 (Whereupon, Detective Sergeant Howard Symbol
12 exits.)

13 THE COURT: Yes, Ms. Furlong?

14 MS. FURLONG: Your Honor, at this time, the State
15 calls Detective Gonzalez.

16 (Whereupon, witness enters.)

17 DETECTIVE J U A N G O N Z A L E Z, sworn.

18 THE COURT: Good afternoon, sir.

19 THE WITNESS: Good afternoon, Judge.

20 THE COURT: Direct examination.

21 MS. FURLONG: Thank you, your Honor.

22 DIRECT EXAMINATION BY MS. FURLONG

23 Q Detective

24 THE COURT: Any relationship here, Mr. Gonzalez?

25 MR. GONZALEZ: No, Judge, not that I know of.

1 THE COURT: All right, thank you.

2 Q Detective Gonzalez, could you please explain for
3 the Court and the jury by whom you're employed?

4 A By the Passaic Police Department, City of Passaic.

5 Q And how long have you been employed in that
6 capacity?

7 A Nineteen years.

8 Q And on September 11th, 1989, what unit were you
9 assigned to?

10 A Detective Division.

11 Q Now, on December 11th, 1989, were you at any
12 time contacted by a Sergeant Lucas?

13 A Yes, I was.

14 Q And as a result of that contact with a Sergeant
15 Lucas, what was your involvement in the apprehension of
16 one Derek Moultrie?

17 A Well, first of all, when Sergeant Lucas came to the
18 police station with one of those pictures of the person,
19 we followed up the investigation and we established a
20 surveillance.

21 MR. GONZALEZ: Judge --

22 THE COURT: No, just one second.

23 I'll hear you at sidebar, just one second, please.
24 (Whereupon, there is a sidebar discussion.)

25 MR. GONZALEZ: Judge, at this time, I ask for a
- COTTON CONTENT -

1 proffer from Ms. Furlong. I'm not sure what he said and --

2 THE COURT: Where it's going to go.

3 MS. FURLONG: He's going into another item that
4 there's a bank envelope that he confiscated from Peggy Lee;
5 so, I'm just setting the stage that he set up the surveillance
6 and confiscated this letter.

7 THE COURT: I think I'll excuse the jury for about
8 two minutes. The only concern that I have is I don't want
9 him -- he's from Passaic, this gentleman, Moultrie, and
10 there may be some question, he may say, Well, I know him
11 from some past and let's avoid that.

12 MS. FURLONG: He's not gonna say that.

13 MR. GONZALES: Judge, it's just on that point.
14 There's an indication from the report that you gave me that
15 he knew that Derek was moving from that apartment.

16 MS. FURLONG: No, no, no, he knew that he --
17 that's part of the report sayin' that he moved to Plainfield
18 that day.

19 THE COURT: Oh, but it's not that he knew that he
20 moved out of town the day before?

21 MS. FURLONG: No.

22 MR. GONZALES: But still, Judge, that's a question.

23 MS. FURLONG: I'll be more direct, I'll just ask
24 him, if you'll let me use a leading question, I'll go right
25 to the target. We won't have to have a rule 6, did you

- COTTON CONTENT -

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PENGAD CO. BAYONNE, N. J. 07002 - FORM 7-69-25

1 speak to Peggy Lee? You went there to apprehend a suspect,
2 did you have occasion to observe or check her person? Did
3 you find this exhibit? Can you say what it is? And that's
4 it.

5 MR. GONZALEZ: The exhibit is --

6 MS. FURLONG: The bank envelope with the directions.

7 MR. GONZALEZ: And that's from Peggy Lee?

8 MS. FURLONG: Yes.

9 THE COURT: Okay. So, we'll allow you to do that,
10 all right.

11 (Whereupon, sidebar discussion is concluded.)

12 THE COURT: All right, Ms. Furlong.

13 MS. FURLONG: Thank you, your Honor.

14 BY MS. FURLONG:

15 Q Detective, getting to the point in time when
16 you arrived at 274 Church Street --

17 A 274 Chestnut.

18 Q Chestnut, I'm sorry, thank you.

19 Did you speak to a female at that time?

20 A Yes, I did.

21 Q And could you state her name for the record?

22 A Peggy Lee.

23 Q And did you have occasion at that -- at some
24 later point to search her person and her pocketbook?

25 A Yes.

WENLOCK
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-COTTON CONTENT-

1 Q And I'm now going to show you what's been marked
 2 as State's Exhibit S-29 for Identification. Can you take a
 3 moment to examine it and tell me whether or not this was
 4 confiscated on September 11th, 1989?

5 (Whereupon, witness reviews exhibit.)

6 A Yes, I did confiscate it from her.

7 Q And could you please explain for the record what
 8 that actually is?

9 A This is a bank -- some kind of envelope indicating
 10 some kind of directions how to get someplace.

11 Q Thank you, Detective.

12 Now, in addition to this bank envelope, did you
 13 have an opportunity to observe any items in a car on
 14 Chestnut Street?

15 A The only thing I remember is Miss Peggy Lee's car was
 16 parked there and the only thing I did -- I don't remember
 17 anything about serving anything but I went to the apartment
 18 after that, something else was confiscated later from another
 19 person's car.

20 MR. GONZALEZ: Judge, objection.

21 THE COURT: Yes.

22 Q Did you have, at any point in time --

23 THE COURT: Sustained.

24 Hold it one second. Did you object and to what,
 25 the answer or the question?

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 COTTON CONTENT

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PENGAD CO. BAYONNE, N. J. 07002 - FORM 718-15

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MR. GONZALEZ: Judge --

THE COURT: Because he already answered it.

MR. GONZALEZ: No, I know. It's just that I'm concerned about getting into irrelevant matters.

THE COURT: Where something is not of issue here?

MR. GONZALEZ: Right, not an issue in this case.

THE COURT: Where are we going?

MS. FURLONG: I'll direct --

THE COURT: Other than the envelope, where else are you going?

Q Did you have any contact that day with Aldo Smith?

A Excuse me?

Q Did you have any contact that day with Aldo Smith?

A Only headquarters.

Q And did you log in any evidence at that point in time?

A Yes, there was evidence turned over to the other police agency.

Q I'm going to show you the following items and ask you if you can identify them for the record, Detective. Can you identify what's been marked as State's Exhibit 8-28 for the record? Take a moment to look at it.

(Whereupon, witness reviews exhibit.)

HEMLOCK
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COTTON CONTENT

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FEB-25

PENGAD CO., BAYONNE, N.J. 07002 - FORM

1 A No, this hacksaw was confiscated --

2 THE COURT: Can you identify that?

3 THE WITNESS: Well, I saw it at the police station,
4 yes, I did.

5 THE COURT: Okay, that's all, next question.

6 Q Can you take a moment to open this envelope which
7 has been marked as State's Exhibit S-31 and tell me if you
8 can identify that for the record?

9 (Whereupon, witness reviews exhibit.)

10 THE COURT: What number is that, please?

11 MS. FURLONG: S-31, your Honor.

12 A Yes, I saw this also in the police station.

13 Q Okay. And can you take a moment to examine
14 State's Exhibit S-30 and tell me if you can identify that
15 for the record?

16 A Yes, I also saw this at the police station.

17 Q Okay.

18 MS. FURLONG: Judge, I have no further questions
19 of this witness.

20 THE COURT: All right, cross-examine, please.

21 MR. GONZALEZ: Judge, I have nothing of this
22 witness.

23 THE COURT: All right, Detective Gonzalez, you
24 may step down.

25 THE WITNESS: Thank you, sir.

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-COTTON CONTENT-

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(Whereupon, Detective Juan Gonzalez exits.)

MS. FURLONG: Your Honor, at this time, the State calls Investigator Officer Raymond Marshall.

THE COURT: All right.

(Whereupon, witness enters.)

INVESTIGATOR RAYMOND E. MARSHALL, sworn.

THE COURT: Good afternoon, sir.

THE WITNESS: Good afternoon.

THE COURT: Direct examination, please.

MS. FURLONG: Thank you, your Honor.

DIRECT EXAMINATION BY MS. FURLONG:

Q Investigator Marshall, could you please state for the record by whom you're employed?

A Newark Police Department, Records Identification Bureau.

Q And how long have you been employed in that capacity?

A As of August 30th this year, 15 years.

Q And could you please explain to the Court and the jury what your job duties entail as an officer in that capacity?

A Process, finger -- process of prisoners, photograph of prisoners, crime scene investigations, forensics, operation of computers.

Q Now, could you please go in and highlight for the

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PERGAD CO. BAYONNE, N.J. 07002 - FORM FED-35

1 record your training and experience in the field of
2 fingerprint comparison and analysis?

3 A Well, for the last 15 years, I've been doing numerous
4 crime scenes, I've been before the Court many many times;
5 I have a little expertise in the Army and I was doing a
6 little photography there.

7 Q And have you received any type of training or
8 schooling in fingerprint classification?

9 A Basically, on-the-job training.

10 Q And how many years of on-the-job training?

11 A Fourteen years.

12 Q And that on-the-job training, how was that
13 training done as far as the classification? Can you cover
14 the areas that you learned in fingerprint identification?

15 A On-the-job training, I was trained by numerous
16 supervisors and they came and go, Assistant Chief Williams,
17 Assistant Chief Petta (ph), they take me out to the field
18 many times, show me how to do it, how to make court
19 presentations and I got better as time went on.

20 Q Now, you've been doing this for 15 years?

21 A Yes, ma'am.

22 Q And have you ever testified in a court of law
23 before as to fingerprints?

24 A Yeah, about - this is my seventh time.

25 MS. FURLONG, Judge, I would offer that.

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PENGAD CO. DAYTONAL. N.J. 01002 - FORM FEB-55

1 THE COURT: Well, are you offering him as to --
2 as what?

3 MS. FURLONG: An expert in fingerprint comparison,
4 your Honor.

5 THE COURT: Would you like to cross-examine him
6 on his qualifications as an expert, Mr. Gonzalez?

7 MR. GONZALEZ: If I could have a minute, Judge?

8 THE COURT: All right. In fact, you know what
9 I'll do at this time, I'll excuse the jury into the jury
10 room for about five minutes and then I'll call you out. Do
11 not discuss the case, as you well know, ladies and gentlemen.

12 Ms. Vaughn, watch your step.

13 (Whereupon, the following takes place outside
14 the presence of the jury.)

15 MR. GONZALEZ: Judge, first of all, I never
16 received a resume from Mr. Marshall but that being as it
17 may, in all good conscience I think he said he had 14 years
18 of on-the-job experience?

19 THE COURT: Well, on-the-job experience, he has
20 been trained by some others but I don't know who they are
21 and I don't know what training they've had but is he qualified
22 here by some special training, schooling, microscopic work,
23 things of that type, Ms. Furlong?

24 MS. FURLONG: Judge, I can go into further detail
25 on that.

HEMLOCK
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1 MR. GONZALEZ: Judge, if you would, it would be
2 more helpful.

3 THE COURT: At this posture, it wouldn't seem to
4 me that he would be qualified as a fingerprint expert.

5 MS. FURLONG: Well, Judge, I think you should
6 also --

7 THE COURT: He takes photos.

8 MS. FURLONG: -- you should also take into
9 consideration that he has already qualified and testified
10 in a court of law seven times; so obviously --

11 THE COURT: That may be there, the question is
12 here.

13 MS. FURLONG: Well, Judge, I don't think his
14 expertise has gotten better over the time as opposed to back
15 then when he was qualified as an expert.

16 THE COURT: He may have gotten less.

17 MS. FURLONG: Judge, I've never seen that in the
18 reverse; however --

19 MR. GONZALEZ: Judge, I would feel more comfortable
20 if we had more details.

21 THE COURT: Well, let's find out a little bit and
22 we'll see.

23 MR. GONZALEZ: And Judge, also, I understand that
24 he has testified in the past but I don't believe he testified
25 that he has testified as an expert. I know that he has

HENMILOCK

Marshall - direct

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1 testified in the past, but --

2 THE COURT: He has testified to taking some
3 photos, I don't know.

4 MR. GONZALEZ: Not that I deny Mr. Marshall's
5 expertise, Judge, I --

6 THE COURT: He may have an expertise in whatever
7 he's indicated, he's a Record Identification Department
8 employee. Is that correct?

9 THE WITNESS: Yes, sir, an officer.

10 THE COURT: I don't know, what does that consist
11 of?

12 THE WITNESS: Well, I process -- say, for instance,
13 a person gets locked up, your Honor.

14 THE COURT: Yeah, let's take that.

15 THE WITNESS: Okay. He gets locked up, comes in
16 the name of Joe Blow.

17 THE COURT: Right.

18 THE WITNESS: I have to take his fingerprints,
19 I cross-check it with my files, I see if he's lyin' and I
20 have busted numerous people many times.

21 THE COURT: No, no, what do you do with the
22 fingerprints? That's what you're being qualified for.

23 THE WITNESS: Okay.

24 BY MS. FURLONG:

25 Q Detective, can you go into the technical aspects --

MEMORANDUM

1 THE COURT: What do you do as far as fingerprints
2 and fingerprint analysis? That's what we're talking about.

3 THE WITNESS: In the City of Newark, we use the
4 Flat Connery (ph) System. I take his fingerprints and
5 classify them to a Flat Connery System, say a 31 over 31
6 over 2, whatever, and I check our files and if he's there,
7 he's there and I match his fingerprints up according to my
8 knowledge and I say, he's not Joe Blow, he's John Doe.

9 BY MS. FURLONG:

10 Q Now, Investigator, can you, when you say
11 according to your knowledge, I think that's what the Judge
12 is having a problem with. As far as your training, you
13 mentioned different individuals who have trained you over
14 the course of 15 years. What aspects have you gone into
15 and what type of equipment do you use to make this analysis,
16 the technical part of it? I think they're having a problem
17 with that.

18 A We use various fingerprint cameras, various fingerprint
19 eyeglasses, fingerprint sketches, different types of
20 equipment used to compare fingerprints with.

21 Q Now, when you get into the comparison of the
22 fingerprints --

23 MS. FURLONG: Do you want me to go into the
24 whole procedure, Judge?

25 THE COURT: Well, slightly so Mr. Marshall.

HEMLOCK

1 can both be satisfied.

2 Q What is the first step that you take in an
3 analysis of a fingerprint? In other words, one that's
4 lifted to one that you want to see if, in fact, it is the
5 same print?

6 A Okay. A fingerprint is lifted. The first thing I try
7 to do is see how many points of reference or characteristics
8 there are in that fingerprint and compare it to the roll
9 fingerprint that I have.

10 Q All right, let me stop you there.

11 MR. GONZALEZ: The what?

12 Q How many characteristics --

13 THE COURT: Wait, she may ask.

14 MR. GONZALEZ: Oh.

15 THE COURT: We're having her go further in her
16 qualifications.

17 Q How many characteristics are there in a typical
18 fingerprint classification if you were able to have one
19 where everything was present?

20 A I'd need at least six.

21 Q Now, from those six, you classify them and then
22 what do you do next?

23 A Then I match them according to the ink or roll of
24 fingerprint that I have if we are talkin' about a latent
25 fingerprint now. It's just a matter of matchin' them.

HEMLOCK

1 Q And can you go into a little more specifics of
2 the classification procedure, looking for whirls, ridges,
3 that kind of thing for the Court?

4 A Okay. If I have -- say, for instance, I have six
5 characteristics, I'm lookin' for a ridge, ridge, ridge
6 ending, ridge ending, dot, dot, delta, delta, core, core.

7 THE COURT: And you've been doing this for how
8 many years now?

9 THE WITNESS: Fifteen years, sir.

10 THE COURT: All right, now you may cross.

11 CROSS-EXAMINATION BY MR. GONZALEZ:

12 Q What are you, an investigator or a detective or --

13 A Identifications officer, sir.

14 Q Okay. Officer, have you testified as an expert
15 in fingerprints in other trials?

16 A I have testified and I've been called an expert by
17 three judges.

18 Q So, you've testified three times in the past as
19 an expert, okay.

20 And apart from your on-hand experience you have
21 through 14 years, what type of training have you gotten,
22 if any?

23 A OJT, sir.

24 Q Have you been to any seminars or any conferences?

25 A I've been to various seminars.

1 Q Okay. How many seminars have you --

2 A About seven, I believe.

3 Q Seven seminars?

4 A Yes.

5 Q And they have to do with the issue of
6 fingerprinting?

7 A Yes, sir.

8 Q And the details of that?

9 You mentioned some names earlier, Petti (ph), I
10 think you mentioned?

11 A Joe Petta, Assistant Chief, Assistant Chief Douglas
12 Williams, Assistant Chief Eddie Owens, these are my
13 supervisors on the job.

14 Q And have you received training from them?

15 A Yes, sir.

16 Q Have you read any treatise or books on
17 fingerprinting? I'm sure you did.

18 A Yes. I had to take a Civil Service exam, came out
19 number three.

20 Q But does that entail certain reading materials
21 in order to prepare?

22 A Yes, sir; yes, sir.

23 Q Have you read any manuals on fingerprinting?

24 A Oh, yes, sir.

25 MR. GONZALEZ: All right, Judge.

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1 THE COURT: Sidebar, for what?

2 MR. GONZALEZ: No, not a sidebar, I think the
3 only point I was making, it should be before the jury.

4 THE COURT: Oh, of course.

5 MR. GONZALEZ: Okay.

6 MS. FURLONG: Your Honor, if I may have a moment?

7 THE COURT: Surely.

8 (Pause)

9 THE COURT: All right, what are we doing here?

10 MS. FURLONG: Judge, I'm sorry, we're just trying
11 to get the witnesses arranged for tomorrow.

12 THE COURT: Okay. Did you do that?

13 MS. FURLONG: Yes, Judge.

14 THE COURT: Can we get the jury out?

15 MS. FURLONG: Yes, Judge.

16 THE COURT: So, what we'll do now, when the jury
17 comes out, you may go through a little bit more so the jury
18 may have the benefit of his expertise and then we'll take
19 it from there, all right.

20 Thank you, bring the jury out.

21 3:20 p.m.

22 (Whereupon, the following takes place within
23 the presence of the jury.)

24 THE COURT: All right, all 14 jurors are back.

25 MS. FURLONG: Thank you, your Honor.

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THE COURT: Please, proceed.

CONTINUED DIRECT EXAMINATION BY MS. FURLONG:

Q Investigator -- Officer, in the nature of your profession as an identifications officer, was it necessary for you to take any type of Civil Service test?

A Yes, it was.

Q And is that in fingerprint classification?

A Yes, it was.

Q And how long ago was that test taken by yourself?

A 1977.

Q And have you also attended, at any time, any seminars as far as fingerprint classifications?

A About seven different seminars.

Q Now, could you please briefly go into characteristics of fingerprint classification as far as whirls, ridges and what your knowledge of that is?

A All right. There are three different types of fingerprints. You have loops --

MR. GONZALEZ: Judge, Judge, if I may? Can we get on with the expert part of that before he gets in --

MS. FURLONG: Judge, there's an objection on the expert; so, I'm trying to show his knowledge.

THE COURT: She's on it now, as far as his expertise and I'll allow it and give you the opportunity to cross.

1 Q Could you just run through what is necessary to
2 be known in your field to classify fingerprints without
3 going into the details of each one?

4 A First, you have to program the three different types
5 of fingerprints, loops, arches and whirls, and once you
6 get to know these three, you have two within a loop, you
7 have just one delta and a core within a whirl. You have
8 two deltas and a core with an arch, you have no deltas and
9 no core.

10 MS. FURLONG: Judge, at this time, I would offer
11 Investigator -- Identifications Officer --

12 THE COURT: Would you like to cross-examine him
13 in his expertise as far as fingerprints are concerned, latent
14 prints?

15 MR. GONZALEZ: Yes.

16 CROSS-EXAMINATION BY MR. GONZALEZ:

17 Q Officer, have you read any manuals or treatises
18 on the field of fingerprinting?

19 A Yes, I have.

20 Q How many?

21 A Numerous. The biggest one I read was the FBI manual.

22 Q And have you been declared an expert in other
23 cases?

24 A Yes, I have.

25 Q And you have so testified in other cases?

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A Yes, I have.

MR. GONZALEZ: No further questions.

THE COURT: Always on behalf of the State or anyone else?

THE WITNESS: On behalf of the State, sir.

THE COURT: On behalf of the Prosecutor?

THE WITNESS: Yes, sir.

THE COURT: All right, any further questions?

MR. GONZALEZ: No, Judge.

THE COURT: Anything further?

MS. FURLONG: No, your Honor.

THE COURT: All right, then under the circumstances, I would declare Officer Marshall as an expert in the field of fingerprinting. That simply means, ladies and gentlemen, that he has some specific training which you and myself would not have; so it will aid you in your fact-finding mission. What that simply means is like a ballistics expert or doctor or anyone else who has a special training that the ordinary juror doesn't have and therefore, will help you in the course of your deliberations.

With that, may we go forward?

MS. FURLONG: Thank you, your Honor.

BY MS. FURLONG:

Q Identifications Officer Marshall, did you have occasion during the month of September in 1963 to receive

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1 evidence from a Detective Thomas?

2 A Yes, I did.

3 Q And more specifically, was it evidence --

4 Let me ask you, what type of evidence did you
5 receive from Detective Thomas at that time?

6 A I believe it was a gun and a telephone book.

7 Q And at that point in time, were you apprised
8 that this was an investigation into a homicide?

9 A Yes, I was.

10 Q And did you have an opportunity to examine those
11 items?

12 A Yes, I did.

13 Q And after your examination of those items, can
14 you tell the Court and the jury what your examination
15 entailed?

16 A Okay. After I examined --

17 THE COURT: Excuse me, can you fix a date as to
18 when --

19 Q Do you remember, Officer, on what date you --

20 A Can I go to my notes?

21 MS. FURLONG: I have his report, Judge.

22 THE COURT: You need that in order to help refresh
23 your memory?

24 THE WITNESS: I do a lot of cases, your Honor.

25 THE COURT: Well, the question was, do you need

1 it to refresh your memory, sir?

2 THE WITNESS: Yes.

3 THE COURT: All right.

4 Q Showing you what's been marked as State's Exhibit
5 S-2 for Identification, can you take a moment to look at it
6 and see if this report refreshes your memory as to the date?

7 A Okay. I wrote that report 9-11-89, 12:30 p.m.

8 These items were brought to me by Detective Thomas of
9 Homicide.

10 Q Now, Identifications Officer Marshall, could you
11 please go into the process of what you did with those
12 items once you received them?

13 A Okay. The first item I examined was the gun which is
14 a .22-caliber. I examined the gun and I developed partial
15 prints on the gun and I also examined a telephone book and
16 I developed partial prints on the telephone book and I
17 developed a good print on the telephone book.

18 Q Let me stop you here, Officer.

19 As far as the partial prints, could you explain
20 to the jury what you mean by "partial prints," that term?

21 A Partial print is a print that doesn't have all of the
22 characteristics which I need for a court presentation and
23 like I said before, six characteristics.

24 Q Now, when you say "six characteristics," is that
25 a minimum of six to be able to compare it to another

1 fingerprint?

2 A Yes, ma'am.

3 Q Now, with those partial prints on the gun, did
4 any of those partial prints have six characteristics?

5 A No, they didn't.

6 Q And as a result of not having six characteristics,
7 were you able to make any comparisons?

8 A I couldn't -- I wasn't able to make a good comparison.
9 I couldn't say this was actually the person that did it.

10 Q Now, as far as a -- you said that you had partial
11 prints and one, I think you used the term "latent print"?

12 A I had one good print off of the telephone book.

13 Q Now, can you explain when you say "good print off of
14 the telephone book," what you mean by that?

15 A I had over six characteristics.

16 Q And as a result of obtaining that, what's the
17 first thing you do when you have -- can you physically
18 describe what you're actually doing to obtain this print?

19 A Okay. I'm lookin' over the fingerprints, I search it
20 and I'm looking, like I said, for six or ^{more} / characteristics
21 looking for ridge endings, dots, bifurcations, cores.

22 Q And --

23 A And I will take this particular good print and try to
24 compare it with a suspect's prints.

25 Q And did you do that in this particular case?

1 A Yes. A suspect's prints was supplied, the name was
2 supplied to me by Detective Thomas.

3 Q And did you prepare any type of exhibit today
4 in court to explain to the jury what you actually did?

5 A Yes, I did.

6 Q And do you have that up there with you now?

7 A Yes, I do.

8 Q At this time, I'd ask you to present it.

9 MS. FURLONG: Your Honor, I'd like to have this
10 marked as State's Exhibit, I think we're up to S-40.

11 THE COURT: Six, I believe.

12 MS. FURLONG: Yes, S-46.

13 (Whereupon, exhibit is marked S-46 for
14 Identification.)

15 Q Now, Officer, I'm going to ask you to explain
16 what that exhibit actually depicts for the Court and the
17 jury?

18 A Sure.

19 All right. Let's start from right here. On the
20 rolling impression here, number one, I have a bifurcation.

21 Q Officer, let me stop you there. Can you first
22 explain how you obtained those two and where they're from
23 so we can start with that premise?

24 A All right. This is latent prints lifted from the
25 telephone book.

1 THE COURT: Will you describe it for the record
2 when you say "this," on the record, is that --

3 THE WITNESS: Okay.

4 THE COURT: What appears to you on the right side
5 but it's on the left side if you look at the card, right?

6 THE WITNESS: Correct.

7 THE COURT: So, let's see --

8 THE WITNESS: This latent print on my -- on your
9 right side would be on my left side.

10 THE COURT: Okay.

11 THE WITNESS: I took from the telephone book.
12 This print right here on this side is an ink print I took
13 from the suspect's record.

14 Q Okay.

15 A Okay.

16 Now, it's just a matter of lookin' for a characteristic.
17 As I said before, I'm looking for six.

18 Q Now, can you explain before you go into the
19 characteristics, why those two separate prints, the one
20 that's the latent print you removed after the one of the
21 suspect are that size and how they got to be that size?

22 A Okay. I took a picture of each print, went to the
23 enlarger, the dark room, and blew it up to this size right
24 here so I can have a nice display and that way, everybody
25 can see it.

1 Q Now, Officer, is that what is usually done to
2 make a fingerprint classification? Is this part of the
3 procedure that's usually done?

4 A Yes, it is, ma'am.

5 Q Now, proceed with the characteristics.

6 A Okay.

7 Now, within the two prints, I'm looking for
8 characteristics. On the latent print, I discovered a
9 bifurcation here. On the roll print, the same bifurcation.

10 Now, look for another bifurcation, another print of
11 interest or characteristic on the latent print, I discover
12 one here. It matches the same one over here, bifurcation.
13 I look for the third characteristic, another bifurcation
14 and I discovered that, another one right here.

15 Q Now, Officer, just let me stop you here because
16 we've gotten three bifurcations.

17 For the jury and myself and everyone in the
18 courtroom's understanding, can you explain when you use the
19 term "bifurcation," what that actually means so we can have
20 an understanding of that?

21 A All right. It's two ridges comin' apart like a fork.
22 On the latent print, I kept lookin' and I discovered a
23 fourth bifurcation or fork. I looked to the ink impression
24 and there it was.

25 Okay. On the latent print, I discovered another

1 bifurcation near the core which is point No. 5. I looked
2 at the roll print, the same bifurcation. On No. 6, I
3 looked for another bifurcation I discovered near the core
4 and I looked at the ink print and I discovered a
5 bifurcation here.

6 On No. 7, I discovered another bifurcation and on the
7 ink print, another matching bifurcation. I looked again
8 and I discovered another bifurcation to the left side of
9 the core. I looked on the roll print, another bifurcation
10 on the same spot. On the ninth point, I discovered another
11 bifurcation, on the roll another bifurcation that
12 matches it.

13 Now, on the tenth one, I discovered a ridge ending,
14 short and abrupt.

15 Q Okay. Officer, let me stop you right there.

16 The tenth characteristic was a ridge ending?

17 A Yes.

18 Q Could you please explain that in more detail
19 so that we're -- in layman's terms, so that we can
20 understand what that means?

21 A Okay. It's a type line that's just completely
22 stopped that we call a ridge ending.

23 THE COURT: That you call a what?

24 THE WITNESS: Ridge ending.

25 THE COURT: Ridge ending?

1 THE WITNESS: Yes.

2 Q Okay, you may proceed.

3 A Okay. And I have ten here and since I had ten, I had
4 stopped searching which is enough for a complete verification
5 of the subject's prints.

6 Q Now, can you -- you mentioned before that there's
7 32 types of classifications. I don't know if I'm clear on
8 that, you were mentioning the procedure that you used.
9 Can you clarify -- someone's fingerprint, do they come in
10 different categories? You mentioned deltas, bifurcations,
11 ridges and stuff.

12 A I mentioned loops, whirls and arches. This is a loop.

13 Q And can you explain why that is classified as a
14 loop?

15 A Because it has one delta and one core.

16 Q And what would a whirl have?

17 A A whirl would have two deltas and a core right in the
18 middle.

19 Q And how about an arch?

20 A No delta, no core.

21 Q And as far as the uniqueness of an individual
22 fingerprint, could there be someone else out there with
23 this print that you lifted?

24 A According to the FBI text, every 2,000 years somebody
25 comes up with your same print.

1 Q Now, was that the end of your analysis as far
2 as the prints that you lifted?

3 A Yes, this was the end of it.

4 Q And based on your training and experience, it's
5 your position here in court that the print that you lifted
6 from the phone book matches the print that was rolled from
7 the suspect?

8 A Yes.

9 Q Now, could you explain to the Court and the jury
10 which finger this print is of?

11 A All right. This roll print came from the left thumb
12 of the suspect.

13 Q And the latent?

14 A The latent matches the left thumb of the suspect.

15 Q Now, in addition to this latent print that you
16 lifted from the phone book, were you able to lift any other
17 prints from the phone book that you were able to make a
18 classification of?

19 A I was -- I lifted other prints but they was not good
20 enough to make a complete classification.

21 Q Just so I'm clear, you need at least six
22 characteristics to make a classification?

23 A Yes, ma'am.

24 Q And if there's less than six, you're not able to
25 do that?

1 A I can't testify in a court of law.

2 MS. FURLONG: I have no further questions.

3 THE COURT: Cross-examination?

4 MR. GONZALEZ: Yes.

5 CROSS-EXAMINATION BY MR. GONZALEZ:

6 Q So, Officer, what you're saying is that based on
7 your expertise, Mr. Moultrie apparently had some contact
8 with the book from which you lifted the latent print,
9 correct?

10 A Correct.

11 Q And only the phone book, based on what you could
12 tell?

13 A On only the phone book.

14 Q Now, you told us that you lifted other prints
15 from the book?

16 A And the gun.

17 Q All right. But did you lift the prints from the
18 book?

19 A Other prints I lifted from the book was not good enough
20 for a court presentation.

21 Q Okay. Did you lift any prints from the -- strike
22 that.

23 Did you get any good prints from the book at all?

24 A Only one good print from the book, the one that I have
25 here.

1 Q And no other good prints?

2 A No other good prints.

3 MR. GONZALEZ: No further questions, thank you.

4 MS. FURLONG: No further questions.

5 I would just ask Identifications Officer Marshall
6 to leave the exhibit.

7 THE COURT: Of course, it's now an exhibit so you
8 must leave it here, that's why you made it, right?

9 THE WITNESS: Yes, sir.

10 THE COURT: Have a good day.

11 THE WITNESS: All right, thank you.

12 (Whereupon, Investigator Raymond E. Marshall
13 exits.)

14 THE COURT: All right, is that it for today?

15 MS. FURLONG: Judge, that concludes the State's
16 witnesses for today.

17 THE COURT: All right. I understand you have two
18 witnesses for tomorrow morning at nine o'clock?

19 MS. FURLONG: Correct, your Honor, they'll be here
20 at nine o'clock.

21 THE COURT: All right. With that, ladies and
22 gentlemen, you'll stand in recess until tomorrow morning
23 at nine o'clock and is it my understanding that after these
24 two witnesses, that you may rest, of course, subject to
25 evidence?

1 MS. FURLONG: Yes, your Honor.

2 THE COURT: All right.

3 MS. FURLONG: And any rebuttal witnesses, if
4 necessary.

5 THE COURT: Of course.

6 All right. Ladies and gentlemen, so with that,
7 we wish you all a pleasant night and with that, of course,
8 do not discuss the case with anyone, as you well know, and
9 do not allow anyone to speak to you about the case. See you
10 at nine o'clock, nine o'clock, please.

11 (Whereupon, jury is excused.)

12 THE COURT: All right, with that, why we'll see
13 everyone at nine o'clock tomorrow.

14 (Whereupon, proceedings are concluded.)
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C E R T I F I C A T E

I, LYDIA FUCCI, a Certified Shorthand Reporter and Official Court Reporter of the State of New Jersey, do hereby state that the foregoing is a true and accurate transcript of my stenographic notes.

Lydia Fucci, CSR
LYDIA FUCCI, C.S.R.
Official Court Reporter

Dated: January 25, 1991

HEMLOCK
ERASABLE
-COTTON CONTENT-

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FEB-23

PENGAD CO., BAYONNE, N.J. 07002 - FORM

A6676-8974

SUPERIOR COURT OF NEW JERSEY
ESSEX COUNTY - LAW DIVISION
INDICTMENT NO. 148-1-90

STATE OF NEW JERSEY,

Plaintiff,

vs.

DEREK MOULTRIE,

Defendant.

STENOGRAPHIC TRANSCRIPT

OF

TRIAL PROCEEDINGS

REC'D

APPELLATE DIVISION

Friday, June 15, 1990

Essex County Courthouse FEB 25 1991

Newark, New Jersey

[Handwritten Signature]
Clerk

B E F O R E:

THE HONORABLE ANTHONY J. IULIANI, J.S.C., and a Jury

TRANSCRIPT ORDERED BY: FRANK J. SOLTIS, ESQ.
Office of the Public Defender
Appellate Section - Newark

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

MARY ELLEN FURLONG, ESQ.
Assistant Prosecutor
Attorney for the State

FRANK GONZALEZ, ESQ.
Attorney for the Defendant

FILED
APPELLATE DIVISION

FEB 25 1991

[Handwritten Signature]
Clerk

LYDIA FUCCI, C.R.R.
Official Court Reporter
License No. X101839

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I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
LT. JAMES DOBAK				
By Ms. Furlong	6		21	
By Mr. Gonzalez		18		
SIHEEM F. MOTT				
By Ms. Furlong	24,43			
DR. S. SINGH				
By Ms. Furlong	45		81	
By Mr. Gonzalez		71		85
DET. HENRY FERRER				
By Mr. Gonzalez	89			
By Ms. Furlong		92		

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>IDENTIFICATION</u>	<u>EVIDENCE</u>
S-9	Blue Pants	--	135
S-10	Blue Cap	--	135
S-11	Socks	--	135
S-12	Sneakers	--	135
S-13	Plaid Shirt	--	135
S-15	Miscellaneous Items	--	135
S-17	White Cap	--	135
S-19	Gun	--	135
S-20	Four Spent Bullets	--	135
S-21A	Phone Book	--	135
S-21B	Jacket	--	135
S-23	Spent Shell	--	135
S-24	Bullet	--	135
S-25	Bullet	--	135
S-26	Bullet	--	135
S-27	Bullet	--	135
S-28	Hackaw and Blade	--	135
S-30	Metal Cutter	--	135
S-31	Handcuffs	--	135
S-33A-B,D-H	Photos	--	135
S-34A and B	Photos	--	135
S-35A-F	Photos	--	135
S-40	Diagram	--	135
S-46	Fingerprints	--	135
S-47	Ballistics Report	S	135

EXHIBITS (Cont.)

<u>NO.</u>	<u>DESCRIPTION</u>	<u>IDENTIFICATION</u>	<u>EVIDENCE</u>	
3	S-48	Dr. Singh's Report	48	--
4	S-49-1	Photos	56	--
	thru S-49-7			
	S-49-8	Photo	56	135
5	S-49-9	Photo	56	135
	S-50-1	Photos	60	--
6	and S-50-2			
	S-50-3	Photo	60	135
7	S-50-4	Photo	60	135
	S-51	Ferrer Report	93	--
8	S-52	Certificate of Clerk	--	117
9	D-1	Diagram	--	135

MIMLOCK

UNAVAILABLE

COTTON CONTENT

1 (Whereupon, the following takes place outside
2 the presence of the jury.)

3 THE COURT: All right, the Lieutenant is here so
4 we can go forward with his testimony, the ballistics expert.

5 MR. GONZALEZ: Judge, when the Defendant comes, I
6 just want to put something on the record.

7 THE COURT: Of course.

8 MR. GONZALEZ: Before you bring out the jury.

9 (Pause)

10 (Whereupon, Derek Moultrie is present.)

11 THE COURT: Good morning, Mr. Moultrie.

12 All right. Yes, Mr. Gonzalez.

13 MR. GONZALEZ: Judge, in the interest of
14 continuity and keeping this case flowing, I know that
15 Ms. Furlong is planning to put on this morning Dobak,
16 Mr. Dobak and I believe also, Dr. Singh or Singh, the
17 forensic pathologist. Then I assume she's going to rest.

18 After that, I intend to, in my case, to put on
19 Investigator Henry Ferrer from the office of --

20 THE COURT: Henry Ferrer?

21 MR. GONZALEZ: Right, of the Prosecutor's Office.
22 He's been mentioned, he's under subpoena from our office.
23 I spoke to Ms. Furlong concerning Mr. Ferrer since she has
24 more contact with Mr. Ferrer than I do.

25 I indicated to her that I wish to put him on.

1 Ms. Furlong has indicated to me that Mr. Ferrer is at the
2 range and won't be back today.

3 THE COURT: Get whoever his superior is and we'll
4 make sure he's back here.

5 MR. GONZALEZ: Okay, Judge, but --

6 THE COURT: Was he under subpoena?

7 MR. GONZALEZ: He's under subpoena.

8 THE COURT: Get his superior on the phone and
9 we'll make sure he's back here.

10 MR. GONZALEZ: Judge, you know, it doesn't make
11 a difference if I decide to put Mr. Moultrie on, it doesn't
12 make a difference if he comes on next.

13 THE COURT: No, no, I want to know if he'll be
14 available for you this morning.

15 MR. GONZALEZ: Well, I'd prefer that he'd be
16 available to me.

17 THE COURT: Officer Sally, you've been up at the
18 range, haven't you?

19 OFFICER SALLY: No.

20 THE COURT: Well, find out who's up there, find
21 out who's the supervisor, all the information on Ferrer and
22 I'll make a phone call right after Lieutenant Dobak's
23 testimony. If he's under subpoena, then he's available.

24 MR. GONZALEZ: Yes.

25 THE COURT: And that doesn't mean on the range up

1 in some country club.

2 All right, that takes care of that.

3 MS. FURLONG: Judge, in all fairness to
4 Investigator Ferrer, I'm sure if he was notified by
5 Defense Counsel yesterday, he would have made himself
6 available.

7 THE COURT: We understand that.

8 MR. GONZALEZ: No, Judge, I'm not blaming it
9 in any way on Ms. Furlong.

10 THE COURT: We understand that, but you know,
11 cases have to move along and we understand all that. I'll
12 take the heat about having him here but there's a continuity
13 to these flow of cases and witnesses must be available;
14 otherwise, a four-day case becomes a seven-day case and
15 there's no reason for it, simply.

16 Are we ready to proceed?

17 MS. FURLONG: Judge, I'm ready.

18 THE COURT: Call the jury.

19 9:30 a.m.

20 (Whereupon, the following takes place within
21 the presence of the jury.)

22 THE COURT: Good morning, ladies and gentlemen,
23 good morning.

24 THE JURY: Good morning.

25 THE COURT: Incidentally, I've been told, I don't

Dobak - direct

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1 know if it's true or not, but is there a leak in the --

2 THE COURT OFFICER: Yes.

3 THE COURT: In the men's room in the jury room?

4 A JUROR: Both.

5 THE COURT: So it cannot be used.

6 Please, bring it to my attention in case anyone
7 has to use the facilities and make sure that I know that
8 immediately. Is that clear? So we'll take care of that,
9 all right, and I'll keep that in mind also so therefore,
10 we won't keep you in there for four hours at one time.

11 All right, thank you.

12 Ms. Furlong, would you call your next witness,
13 please?

14 MS. FURLONG: Yes, your Honor. At this time,
15 the State calls Lieutenant Dobak.

16 (Whereupon, witness enters.)

17 LIEUTENANT J A M E S D O B A K, sworn.

18 THE COURT: Good morning, sir.

19 THE WITNESS: How are you, your Honor?

20 THE COURT: Excellent.

21 Direct examination, please.

22 MS. FURLONG: Thank you, your Honor.

23 DIRECT EXAMINATION BY MS. FURLONG:

24 Q Lieutenant Dobak, could you please tell the
25 Court and jury by whom you're employed?

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1 A I'm employed by the police department of the City
2 of Newark.

3 Q And how long have you been employed in that
4 capacity?

5 A Twenty-nine years.

6 Q And what is your job function there?

7 A I'm a lieutenant in charge of the firearms
8 identification laboratory.

9 Q And could you please give your background as
10 far as your technical training and schooling in that area?

11 A I was trained by the New York City Police Department
12 at their firearms laboratory; I was trained by the State
13 Police of New Jersey at their laboratory; I was involved
14 with the FBI at different seminars and training programs;
15 I was trained by the Smith & Wesson Firearms Corporation,
16 the Remington Corporation; I've attended numerous seminars;
17 I was tutored by Lieutenant McConnell and Captain Specvak
18 of the Newark Police Department.

19 Q Now, Lieutenant, have you ever qualified in a
20 court of law as a ballistics and firearms expert?

21 A Yes, I have.

22 Q And could you approximate about how many times
23 have you qualified as a ballistics and firearms expert?

24 A In excess of 5,000 times.

25 MS. FURLONG: Judge, at this time, I quit.

1 Lieutenant Dobak as an expert --

2 MR. GONZALEZ: No objection.

3 THE COURT: Just one second, please, just one
4 second.

5 May I see both of you at sidebar for a moment?

6 (Whereupon, there is a sidebar discussion off
7 the record.)

8 MR. GONZALEZ: Okay, very good, Judge, thank you.

9 THE COURT: All right. You admit the qualifications
10 of the Lieutenant as far as a ballistics expert is concerned,
11 Mr. Gonzalez?

12 MR. GONZALEZ: Judge, I have no objection at all.

13 THE COURT: All right.

14 BY MS. FURLONG:

15 Q Lieutenant, were you provided with evidence
16 relating to the investigation of a homicide involving
17 Derek Moultrie?

18 A Yes, I was.

19 Q And as a result of that, did you prepare a
20 report?

21 A Yes, I did.

22 MS. FURLONG: Your Honor, at this time, I'd
23 like to have Lieutenant Dobak's report marked State's
24 Exhibit S-46 for identification.

25 (Whereupon, exhibit is marked S-46 for

1 Identification.)

2 Q Lieutenant, I now show you what's been marked
3 as State's Exhibit S-47. Could you identify this for the
4 record?

5 A Yes, I can.

6 Q Is that your report, Lieutenant?

7 A It's a photocopy of a report that I submitted, yes.

8 Q And when was that report submitted?

9 A April 6th of 1990.

10 Q Now, did you -- could you tell the Court and
11 jury what items you examined in the course of this
12 investigation?

13 A Certainly. The one specimen was a 6.35 or equivalent
14 to a .25-caliber Dilesi (ph) semi-automatic pistol bearing
15 the serial number of 436789 along with the magazine for
16 the firearm.

17 Q Now, Investigator, I'm going to have you stop
18 right there and show you what's been marked as State's
19 Exhibit S-19. Can you state for the record if this is
20 in fact the weapon that you examined?

21 (Whereupon, witness reviews exhibit.)

22 A Yes.

23 Q Thank you.

24 Please, proceed with the other items.

25 A The firearm I'm examining is the firearm in question.

1 It bears the serial number of 436789 and that's engraved
2 on the grip of the firearm and this was the magazine that
3 came with the firearm.

4 Along with the semi-automatic pistol came three
5 .25-caliber cartridge casings. Also, one lead evidence
6 bullet fragment which was marked with a one, one copper
7 jacket bullet fragment which was marked with a one along
8 with three .25-caliber metal jacketed evidence bullets
9 which were marked two, three and four.

10 Q Now, Lieutenant, I'm going to show you the
11 following exhibits and could you indicate for the record
12 whether or not these are the exhibits you examined?

13 I'm showing you what's been marked as State's
14 Exhibit S-24, S-25, S-26 and S-27. They go in here.
15 Additionally, I am presenting you with Exhibit S-20 for
16 Identification.

17 (Whereupon, witness reviews exhibits.)

18 A From the envelope which is marked State's Evidence 24,
19 I think I'm reading this correctly, are the two fragments
20 that I had mentioned before. The little copper fragment
21 which was marked one, along with a little piece of lead
22 which was also marked one.

23 THE COURT: What has that been marked as, that
24 envelope that you just --

25 THE WITNESS: 24.

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THE COURT: 24, thank you.

A Out of the envelope marked 25, I am extracting an evidence bullet which is marked two, it's a .25-caliber full metal jacketed bullet and out of the envelope marked 26, I've taken a full metal jacketed .25-caliber evidence bullet which was -- which is marked three.

It feels like the Academy Awards.

And that of the last envelope -- well, not last envelope but the envelope marked 27 is the .25-caliber evidence specimen and it's marked with a four.

There's one more envelope, this envelope is marked 20, State's Evidence, and out came a .25-caliber cartridge and two .25-caliber cartridge casings. I'm shy one cartridge casing.

THE COURT: In S-20 --

MS. FURLONG: S-23, I have --

THE WITNESS: Your Honor, in S-20, there was one cartridge and two cartridge casings and the Prosecutor just handed me an envelope marked 23. So I don't observe anything, I'll put them here.

The envelope marked 23 contains a spent cartridge casing.

Q Now, Investigator, did you have an opportunity to test the weapon you have before you for fingerprints?

A Yes, I did.

PERGAS CO., BAYONNE, N.J. 07002 - FORM 125-21

1 Q Would you please explain to the Court and jury
2 what procedure you use to test a weapon for operability?

3 A I tested the semi-automatic pistol by placing live
4 ammunition into the magazine placing the magazine into the
5 firearm and then firing the firearm itself into a bullet
6 recovery box.

7 The bullet recovery box is a large box filled with
8 cotton waste and it has the ability to stop, slow down and
9 stop the projectile and it allows me to retrieve it and I
10 subsequently used that for my examinations so at that time,
11 I found that the gun was operative.

12 Q Now, from determining that the gun was operable,
13 what was the next procedure you used to examine the bullets
14 and fragments?

15 A I took those test firings which I knew came from this
16 gun because I fired them myself and I compared them
17 microscopically against all these evidence specimens and
18 with the use of a comparison microscope, it enables me to
19 view both the known, which I fired from the gun against
20 the unknown simultaneously. So, I can take a sample from
21 the gun, one of these cartridge casings or the bullet,
22 mount it on the microscope and then I can view them both
23 at the same time.

24 Q And Lieutenant, would you please explain to the
25 Court and jury the terminology, lands and grooves and how

1 you actually make the comparisons between the test shot
2 and the evidence that you have, the items, the bullet
3 fragments, the bullets?

4 A Certainly.

5 With everything, the manufacturing of a gun, certain
6 markings are made because of the machine process. The
7 lands and the grooves that the Prosecutor alluded to is
8 the spiraling effect that's placed in the barrel of the
9 gun and it's a basic part of physics where given the
10 rotation of an object in space, it gives it a flatter or
11 better trajectory. It gives it a better definition and
12 you can see this when you throw a football. When you
13 throw a football, it wobbles end over end and it goes
14 anywhere you want it to go.

15 A football player takes a ball and puts a spin to it,
16 so actually, the football is going in two dimensions at the
17 same time. It's going forward but it's also rotating on
18 its axis. Someone thought that if you could do this to a
19 firearm, the same effect takes place and it's true, that
20 as the bullet passes through this gun, there's a revolving
21 effect. There's an inclination or inclined spiraling
22 effect that's placed there by a machine and as the bullet
23 passes through in a forward manner, it also imparts a
24 spin to the bullet.

25 Due to that machining effect, though, each of these

1 specimens is left with a unique series of markings that's
2 unique to the gun and it's only -- this only happens
3 because of accidents, not predesigned by any manufacturing
4 ability of someone, but when the machining process takes
5 place, little bits of metal are embedded into the barrel
6 of the gun and as it's pulled through, it's the pulling
7 that makes these spiraling effects. These little metal
8 fragments are imparted into the barrel and it leaves an
9 impression within a barrel.

10 In every subsequent bullet that is fired through this
11 gun, it picks up that signature and again, with the use of
12 a microscope, I can compare these very fine markings and
13 when I'm to the point that I'm satisfied that there are
14 enough markings that compare on this bullet against the
15 unknown that I'm comparing it against, I can state as a
16 matter of fact, that at one time or another, this specimen
17 was fired from this gun.

18 Q Now --

19 A Couple -- I'm not finished.

20 Q Okay.

21 A Consequently, this cartridge casing has markings on
22 it also. There's a firing pin impression from the firing
23 pin and also breach block impressions.

24 What happens is that this cartridge is chambered in
25 a portion of the firearm. When a firearm pin strikes the

1 priming cap, an explosion takes place. The bullet comes
2 out the forced end but because of the dynamics of the
3 explosion, this cartridge casing is slammed back against
4 the breach. That holds it so it doesn't come out of the
5 gun in a rearward manner. As it slams against the breach,
6 it picks up unique machine markings again that were placed
7 there in the process of manufacturing a firearm.

8 Again, I can tell you whether or not this particular
9 cartridge casing was fired in this gun.

10 Q Now, Lieutenant, my next question to you would
11 be with that explanation, for the Court and jury, can you
12 go through each one of the exhibits you have marked for
13 identification and explain whether or not you were able to
14 determine if that particular exhibit was fired from that
15 weapon?

16 A Sure, okay.

17 First we have the firearm and I found that to be
18 operative. I took test shots from that and I compared them
19 against this cartridge casing that came from envelope
20 No. S-23 with positive results using that mode of operation.

21 And the two cartridge casings that came from envelope
22 No. 20, they were fired from this firearm and I compared
23 them with positive results.

24 This projectile or projectiles from envelope 24 were
25 damaged and they're too small for me to base any conclusions

1 on. Due to the damage that's been caused to them, I cannot
2 come to any conclusion.

3 The evidence bullet from envelope No. 25, it's bullet
4 No. 2 was compared with positive results; that projectile
5 came from this gun.

6 Bullet No. 3 from envelope No. 26 was also at one time
7 or another fired from this firearm and that stands true
8 for bullet No. 4 which is from envelope No. 27; that was
9 also fired from this firearm.

10 Q So, Lieutenant, except for what's been marked
11 as State's Exhibit S-24 which are the fragments, I believe,
12 or the lead and copper fragments, all the other exhibits
13 you're able, with your expertise and training, able to say
14 were fired from that weapon?

15 A That's correct.

16 Q Now, would you go into a little bit of an
17 explanation as far as when that gun is fired, how the
18 casings are projected from that gun?

19 A This firearm is called a semi-automatic pistol.
20 One would take a number of cartridges, put them into the
21 magazine, place the magazine into the grip of the gun and
22 at that point, you would have to take the slide back and
23 as the slide goes back and forward, it takes one of the
24 cartridges, which is this, from the magazine here and it
25 places it in the chamber.

1 Indeed -- you'd have to do that initially. After
2 that, what takes effect is the firearm is discharged, the
3 bullet goes through the barrel, comes out and there are
4 certain amount of gases used to throw back the slide.
5 As the slide comes back, there's a little bit of a hook
6 in here that picks up this cartridge casing and actually
7 flings it from the gun, throws it from the gun.

8 Now, as the slide goes forward, it picks up one more
9 of these cartridges, places it in the chamber and that
10 whole cycle is reproduced up until you have no more
11 cartridges in a magazine.

12 Q Lieutenant, if you're standing with a gun
13 pointing forward, can you determine what direction that
14 casing is going to expel itself?

15 A Yeah. The casing on this firearm comes out to the
16 right and that's due to the fact that most shooters are
17 right-handed and that will go over the right shoulder.

18 Myself, I'm a left-handed shooter and unfortunately,
19 I usually get struck in some part of the body with the
20 cartridge casing as it's expended. They do have a gun that
21 is designed for left-hand shooters with the port on the
22 left-hand side.

23 Q Now, are you able to determine the distance a
24 casing would be expelled from that gun? In other words,
25 would it fall -- would it be expelled to the right and

1 fall immediately to the ground? Could it be expelled
2 further? Is there any amount from where the person is
3 actually shooting, if it goes to the right, is there any
4 distance that that casing can travel?

5 A That would have to be determined by the type of
6 ammunition, the spring in the gun itself, the dexterity
7 of the spring, if it's a weaker, spongier spring; a lot
8 of different variables. The only way to determine would
9 be to duplicate that using of the same type of ammunition.

10 MS. FURLONG: No further questions of this
11 witness, your Honor.

12 THE COURT: That wasn't done in this case?

13 THE WITNESS: No, it was not.

14 THE COURT: So therefore, you cannot give an
15 answer?

16 THE WITNESS: No, I cannot.

17 THE COURT: How many bullets are in the magazine?
18 What does it hold?

19 THE WITNESS: Six, your Honor.

20 THE COURT: All right. Thank you.

21 Cross-examination?

22 MR. GONZALEZ: Yes.

23 CROSS-EXAMINATION BY MR. GONZALEZ:

24 Q Good morning.

25 A Good morning, Counselor.

1 Q Now, Detective Dobak, you told us that you
2 examined three cartridge casings?

3 A Yes, I did.

4 Q Correct?

5 A Yes.

6 Q Now, do you recall from whom you received these
7 casings to be examined? Was it Detective Thomas?

8 A I received one cartridge casing from Detective Thomas.

9 Q And from whom, if you recall, did you receive
10 the other two?

11 A The police department messenger who delivered the
12 other evidence.

13 Q All right. Can you tell us by looking at the
14 casings, which one you received from Detective Thomas?

15 A It was in this envelope which was marked 23.

16 Q So, the cartridge marked S-23 for identification
17 was the one you received from Detective Thomas?

18 A That's correct.

19 Q I ask you to look at S-23 and I want you to
20 examine and see if there are any markings, any letters
21 either inside or outside the casing?

22 A I see some type of marking in the mouth but I can't
23 determine what it is.

24 Q Does it look like initials?

25 A It may be, Counselor, I can't tell without the aid of

1 a device of some sort.

2 Q But there's definitely some type of marking?

3 A I see something in there.

4 Q Okay. And where do you see it, sir?

5 A It's in the mouth of the cartridge casing.

6 Q And you can't really tell what it is but does
7 it seem like letters or numbers? What does it seem like?

8 A I can't tell without the aid of some device, magnifying
9 glass, probably.

10 Q All right. I ask you to look at the cartridge
11 casings in S-20.

12 A S-1?

13 THE COURT: S-20.

14 Q S-20, I'm sorry.

15 A S-20?

16 Q S-20.

17 Do you see any markings on those casings?

18 A There's something on the outside of the cartridge
19 casing.

20 Q Do you see anything on the inside?

21 A And again, no, I don't.

22 Q All right. So, there's one casing with some
23 type of marking on the inside of the casing?

24 A Seems to be, Counselor, yes.

25 Q All right. And two without any type of marking,

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correct?

A Yes, that's correct.

Q All right.

Now, I believe you indicated that the casing with the marking inside of it, I think it's S-23, you tested that and it matched the gun, correct?

A That's correct.

MR. GONZALEZ: No further questions, thank you.

THE COURT: Is there anything further, Ms. Furlong?

MS. FURLONG: Yes, your Honor.

REDIRECT EXAMINATION BY MS. FURLONG:

Q Lieutenant, the markings which Defense Counsel asked you about, would they in any way alter your assessment and examination in those exhibits?

A No, they wouldn't.

MS. FURLONG: No further questions, your Honor.

MR. GONZALEZ: Nothing further.

THE COURT: Thank you, Lieutenant, you may step down.

THE WITNESS: You're welcome.

THE COURT: Be sure that all these casings, et cetera, are put in the same envelope, please.

THE WITNESS: Yes.

(Whereupon, witness returns evidence into custody.)

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THE COURT: Thank you, Lieutenant.

THE WITNESS: You're welcome, your Honor.

(Whereupon, Lieutenant James Dobak exits.)

THE COURT: Yes.

MS. FURLONG: Judge, it's my understanding
Lieutenant Ferrer will be here in an hour from the range.
That's what Mr. Dillon --

THE COURT: That's fine, that's -- I think you
have --

MS. FURLONG: And Dr. Singh will be here at
10:30.

THE COURT: 10:30, all right, Dr. Singh.

MS. FURLONG: The medical examiner.

THE COURT: Yes, the forensic pathologist.

MS. FURLONG: Correct.

THE COURT: All right. With that, ladies and
gentlemen, we'll excuse you then until 10:30 and do not
discuss the case, keep an open mind, as you well know.
You may go downstairs and use some other facilities other
than the ones here in the jury room.

All right. Keep an open mind as you well know,
the matter is not concluded. We'll see you here at 10:30,
9:55 a.m.

(Whereupon, jury is excused for a short recess.)

THE COURT: All right. I pass; you may return.

MEMORANDUM

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1 Mr. Moultrie back and have him back here at 10:30.

2 (Whereupon, Court in short recess.)

3 10:55 a.m.

4 THE COURT: All right. Is the doctor ready?

5 MS. FURLONG: Judge, I'm calling another witness.

6 The doctor is here but I'm calling a short witness before
7 the doctor.

8 THE COURT: Oh, whatever.

9 Are you ready, Mr. Gonzalez?

10 MR. GONZALEZ: Yes, Judge.

11 THE COURT: All right, call the jury out, please.

12 (Whereupon, the following takes place within the
13 presence of the jury.)

14 THE COURT: All right, all our 14 jurors are in
15 the jury box.

16 Ms. Furlong, would you like to call your next
17 witness?

18 MS. FURLONG: Yes, your Honor. At this time,
19 the State calls Siheem Foster Mott.

20 THE COURT: All right.

21 (Pause)

22 THE COURT OFFICER: I checked the room in the
23 hall, the one in between the hall, he's not there.

24 MS. FURLONG: That's where he was sitting,
25 Judge, when I came into the courtroom. Maybe he was

1 into the men's room.

2 THE COURT: I have no idea.

3 Do you want to check and see?

4 (Pause)

5 MS. FURLONG: Judge, apparently, they asked for
6 Diane instead of Siheem and it's a male individual so he
7 didn't come in.

8 THE COURT: All right.

9 (Whereupon, witness enters.)

10 S I H E E M F O S T E R M O T T, sworn.

11 THE COURT: Thank you, please, be seated.

12 Direct examination.

13 MS. FURLONG: Thank you.

14 DIRECT EXAMINATION BY MS. FURLONG:

15 Q Siheem, how old are you?

16 A Seventeen.

17 Q And are you presently enrolled in school?

18 A Yes, I am.

19 Q And in what grade are you in?

20 A Eleventh.

21 Q And what school do you attend?

22 A Weequahic High School.

23 Q Now, I'm going to take you -- first, let me
24 ask you this question. What is your relationship to
25 Victor Mott?

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1 A I'm his nephew.

2 Q And on September 10th, 1989, in the latter part
3 of the evening, could you tell the Court and jury if
4 anything unusual happened that evening?

5 A Well, around eleven o'clock, I say, because the news
6 was on around that time, telephone rang and I answered it
7 and I said, Hello, and a guy on the other end said, Can
8 I speak to --

9 MR. GONZALEZ: Your Honor, objection.

10 THE COURT: No, no, don't indicate what anybody
11 said on the other side.

12 THE WITNESS: Okay.

13 THE COURT: You answered a telephone call?

14 THE WITNESS: Uh-huh.

15 THE COURT: Next question.

16 Q At any point in time, did this individual
17 identify himself by name?

18 A Yeah.

19 MR. GONZALEZ: Your Honor, objection, hearsay.

20 MS. FURLONG: It's not hearsay, Judge, when it
21 comes out.

22 THE COURT: No, no, just one second.

23 May I see you at sidebar?

24 (Whereupon, there is a sidebar discussion.)

25 THE COURT: Now, I don't understand --

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1 MS. FURLONG: It's not hearsay because it was
2 Derek Moultrie on the other end of the phone.

3 THE COURT: Does he know --

4 MS. FURLONG: He identified himself as Derek on
5 the phone.

6 THE COURT: Wait a minute, wait a minute. We
7 don't -- just let me hear --

8 MR. GONZALEZ: Judge, it's -- there's no exception.
9 What's the exception to the Hearsay Rule? The only exception
10 to that is that it's a declaration of interest but --

11 MS. FURLONG: It's a defendant. It's allowed to
12 come in against him, it's an exception to the Hearsay Rule.

13 MR. GONZALEZ: No. If what is stated is against
14 his interest --

15 MS. FURLONG: It is against his interest in light
16 of the case.

17 MR. GONZALEZ: How did he know then that it was
18 against his interest?

19 MS. FURLONG: I don't understand what you're
20 saying.

21 MR. GONZALEZ: In other words, if it's against
22 his interest, you've got to look at the reason why they
23 allowed those statements because when somebody says
24 says something that's against his interest and they know
25 that it's against their interest, the presumption is that

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1 fruitful --

2 THE COURT: Let me ask you this.

3 What is the offer here, what's the proffer of
4 the testimony from this witness?

5 MS. FURLONG: Judge, because if you remember --

6 THE COURT: No, what's -- I remember, but I'm
7 asking you.

8 MS. FURLONG: It's an exception to the Hearsay
9 Rule.

10 THE COURT: No, no. What's the proffer of proof?

11 MS. FURLONG: The proffer of proof is to establish
12 the fact that the Defendant did in fact call the home looking
13 for Victor Mott and he --

14 THE COURT: Looking for, asking for?

15 MS. FURLONG: Asking for and saying that he
16 hadn't seen him and he heard some other individuals were
17 looking for him and I think it's highly relative in this
18 case in light of the other testimony.

19 MR. GONZALEZ: Judge, whether it's relevant or
20 not is not an issue. Out-of-court statements is hearsay.

21 Now, I'm wondering, what exception are we
22 talking about here? It's not a declaration against interest
23 because at the time --

24 THE COURT: Was it being offered to establish
25 that he made a telephone call?

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1 There's testimony that somebody made a telephone
2 call.

3 MR. GONZALEZ: There's -- yes.

4 THE COURT: Maybe not as to what was said, but
5 that somebody -- that he made a telephone call.

6 MR. GONZALEZ: Well, I have no problem that a
7 telephone call was made but what was the content of the
8 telephone call.

9 MS. FURLONG: Judge, there's no problem to the
10 content because it also goes to the state of mind of the
11 Defendant and also a declaration against interest as to
12 what he said and we have a right to bring it out and the
13 jury can decide, your Honor.

14 MR. GONZALEZ: If it were a declaration against
15 interest, I don't think he would have done that, I think
16 that's pretty obvious.

17 MS. FURLONG: Oh, we can't say that he didn't
18 kill the person if it's a declaration of --

19 THE COURT: No, there's some question along the
20 line that he made a telephone call.

21 MR. GONZALEZ: Yes.

22 THE COURT: And this witness here is just
23 corroborating the fact that he made the telephone call.

24 MR. GONZALEZ: That's correct.

25 THE COURT: That he received a telephone call.

HEMLOCK

1 MR. GONZALEZ: Fine, I have no problem.

2 THE COURT: From somebody who said -- I don't
3 know, is he going to say --

4 MS. FURLONG: He says who he is and tells him to
5 call him.

6 THE COURT: That's all?

7 MR. GONZALEZ: Well, what I'm saying is --

8 THE COURT: That's it?

9 MR. GONZALEZ: Yes, but what I'm saying is what
10 the other person on the other side said to him --

11 THE COURT: We're not getting into that.

12 MS. FURLONG: Judge, no, no, no, no.

13 THE COURT: Look, I'm not going to argue here.

14 (Whereupon, sidebar discussion is concluded.)

15 THE COURT: Ladies and gentlemen, I'll excuse
16 you into the jury room for a few minutes, thank you.

17 Do not discuss the case.

18 (Whereupon, jury is excused.)

19 THE COURT: Would you excuse this witness for a
20 moment? Just go right outside into the hallway, please,
21 and do not talk to anyone.

22 (Whereupon, Siheem Foster Mott exits.)

23 THE COURT: All right, Ms. Furlong, I'll hear
24 you.

25 MS. FURLONG: Judge, if I can have a moment,

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1 because I didn't anticipate a problem and I want to have --
2 (Pause)

3 MS. FURLONG: Judge, again, I cite 63 -- Rule 63-10
4 as an exception, declaration against interest, and I also
5 cite State v. Roshonder (ph), declaration subsequent to
6 the commission of a crime which is the situation here with
7 the phone call which indicates consciousness of guilt or
8 which are inconsistent with innocence or tends to establish
9 intent are relevant and admissible and that's the State's
10 position here; that Mr. Moultrie made the phone call to
11 cover up the act that he had committed prior to the telephone
12 call and I believe if we go to Ms. Woods' testimony, she
13 indicated that immediately after the shooting of Mr. Mott,
14 that she was directed to stop and make a phone call to the
15 victim's home and this individual who's coming into court
16 to testify today will substantiate that.

17 I don't see why this isn't relevant, this person
18 took the phone call, the caller identified himself. I
19 mean, it's up to the jury as the fact-finder whether or not
20 that person was, in fact, Derek Moultrie but he did indicate
21 who he was and you should not preclude it as it's stated
22 in State v. Rashon (ph).

23 MR. GONZALES: Fine, Judge, fine, fine, fine.

24 THE COURT: You now concede?

25 MR. GONZALES: Well, I'm not conceding, I'm just

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1 saying, you know --

2 MS. FURLONG: Judge, I think the law covers that
3 as far as letting it in. Again, you know, hearsay, whether
4 Derek did this yesterday, Derek did that, we had no problem
5 with it yesterday so I don't understand the problem today.

6 THE COURT: Well, only because it is, as you well
7 know, it is hearsay. If it's being offered for the truth of
8 the matter, as you well know, then it's inadmissible except
9 if it falls within one of the exceptions; so, we just like
10 to know what exception and your argument is under exception
11 63-10, right?

12 MS. FURLONG: Correct, your Honor.

13 MR. GONZALEZ: Judge, I don't necessarily agree
14 that it would fall under 63-10. I still don't understand
15 how it's a declaration against interest, first of all.

16 MS. FURLONG: Judge, and also, if I can just
17 put another thing on the record?

18 In this particular case, there's -- when you said,
19 for the truth of the matter asserted, I mean, it can come
20 in even if it's not offered for the truth, but it's offered
21 for the fact that these words were said and just to document
22 the phone call and whatever, that is also another situation
23 where it can come in.

24 (Whereupon, Court reviews rulebook.)

25 THE COURT: Well, I read 63-10 and the case that

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1 you cited on page 612 which is the evidence rule book and
2 there, of course, it would seem that all the statements
3 that were made by the Defendant came after an arrest and
4 after charges. What you have here is a situation that
5 occurred from a telephone call that was made prior to any
6 arrest or prior to any accusation; so, you see, they are
7 somewhat distinguishable, Ms. Furlong.

8 MS. FURLONG: Judge, then I'm going to ask for
9 time because this is crucial to the State's case and I
10 don't see the --

11 THE COURT: Well, you know, you gave me the rule,
12 I looked at it, I'm reading the same page that you are and
13 I just went a little bit further on it. It does seem that
14 these cases, unless you have something else, that those
15 statements; and I have no problem with that and that's
16 what bothered me at sidebar.

17 MS. FURLONG: Judge, can I --

18 THE COURT: That this is something that was
19 made ahead of time.

20 MS. FURLONG: Can I ask for a distinction if
21 your Honor would bear with me?

22 Yesterday, Kathy Woods testified and she
23 indicated; the whole thrust of her testimony was Derek was
24 in the car with me, then Derek did that, Derek did this
25 and it was all prior to his arrest for anything, everything

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ERASABLE

1 she said.

2 Now, all of a sudden, we're in court, this is
3 also prior to his arrest and now this witness isn't allowed
4 to come in and say it and now all of a sudden, we're saying
5 it's hearsay? Yesterday, the whole thrust of Ms. Woods'
6 testimony was first, Derek --

7 THE COURT: Wait a minute. If it wasn't hearsay --

8 MR. GONZALEZ: Judge, we're talking about oranges
9 and apples.

10 THE COURT: The problem is, it is hearsay and it
11 has to fall within an exception.

12 MS. FURLONG: That wasn't hearsay?

13 THE COURT: No, no, let's not bootstrap something
14 else.

15 MS. FURLONG: No, Judge, I'm just asking for a
16 distinction between Ms. Woods saying what Mr. Moultrie said
17 and did yesterday is not hearsay as opposed to today what
18 Mr. Mott heard Mr. Moultrie say?

19 THE COURT: Well, one distinction is that Ms. Woods
20 you know, was in the company constantly of the Defendant.

21 MS. FURLONG: So, in other words, Judge, if
22 you're in the company, it doesn't make it hearsay?

23 THE COURT: Hold it, hold it. I don't know what
24 she stated as far as any -- she said he made a telephone
25 call, went to the phone booth but then she also stated she

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1 didn't hear what he stated. Now, this is a different
2 situation.

3 MS. FURLONG: No, Judge, I wanted clarification
4 from the Court why it's hearsay today and not hearsay
5 yesterday?

6 THE COURT: You offered a witness.

7 MS. FURLONG: Correct, your Honor.

8 THE COURT: That you just called. In fact, it
9 was a witness who you didn't even expect to call because
10 the next witness was supposed to be the forensic --

11 MS. FURLONG: Judge, that's neither here nor
12 there, that's my position as a --

13 THE COURT: Hold it, you brought it up, now give
14 me the opportunity to explain.

15 We were waiting for Dr. Singh, is it?

16 MS. FURLONG: He's out in the hallway, Judge.

17 THE COURT: I'm just trying to explain the
18 scenario. Let's make the record complete, you just can't
19 take exception, that's the worst thing to do on the record.

20 We're waiting for him, we took a recess at
21 ten o'clock waiting for the doctor to come in because he
22 was scheduled at 10:30; we had the lieutenant testify,
23 Dobak. Finally, the doctor's here, we come out and bring
24 the jury out and you say, I have a witness and you bring
25 this witness out of turn. He gets on the stand, there's

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1 no proffer here or anything, you put him on the stand,
2 it's a 17-year-old that states at eleven o'clock at night,
3 I received a telephone call.

4 MS. FURLONG: Excuse me, Judge. What proffer
5 does the State need to call a witness?

6 THE COURT: Hold it, wait a minute, wait a
7 minute.

8 MS. FURLONG: Mr. Gonzalez knew I was calling
9 him, I had already alerted him; so, what proffer --

10 THE COURT: Did you know for what reason he was
11 being called?

12 MR. GONZALEZ: Judge, in all honesty, I did
13 know, yes.

14 THE COURT: Oh.

15 MS. FURLONG: So, I don't understand what the
16 problem is, Judge.

17 THE COURT: Look, I don't know what he knows
18 and I don't know what you know.

19 MS. FURLONG: Well, Judge, let the record be
20 clear, Mr. Gonzalez was apprised that he was being called.

21 THE COURT: Now, we know he was apprised, the
22 point is, he gets on the stand, says he received a telephone
23 call, fine.

24 Now, the question is, what -- whoever called
25 you, stated to you and your argument is that you're saying

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ERASABLE

1 to get it in as a -- that's clearly hearsay, whoever made
2 the telephone call, now you're trying to get it in and
3 I don't know if you're offering it for the truth or not
4 because you have to look at the rule.

5 The rule simply states, if it is offered for the
6 truth, then you have to get into the exception and now the
7 exception is that you indicate under 63-10, that it's a
8 statement as against the Defendant's interests and you
9 offer the explanation that he, assuming everything for
10 argument's sake, that's what you're saying, that you think
11 he meant that he's trying to cover himself up by saying,
12 I'm making a call to make an inquiry if Victor Mott is at
13 home or not. You are certainly not Mr. Moultrie, so --

14 MS. FURLONG: Thank God, your Honor.

15 THE COURT: Do we need that comment?

16 MS. FURLONG: No, Judge, but I think that we're
17 getting sidetracked because what I have before the Court is,
18 I'm trying to ask the Court, what makes it different from
19 yesterday when Ms. Woods, even though she wasn't always
20 with Mr. Moultrie at every single minute because there were
21 times when he was out of the car, she was able to testify
22 about his actions, what he did, everything. If that isn't
23 hearsay, Judge, I don't know what is.

24 THE COURT: Wait a minute.

25 Now, I'll give you two minutes. You speak to

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PEC-35

PENSAC CO., BAYORNE N.J. 07002 - FORM

1 on me and I'll try to explain it to you. I said, number
2 one -- Ms. Kay, I didn't mean to cut you off, I'd like to
3 see you for a moment.

4 MS. KAY: I'll be back, Judge.

5 THE COURT: Fine.

6 Now first of all, there were no objections,
7 that's one thing. I'm certainly not going to interject
8 myself; two, there may be some strategy that was by the
9 Defense Counsel, I don't know what they have in mind;
10 three, she was in the company of the Defendant.

11 Here, what you have is a phone call being made
12 to a party at home at eleven o'clock at night wherein
13 you're attempting to bring in to explain that the phone
14 call was made for a cover-up, to explain what he had
15 already did and these are the assumptions that you're
16 facing in the context of this phone call and I don't know
17 if you can do that. And you're saying -- you're allowing
18 it as an exception because it falls within 63-10 as an
19 exception, statement against interest; then you recite the
20 cases that you did.

21 I read -- not all of them, but I read the same
22 page that you did and there, those statements, and I have
23 no problem with that, are made after an arrest, after the
24 commission. This is all prior to, this is all history, going
25 on prior to the incident, prior to discovery of any body.

ERASABLE

1 corpse and prior to any arrest and there is a distinction
2 and I feel there is a distinction.

3 Now, if you can show otherwise, I'll allow it.

4 MS. FURLONG: Judge, also too, there's an exception
5 that it can come in if it's relevant and you don't have to go
6 into the exception for the Hearsay Rule. If it's not offered
7 for the truth but it's relevant and it's offered to prove a
8 state of mind that something was done but not the actual
9 content was a fact but that the phone call was placed, I
10 don't see a problem with that coming in in that situation.

11 MR. GONZALEZ: Two things, Judge.

12 Number one, I agree with Ms. Furlong, you could
13 allow relevant evidence in.

14 THE COURT: Relevant evidence is always --

15 MR. GONZALEZ: But it can't be hearsay. I mean,
16 there's a lot of hearsay relevant evidence but it's not
17 allowed. Just relevance alone doesn't mean that it
18 overtakes the hearsay rule. If it's hearsay, it's hearsay,
19 it has to fall into one of the exceptions whether it's
20 relevant or not.

21 THE COURT: The point is, if it is to be used
22 to corroborate is one thing; that the telephone call was
23 made, maybe it can be used to corroborate the fact that a
24 phone call may or may not have been made, that's up to the
25 jury.

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CONTINUED CONTENT

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MR. GONZALEZ: Well, Judge, if I may, that's the case --

THE COURT: But what she is trying to get in are beyond that. The contents of a statement by another individual who has never been told anything about any statements against interest, he was never arrested, he was never charged and now you want to get in a telephone call of what he may have said.

MR. GONZALEZ: Judge --

MS. FURLONG: Judge --

MR. GONZALEZ: If I may?

MS. FURLONG: I have --

MR. GONZALEZ: If it's the purpose of Ms. Furlong under the theory that it's not given for the truth of the matter but -- that exception, which is in effect an exception --

THE COURT: In other words, that a phone call was made.

MR. GONZALEZ: All she has to do is ask this individual, at eleven o'clock, did you get a phone call? That's fine.

THE COURT: Then she asked, did the party identify themselves?

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MR. GONZALEZ: But I'm saying, what's the --

THE COURT: I agree.
ERASABLE

-COTTON CONTENT-

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PENGAD CO., DAYTON, N.J. 07102 - FORM

1 MR. GONZALEZ: Then it becomes a hearsay problem.

2 THE COURT: I agree, I agree. I think it becomes
3 a matter of hearsay and I do not find --

4 MS. FURLONG: Judge --

5 THE COURT: -- that it falls within the rule that
6 you cited as an exception.

7 MS. FURLONG: Judge, could I just explain one
8 thing to you?

9 Yesterday, I know you say I'm trying to bootstrap
10 it, but Ms. Woods testified and the majority of her testimony
11 was about all the incidents that occurred prior to arrest.
12 I make that analogy because this occurred prior to arrest.
13 She was able to go into and she wasn't always physically
14 with the Defendant and it is against his interest because
15 he's doing a subsequent act after the commission of a crime
16 and it is against his interest.

17 THE COURT: Ms. Furlong, I'll answer you once
18 more. I don't know for what reason, that may be, it was
19 or could have been objected to and maybe would not have
20 come in, I can't get into any defense-minded individual or
21 for that matter, even your own mind as to how or what you
22 want or what you may want to come in. I can't always
23 interject myself with a form of objection. I may be
24 interfering with effective assistance of counsel.

25 Now, I can't get into that strategy, I can't

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ERASABLE

-COTTON CONTENT-

1 rule if I see something very flagrant that is unfair to
 2 both sides, I will interject; however, you're attempting
 3 to get in here what I believe is inadmissible under the
 4 Hearsay. You haven't offered any exceptions that I can
 5 find that would be fair to allow it under the circumstances
 6 and you keep striving back as to what may have been said
 7 yesterday. That may have been said by her, you are now --
 8 this is what she said and here you want to get in what a
 9 defendant said --

10 MS. FURLONG: Excuse me.

11 THE COURT: -- to an individual on the telephone.
 12 That's entirely different, I will not allow it.

13 MS. FURLONG: Your Honor, may I ask you one
 14 question?

15 THE COURT: I will not allow it.

16 MS. FURLONG: Do you consider it's not against
 17 your interest to make a phone call asking for someone
 18 saying that you haven't seen that person all evening when,
 19 in fact, you have?

20 THE COURT: Look, you're presuming something that
 21 is not here. You're getting into a state of mind of an
 22 individual, whatever it may be.

23 MS. FURLONG: Well, Judge, I will submit that
 24 for rebuttal then and I will have had just a few minutes
 25 call.

ERASABLE
 COTTON CONTENT

1 THE COURT: Fine.

2 MS. FURLONG: Call him on the witness stand and
3 I'll just go in with the telephone call was placed and was
4 it a male caller?

5 THE COURT: You ask him that, period, good-bye
6 and good luck, thank you.

7 Bring the jury out.

8 (Whereupon, Siheem Foster Mott resumes witness
9 stand.)

10 11:25 a.m.

11 (Whereupon, the following takes place within the
12 presence of the jury.)

13 THE COURT: All right. Ladies and gentlemen,
14 it's my understanding that the leak has now stopped in the
15 bathrooms; so therefore, you can at least use them.

16 A JUROR: The sign was off when we came back,
17 we can feel comfortable now.

18 THE COURT: That's very nice, thank you.

19 Now that we've gotten over that part, then we'll
20 get back into the trial.

21 All right. Would you please -- sir, you're still
22 under oath, as you know.

23 THE WITNESS: Yes.

24 THE COURT: All right, thank you.

25 BY MS. FURLONG:

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-COTTON CONTENT-

1 Q Siheem, on September 10th, 1989, did you, getting
2 back to this phone call -- excuse me, September 11th, were
3 you able to, at any point, identify the sex of the caller
4 on the phone?

5 A Yes.

6 Q And could you tell the Court and the jury what
7 sex this --

8 A Male.

9 Q -- caller was?

10 A Male.

11 THE COURT: Pardon?

12 THE WITNESS: Male.

13 THE COURT: Male voice, all right.

14 Q And at that point in time, could you again fix
15 the time that you received that phone call?

16 A Had to be somewhere around eleven o'clock because the
17 news was on.

18 Q And after you received that phone call, did you
19 communicate the information that took place during that
20 phone call to anyone else?

21 A Yes.

22 Q And who did you tell about that phone call?

23 A My father.

24 Q And for the record, who is your father?

25 A Richard Mott.

-COTTON CONTENT-

1 Q And at any point in the latter part of the
2 evening, did you learn of your uncle's death?

3 A Yes.

4 Q And at what time did you learn of your uncle's
5 death?

6 A I was sleepin', I think it was around -- it was
7 somewhere around three o'clock.

8 Q And how --

9 A I don't know.

10 Q --were you informed of your uncle's death?

11 A I heard my cousin cryin' and that woke me up and my
12 grandmother told me.

13 MS. FURLONG: No further questions of this
14 witness.

15 THE COURT: Cross-examination?

16 MR. GONZALEZ: Judge, I have nothing, thank you.

17 THE COURT: All right. Thank you, sir, you may
18 step down.

19 (Whereupon, Siheem Foster Mott exits.)

20 THE COURT: All right, next witness, please.

21 MS. FURLONG: Your Honor, at this time, the State
22 calls Dr. Singh.

23 (Whereupon, witness enters.)

24 DR. SUNANDAN SINGH, sworn.

25 THE COURT: Testimony, please.

26 -CUTION CONTENT-

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PENSAC CO., BAYONNE, N.J. 07002 - FORM

1 THE WITNESS: Good morning, your Honor.

2 THE COURT: Direct examination, please.

3 DIRECT EXAMINATION BY MS. FURLONG:

4 Q Good morning, Dr. Singh.

5 Could you please state for the Court and the jury
6 by whom you're employed?

7 A I'm employed by the County of Essex, New Jersey, in
8 the capacity of Assistant Medical Examiner.

9 Q And Doctor, how long have you been employed in
10 that capacity?

11 A I've been in this capacity as of the 1st of January,
12 1986.

13 Q And during the course of your employment as
14 medical examiner, approximately how many autopsies have you
15 performed?

16 A To date, 546.

17 Q And could you please go through the technical
18 training that you have that has prepared you to perform
19 autopsies?

20 A I will.

21 I graduated as a physician in my country of origin
22 which is India in the year of 1960 from the University of
23 Osmania, C-S-M-I-M-I-A.

24 Following which I did family practice for two years
25 and at the end of which I joined ...

NOTION CONTENT

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FEB-88

PENGAD CO., BAYONNE, N.J. 07002 - FORM

1 post-graduate training in pathology and bacteriology.

2 During this tenor, I had to join Army and serve as
3 Army medical doctor for four years from 1965 till '69 and
4 upon return from Army, I completed my training in pathology
5 and had my post-graduate degree in the year of 1970.

6 I migrated to the United States in '71 and underwent
7 further training and ultimately, in 1979, I was Board-
8 certified in anatomy and clinical pathology and have
9 practiced pathology ever since.

10 I have served in various hospitals since then, one
11 of them being Sydenham Hospital in New York after which I
12 joined Zurbrugg (ph) Memorial Hospital in South Jersey at
13 which time when I join Zurbrugg Hospital in 1980, I also
14 practiced as assistant county medical examiner for the
15 County of Camden, New Jersey, and from '86 onward, I have
16 practiced full-time forensic pathology.

17 Additionally, I had Board certification in the year
18 of 1989 in forensic pathology also, besides my anatomy.

19 Q Thank you, Doctor.

20 A You're welcome.

21 Q Now, Doctor, are you familiar with an autopsy
22 performed on

23 THE MLOCK THE COURT: Just one second, please.

24 ERASABLE Qualifications
25 MR. GONZALES: No objection.

-COTTON CONTENT-

PENSACOLA COUNTY, FLORIDA, N.J. 07002 - FORM FED-38

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THE COURT: All right; therefore, he will be admitted as a forensic pathologist, Doctor.

THE WITNESS: Yes, your Honor.

THE COURT: All right. So qualified in that field.

MS. FURLONG: Thank you, your Honor.

Q Are you familiar with an autopsy that was performed on one Victor Mott on September 11th, 1989?

A Yes, I do.

Q And can you please tell the Court and jury the first time you were asked to become involved in this investigation?

A I will.

I was present at the place where the victim's body was found which was located at --

THE COURT: Are you referring to some reports, Doctor?

THE WITNESS: Certainly, your Honor.

THE COURT: All right. Do you need these reports to refresh your memory?

THE WITNESS: I certainly will, thank you, your Honor.

MS. FURLONG: I'll have them marked, your Honor. At this time, I'd like to have Dr. Singh's report, I believe it's State's Exhibit 39 marked by

-COTTON CONTENT-

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PERGAS CO., BAYONNE, N.J. 07002 - FORM 78B-25

1 identification.

2 THE COURT: I believe 48.

3 THE COURT REPORTER: Forty-eight.

4 MS. FURLONG: Forty-eight, Judge, I'm sorry.

5 THE COURT: It's all right.

6 (Whereupon, exhibit is marked S-48 for

7 Identification.)

8 BY MS. FURLONG:

9 Q Doctor, I'm now showing you what's been marked
10 for identification as State's Exhibit S-48. Could you
11 identify that report for the record?

12 A It's a copy of my original autopsy report. It is
13 No. 07891989 and bears the name of the decedent, Victor
14 Mott. It says, "Essex County, September 11, 1989."

15 Q Now, Doctor, is it necessary for you to refer
16 to your report to answer my question of when you first got
17 involved in the investigation of the death of Victor Mott?

18 A Yes, I do need to refer to my notes which I made.

19 According to my notes, draw your attention to page 8
20 which I'm reading, I was present at the location where the
21 body was found at 20 minutes past 1 A.M. on the 11th of
22 September, 1989, and present at the time at the scene were
23 Mr. Bill Thomas of the Newark Homicide Squad and also,
24 Mr. Henry Ferrer from the Essex County Prosecutor's Office.

25 Q Now, Doctor, if I may interrupt you for a moment.

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FEB-88

PENSAC CO., BAYONNE, N.J. 07002 - FORM

1 I'd like to show you a group of photographs marked State's
2 Exhibit S-33A through E and ask you if you can identify
3 these photographs?

4 (Whereupon, witness reviews photographs.)

5 A Yes.

6 Q How can you identify those photographs, Doctor?

7 A I have my original description about the place where
8 the body was found and the way it was found plus, the oral
9 description of the location also helps me to identify these
10 pictures.

11 Q Now, do these pictures accurately depict what you
12 saw when you arrived at the crime scene?

13 A Yes.

14 Q On September 11th?

15 A Yes.

16 Q Now, Doctor, when you arrived at the crime
17 scene, could you indicate to the Court and the jury what
18 is the first thing you, as a doctor assigned to go out
19 to the crime scene, what is the first thing you do when
20 you arrive at a crime scene?

21 A The first thing after arriving at the crime scene is
22 to inquire from the police officials who are present at
23 the scene as to what happened, and how the body was
24 recovered, et cetera, and after having gleaned that
25 information and after having made certain that the crime

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PENSACOLA CO., FLORIDA, N.J. 07102 - FORM 7-18-18

1 scene has been secured by the police personnel and their
2 interests are out of the way, meaning that we do not disturb
3 their investigative procedures; so, after having gotten a
4 clearance on that, we approached the body and examine the
5 body and try and find out what kind of state it is in and
6 also, if there are any injuries on the body. All these
7 observations are made.

8 Q Now, Doctor, at the time that you received the
9 clearance and you went to examine the body, what is the
10 purpose of your examining the body at that point in time?
11 What can you determine from examining the body at that
12 crime scene?

13 A First, we try to determine if the body is in a fresh
14 state, whether it is started decomposing, if it is dead,
15 of course, and most of the times, we have to deal with
16 dead bodies and after having done that, we take routine
17 signs of -- like taking whether a body has become stiff
18 after death or not, we take temperature of the body.

19 Q Now, Doctor, let me interrupt you.

20 Was that temperature taken in this case of
21 Victor Mott?

22 A Yes.

23 Q And from taking his temperature, what were you
24 able to assess?

25 A The temperature, there are two types of temperature

MEMLOCK
ERASABLE

1 we normally take. One is the temperature of the decedent
2 himself or herself and the environment as per my notes,
3 the temperature at our time of examination of the body of
4 Mr. Mott was 90 degrees. This was taken in the axilla and
5 environment was 82 degrees.

6 Q Now, from those two figures, 90 degrees for the
7 body of Victor Mott and 82 degrees for the air environment,
8 from that, what do you use as figures to determine?

9 A We normally apply a rule of thumb, more or less,
10 in arriving at a ballpark figure that may have been passed
11 between the death of the demised and the time the body was
12 found. In this case, the ballpark figure of the drop of
13 body temperature was in the range of eight degrees and
14 based on that, my estimate was, give or take three hours
15 prior to our examination, the body was dead.

16 Q And what time would you figure then around for
17 the death of the decedent?

18 A My actual taking of temperature was around 1:30, about
19 ten minutes after our arrival at the scene so that would
20 place it at 10:30; backward, 12:30, 11:30, about -- between,
21 give or take, around ten o'clock I would predict, 10:00 to
22 10:30 I should say.

23 Q Now, Doctor, does that time period, 10:00 to 10:30,
24 involve a range for a margin; would it be a wider margin?
25 is that the two parameters that you would, with your

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ERASABLE

CRITICAL CONTENT

1 expertise, deal with, a 10:00 to 10:30 period?

2 A No, it's not very accurate, I would have to admit
3 that. We'll have to plus or minus one hour, either way.

4 Q Now, Doctor, after you made -- after you took
5 the temperature, were there any other observations that
6 you physically made about the body?

7 A Yeah. You see, at the scene, we do not have as
8 accessible of the amount of light that is present to the
9 extent that we can examine the body without disturbing the
10 evidence so at that time, I found that he had injury to his
11 side of his head and chest and that was about the extent of
12 examination that was possible at the scene.

13 Q Now, at that point in time, was the body of
14 Victor Mott transported back to the medical examiner's
15 office?

16 A Yes.

17 Q And at that point in time, what type of
18 examination did you yourself conduct?

19 A At the scene?

20 Q No, when you were back at the medical examiner's
21 office?

22 A Back at the medical examiner's office, the body was
23 transported, it was stayed overnight in a cool room and I
24 actually conducted my examination and this was started at,
25 I have the times here, 0940 hours. The autopsy was conducted

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ERASABLE

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FEB-25
KODAK CO. BAYONNE, N. J. 07002 - FORM

Singh - direct

1 started by myself and it lasted till 40 minutes past 1 P.M.

2 Q Now, could you please explain from your training
3 and the procedure that you use yourself in performing an
4 autopsy, what is the first thing you examine, the clothing,
5 the body? Do you -- could you just explain the procedure
6 that's usually done?

7 A Certainly, I will do that.

8 In order to conduct a complete investigation in any
9 decedent, especially in places of medical examiners, unless
10 he has already been transported with a hospital, you start
11 off with an examination of the clothes in which the decedent
12 was found, the state in which the clothing is kind of
13 marked, if there are any other clothing, whether they are
14 of any weapon that may have been used or if there are any
15 blood stains, what state of whether they are dry or wet or
16 if there are any tears in the clothing which may have been
17 caused during scuffle or any -- having been caught in any
18 object.

19 Those kinds of observations are made on the clothing
20 of the decedent and after having done that and remove the
21 clothing and preserved it for evidence, we proceed with
22 the description of the body itself taking measurements like
23 height, weight, state of measurement, the color of the
24 skin, color of hair, distribution of hair on the body,
25 color of eyes and after having done that, we also, if it

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1 is present, marks of identification like tattoos or molds,
2 deformities, scars. Those are made note of and then if
3 there is any external evidence or any medical assistance
4 that may have been given to the person in order to save
5 the life of the person, that again is noted.

6 And from that point on, then we identify separately
7 if there are any injuries on the body externally and after
8 having confirmed that and if it is deemed necessary, we
9 do take X-rays of the body to determine if there are any
10 internal injuries that are visible on X-rays; so, after
11 having done that, we make incisions in the body, namely the
12 top of the skull and front of chest, abdomen and if it is
13 so deemed necessary, we make additional incisions elsewhere
14 to highlight and completely explore the internal damage as
15 may have occurred in the homicide.

16 Now, after having done that, we remove the internal
17 organs, examine them, weigh them, look at them, cut through
18 them and determine the extent of injury if it is present in
19 the internal organs. After having completed all that and
20 during all this time, we take photographs of procedures
21 to document the internal damage if it is present and at
22 the conclusion of the autopsy, we take examples of tissues
23 for determination if there were any toxicological substances
24 present in the person.

25 And also, if it is deemed necessary, we make microscopic

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1 examination to examine the tissues and access to damage
2 that has happened to the tissue; so, after having done
3 all these things, that's the physical end of conclusion of
4 the autopsy at that time but other reports, if there are
5 any generated, they take some time to come back to us.

6 Now, if the obvious cause of death is present, in
7 cases like these of Mr. Mott, we go ahead and say that
8 these were the injuries which were in the demise of the
9 individual and you render an opinion then.

10 Q Now, Doctor, could you please go into the physical
11 observations and descriptions of the notes that you made
12 of the decedent's clothing?

13 A I will.

14 Q In this case?

15 A This is the clothing which was present on the body
16 of Mr. Mott, that was a red and blue long-sleeve shirt and
17 the front of this clothing was soaked in blood and in the
18 left upper pocket was apparently ripped from the seam and
19 there were horizontally disposed tears and loosening the
20 seam of the left side of the garment of Mr. Mott.

21 Now, the lower body had blue denim jeans which appeared
22 to be clean and there were no tears or rips in them and
23 that one of the pockets, there was a white nap in which
24 was nicely and neatly folded and put into pocket, that's
25 how it was found. On his feet were white socks and shoes

1 were stripes at the end of these, blue and red stripes
2 and then there were white sneakers with red and blue
3 stripings and they were made by Pro Champs.

4 There was no blood found either on the denim jeans
5 or the sneakers or the socks and around the waist of this --
6 of these jeans was black belt and total of 35 cents and
7 two matchbooks, one key and a crumbled tissue paper was
8 found. The other belongings like the wallet of the decedent
9 and papers were removed at the scene by the investigative
10 people from the Prosecutor's Office and they were in their
11 possession.

12 On his little finger on the right-hand side there was
13 a partial ring with the figure of an owl's head on it and
14 the eyes of the owl were made of colorless stones, so this
15 was the amount and extent of personal belongings that were
16 present on him.

17 Q Doctor, at this time, I'd like to --

18 MS. FURLONG: First, I'd like to have these
19 marked as State's Exhibit S-49-1 through 9, nine photographs
20 of Victor Mott's clothing.

21 (Whereupon, exhibit is marked S-49-1 through 9
22 for identification.)

23 Q Dr. Singh, I'm going to ask you to look at
24 what's been marked as State's Exhibit S-49-1 through 9 and
25 can you identify these photographs?

1 A Yes.

2 Q And how can you identify these photographs?

3 A There is this matching of the plaid, long-sleeve
4 shirt that I just described that was found on the body of
5 Mr. Mott and these pictures have been taken to depict the
6 circular or oval holes surrounded by dried blood around
7 these holes that were found and these pictures essentially
8 depict that.

9 Q Now, Doctor, when you say "circular holes," are
10 there any little tags on the clothing indicating where
11 these circular holes are in those pictures?

12 A That's right.

13 Tags have been placed by the investigating officers
14 to show for certain I know where exactly these holes are
15 located because sometimes they do not show very clearly
16 the holes in color pictures; so, that's why the tags also
17 have been additionally put, to highlight and point -- and
18 bring to the attention the location of the holes.

19 Q Now, Doctor, you physically examined yourself,
20 personally, that shirt of the decedent?

21 A Yeah, the clothing was examined by myself personally.

22 Q Now, after the clothing was examined, what is
23 the next procedure as far as is it the description of the
24 body that you could go into after the description of the
25 clothing?

1 A Yes.

2 Q And could you please explain in this case what
3 was done as far as documenting that?

4 A Well, I took the measurements at which these injuries
5 were present on the body of Mr. Mott, described them in
6 details, both external and internal, their extent to which
7 they had entered the body and done the damage to the inside
8 of the body.

9 Q Could you please go and explain the actual
10 dimensions and what you came up with as far as those
11 markings?

12 A Yes, I will.

13 In the head and neck region, Mr. Mott showed one
14 bullet entry hole located in the right temple region about
15 one inch in front of the ear, but this was well within his
16 hair. This was located at a height of 67 inches from his
17 heel.

18 By the way, Mr. Mott was 70 inches tall, 155 pounds
19 of weight.

20 So, this one injury due to the bullet entry in the
21 head was located, as I said, one inch from the ear and was
22 still well within the hairline and 67 inches from the right
23 heel.

24 There was yet another bullet entry hole located on
25 the right side of his chin, 61 inches from the right heel.

1 Both of these injuries were four millimeters in diameter.

2 And coming to the chest region just slightly to the
3 left of the midline and at a height of 51 inches from his
4 heel was a bullet hole, again, circular and it had an
5 abrasion ring and the hole itself measured four millimeters
6 in diameter and depending on the abrasion ring that was
7 present, even without entering the body, I did determine
8 that the direction of the bullet in which it came into the
9 body of Mr. Mott was from his right side of the body and
10 went towards the left and in a downward fashion.

11 After I had determined these injuries -- excuse me,
12 there was one additional injury I found that was in the
13 right hand and the bullet had entered the back side of the
14 right hand and exited on the palm side and passed through
15 and went through the hand.

16 After having done that, I turned the body over on the
17 face and this additionally revealed more injuries to the
18 back of Mr. Mott. The main injuries were present on the
19 back of his right shoulder and I have given their locations,
20 one was at 59 inches and the other one was at 50 inches and
21 their exits were located -- those were the holes of entry
22 and they were exit entries located at 61 inches and another
23 one was 61 and one-half inches. Of these, they were in and
24 out kind of injuries of the bullets. The bullets had not
25 entered any deeper parts of his body, so these essentially

1 are two bullets entering and leaving without damaging
2 insides of the body, just the subcutaneous tissue, soft
3 tissues.

4 However, there was an additional hole located in the
5 right occipital region of Mr. Mott and there it was found
6 that it had entered just and fractured the skull bone at
7 this point of entry and the bullet was just right there
8 under the skin and not entered into the cranial cavity.

9 Now, after opening his body, I found that --

10 Q Doctor, may I interrupt you one minute?

11 MS. FURLONG: I'd like to have these photographs
12 marked as State's Exhibit S-50, there are four photographs.

13 (Whereupon, exhibits are marked S-50-1 through 4
14 for Identification.)

15 Q Doctor, I'm now showing you what's been marked
16 as State's Exhibit S-50 for Identification, 1 through 4.
17 Can you please look at these photographs and tell me if
18 you can identify them and what they actually depict?

19 A These are color photographs of various injuries I just
20 described on the body of Mr. Mott; namely, the injury on
21 the back side of Mr. Mott in the shoulder regions and in
22 the right occipital region; the injury in the chest and the
23 back of right wrist. So, these are the injuries that are
24 essentially depicted.

25 I do not visualize the injury that I described on

1 being present very clearly in the right temple region and
2 the right chin region. Except for these two injuries, I
3 see all the other injuries that have been described.

4 Q Now, Doctor, you refer to the one in the wrist.
5 I believe that's been marked as State's Exhibit S-50, No. 4,
6 for Identification. Can you explain to the Court and jury
7 what observations you made of that injury in the hand area?

8 A With the exception of the injury which I've been asked
9 to describe was located in the back of the wrist, lower
10 hand. All the other injuries did not have this feature
11 which this particular injury on the back of the wrist had.
12 Namely, the wound in the wrist region was surrounded by what
13 medical examiners call in their technical term as tattooing.

14 Tattooing is the result of actually burning of the skin
15 in a pinpoint fashion because the gunpowder which is still
16 red hot comes out of the barrel of the gun, gets deposited
17 and produces bright red spots. So, this is what I had found
18 in relation to the wound on the back of the right wrist.

19 Q And Doctor, from your findings of this tattooing,
20 is it also referred to as stippling?

21 A Tattooing and stippling are synonymous.

22 Q Okay.

23 Now, from observing this on the victim's, I
24 believe you said the outer right part of his hand --

25 A Right.

1 Q -- what can you, with your experience and
2 training, can you make any determination as to why this is
3 present?

4 A At the scene, I was told --

5 MR. GONZALEZ: Your Honor, objection, hearsay.

6 THE COURT: Don't indicate what you were told.

7 Can you give any opinion as to what you saw?

8 THE WITNESS: Yes, your Honor, I can.

9 THE COURT: Without indicating what was told to
10 you?

11 THE WITNESS: Certainly, your Honor.

12 THE COURT: Go ahead, please.

13 THE WITNESS: May I?

14 Q In reference to stippling, what do you use to
15 determine it?

16 When you find stippling or tattooing, what do you
17 use to determine it? Can you determine anything else with
18 your forensic background?

19 A All right. It helps us to determine the approximate
20 distance at which the end of the barrel of the gun was from
21 the target, meaning the hand of, in this particular case,
22 the back of the wrist of Mr. Mott was.

23 Q And Doctor, how far would you determine the
24 barrel of the gun was from Victor Mott's wrist area when
25 the stippling was found?

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1 A I would place it around six to nine inches.

2 Q Thank you, Doctor.

3 Now, Doctor, as far as your internal examination
4 of the deceased, Victor Mott, can you please tell the Court
5 and jury how that was performed?

6 A As I indicated, I had proceeded to make incisions and
7 open the internal organs.

8 Now, starting from the head and then going downward
9 in that fashion, the wound in the right side of the head of
10 Mr. Mott had entered it through the muscle that is called
11 temporalis and the bone that is under the temporalis muscles
12 is called the temporal bone. So, it had entered through
13 that and traversed in a slightly backward from right to left
14 fashion and gone through the various parts of the cerebral
15 hemispheres ultimately, entering the left side of the brain
16 which is called cerebellum. So, the bullet had gone through
17 that and lodged there in the left occipital region and this
18 was removed by myself from there and held as evidence.

19 Coming to the injury to the right side of the chin,
20 the bullet had entered and traversed in an upward fashion
21 through the base of the tongue and ultimately gone upward
22 and lodged behind the cheekbone which is called the malar
23 bone and it was lodged in that region and that's from where
24 I removed the second bullet that was found.

25 Now, coming to the wounds on the wrist and the right

1 shoulder regions, they had come in and gone out; so, there
2 were no bullets to recover from there; however, there was
3 this in the back of the head on the right side which I call
4 the occipital region, this bullet had gone and fractured
5 the body of the occipital region and by itself, it had not
6 entered the skull cavity. However, the bone fragments were
7 pushed into the right side of the brain, the cerebral part
8 of the brain and that's where the bony fragments were found.
9 However, the bullet was recovered from under the skin and
10 from among the fragments outside of the skull and preserved.

11 So that and lastly, the wound in the center of the
12 chest had passed from the direction from right to left so
13 in its travels from right to left and going slightly
14 downward, it had passed through the heart of Mr. Mott,
15 gone through the heart, then it had gone through the covering
16 which separates the chest organs from the abdominal organs
17 which is called the diaphragm and after it had perforated
18 the diaphragm, it had entered the stomach and it had gone
19 through and through the stomach and there is a small organ
20 which sits snugly on top of the left side of the stomach
21 which is called the spleen. So, it had gone through the
22 spleen and ultimately that was -- that bullet lodged
23 between two of the ribs in the soft tissues and from there,
24 I had removed this bullet and preserved it as evidence.

25 Q Now, Doctor, I'm going to show you the following

1 exhibits marked for identification, S-24, S-25, S-26, and
2 S-27 and I'm going to ask you if you're able to identify
3 these exhibits?

4 (Whereupon, witness reviews exhibits.)

5 A Okay. They are not strictly in the order that I
6 described, but bullet No. 1 corresponding to No. 24 I.D.
7 and it's 6-12-90 and it bears the name of the decedent
8 and our autopsy number and this is labeled as bullet No. 1
9 from right occipital region.

10 This bullet consists of the bullet itself and the
11 covering of the bullet which is called the jacket of the
12 bullet. It's a small caliber bullet and the jacket from
13 the right cerebral regions, I have the weights but I don't
14 know if I should give all these details.

15 Q Doctor, it's sufficient just to explain where
16 you recovered each exhibit.

17 A Yes.

18 So, the bullet's jacket had separated while it
19 impacted on the occipital bone and that's what I had
20 pulled from that region and preserved as evidence.

21 The evidence labeled as bullet No. 2 and for some
22 reason, Mr. Gold again calls it an occipital region, but
23 this would be from the left side of the occipital region,
24 which had entered from the right temporal region and
25 that's from the head and in this case, the bullet still

1 has retained its jacket and is whole and this was removed
2 from the left cerebral hemisphere and that is removed.

3 Then is bullet No. 3 -- by the way, the reference
4 number is 25 I.D. on this.

5 Bullet No. 3 which was recovered and labeled as left
6 malar region which had come through the right chin, gone
7 across the base of the tongue and lodged behind the malar
8 bone is also a metal-jacketed bullet fully retaining its
9 jacket and showing a small dent on the front end of this
10 bullet so that was bullet No. 3 corresponds to 26 I.D.
11 number given by the Court.

12 And lastly, bullet No. 4 which I described had entered
13 the center, more or less, left side of the center of the
14 chest then gone backward into the heart, stomach, spleen
15 and was removed from between the tenth and eleventh ribs
16 on the left side and is again a metal-jacketed bullet and
17 shows deformity of its base.

18 Now, all these bullets are the same caliber and these
19 were -- the number on that was 27 I.D.; so, a total of
20 four bullets and the fragments that I have removed in
21 case of one bullet in the occipital region on the right
22 side, they are the ones which I have removed.

23 Q Doctor, do you have an opinion after all this
24 examination, the external examination of the body, internal
25 examination of the body as to how many bullets actually

1 penetrated the victim's body, if you can?

2 A Four, for certain which I removed from actually the
3 body of the victim.

4 Now, the ones which in the shoulder region and the
5 one through the wrist region, I can only speculate what
6 happened to those bullets.

7 Q But Doctor, can you, based on your training
8 and experience, were you able to determine whether the
9 shoulder area wounds were done from a bullet, from a gun
10 or was it --

11 A They were bullet injuries.

12 Q But you didn't recover the bullets in those two
13 areas?

14 A From two regions and the wrist as I indicated, I did
15 not.

16 Q But your opinion is that they are definitely --
17 they were definitely, those wounds were made from a bullet?

18 A Yes.

19 Q Now, Doctor, after doing all this examination,
20 do you, in the normal course of making your findings, come
21 to a conclusion which I believe in your business you call
22 pathological findings as to the conclusion of the death of
23 Victor Mott?

24 A Yes, I did.

25 Q And could you tell this Court and jury that your

1 pathological findings were?

2 A I will.

3 THE COURT: Does that mean the cause of death?

4 THE WITNESS: No, your Honor.

5 A First, I will list the kind of injuries that were
6 found. That's what I believe you're asking, pathological
7 findings.

8 Q Yes, pathological.

9 THE WITNESS: And that will be on page 6, your
10 Honor.

11 THE COURT: Go ahead,

12 A My findings, pathological findings, meaning what kind
13 of internal injuries as a result of the gunshot wounds that
14 I found and these were as follows: multiple gunshot wounds
15 of the body, fracture of skull due to gunshot wounds and
16 laceration of brain due to gunshot wounds. Laceration of
17 heart, liver, stomach, spleen due to gunshot wounds;
18 hemodynamic and hemobetonium.

19 Q Thank you, Doctor.

20 Now, to sum this all up, Doctor, I believe the
21 cause of death would be in your report?

22 A The cause of death is rendered by me. After completion
23 of the autopsy and having considered all the injuries and
24 multiple gunshot wounds of body and laceration of internal
25 organs. That was my opinion.

1 Q And as far as the manner of death, in your
2 opinion?

3 A The manner, in my opinion, was homicide.

4 MS. FURLONG: I have no further questions of this
5 witness.

6 THE COURT: Cross?

7 MR. GONZALEZ: Yes, Judge.

8 THE COURT: Will it be lengthy? Because I have
9 to take a recess at this time.

10 MR. GONZALEZ: It may be, Judge.

11 THE COURT: May be?

12 MR. GONZALEZ: May be.

13 THE COURT: Well, we'll have to continue it until
14 1:30.

15 MR. GONZALEZ: Fine, Judge.

16 THE COURT: I'm sorry, Doctor, but I have something
17 else I have to do.

18 THE WITNESS: Certainly, your Honor.

19 THE COURT: That was brought to my attention.

20 THE WITNESS: No problem.

21 THE COURT: So, we will see you after lunch at
22 1:30.

23 THE WITNESS: Thank you.

24 THE COURT: Thank you.

25 THE WITNESS: Am I excused, your Honor?

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THE COURT: What?

THE WITNESS: Am I excused?

THE COURT: Just a moment, let me excuse the jury.

Ladies and gentlemen, we'll excuse you for lunch and we'll see you back here at 1:30 and we'll continue with the cross-examination of the Doctor.

Do not formulate any opinions, as you well know, keep an open mind, this matter has not been concluded. Have a pleasant lunch, see you back here at 1:30, thank you.
(Whereupon, jury is excused for the luncheon recess.)

THE COURT: All right, Doctor.

THE WITNESS: Thank you, Judge.

(Whereupon, Dr. Sunandan Singh exits.)

(Whereupon, Court in luncheon recess.)

(Whereupon, the following takes place outside the presence of the jury.)

(Whereupon, witness resumes witness stand.)

THE COURT: All right, Doctor.

THE WITNESS: Yes, your Honor.

THE COURT: Sorry for the delay but we got involved in some other matters; so, our lunch hour was --

THE WITNESS: No problem, Judge.

THE COURT: -- was a little bit longer.

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THE WITNESS: Thank you, your Honor.

THE COURT: All right. Bring the jury out.

Are we ready to proceed, Mr. Gonzalez?

MR. GONZALEZ: Yes, sir.

THE COURT: All right, bring the jury out.

1:50 p.m.

(Whereupon, the following takes place within the presence of the jury.)

THE COURT: All right, all our 14 jurors are in the jury box and Doctor, may I remind you, you are still under oath.

THE WITNESS: Yes, your Honor, I am under oath, thank you.

THE COURT: All right, cross-examination.

MR. GONZALEZ: Thank you, Judge.

CROSS-EXAMINATION BY MR. GONZALEZ:

Q Doctor, good afternoon.

A Good afternoon, sir.

Q Doctor, do you know the age of Victor Mott?

A I was given his age as being 30 years of age.

Q Doctor, you testified that in examining the body of Victor Mott, you found six bullet wounds on the body, six or seven, how many were there?

A Let me go over them. One in the chin, two, one in chest, three; one in the wrist region, that would be four.

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1 and entry and exit, entry and exit so there is, I count
2 them as two, actually, so that would be six and then in
3 the right occipital region, seven.

4 Q So, you found seven wounds in total?

5 A If you count those shoulder wounds as being entry,
6 exit as one; otherwise, I'll have to add the exit wound
7 from the palm and two exit wounds of the shoulder, additional
8 three. So, that will be ten wounds.

9 Q Well, let's count them as one, the one from the
10 wrist and also from the --

11 A Shoulder.

12 Q How many in total?

13 A Seven.

14 Q Seven.

15 Now, taking the wound to the right ear area,
16 I believe you called it --

17 A Temporal.

18 Q The temporal area?

19 A Yes.

20 Q Doctor, based on your knowledge and your
21 observations of Victor Mott, the right temporal wound,
22 can you make a determination as to the direction of the
23 bullet which inflicted the right temporal region area?

24 A Yes, I can.

25 Q And what is that direction?

1 A The direction was from the right side of the victim
2 from coming from forward then hitting the skin, muscles
3 and bone and then going from right to left before backwards
4 inside the brain and slightly downward.

5 Q So, you're saying that the person who shot or
6 the direction of the bullet from the gun used by the person
7 who shot Victor Mott had to have come from the right of
8 Victor Mott, correct?

9 A It is possible.

10 Q So, if the shooter was right in front of Victor
11 Mott, the shot would have been to the face area rather than
12 the right temporal, correct?

13 A If you're creating a scenario as I understand, is
14 that the victim and the assailant, they stood face to face.

15 Q Correct.

16 A Right in front of each other and if the assailant is
17 assumed to be right-handed, holding the gun in right hand,
18 I don't see -- it would be consistent with the direction of
19 the bullet.

20 Q Right, it's not consistent if they were facing
21 face to face?

22 A Right. If the assailant is right-handed, not like
23 that.

24 Q So, therefore, the person or the direction had
25 to be from -- strike that.

1 Let's say I was the assailant and you were the
2 victim and we're standing in this direction. The person
3 who shot Victor Mott had to have been from that direction,
4 from the right side, correct?

5 A If I'm the victim, if you're visualizing me as the
6 victim?

7 Q Correct.

8 A You being the assailant, so that the jury can
9 understand, you'd have to be way out on my right side.

10 Q The shooter had to be on that side?

11 A In other words, on my right side.

12 Q In other words -- on this angle?

13 A Yes. ~~CONTENT~~

14 Q Not in this angle, straight?

15 A No.

16 Q Okay. Based on your expertise and your
17 observations of the body of Victor Mott, can you determine
18 and I'm restricting myself to the temporal wound, can you
19 determine the distance of the shooter when he inflicted
20 that wound to the temporal area?

21 A I cannot.

22 As I indicated, with the exception of the wound on
23 his wrist, all other wounds on his body are of indeterminate
24 origin.

25 Q Which means that you can't call the distance

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1 A I cannot.

2 Q All right.

3 Now, Doctor, can you tell if the individual had
4 to be past 18 inches from the -- from Victor Mott?

5 A Yes.

6 Q To inflict the head injury?

7 A Minimum distance, in my judgment, not the person but
8 the end of the barrel of the gun should have to be beyond
9 18 inches.

10 Q All right. So, the person who shot Victor Mott
11 had to be, and I'm restricting myself once more to the
12 temporal region, at least 18 inches away and to the right.
13 Is that a fair assumption, Doctor?

14 A Yes.

15 Q The gun had to be at least 18 inches away?

16 A Eighteen inches away.

17 Q Okay. And it could have been further?

18 A Possibly.

19 Q All right. But no less than 18 inches, correct?

20 A No less than 18 inches.

21 MR. GONZALES: Judge, I'm sorry for coming up
22 here.

23 THE COURT: No, that's all right, I just want to
24 put on the record that there was a demonstration by you
25 whereby you came up towards the bench and by so doing

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1 stenographer standing to his right. When I say "him,"
2 Dr. Singh, and with you -- with your hands or arm extended
3 and four fingers extended to simulate a gun and describing
4 the distance. Is that accurate, Mr. Gonzalez?

5 MR. GONZALEZ: Yes, Judge.

6 THE WITNESS: One thing only, your Honor, he was --
7 all the while, he was on my left though.

8 THE COURT: Pardon, on your left?

9 THE WITNESS: All the while, the Counsel was on
10 my left side when actually, it should have been on the
11 right.

12 THE COURT: The other way?

13 MR. GONZALEZ: I'll ask the question the other
14 way.

15 THE COURT: Excellent observations, Doctor.

16 BY MR. GONZALEZ:

17 Q I'll ask the question this way, it had to be
18 this direction or 18 inches or more?

19 A Or more.

20 Q It could have been 20 feet away, correct?

21 A I can't tell -- possibly.

22 Q All right. Could have been 15 feet away?

23 A Could have been.

24 Q But no closer, in your expertise, than 15 feet
25 when you're referring -- when you say no closer than 15

1 feet --

2 THE COURT: Feet or --

3 Q I'm sorry, 18 inches, you're referring to the
4 end of the barrel?

5 A End of the barrel.

6 Q Of the weapon to the victim?

7 A That's correct.

8 Q Okay.

9 Now, let's talk about the wound to the right area
10 underneath the chin. Can you make a determination, based
11 on your observations and your expertise as to the direction
12 in which the -- of the shooter who inflicted this wound?

13 A Yes.

14 Q Meaning the one on the right side?

15 A Yes, sir.

16 Q And would that be consistent with your
17 determination as to the temporal area? In other words,
18 would it be the same?

19 A The same observations as I made about the temporal
20 wound.

21 Q And once again, the shooter would have to be
22 at least 18 inches?

23 A Or further away.

24 Q Or further away and to the right?

25 A To the right.

1 Q Okay.

2 Now, getting to the wound to the chest, and
3 once again, I ask you after looking at the body and looking
4 at the wound and your expertise, can you make a determination
5 as to the direction and the distance as to that wound?

6 A The wound from this direction was from the right side
7 of the victim, bullet coming from the right side of the
8 victim entering just slightly to the left side of the
9 midline and went all the way to the extreme left. Again,
10 from the front right of the victim and slightly about on an
11 onward course.

12 Q All right. And that also would have to have
13 been 18 inches or further?

14 A This wound is an exception to that. The clothing did
15 not show any powder on it but the body would not show at
16 all because all the powder would be absorbed by the clothing.

17 Q All right. But as far as --

18 A And my examination of the clothing did not reveal
19 any powder residue.

20 Q All right. So, it didn't reveal any powder
21 residue?

22 A No.

23 Q And when there's a powder residue, it would
24 mean --

25 A Within 18 inches.

1 Q Within 18 inches there was no powder residue on
2 the clothing, correct?

3 A Not on the clothing.

4 Q What?

5 A Not on the clothing.

6 Q Not on the clothing nor the body on the chest
7 area?

8 A In the chest area, no.

9 Q All right. Therefore, you assume from that that
10 it had to be past 18 inches to the right, correct?

11 A Correct.

12 Q And that is consistent with the wound to the
13 temporal region and also to the chest region?

14 A Chin.

15 Q All right. So, assuming these facts, Doctor,
16 assuming, taking all these three wounds in consideration,
17 assuming that the victim was in this position and Moultrie,
18 Derek Moultrie was in this position, they were close, no
19 further than about six or seven inches away from each other;
20 assuming those facts, in order to inflict the three wounds
21 that we just talked about, the shooter had to be from that
22 direction and more than 18 inches away, correct?

23 A You have created a very specific scenario for me.

24 Q Yes, I want you to assume those facts.

25 A That both victim and the assailant, they are facing

1 each other?

2 Q Close distance.

3 A Close to each other, very close to each other.

4 Q And in facing --

5 A And the wounds I have just described, they are not
6 consistent with the scenario you have created.

7 Q They're not consistent with that?

8 A They are not.

9 Q In other words, the shooter would have to have
10 come -- the person who had shot would have to have shot
11 from that direction, correct?

12 A With this scenario given?

13 Q Yes.

14 A No, it had to be from another direction.

15 Q From another direction?

16 A From another direction.

17 Q Okay.

18 Now, Doctor, when you say that it had to have
19 been from another direction, what do you mean, another
20 direction? From what I just -- positive to you or -- I
21 don't quite understand.

22 A Meaning that there could be other possibilities of
23 assailant facing the victim.

24 Q But the possibility -- the facts that I just
25 gave you could have been one of the possibilities, based

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1 on what you told us earlier as to the distance -- I mean,
2 the direction of the shot on all three wounds?

3 A I'm afraid -- are we just now -- I think you created
4 a scenario for me. Please, correct me if I'm quoting you
5 wrong.

6 Q Okay.

7 A The assailant and victim are facing each other at
8 very close range?

9 Q Right.

10 A [And you asked me the opinion about the wound in the
11 right temporal region, right chin and the chest.

12 Now, is it consistent that these wounds were inflicted
13 by the assailant?

14 Q Correct.

15 A Given that particular scenario of facing each other
16 at close range like that?

17 Q And your answer is?

18 A And my answer to that particular question was no, it
19 is not consistent.

20 Q Not consistent.

21 MR. GONZALEZ: No further questions, thank you.

22 THE COURT: Redirect?

23 MS. FURLONG: Thank you, your Honor.

24 REDIRECT EXAMINATION BY MS. FURLONG:

25 Q Now, Doctor, in relationship to the question that

1 Defense Counsel just posed to you with the victim and the
2 assailant face to face I believe was the description that
3 you gave your opinion as far as the wounds.

4 I'm going to ask you to insert another fact. I
5 believe you testified that there was no blood on the lower
6 part of the clothing of the victim as far as his pants and
7 as far as his shoes; that the blood was on the upper portion
8 of his shirt and that it was soaked. Assuming those facts,
9 could the victim in this case have been shot once by an
10 assailant, say, in the chest in a standing position and
11 could the wounds, the other wounds which Mr. Gonzalez
12 referred to, the one in the chin area and the one I believe
13 in the occipital area, temporal region, could they have
14 been inflicted while the victim was on the ground?

15 A It is possible.

16 Q Do you have any opinion as to why there was no
17 blood on the victim's pants or shoes and only on the upper
18 portion of his body?

19 A The blood, most of the blood that was found on the
20 upper part of the body, when I reached the scene, the victim
21 was found face up and I have no knowledge how he ended face
22 up.

23 My observation would have been that the victim should
24 have been like face down because if he fall down after
25 receiving his injuries, there is no reason why the blood

1 should have accumulated on that amount on the front of the
2 chest; so, I don't have the facts as where the first time
3 the victim was found but I have no knowledge to and when
4 he turned the body or any person turned the body on the
5 face.

6 So, I have no knowledge of that but the pattern that
7 is on the chest is from the wounds, the blood is from these
8 wounds and soaked it and the lower part of the body was
9 not soaked because the victim, it is possible, that after
10 receipt of the injuries, fell and this is why there is no
11 blood on the lower part of the body.

12 Q Now, Doctor, you indicated about whether the body
13 was face up or the body was turned over. I'm going to ask
14 you a question.

15 In your opinion, could the victim in this case
16 have been shot, as you indicated, beyond this 18-inch range
17 and had fallen backwards, could any of these wounds have
18 been inflicted while the victim was down on the ground?

19 A That is a possibility.

20 Q Would it be inconsistent with the angles and the
21 directions that you indicated to Mr. Gonzalez that those
22 wounds could have been inflicted at that angle while the
23 victim was down on the ground?

24 A The wounds in the back of the neck -- I mean, the
25 occipital region and on the shoulder, they are consistent

1 and they are possible to have been inflicted while the
2 victim was down, face down on the ground.

3 Q Could they have been inflicted, for instance,
4 if the victim had taken flight from the shooter? In other
5 words, if the shooter is here and the victim is here and
6 the victim goes to run, could the wounds have been -- any
7 of the wounds be inflicted from behind the victim while he
8 was running?

9 MR. GONZALEZ: Judge, my objection --

10 THE COURT: Well, you know, we have a lot of
11 "coulds" and a lot of possibilities.

12 MR. GONZALEZ: I believe the --

13 THE COURT: This one is -- you're posing this
14 one while in flight?

15 MR. GONZALEZ: Well --

16 THE COURT: I don't know if there's any testimony
17 to that.

18 The testimony is that some bullet wounds in the
19 back or in the back area could have been while he was on
20 his stomach lying down.

21 THE WITNESS: That's correct, your Honor.

22 THE COURT: All right, that's it.

23 MS. FURLONG: Judge, I have no further questions
24 of this witness.

25 MR. GONZALEZ: Just one more.

1 RE-CROSS-EXAMINATION BY MR. GONZALEZ:

2 Q Doctor, you indicated that when you found the
3 body, he was on his back or on his stomach?

4 A He was face up, meaning he was on his back.

5 Q And as far as you know, did you -- do you know
6 if anybody turned the body over?

7 A Not to my knowledge.

8 MR. GONZALEZ: No further questions, thank you.

9 MS. FURLONG: No further questions, your Honor.

10 THE COURT: Doctor, you're all done.

11 THE WITNESS: Thank you, your Honor.

12 THE COURT: You're quite welcome.

13 Watch your step.

14 (Whereupon, Dr. Sunandan Singh exits.)

15 THE COURT: All right. Do you have any other
16 witnesses at this time?

17 MS. FURLONG: Your Honor, the State would rest
18 at this time subject to any rebuttal witnesses.

19 THE COURT: All right, and subject to evidence.

20 MS. FURLONG: Correct.

21 THE COURT: All right. What I'm going to do,
22 ladies and gentlemen, I'm going to excuse you into the jury
23 room for a while, then I'll call you out to see just where
24 we're proceeding with this case as far as today's concerned.

25 Now, even though the State has not called, subject

1 to rebuttal witnesses, if any, and any evidence that the
2 State may move into -- I mean, any exhibits which have been
3 marked into evidence, we don't know yet, this case is not
4 complete, simply put. So, therefore, you will not think
5 how you will decide this case either one way or the other.
6 Putting it another way, don't start to formulate any
7 opinions because you have to wait until the matter is
8 complete and you hear arguments, that is, summations by
9 both sides, my charge to you on what the law is, the
10 elements of the various offenses, what evidence is and
11 so forth. Therefore, we'll send you into the jury room
12 and then we'll call you out and let you know just how
13 we'll proceed. All right, thank you.

14 (Whereupon, jury is excused.)

15 THE COURT: I suppose the first thing I can do
16 is hear you on the evidence.

17 MS. FURLONG: Judge, may I be heard?

18 We had a big to-do this morning about obtaining
19 Detective Ferrer. He's been sitting outside for about two
20 hours.

21 THE COURT: Well, I could hear you on the
22 evidence but you want to hear Detective Ferrer?

23 MR. GONZALES: Sure.

24 THE COURT: I have no idea and I forgot all about
25 Detective Ferrer and if he's available --

1 MR. GONZALEZ: He is available, Judge. I had a
2 chance to talk to him.

3 THE COURT: And we'll use him out of turn or
4 let's say in the sense that the evidence then will be --

5 MS. FURLONG: Judge, I'd like to proceed with
6 the Defense case with the Defendant so that we can --

7 THE COURT: All right, you want to hold off on
8 the evidence?

9 MS. FURLONG: Correct, your Honor.

10 MR. GONZALEZ: Well, the only problem is in terms
11 of what evidence Ms. Furlong plans to try to get into
12 evidence, waiting until -- you know, it's a little bit --

13 THE COURT: I understand. All right, here's what
14 we can do.

15 MR. GONZALEZ: I don't mind putting Ferrer on.

16 THE COURT: What we can do is call the jury out,
17 you can proceed with Detective Ferrer. After that, you make
18 a determination whether you're going forward with any other
19 witnesses and then we'll decide on evidence issues and then
20 you can make a determination where we're going.

21 MR. GONZALEZ: Fine, Judge.

22 THE COURT: All right?

23 MR. GONZALEZ: Sure.

24 THE COURT: And the way I understand it, other
25 Detective Ferrer, the only other possible witness --

1 not be Mr. Moultrie?

2 MR. GONZALEZ: Correct, Judge.

3 THE COURT: All right. With that-- is Investigator
4 Ferrer here?

5 THE COURT OFFICER: Yes.

6 MS. FURLONG: He's out in the hallway.

7 THE COURT: Call the jury out and that's how we'll
8 proceed.

9 2:17 p.m.

10 (Whereupon, the following takes place within
11 the presence of the jury.)

12 THE COURT: All right, we have our 14 jurors back.
13 I understand you'd like to proceed with
14 Detective Ferrer?

15 MR. GONZALEZ: Is the Prosecutor resting subject
16 to any --

17 THE COURT: She has rested subject to evidence
18 and any rebuttal and we'll move as far as your witness is
19 concerned.

20 MR. GONZALEZ: Fine, Judge.

21 THE COURT: At this time, and then we'll adjourn
22 where we're going from there.

23 MR. GONZALEZ: I'm ready to proceed, Judge.
24 We call Henry Ferrer.

25 THE COURT: All right.

1 (Whereupon, witness enters.)

2 DETECTIVE H E N R Y F E R R E R, sworn.

3 THE COURT: Good morning, sir.

4 THE WITNESS: Good morning.

5 THE COURT: Good afternoon, I'm sorry.

6 THE WITNESS: Good afternoon.

7 THE COURT: Direct examination, please.

8 MR. GONZALEZ: Thank you, Judge.

9 DIRECT EXAMINATION BY MR. GONZALEZ:

10 Q Good afternoon, Mr. Ferrer.

11 A Good afternoon.

12 Q Mr. Ferrer, by whom are you employed?

13 A I'm employed by the Essex County Prosecutor's Office.

14 Q Back on September 11th of '89, were you employed
15 by the Prosecutor's Office?

16 A Yes, I was.

17 Q In what capacity are you employed by the
18 Prosecutor's Office?

19 A I've been assigned to the Homicide Squad since April
20 of 1984.

21 Q Back on September 11th of 1989, were you assigned
22 to investigate the death of Victor Mott?

23 A Victor Lamont Mott, yes.

24 Q All right. And were you working on that case
25 along with Detective Thomas of the Essex Police Department?

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1 A Yes, I was.

2 Q All right.

3 Now, Mr. Ferrer, are you familiar with a person
4 named Kathy Woods?

5 A Yes, I am.

6 Q And -- strike that.

7 In regards to this case, did Ms. Woods give you
8 anything back in '89 concerning this case? Did she give
9 you any -- a bullet fragment?

10 MS. FURLONG: Objection, your Honor, it's leading.

11 THE COURT: No, no, it's leading now.

12 MR. GONZALEZ: Well, Judge -- okay, fine, fine.

13 THE COURT: So you're to -- it's not cross-
14 examination, he's now on direct examination.

15 MR. GONZALEZ: Okay, Judge, fine.

16 Q Mr. Ferrer, in December, December 1st to be
17 exact, of '89, did you have any contact with one Katie
18 Woods?

19 A That was on November 30th, I wrote the report on
20 December 1st.

21 Q All right. On November 30th, 1989, did you have
22 any contact with Katie Woods?

23 A Kathy Woods, yes, I did.

24 Q Can you tell us about that?

25 A Yes. She contacted me by phone and said that she had

1 found a spent cartridge in her vehicle.

2 Q Did she tell you what vehicle she found this in?

3 A This was in the brown Oldsmobile that the suspect had
4 been with her.

5 Q Now, when you referred to the brown Oldsmobile,
6 you're referring to the car owned by Kathy Woods, correct?

7 A That's correct.

8 Q I show you what has been marked S-23 for
9 identification and ask you, do you recognize it?

10 A Yes, this is an evidence envelope that I filled out.
11 These are my initials with the date, 11-30-1989, and a
12 homicide number.

13 Q All right. Can you open the envelope and see
14 if you can -- if you recognize the contents?

15 (Whereupon, witness reviews exhibit.)

16 A Yes, this is the expended shell casing of a .25-caliber
17 that was given to me by Kathy Woods.

18 Q Now, after you received this expended shell,
19 who did you give it to?

20 A I gave it to Detective Thomas.

21 Q All right.

22 THE COURT: Specifically, is that S-23?

23 MS. FURLONG: Yes, Judge.

24 THE COURT: All right. Is it, Detective?

25 THE WITNESS: Yes, it is.

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THE COURT: All right, thank you.

MR. GONZALEZ: Well, Judge, the envelope is, I assume, that the bullet --

THE COURT: That's S-23.

MR. GONZALEZ: Fine, Judge.

THE COURT: That's been marked as S-23, that's what it is.

MR. GONZALEZ: No further questions, thank you.

THE COURT: Cross?

MS. FURLONG: Thank you, your Honor.

CROSS-EXAMINATION BY MS. FURLONG:

Q Investigator Ferrer, did Ms. -- or do you have personal knowledge when Ms. Woods' vehicle was returned to her?

A It was prior to November 30th.

Q And as a result of this information, did you prepare a report?

A Yes, I did.

Q And do you have that report with you here today in court?

A Yes, I do.

MS. FURLONG: Your Honor, at this time, I'd like to have the report --

Q Well, first let me ask you, Investigator, do you remember the exact date of when Ms. Woods' report was filed?

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1 was returned to her?

2 A I believe it was the day before she called me.

3 Q Do you remember if you've documented that in your
4 report?

5 A I'd have to check my report.

6 Q Well, let's have the report marked for
7 identification, State's Exhibit S-51.

8 (Whereupon, exhibit is marked S-51 for
9 Identification.)

10 Q Now, Detective, I now show you what's been marked
11 as State's Exhibit S-51 for Identification. Would you
12 please review that and let me know if your memory is
13 refreshed as to the date that Kathy Woods' vehicle was
14 returned to her?

15 A Yes.

16 Q Can you now state for the Court and jury on what
17 date this vehicle was returned to her?

18 A The vehicle was returned to her on November 28th, 1989.

19 Q And what is the date that she called you informing
20 you that she found a spent casing in her vehicle?

21 A November 30th, 1989.

22 Q Now, prior to that phone call, do you have
23 personal knowledge that Ms. Woods' car was in the custody
24 of the police department?

25 A That's correct.

1 Q Now, as of September 10th, 1989, when you went
2 down to Plainfield, did you have occasion to search that
3 vehicle?

4 A Yes, I did.

5 Q And at that time, when you searched the vehicle,
6 what were you looking for?

7 A I was looking for the handgun in question.

8 Q And where did you look for the handgun?

9 A Under the seats, in the carpeting, in the trunk,
10 in the glove box.

11 Q And at that point in time, did you make a decision
12 to have the car impounded?

13 A Yes.

14 Q And could you tell the Court and the jury why you
15 made a decision to have the car impounded?

16 A We wanted to thoroughly go through the car, even though
17 we had quickly gone through the car looking for the gun, we
18 now wanted to thoroughly go through the vehicle.

19 Q And did there come a point in time where that
20 was necessary?

21 A No.

22 Q Can you tell the Court and jury why?

23 MR. GONZALEZ: Judge, this goes beyond --

24 THE COURT: Sustained.

25 MR. GONZALEZ: It's beyond the Court's jurisdiction.

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THE COURT: It is beyond.

MS. FURLONG: Judge, this is cross-examination, it's not beyond the scope.

THE COURT: I know it's cross-examination but you are limited to the parameters of what was brought out on direct.

MS. FURLONG: Well, Judge, we're speaking about the casing and how it was found and I'm trying to go through the fact that this Investigator had --

THE COURT: Sustained.

BY MS. FURLONG:

Q Investigator, is it your testimony here today in court that Ms. Woods' car was in the custody of the police department from the date of this incident which was September 10th, 1989, until November 28th, 1989?

A I believe it was September 11th.

Q 1989 to November 28th, 1989?

A That's correct.

Q And that immediately upon the return of the car to Ms. Woods, she telephoned you indicating she found this casing?

A She called --

THE COURT: Immediately, that's not a fact, sustained.

MR. GONZALES: Judge --

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Q Well, the following day --

THE COURT: Let him testify, please.

MS. FURLONG: Judge, this is cross-examination.

THE COURT: It is, but yet you're not testifying,
he is.

The jury heard when the call was made, the jury
heard when the car was impounded.

Any other questions of this gentleman?

Q On Wednesday, November 29th, which is the
following day after November 28th when the car was returned,
did you receive a phone call from Ms. Woods?

MR. GONZALES: Judge, we've been through this,
objection.

THE COURT: It was stated but it's cross-examination.

Q Did you receive a call?

THE COURT: When did you receive the call from
Ms. Woods?

You're looking at your report now to refresh your
memory?

THE WITNESS: Yes, I am, your Honor.

THE COURT: All right.

THE WITNESS: I have it as November 30th, 1979.

MS. FURLONG: Thank you, Investigator.

No further questions, your Honor.

THE COURT: Anything further?

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1 MR. GONZALEZ: No, I don't have anything further.

2 THE COURT: All right, fine.

3 Sir, you may step down, thank you.

4 THE WITNESS: All right.

5 (Whereupon, Detective Henry Ferrer exits.)

6 MR. GONZALEZ: Judge, I believe now we're going
7 to go through --

8 THE COURT: Yes. Let me see you at sidebar to
9 see just how long I may excuse this jury. Maybe it may be
10 a little bit longer than ten minutes.

11 (Whereupon, there is a sidebar discussion off
12 the record.)

13 THE COURT: Okay. Ladies and gentlemen, I'll
14 send you into the jury room about five minutes or so.
15 The bathrooms are working today, Mr. Reilly?

16 A JUROR: Yes.

17 THE COURT: All right. Do not discuss this case,
18 please, as you well know.

19 (Whereupon, jury is excused.)

20 THE COURT: All right.

21 MR. GONZALEZ: Judge, after discussing with
22 Mr. Moultrie, the Defense rests.

23 Judge, let me indicate that before undertaking
24 this decision, I advised Mr. Moultrie of all his rights,
25 not only his right to testify, but also his right to remain

1 silent. We've discussed all the possibilities and
2 consequences relevant to this case, the testimony, and
3 Mr. Moultrie has decided not to take the stand at this
4 time.

5 THE COURT: Is that right, Mr. Moultrie?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: You know, you exercise your own
8 right and of course, you listen to your lawyer with his
9 advice and experience and assistance of Counsel, but then
10 you are the one who makes the choice.

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: You either testify or you don't.

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Of course, if you do testify, you're
15 subject to cross-examination like anyone else.

16 THE DEFENDANT: Right.

17 THE COURT: If you do not testify, that's your
18 privilege. The State has the burden to prove every element
19 of the case -- of the offenses as you well know and that
20 burden never shifts, as you well know, and you have no
21 obligation or any duty, for that matter, to offer any
22 defense at all. In fact, you don't have to say one word.

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: All through the trial and I see that
25 the family has been here, is that correct, Mr. Moultrie?

1 MR. GONZALEZ: That is correct, Judge.

2 THE COURT: They have been here three, four, I
3 don't know who they are but I know they've been here
4 several days during the course of this trial; so, if
5 that's what you have in mind, then you will rest?

6 MR. GONZALEZ: Let me also indicate --

7 THE COURT: Now, the only other thing is if you
8 do that, I don't know about the State, do you have anything
9 to go forward? Do you have any rebuttal?

10 MS. FURLONG: Judge, I can't have rebuttal --

11 THE COURT: If there's nothing to rebut.

12 MR. GONZALEZ: Judge, let me just -- you indicated
13 that the family are here and they have been here throughout
14 this whole trial and Mr. Moultrie has discussed some of
15 these matters with his family also.

16 THE COURT: All this here is really for Mr. Moultrie.
17 We don't want you to come back one day and say, Well, you
18 know, I wanted to testify and my lawyer never told me about
19 that. So, in essence, it's for your own protection to
20 advise you of your right and you've been here and you've
21 been listening to all of the testimony and so forth.

22 All right. With that then you're going to rest
23 and then what we'll do at this posture, we will hear the
24 matters of evidence, exhibits, etcetera, and then we'll hear
25 if there are any motions to be heard. All right.

1 Monday, I suppose -- at this point, we're not going to
2 have summations and the jury charge and have the jury come
3 back/^{SO} I think first thing Monday morning although I have
4 PDC's and other matters.

5 I think I would rather have the jury hear
6 arguments--summations and then charge and then we have
7 the balance of the day or the next day, whatever it takes
8 them in order to arrive at the verdict and I think that's
9 what we'll have planned. Any problems with that?

10 MS. FURLONG: No, Judge.

11 MR. GONZALEZ: No, Judge.

12 MS. FURLONG: If I may be excused one minute?

13 THE COURT: All right, and you will indicate to
14 the jury that you've rested.

15 MR. GONZALEZ: All right, and you're going to let
16 the jury go?

17 THE COURT: Oh, yes, I'll have them come back
18 nine o'clock Monday.

19 MS. FURLONG: Judge, I just had my rebuttal
20 witnesses come in the courtroom since the Defense is
21 resting.

22 THE COURT: All right, call the jury out and
23 we'll indicate to them that they can go home until Monday
24 at nine o'clock.

25 2:50 p.m.

(Whereupon, the following takes place within the presence of the jury.)

THE COURT: All right, we have all our 14 jurors in the jury box.

Mr. Gonzalez, please.

MR. GONZALEZ: Judge, the Defense now rests.

THE COURT: All right. With that then, this matter comes to a completion, ladies and gentlemen, as far as testimony is concerned and the next matter -- let's say, the next step in the proceeding of this trial, ladies and gentlemen, would be that you would then now hear summations both by Mr. Gonzalez and then followed by Ms. Furlong on behalf of the State.

After that, you will hear my charge or instructions, the elements of the various offenses and evidence, circumstantial evidence, direct evidence, what all these terms will mean to you; relevancy, probative value. I'll explain all that to you after. Then after that, why, we pick two alternates and then we have 12 and it will be those 12 who will sit and deliberate until a verdict is arrived at.

Of course, we can't do all that at ten o'clock to three on a Friday afternoon; so, we realize that and we're not going to start procedural, therefore, with that, we ask you all to have a pleasant weekend and we

1 back here at nine o'clock Monday and everything else I
2 have to do I will hold off in abeyance and then we will
3 hear summations from both Counsel.

4 As I indicated, I will then give you my charge,
5 we will then select the two alternates and the other 12,
6 you know, jurors may have the rest of the day, et cetera,
7 or to the next day, whatever it takes in order to deliberate
8 and as I indicated, to arrive at a verdict.

9 Now, even though both sides have now rested,
10 as you well know, until all the other matters are taken
11 care of as I just stated to you, you cannot, must not
12 think even in your own minds how you would decide the case.
13 You must not, or allow anyone to speak to you about this
14 case or you to anyone such as members of your own family
15 or friends, whatever it may be whether it be at the
16 shopping area or supermarket or lunch or wherever. Talk
17 about anything and everything except the case. Is that
18 clear?

19 THE JURY: Yes, your Honor.

20 THE COURT: With that, we wish you all a
21 pleasant weekend and we'll see you here at nine o'clock
22 sharp, please, on Monday morning, thank you.

23 (Whereupon, jury is excused.)

24 THE COURT: All right, everybody good?

25 THE COURT OFFICER: Yes, sir.

1 MS. FURLONG: Judge, are we going to go with the
2 evidence?

3 THE COURT: Yes, and then charges also.

4 MS. FURLONG: I just want to tell them they can
5 leave.

6 THE COURT: Whatever.

7 (Pause)

8 THE COURT: All right, are we ready to proceed
9 on the evidence?

10 MS. FURLONG: Yes, Judge.

11 THE COURT: You have a long list.

12 MS. FURLONG: I have one other thing that I need
13 marked for identification, that's the permit for the gun,
14 Judge.

15 THE COURT: Oh, the certificate of -- by the
16 County Clerk?

17 MS. FURLONG: And somehow, apparently -- my
18 investigator -- he was looking at it, I don't know, I don't
19 see it here.

20 THE COURT: Well, that will be B-52, but I guess
21 we can start with that. Is there going to be any objection?

22 MR. GONZALES: Which one was that, Judge, B-52?

23 THE COURT: B-52, the certificate of the County
24 Clerk.

25 MR. GONZALES: No, Judge.

1 THE COURT: I raise my hand, Mr. Gonzalez,
2 because look who walked in.

3 MR. GONZALEZ: Oh, I apologize.

4 THE COURT: Seems like old times.

5 52 would then be the judgment of the County
6 Clerk.

7 MS. FURLONG: Judge, I don't know if Mr. Dillon --

8 THE COURT: All right. Whenever you get it, then
9 you'll have to have it marked.

10 MR. GONZALEZ: Judge, I have no objection.

11 THE COURT: All right. When you do get it, it
12 will be marked 52 and do you have any objection to that?
13 We'll start right with that.

14 MR. GONZALEZ: 52, no.

15 THE COURT: Okay, therefore, that will be in
16 evidence.

17 MS. FURLONG: Just for my records, Judge,
18 inadvertently I don't have S-51.

19 THE COURT: 51 is the report of Ferrer.

20 MS. FURLONG: I thought that was marked as a
21 Defense exhibit.

22 THE COURT: No, you asked to have it marked.

23 MS. FURLONG: Okay. Am I right?

24 THE COURT REPORTER: Yes, Judge.

25 MS. FURLONG: Okay, your Honor, the State...

1 the following items.

2 THE COURT: All right. Now, just wait a minute.

3 (Pause)

4 THE COURT: All right. You want to start?

5 MS. FURLONG: I think we can go all the way down,
6 your Honor, from S-1 to S-9.

7 THE COURT: Wait a minute.

8 MS. FURLONG: Start with S-9. I'm not moving S-1,
9 I'm not moving S-2, S-3, S-4, S-5, S-6, S-7, S-8; I'm moving
10 S-9.

11 THE COURT: S-9, that's the blue pants?

12 MS. FURLONG: Clothing, right.

13 THE COURT: Any objection?

14 MR. GONZALEZ: No, Judge.

15 THE COURT: Just one second so we can mark that,
16 okay.

17 No objection, next is S-10, that's the blue cap.

18 MS. FURLONG: Correct, your Honor.

19 THE COURT: Any objection?

20 MR. GONZALEZ: No, Judge.

21 MS. FURLONG: S-11.

22 MR. GONZALEZ: No objection.

23 THE COURT: The socks?

24 MS. FURLONG: Correct.

25 MR. GONZALEZ: No objection, Judge.

1 THE COURT: You got the bag with the socks?
2 MR. GONZALEZ: Right.
3 MS. FURLONG: Right.
4 THE COURT: You don't have them individually.
5 Next, S-12, the sneakers.
6 MS. FURLONG: Correct.
7 MR. GONZALEZ: No objection.
8 THE COURT: Bag with sneakers.
9 MS. FURLONG: S-13.
10 THE COURT: Bag with shirt.
11 MR. GONZALEZ: No objection.
12 THE COURT: Plaid shirt.
13 S-14.
14 MS. FURLONG: S-14.
15 THE COURT: Thirty-five cents, key, et cetera,
16 the remains on the victim.
17 MS. FURLONG: No, that was S-15.
18 THE COURT: Oh, I'm sorry, 14 is the wallet.
19 MS. FURLONG: And then, S-15.
20 THE COURT: Any objection to S-14, the wallet?
21 MR. GONZALEZ: No, Judge.
22 THE COURT: S-15, the key, et cetera, any
23 objection?
24 MR. GONZALEZ: No.
25 THE COURT: 13, 14 --

1 MR. GONZALEZ: Judge, but before we allow the
2 wallet in, I'd like to take another look at it and make
3 sure there's --

4 THE COURT: Anything in there?

5 MR. GONZALEZ: -- that's not supposed to be in
6 there. You know, the wallet itself, I don't mind it going
7 in but --

8 THE COURT: I suppose I should -- off the record.

9 (Whereupon, there is an off-the-record discussion.)

10 THE COURT: Look at it now, please, so we don't
11 have to think about it on Monday to look at it.

12 MR. GONZALEZ: You don't mind me looking through
13 this, do you, Ms. Furlong?

14 MS. FURLONG: No.

15 (Pause)

16 MR. GONZALEZ: Judge, I'm going to withdraw that
17 because he has a lot of personal things in here.

18 THE COURT: All right, so B-14 is not?

19 MS. FURLONG: No, Judge.

20 THE COURT: And it wouldn't serve as any positive
21 value anyway.

22 MS. FURLONG: No.

23 THE COURT: All right.

24 MS. FURLONG: The next item is --

25 THE COURT: Well, well, well, well.

1 cap of the victim?

2 MS. FURLONG: Correct, your Honor.

3 MR. GONZALEZ: No objection.

4 THE COURT: No objection?

5 MR. GONZALEZ: No, Judge.

6 MS. FURLONG: I believe the next item is S-19.

7 THE COURT: 19.

8 MS. FURLONG: The weapon.

9 THE COURT: Gun?

10 MR. GONZALEZ: No objection.

11 THE COURT: Next, spent bullets.

12 MS. FURLONG: S-20.

13 THE COURT: Well, S-20 -- okay, those are the
14 bullets, any objection?

15 MR. GONZALEZ: No, Judge.

16 THE COURT: All right, S-20.

17 MS. FURLONG: Then it's S-21A and B.

18 THE COURT: Phone book and blue jacket.

19 MR. GONZALEZ: No objection.

20 THE COURT: All right.

21 MS. FURLONG: I don't see there's any need to put
22 S-22.

23 THE COURT: Well, that's the account of what was
24 the -- there's no need for that.

25 Next is 23.

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1 MS. FURLONG: That's the expended shell which
2 was the subject matter of the testimony of Detective Ferrer.

3 MR. GONZALEZ: No objection.

4 THE COURT: Any objection?

5 MR. GONZALEZ: No, Judge.

6 MS. FURLONG: I don't -- wait a minute, that has
7 a K on it. Is it possible it's on Counsel table? That had
8 K on it. I don't see that here.

9 THE COURT: Make sure you have it.

10 THE COURT CLERK: He cleared all that off and
11 that's just what she's been marking and putting up there.

12 MS. FURLONG: I don't see it -- here it is.

13 THE COURT: That's in evidence, no objection.

14 THE COURT CLERK: 8-23?

15 THE COURT: Yes.

16 MS. FURLONG: Next is 8-24, 25, 26 and 27, the
17 bullets removed by the medical examiner.

18 THE COURT: These are the bullets which were
19 removed, one from the right lobe here and so forth, 24, 25,
20 26, 27, any objection?

21 MR. GONZALEZ: No, Judge.

22 THE COURT: All right.

23 MS. FURLONG: Hack saw and blade, 8-28.

24 THE COURT: Any objection to that?

25 MR. GONZALEZ: No, no, Judge.

1 MS. FURLONG: S-29, the bank envelope with
2 directions on it.

3 MR. GONZALEZ: Judge, my problem -- I have a
4 problem with that.

5 THE COURT: Yes, well -- I have a problem --
6 how does that come in? How did you -- other than the
7 testimony of Gonzalez, I believe he was the detective who
8 said he had the envelope with directions, there was no
9 testimony from where -- I don't know how or what does it
10 indicate? What directions -- what's the probative value?

11 MS. FURLONG: Judge, they identified that from
12 Peggy Lee.

13 THE COURT: What's the probative value? Who's
14 Peggy Lee?

15 MS. FURLONG: It's directions, Judge, from the
16 Defendant to pick him up for his escape.

17 MR. GONZALEZ: Judge, it has no probative value.

18 MS. FURLONG: Judge, it doesn't matter, I'm not
19 going to stand here --

20 THE COURT: It doesn't. There's no other issue,
21 all right, next.

22 MS. FURLONG: S-30.

23 THE COURT: The metal cutters.

24 MR. GONZALEZ: No, Judge, no objection.

25 THE COURT: All right.

1 MS. FURLONG: S-31, the handcuffs.

2 THE COURT: Handcuffs with the eyebolt.

3 MR. GONZALEZ: No objection.

4 THE COURT: Testimony by Detective Lucas, I'll
5 permit it, no objection.

6 MS. FURLONG: Crime scene photos A through --

7 THE COURT: Just one second, please.

8 Next I have is 33, you're skipping 32, that's
9 the report. 33A to H.

10 MS. FURLONG: Correct, your Honor.

11 THE COURT: Have you looked at all those photos,
12 Mr. Gonzalez?

13 MS. FURLONG: Your Honor, for the record, they're
14 black and white photographs.

15 MR. GONZALEZ: Yes, I have, Judge, I have no
16 objection.

17 THE COURT: May I see them also? I have never
18 seen them.

19 MS. FURLONG: No, Judge, you can't.

20 THE COURT: Pardon?

21 MS. FURLONG: I'm kidding, Judge.

22 THE COURT: No, my only concern is, are they
23 duplicates? Are they guesses? Is there any --

24 MR. GONZALEZ: Well, Judge, they are not --

25 MS. FURLONG: Judge, I would object, your Honor.

1 the State -- I don't object to your looking at them, first
2 I'm putting them in order. We had them done in black and
3 white, your Honor, so we would take out any --

4 THE COURT: Are there any there that are
5 duplicates?

6 MS. FURLONG: Judge, we may be able to eliminate
7 one or two.

8 THE COURT: All right, I'll tell you what then.
9 Why don't you decide it between yourselves which ones you'd
10 like to --

11 MS. FURLONG: The difference, Judge, if I may,
12 it shows different positions to try and get the full view
13 of angles.

14 THE COURT: How many views do you need?

15 MS. FURLONG: Well, quite a few, Judge, because
16 it's to establish how the body was -- the position that the
17 body was in.

18 THE COURT: Well, the body was found, you get
19 the testimony of the doctor.

20 MS. FURLONG: Also, these pictures document the
21 casings that were found, Judge.

22 THE COURT: All I ask is to look at them. Suppose
23 we come back to 33 when you look at them.

24 MR. GONZALEZ: Judge, I don't have any objection.

25 THE COURT: Oh, that's all right. All right.

1 see them anyway.

2 (Whereupon, Judge reviews photographs.)

3 THE COURT: You do have one with the eyes open
4 on one, what's the purpose of that?

5 MS. FURLONG: Judge, it's the position of the
6 body and the surrounding area.

7 THE COURT: All it does is show his head with his
8 eyes open, more detail and --

9 MS. FURLONG: Judge, it's highly probative.

10 THE COURT: I don't think if that's a patch for
11 his heart or what's on it, there's nothing there. I just
12 looked at it, the others with the officers involved and I
13 would suggest you go over them again and then be sure what
14 goes in.

15 MS. FURLONG: Judge, the crime scene is highly
16 relevant.

17 THE COURT: I understand that, but I don't see --

18 MS. FURLONG: Mr. Gonzalez he had --

19 THE COURT: I don't understand why you have to put
20 in somebody with the eyes open or more than one. I ask
21 you to go over it in all due respect.

22 MS. FURLONG: Judge, we'll eliminate that one
23 photograph and --

24 THE COURT: Is there any problem just looking at
25 it and I'll simply get back to it and let's get on with it.

1 others?

2 S-34.

3 MS. FURLONG: Judge, those are the pictures of
4 the --

5 THE COURT: Ceiling and the bathroom.

6 MS. FURLONG: Correct, your Honor.

7 THE COURT: The hole. Any problem?

8 MR. GONZALEZ: No, Judge.

9 THE COURT: All right, S-34A and B.

10 MS. FURLONG: S-35A through F, it's a sequence
11 of pictures showing the recovery of the gun from the
12 telephone book.

13 THE COURT: Again, I would ask you simply just
14 to go over them and we'll come back to those two sequences.

15 Next, you have a diagram here by Wilkerson, S-40.

16 MS. FURLONG: S-40, your Honor, I'd like to admit.

17 THE COURT: Any objection?

18 MR. GONZALEZ: No objection.

19 THE COURT: All right.

20 MS. FURLONG: S-43 and S-44.

21 THE COURT: Well, that's the consent search
22 consent to search.

23 MR. GONZALEZ: Judge, I --

24 THE COURT: There's testimony that --

25 MR. GONZALEZ: To that --

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1 MS. FURLONG: Okay, fine, Judge, I'll withdraw
2 the application.

3 THE COURT: All right. Don't get annoyed.

4 MS. FURLONG: Judge, I wasn't, I --

5 THE COURT: No, sometimes I gather from your
6 tenor you may be --

7 MS. FURLONG: Judge, I'm not annoyed.

8 THE COURT: But however, let's go on.

9 MS. FURLONG: The fingerprint exhibit which is
10 S-46.

11 THE COURT: Is that the large --

12 MS. FURLONG: Correct, your Honor.

13 THE COURT: Any problem with that?

14 MR. GONZALEZ: No, Judge.

15 THE COURT: 46, all right.

16 MS. FURLONG: S-47, the ballistics report.

17 THE COURT: Well, you had testimony from that
18 from the detective -- lieutenant, rather.

19 MR. GONZALEZ: I would agree, Judge.

20 MS. FURLONG: Judge, we had testimony but I
21 believe that the report in this case is highly relevant
22 and probative and should go to the jury. They'll have
23 this in front of them, I mean, it's very technical and I
24 think it's necessary for them to see and with the various
25 amount of bullets and what was recovered from them.

1 they can make a factual determination.

2 THE COURT: Let's see, take a look at it. Is
3 that what it relates to, the bullet and the operability?
4 If that is all, you may have a point there.

5 MS. FURLONG: Which one was reviewed, which one
6 was tested, which one was fired.

7 (Whereupon, Defense Counsel reviews report.)

8 THE COURT: Anything else on that report?

9 MR. GONZALEZ: Judge, there's only -- I'm
10 reviewing it now just to make sure that there's nothing in
11 here that was not testified to by Detective Dobak.

12 (Pause)

13 MR. GONZALEZ: Judge, it's okay.

14 THE COURT: All right, thank you. That would
15 just relate to the barrel, the muzzle, all right. And
16 other than 52 which you have to obtain, that's the evidence.

17 MS. FURLONG: Judge, I have photographs of the --

18 THE COURT: Not the judgment, the certificate.

19 MS. FURLONG: Judge, bear with me. In my folder --

20 THE COURT: S-50.

21 MS. FURLONG: Correct, your Honor, and in reference
22 to --

23 THE COURT: One to four, what is it for?

24 MS. FURLONG: S-49.

25 THE COURT: What is S-50, one to four? The same.

1 photos, what are they for?

2 MS. FURLONG: Well, Judge, in the breakdown of
3 the medical examiner's testimony, I had him identify two
4 series of pictures, one identifying the clothing and there
5 are specific markings that he testified to.

6 THE COURT: Show them to Mr. Gonzalez. There
7 are four of them there.

8 MS. FURLONG: I can probably break down out of
9 the nine four of them if we have a minimum because some of
10 them are duplicates.

11 THE COURT: All right, we'll come back to S-49
12 and S-50 and then S-52.

13 I think that's it. So, you had only the photos
14 that you should go over and decide which ones may or may not
15 be admitted and other than that, what about charges?

16 Oh, I'm sorry, on behalf of the Defense?

17 MS. FURLONG: I have it, Judge, I have S-52.
18 I apologize.

19 THE COURT: That's 52 which will be marked into
20 evidence.

21 MR. GONZALEZ: I have no objection, Judge.

22 THE COURT: All right, S-52.

23 (Whereupon, exhibit S-52 is marked into evidence.)

24 THE COURT: Now, what about charges?

25 MR. GONZALEZ: Judge, on behalf of Mr. Modugno,

1 I have no -- nothing to offer. I believe I only have --

2 THE COURT: You have a diagram by Ms. Mott,
3 D-1.

4 MR. GONZALEZ: Correct.

5 THE COURT: And that's about it, I guess.

6 MR. GONZALEZ: All right, Judge, I'll move D-1
7 into evidence. I mean, I -- D-1.

8 THE COURT: Any objection?

9 MS. FURLONG: No, Judge.

10 THE COURT: All right. Does that conclude that
11 except for the photos?

12 MS. FURLONG: Correct, your Honor.

13 THE COURT: And we'll decide on that and make
14 that determination.

15 Now, what about charges? No one submitted any
16 requests to charge.

17 MS. FURLONG: Judge, I believe because of the
18 nature of the defense, there's no lesser-included here.

19 MR. GONZALEZ: Judge, I would disagree. It's
20 not -- as to lesser-included offenses, Judge, it has
21 nothing -- strike that.

22 The nature of the defense is only one part of
23 what may be or may not be a lesser-included offense. You
24 have to look at the whole case and see whether what I'm
25 requesting is in the case. Whether it be like the

1 Prosecutor's or from the Defense.

2 There's nothing to say that based on the defense,
3 then we have certain lesser-included offenses. It's whether
4 the lesser-included offense that's requested by whomever is
5 in the case. I think that's the standard, not whether he
6 put on a defense or not. We have no burden of putting on
7 a defense.

8 THE COURT: What are you asking for?

9 MR. GONZALEZ: Judge, I'm looking through the --

10 MS. FURLONG: Judge, can I ask the Court's
11 permission to submit our requests and have you rule Monday
12 morning? Because I'd like to provide some case law to the
13 Court to support the State's position for their request.

14 THE COURT: You mean, is there to be any lesser-
15 included offenses such as what, aggravated manslaughter?

16 MR. GONZALEZ: Judge, I'm asking -- I'm sorry

17 THE COURT: I understand.

18 MR. GONZALEZ: I'll be asking for --

19 THE COURT: What are you asking for?

20 MR. GONZALEZ: I'm looking through 2C:e-4.

21 MS. FURLONG: Well, Judge, there's aggravated
22 manslaughter, there's manslaughter, heat of passion,
23 whatever.

24 THE COURT: One is reckless -- didn't hear
25 heat of passion.

1 MR. GONZALEZ: I'm asking for heat of passion.

2 MS. FURLONG: Judge, it's not even in the case,
3 there's been no testimony to that.

4 THE COURT: Well, you may submit whatever you'd
5 like.

6 MR. GONZALEZ: Judge, no testimony -- all right.

7 THE COURT: Where do you get it here?

8 MR. GONZALEZ: Judge, I believe it is the theory
9 of the State that Mr. Moultrie shot the decedent in this
10 case because the decedent took his chain.

11 THE COURT: There's no -- there's testimony, would
12 that make it heat of passion?

13 MR. GONZALEZ: When somebody takes a chain and
14 you get angry and you shoot them, I believe that's the
15 theory of the State.

16 MS. FURLONG: Judge, that's not heat of passion.

17 MR. GONZALEZ: Heat of passion is just not finding
18 your woman with somebody else and then shooting them, Judge,
19 heat of passion is any type of anger that results in death.

20 MS. FURLONG: Can we reserve on this until Monday?

21 THE COURT: You can reserve but I want to get
22 something going.

23 MS. FURLONG: I'm only asking for the original
24 charges in the indictment to be charged in addition to
25 flight.

1 THE COURT: What about the kidnapping?

2 MS. FURLONG: Flight. Flight is in this case,
3 Judge.

4 THE COURT: Flight is embodied in the escape
5 charge.

6 MS. FURLONG: Correct, and I'm asking for a
7 flight charge.

8 THE COURT: How do you have flight if you have
9 escape? Do you understand? Think about that. You have
10 escape, he's been charged with escape.

11 MS. FURLONG: Correct, your Honor, but there is
12 a flight here. I understand the fact that he escaped and
13 I think if you review the jury charge, you will see that
14 it's pertinent in this case.

15 THE COURT: Well, he escaped maybe but flight in
16 itself -- what you'd like to draw is an inference of some
17 consciousness of guilt. What I'm trying to say is if you
18 have flight in conjunction -- let me put it this way.
19 Certainly, if there was leaving, et cetera, and no count
20 for escape, you have no problem for having that charge.

21 MS. FURLONG: Judge --

22 THE COURT: What I'm trying to do is have you
23 think about it but I'll decide it on Monday and you have
24 the argument also about flight so think about it.

25 MR. GONZALES: Judge, I'm against it, absolutely.

1 I mean, if --

2 THE COURT: I'm just raising the issue. That's
3 why we have this afternoon, that's why charges should be
4 submitted ahead of time; however, in order to get everybody
5 on the right track so that when it comes Monday we'll be
6 ready for summations without thinking about what you have
7 to speak about. There's a question about flight, a question
8 about the defense of heat of passion; what else, aggravated
9 manslaughter?

10 MR. GONZALEZ: Judge, reckless manslaughter.

11 THE COURT: Well, you're going all the way down
12 the line on homicide then.

13 MR. GONZALEZ: Well, Judge, then --

14 THE COURT: I mean, that's what you're asking for.

15 MR. GONZALEZ: I think it's in the case.

16 THE COURT: Then of course, knowing and purposeful
17 murder.

18 MS. FURLONG: And felony murder, Judge.

19 THE COURT: Now --

20 MS. FURLONG: Let's not forget felony murder.

21 THE COURT: Felony murder, interesting. I didn't
22 forget about it, I thought about it but I'm wondering if
23 it's here.

24 MS. FURLONG: It's here, Judge.

25 THE COURT: Is it?

1 MS. FURLONG: Judge, the testimony here is that
2 the Defendant had in his possession a weapon at the time
3 he left to go out to the liquor store and came back with
4 Mr. Mott. Two eyewitnesses saw him and they didn't see the
5 gun but that doesn't matter if they saw the gun or not,
6 there's circumstantial evidence to hear -- here to support
7 that position that he was taken against his will.

8 Even Ms. Woods indicated --

9 THE COURT: Are you indicating that --

10 MS. FURLONG: There's enough testimony --

11 THE COURT: The underlying -- are you indicating
12 that the kidnapping is the felony murder?

13 MS. FURLONG: Well, your Honor, it speaks for
14 itself.

15 THE COURT: No, I'm asking you.

16 MS. FURLONG: Correct, your Honor. It's charged
17 in the indictment, the kidnapping.

18 THE COURT: No, I understand that.

19 MS. FURLONG: I mean, unfortunately, Mr. Mott's
20 not here to say, you know, how he felt about it, so --

21 THE COURT: If he was here, we wouldn't be here
22 at all, that's obvious.

23 MS. FURLONG: Judge, can we get back to the
24 exhibits?

25 THE COURT: Well, in the kidnapping, are you

1 saying then that -- well, it's removal of a substantial
2 distance because it's not place of residence or business
3 unless you're saying the allegation is the street down
4 from the house is the place of residence, I don't know, or
5 is it because of a substantial distance and then was
6 it to facilitate commission of any crime?

7 MS. FURLONG: Judge, I will submit --

8 THE COURT: Or was it to inflict bodily --

9 MS. FURLONG: -- my support for my requests for
10 my jury charge on Monday morning.

11 THE COURT: Okay.

12 MS. FURLONG: I feel hard-pressed right now after
13 being on trial for a week to submit it now at this late
14 hour.

15 THE COURT: Well --

16 MS. FURLONG: Switching from one gear to the
17 next, going to this, going to that, going to this and
18 making --

19 THE COURT: Hold it now, easy, don't get upset.

20 MS. FURLONG: Judge, I'm not upset but I --

21 THE COURT: We're not switching, all you have is
22 a lot of photos that could have been decided upon between
23 yourselves as to how many of them and what should be.
24 Everything else is in evidence except the photos.

25 MS. FURLONG: Judge --

1 THE COURT: And I'd like to get it clear so that
2 on Monday morning we do not -- I don't have to adjourn here
3 at three o'clock or 3:20 on a Friday because it's Friday
4 and people have been trying a case all week, that's expected.
5 Let's go no further.

6 MS. FURLONG: Judge, I want the record cleared,
7 that's not my complaint, I'll stay until six if it's
8 necessary.

9 THE COURT: Fine, then maybe that's what you will
10 do.

11 MS. FURLONG: Fine.

12 THE COURT: Let me ask you this. On the kidnapping,
13 you're asking -- I just want to be specific.

14 MS. FURLONG: Judge, I'm not in the position
15 right now to argue and I'm asking on Monday morning, I will
16 present it to the Court.

17 THE COURT: I'm not gonna give you an hour, two
18 hours on Monday morning.

19 MS. FURLONG: Judge, I will be here at nine
20 o'clock and I will have it ready. I will even come in at
21 8:30 and alert Mr. Gonzalez as I have been reporting all
22 week in court, have been early and apprising Defense Counsel
23 of things before nine.

24 MR. GONZALEZ: Judge --

25 THE COURT: Felony murder so that you understand.

1 Mr. Gonzalez.

2 MR. GONZALEZ: Yes, Judge.

3 THE COURT: And if you would refer to the crimes
4 that are enumerated therein, 2C:11-3(a), robbery, sexual
5 assault, arson, burglary, kidnapping and criminal escape.
6 Understand so that you may very well have felony murder
7 concerning the kidnapping charge.

8 MR. GONZALEZ: Yes, Judge, I'm aware of that.

9 THE COURT: So, I want you to be prepared.

10 MR. GONZALEZ: Judge, let me tell you what our
11 problem is. I don't have any problem with the way the
12 indictment is written as to the felony murder, the underlying
13 felony is the kidnapping.

14 THE COURT: That's the substantive offense.

15 MR. GONZALEZ: Therefore, it becomes felony
16 murder.

17 Now, my problem is that I may bring up on Monday,
18 since we're a little tired and I agree with Ms. Furlong;
19 whether the State has shown enough evidence to at least get
20 over a motion for judgment of acquittal on the kidnapping.

21 THE COURT: Well, I hinted --

22 MR. GONZALEZ: And that's something I may bring
23 up on Monday.

24 THE COURT: See, that's the problem. I hinted
25 that, I said before, evidence and motions and so forth and

1 I mentioned motions.

2 MR. GONZALEZ: Well, Judge, a motion for judgment
3 of acquittal can be made after the State's case or the total
4 case.

5 THE COURT: I understand that.

6 MR. GONZALEZ: It can be made after a conviction.

7 THE COURT: Maybe a motion by you regarding the
8 kidnapping charge?

9 MR. GONZALEZ: Correct, Judge.

10 THE COURT: Based on what?

11 MS. FURLONG: Judge, 2C:13-1(b)1, exactly as it's
12 charged in the indictment.

13 THE COURT: Yes, to facilitate the commission of
14 any crime.

15 MS. FURLONG: I don't understand what the problem
16 is, Judge. I'm confused -- I'm very confused at this point,
17 Judge. I think -- I don't know where we're going with this.

18 MR. GONZALEZ: Judge, let me just be clear and
19 maybe if I -- if I'm clear, things will be different. I'm
20 not referring to the charge, what I'm doing now, Judge, is
21 backtracking a little bit and making a motion for judgment
22 of acquittal on the charge of kidnapping which is the
23 underlying --

24 Judge, if I can get the rules, Rules of Court --
25 hold it up one minute, Judge.

1 (Pause)

2 MR. GONZALEZ: Judge, after either the State's
3 case or after my case I, under the rules governing the
4 Courts, I'm allowed to make a motion --

5 THE COURT: Judgment of acquittal.

6 MR. GONZALEZ: -- for judgment of acquittal on
7 either the whole indictment or any count on the indictment
8 if I feel that the State has failed to meet the burden which
9 is established in the rules of -- govern in the criminal
10 practice.

11 I just can't find the standard, Judge, at this
12 point in time.

13 THE COURT: I understand what you're driving at;
14 therefore, I'll give you until Monday to make that
15 determination.

16 MR. GONZALEZ: Fine, Judge.

17 THE COURT: And refer you to, there's many cases
18 about drawing inferences, et cetera, from the various
19 circumstantial and direct evidence.

20 MR. GONZALEZ: Correct, Judge.

21 THE COURT: Also, while you're at it, the
22 Prosecutor's indicated that the indictment, as far as the
23 kidnapping is concerned, it relates to 2C:13-1(b) and
24 that's the unlawful removal a substantial distance. It
25 could also be from place of residence, force or threat

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1 coercion or deception and it also relates to that kidnapping
2 as a second-degree but it's elevated to a first-degree but
3 becomes second-degree where the party's returned unharmed
4 and in a safe place. So that part of it certainly doesn't
5 relate here on second-degree.

6 Now, that -- those are the elements of kidnapping.
7 You have the substantive offense of purposeful and knowing
8 murder or in the kidnapping charge; therefore, then that
9 becomes a question of felony murder and I will hear you on
10 your argument of judgment of acquittal and, of course, your
11 request for lesser offenses dealing with aggravated
12 manslaughter and reckless manslaughter and as what you
13 indicated, heat of passion. I don't think there's anything
14 else that has to be -- of course, there's the charges
15 relating to expert witnesses, I think you have three.

16 MS. FURLONG: Flight issue.

17 THE COURT: Flight, that's a question between --
18 you can argue that further on flight.

19 The other question, does the Defendant want me to
20 indicate to the jury that he did not have to take the stand
21 and, of course, they should draw no inference from that,
22 he has a constitutional right not to testify or not to
23 mention anything at all. Will you please ask him?

24 MR. GONZALEZ: Fine, Judge.

25 THE DEFENDANT: The first statement was true.

1 your Honor.

2 MR. GONZALEZ: Judge, yes, Judge, we want that
3 charge.

4 THE COURT: That --

5 MR. GONZALEZ: That he -- they can't draw any
6 inference, negative inferences from the fact that he didn't
7 take the stand, that's his perfect right.

8 THE COURT: I think that's about it on the
9 charges so you know where we're going.

10 MR. GONZALEZ: Judge, you have the regular
11 charges, false in one, false in all, all that stuff?

12 THE COURT: I don't put it that way, I put it
13 generally to the -- as I recall it, you may believe all of
14 the testimony or some of it or they may, in their own
15 discretion, disregard all of it.

16 MR. GONZALEZ: Right, that's the same thing.

17 THE COURT: If evidence is susceptible of two
18 constructions, then of course, the one of innocence should
19 be assumed so there you have all that, that's the general.

20 All right. Other than that, we have everything
21 now?

22 MS. FURLONG: The pictures.

23 THE COURT: The point is, I just want to get
24 back to your photos and then you should be in good order
25 to proceed on Monday.

1 Now, what about the photos?

2 MS. FURLONG: There's no objection by

3 Mr. Gonzalez to S-35A --

4 THE COURT: Just one second until I get my notes
5 on that, please.

6 (Pause)

7 THE COURT: S what?

8 MS. FURLONG: 35A through F.

9 THE COURT: S-35, that's the bedroom?

10 MS. FURLONG: It's a sequence of --

11 THE COURT: The bedroom?

12 MS. FURLONG: The phone book and the gun.

13 MR. GONZALEZ: Judge, I have no --

14 THE COURT: You have 35A, B, C, D, E, and F?

15 MS. FURLONG: Correct.

16 THE COURT: All in?

17 MS. FURLONG: Yes.

18 MR. GONZALEZ: Judge, I have no objection.

19 THE COURT: All right. Then we had to go over
20 the ones dealing with the crime scene.

21 MS. FURLONG: Judge, all right. Mr. Gonzales
22 had said there was no objection but the Court --

23 MR. GONZALEZ: Judge --

24 MS. FURLONG: I'll remove S-33C.

25 THE COURT: The one with the eyes open?

1 MR. GONZALEZ: Yes.

2 MS. FURLONG: And then there'll be seven copies.

3 THE COURT: Well, in addition thereto, there's
4 a patch on his chest and I heard no testimony to the one
5 you just put aside.

6 MR. GONZALEZ: Correct, Judge.

7 THE COURT: I don't know what that patch is there
8 for.

9 All right. Which ones are going into evidence?

10 MS. FURLONG: All seven, Judge.

11 THE COURT: Let's find out, it's 33 --

12 MS. FURLONG: A and B are going in, C is not
13 going in. D, E, and F are going in. C's not going in,
14 that's the one with the eyes open.

15 THE COURT: All right. I think also you were
16 going to go over S-49 and 50?

17 MS. FURLONG: Correct, your Honor.

18 I request the following --

19 (Pause)

20 MS. FURLONG: I'd like to submit the following,
21 S-49-9 for identification.

22 THE COURT: 44 or 49?

23 MS. FURLONG: 49, S-49-8 for identification and --

24 THE COURT: 49 small 8?

25 MS. FURLONG: Small 8 and 49-9.

1 THE COURT: Small 9, all right.

2 MR. GONZALEZ: No objection, Judge.

3 THE COURT: And what about S-50, 1 to 4?

4 MS. FURLONG: Judge, I'd like to have all of
5 them in.

6 THE COURT: Do you have any objection to those?

7 MS. FURLONG: They're the marks of injury on the
8 external part of the body.

9 MR. GONZALEZ: My objection is, they have been
10 testified to and they're kind of inflammatory.

11 THE COURT: Well, if they are inflammatory, you
12 can always refer to them.

13 MR. GONZALEZ: Potentially inflammatory.

14 THE COURT: May I see them, please?

15 MS. FURLONG: Judge, I picked out the internal
16 dissection ones. They aren't in there. That's the external
17 markings of the body where the bullets penetrated.

18 (Whereupon, Judge reviews photos.)

19 MS. FURLONG: I think it's highly relevant to
20 this case.

21 THE COURT: Well, I could see the one that is
22 50-3 which is the -- reflects a bullet hole in the center
23 of the chest. See that?

24 MR. GONZALEZ: Yes, I do, Judge.

25 THE COURT: Any problem with that?

1 That's certainly not inflammatory in any way.

2 MS. FURLONG: Judge, the hand one isn't
3 inflammatory.

4 THE COURT: One at a time.

5 MS. FURLONG: Okay.

6 THE COURT: Anything inflammatory about that,
7 Mr. Gonzalez?

8 MR. GONZALEZ: Judge -- okay.

9 THE COURT: I mean, you say it's inflammatory.
10 Is there anything inflammatory?

11 MR. GONZALEZ: Well, the thing is, they've already
12 been testified to.

13 THE COURT: Well, that's true, but they also
14 prove the point of entry and so forth.

15 MR. GONZALEZ: Fine, Judge.

16 THE COURT: All right. So therefore, we have
17 S-50 small what, 3, I said?

18 MS. FURLONG: Correct, your Honor.

19 THE COURT: All right, that's in evidence.
20 Now, you have one of the hand, it's a rather
21 dark photo. Is there anything inflammatory about that
22 which is S-50-4?

23 MR. GONZALEZ: Judge, not inflammatory, it's
24 cumulative.

25 THE COURT: Well, I'll allow it.

1 MR. GONZALEZ: All right, fine.

2 THE COURT: Now, the other two which is 50-1 and
3 50-2, I don't see any relevancy here at all except for a
4 lot of marks and various holes and bloody face and --

5 MS. FURLONG: The relevancy, Judge, is because
6 we went into quite a bit of detail about the angle and
7 direction of the bullet wound and --

8 THE COURT: I know, but I don't see any real
9 probative value of those two and it may have some sort of
10 an inflammatory nature; therefore, I will not allow it and
11 I think that concludes the evidence.

12 MS. FURLONG: Yes, your Honor.

13 THE COURT: Thank you. In fact, it will conclude
14 the matter for today.

15 Be prepared on whatever charge you want, what we
16 discussed and I would like this case to get to the jury
17 starting your summations on Monday morning.

18 MR. GONZALEZ: Sure, I'll be ready.

19 THE COURT: Thank you, have a nice weekend.

20 (Whereupon, the following exhibits are marked
21 into evidence: S-9, 10, 11, 12, 13, 15, 17, 19, 20, 21A and
22 B, 23, 24, 25, 26, 27, 28, 30, 31, 33A through H, omitting C,
23 34A and B, 35A through F, 40, 46, 47, 49-8 and 49-9, 50-3
24 and 4; D-1.)

25 MS. FURLONG: Judge, would you please direct

1 the Defendant's family not to make any remarks to the
2 Prosecutor?

3 A WOMAN: No one made remarks to you.

4 MS. FURLONG: The woman leaving the room made a
5 remark saying, I have a smart mouth. I am not deaf, your
6 Honor.

7 THE COURT: Well, no remarks.

8 (Whereupon, proceedings are concluded.)
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C E R T I F I C A T E

I, LYDIA FUCCI, a Certified Shorthand Reporter and Official Court Reporter of the State of New Jersey, do hereby state that the foregoing is a true and accurate transcript of my stenographic notes.

Lydia Fucci, CSR
LYDIA FUCCI, C.S.R.
Official Court Reporter

Dated: *February 7, 1991*

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NO CONTENT

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PENGAD CO., BAYONNE, N.J. 07002 -- FORM

ACC76-8974

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - ESSEX COUNTY
INDICTMENT NO. 148-1-90

STATE OF NEW JERSEY, :
 :
Plaintiff, : STENOGRAPHIC TRANSCRIPT
 :
vs. : OF
 :
DEREK MOULTRIE, : TRIAL PROCEEDINGS
 :
Defendant. :

REC'D
APPELLATE DIVISION

Monday, June 18, 1990 FEB 25 1991
Essex County Courthouse
Newark, New Jersey
R. J. Soltis
Clerk

B E F O R E :

THE HONORABLE ANTHONY J. IULIANI, J.S.C., and a Jury

TRANSCRIPT ORDERED BY: FRANK J. SOLTIS, ESQ.
Office of the Public Defender
Appellate Section - Newark

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

MARY ELLEN FURLONG, ESQ.
Assistant Prosecutor
Attorney for the State

FRANK GONZALEZ, ESQ.
Attorney for the Defendant

FILED
APPELLATE DIVISION

FEB 25 1991

R. J. Soltis
Clerk

LYDIA FUCCI, C.S.R.
Official Court Reporter
License No. XI01559

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ACC76-8974

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - ESSEX COUNTY
INDICTMENT NO. 148-1-90

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STATE OF NEW JERSEY, :
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BY: Ms. Mary Ellen Furlong 42

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1 (Whereupon, the following takes place outside
2 the presence of the jury.)

3 THE COURT: Good morning, good morning.

4 All right, please, be seated.

5 All right. They just brought you over, huh,
6 Mr. Moultrie?

7 THE DEFENDANT: It's crowded downstairs.

8 THE COURT: Crowded?

9 THE DEFENDANT: Yeah.

10 THE COURT: All right.

11 We have a few things to go over -- oh, first of
12 all, make sure all the evidence is here and the second thing
13 is that we should go over a few items regarding the charges.
14 I think you indicated something about flight, I don't know
15 if you're still pursuing that or not.

16 MS. FURLONG: I am, your Honor.

17 THE COURT: Well, can you justify it?

18 MS. FURLONG: Judge, I believe if it were in any
19 case, it's present in this case. I mean, the Defendant was
20 in custody and then removed himself. If that isn't flight,
21 I don't know what is. I mean, you can't say that he wasn't
22 aware that --

23 THE COURT: Well, simply, flight is -- the flight
24 charge, as I recall, or with the elements, generally it's
25 where somebody, before the actual arrest -- in other words,

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PENGAD CO., BAYONNE, N.J. 07002 - FORM

1 in the process and the obvious, the police come over or
2 somebody else comes over and then there's a leaving or
3 flight. Generally, it's before any arrest.

4 MS. FURLONG: Correct, your Honor, but it can
5 also occur, as in this case, that he removed himself knowing
6 and being alerted to the fact that he was in custody, he
7 removed himself.

8 MR. GONZALEZ: Judge, you have a charge for that
9 in the escape.

10 THE COURT: You see, the point -- well, that's
11 escape.

12 MS. FURLONG: Escape is separate and apart.

13 THE COURT: What she wants simply put, is that in
14 the flight, Mr. Gonzalez, then if they believe it, they find
15 it to be -- the jury, they can draw an inference of
16 consciousness of guilt. That's what she's looking for.

17 MR. GONZALEZ: Judge, I know what she's looking
18 for, I'm saying the basis --

19 THE COURT: I don't think she can have it.

20 MS. FURLONG: Then Judge, how can you distinguish --

21 MR. GONZALEZ: I know what she wants.

22 THE COURT: Just one second.

23 MR. GONZALEZ: But the basis for her flight charge
24 that Ms. Furlong has brought forth to the Court is the
25 escape and I'm saying that escape is a charge in the

1 indictment already. I think what we talk about when we
2 talk about a flight charge is when somebody comes -- when
3 a cop comes on the scene --

4 THE COURT: That's what I said.

5 MR. GONZALEZ: -- and that person leaves at some
6 point in time, then there should be a flight charge; but no,
7 you have an escape charge in this case already.

8 THE COURT: That's what I indicated.

9 MS. FURLONG: Judge, if you review the escape
10 charge, and I have a copy of our own jury charge, it's
11 separate and distinct.

12 THE COURT: I just used the escape charge in the
13 case of State v. Lamar (ph).

14 MS. FURLONG: The escape charge addresses to the
15 fact that he was in custody and removed himself from official
16 retention, that's what the escape charge is about. I'm
17 asking for the flight charge because this Defendant removed
18 himself knowing, after the police -- and that's the
19 touchstone for any flight charge, is that the person left
20 fleeing knowing that it -- they were asked to be stopped by
21 a police official and we have that here.

22 MR. GONZALEZ: Judge, what more do you want from
23 the escape? If she wants to use that as an argument to the
24 jury, she can. I'll use that same argument when she talks
25 about the escape charge.

1 THE COURT: Well, you see, the problem is that
2 in the flight, the general charge dealing with, and I'm
3 gonna wrap it up at this point, that where there's testimony
4 in the case that the jury may infer the Defendant fled and
5 generally, it's shortly after the, you know, the police
6 maybe have arrived or during the process, whether the
7 question has to be that after the commission of the crime,
8 which is another question for the jury's determination, if
9 they find that the Defendant, fearing an accusation would be
10 made against him that he would be arrested.

11 Now, in this case, certainly he knows the
12 accusation, it's not fearing the accusation and he was
13 arrested and in fact, he's been charged so that the elements
14 of flight really do not embody themselves within the facts
15 of this case.

16 Now, if you've got law, which you indicated to me
17 you would have, or memorandum, I'll hear you further. If
18 not, I'm going to deny your request.

19 MS. FURLONG: Fine, your Honor.

20 THE COURT: That's all.

21 Do you have any law?

22 MS. FURLONG: Your Honor, it's a fact --

23 THE COURT: Do you have any law?

24 MS. FURLONG: No, Judge, it's the discretion of
25 the Judge. I mean --

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THE COURT: Fine. So, I deny your request based upon the reasons I stated, all right.

Now, I think there was what else?

MR. GONZALEZ: Judge, I have some --

THE COURT: Your question about heat of passion.

MR. GONZALEZ: Yes, Judge.

THE COURT: Or provocation.

Where is there any rationale in the facts here to give this lesser charge?

MR. GONZALEZ: Judge -- well, right in the State's case.

THE COURT: Where?

MR. GONZALEZ: It is the --

THE COURT: What's the provocation?

MR. GONZALEZ: It is the, I believe, the theory of the State that Mr. Derek Moultrie shot the Defendant because -- I mean, the victim because --

THE COURT: That's not being provoked.

MR. GONZALEZ: No, Judge, but the victim took his chain and didn't want to give --

THE COURT: Well, if that's provocation, I deny it. I'm not going to charge it.

MR. GONZALEZ: Judge, if somebody --

THE COURT: Sir, I'm not going to charge it, it's not in the case.

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1 Now -- and you know, it's just not here as I
2 see it, it's not here. I mean, you think there is but I
3 don't see it.

4 MR. GONZALEZ: Judge, could I just bring one
5 thing up on that same issue very briefly?

6 I cite State v. Powell, 85 N.J. -- oh, you've
7 got that case and others?

8 MS. FURLONG: And then there's Hollander, Judge,
9 where I think distinguishes choice and Powell in Hollander,
10 it's the final case.

11 THE COURT: Yes.

12 MR. GONZALEZ: Well, I just want to use some
13 language from Powell.

14 THE COURT: Go ahead, use it.

15 MR. GONZALEZ: And I'll leave the issue.

16 "When a lesser-included offense charge -- and
17 this is State v. Powell, "When a lesser-included offense
18 charge is requested by a defendant, the trial court is
19 obligated, in view of defendant's interest, to examine the
20 record thoroughly."

21 THE COURT: That's correct, you're absolutely
22 right.

23 MR. GONZALEZ: "To see if there's a rational
24 basis in the evidence for a lesser-included offense."

25 THE COURT: You're absolutely correct, "a rational

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1 basis," that's how I started off. We do examine the
2 record, that's why I asked you where is there any provocation
3 or such a heat of passion that would require me, over your
4 objection, or let's say to deny your request of heat of
5 passion? Is there a rational basis?

6 MR. GONZALEZ: Well, Judge, I mean, if somebody
7 took something from you of value, the argument -- there
8 could be a fair argument that's going to provoke somebody
9 into doing --

10 THE COURT: Sir -- go ahead, I'll let you finish.

11 MR. GONZALEZ: Now, whether he's reasonable in
12 doing this is a whole different issue but if something is
13 taken from somebody, that can be provocation in and of
14 itself for somebody to get into a rage and shoot someone
15 else.

16 THE COURT: Well, that may be so and then I'm
17 wrong in what rationale means in State v. Powell. I can't
18 find it and I will tell you something now, I am not going
19 to charge it.

20 MR. GONZALEZ: Fine.

21 THE COURT: Is that clear?

22 MR. GONZALEZ: Sure, all right, Judge.

23 THE COURT: And I examined the records, I heard
24 the testimony. I don't have to repeat it, I'll go on the
25 basis of exactly what you said and what the testimony is.

1 This is a, you know, a half a day or a day, it's not
2 something that arose instantaneously where there was a
3 taking, maybe at the moment and then a request and then
4 a fight and then a provocation and then somebody provoking.
5 There's nothing like that at all.

6 MR. GONZALEZ: Well, Judge, there was --

7 THE COURT: In fact, there's no proof here that
8 the chain was, in fact, even taken by this gentleman.

9 MR. GONZALEZ: That doesn't have to be proved,
10 Judge.

11 THE COURT: If that's provocation, I don't see it.
12 I don't see the heat of passion and therefore, I will not
13 charge it.

14 Now, aggravated manslaughter and manslaughter,
15 I'll hear you on that or was that decided?

16 MR. GONZALEZ: Well, Judge, it seems to me there's
17 a greater rational basis for --

18 THE COURT: I agree with you.

19 Is there any problem with that, Ms. Furlong?

20 MS. FURLONG: On which one, your Honor?

21 THE COURT: Aggravated manslaughter.

22 MS. FURLONG: No problem with that but I have a
23 problem with manslaughter.

24 THE COURT: Well --

25 MS. FURLONG: I don't see it in the case and I

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PENGAD CO., BAYONNE, N.J. 07002 - FORM

1 don't feel --

2 THE COURT: Well, the difference between the two
3 is what, failure for disregard of human life and the other
4 is recklessness and deviation from some standard.

5 MS. FURLONG: Judge, I believe you have to look
6 at the fact that a gun was used in this case and I think I
7 have to look at the distinguishing things used in the
8 charge between aggravated manslaughter and manslaughter.

9 THE COURT: Well --

10 MS. FURLONG: I have circumstances manifesting
11 extreme indifference and then when you look at the
12 manslaughter charge, I don't believe that the factual basis
13 or the evidence that came in establishes that there's a
14 rational basis for manslaughter here, Judge.

15 THE COURT: Well, again, we go under statute
16 2C:1-8e where it states, "The Court shall not charge the
17 jury with respect to an included offense unless there is a
18 rational basis for a jury convicting the defendant in the
19 included offense." And of course, you can indicate that
20 the Supreme Court has characterized the "rational basis"
21 test under said rule which I just referred to as a low
22 threshold and I underline that, for permitting a charge
23 on a lesser-included offense and I refer you to State v.
24 Christanos, 102 N.J. 265 at 278.

25 Therefore, when the lesser-included offense charge

1 is requested by a defendant as in here, why, the trial
2 Court is obligated in view of the defendant's interest to
3 examine the record and determine if the rational basis
4 standard has been satisfied.

5 Now, as you well know, there are three different
6 forms of manslaughter under our statute. You have the
7 A section under 2C:11-4A, B-1 and B-2; criminal homicide
8 constitutes aggravated manslaughter when the actor
9 recklessly causes death under circumstances manifesting
10 extreme indifference to the value of human life; B, criminal
11 homicide constitutes manslaughter when one, it is committed
12 recklessly or two, a homicide which would otherwise be
13 murder under section 2C:1-3 is committed in the heat of
14 passion resulting from a reasonable provocation.

15 Now, I can understand the rationale here from
16 all the facts that it could be either, or a jury could find
17 from an aggravated manslaughter as a lesser and also possibly
18 reckless manslaughter even under the circumstances where a
19 gun was used, that's up to the jury, I don't know what they
20 may or may not do but I think the rationale and the low
21 threshold would indicate that both aggravated manslaughter
22 and manslaughter should be charged.

23 Certainly, as you well know for the same reasons,
24 I deny your requests for heat of passion provocation.
25 I deny it because it simply is not within the facts as I

1 see them; therefore, I will charge both the lessers,
2 aggravated manslaughter and manslaughter.

3 MR. GONZALEZ: Fine, Judge.

4 THE COURT: Now, what else do we have?

5 MS. FURLONG: Nothing, Judge, the State's ready.

6 MR. GONZALEZ: That's it, Judge.

7 THE COURT: All right. Be mindful also that
8 under the recent case, State v. Martin, which just came
9 down about a week ago, I think, about felony murder,
10 causation, that has to be indicated to the jury that
11 although there was an arson and people were then killed
12 because of the arson, certainly, the facts are a little
13 bit different, but I will make a reference, you know, but
14 for I guess the crime here, kidnapping, it would not have
15 occurred; so, I will refer to that causation.

16 Anything else?

17 MR. GONZALEZ: No, Judge.

18 THE COURT: The Defendant's failure to take the
19 stand, you want me to charge that?

20 MR. GONZALEZ: Yes, I do, your Honor.

21 THE COURT: Constitutional right, they should
22 draw no inference one way or the other.

23 Now, one other thing I have in mind as I was
24 thinking of this. There is circumstantial evidence here,
25 we agree with that?

1 You can't shake your head.

2 MS. FURLONG: Yes, Judge.

3 THE COURT: And I probably will go over in a
4 little more detail circumstantial evidence as a two-step
5 process in their thinking, but I'll make the ordinary
6 comment with footprints in the snow and maybe a little bit
7 more so they can have the thinking of arriving at or the
8 use of circumstantial evidence as opposed to direct
9 evidence.

10 MR. GONZALEZ: Fine, Judge.

11 THE COURT: Other than that, I think we're ready
12 to go?

13 MS. FURLONG: Yes, your Honor.

14 THE COURT: All right, call the jury out, please.
15 9:45 a.m.

16 (Whereupon, the following takes place within
17 the presence of the jury.)

18 THE COURT: Good morning, ladies and gentlemen,
19 good morning.

20 THE JURY: Good morning.

21 THE COURT: Just one moment, I'd like to see both
22 Counsel at sidebar on the record, please.

23 (Whereupon, there is a sidebar discussion.)

24 THE COURT: I just wanted to add to the record,
25 Mr. Gonzalez, that under the heat of passion, you know, I

1 was looking for something before but I did not -- State of
2 New Jersey v. Mauricio (ph), a decision that just came
3 down from the Supreme Court January of this year and it
4 would indicate that passion provocation manslaughter has
5 four elements, the provocation must be adequate, the
6 defendant must not have had time to cool off between the
7 provocation and the slaying; I was referring to that before,
8 that was a half-day or whole-day event; the provocation
9 must have enraged the defendant and the defendant must
10 not have actually cooled off before the slaying and for
11 those reasons and the facts here, I simply just cannot find
12 it and I just want to supplement it with this case, okay.

13 (Whereupon, sidebar discussion is concluded.)

14 THE COURT: All right. With that, Mr. Gonzalez,
15 your summation, please?

16 MR. GONZALEZ: Yes, Judge.

17 May it please the Court, Judge Iuliani,
18 Ms. Furlong, Mr. Moultrie, members of the jury, good morning.

19 THE JURY: Good morning.

20 MR. GONZALEZ: Where should I begin to comment
21 on the evidence? I'd like to first, on behalf of
22 Mr. Moultrie and myself, sincerely thank you for being such
23 fine and attentive jurors. Really, you were very very
24 attentive. We know that you're here not only because of
25 a recognition of a civic duty that each and every one of

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1 you know that you have, but also because you'd like to see
2 justice properly admitted in this courtroom here today.
3 Because of this, we thank you very much for serving as
4 jurors in this criminal trial.

5 Members of the jury, I'd like to start off by
6 reminding you once again of a few concepts that we talked
7 about at the beginning; but I'd like to just reemphasize
8 them again. The first one is that Mr. Derek Moultrie is
9 presumed innocent until proven guilty beyond a reasonable
10 doubt. That presumption must remain during the trial and
11 it remains during the process, during the deliberation
12 process you'll be going through next up to and if the
13 Prosecutor is able to meet its burden of proving Mr. Moultrie
14 guilty beyond a reasonable doubt.

15 Remember also that the standard that we use
16 under our system is the beyond a reasonable doubt standard.
17 The Prosecutor must prove every element of the crime
18 beyond a reasonable doubt. What is a reasonable doubt?
19 The Judge will charge you. A reasonable doubt is an honest
20 uncertainty existing in your minds after you have heard
21 all of the evidence or the lack of evidence. So, members
22 of the jury, after you deliberate and in your minds you
23 have some uncertainty -- if, in your minds, you say to
24 yourself, I'm not sure that Mr. Derek Moultrie killed
25 Mr. Victor Mott, there's a little uncertainty in my mind,

1 if you have that uncertainty, members of the jury, just
2 that little uncertainty, it is your duty and obligation
3 as jurors to acquit Mr. Derek Moultrie.

4 Also, remember, members of the jury, that we
5 have no burden, that burden rests on the Prosecutor. We
6 have no burden of putting any evidence on and we didn't
7 in this case, we put on Detective Henry Ferrer and that
8 was it and we rested. The Defendant did not take the
9 stand, but that's his perfect right under our beautiful
10 system since we have no burden of proof. He has the right
11 to remain silent and you are not to infer anything negative
12 in any way and the Judge will charge you later on in this
13 issue. You're not to infer anything negative from the
14 fact that Mr. Moultrie chose not to take the stand.

15 Remember, we have no burden, the burden is on
16 the Prosecutor. She has the burden of proving every
17 element of the crime. She has the burden of proving
18 that Mr. Moultrie kidnapped Mr. Mott, that Mr. Moultrie
19 possessed that weapon, that Mr. Moultrie murdered Mr. Mott.
20 She has that burden of proof, she has to prove all these
21 things beyond a reasonable doubt through competent and
22 credible and believable evidence. The evidence has to be
23 believable and credible and in this case, members of the
24 jury, I submit to you the Prosecutor has failed to meet
25 that burden. Why do we say that? Let's look at the

1 evidence.

2 Folks, the Prosecutor paraded to the stand
3 five or six witnesses. Keep in mind that when they gave
4 their testimony, you have a right to look at that testimony
5 by looking at any interest and motives that those individuals
6 have and I'm referring to Nathaniel Montgomery, Mr. Wilkerson,
7 Ianthia Mott, Faleshia Harrell, Siheem Mott. Those members
8 are either friends -- those witnesses are either friends
9 of Mr. Mott or friends of the family; so, they have an
10 interest in testifying the way they did. They feel they
11 have an obligation to the Mott family to help them out,
12 assist them in any way they can and as human nature is,
13 members of the jury, they will embellish and they will
14 exaggerate certain things and that's exactly what happened
15 with Nathaniel Montgomery and Mr. Wilkerson and Faleshia
16 Harrell. They embellished, they exaggerated what happened
17 on that day in order to help the family; so, look at their
18 interest and motive for testifying the way they did.

19 But let's look at their testimony in a little bit
20 more detail. Let's first start off with the testimony of
21 Nathaniel Montgomery. Nathaniel Montgomery told you that
22 on that day, he was walkin' down Goldsmith Avenue with a
23 friend or family member and he saw the Defendant, Derek
24 Moultrie.

25 Now, remember that Nathaniel Montgomery lived

1 at 231 Goldsmith Avenue and the Mott family lived at
2 235 Goldsmith Avenue. He was a friend of the family, in
3 and out of the house, a friend of Victor Mott.

4 What did Nathaniel Montgomery tell you? He told
5 you that as he was walking through the street he was stopped
6 by Derek Moultrie and Kathy Woods, they were in their car.
7 He walks over and Mr. Moultrie tells Mr. Montgomery,
8 Nathaniel, Victor Mott has just taken my chain and if
9 Victor Mott sells that chain, tell him that he's finished.
10 And then at that point in time, according to the testimony
11 of Nathaniel Montgomery, Derek Moultrie took out the
12 weapon while in the car, while Kathy Woods was next to him
13 and showed it to Nathaniel Montgomery. After that,
14 according to his testimony, Derek Moultrie put the gun
15 between his lap or between his legs.

16 Let's take a look at that. First of all,
17 members of the jury, would anybody who's out lookin' for
18 another individual tell a friend of that individual, Look,
19 if you see him, tell him that he's gonna be finished? That
20 I'm gonna do something to him? You wouldn't do that if
21 you're a sensible man, but that's not all. His testimony,
22 testimony that Mr. Moultrie showed him the gun and told him
23 this thing while Katie Woods was in the car was contrary
24 to what Kathy Woods told you.

25 You heard the testimony of Kathy Woods, Kathleen

1 Woods was right there. She said, I never saw Nathaniel
2 Montgomery, I never saw anybody come to the car and Derek
3 Moultrie tell him that if he saw Victor Mott and if Victor
4 Mott had sold his chain, that he was finished. I never
5 heard Moultrie say that, I never saw Moultrie while this
6 guy was lookin' into the car, show this individual the
7 gun. I never saw Moultrie not only show this individual
8 the gun, but also put it between his leg. The testimony
9 of Nathaniel Montgomery was inconsistent to another State's
10 witness, the main State's witness, Kathy Woods.

11 Let's take a look at the gun, what Nathaniel
12 Montgomery saw as to the gun. He told you on the stand on
13 direct examination that the gun that he saw on that date
14 was a nickel-plated gun. In other words, a silver gun.
15 Members of the jury, you had a chance to look at the gun
16 that was allegedly used in the perpetration of this crime,
17 it is a black gun with a white handle. The gun he saw was
18 a nickel-plated silver gun. Of course, upon the Prosecutor
19 taking out the gun and Mr. Nathaniel Montgomery seeing
20 the gun, then he changes his mind, Well, it also had --
21 the gun he saw also had a white handle but I thought the
22 statement he gave to the police a day after this incident
23 only describes the gun as a silver nickel-plated gun,
24 never mentioned the white handle.

25 Members of the jury, I submit to you, Nathaniel

1 Montgomery never saw a gun and Kathy Woods testified to
2 that. And the fact that he can't get straight how that
3 gun looked like should suggest to you, members of the jury,
4 respectfully, that there was never this incident between
5 Mr. Moultrie, Kathy Woods and Nathaniel Montgomery.

6 Let's take a look at Wilkerson, what was the
7 testimony of Wilkerson? Wilkerson learned -- strike that.
8 Wilkerson also was a very very close member -- friend of
9 the Mott family. In fact, on the day when this happened,
10 he was around the house of Victor Mott. What did he tell
11 you? He said that he learned about this incident about
12 1 a.m. in the morning just about when it happened, but if
13 you recall, he didn't give a statement on this until a day
14 later when he went to police headquarters. What was he
15 doing all this time if he actually saw what he said he saw?

16 Well, what did he tell you? He told you that
17 he was standing outside with a few friends, outside of
18 Victor Mott's house, that Mr. Derek Moultrie came from
19 behind and mistakenly grabbed him and said, Uh-huh, Victor
20 Mott, I got you now. Let's take a look at that. Do you
21 remember the testimony, members of the jury? Mr. Wilkerson
22 is 22 years of age, the decedent in this case is 30 years
23 of age. There's eight years difference between one and
24 the other but what else? You remember that he said this
25 happened from 10:30 to eleven o'clock when Mr. Moultrie

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1 went up to him and mistaken him for Victor Mott? Kathy
2 Woods testified that Mr. Mott was already in the car by
3 9:30, ten o'clock.

4 That's the testimony of Kathy Woods, but
5 Wilkerson is saying that this mistaken identity happened
6 from 10:30 to eleven o'clock. It's impossible because
7 according to Kathy Woods, Mr. Mott was already in the
8 car by 9:30, ten o'clock. Do you recall her testimony?
9 She said it happened while it was still light out and what
10 else? Once again, let's take a look at the gun. He said
11 that when Mr. Moultrie showed him this gun, he could see,
12 as he demonstrated to each and every one of you, the front
13 part of the gun was inside the pants but the handle was
14 out and how -- and sayin' that, how does he describe the
15 gun to the police and also to each and every one of you?
16 He describes it as a black gun.

17 Once again, members of the jury, the gun used
18 in this case was white and if you take the testimony of
19 Mr. Wilkerson and the way he demonstrated to you how
20 Mr. Moultrie showed him the gun, you can see that the
21 handle was out. If he saw that gun and in fact that
22 happened the way he said it happened, he would have
23 described the gun as a white gun because that was all
24 that was showing under his testimony; but no, he said it
25 was a black gun.

1 Once again, members of the jury, I ask you to
2 take a look at these things, use your common sense, look
3 at the interest and motives that these individuals have
4 for embellishing, for exaggerating and Wilkerson and
5 Nathaniel Montgomery were exaggerating and embellishing.
6 And I'm not saying, ladies and gentlemen, that these two
7 individuals are bad people, they are not, but they think
8 by testifying as they testified during this trial that
9 they're doin' the Mott family a favor.

10 What else? Let's take a look at the testimony
11 of Ianthia Mott. Ianthia Mott is the sister of Victor
12 Mott.

13 Now, Ianthia Mott told you that she was sittin'
14 on the corner of Lyons Avenue and Clinton Place here in
15 Newark and she was there with Faleshia Harrell who's also
16 related to the Mott family. They were havin' a few beers
17 or a few drinks, they were sittin' down. The next thing
18 Ms. Mott tells you, she sees Mr. Derek Moultrie and
19 Mr. Mott walkin' to the brown Oldsmobile while Katie Woods
20 was waiting inside this brown Oldsmobile. What happened
21 after that? Initially, Ms. Mott testified that she saw
22 Mr. Moultrie, he was forced or she described it as
23 Mr. Moultrie forcing Mr. Mott into the car but on cross-
24 examination, we were able to bring out that all she saw
25 were -- or all she heard were just words and certain

1 expressions performed by Mr. Mott.

2 On cross-examination, she admitted that she
3 didn't see any grabbing of Mr. Moultrie or Mr. Victor Mott,
4 any pushing of the Defendant to the victim, any shoving of
5 the victim by the Defendant. This she admitted on cross-
6 examination but there was none of that, that they were
7 just words, get in the back seat. That's what she said
8 she heard, she told you that she didn't see a gun at any
9 time.

10 Now, let's compare that with the testimony of
11 Faleshia Harrell.

12 Now, remember, Faleshia Harrell and Ianthia Mott
13 were sitting in exactly the same position, according to
14 their testimony.

15 Now, Faleshia Harrell changed the testimony a
16 little bit. She says when she saw the two individuals,
17 she saw Derek Moultrie shoving and pushing Victor Mott into
18 the car. Well, this is contrary to what Ianthia Mott saw
19 who was standing exactly in the same position as Faleshia
20 Harrell.

21 Now, how could two people be seeing the same thing
22 or not seeing the same thing? Once again, Ms. Harrell is
23 exaggerating and embellishing the facts, but let's bring
24 one more person into this scenario, Katie Woods. What does
25 Katie Woods say about that little incident in front of

1 Clinton Place and Lyons Avenue? She told you that when
2 Derek Moultrie and Victor Mott came back to the car, there
3 was no gun involved, there was no shoving and no pushing.
4 She was consistent with Ianthia Mott and she was right
5 there, they were goin' right into her car and at no time
6 did she see what Faleshia Harrell told you she saw. I
7 submit to you, there was no shoving or pushing or grabbing
8 or forcing of an individual to get into that car.

9 Let's look at this point in time, to Tykesha
10 Mott, the niece of Victor Mott. Tykesha Mott is very very
11 important, she testified on that day she got a phone call
12 from Derek Moultrie. Derek Moultrie asked her for Victor
13 Mott, she said that Victor Mott was not there and Derek
14 Moultrie gave Tykesha Mott a telephone number where Derek
15 Moultrie could be reached.

16 Now, folks, look at that for one moment. Do you
17 think that if a person had the intention of arming himself,
18 had the intention of executing Victor Mott, had the intention
19 of later on kidnapping Victor Mott, taking him to a desolate
20 part of Newark and killing this individual, that you would
21 give a family member of that victim the right telephone
22 number? You wouldn't, you would give something false. No,
23 but he gave her, he gave Tykesha Mott the right number. _

24 Later on he comes to the scene where Victor
25 Mott lives or lived and he spoke to Tykesha Mott. Did you

1 hear Tykesha Mott testify at all that at that point in
2 time, Derek Moultrie was threatening that he would do
3 something to Victor Mott? No. He told Tykesha Mott,
4 Look, the chain is missing and I'm looking for him, tell
5 him that I'll be around. And he waited for Victor Mott
6 to come.

7 What else did Tykesha Mott tell you? Tykesha
8 Mott told you that that evening, she received a phone
9 call from Katie Woods at the number she gave Derek Moultrie
10 and that she asked Katie Woods, the person who picked up
11 the phone that turned out later on to be Katie Woods, the
12 person -- she asked Katie Woods, have you seen Mr. Moultrie?
13 And she said, No. Have you seen my uncle? And this Katie
14 Woods said, No. She lied, she lied to Tykesha Mott and
15 Tykesha Mott knew that; so, what does Tykesha Mott do?
16 Tykesha Mott calls once again after she was further
17 concerned, more concerned about her uncle and she calls
18 again and this time asks Katie Woods for her plate number
19 and Katie Woods changes that number.

20 Once again, she lied. If somebody is so
21 innocent, if somebody was just a victim of circumstances,
22 such as Katie Woods who wants you to believe that she knew
23 nothing about the gun, that she didn't do anything at all,
24 that she didn't do anything to Victor Mott, how come she
25 didn't tell Tykesha Mott, Ms. Mott, I got the killer right

1 here or, Derek Moultrie did it, go call the cops? She
2 didn't do any of that. But what she did was lie and that
3 wasn't the only lie that Katie Woods perpetrated in this
4 case.

5 Let's look at Detective Thomas. Detective Thomas
6 is the main investigating or was the main investigating
7 officer in this case. After learning of the identity of
8 the car involved in this case, he got the plate number,
9 checked it out and went to Ms. Katie Woods' address. At
10 the address of Ms. Katie Woods, Katie Woods opened the
11 door after he knocked on it. He told and advised Ms. Woods
12 of this investigation. Ms. Katie Woods, after Mr. Thomas
13 asked for Derek Moultrie, Ms. Woods said, I don't know of
14 his whereabouts. That was her declaration to Mr. Thomas.

15 She denied once again knowin' anything of Derek
16 Moultrie. Don't you think that if a person was innocent,
17 such as Katie Woods wants you to believe in this case,
18 that she would say to Detective Thomas, thank God you're
19 here, Detective Thomas, because the guy who just shot
20 Victor Mott and has a gun right underneath my bed is
21 upstairs? Thank God you're here, go do justice. No,
22 what she did was deny he was up there. What she did was
23 lie and this time, it was to a law enforcement officer,
24 Detective Thomas. What else, she's taken eventually to
25 the police department, that she's further advised of the

1 problems that she's in, she's advised that she's basically
2 the main suspect since they saw her car, she's advised
3 that if she didn't cooperate with them, she'll spend the
4 rest of her days in jail and she knows this. So, what
5 does she do? She says, I know where the gun is, it's
6 in my house and Derek Moultrie did it.

7 Folks, do you think that at that point in time
8 she's gonna say, Yes, I did it? No, she's gonna go blame
9 someone else. When she knows that her future, her liberty
10 was at stake, and that's exactly what she did, she blamed
11 Derek Moultrie. After that, she takes the police to her
12 house, shows them where the gun is, exactly where the gun
13 is. Members of the jury, if this person has nothing to do --
14 when I say "this person," I mean Katie Woods, if she has
15 nothing to do with this case, why does she know exactly
16 where that gun is? She takes the cops right to the house
17 and says, Oh, I know where it is, it's inside the telephone
18 book underneath my bed. Is it coincidence that she happens
19 to know where the gun is? Don't you think that if she had
20 no involvement with that gun, she wouldn't even know where
21 somebody else put that gun? But no, she knew exactly
22 where it was. Take that into consideration, look at these
23 little things, members of the jury.

24 Who else do we have, let's take the testimony
25 now of Detective Marshall. Detective Marshall was the

1 fingerprint expert, he told you that he took some
2 fingerprints from the phone book in this case and they
3 matched the fingerprints of Mr. Derek Moultrie.

4 Now, members of the jury, I submit to you,
5 respectfully, that all that shows is that at one point in
6 time, Mr. Derek Moultrie had some contact with that
7 telephone book. There's no fingerprints connecting him
8 with the gun whatsoever. As you recall the testimony,
9 Mr. Derek Moultrie and Katie Woods were livin' with each
10 other, he could have come in contact with that book at
11 any time. That only shows that he had contact with that
12 book and in no way shows that he had contact with the gun.

13 Let's take the testimony of Detective Dobak.

14 Upon testimony, members of the jury, Detective Dobak is a
15 ballistics expert. He compared the expended shells and
16 as you recall his testimony, the expended shells are the
17 shells that are ejected from the automatic upon shooting
18 of the .25 automatic. He testified that three expended
19 shells, the two that were found on the scene and the one
20 given to him by Detective Thomas who received it from
21 Katie Woods, he compared those three expended shells with
22 the gun in question here and they match. In other words,
23 the expended shells were indeed shot from that type of
24 gun.

25 He also explained to you how expended shells

1 occur, but they drop to the ground upon the person utilizing
2 the gun, upon ejection of the shells. They fall right to
3 the ground, they pop up in the vicinity of where you shot
4 the gun. Keep that in mind. That was the testimony of
5 Detective Dobak.

6 Then we got the testimony of Ferrer. As I
7 indicated earlier, Ferrer told you that he received, about
8 a month and a half later, he received this expended shell
9 from Katie Woods who found it in her car. This expended
10 bullet from the weapon in question, the murder weapon, was
11 found in her car. She gave it to Henry Ferrer and it was
12 later in the hands of Dobak who compared it to the murder
13 weapon. Keep that in mind also, members of the jury.

14 And now, let's look at the testimony of Katie
15 Woods. What was her testimony? Ms. Katie Woods told you
16 that she knew Derek Moultrie for about a year. On that
17 day, Katie Woods, Moultrie and Victor Mott was moving and
18 along the way, the chain that belonged to Derek Moultrie
19 was missing. Derek Moultrie decided to go to Newark and
20 look for Victor Mott who he thought, and there was no great
21 evidence, who he thought had taken his chain. They went
22 down to the area where Victor Mott lived, 235 Goldsmith
23 Avenue.

24 Let's talk about the first time she saw the
25 gun. She said that as they were parked or in that area,

1 Mr. Derek Moultrie took out a gun from somewhere, she
2 didn't really know where. Did you notice, members of the
3 jury, that she was quite sure about everything but when
4 it had to do with the gun, she was cloudy, or, I'm not
5 sure, or, possibly, or, I was sleeping? The first time
6 she allegedly saw this gun given to her by Derek Moultrie
7 she said that Derek Moultrie gave it to her and told her
8 to put it underneath the seat or the gun was put underneath
9 the seat.

10 Now, I asked her, Miss Katie Woods, why didn't
11 you just say to Derek Moultrie, later for you, sir, I'm
12 not gonna take that gun, I'm not gonna get involved with
13 this if you're so innocent? How come she didn't do that?
14 How come she said -- she didn't say to Derek Moultrie,
15 Please, please, keep that gun to yourself, don't give it
16 to me and put it in my car? But no, she didn't say that.

17 What else? She told you that after Moultrie
18 gave her this gun, Mr. Moultrie gets out of the car and
19 speaks while with Tykesha Mott. Remember that? Mr. Moultrie
20 was outside of the car with Tykesha Mott at this point in
21 time and she was in the car with this gun underneath her
22 seat. If she is so innocent, and she has nothing to do
23 with this gun, how come she just didn't leave the scene
24 and give that gun to a cop? Don't you think that would
25 be the most logical thing to do if this is not your gun,

1 if you want no involvement in this? No, but what she
2 does, she remains there.

3 What happens after that? After that, Derek
4 Moultrie, and this is key, members of the jury, after that,
5 Derek Moultrie comes into the car; this is key. After that,
6 Derek Moultrie comes into the car, Ms. Katie Woods testified
7 that along the way from where they spoke to Tykesha Mott
8 to where they picked up Victor Mott on Lyons Avenue and
9 Clinton Place, that long the way, Derek Moultrie asked Katie
10 Woods for the gun. He said, Where is the gun? Give me the
11 gun. I believe her testimony was that Mr. Derek Moultrie
12 even tried to reach underneath her seat to get the gun.
13 What was the testimony of Katie Woods at that time? You
14 recall her testimony? She told you that she kept pushin'
15 the gun back, either with her hands or with her feet so
16 Derek Moultrie could not get it. She kept pushin' the gun
17 back so Derek Moultrie could not get the gun, the gun
18 remained underneath her seat.

19 Now, that was the end of that part of the
20 testimony. Later on -- keep that in mind. Later on, they
21 reached Lyons Place and Clinton Avenue -- I mean, Lyons
22 Avenue and Clinton Place and they pick up Victor Mott.
23 She told you that she waited for Mott and Moultrie for
24 a while in the car. Once again, I asked her, Why didn't
25 you leave? Why didn't you go seek police help if this gun

1 was there and for the first time you seen this gun and
2 you knew there was trouble brewing? Why didn't you do
3 anything? But no, she waited there and she waited for
4 Moultrie to come back with Victor Mott.

5 Eventually, members of the jury, the testimony
6 of Katie Woods was they went to the area of Watson and
7 Ridgewood while they were taking Mr. Mott back to Newark
8 after goin' to the house to look for the chain; so, they
9 were taking Mr. Mott back to Newark. This is the testimony
10 of Katie Woods. They stopped one time along the way and
11 Mr. Moultrie and Mr. Mott got out of the car somewhere
12 along some junk yard I think here testimony was and at
13 that point in time, if you recall her testimony, the
14 conversation between Mr. Mott and Mr. Moultrie was, Okay,
15 Derek, if you're gonna do somethin', why don't you do it?
16 If you're gonna let me walk home, why don't you do it? In
17 other words, when they were there, when they stopped at
18 that vicinity, at that area, the testimony -- the intent
19 of Mr. Moultrie, according to the testimony of Katie Woods,
20 was to leave him there, to make him walk for doin' what he
21 did, to make him walk back to his house.

22 What happened after that? After that, they come
23 back into the car and sometime later, a little bit later,
24 they once again get out of the car, Mr. Moultrie and
25 Mr. Mott. Once again, they talk about possibly walking

1 home, all right. The testimony of Katie Woods, at that
2 point in time, was that they were face to face with each
3 other. In other words, when Mr. Moultrie and Mr. Mott
4 were having these conversations, they were face to face
5 with each other. At some point in time, the conversation
6 ignited a little bit and it turned into a yell. Katie
7 Woods told you that at that point in time, as they were
8 yellin' to each other outside of the car face to face, she
9 heard some popping sounds. In fact, one popping sound.
10 She told you that she didn't see Mr. Moultrie shoot
11 Mr. Mott because she was sleeping.

12 Now, members of the jury, think about it. Is it
13 credible testimony that you have a possible big situation
14 arising right next to her car, there was a gun involved,
15 allegedly Mr. Moultrie had a gun at that point in time and
16 this lady's sleepin' at the wheel of the car? That doesn't
17 make any sense. She told you that after hearing that one
18 pop, she heard two more pops and she saw them running down
19 the street.

20 What happened after that? After that, she told
21 you they went to a telephone and Mr. Moultrie made the
22 call. Once again I asked, members of the jury, if in fact
23 things happened the way it did, that it was Derek Moultrie
24 who shot this individual, how come you didn't leave the
25 scene? How come you didn't run? How come you didn't call

1 the cops? Mr. Moultrie was outside, why didn't you just
2 take the wheel and leave? And once again she didn't do
3 that. And I ask you to think about that and ask yourselves
4 why she didn't do any of that.

5 Folks, the State wants you to convict Derek
6 Moultrie based on that testimony. They want you to believe
7 that based on that testimony, it was Derek Moultrie who shot
8 Victor Mott.

9 Let me explain to you, members of the jury, who
10 actually did the shooting based on the evidence and
11 reasonable inferences you can draw therefrom. Number one,
12 members of the jury, keep in mind that the testimony was
13 that when Victor, that when Victor was taken from Lyons
14 Avenue and Clinton Place, the gun used in the crime was
15 underneath the seat of Katie Woods.

16 MS. FURLONG: Judge, I'm gonna have to object at
17 this point. I know that Defense attorney can make, and it's
18 for the jurors' consideration, what actually came as
19 evidence, but that, Judge, was not the testimony that the
20 car -- the gun was under the seat.

21 THE COURT: Whatever the testimony was, there
22 was some testimony where it may have been at one point or
23 another; but ladies and gentlemen, let me indicate this
24 to you, it's your recollection that controls. Is that
25 clear?

1 THE JURY: Yes.

2 THE COURT: Whatever comments are made of the
3 testimony by either Mr. Gonzalez or Ms. Furlong when she
4 gets up, or if I should make any comments, if it doesn't
5 coincide with your own recollection, disregard it and be
6 controlled by your own recollection. If it does coincide,
7 fine, then you may accept it and find it to be true. Is
8 that clear?

9 THE JURY: Yes.

10 THE COURT: All right.

11 MR. GONZALEZ: Thank you, Judge.

12 Well, think in your minds, members of the jury,
13 listen. Did you hear any testimony saying that Mr. -- that
14 that gun was ever given back to Mr. Moultrie? The last
15 testimony about the gun was that he was tryin' to get it
16 from underneath the seat and it was Katie Woods who was
17 trying to push it back and after that, there was no
18 testimony whatsoever that he ever got the gun back. Think
19 back, use your collective memories and see if you recall
20 testimony saying that he got the gun back from underneath
21 the seat. So, members of the jury, I submit to you that
22 when the incident happened on Ridgewood and Watson, the
23 gun was still underneath the seat of Katie Woods.

24 Now, put that fact together with the fact that
25 the -- that Katie Woods found an expended shell in her car.

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1 How did that expended shell get in her car? If everything
2 happened the way she said, the expended shells would have
3 been in the street, not in that car. How did that expended
4 shell get in that car, Katie Woods' car? And let me just
5 throw in one more fact for your consideration, the fact
6 that the gun was never in the hands of Mr. Derek Moultrie
7 because there was no testimony after it was put underneath
8 the seat, under Katie Woods' seat and the fact that an
9 expended shell was found in her car that belonged --
10 matched the gun.

11 Take the testimony also of Dr. Singh. What did
12 Dr. Singh tell you? Dr. Singh told you that if you put the
13 people face to face the way Katie Woods described them when
14 she testified, that the wounds inflicted upon Mr. Victor
15 Mott were inconsistent with standing face to face. As you
16 recall, he said that Mr. Mott suffered wounds from the
17 area right here under the chin and under the right chest and
18 that those wounds have to be inflicted from somebody on the
19 right side further than 18 inches away from the barrel of
20 the gun.

21 So, I pose this to you, members of the jury,
22 that if Victor Mott was standing here and that if Derek
23 Moultrie was standing here, face to face, and the car is
24 in between and over there is Ms. Katie Woods, inside the
25 car, that she's in the perfect angle to inflict these

1 wounds. Derek Moultrie could not have done it because the
2 doctor told you, it is inconsistent with those wounds.
3 She's at a perfect angle comin' out of the car either
4 shootin' through the car or out of the car and inflicting
5 these wounds from the perfect angle, according to Dr. Singh.

6 Think about that, members of the jury, the gun
7 is in the car, the expended bullet is in the car, Katie
8 Woods is in the perfect angle, according to Dr. Singh, to
9 inflict these wounds. Dr. Singh tells you that according
10 to her testimony, Mr. Mott could not have been shot the
11 way he was. How did that expended bullet get in there?
12 Where was the testimony that that gun was ever out from
13 underneath the seat of Katie Woods? How do you think the
14 car rolled down the hill, members of the jury? She had
15 to be doing something when the car rolled down the hill.
16 I submit to you, the car rolled down the hill because she
17 left the car, she got out of the car to do what she had
18 to do for whatever reason she did it. That's why the car
19 started rolling down the hill. Think about all these
20 things, members of the jury, and you draw your own
21 conclusions.

22 I remind you once again that Mr. Moultrie was
23 charged with these offenses at one point in time and
24 throughout this whole trial, Mr. Moultrie has said to
25 every single individual, I didn't do it, I didn't do it.

1 And many times, when you look at things and they seem
2 apparently overwhelming, when you look at them piece by
3 piece and detail by detail and you really analyze them,
4 members of the jury, you'll find the real truth and if you
5 take the testimony of Katie Woods herself, if you take the
6 testimony of Dr. Singh, if you take the testimony of
7 Henry Ferrer who said that she found that expended bullet
8 underneath the car, members of the jury, then you know
9 who really did the harm in this case and it was not Derek
10 Moultrie.

11 The Prosecutor may argue that the wounds to the
12 head, to the neck and to the chest were inflicted later on
13 when Mr. Mott -- could have been inflicted later on when
14 Mr. Mott was on the ground. Dr. Singh said, Yeah, that's
15 possible. Well, anything's possible but the testimony
16 from Katie Woods was that there was only three shots, that
17 she heard only three shots. She didn't testify that she
18 saw Mr. Moultrie go to Mr. Woods -- Mr. Mott and shoot
19 him, she didn't hear any shots, she didn't see any shooting,
20 she tells you she didn't see the shooting at all. Ms. Katie
21 Woods herself told you and gave you an indication of where
22 this case really is, she didn't see Derek Moultrie shoot
23 him, didn't see Victor Mott fall to the ground.

24 Members of the jury, she had conscience enough
25 that she had to tell you what she saw or didn't see. She

1 didn't see it because it never happened.

2 Folks, I'm through commenting on testimony.

3 Your recollection is what counts. If I, in any way, have
4 talked about the evidence in a manner inconsistent with
5 your own recollection, remember it's your recollection
6 that counts.

7 Members of the jury, be reminded that this is --
8 that the decision you'll be making during this trial is a
9 very very important decision for the future of this young
10 man, Mr. Derek Moultrie. Whatever decision you make, and
11 I'm positive and I'm sure that you'll make the right
12 decision, you've been fair thus far, you've been listening
13 very very attentively and I'm sure that you'll make the
14 right decisions, but whatever decision you make, be certain
15 of it. Be certain of that decision as if you are making
16 a decision in your own -- an important decision in your own
17 personal lives because we've got the life of an individual
18 at stake. So, be certain, be absolutely sure and keep in
19 mind, once again, members of the jury, that if at any time
20 you have an uncertainty, a doubt, a little uncertainty,
21 you have taken an oath and an obligation that you will
22 acquit the Defendant. So, if you're uncertain, you must
23 acquit the Defendant.

24 MS. FURLONG: Objection, your Honor, to the
25 clarification of the uncertainty as to reasonable doubt.

1 THE COURT: Well, beyond a reasonable doubt.
2 Just a mere uncertainty by itself, it's got to be beyond a
3 reasonable doubt but I'll explain that to you.

4 MR. GONZALEZ: Thank you, Judge.

5 MS. FURLONG: Thank you, Judge.

6 MR. GONZALEZ: Folks, it has been a long trial.
7 I know that a few days from now, I'll be thinking about
8 the Derek Moultrie case and many of you after this trial
9 will probably have an idle moment while doing the lawn or
10 just playing golf or whatever will probably think about
11 Mr. Moultrie. It's a major case, you'll think about your
12 decision at that point in time, two and three days from
13 now.

14 Members of the jury, if you're going to have
15 doubts, if you're going to have reasonable doubts, have
16 them today and please, express them to your fellow jurors
17 while you're in that room. If you're going to have doubts,
18 please, have them today because for Mr. Derek Moultrie,
19 there's no second chance for Mr. Derek Moultrie. There's
20 no tomorrow; so, if you're going to have doubts and there
21 are doubts in this case, have them today, express them,
22 discuss them with your fellow jurors.

23 Members of the jury, I'm confident that after
24 you deliberate and carefully weigh the evidence, you will
25 render the only verdict possible, let Derek go back home

1 with his family, find him not guilty. Thank you very much.

2 THE COURT: Thank you, Mr. Gonzalez.

3 Ms. Furlong, please.

4 MS. FURLONG: Thank you, your Honor.

5 Your Honor, I believe there's another exhibit
6 that's not on the table that I'd like to have and it's
7 the fingerprint exhibit.

8 THE COURT: Which one is it, please?

9 MS. FURLONG: Excuse me, your Honor?

10 THE COURT: Which one is it?

11 MS. FURLONG: It's the fingerprint exhibit.

12 THE COURT: Oh, the big card, yes, all right.
13 They'll obtain it.

14 MS. FURLONG: Mr. Gonzalez, ladies and gentlemen,
15 of the jury. Before I begin going into my comments about
16 the trial and what evidence is before you, I'd like to first
17 just start out that I would like you, at this point in time,
18 to take the following questions into the jury room so I don't
19 forget them. Mr. Gonzalez hinted, mentioned to you motive
20 and interest.

21 Now, Mr. Gonzalez indicated to you that the Mott
22 family, Kathy Woods, they're the ones with the motive and
23 the interest here; but I'd just like to remind you that
24 the indictment that I have in my hand and the one that
25 you'll be deciding is State of New Jersey versus Derek

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1 Moultrie.

2 Now, I'm not going to stand up here and say that
3 there isn't an interest by the Mott family, there isn't an
4 interest by Kathy Woods, there is, but what kind of interest
5 is there? The Mott family no way has an interest in whether
6 or not they are going to be charged with this crime. They
7 made observations about what happened in the early evening,
8 the night this incident occurred and they documented what
9 they saw.

10 Now, Mr. Gonzalez wants you to say they embellished
11 it and that goes for the other individuals, Nat Montgomery,
12 Joseph Wilkerson and oh, Pearl Harrell, she's related, she
13 got up here and lied, she embellished; Kathy Woods. The
14 person here in this courtroom who has the motive and
15 interest here is Derek Moultrie, he is the one that's
16 charged in the indictment.

17 Now, the family members came in here, they told
18 you what happened. Let's put them aside for a minute
19 because the defense in this case, the one that's been
20 brought out is, Derek Moultrie is not the shooter, Kathy
21 Woods is; so, now what is her interest? I just want you
22 to go in and ask yourselves, isn't it interesting when
23 Mr. Gonzalez got up here and when he started to attack
24 the testimony of the State's witnesses, he used Kathy
25 Woods' testimony at one point to say that it was inconsistent

1 with the State's witness. And then at a later point, he
2 says, Believe Kathy Woods then when she is inconsistent
3 with the State witness, specifically, Nat Montgomery but
4 then later on when the shooting actually occurs, we're
5 not gonna believe her. So, Mr. Gonzalez got up here and
6 took this and he said, Believe Kathy here, believe Kathy
7 here, but don't believe Kathy there.

8 I want you to go into the jury room and analyze
9 that, look at that. Defense Counsel picked and chose the
10 parts of the testimony that he highlighted, believe this
11 because it supports the defense, don't believe that because
12 my client wasn't the shooter.

13 Now, before we go into the case, it's been five
14 days and I want to thank you for being patient and there's
15 a lot of information here, there's a lot of testimony here
16 and there's a lot of evidence. I'm not gonna go into it
17 as Mr. Gonzalez went through who said what and whatever,
18 I want to highlight certain things because when you have
19 a case, it's like a puzzle, you're never ever ever gonna
20 get every single thing. Things are gonna come together,
21 this is not television but what you're gonna get is that
22 bit by bit, as each one of those witnesses testified, a
23 piece of the puzzle came in and one came in over here and
24 what I want to do is show you, because it's a very serious
25 job that you have here today, I want to run through the

1 indictment and actually what it means or the charges.

2 Now, the first charge for Derek Moultrie is that
3 he's charged with kidnapping.

4 Now, I want you to look at that because what I'm
5 going to do is, as I go through the jury charges, I'm going
6 to show you the evidence that supports the State's position
7 since I have the burden to prove it to you, ladies and
8 gentlemen.

9 Let's go with the kidnapping. So, when we start
10 with the kidnapping, where are we gonna start? We're
11 gonna start with the testimony of Ianthia Mott and Pearl
12 Harrell and Kathy Woods. And you got to go back in time
13 because Kathy Woods' testimony, as far as what happened at
14 the liquor store, was a little later into her testimony
15 but I want to highlight one thing to you. Why would
16 Ianthia Mott, why, there's another question for you to go
17 in there with, why would Ianthia Mott go in and write
18 the license plate number if she didn't feel that her brother's
19 safety -- that he was being taken against his will?

20 Is it a normal thing for a person to jot down
21 a license plate number when they see someone in their
22 family get into a car? Just think for a minute. You see
23 your cousin, your brother, your uncle get into a car, do
24 you run and write down the license plate number? Is that
25 a normal thing to do? Forget the motive and the interest,

1 she wrote down the plate number and there's no question,
2 the plate number was written down because that's how they
3 found Derek Moultrie. The police, when they alerted the
4 family of the death had the license plate number, ran the
5 plate number and ended up in Plainfield and ended up right
6 to where Derek Moultrie was; so, do we have a kidnapping
7 or not?

8 Now, Mr. Gonzalez says to you, two people in
9 the same place, one sees a pushing, one doesn't.

10 Now, looking at the testimony, Ianthia Mott was
11 asked, Can you identify the woman? No. Did you see
12 anything else? No. If she wanted to embellish, if she
13 wanted to fabricate, I -- rest assured, ladies and gentlemen,
14 she would have had the Defendant beating him over the head,
15 shoving him in the car, dragging him on the ground; but
16 no, she doesn't tell you that. This is what I saw, I saw
17 my brother with his hands up in the air, I know my brother.
18 Who knows a family member better than his own sister? I
19 knew from the look on his face he didn't want to get into
20 that car and she heard the statement saying, Get in the
21 back of the car.

22 And Pearl Harrell, can you imagine what was going
23 through her mind at that time? Here's her brother. Should
24 I run and get help? Should I call for the police? What
25 should I do? She's writing down the number. Pearl Harrell

1 is also making observations and she sees the pushing and
2 the shoving and another thing about Pearl Harrell, she
3 didn't know the Defendant until that day and she was shown
4 a series of seven photographs and she I.D.'d the Defendant,
5 she picked the Defendant out of the lineup.

6 So, there's no question, ladies and gentlemen,
7 from the testimony, nothing showing that Ianthia Mott
8 didn't take down the license plate, that's uncontested
9 here and I want you to go in there and from that and from
10 what Kathy Woods said about when the Defendant came back to
11 the car and he said, Don't get in the front seat, get in
12 the back and move over because I want to see you because
13 I can't trust you, you're behind me, you tell me, because
14 there's only one thing that you don't have here and that's
15 Victor Mott and what he would have to say, but Victor Mott
16 is unfortunately the one witness who's unable to speak.
17 But when you look at the whole case, he is speaking to
18 you, ladies and gentlemen, from the testimony and everything
19 that's come out here.

20 Now, we get to another point that Defense Counsel
21 brought up. Why didn't Kathy Woods call for the police?
22 She's had all these opportunities to call the police. She
23 had all this opportunity to go away from the scene, she
24 could have left at any time and this wouldn't have happened.
25 But I suggest to you, ladies and gentlemen, that's point

1 the finger in the other direction, let's blame Kathy Woods
2 because if Kathy Woods went away with the car when the gun
3 was in it, and if Kathy Woods did this, this wouldn't have
4 happened. That's a fine line, ladies and gentlemen. She
5 didn't do that, she stayed in the car, she stayed until
6 the very end of the shooting. She went home with the
7 Defendant, she told you why but let's remember one thing,
8 what was happening at the time this homicide occurred?
9 What was the relationship of Kathy Woods and the Defendant?

10 Remember, and just keep this in your mind, Kathy
11 Woods and the Defendant, at the time of this incident, were
12 boyfriend and girlfriend. She had known him for a year
13 and what happened, the Defendant was moving in with her
14 that day; so, what does that say to you, ladies and
15 gentlemen? Was this just some stranger she vaguely knew?
16 They had a serious relationship and we all know, ladies
17 and gentlemen, whether it's wrong or right, I'm not gonna
18 stand up here and condemn Kathy Woods for what she did;
19 but, when you love someone you sometimes don't always
20 come forward with all of the truth and I suggest to you,
21 ladies and gentlemen, that even when she was on the stand,
22 she was in a very compromising position. The man that
23 she loved, the man that she was asking to move in with
24 her, she had to come in court and tell you what he did
25 that day.

1 Now, I suggest to you, ladies and gentlemen,
2 that's a very compromising position. When you love someone
3 so much, why do you think when the police came to her door
4 she told you on the stand she lied? She didn't say, I
5 didn't say that, she told you, I told the police initially
6 he wasn't there. Why, because she was trying to hide
7 something? Yes, she was trying to hide something, she
8 didn't want the Defendant to be detected because she loved
9 him. She thought if the police went, he could get away and
10 ladies and gentlemen, the testimony speaks for itself. I
11 didn't hear Mr. Gonzalez mention the fact, anything, not
12 a word of where the Defendant was when the police came.
13 Was Kathy Woods up in the attic? Did it take the police
14 two and a half hours to coax Kathy Woods out of the attic?
15 No, it took two and a half hours to get the Defendant out
16 of the attic.

17 Now, I suggest to you, ladies and gentlemen,
18 if the Defendant had nothing to do with this murder, that
19 Kathy Woods -- what's good for the goose is good for the
20 gander, if she was the shooter, he would have been beating
21 a path to the front door saying, Look, I had nothing to do
22 with it, she was the shooter; but where is he? Does he
23 go to the door? He's up in the attic crawl space with
24 two and a half hours of coaxing to get him out. Two and
25 a half hours, ladies and gentlemen, and then additionally

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1 to that, Defense says to you, Kathy Woods is lying because
2 she's the one that shot somebody over the Defendant's gold
3 chain.

4 Now, I want you to remember back when Kathy Woods
5 was asked about the jewelry missing. Defense Counsel tried,
6 tried. He said, Weren't you angry? Weren't you angry?
7 Weren't you angry? She said, No. I was upset it was gone
8 but it wasn't my jewelry, it was Derek's gold chain. And
9 if you remember the testimony, she said, My jewelry was
10 there, Derek's watch was still there, his diamond earring
11 was still there, I was upset.

12 Now, the Defense wants you to believe that Kathy
13 Woods shot someone, first of all, she didn't even know
14 before the day they moved; second of all, didn't even take
15 her chain. For what? For what? Who is the one that was
16 gunning for Victor Mott? Who was the one that was looking
17 for him? Who went around the streets looking for him?
18 Was it Kathy Woods? She was driving the car but every
19 single one of the State's witnesses said Kathy Woods remained
20 in the car.

21 Now, we get to the attack on the State's witness,
22 Joseph Wilkerson, who -- instead of putting this up, I'll
23 try to hold this like this. This is Joseph Wilkerson, you'll
24 have this in the jury room, it's been marked State's
25 Exhibit S-40.

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1 Now, this is a little diagram that he got up
2 and he showed you the point in time where the car stopped
3 on Goldsmith Avenue, he was on the corner sitting on a car
4 and the Defendant approached him and then he said the
5 girlfriend's car had to move and make this circular type
6 of move and whatever and he drew this diagram.

7 Now, what does Kathy Woods tell you? The point
8 in time that she went to Goldsmith Avenue and she let
9 Derek out of the car, he went over, he approached a group
10 of people on the corner. After he approached that group
11 of people, he went down and spoke to the victim's mother.
12 What did she tell you she had to do with her car? If
13 Joseph Wilkerson didn't see what happened that night, how
14 is he able to corroborate what Kathy Woods said? Two
15 separate people who didn't even know each other until
16 this incident occurred and again, remember, Joseph
17 Wilkerson never saw Derek Moultrie until that night and
18 he also -- I showed him the photographs and he was able
19 to pick out the Defendant from a group of seven photographs.
20 But he told you something else, he told you something very
21 important, ladies and gentlemen. He I.D.'d this vest and
22 who had this vest on but the Defendant, Derek Moultrie,
23 and Kathy Woods substantiated that the Defendant had this
24 on and I had him put it on and I don't know what your
25 opportunity to view was, but when he testified and he had

1 this vest on and I had him put the gun in, you could
2 see that there was black when the vest was pulled back.

3 Now, ladies and gentlemen, what motive, what
4 possible motive does Joseph Wilkerson have to come in here
5 to lie and where would he have gotten that information?
6 Kathy Woods indicated there were individuals on the corner,
7 there was a car, I dropped him off. I didn't hear what he
8 said because I was in the car and I had to move the car.
9 I had him draw this diagram for a reason, ladies and
10 gentlemen, to document exactly the movement of Kathy
11 Woods' vehicle.

12 And now we get to Tykesha Mott. What motive
13 does she have? Well, the Defense didn't say she was lying
14 because she wasn't. She had that conversation, Kathy Woods
15 also documented that they had the conversation and the
16 important part about Tykesha Mott's conversation is that
17 prior to getting out of the car is when Kathy Woods said
18 that the Defendant said, Hold this, and Kathy Woods said,
19 Hold what? And she looked over there and it was a gun.
20 She didn't take the gun, the Defendant took the gun and
21 placed it underneath the seat of the car.

22 Now, Defense Counsel said the car -- the gun
23 remained there, excuse me, until the shooting took place
24 but I want you, as Defense said, to use your collective
25 memories and if there is a problem, you can always ask

1 for a readback. Kathy Woods' testimony was that after
2 the Defendant got back in the car, after he had the
3 conversation with Tykesha Mott and got back in the car,
4 he asked her for the gun and she said that she was pushing
5 it underneath the seat trying to keep it from the Defendant
6 but what did she tell you? The car stopped.

7 Now, I don't remember if she said it stopped
8 for a light or for a stop sign, but there was a point in
9 time when they got to the liquor store and the Defendant
10 reached under and he got the gun.

11 Now, he had that gun when he got out of the car
12 to go to the liquor store. It's true, Kathy Woods said
13 she never saw him with a gun when he came back to the car
14 but then I ask you to go through what the sister and
15 neighbor and everybody who viewed it said at that point
16 in time and what the victim actually said getting into
17 the car.

18 Now, where are we at this point in time? There's
19 a lot going on. We have a situation where we have the
20 victim in the vehicle and they're on their way back to
21 Plainfield and what happens when they go to Plainfield?
22 The Defendant makes the victim look for the chain and he's
23 like, I don't have a chain, why would I take something
24 from you? Then not only does he do that, he makes him go
25 out underneath a street light, roll up his pants, roll up

1 his shirt and he checks for the chain. They get in the
2 car again, they go around and around. There's an argument
3 going on, you have my chain and then we get to the point
4 in time, ladies and gentlemen, and I don't want to go
5 through all of the testimony because again, it's your
6 recollection that controls, but what happens when we get
7 to the point where the shooting is?

8 Now, it's a very interesting theory that Defense
9 has come up with that Kathy Woods snuck around the car and
10 she's the one that did the shooting, but I'd like to pass
11 out and show you, ladies and gentlemen, at this point in
12 time and I hope everyone can see it, these are a series of
13 pictures from the crime scene and where the spent casings
14 were found and I want you to look at them in light of the
15 fact of where the casings are actually found and you can
16 see in this particular picture, it's marked State's Exhibit
17 S-35F, there is a spent casing found here and the body is
18 right here. Here's the head of the victim and if you can
19 see, there's a car wheel, it's the car wheel of one of the
20 officers.

21 Now, here's a spent casing and if the car was
22 parked over here and Kathy Woods got out on this side of
23 the car, the driver's side of the car to shoot Victor Mott,
24 the spent casing would have fallen over here, not on this
25 side because she would have been on the other side of the

1 car. So in other words, when Defense Counsel gets up and
2 says to you that Kathy Woods is the shooter and she had
3 this gun in her right hand -- now mind you, the Defendant
4 is here, the victim is here, the car is here and that Kathy
5 Woods gets out of the driver's side of the car like this
6 because remember, it's the right to left angle that Defense
7 is trying to move, and uses his right hand and shoots this
8 way, there's only one problem, you heard the testimony about
9 the casings and I invite you to look at this picture, and
10 I'll bring it up and down for everyone, it's the car with
11 the driver's side over here and she gets out that side and
12 she's shooting from that angle, how's the casing over here
13 on this sidewalk? And when you get a chance to look, you
14 can see the victim's head right here.

15 If the casing was going to fall where she was
16 shooting, the casing would have fallen directly in the
17 street. It's not in the street, it's on the sidewalk and
18 I invite you to look because this is the side of the car
19 and it's -- can everyone see? This is the side of the
20 street, here's the victim's body but what you're seeing
21 in this photograph and you put it on this side, there's
22 actually a sidewalk from the fence over here. How did
23 the casing get over here, according to the Defense theory,
24 when she got out? It didn't get there, ladies and
25 gentlemen, because Kathy Woods isn't the shooter. The

1 Defendant is and how do we know that? You have the
2 testimony of all of the witnesses, you're going to have
3 a chance to put it all together.

4 A phone book. The phone book that the gun was
5 found in, and Defense Counsel says to you, Well, you know,
6 Derek Moultrie lived with Kathy Woods so, isn't it possible
7 that his fingerprints got on the phone book just by mere
8 fact that he lived with her? But I suggest to you, ladies
9 and gentlemen, first of all, this is a Cincinnati phone
10 book and I doubt very much that since Mr. Moultrie moved
11 in that day, he had a real desire and need to call somebody
12 and look somebody up in Cincinnati.

13 Additionally, the phone book is hollowed out.
14 This wasn't hollowed out, ladies and gentlemen, the day
15 that this incident occurred, this was hollowed out way
16 before this incident occurred and that gun was put in there
17 way before this incident occurred because the day that this
18 incident occurred, Mr. Moultrie had the purpose, the
19 knowledge he was going there to kill Victor. If Victor
20 didn't give him the chain, he was prepared. He armed
21 himself with the gun and he was ready. You either give
22 it to me or your life is over and that's exactly what
23 happened here.

24 You'll have the photographs where the gun was
25 found and the thing is that you can't overlook, don't

HEMI LOCK

1 overlook this one important factor, you have a situation
2 where you have Kathy Woods, she never denied that she
3 was the driver of the car, she never denied it from the
4 beginning, yes, and I think you can see why she's in a
5 situation like this, this is the man she loved. She just
6 saw him commit a murder and the police are at her door
7 and she's trying to protect him. Once she realizes,
8 though, that they're on to the whole thing, she realizes
9 there really isn't much she can do. So, she goes and
10 she cooperates with the police; but there's something
11 that's overwhelming in this case and I didn't hear the
12 Defense attorney make mention of it and I hope you noticed
13 it, no one mentioned his escape. Defense attorney doesn't
14 mention how long it took him to get out of the crawl space,
15 Defense attorney doesn't mention his escape.

16 Now, isn't it a little odd that we didn't hear
17 anything in the comments about his escape? And I'm not
18 going to take everything out, you're gonna have all the
19 evidence in there about how the Defendant escaped. I
20 don't think there's any doubt or should be any doubt in
21 your mind that the Defendant did escape.

22 You're gonna have the ballistics which I'm not
23 going to go into, I think that was pretty clear. I think
24 Investigative Officer Marshall was very clear that he found
25 ten characteristics, that normally you only need six, he

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ERASABLE

1 found more and that there's no doubt in his mind that this
 2 is the Defendant's fingerprint and I don't even think that
 3 the Defense Counsel contested that it was the fingerprint
 4 but ladies and gentlemen, when you go in there, there's
 5 a term of art that we use in the legal profession and it's
 6 called the totality of circumstances.

7 You can't just go in there and say, Oh, well,
 8 this is wrong as Defense attorney said. You know, that
 9 Kathy Woods was asleep at the wheel and what do you think
 10 about that? You know, you can't just ignore certain things.
 11 You could look at it and say, Well, God, you know, she
 12 really wasn't up front at this point but just think of
 13 certain things. I mean, she had to come into court and
 14 testify against an individual that she had a relationship
 15 with. You know, it's a very difficult thing. She witnessed
 16 this whole thing, she was under oath, she had to testify.

17 Just take that into consideration but don't
 18 overlook one thing. When you look at the totality of this
 19 case and remember, Defense attorney never mentioned this
 20 and we have no contrary testimony, none whatsoever. I
 21 beg you to even ask for a readback to find it, that Kathy
 22 Woods, I didn't hear anyone testify on this stand, did
 23 you hear any testimony that Kathy Woods had the gun, that
 24 Kathy Woods was the shooter, Kathy Woods was the one
 25 looking for the victim? Did you hear any of that testimony?

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HEMLOCK

ERASABLE

Furlong - summation

1 because I didn't. And did you hear the fact or omissions,
 2 I should use, that Defense attorney never mentioned about
 3 the crawl space and the escape?

4 Now, I think that you can put those two together,
 5 ladies and gentlemen.

6 MR. GONZALEZ: Judge, objection. We have no
 7 burden of proving anything, Judge.

8 THE COURT: As you well know, there's no burden
 9 here on the Defendant to prove anything whatsoever and he
 10 has no obligation to do it. The burden is always on the
 11 State, ladies and gentlemen, and it never shifts over. In
 12 fact, I'll make a comment right now.

13 Where the Prosecutor may have said there's nothing
 14 contrary to -- to anything by Ms. Woods, nothing has to be
 15 offered by the Defendant. Is that clear?

16 THE JURY: Yes.

17 THE COURT: Also, keep in mind it is the State's
 18 obligation to prove each element of each offense beyond a
 19 reasonable doubt in order for you to change your mind from
 20 one of innocence to that of guilty. Is that clear?

21 THE JURY: Yes.

22 THE COURT: All right.

23 MS. FURLONG: Ladies and gentlemen, what I'm
 24 suggesting to you is, and maybe I should put it in different
 25 wording, is that when you look at this, I want you to look

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HEMLOCK

1 at the totality of the circumstances, not minute little
2 pieces and put all the testimony together, the lack of
3 evidence, the evidence that's here from the beginning to
4 the end. There was the hiding by the Defendant, there
5 was the escape by the Defendant, all this evidence; but
6 most importantly, you have to, when you look at all this
7 collectively, remember certain things that were very key
8 here. Consider things that should really hone in the facts
9 to you.

10 For instance, Siheem Mott testified and why was
11 he called by the State? Well, if you remember, Kathy Woods
12 said that right after the murder, the Defendant made her
13 pull over and he used a pay phone to call Victor's house.
14 That was her testimony, and she said to him, Why are you
15 calling Victor's house? She was upset, she was hysterical
16 and he never answered. Well, Siheem Mott came in and he
17 told you that it was eleven o'clock, the news was on, that's
18 how he knew the time and that he received a phone call from
19 a male individual. Please, take that into consideration
20 when you look at the totality of the circumstances here in
21 this case. You can't look at it individually and little
22 piece by little piece, you've got to put it all together.

23 Now, additionally, Defense kept saying to Kathy
24 Woods, you know, why didn't you call the police? Why didn't
25 you do anything? I don't think it's unrealistic, ladies and

1 gentlemen, to use your common sense that you're with an
2 individual who you saw just kill somebody and I believe
3 Kathy Woods even said to the Defendant, What are you gonna
4 do now, shoot me? And that she was fearful of him at that
5 time and there were a lot of things going through her head.
6 Here's a person she loved who just killed somebody, she's
7 afraid for her life and she even said to Defense Counsel,
8 Well, what would you have done in my situation? I'm not
9 crazy, I wasn't gonna do anything, he had a gun.

10 There was a lot here and I think that it's to the
11 point where I'm going to really bore you if I go into it.
12 You have the medical examiner's reports as far as the
13 evidence actually, the bullets taken out and the areas
14 that they were taken out of and you have the medical
15 examiner's testimony and you heard the testimony and there
16 were different questions posed to him about how the victim
17 could have been shot and that brings me to one of the most
18 important points that you should consider, Kathy Woods'
19 testimony. She did testify at one point they were standing
20 face to face outside of the car but she did, on Defense
21 Counsel's cross-examination say that they were on an angle
22 from each other. That is her testimony.

23 You also heard the medical examiner say it could
24 have happened many different ways. I posed a question to
25 him whether one shot could have hit the body, the body

1 fell to the ground and the other shots were put into the
2 body while the body was down on the ground. He did say
3 that that was a possibility. He said there's many
4 possibilities but the one possibility that doesn't fit
5 this case is the possibility that Defense Counsel put
6 before you this morning because the casings -- where the
7 casings were completely exclude any merit to that argument.

8 Now, when you get in there, you're gonna have
9 the indictment charges of felony murder, murder, kidnapping,
10 possession of a weapon and possession of a weapon for an
11 unlawful purpose.

12 Now, I want you to realize one thing, when you
13 get to the felony murder, you have to consider two things,
14 kidnapping is the underlying felony.

15 Now, the Judge is going to charge you but I just
16 want to highlight a little bit for you on felony murder.
17 Felony murder is a crime of transferred intent. In other
18 words, you don't have to have the intent to commit the
19 murder at that point, you're committing a kidnapping and
20 the distinguishing feature of felony murder is that a
21 whole unintended killing is committed if it results from
22 the commission of the underlying felony. There is no
23 specific culpability requirement for the homicide, the
24 actor need only have met the culpability requirement of
25 an underlying felony. So in other words, ladies and

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1 gentlemen, the kidnapping here, the taking of the victim
2 in this case in the vehicle for a substantial distance
3 away from the area where he was found and not leaving
4 him unharmed and I don't think there's any question here
5 that the victim was harmed since the victim is dead here;
6 so, I don't think that's even a question you're gonna have
7 to deal with at this point in time.

8 Now, when you go into the kidnapping statute,
9 please, listen to the statute very carefully because it's
10 not kidnapping which some of us conjure up in our minds
11 that there's a ransom note. There's a very broad definition
12 of kidnapping, it involves different aspects of different
13 types of kidnapping and the Judge is going to give you the
14 law on that.

15 Now, as far as the murder, he's charged with
16 purposeful or knowing and I want you to be careful of the
17 language "or." It's not both, it's either/or and the
18 Judge is going to give you what purposeful and knowing
19 mean, those two different terms.

20 Now, it's the State's position and as I believe
21 the proofs beared out, that Derek Moultrie had the purpose
22 and he had the knowledge and the Judge is going to tell
23 you that because a weapon is used in this case and is
24 charged, you can infer from the fact that there was a
25 weapon in this case on September 10th, 1989, when Derek

MEMLOCK

1 Moultrie discovered that his gold chain was missing.

2 Now, I'm not going to go into a characterization
3 about the type of person Derek Moultrie is but I think you
4 can tell by the way this case happened what type of person
5 he was and is today. He was determined that if Victor Mott
6 didn't have his gold chain, that he was gonna be the judge
7 and he was gonna be the jury and he was gonna be the
8 executioner all rolled in one. And why do I say that?
9 Because the tone throughout this whole case, Kathy Woods
10 kept telling you through her testimony, Victor kept sayin',
11 I don't have your chain, man, I don't have your chain.
12 Why would I help you move? Why would I do something to
13 you? I don't have your chain. To this day, no one knows
14 where the chain is.

15 There is no chain, you saw all the evidence put
16 in from the clothing of the victim, there's no chain.
17 You're gonna have his personal effects in this little bag,
18 there's no gold chain, no gold chain. So, Derek Moultrie
19 decided, my gold chain was missing, Victor was the last one
20 in my house that I'm aware of, he's the one that took it
21 and I'm arming myself, I'm arming myself with this gun
22 because if Victor doesn't play with me the way I want him
23 to, he's gonna pay for it. So, he left Plainfield with
24 the mind set that if I don't get my chain, Victor is
25 going to get it and he did just that. And how do we know

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HEMLOCK

ERASABLE

Furlong - summation

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1 that? Because of the testimony of Kathy Woods saying
2 in the car that Derek said, I'm sick of people taking
3 advantage of me and he took this gun and if you remember
4 Kathy Woods saying in her testimony at this point in time,
5 he took the gun and he said to the victim, After showing
6 you this you're still not going to give me my chain? And
7 the victim was pleading.

8 Now, Defense Counsel wants you to believe that
9 he was pleading because they were going to let him walk
10 from where they were. Ladies and gentlemen, I think by
11 the fact that we're here and this is a homicide case it's
12 obvious that the Defendant had no intentions of just
13 leaving him and letting him walk home or we wouldn't be
14 here today.

15 And then we get to the point where the gun is
16 shown and the victim is saying, I don't have your gold
17 chain. And what does the Defendant do? He doesn't let
18 the victim go, he didn't say to the victim, Okay, well,
19 maybe somebody else took it or give it a chance, you're
20 my friend, I'm sorry, I lost my head, let's see what we
21 can do. No, finally, he let him have it and he let him
22 have it with this gun, the six bullets.

23 As the medical examiner said, the pathological
24 findings were multiple gunshot wounds to the body, fracture
25 of the skull due to gunshot wounds, laceration to the brain

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HEMLOCK

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Furlong - summation

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1 due to gunshot wounds, laceration of the heart, liver,
2 stomach, spleen, due to gunshot wounds. Cause of death,
3 multiple gunshot wounds of body and lacerations of internal
4 organs. Manner of death, homicide. It's all here, ladies
5 and gentlemen.

6 Additionally, since you didn't see this in the
7 trial, this is the weapon charges. You'll have to consider
8 this, that Derek Moultrie didn't have a permit to carry a
9 handgun. The State is required to prove that as part of
10 its proofs.

11 You'll have Lieutenant Dobak's ballistics tests
12 which will show you that all of the bullets retrieved, with
13 the exception of a partial bullet fragment came from this
14 gun and I don't think it's necessary to go through all the
15 testimony about how the bullets actually matched to this
16 gun.

17 Ladies and gentlemen, it's all there for you to
18 decide. What I'm saying up here is not evidence, what
19 the Defense has told you is not evidence. I have the
20 burden to prove this case; so if I seem that I'm going --
21 talking to you at length, I'm trying to set forth the
22 State's position so that you can go in there and actually
23 physically go through your minds and remember what the
24 testimony is.

25 If there's any snags or there's any differences

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Furlong - summation

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1 of opinion, you could always have a readback about what
2 happened but there's one thing, ladies and gentlemen,
3 that I can say, Kathy Woods was not the shooter. I almost
4 want to laugh when I stand up here and say that because --

5 MR. GONZALEZ: Your Honor, objection.

6 THE COURT: Just comments on the evidence,
7 whatever you may want to do, that's neither here nor there.

8 MS. FURLONG: Fine, your Honor.

9 Please, the crime scene photos are key, where
10 the casings were found, the testimony of Kathy Woods of
11 when she first heard the first shot and where those
12 casings are, I believe you'll return a verdict of guilty.
13 Thank you.

14 THE COURT: All right, thank you, Ms. Furlong.

15 With that, ladies and gentlemen, I'm going to
16 ask you -- I'll give you a ten-minute break now, ten
17 minutes, please. In fact, I'm going to make it five
18 minutes. I don't know if anybody wants to go downstairs
19 or not; if not, I'll just send you into the jury room for
20 about five minutes. We'll give you, let's say, five to
21 ten minutes, how's that? So, if you want to have a smoke,
22 you can go downstairs and have it and those who may want
23 to stay in the jury room, you may do that also.

24 Do not discuss this case, keep an open mind.

25 You still have to hear my charge to you; so we'll do that

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PENGAD CO., BAYONNE, N.J. 07002 - FORM

HEMLOCK

ERASABLE

COTTON CONTENT

1 within five to ten minutes, as soon as all of you get back
2 here. But in any event, no more than ten minutes, please.
3 Is that understood? All right, thank you.

4 (Whereupon, jury is excused.)

5 THE COURT: Ma'am, what is your name, please?

6 The one with the white jacket and the black --

7 DENISE MOULTRIE: I'm his sister, Denise.

8 THE COURT: Pardon?

9 DENISE MOULTRIE: Denise.

10 THE COURT: Well, if you'd like to remain, why,
11 you may; but please, you cannot display your emotions. Is
12 that understood? Is that understood?

13 DENISE MOULTRIE: Yes.

14 THE COURT: Because if you're going to do that,
15 of course, you cannot be allowed to be in the courtroom.
16 The jury has to make a determination according to the
17 evidence of what they heard and saw in this courtroom
18 concerning this case and according to the law that I will
19 give to them that applies and they should not, must not and
20 I will so instruct them that they cannot do it with passion
21 or sympathy or fear. Is that understood?

22 (Whereupon, Denise Moultrie nods head in
23 affirmative.)

24 THE COURT: So, if you start to make any type of
25 emotional disturbance, why, I'll just stop and have you

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-COTTON CONTENT-

1 taken out of the courtroom at any time. Do you understand
2 that?

3 (Whereupon, Denise Moultrie nods head in
4 affirmative.)

5 THE COURT: Thank you.

6 (Whereupon, Court in short recess.)

7 (Whereupon, the following takes place outside
8 the presence of the jury.)

9 THE COURT: First thing I want to ask Counsel
10 is, did you go over the verdict form?

11 MR. GONZALEZ: No, I have not, Judge.

12 THE COURT: Will you please do that?

13 MR. GONZALEZ: Yes, I will.

14 THE COURT: See if there's any corrections so
15 this way -- that's number one.

16 (Whereupon, Counsel reviews verdict form.)

17 MR. GONZALEZ: Judge, I reviewed it, there are
18 no objections.

19 THE COURT: Ms. Furlong?

20 MS. FURLONG: No objection.

21 THE COURT: All right, then call the jury out,
22 please.

23 11:30 a.m.

24 (Whereupon, the following takes place within
25 the presence of the jury.)

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PENGAD CO., BATONNE, N.J. 07002 - FORM

1 THE COURT: All right. We have all our 14
2 jurors in the jury box and at this time, I'll give you
3 what is known as the charge, ladies and gentlemen, the
4 instructions on the law.

5 Before we start may I, at the outset, allow me
6 to express all my thanks and appreciation to all of you
7 ladies and gentlemen for all the attention that you have
8 given to this case. At the same time, I would also like
9 to commend both Counsel for the State and Counsel for the
10 Defendant for the adequate manner in which they have
11 presented their respective cases and also for their
12 courtesy extended not only to this Court, but also to all
13 of you, ladies and gentlemen, during the course of this
14 entire trial.

15 Now, the Defendant, Mr. Derek Moultrie stands
16 before you on an indictment charging him with six counts
17 and specifically, they are first-degree kidnapping, murder,
18 third-degree unlawful possession of a weapon, second-degree
19 possession of a weapon for an unlawful purpose and third-
20 degree escape.

21 When I say six counts and apparently, I read
22 five or if you calculated it, there's one also referred to
23 as felony murder and then purposeful and knowingly murder
24 and they come out to six counts.

25 Now, this indictment which I referred to in the

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1 various counts, of course, is not evidence of the guilt
 2 of the Defendant on any of those charges, it's what we
 3 refer to as an informative pleading or formal charge, if
 4 you like, evidencing a step in the proceedings to bring
 5 this matter before a court and a jury, such as this,
 6 for the ultimate determination as to whether the Defendant
 7 should or should not be found either not guilty or guilty
 8 on those various charges as set forth in the indictment.

9 Now, I am going to charge you as to the law
 10 which will apply in this case and, of course, the charge
 11 is instructions on how you, ladies and gentlemen, are to
 12 apply evidence and testimony that's presented before you
 13 during the course of this trial. And of course, the charge
 14 is most important and as you have in the past paid very
 15 diligent attention, why, I expect you to do the same thing
 16 now.

17 Let me explain some terms to you. I said -- well,
 18 I indicated how you are to apply evidence and later on I
 19 will indicate to you somewhere along the line that you are
 20 to decide this case according to the evidence; so, what is
 21 evidence? You have to understand that. Evidence, ladies
 22 and gentlemen, is the means from which inferences may be
 23 drawn as a bases of proof in a duly constituted court such
 24 as this.

25 I'll refer to what an inference is later on and

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PENGAD CO., BAYONNE, N.J. 07002 - FORM

1 how you can use inferences.

2 I would also like to indicate to you at this
3 particular time so that you'll understand, during the course
4 of the trial, I may have asked one attorney or the other,
5 is there any materiality to that particular question? Is
6 there any probative value? Is it relevant? So, what do
7 these terms mean to you so that you have an understanding,
8 relevancy, relevant evidence, materiality or probative
9 value? Well, of course, relevant evidence means evidence
10 having any tendency and reason to prove any material fact
11 and a material fact is what really is in issue so that
12 understand what evidence is, relevant, relevancy, material
13 fact; is there any materiality to that question? Probative
14 value, well, probative value is the tendency of evidence to
15 establish the proposition for which it was offered to prove.
16 So, you have a working knowledge of what these terms mean.

17 Now, with that in mind, let's go further in the
18 instructions before we get to the actual counts or offenses
19 of the elements thereof.

20 In a trial of a case or any case, the function of
21 the Court, that is myself, is to instruct you, ladies and
22 gentlemen, with respect to the principles of law that govern
23 the case and, of course, the jury's required to accept and
24 be controlled by the law as this Court will state it to you,
25 not only now but as I have stated to you during the course

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Court - charge

1 of the entire trial.

2 Now, on the other hand, of course, you are the
3 sole judges of all the facts, the weight of the testimony,
4 the credibility of the witnesses who appear before you and
5 the inferences that may be drawn from that testimony and,
6 of course, the ultimate conclusions to be reached upon all
7 of the facts.

8 Now, it is, however, proper for the Court -- I
9 should say, for myself or Court or Judge, I refer to myself
10 in different ways, to comment on the evidence or parts of
11 the evidence; but of course, always understand, ladies and
12 gentlemen, and remember that the comments of this Court on
13 any of the evidence, of course, is not binding on you in
14 any sense at all because it is, ladies and gentlemen, the
15 exclusive function of the jury to decide all of the facts.

16 Now, you will also understand that the Judge does
17 not, cannot and will not undertake to say what the evidence
18 is or is not. I can only state my own recollection of it
19 and in my recollection, if I do go into any evidence at all
20 or mention it, why, that evidence is to be disregarded
21 except if it coincides with your own recollection. Is
22 that understood?

23 The same thing, of course, is absolutely true
24 as I indicated to you earlier, any comments made either by
25 Ms. Furlong or Mr. Gonzalez in their comments or any

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-COTTON CONTENT-

Court - charge

1 questions or as they recall what the evidence is or what
 2 was said or not said in testimony, if it coincides with
 3 your own recollection, fine, you may accept that; if it
 4 does not, disregard it. Your recollection controls, simply
 5 put.

6 Now, during the course of the trial, of course,
 7 there were objections made both by the attorney for the
 8 State and the attorney for the Defendant and of course,
 9 they have the obligation to do so, they must do so as
 10 lawyers and well, you are bound by the rulings that I made
 11 regarding those objections that were made and any evidence
 12 which was excluded by the Court must not be considered by
 13 you in your deliberations.

14 You'll recall where I indicated and there were
 15 some argument, colloquy, as you'd like about what I
 16 admitted, is it to be admitted? No. And I made rulings
 17 and I said, No, it's not admitted and objection sustained,
 18 that's not for you even though you may have heard it; but
 19 it's not evidence, you will not use it in your deliberations.
 20 The actions and the rulings of this Court should not, must
 21 not, will not be taken by you as an indication of how I
 22 may feel how this case should be decided. The trial
 23 procedural matters, ladies and gentlemen, of course are
 24 the responsibility of the Judge.

25 During the course of this trial, there have been

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PENGAD CO., BAYONNE, N.J. 07001 - FORM

Court - charge

1 some sidebar conferences and sometimes I may have said,
 2 No, there's no need for it. I control that. Any objections
 3 that were made to the Court, of course, I did rule on that.

4 Now, I want you to understand and always keep in
 5 mind that you are not to draw any conclusions at all, one
 6 way or the other, as to how I feel the case should be
 7 decided either because I may have said, Well, no, it's not
 8 necessary to have a sidebar; or, yes, it is necessary; or,
 9 I may have called one myself. It doesn't have anything to
 10 do with the evidence or for that matter, the number of
 11 times that I may have either sustained or overruled either
 12 the attorney for the State or the attorney for the Defense,
 13 that has no bearing on it whatsoever.

14 I do charge you also that the fact that the Court
 15 saw fit, as I recall in some instances, to direct some
 16 questions of whatever witnesses were on the stand must not
 17 influence you in any way in your deliberations. The fact
 18 that I may have asked a question doesn't give the answer
 19 to that particular question any greater or lesser weight
 20 than if it were asked by anyone else. I have an absolute
 21 right as a judge to ask questions when I feel like it. Is
 22 that understood, ladies and gentlemen?

23 THE JURY: Yes.

24 THE COURT: So therefore -- no opinion or to
 25 indicate any opinion at all as to how I feel the case should

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PENGAD CO., BAYONNE, N.J. 07002 - FORM

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-COTTON CONTENT-

Court - charge

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be decided one way or the other because I may have asked a question to a certain witness.

As to the credibility, ladies and gentlemen, of the witnesses and the believability of any defenses, that must be determined by you and you alone.

Any remarks made by this Court to any of the Counsel here or for that matter, by any other Counsel to this Court or for that matter, between the attorneys or Counsel as I refer to them, or in the questions that were put by either attorney or Counsel to the witnesses, that's not evidence. Simply, not evidence and it should not, will not, must not affect or have any part in your deliberations. Likewise, any statement made by the attorneys in the questioning of the witnesses are not to be considered facts and also should not, may or affect any part of your deliberations. Simply put, ladies and gentlemen, it's not the questions or what's in the questions or those statements that go to the witnesses that's evidence, it's what the witness responds to those questions that is evidence taken under oath; otherwise, it's not evidence.

Presumption of innocence, burden of proof, reasonable doubt, we went over all these items or should we say, conceptions -- legalities, you might say, and referred to it in the law. Let's go over them just once

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1 again. This Defendant, as all defendants, in all criminal
 2 cases, is presumed to be innocent until proven guilty beyond
 3 a reasonable doubt. That presumption, ladies and gentlemen,
 4 continues throughout the whole trial of this case and even
 5 during your deliberations unless and until you have made
 6 the determination that the State has proven his guilt
 7 beyond a reasonable doubt.

8 As to the burden of proof, well, that burden of
 9 proof is always on the State and it never shifts over to
 10 the Defendant. It always remains on the State throughout
 11 the whole trial of the case. As I indicated to you earlier,
 12 there is no burden, and I tell you that again, with respect
 13 to proof that is imposed on this Defendant. Mr. Moultrie
 14 is not obligated to prove his innocence. Unless the State
 15 has proved the crime or crimes charged in each of its
 16 elements beyond a reasonable doubt, then of course, the
 17 Defendant is entitled to an acquittal, that is, to be
 18 found not guilty.

19 As to the various elements of each offense, we'll
 20 get to that rather shortly.

21 Reasonable doubt, well, it's not a mere, possible
 22 or imaginary doubt. What is it? As you may well know,
 23 it relates to everything, I may indicate, anything that
 24 relates to human affairs or depending upon oral evidence,
 25 ladies and gentlemen, is open to some possible or imaginary

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1 doubt. A reasonable doubt, ladies and gentlemen, is an
2 honest and reasonable uncertainty as to the guilt of the
3 Defendant existing in your minds after you have given full
4 and impartial consideration to all of the evidence.

5 Now, that may arise from the evidence itself or
6 from a lack of evidence. It may arise from all the evidence
7 introduced by the State or on behalf of the Defendant or
8 from cross-examination of the various witnesses or from
9 the failure of the State, prosecution, to produce essential
10 proof.

11 Now, in determining whether or not the State
12 has proven its case beyond a reasonable doubt of course,
13 ladies and gentlemen, you are to give regard to the
14 credibility of each witness who appeared here. That is,
15 the extent to which the testimony of each witness may be
16 believed or disbelieved.

17 Now, in regard to this, always, ladies and
18 gentlemen, you should take into account the demeanor of
19 the various witnesses who appeared on the stand, his or
20 her or their interest in the outcome of the case or their
21 ability to observe and their ability to recollect and
22 recount what they observed. If the evidence bearing upon
23 the guilt or the innocence of the Defendant is susceptible
24 of two constructions, then of course, the one of innocence
25 should be adopted.

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Ladies and gentlemen, if you believe that anyone who has testified in this case before you knowingly testified falsely to any material fact in the case or facts in the case with the intention to deceive you, then you may give such weight to his or her testimony as you may deem it is entitled to.

Now, that is, you may believe all of it or you may believe some of it or you may, in your own discretion, disregard all of it.

Presumption, inferences, well, what do these terms mean to you? A presumption, ladies and gentlemen, is a term used to signify that which may be assumed without proof or taken for granted. It is asserted as a self-evident result of human evidence and reason. A presumption, ladies and gentlemen, may be given the weight of a fact unless overcome by sufficient proof to show something that is, in fact, not what it was presumed to be.

Now, an inference, on the other hand, that differs from a presumption. Right, Mr. Reilly? Stay with me.

I, as you know, I --

A JUROR: Thank you.

THE COURT: All right. We're talking about an inference, how it differs from a presumption.

An inference is a conclusion drawn by reason for premises established by proof. It is, ladies and gentlemen,

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1 what we refer to as a deduction or conclusion made from
2 facts or propositions or if you'd like to put it another
3 way, it's like reading between the lines. Some of the
4 evidence introduced in this case has been what the law
5 calls circumstantial evidence.

6 Now, evidence, ladies and gentlemen, may be both
7 direct and circumstantial evidence and, of course, evidence
8 is evidence that directly proves a fact. If you were to go
9 to a ski resort and you were to find some fresh snow on the
10 ground and you would see someone walking there on that fresh
11 snow in that ski resort, that is direct evidence that
12 someone is walking there on that fresh snow in that ski
13 resort. If, on the other hand, you went to that ski resort
14 and it was deserted and there was fresh snow on the ground
15 and you would see some footprints in that fresh snow, that
16 is, ladies and gentlemen, circumstantial evidence that
17 someone was walking there in that fresh snow.

18 Therefore, circumstantial evidence is evidence
19 that proves a fact from which an inference of the existence
20 of another fact may be drawn. Thus, from the existence of
21 the footprints, you would or may draw the inference of the
22 fact that someone had been walking there in that fresh snow
23 even though that person was not actually seen walking there.

24 I may indicate also that the difference between
25 direct evidence, you might say, of guilt and circumstantial

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PENGAD CO., BAYONNE, N.J. 07002 - FORM

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COTTON COUNCIL

1 evidence of guilt, well, what is direct evidence? I gave
2 you an example. And what is circumstantial evidence? I
3 gave you an example there.

4 If I may also indicate, direct evidence is guilt
5 of some facts or fact established alone and if believed by
6 you, may be sufficient to establish guilt. Circumstantial
7 evidence of guilt is also some evidence of fact or facts,
8 but circumstantial evidence standing alone does not
9 directly establish guilt. Is that clear?

10 Now, circumstantial evidence is therefore,
11 evidence of some fact or facts called circumstantial facts
12 which, while not directly establishing guilt, give rise to
13 a reasonable inference of guilt or I may put it another way
14 for you. The difference between direct evidence of guilt
15 and circumstantial evidence of guilt lies in the number of
16 steps that the jury; that you may have to be required in
17 order to take. When the evidence is direct evidence of
18 guilt, the only step that the jury is required to take is
19 to determine the credibility of such direct evidence and
20 decide whether such evidence is sufficient to establish
21 guilt beyond a reasonable doubt.

22 With circumstantial evidence, the jury's first
23 required to determine the credibility of the evidence as
24 to the circumstantial facts, but then the jury's required
25 to take that additional second step and decide whether to

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1 prove circumstantial facts reasonably and logically
2 compel the conclusion that the Defendant is guilty.

3 I can give you an example, maybe it would be
4 good to give it to you so it may help you in determining
5 circumstantial evidence and direct evidence. Let me talk
6 about a different type of case like a burglary and a
7 larceny case in which a defendant is charged with stealing
8 a T.V. set from a house, a witness testifies at trial that
9 during a heavy snowfall, he saw a person whom he positively
10 identifies as the defendant approach the rear of the house.
11 He breaks open the window, enters and then emerges with the
12 T.V. set.

13 Now, that witness' testimony would be direct
14 evidence of the defendant's guilt or referred to the
15 defendant's guilt. You see? Eyewitness.

16 Now, the single step there that the jury would
17 have to take is to determine the credibility of the witness'
18 testimony and, of course, the accuracy of the identification
19 of that witness of the defendant at the time of the trial.
20 However, suppose there is no such direct evidence by any
21 eyewitness? Suppose instead that the only evidence at the
22 trial is one, footprints in the snow outside the house
23 which matches the defendant's shoes in that, you know,
24 hypothetical case that I'm giving you; two, the presence
25 of the defendant's fingerprints on the broken window pane'

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-COTTON CONTENT-

1 and three, proof that a T.V. set was missing from the house.
2 These are circumstantial facts which even if believed by
3 the jury, do not directly establish the defendant's guilt.
4 The jury would be required to take that second step and
5 determine, whether to prove circumstantial facts, reasonably
6 and logically compel the conclusion that it was the
7 defendant who committed the burglary and the larceny despite
8 the absence of direct evidence from a witness who actually
9 saw him do so.

10 So, you understand, there are -- it's like a
11 two-prong step. So, I try to give you an example of a
12 totally different type of scenario which may help you in
13 determining when we're speaking about circumstantial evidence
14 and direct evidence.

15 Now, I would also indicate that circumstantial
16 evidence is evidence that proves a fact from which an
17 inference of the existence of another fact may be drawn.
18 So, therefore, I just tried to explain that to you and
19 therefore, in the first example I gave you about the
20 footprints up there in that deserted ski lodge, there you
21 may draw the inference of the fact that someone had been
22 walking there in that snow even though that person had not
23 been seen walking there.

24 Now, as I indicated, of course, facts may be
25 proven by direct evidence, circumstantial evidence or a

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1 combination of both and I may also indicate to you, ladies
2 and gentlemen, that both direct and circumstantial evidence,
3 of course, are acceptable means of proof.

4 Now, in some cases, circumstantial evidence may
5 be more certain and persuasive than direct evidence.
6 Circumstantial evidence, of course, should be evaluated
7 carefully. An accused, that is, the Defendant, may be
8 convicted by circumstantial evidence alone. The Defendant,
9 the accused, may also be acquitted on the basis of
10 circumstantial evidence if it gives rise to a reasonable
11 doubt as to the guilt of the Defendant.

12 Now, we're going to relate for the next 15, 20
13 minutes or so to the particular counts of the indictment.

14 Now, as to the first count, the Defendant,
15 Mr. Derek Moultrie, is charged that on or about or before
16 the 11th day of September, 1989, in the City of Newark
17 and within the jurisdiction of this County of Essex,
18 allegedly did unlawfully remove and confine Victor L. Mott
19 for the purpose of facilitating the commission of murder,
20 but the Defendant did not release the victim unharmed and/or
21 in a safe place prior to apprehension.

22 Now, ladies and gentlemen, the second part of
23 that, well, let me go over the entire law concerning
24 kidnapping and I'll explain to you what that leaving
25 unharmed and/or in a safe place prior to apprehension means.

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PENGAD CO., BAYONNE, N.J. 07002 - FORM

1 That really deals with a grading of a crime between first-
2 degree kidnapping and second-degree and I'll explain that
3 to you.

4 Now, the pertinent part of this particular --
5 of the statute upon which this count one of the indictment
6 is based on reads as follows: "A person is guilty of
7 kidnapping if he unlawfully removes another from his place
8 of residence or business or a substantial distance from
9 the vicinity where he is found or if he unlawfully confines
10 another for a substantial period with any of the following
11 purposes; one, to facilitate the commission of any crime
12 or flight thereafter; two, to inflict bodily injury on or
13 to terrorize the victim; or three, and I'll just give it to
14 you but it doesn't relate here, to interfere with the
15 performance of any governmental or political function."

16 Now, in order for you to find the Defendant
17 guilty of kidnapping, the State is required to prove each
18 of the following elements beyond a reasonable doubt, and
19 what are these elements? One, that the Defendant,
20 Mr. Moultrie, unlawfully removed Mr. Mott a substantial
21 distance from the vicinity where he was found. That's
22 the allegation here, it's not from a place of residence
23 or business, that doesn't relate here; and the other
24 element --

25 Mr. Smith, are you with me?

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-COTTON CONTENT-

1 A JUROR: Yes, sir.

2 THE COURT: All right, please. I know that
3 some may feel it may be a little bit dry, but it's also
4 very interesting and you must pay very close attention to
5 fully understand what all these elements are. Is that
6 clear, sir?

7 A JUROR: Yes, sir.

8 THE COURT: Now, or the other part of that
9 substantial distance from the vicinity is that the Defendant
10 unlawfully confined Mr. Mott for a substantial period.

11 Now, the second element is that the removal or
12 the confinement was for the purpose of facilitating the
13 commission of any crime or flight thereafter or could be
14 for inflicting bodily injury or for terrorizing the victim,
15 in this case, Mr. Mott.

16 Now, I say, unlawfully removed or unlawfully
17 confined. Well, the term "unlawful" means to accomplish
18 the removal or confinement without the consent. That
19 doesn't relate to you about any consent at all -- just
20 strike that.

21 The term "unlawful," what I meant to inform you
22 of means to accomplish the removal or confinement by force,
23 threat or detention. That's what unlawful means.

24 Now, we speak about, well, knowingly and purposely.
25 And let me explain this to you. A person acts purposely,

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- COTTON CONTENT -

1 ladies and gentlemen, with respect to the nature of his
2 conduct or as a result thereof if it is his conscious
3 object to engage in conduct of that nature or to cause
4 such a result. That is, if the person means to do what
5 he does or cause such a result. A person acts purposely
6 with respect to the attendant circumstances, if the person
7 is aware of the existence of such circumstances or believes
8 or hopes that they exist and then with purpose or design or
9 with design or any equivalent terms, ladies and gentlemen,
10 they have the same meaning.

11 Now, the nature of the purpose for which the
12 Defendant acted towards the victim, well, ladies and
13 gentlemen, that is a question of fact for you, the jury,
14 to decide. Purpose is a condition of the mind that cannot
15 be seen and therefore, it can only be determined by
16 inferences drawn from the Defendant's conduct, words, or
17 actions as they may have been presented in the evidence
18 before you and that you have heard and seen in this case.
19 It is not necessary, ladies and gentlemen, that the State
20 produce a witness or witnesses to testify that the Defendant,
21 Mr. Moultrie, stated, for example, that his purpose in
22 removing or if that is a fact, Mr. Mott, and confining him
23 was to facilitate the commission of any crime or flight or
24 to inflict any bodily injury or to terrorize him at any
25 time.

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PENGAD CO., BAYONNE, N.J. 07002 - FORM

- COTTON CONTENT -

1 Always keep in mind, ladies and gentlemen,
2 it is within the power of the jury to find that proof of
3 purpose has been furnished beyond a reasonable doubt. The
4 inferences which you may draw from the nature of the acts
5 and the circumstances surrounding the conduct which is under
6 investigation, you might say, by you as they have been
7 presented to you in the evidence which you have heard and
8 seen in this case in this courtroom. The action condemned
9 by the statute as I referred to is the unlawful removal,
10 that is, a removal accomplished by force, threat or
11 deception which is accomplished without the consent of
12 the individual and for a purpose as I already indicated
13 to you.

14 The statute, therefore, condemns the unlawful
15 removal of another person a substantial distance from the
16 vicinity where the person is found. That is, where the
17 person happened to be at the time of the unlawful removal.
18 The unlawful removal, therefore, must be a substantial
19 rather than a trivial distance from the vicinity where the
20 person was found. The unlawful confinement condemned by
21 the statute is the confinement I already explained to you,
22 either accomplished by force, threat or deception.
23 Now, when I referred to you about the second-degree
24 and first-degree in kidnapping, a section in our statute
25 does provide that kidnapping is a crime of the first degree

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-COTTON CONTENT-

1 except that it is a crime of the second degree if the
2 kidnapper releases the victim unharmed and in a safe place
3 prior to his apprehension and you'll recall when I referred
4 to the indictment, that that's why they're related and I
5 then stated that it may be a different degree. Therefore,
6 in this case, it is alleged that the Defendant did not
7 release the victim, that is Mr. Mott, unharmed and in a
8 safe place prior to his apprehension.

9 Therefore, if you find that the State has not
10 proven to you beyond a reasonable doubt each and every
11 element of the crime of kidnapping as I have defined that
12 crime to you, then you would find the Defendant not guilty.
13 If you find that the State has proven to you beyond a
14 reasonable doubt that the Defendant committed the crime
15 of kidnapping as I have defined that crime to you, but you
16 have a reasonable doubt as to whether the Defendant released
17 the victim unharmed and in a safe place prior to his
18 apprehension, then you would find the Defendant guilty of
19 kidnapping in the second degree.

20 However, if you find beyond a reasonable doubt
21 that the Defendant committed the crime of kidnapping and
22 that he did not release the victim unharmed and in a safe
23 place prior to the Defendant's apprehension, then you
24 should -- would find the Defendant guilty of kidnapping
25 in the first degree provided, of course, all the other

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-COTTON CONTENT-

Court - charge

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1 elements have been proven to you beyond a reasonable
2 doubt. Is that clear to you?

3 THE JURY: Yes.

4 THE COURT: Now, also, keep in mind what I just
5 stated to you because kidnapping, ladies and gentlemen,
6 will play a part in the second count which is the felony
7 murder because the substantial or I shouldn't say
8 substantial, substantive crime therein of felony murder
9 in this particular case is kidnapping. See, it's a felony
10 murder and I'll explain that to you now.

11 In the second count, the jurors or the grand jurors,
12 I should state, have presented under their oath that
13 Mr. Moultrie on or about or before the 11th day of September,
14 1988, in the City of Newark and within the jurisdiction of
15 this County of Essex allegedly, while in the course of
16 committing kidnapping upon the person of Victor L. Mott or
17 in an attempt there at or during flight therefrom, did kill
18 and murder the said Victor L. Mott.

19 Now, that is what we refer to as a felony murder
20 and kidnapping is the underlying or substantive offense,
21 as I have indicated, all right,

22 Now, the section of the statute which applies in
23 this case concerning this particular count reads as follows:
24 "Criminal homicide constitutes murder when it is committed
25 when the actor is engaged in the commission of, and in this

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1 case, kidnapping, and in the course of and in the
2 furtherance of such crime any person causes the death of
3 a person other than one of the participants. Under this
4 particular law, it does not matter that the act which
5 caused death was committed recklessly or unintentionally
6 or accidentally. The perpetrator, that is the Defendant,
7 is as guilty of murder as he would be had he purposely or
8 knowingly committed the act which caused death."

9 Now, I want to explain to you here that here we
10 have felony murder and then the next count I'll get into,
11 we're dealing with purposeful or knowingly murder; so,
12 that's why it's most important that you pay very close
13 attention. Therefore, in order for you to find the Defendant
14 guilty of murder in this case, and again, we're speaking
15 about the second count, the State is required to prove
16 beyond a reasonable doubt from all the evidence in the
17 case, all the essential elements of the crime charged.

18 Therefore and accordingly, before you can find
19 the Defendant guilty of murder, the State must prove beyond
20 a reasonable doubt one, that on or about or before the 11th
21 day of September, 1989, in the City of Newark and within
22 this County, that he did commit the crime of kidnapping
23 upon the person of Victor L. Mott or in an attempt there at
24 or during the flight therefrom did kill and murder the
25 said Victor L. Mott; two, that the death of Mr. Mott was

1 caused by the Defendant at some time within the course
2 of the commission of that crime of kidnapping, including
3 its aftermath of flight and concealment efforts; three,
4 that Mr. Mott was not, of course, a participant in any
5 of that crime of kidnapping in this case.

6 Now, again, here, without going over it and I --
7 that's why I wanted you to pay very very close attention
8 to the elements of kidnapping, because that's what we refer
9 to as the predicate crime or the substantive crime and
10 therefore, I would then now explain to you what the
11 elements are of that particular crime of kidnapping, you
12 understand, which I have already did for you when I went
13 over it in the first count and they are the same elements.
14 Is that clear?

15 THE JURY: Yes.

16 THE COURT: All right. Therefore, without going
17 over those particular elements of kidnapping which, I just
18 did before this and you have that in mind, I would then
19 sum up for you that if you find after a consideration of
20 all of the evidence that the State has proven to your
21 satisfaction beyond a reasonable doubt that each of these
22 elements as I have just explained them to you, that is,
23 one, that the Defendant committed a crime of kidnapping
24 which we call a felony and again, I gave you the elements
25 of that, two, that the death of Mr. Mott was caused by the

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1 Defendant and that the death of that person was caused
2 while the Defendant was engaged in the course of that
3 kidnapping or in furtherance of that commission of
4 kidnapping and that Mr. Mott, of course, that he was not
5 a participant in that crime at all, then you would find
6 the Defendant guilty of murder.

7 Now, on the other hand, if you find that the
8 State has failed to prove to your satisfaction beyond a
9 reasonable doubt that Defendant caused the death of
10 Mr. Mott, then you would find the Defendant not guilty of
11 murder. But, ladies and gentlemen, if you should find
12 beyond a reasonable doubt that the Defendant did cause
13 the death of Mr. Mott but that the State has failed to
14 prove to your satisfaction beyond a reasonable doubt that
15 the Defendant was engaged in a course in the furtherance
16 of the commission of kidnapping, that's the predicate
17 crime, then you will proceed to consider whether the
18 Defendant purposely, knowingly or recklessly caused the
19 death of Mr. Mott in accordance with the instructions
20 which I will give to you shortly. Is that understood?

21 THE JURY: Yes.

22 THE COURT: So, we spoke about kidnapping, the
23 elements, the predicate crime therein, felony murder,
24 and what felony murder is all about and how the elements
25 of one must be related to the other. Of course, you are

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PENGAD CO., BAYONNE, N.J. 07002 - FORM

1 always the finder of fact as to all the elements in the
2 case. I may also indicate to you and maybe this may help,
3 felony murder only requires a showing that a death was
4 caused during the commission of or in an attempted commission
5 of the flight thereafter of the statute listing of kidnapping
6 and one of them is felony, understand? And I may also
7 indicate that felony murder, ladies and gentlemen, is an
8 unintended killing resulting from the commission of a
9 felony which I have just explained to you.

10 The culpability required for felony murder is
11 not specific, instead, the actor need only had met the
12 culpability requirement of the underlying felony which I
13 referred to as the substantive crime or the predicate crime
14 in this case, the kidnap. May I also indicate to you,
15 ladies and gentlemen, that felony murder is a crime of
16 transferred intent based on a showing of intent to commit
17 the underlying felony even though there is no intent to
18 kill. Is that understood? So, you have all these elements
19 in accordance with everything I have indicated to you.

20 All right, now we go into the third count.
21 The third count alleges that Mr. Derek Moultrie on or about
22 or around the 11th day of September, 1989, in the City of
23 Newark, County of Essex, allegedly did purposely or
24 knowingly murder Victor L. Mott by his own conduct. So,
25 now we're going to speak about this particular crime,

1 purposeful or knowingly murder. In conjunction with that,
2 I will also give you later, in conjunction with this
3 particular count what is known in the law, ladies and
4 gentlemen, as lesser-included offenses of aggravated
5 manslaughter and manslaughter.

6 Now, let me explain to you that murder is the
7 unlawful killing of one person by another purposely or
8 knowingly. A person who commits a killing does so purposely
9 when it is the person's conscious object to cause death or
10 serious bodily injury resulting in death. A person who
11 commits a killing does so knowingly when the person is
12 aware that what he is doing will cause death or serious
13 bodily injury resulting in death or is practically certain
14 to cause death or serious bodily injury resulting in death.

15 Now, in either case, that is, whether the killing
16 is committed purposely or knowingly, causing the death or
17 serious bodily injury must be within the design or the
18 contemplation of the Defendant, that is, Mr. Moultrie.

19 Let me explain what serious bodily injury means
20 in connection with this particular crime of purposeful or
21 knowingly murder. Serious bodily injury means bodily
22 injury which creates substantial risk of death or causes
23 serious permanent disfigurement or protracted loss or
24 impairment of the function of any bodily member or organ.

25 Now, ladies and gentlemen, of course, you will

1 note that I have used the terms or the words "purposely" --
2 Ms. Vaughn, are you with me?

3 A JUROR: Yes.

4 THE COURT: Thank you. I know that sometimes you
5 have a tendency, not you, but all, to sort of, you know,
6 relax your eyes and there's nothing wrong with that. Of
7 course, it doesn't convey to me whether or not you're
8 with me or not; so that please, excuse me when I call your
9 name and to be sure that you are with me.

10 As I was indicating, the words which I have used,
11 "purposely" and "knowingly" let me explain these words to
12 you. The nature of the purpose or knowledge with which the
13 Defendant acted or the decedent in this case, Mr. Mott,
14 that is also, ladies and gentlemen, a question of fact
15 for you, the jury, to decide. Purpose and knowledge, of
16 course are conditions of the mind which cannot be seen and
17 can only be determined by inferences, from conduct, words
18 or acts. It is not necessary for the State to produce a
19 witness or witnesses who can testify that the Defendant
20 stated, for example, that his purpose was to cause the
21 death or serious bodily injury resulting in death or that
22 he knew that what he was doing would kill the victim or
23 was practically certain to cause the victim's death or
24 serious bodily injury resulting in death.

25 It is within the power, ladies and gentlemen,

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1 of the jury to find that proof of purpose or proof of
2 knowledge has been furnished beyond a reasonable doubt by
3 inferences which may arise from the nature of the acts and
4 circumstances surrounding the conduct under investigation.
5 Such things as the place where the acts occurred or the
6 weapon used or the location and the number and nature of
7 the wounds that were inflicted and all that was done and
8 said by the Defendant preceding or connected with and
9 immediately succeeding the events leading to the death of
10 Mr. Mott are among the circumstances to be considered.

11 Now, circumstantial evidence and direct evidence,
12 I've already indicated that to you, I've gone over that
13 because certainly, it is within the case here and there's
14 no reason for me to go over it again.

15 The essential determination, ladies and gentlemen,
16 of course for you to make in regard to this particular
17 charge of purposeful or knowingly murder as to count three
18 is whether the Defendant, Mr. Moultrie, committed the
19 killing purposely or knowingly as I have already described,
20 explained those terms to you.

21 Now, you've heard what the State contends in this
22 case and I am not going to go over it, even though I can,
23 there's no reason for me to do so. I may misquote or my
24 recollection may not be accurate or you may say, Hey,
25 Judge, that's not the way it was and you rely on your own

1 recollection and furthermore, I think you have all the
2 facts, it's been amply gone over by both Ms. Furlong and
3 Mr. Gonzalez; so, I'll stay away from that as to what the
4 contentions are.

5 Now, therefore, in order for you to find the
6 Defendant guilty of murder, the State must first establish
7 beyond a reasonable doubt that the killing of the decedent,
8 that is, Mr. Mott, was committed by the Defendant,
9 Mr. Moultrie, and that it was done purposely or knowingly
10 as I have defined these terms for you.

11 The State, however, is not required, ladies and
12 gentlemen, to prove a motive. If the State has proved the
13 essential elements of the offense beyond a reasonable doubt,
14 then the Defendant, of course, would be found guilty of
15 that offense regardless of the Defendant's motive or lack
16 of motive. If the State, however, has proved a motive,
17 well, then, you may, of course, consider that insofar as
18 it gives meaning to all of the other circumstances. On the
19 other hand, the absence of motive may be considered in
20 weighing whether or not the Defendant did, in fact,
21 participate in this crime that's been charged.

22 Now, I may also indicate that a homicide or a
23 killing with a deadly weapon such as what has been described
24 here, the handgun, I believe it's S-19, I don't really
25 recall, in itself would permit you, ladies and gentlemen,

1 to draw an inference that the Defendant's purpose was to
2 take a life or cause serious bodily injury resulting in
3 death.

4 Let me explain to you what a deadly weapon is.
5 A deadly weapon is any firearm or other weapon, device,
6 instrument, material or substance which in the manner it
7 is used or it is intended to be used is known to be
8 capable of producing death or serious bodily injury.

9 Now, in your deliberations, you may consider
10 the weapon used and the manner and circumstances of the
11 killing and if you are satisfied beyond a reasonable
12 doubt that the Defendant shot and killed the decedent with
13 a gun, then you may draw an inference from the weapon used,
14 that is, the gun and from the manner and circumstances of
15 the killing as to the Defendant's purpose or knowledge.
16 If after a consideration of all of the evidence, ladies
17 and gentlemen, you are convinced beyond a reasonable doubt
18 that the Defendant did purposely or knowingly cause the
19 death of Mr. Mott; then, of course, your verdict would be
20 guilty. If, however, after a consideration of all of the
21 evidence you find that the State has failed to prove each
22 and every element of this particular offense beyond a
23 reasonable doubt; then, of course, your verdict would be
24 not guilty.

25 Now, let me explain to you that although, as I

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1 already stated earlier, the crimes of aggravated manslaughter
2 and manslaughter are not set forth in the indictment, I'm
3 going to explain these elements to you because they are
4 what are known in the law as lesser-included offenses of
5 purposely and knowingly or knowingly -- or knowingly murder.

6 Aggravated manslaughter. A person is guilty of
7 aggravated manslaughter if he recklessly causes the death
8 of another person under circumstances manifesting extreme
9 indifference to the value of human life. Here, in order
10 to find the Defendant guilty of this particular aggravated
11 manslaughter, the State must prove beyond a reasonable
12 doubt the elements and well, what are the elements here?
13 One, that the Defendant caused Mr. Mott's death; two, that
14 the Defendant did so recklessly; and three, that the
15 Defendant did so under circumstances manifesting extreme
16 indifference to the value of human life.

17 Each of these three elements, of course, ladies
18 and gentlemen, need a little bit more explanation for you.
19 Therefore, with respect to the first element, that is, to
20 cause the death of Mr. Mott, in order for you to find that
21 the Defendant caused Mr. Mott's death, you must first find
22 that Mr. Mott would not have died but for the Defendant's
23 conduct. With respect to the second element, in order for
24 you to find that the Defendant recklessly caused his death,
25 that is, Mott's death, you must find that the Defendant

1 was aware of and consciously disregarded a substantial
2 and unjustifiable risk that death would result from his
3 conduct.

4 The risk itself must be of such a nature and
5 degree, ladies and gentlemen, that considering the nature
6 and purpose of the Defendant's conduct and in the
7 circumstances known to him, that is, to the Defendant,
8 that his disregard of that risk is a gross deviation from
9 the standard of conduct that a reasonable person would
10 follow in that same situation. In other words, ladies
11 and gentlemen, in order for you to find that the Defendant
12 was aware, consciously disregarded the risk of causing
13 death, if you find the Defendant was aware of and disregarded
14 the risk of causing death, then you must determine whether
15 that risk that he disregarded was substantial and
16 unjustifiable.

17 In doing so, you must consider the nature and
18 the purpose of Mr. Mott's -- Mr. Moultrie's conduct and
19 the circumstances known to him and you must determine
20 whether in light of those factors, that his disregard of
21 that risk was a gross deviation from the conduct that a
22 reasonable person would have observed in his situation.
23 That is, the Defendant's situation.

24 Now, as to the third element, in order to find
25 the third element, you must find that the Defendant acted

1 under circumstances that manifest extreme indifference to
2 human life. The phrase, "under circumstances manifesting
3 extreme indifference to human life" does not focus, ladies
4 and gentlemen, on the Defendant's state of mind, but it's
5 rather under circumstances under which you find he acted.
6 The State must prove that the Defendant acted in a way that
7 showed that he was indifferent to whether or not Mott,
8 that is, Mr. Mott, lived or died. That is, the Defendant
9 acted in a way which showed that he did not care that
10 someone was killed.

11 With respect to the aggravated manslaughter, the
12 Defendant must have acted in a way under circumstances
13 involving a probability of death. Therefore, in conclusion,
14 the three elements of this particular crime of aggravated
15 manslaughter are one, that the Defendant caused the victim's
16 death; two, that the Defendant did so recklessly; and, three,
17 that the Defendant did so under circumstances manifesting
18 extreme indifference to human life. Therefore, if you are
19 not satisfied that the State has proven each of these
20 elements as I have described them to you, ladies and
21 gentlemen, beyond a reasonable doubt, then, of course, you
22 will find the Defendant ^{not} guilty of this particular offense.
23 However, if you are convinced beyond a reasonable doubt
24 that each of the elements as I have described them to you
25 have been proven beyond a reasonable doubt, then you would

1 find the Defendant guilty of aggravated manslaughter.

2 Now, while we're at it and I'll remind you now,
3 ladies and gentlemen, that you'll have some of these
4 matters with you on the verdict form to jog your memory
5 and I'll get to that shortly.

6 Let me explain to you reckless manslaughter,
7 that's another lesser-included offense of this particular
8 third count which we're talking about, purposeful or
9 knowingly or -- murder. A person is guilty of manslaughter
10 if the person recklessly causes the death of another human
11 being. The difference between manslaughter and murder is
12 one that commits murder or another's death purposely or
13 knowingly while one who commits manslaughter does so
14 recklessly. Of course, we have the other one in between
15 which I just had gone over which is, of course, aggravated
16 manslaughter. Do you understand that?

17 THE JURY: Yes.

18 THE COURT: Let me explain to you what recklessly
19 means, right, Ms. Vaughn?

20 A JUROR: Yes.

21 THE COURT: A person acts recklessly with respect
22 to a material element of an offense when a person consciously
23 disregards a substantial or unjustifiable risk that the
24 material will result in his conduct. The risk must be of
25 such a nature and degree that in considering the nature

1 and purpose of the actor's conduct, that is, the Defendant,
2 and the circumstances known to him, if disregard involves
3 a gross deviation from the standard of conduct that a
4 reasonable person would observe in that person or Defendant's
5 or referred to as the actor's situation.

6 I may put it to you in another way. In order
7 for you to find the Defendant, Mr. Moultrie, acted recklessly
8 the State must first prove beyond a reasonable doubt that
9 he was aware of this substantial and unjustifiable risk.
10 In addition, the State must prove that the Defendant
11 consciously disregarded this risk and for you to conclude
12 that the Defendant acted recklessly, you must find that his
13 disregard was a gross deviation from the way a reasonable
14 person would have conducted himself in that situation.

15 Now, if you are not satisfied beyond a reasonable
16 doubt that the Defendant did, in fact, cause the death of
17 the victim or that the Defendant acted purposely or
18 knowingly or recklessly, then you would find the Defendant
19 not guilty. If you find that you would have a reasonable
20 doubt as to whether or not the Defendant purposely or
21 knowingly caused the death or serious bodily injury
22 resulting in death but you are convinced beyond a reasonable
23 doubt that the Defendant recklessly caused death or serious
24 bodily injury resulting in death, then you would find the
25 Defendant guilty of manslaughter.

1 Now, you also -- so, therefore, you have three
2 possibilities you might say here because it's simple.
3 You have the purposeful or knowingly murder and the verdict
4 form will indicate that if you find him not guilty there,
5 then you go on and consider the lesser and then you will
6 consider reckless manslaughter which I have just indicated
7 to you.

8 All right, that will bring us into the third count
9 which we'll get to that in a moment and we're getting towards
10 the end.

11 I just wanted to indicate something for you which
12 I may have omitted about causation in the felony murder.

13 (Pause)

14 THE COURT: Yes. You recall, and I omitted it,
15 but I just want to make sure you understand it, when we were
16 speaking about felony murder in count two and the predicate
17 crime of kidnapping, do you recall that?

18 THE JURY: Yes.

19 THE COURT: All right. I would indicate that
20 you, ladies and gentlemen, must be aware that you must not
21 only find that the Defendant committed that crime of
22 kidnapping as I already told you, and that the death of
23 the victim, that is, Mr. Mott, occurred in the course of
24 that crime; but you must also always keep in mind and
25 consider that the death of Mr. Mott would not have occurred

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1 but for that, you might say, commission of the predicate
2 crime of kidnapping. Is that clear? In other words,
3 its causation; so therefore, I just want to be sure that
4 that's impressed upon you when you're thinking about the
5 second count which we're talking about felony murder.

6 I know that sometimes they become a little bit complicated
7 and therefore, I try to explain it to you as best as I can,
8 but always keep that in mind, all right.

9 With that, we commence going to the third count
10 which is that on the -- on or about or before the 11th day
11 of September, 1989 -- that's not the third count, that's
12 the fourth count, I'm sorry, we just did the third count
13 which was purposeful, knowingly murder with the lessers.

14 The fourth count alleges on or before or about
15 the 11th day of September, 1989, in the City of Newark
16 and the County of Essex, Defendant allegedly possessed a
17 certain firearm, a handgun, without first having obtained
18 a permit to carry the same.

19 Now, there, if you read the statute concerning
20 this particular count, it reads as follows: "Any person
21 who knowingly has in his possession any handgun without
22 first having obtained a permit to carry the same is guilty
23 of a crime." And the crime in which the Defendant in this
24 case regarding this particular fourth count is charged with
25 knowingly and unlawfully possessing a certain firearm, a

1 handgun, without first having obtained a permit to carry
2 the same. The three essential elements, all of which the
3 State must prove beyond a reasonable doubt before you can
4 find the Defendant guilty of this particular offense are
5 as follows: One, that there was a handgun capable of being
6 fired; two, that the Defendant knowingly possessed the
7 handgun; and three, that the Defendant did not have a
8 permit to possess the weapon. The first element was that
9 there was a handgun capable of being fired.

10 Now, another part of our statute simply means
11 that a handgun or defines it as any pistol, revolver or
12 other firearm originally designed or manufactured to be
13 fired by the use of a single hand. The second element is
14 that the Defendant knowingly possessed the handgun and I
15 already explained to you what knowing means so therefore,
16 I will not go over that for you. The third element is that
17 the State must prove that the Defendant did not have a
18 permit to possess such a weapon.

19 Therefore, if you find that the Defendant knowingly
20 possessed the weapon and that there is no evidence that the
21 Defendant had a valid permit to carry such a weapon, then
22 you may infer, if you think it is appropriate to do so,
23 based upon all the facts presented, that the Defendant did
24 have no such permit. However, note that as with all other
25 elements, the State always has the burden of showing and

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1 proving beyond a reasonable doubt the lack of a valid
2 permit and that you may apply the inference only if you
3 feel it is appropriate to do so after all the facts.

4 Now, in this particular case, as you'll recall
5 there is a piece of evidence I believe that was introduced
6 that you'll have with you, a certification from the County
7 Clerk indicating that a search of the records would show
8 that Mr. Moultrie did not have a permit and the reason for
9 all this was that there was an absence of such a required
10 permit. That's an essential element of the offense and
11 therefore, you also have to find, not from inference only,
12 that there is no permit in order for you to find the
13 Defendant guilty of this particular crime. Therefore, if
14 any of the elements of this --

15 When I say "possession," let me explain something
16 else about what possession means in the law. The word
17 "possess" as used in criminal statutes signifies a knowing
18 intentional control over a designated thing accompanied
19 by knowledge of its character. Therefore, a person must
20 know or be aware that he possessed the item in this case,
21 it's the gun or handgun, and that he must know what it is
22 that he possessed or controls.

23 Now, the possession can -- it can't be what we
24 would refer to as a passing control or merely a passing
25 control, that is, fleeting and uncertain in its nature.

1 In other words, to possess within the meaning of the law,
2 ladies and gentlemen, the Defendant must knowingly procure
3 or be aware of this control. Therefore, for a sufficient
4 period of time to be able to relinquish control if he
5 chose to do so.

6 Again, knowing, I already defined that for you,
7 it has the same meaning, I'm not going to repeat it.
8 Therefore -- and may I also indicate, a person may possess
9 an item that is, the gun, in this case even though it was
10 not physically on his person at the time of the arrest,
11 if the person had in fact at some time prior to his arrest
12 had control and possession over it. We can speak both of
13 possession, conscious knowing possession and the law does
14 recognize actual possession and knowing possession.

15 Now, the actual possession, ladies and gentlemen,
16 is where a person is in actual possession of a particular
17 article. That is, he knows what it is and that he has
18 knowledge of its character and only has it on his person
19 at a given time. Whereas, constructive possession, which
20 the law recognizes that possession may be such in itself
21 actual and a person who, with knowledge of its character,
22 knowingly has direct physical control over a thing at a
23 given time is in actual possession of it. Constructive
24 possession means possession in which the person does not
25 physically have the property, but though not on physically

1 one's person, he is aware of the presence of the property
2 and is able to exercise intentional control or dominion over
3 it. Therefore, a person who, although not in actual
4 possession, has knowledge of its character knowingly has
5 both the power and the intention at a given time to
6 exercise control over a thing either directly or through
7 another person or persons who are in constructive possession.

8 Therefore, if any of the elements of this crime
9 which I have just gone over with you have not been proven
10 to your satisfaction beyond a reasonable doubt, then your
11 verdict would be not guilty. If, on the other hand, you are
12 so satisfied beyond a reasonable doubt that the Defendant
13 knowingly possessed a handgun capable of discharge without
14 a valid permit, then, of course, your verdict would be
15 guilty.

16 Now, we have the last -- well, no, there are
17 two more counts. The fifth count is where the Defendant is
18 charged, allegedly, knowingly and unlawfully did possess
19 a certain weapon, a handgun, with the purpose to use it
20 unlawfully against the person of another at the alleged
21 time and place as indicated.

22 Now, the statute upon which this particular count
23 of the indictment is based reads as follows: "Any person
24 who has in his possession any firearm with a purpose to use
25 it unlawfully against the person of another is guilty of a

1 crime." In order for you to find the Defendant guilty of
2 possession of a firearm with the purpose to use it
3 unlawfully against the person of another, the State is
4 required to prove each of the following elements beyond a
5 reasonable doubt, and what are they? One, that what is
6 in evidence, I believe it's S-19, is a firearm; two, that
7 the Defendant possessed it, the gun; three, that Defendant's
8 purpose or conscious objective was to use the firearm
9 against the person or property of another; and the fourth
10 element is that the Defendant intended to use the firearm
11 in a manner that was proscribed or prohibited by law.

12 Now, a firearm, ladies and gentlemen, means any
13 handgun. It could also mean a rifle, shotgun, et cetera.
14 I'm not going to give you all of that, it also shall include,
15 without any limitations, any firearm which is in the nature
16 of an airgun. Well, we don't have that; so, I'm not going
17 to burden you with that. However, the important part is
18 that it is which can eject a bullet or missile smaller than
19 three-eighths of an inch in diameter within sufficient
20 force to injure a person and that's what a firearm is.

21 The second element of the offense is possession,
22 I just gone over that with you, it means the same thing,
23 actual possession, constructive possession and I will not
24 burden you with that again.

25 The third element is that the Defendant's

1 conscious objective was to use the firearm against the
2 person of another and purposely, again, ladies and
3 gentlemen, I've gone over that with you and I won't repeat
4 it for you, it has the same meaning. The fourth element
5 is that the Defendant intended to use the firearm unlawfully.

6 Now, the mental element of the unlawful purpose,
7 it requires a special finding by you, ladies and gentlemen,
8 that the Defendant possessed the weapon with the conscious
9 objective or specific intent to use it to commit an illegal
10 act. That is, one which is proscribed, prohibited by law
11 and not for some other purpose. Intent is defined as the
12 purpose to do something, it's a resolution to do a
13 particular act or accomplish a certain thing. Intent,
14 ladies and gentlemen, is a condition of the mind which
15 cannot be seen, it can only be determined by inferences,
16 conduct, words or acts.

17 Therefore, if you are satisfied -- well, let me
18 also indicate that the purpose or the purpose of the
19 possession is for an unlawful purpose, ladies and gentlemen.
20 It simply means that a gun may have a lawful purpose if
21 used in a proper manner but also, if it is used for an
22 lawful purpose or the intent was to be used unlawfully or
23 for some unlawful purpose, that's an element for your
24 consideration. Therefore, if you are satisfied beyond a
25 reasonable doubt that the State has proven each of the

1 elements of this offense as I have already defined those
2 elements to you, beyond a reasonable doubt; then, of
3 course, you would find the Defendant guilty. If, on the
4 other hand, the State has not proved all these various
5 elements of this particular offense beyond a reasonable
6 doubt as I have defined these elements to you, then of
7 course, you would find the Defendant not guilty of this
8 offense.

9 Now, I'd also like to indicate that the unlawful
10 purpose, ladies and gentlemen, as I attempted to explain to
11 you is suggested by the evidence and, of course, you may not
12 convict the Defendant upon this particular count of the
13 unlawfulness of some -- in your own -- in other words,
14 from your own opinion as to what unlawfulness may be, you
15 can't interject some speculation on that. Is that clear,
16 ladies and gentlemen?

17 THE JURY: Yes.

18 THE COURT: All right.

19 Now, we have, I believe, the last count and we
20 should -- let me go over that with you which is the sixth
21 count that on the -- specifically here, on the 11th day of
22 September, 1989, in the City of Newark, that the Defendant
23 allegedly, without lawful authority, removed himself from
24 the lawful custody and control of the Newark Police
25 Department.

1 Well, ladies and gentlemen, there, again -- to
2 indicate to you that although I think there was in the
3 opening that the Defendant admitted that he escaped, I
4 may also indicate to you, regardless of that it is still
5 your duty and your obligation to make a finding of either
6 not guilty or guilty, regardless of what the Defendant may
7 have stated.

8 So, with that in mind, let me explain to you what
9 the law is regarding escape. Escape is where a person
10 commits the crime, I might say, without lawful authority
11 where he removes himself from official detention or he
12 fails to return. Therefore, in order to obtain a conviction
13 of this particular charge, the State must prove each of the
14 following elements beyond a reasonable doubt, and what are
15 they? One, that the Defendant was the subject of some
16 official detention; and two, that the Defendant removed
17 himself from that official detention; and three, that he
18 acted without lawful authority. So, those are the elements
19 and also, of course, as always, the Defendant acted knowingly
20 that he knew what he was doing and in actuality, ladies and
21 gentlemen, official detention basically means arrest or
22 confinement on a charge of -- well, an arrest or confinement.

23 Here, the State's allegations is that the
24 Defendant was under arrest and as you recall and I'm not
25 going to belabor it, where he was and under the circumstances

1 as to whether or not he was confined there, that's also
2 for your finding from all of the facts.

3 Now, it doesn't have to be that an arrest required
4 formally the spoken word or that a person need be handcuffed,
5 although in this case, you heard evidence whether you
6 believe it or not, that's for you, you may consider that;
7 but what it does require simply is a form of restraint of
8 a person, any restriction of his liberty of movement.
9 Therefore, an individual fleeing from an officer would not
10 be guilty of an escape unless he had first had his liberty
11 or movement restrained by that particular officer.

12 Put another way, a person under arrest must know
13 that he's being detained, that he is in the custody of the
14 officer and he is therefore not free to leave or, even if
15 he wishes to do so, to remove oneself from official
16 detention is to engage in conduct which results in his
17 gaining freedom and custody without lawful authority. That
18 means without the legal right to engage in such conduct
19 knowingly. Well, you already know about that and I've
20 already explained what knowingly means with respect to the
21 nature of his conduct and attendant circumstances.

22 Therefore, a conviction for the crime of escape
23 would require proof beyond a reasonable doubt that the
24 Defendant was under arrest or that he was confined or his
25 freedom or his liberty was taken away and that he engaged

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1 in conduct which resulted in his own removal from custody
2 and that he had no legal right to do so and that he acted
3 knowingly. And of course, you may also consider that if
4 he removed himself after an arrest, that is also for your
5 consideration.

6 Now, therefore, ladies and gentlemen, you have
7 the elements of escape. Although there is a lot more to
8 it, I don't believe it's necessary for your determination
9 here about the manner of the arrest and so forth; so, I'm
10 not going to go into that. If you find from all the proofs
11 that have been submitted, and according to the elements that
12 I have given to you that the State has sustained its burden
13 of proof regarding these elements beyond a reasonable doubt,
14 then you would find the Defendant guilty. If, on the other
15 hand, ladies and gentlemen, you find that the State has
16 failed to prove the elements as I have defined them to you,
17 as to the crime of escape and even though the Defendant may
18 have admitted in opening, you know, that he did escape,
19 still and all, you would have to find the Defendant not
20 guilty, so therefore, you have that.

21 Now, I also may like to refer to a few matters
22 and then we'll come to the conclusion. I'd like to bring
23 to your attention a few facts such as -- well, let's refer
24 to identification. I think it's important for you to know
25 that the Defendant, as part of his general denial of guilt,

1 contends that the State has not presented sufficient
2 reliable evidence to establish beyond a reasonable doubt
3 that he may be the person who committed the alleged offense.

4 I would like to indicate this to you, ladies
5 and gentlemen, where the identity of a person -- and
6 we're referring here now to an out-of-court identification
7 and an in-court identification, that's why I'm giving this
8 to you because there was some reference to photos, if you
9 recall. Where the identity of that person who committed
10 the crime, if it is an issue, the burden of course in
11 proving that identity is always upon the State and the
12 State must prove beyond a reasonable doubt that it was this
13 Defendant who committed the crime. And the Defendant neither
14 has the burden nor the duty to show that the crime, if
15 committed, was committed by someone else or to prove the
16 identity of that other person.

17 Therefore, you must determine and not only
18 whether the State has proved each and every element of the
19 offense or offenses that I've just gone over with you in
20 the various counts of the indictment beyond a reasonable
21 doubt, you also have to be concerned as to whether or not
22 the State has proved beyond a reasonable doubt that this
23 Defendant is the person who committed the crime and in
24 order to meet its burden with respect to the identification
25 of the Defendant, the State has presented the testimony of

1 various witnesses and those names you will recall, ladies
2 and gentlemen. You will also recall that these witnesses
3 identified the Defendant in court as the person who committed
4 the offense. According to the witness or witnesses, the
5 identification of the Defendant in court is based upon the
6 observations and the perceptions which he or she had -- may
7 have made of the Defendant on the scene at the time of the
8 alleged offense.

9 Therefore, ladies and gentlemen, it is also your
10 function as jurors to determine what weight, if any, to
11 give to this testimony. You must also decide whether it
12 is sufficiently reliable testimony -- evidence upon which
13 to conclude that this Defendant is the person who committed
14 the offense or offenses charged and in going about your
15 task, you should consider the testimony of the witness in
16 light of certain customary criteria concerning the
17 credibility as I have already explained to you.

18 It is also particularly appropriate, ladies and
19 gentlemen, that you consider the capacity or the ability
20 of the witnesses or witness to make the observations or,
21 for that matter, the perceptions as you gauge it to be
22 and that you consider the opportunity which each witness
23 had at the time and under all of the attendant circumstances
24 for seeing that which he or she says that either he or she
25 saw or that which he or she says that either he or she

1 perceived with regard to either his or her identification
2 of the person who committed the alleged offense or offenses.

3 Now, ladies and gentlemen, unless the in-court
4 identification results from the observations or the
5 perceptions of the Defendant with that witness or witnesses
6 during the commission of the crime rather than being the
7 product of an impression gained at the out-of-court
8 identification procedure, it should be afforded no weight.
9 By that, I mean that if there was some out-of-court
10 procedure, if you will recall the testimony about photos
11 and et cetera, that's what we're referring to. Therefore,
12 the ultimate issue of the trustworthiness of in-court
13 identifications is also for you to decide.

14 If, after a consideration of all of the evidence
15 you have a reasonable doubt as to the identify of the
16 Defendant as the person present at the time and place of
17 the crime, then, of course, you would find him not guilty.
18 If, however, after a consideration of all of the evidence
19 you are convinced beyond a reasonable doubt of his presence
20 at the scene, you will then consider whether the State has
21 proved each and every element of the offense or offenses
22 beyond a reasonable doubt.

23 In addition, I also would like to refer shortly
24 to some testimony about expert witnesses and ladies and
25 gentlemen, as a general rule of evidence, witnesses can

1 testify only as to facts known by that particular person.
2 This rule ordinarily does not permit the testimony of a
3 witness to be perceived as evidence; however, there is
4 an exception to this rule in an expert witness who may
5 give his opinion as to any matter which he is versed which
6 is material to the case. Or put another way, in legal
7 terminology, ladies and gentlemen, an expert witness is
8 a witness who has some special knowledge, skill, experience
9 or training that is not possessed by the ordinary juror
10 and who thus may be able to provide assistance to the jury
11 in its fact-finding duties.

12 You'll remember, I gave you some instructions
13 about that to some witnesses who qualified as an expert
14 and, of course, you'll recall in this case, there were
15 some officers, I believe a lieutenant/sergeant, one
16 doctor, then Officers Marshall and Dobak, as I recall it,
17 and also, Dr. Singh, who is a forensic pathologist. They
18 were called as experts and of course, they did testify;
19 but let me indicate this, you are not bound by such experts'
20 opinion but of course, consider or you should consider
21 each opinion and give it the weight in which you may deem
22 it is entitled, whether that be great or slight or you
23 may reject it.

24 Now, in examining each opinion of each expert,
25 ladies and gentlemen, you may consider the reasons that

1 were given for it, if any, and you may also consider the
2 qualifications and, of course, as always, the credibility
3 of that particular expert witness. Always keep in mind,
4 ladies and gentlemen, it is always within the special
5 function of the jury to decide the facts upon which the
6 answer of that expert or experts is actually based. That
7 is, did they exist and the value or the weight of the
8 opinion of the expert is dependent upon and no stronger
9 than the facts upon which it was predicated.

10 Now, the Defendant in this case, Mr. Moultrie,
11 chose not to be a witness and I would like to indicate to
12 you, ladies and gentlemen, it is the constitutional right
13 of a defendant to remain silent. I do charge you that you
14 are not to consider for any purpose or in any manner
15 whatsoever in arriving at your verdict the fact that the
16 Defendant, Mr. Moultrie, did not testify, nor should that
17 fact enter into your deliberations or discussions at any
18 time or in any manner. The Defendant is entitled to have
19 the jury consider all of the evidence and he is entitled
20 to his presumption of innocence even if he does not
21 testify as a witness.

22 Now, I do charge you, ladies and gentlemen,
23 that is the law that certain inferences may be drawn by
24 you, the jury, from facts which are proven by direct
25 evidence. However, ladies and gentlemen, you are -- you

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1 may not, may not further infer another fact from the
2 inference that you had drawn at first. An inference of
3 fact, ladies and gentlemen, may not rest upon an inference.
4 Simply put, you cannot build an inference upon an inference
5 upon an inference. That is, the inference must rest upon
6 the facts clearly proven by direct evidence. Any
7 presumption of fact must be an immediate inference to be
8 drawn from the facts proven.

9 Now, where there is a conflict of the testimony
10 of the witnesses, that conflict, of course, you will have
11 to decide. You will have to determine where the truth
12 lies and what in fact occurred at this particular time and
13 place.

14 Now, in connection with that or I should say,
15 in connection with your consideration of that particular
16 problem, of course, you will always have in mind the
17 attitude and demeanor of the various witnesses who appeared
18 on the stand, the impression that they made upon you in
19 giving their testimony as to the truthfulness of their
20 testimony. You may consider the interest they have in the
21 outcome of the case and in general, ladies and gentlemen,
22 you will take into consideration any factor which, in your
23 judgment, bears upon the truth of what occurred at that
24 particular time and place.

25 As I have already indicated to you, ladies and

1 gentlemen, why, in considering the evidence, you are not
2 to be controlled by statements made either by the attorney
3 for the State or the attorney for the Defendant as to
4 either her or his recollection of that testimony unless,
5 of course, those statements coincide with your own
6 recollection.

7 Now, ladies and gentlemen, you, the jury, are
8 the sole judges of all the facts and it is, as I've
9 indicated to you, your own recollection of the testimony
10 that must control. The solemn oaths that you have taken
11 as jurors, ladies and gentlemen, oblige you to render a
12 true verdict according to the evidence and a verdict cannot
13 be true unless it is in accordance with the evidence.

14 In arriving at your verdict, you are to do so
15 without any prejudice or sympathy, without passion, without
16 favoritism, without fear.

17 Now, as to the verdict in this case, of course,
18 it must be unanimous. That simply means that in your
19 estimation, if the State has carried its burden and
20 established the Defendant's guilt beyond a reasonable doubt;
21 then, of course, you will return a verdict by saying, we
22 find the Defendant guilty. On the other hand, if the
23 State has failed to prove his guilt beyond a reasonable
24 doubt, then you will return a verdict by saying, we find
25 the Defendant not guilty.

1 Now, at this posture, ladies and gentlemen, we're
2 going to take a break and when we do come back, I will then
3 explain to you the verdict form and I'll go over each one
4 with the lessers and the labels and how you are to consider
5 that. It's only to be used to jog your memory and that's
6 what we'll do and then after that, why, we'll pick the two
7 alternates and then we'll have the 12 and then we'll make
8 the selection of the jury foreperson and then I will give
9 you just another one minute or two of further instructions
10 and then it will be those 12 who will be able to deliberate.

11 So, until that point, we want you back here just
12 about five minutes of what, two, give you just about an hour
13 and then why, the 12 of you will start to deliberate after
14 that. Is that clear?

15 THE JURY: Yes.

16 THE COURT: Now, at this posture, I'd like to
17 have my officers sworn in at this moment. You are not to
18 consider this case or deliberate upon it because the
19 deliberations will only take place after the 12 have been
20 selected in the jury room with all the evidence and the
21 verdict sheet for deliberation. Is that understood?

22 THE JURY: Yes.

23 THE COURT: Up to that point, there are no
24 deliberations at all that go on in your own head or between
25 yourselves or anyone else or allow anyone to speak to you

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1 about the case. Is that clear?

2 THE JURY: Yes.

3 THE COURT: Very good.

4 (Whereupon, Court Officers are sworn.)

5 THE COURT: All right, thank you.

6 Any objection if we break for lunch at this
7 point?

8 MR. GONZALEZ: No, Judge.

9 MS. FURLONG: No, Judge.

10 THE COURT: All right, fine.

11 All right, please, escort the jury out.

12 Within one hour, please, be back here.

13 (Whereupon, jury is excused for the luncheon
14 recess.)

15 THE COURT: All right, all the jurors are out.

16 Yes, as to the charges?

17 MS. FURLONG: Yes, Judge, the only discrepancy
18 that I made note of was as to reference of your initial
19 charge as to circumstantial versus direct evidence. I
20 believe you said that you cannot find the Defendant guilty
21 on circumstantial evidence alone and that's not my
22 understanding of the law.

23 THE COURT: I thought I did --

24 MS. FURLONG: Within the body --

25 THE COURT: You either find them or not find them.

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1 MS. FURLONG: Within the body of the murder
2 charge, and I'm reading the current one from the Attorney
3 General's Office, it says, "Circumstantial evidence, of
4 course, should be scrutinized carefully; however, it may be
5 sufficient to convict. In many instances, it may be more
6 certain, satisfying and persuasive --

7 THE COURT: I thought I did that.

8 MS. FURLONG: But you said, Judge, circumstantial
9 evidence alone is not enough and that's not the case.

10 THE COURT: If you can find it, let me see if I
11 did or not. If not, I will certainly go over it.

12 I thought I did when I gave the general
13 instruction of circumstantial and direct, that you can
14 either find him guilty or not but if not, I certainly will
15 tell them but if not, anything else?

16 MS. FURLONG: No, Judge.

17 MR. GONZALEZ: No, Judge.

18 THE COURT: All right. With that, we'll see you
19 promptly here within one hour.

20 MR. GONZALEZ: Fine, Judge.

21 (Whereupon, Court in luncheon recess.)

22 THE COURT: All right, do we have our jurors in?

23 THE COURT OFFICER: Yes, Judge.

24 THE COURT: And what we'll do is we'll finish up
25 with that and then we can have them start to work and then

1 in the meantime, I had the court stenographer go over the
2 charge and apparently, what you indicated about circumstantial
3 evidence, Ms. Furlong, has been charged and I think you did
4 inform Ms. Furlong of that?

5 THE COURT REPORTER: Yes, I did.

6 MS. FURLONG: Judge, just for the record, the
7 State is satisfied with the instructions.

8 THE COURT: All right. So therefore, we did
9 cover that and -- all right. So therefore, there are no
10 other exceptions to the jury charge?

11 MS. FURLONG: No, your Honor.

12 MR. GONZALEZ: No, Judge.

13 THE COURT: And the verdict form?

14 MS. FURLONG: No, Judge.

15 MR. GONZALEZ: No, your Honor.

16 THE COURT: All right. Therefore, we can complete
17 this matter, thank you.

18 All right, bring the jury out.

19 2:15 p.m.

20 (Whereupon, the following takes place within
21 the presence of the jury.)

22 THE COURT: All right. We have all of our 14
23 jurors in the jury box. Good afternoon, ladies and
24 gentlemen.

25 THE JURY: Good afternoon.

1 THE COURT: All right. At this posture, why --
2 well, of course, before we do that, let me explain this
3 verdict form and I'll hold it up for you. You will have a
4 verdict form when you go in there. The original of the
5 verdict form, of course, must be handed back and I'll
6 explain that in a moment; but let's go over it.

7 The two sheets, each one of you will have one,
8 there'll be an original that will be returned by the
9 foreperson, whoever it may be. First, count one, it
10 indicates -- over the name and the indictment number,
11 first-degree kidnapping, in brackets under that which I
12 refer to as a label, (did unlawfully remove and confine
13 Victor L. Mott for the purpose of facilitating the
14 commission of murder, but the Defendant did not release
15 the victim unharmed and/or in a safe place prior to
16 apprehension.) Either not guilty or guilty.

17 Count two is the felony murder, in brackets,
18 (while in the course of committing kidnapping upon the
19 person of Victor L. Mott or in an attempt there at, or
20 during flight therefrom, did kill and murder the said
21 Victor L. Mott.) Either not guilty or guilty.

22 Count three, murder, and in brackets, (did
23 purposely or knowingly murder Victor L. Mott by his own
24 conduct.) Either not guilty or guilty.

25 Now, under that is the lesser-included offense²

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1 which I've already explained to you and it states, If you
2 find the Defendant not guilty of murder, that is on the
3 count three, then consider the lesser-included offense of
4 aggravated manslaughter, in brackets, (did recklessly cause
5 the death under circumstances manifesting an extreme
6 indifference to human life.) Either not guilty or guilty.

7 Under that, if you find the Defendant not guilty
8 of aggravated manslaughter, then consider the lesser-included
9 offense of manslaughter, in brackets, (recklessly committing
10 a homicide.) Either not guilty or guilty.

11 You will go on to count four, third-degree
12 unlawful possession of a weapon, in brackets, (did knowingly
13 and unlawfully possess a certain firearm, a handgun, without
14 first having obtain a permit to carry the same.) Either
15 not guilty or guilty.

16 Count five, second-degree possession of a weapon
17 for an unlawful purpose, in brackets, (did knowingly and
18 unlawfully possess a certain weapon, a handgun, with a
19 purpose to use it unlawfully against the person of another.)
20 Either not guilty or guilty.

21 Then count six, third-degree escape, in brackets,
22 (did without lawful authority remove himself from the
23 lawful custody and control of the Newark Police Department.)
24 Either not guilty or guilty.

25 Now, that is the form of the -- or I should say,

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1 the verdict form with the labels thereunder.

2 Now, this, what I just referred to, the verdict
3 form, why, ladies and gentlemen, that, including the
4 lesser-included offense under count three which is the
5 purposeful, knowingly murder count that the purpose or
6 one of the purposes of the written sheet is to give you
7 a short descriptive label as to each offense as I indicated
8 to you.

9 Now, the descriptions are merely labels, ladies
10 and gentlemen, and of course, they are not to be considered
11 as constituting all of the elements for each particular
12 offense. You are specifically to recall all of the elements
13 of each offense and of course, the entire charge or my
14 instructions that I have given to you in arriving at your
15 verdict. These short descriptive labels which I referred
16 to, ladies and gentlemen, on the written verdict sheet or
17 form, why, that serves only to help you jog your memory as
18 to everything I've been telling you about as to each
19 offense, the elements of each offense and the lesser-included
20 offenses also.

21 Therefore, always keep in mind and be mindful
22 that it is my total charge, the entire charge that you must
23 refer to in determining whether the State has met its burden
24 of proving each element of each offense beyond a reasonable
25 doubt in order for you to change the presumption of

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1 innocence to one of guilt.. Is that clear?

2 THE JURY: Yes.

3 THE COURT: All right. With that, we will pick
4 out two alternates, please.

5 (Whereupon, jurors No. 4 and 3 are picked as
6 the alternate jurors.)

7 THE COURT: All right, just step there in the
8 back for a moment, all right.

9 With that, I will now appoint a foreperson who
10 will lead the discussions in the jury room and of course,
11 the foreperson in this case will be you, Ms. Williams,
12 Juror No. 1, who will, of course, be the one that will
13 lead the discussions in the jury room as I indicated. It
14 will be you, Ms. Williams, as the foreperson, that shall
15 write down anything that -- on a piece of paper in the
16 event there's any questions or anything that you may have
17 in mind.

18 My Court Officer, or one of my Court Officers,
19 will indicate to you how that red light works in the jury
20 room. If it becomes necessary, ladies and gentlemen, and
21 specifically Ms. Williams, that -- to return to the
22 courtroom for whatever reason, why, you never, never let
23 me know or my Court Officers or for that matter, anyone
24 else, know how you stand as to your verdict at that
25 particular time. Is that clear?

1 THE FOREPERSON: Yes.

2 THE COURT: Simply put, you never give me a
3 tally of the vote or for that matter, my Court Officer
4 or anyone else. When you have arrived and reached a
5 verdict, you will indicate that by telling my Court Officer
6 that you have arrived at a verdict but do not say what the
7 verdict is. The verdict itself, of course, will have to be
8 announced by you, Ms. Williams, the Foreperson, Juror No. 1,
9 who will then rise and give the verdict when my Court Clerk
10 asks for it after you return to the jury room.

11 Of course, this Court will always be at your
12 disposal to answer any questions that may arise during the
13 course of your deliberations. As I indicated to you, you
14 will start your deliberations immediately when all 12 of
15 you are in that jury room together with the verdict sheets
16 as I just went over and together with the evidence.

17 Now, there are a lot of items of evidence which
18 have been marked and then there are some items which have
19 not been marked. As I told you when you were being
20 selected, they may have served or did serve their purpose
21 as you recall, to refresh somebody's memory so that
22 something that is not in evidence, a police report or
23 anything like that, that is not in evidence so do not
24 request it because if you do, the answer will be no.
25 Is that clear?

1 THE FOREPERSON: Yes.

2 THE COURT: So, that will save a little time.
3 You have the evidence, there are many pieces of items in
4 evidence and you'll have them all with you. We'll send
5 the item of the gun -- I don't think there's any -- that
6 was S-19, I believe, there were no -- are there any live
7 rounds here?

8 MS. FURLONG: One, your Honor.

9 MR. GONZALEZ: One, Judge, yes.

10 THE COURT: Well, that one will come in when you
11 request it, we will not send both in at the same time. Is
12 that clear?

13 THE FOREPERSON: Yes.

14 THE COURT: Sometimes things become very heated.
15 I'm only joking, that's an aside, but when you want the
16 other, we will send it in and send the gun out; otherwise,
17 you'll have all the evidence in with you at the same time.

18 Your deliberations, as I indicated, will start
19 and we will let it continue and when you want a break or
20 whatever, let me know. We generally break, as you know,
21 at 4:00 or 4:15, generally around 4:00.

22 Now, we don't want to rush you into anything
23 because you have tomorrow; so, we don't want to put any
24 pressure on you one way or the other; however, if you feel
25 another five, ten minutes may help, always ask and we'll

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1 let you stay but ordinarily, we take our recess until
2 tomorrow and that's how we'll move along.

3 Simply keep in mind that when the 12 of you are
4 in the jury room and the door is locked, that is when you
5 start your deliberations with the verdict form and all
6 the evidence and, of course, you'll have a manila envelope
7 with some papers and note pads and pencils.

8 All right. With that, you may -- the officers
9 were sworn earlier, I believe, and you may start your
10 deliberations.

11 You'll check all the evidence, Ms. Furlong and --

12 MR. GONZALEZ: Yes, Judge.

13 THE COURT: Make sure that gets in together with
14 the verdict sheets.

15 I'll see the two alternates at sidebar while
16 we're waiting for a moment. Please, come up to the bar.

17 You may take the jury in, please.

18 The reason why we have two alternates is, in the
19 event, why, that one gets sick or incapacitated, it is
20 necessary for one or both of you to go into the jury room
21 to deliberate.

22 Now, it's important that you do not think how
23 this case will be decided. Is that clear?

24 MR. REILLY: Yes.

25 THE COURT: Keep an open mind because if your

1 services are needed, one or the other, then those
2 deliberations start as if they never started. That's
3 why it's important to go in with an open mind. You may
4 talk about the weather, the baseball games or whatever,
5 anything except for the case. Is that clear?

6 All right. They have a room for you where you
7 may stay. Also, keep in mind that when there's a recess,
8 you'll be called in and if there's a question, you'll be
9 called in. You'll hear the question and a response to
10 any and all questions that may be set forth by the jury.
11 If we go overnight, you'll be back here tomorrow; so,
12 you're with us until a verdict is returned. In fact,
13 you'll be here when the verdict is returned. Is that
14 clear? All right, thank you very much.

15 (Whereupon, jury deliberations commence at
16 2:30 p.m.)

17 (Whereupon, Court hears other calendar matters.)
18 4:05 p.m.

19 (Whereupon, the following takes place outside
20 the presence of the jury.)

21 THE COURT: All right. Ms. Furlong, Mr. Gonzales,
22 Mr. Moultrie, it's now just a little after four, and we've
23 heard nothing at all from the jury in their deliberations
24 and they started when?

25 THE COURT REPORTER: 2:30.

1 THE COURT: When?

2 THE COURT REPORTER: 2:30.

3 THE COURT: You can either stay a little longer
4 if you'd like or we can call them out, I suppose, or send
5 someone in and indicate, one of my Court Officers in and
6 get an idea whether they want to stay a little longer or
7 whether they want to come back tomorrow.

8 MS. FURLONG: Judge, I think you should send
9 in a Court Officer and see what the situation is and go
10 with that.

11 THE COURT: All right. Mr. Gonzalez, do you have
12 any problem with that?

13 MR. GONZALEZ: Judge, as I indicated to you, I
14 have a personal matter that I would like to take care of;
15 however, if -- you know, it depends on what they want to do.

16 MS. FURLONG: Judge, I have no objection if they
17 feel comfortable with coming back tomorrow, I have no
18 objections.

19 THE COURT: Well, let's find out. If they're
20 rather close, fine; if they say they want to stay another
21 half an hour, an hour or come back, we'll see.

22 MR. GONZALEZ: Also, Judge, I don't want them
23 to feel that they have to decide today under pressure.

24 THE COURT: I understand that, that's the problem
25 and that's why I have you here.

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1 MR. GONZALEZ: Okay.

2 THE COURT: I can bring them out rather than
3 send a Court Officer to indicate whether they'd like to
4 have more time or come back tomorrow and send them in
5 and then you'll know exactly where they are.

6 MR. GONZALEZ: Fine.

7 THE COURT: I think I'd rather do it that way.

8 MR. GONZALEZ: Okay.

9 MS. FURLONG: Fine, Judge.

10 THE COURT: So, let's bring them out for a
11 moment and get my two alternates.

12 Or on the other hand, I could let them go another
13 10, 15 minutes.

14 MR. GONZALEZ: Judge, maybe we should ask them
15 at this point in time.

16 THE COURT: Well, Ms. Furlong?

17 MS. FURLONG: Judge, I have no problem with
18 asking them. It's just a general question, do they want
19 to continue or do they want to come back tomorrow? Without
20 getting into where they --

21 THE COURT: Well, I'll just indicate to them that
22 if they need a little bit more time, if they feel another
23 15 minutes, half hour would help, fine; if not, we can --

24 MS. FURLONG: Right, Judge.

25 THE COURT: Maybe that will resolve our problem.

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1 THE COURT OFFICER: Judge, we have a light.

2 THE COURT: You see, you never know. That
3 resolves the problem, we won't have to ask them a question,
4 we'll see what it is.

5 (Pause)

6 THE COURT OFFICER: Verdict.

7 THE COURT: Verdict, that resolves the problem.

8 THE COURT OFFICER: Bring them out?

9 THE COURT: Yes, we have our two alternates here
10 and everybody's present and we can take a verdict, yes,
11 very good.

12 4:10 p.m.

13 (Whereupon, the following takes place within
14 the presence of the jury; jury verdict.)

15 THE COURT: All right. We have all our 12
16 deliberating jurors and our two alternates, fine.

17 From what I understand, ladies and gentlemen,
18 you have arrived at a verdict, Ms. Williams?

19 THE FOREPERSON: Yes, we have, your Honor.

20 THE COURT: All right, thank you.

21 THE COURT CLERK: Please, stand.

22 Madame Forelady, in the matter of the State of
23 New Jersey versus Derek Moultrie, Indictment No. 148-1 of
24 the '90 term, have you agreed upon a verdict?

25 THE FOREPERSON: Yes, we have.

1 THE COURT CLERK: Is this verdict unanimous?

2 THE FOREPERSON: Yes, it is.

3 THE COURT CLERK: What is your verdict as to
4 count one, first-degree kidnapping, did unlawfully remove
5 and confine Victor L. Mott for the purpose of facilitating
6 the commission of murder, but the Defendant did not release
7 the victim unharmed and/or in a safe place prior to
8 apprehension; how do you find?

9 THE FOREPERSON: Guilty.

10 THE COURT CLERK: As to Count No. 2, felony
11 murder, while in the course of committing kidnapping upon
12 the person of Victor L. Mott or in an attempt there at,
13 or during flight therefrom, did kill and murder the said
14 Victor L. Mott, how do you find?

15 THE FOREPERSON: Guilty.

16 THE COURT CLERK: Count No. 3, murder, did --

17 MS. MOULTRIE: No, that's bullshit.

18 THE COURT: All right, just one second.

19 MS. MOULTRIE: No, no.

20 THE COURT: Please.

21 MS. MOULTRIE: No, no, you can't do this to my
22 brother. No, no, no, no, no. You bitch.

23 THE COURT: Ms. Williams, please, be seated.

24 MS. MOULTRIE: No, that's my only brother, no,
25 that's my -- don't do this to us, no.

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1 (Whereupon, Court Officer approaches members of
2 the Moultrie family.)

3 MS. MOULTRIE: Get off of me, get off of me.

4 A FAMILY MEMBER: Relax, Missy.

5 MS. MOULTRIE: Get off of me, get off of me.

6 No, get off of me, get off of me. No, get off of me, no,
7 no. Please, don't do this to me.

8 MRS. MOULTRIE: My son is not a killer.

9 THE COURT: Please, please.

10 MRS. MOULTRIE: He's not a killer. I want to
11 stay here with my son.

12 A FAMILY MEMBER: I'll be fine, you all go ahead.

13 (Whereupon, Court Officers escort Ms. Moultrie
14 from the courtroom.)

15 (Whereupon, Ms. Moultrie enters.)

16 MS. MOULTRIE: I'm gonna appeal.

17 (Whereupon, Court Officers escort Ms. Moultrie
18 from the courtroom.)

19 THE COURT: All right, we'll continue, please.

20 THE COURT CLERK: Okay.

21 THE COURT: Count three, please, Ms. Williams.

22 THE COURT CLERK: Did purposely or knowingly
23 murder Victor L. Mott by his own conduct, how do you find?

24 THE FOREPERSON: Guilty.

25 THE COURT CLERK: Count No. 4, third-degree

1 unlawful possession of a weapon, did unlawfully possess
2 a certain firearm, a handgun, without first having obtained
3 a permit to carry the same, how do you find?

4 THE FOREPERSON: Guilty.

5 THE COURT CLERK: Count No. 5, second-degree
6 possession of a weapon for an unlawful purpose, did knowingly
7 and unlawfully possess a certain weapon, a handgun, to
8 purposely use it unlawfully against the person of another,
9 how do you find?

10 THE FOREPERSON: Guilty.

11 THE COURT CLERK: Count 6, third-degree escape,
12 did without lawful authority remove himself from the lawful
13 custody and control of the Newark Police Department, how do
14 you find?

15 THE FOREPERSON: Guilty.

16 THE COURT: Please, be seated.

17 MRS. MOULTRIE: My son, my son, my son. Oh, my
18 son. Oh, my son, my son.

19 (Whereupon, Court Officers approach members of
20 the Moultrie family.)

21 (Whereupon, Ms. Moultrie enters.)

22 A FAMILY MEMBER: Leave my mother alone, leave
23 my mother alone. Get off of her, get off of her.

24 MS. FURLONG: Could we excuse the jury?

25 (Whereupon, Defendant stands.)

1 A FAMILY MEMBER: I'm doin' okay.

2 Get off of me, God damn it. Just don't touch me,
3 I'm okay. I'm not doin' -- you don't hear me hollerin',
4 you don't hear me actin' like a fool. Just don't put your
5 hands on me. I'm not goin' nowhere, I'm --

6 THE DEFENDANT: You made me a murderer.

7 Hold it, hold it.

8 I didn't kill nobody.

9 THE COURT: Just one second, Mr. Moultrie.

10 The two alternates here --

11 Let her sit there, they'll be quiet. Sit there.

12 MRS. MOULTRIE: Why do I have to move?

13 (Whereupon, Court Officers approach members of
14 the Moultrie family.)

15 A FAMILY MEMBER: Get off of me, get off of me.

16 (Whereupon, Court Officers approach the Defendant.)

17 MRS. MOULTRIE: Leave him alone. Hold it.

18 THE COURT: Hold it, hold it.

19 MRS. MOULTRIE: Derek, sit down, Derek, sit down.

20 THE COURT: Wait a minute, wait a minute.

21 MRS. MOULTRIE: Sit down, Derek.

22 THE DEFENDANT: If I was gonna do something, I
23 would have done it.

24 MRS. MOULTRIE: I'm not going anywhere.

25 THE DEFENDANT: Don't let them touch my family,

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PENGAD CO., BAYONNE, N.J. 07002 - FORM FED-35

1 okay?

2 A COURT OFFICER: Sit down, sit down.

3 THE COURT: Officers, Officers.

4 THE DEFENDANT: Would you stop.

5 THE COURT: Let him sit down, let him sit there.

6 MRS. MOULTRIE: Okay, Derek, everything's gonna
7 be okay, everything will be all right.

8 He's not going anywhere, Officer.

9 THE DEFENDANT: Get off of me, man.

10 MRS. MOULTRIE: Come on, let's go. They ain't
11 got to treat him like that.

12 Cool it, Derek, we all right, Derek.

13 Let me go and I won't do nothing.

14 A COURT OFFICER: We're gonna lock her up if she
15 doesn't --

16 MS. MOULTRIE: I'm in the --

17 MRS. MOULTRIE: You're making it worse.

18 MS. MOULTRIE: No, you're making it worse.

19 Get off of my brother, you.

20 THE DEFENDANT: I'm tryin' to tell you, you want
21 to go?

22 A COURT OFFICER: You don't tell us, we tell you.

23 THE DEFENDANT: That's my damn family.

24 A COURT OFFICER: Ma'am, step outside, step
25 outside.

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PENGAD CO., BAYONNE, N.J. 07002 - FORM

1 MRS. MOULTRIE: Derek, everything's all right.

2 THE DEFENDANT: I'm all right, don't worry about
3 me.

4 (Whereupon, the Moultrie family is escorted from
5 the courtroom.)

6 THE DEFENDANT: Damn, damn.

7 Your family ain't here cryin' and all that, you'd
8 do the same damn thing. I'm bein' convicted of something
9 I didn't fuckin' do. I should have took that fuckin' stand,
10 man, shit. Damn, I don't believe this.

11 (Whereupon, the Moultrie family enters.)

12 THE DEFENDANT: You got to go home, I'm all right.

13 (Pause)

14 4:20 p.m.

15 THE COURT: Get the jury back in the jury box.

16 Mr. Moultrie, are you all right?

17 THE DEFENDANT: All right, yeah. It's not right,
18 your Honor, I should have --

19 (Whereupon, the Defendant stands.)

20 THE COURT: Sir, please, get over here.

21 THE DEFENDANT: I should have -- I'm gonna appeal,
22 I should have taken that stand. It's not right.

23 THE COURT: Please, sir, just a moment.

24 He's all right. Sit down.

25 THE DEFENDANT: You're messin' with my family.

1 THE COURT: Your family will be all right, just
2 relax.

3 THE DEFENDANT: It's not right, your Honor, I
4 ain't no killer.

5 THE COURT: Sir, please.

6 All right, I want to have the jury polled and
7 then after that, we'll discharge the jury and then after
8 that, we'll return and then we'll take it from there; so,
9 bring out the 12 jurors and have the two alternates resume
10 their seat.

11 THE DEFENDANT: I ain't no killer, man.

12 THE COURT: Now, before I discharge the jury,
13 I want everybody cleared off of the floor.

14 A COURT OFFICER: Yes, sir.

15 4:23 p.m.

16 (Whereupon, the following takes place within
17 the presence of the jury.)

18 THE COURT: All right, just remain there, yes,
19 please.

20 All right. Ladies and gentlemen, we're sorry for
21 what occurred but of course, sometimes emotions are displayed
22 however, what we'd like to do at this particular time, now
23 that the jury verdict has been rendered by all 12 of you,
24 we would like to have you polled.

25 MR. GONZALEZ: Yes, Judge.

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PENGAD CO., BATONNE, N.J. 07002 - FORM

1 THE COURT: Any problem with that?

2 MR. GONZALEZ: No, Judge.

3 THE COURT: Ms. Furlong?

4 MS. FURLONG: No, your Honor.

5 THE COURT: All right. So, we're going to poll
6 the jury and then we'll take it from there, thank you.

7 THE FOREPERSON: Your Honor, do you want these
8 forms?

9 THE COURT: Just hold everything for a moment.

10 THE COURT CLERK: When I call your name, please,
11 answer either yes if you agree with the verdict in its
12 entirety or no, if you disagree with this verdict or any
13 portion thereof.

14 (Whereupon, jury is polled; verdicts are
15 unanimous.)

16 THE COURT: All right, thank you, ladies and
17 gentlemen.

18 I wish to thank you at this particular time for
19 all the time that you put in to it. I'd like to also
20 indicate to you, ladies and gentlemen, that of course,
21 you're under no duty to discuss this case with anyone,
22 is that clear? And what goes on in the jury room, why,
23 that's within your province and your function and no one
24 has the right to inquire as to how or why or whatever.

25 Always keep in mind, also, that if you should

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PENGAD CO., BAYONNE, N.J. 07002 - FORM

1 make any statements, always remember that that statement
2 that you do make or answer to any inquiry will always --
3 may have to be repeated under oath in the presence of all
4 the other jurors; so always keep that in mind. Is that
5 clear?

6 THE JURY: Yes.

7 THE COURT: All right. With that, of course,
8 your duties are now completed in this case. You will report
9 downstairs to the fourth floor, if necessary. I don't think
10 you have anything else, I think you could leave your juror
11 buttons here instead and under the circumstances, our
12 Court Officers will escort you to the various cars and
13 what have you and complete your jury duty here.

14 A JUROR: We have to get a slip for returning.

15 THE COURT: Well, if you want to go to the fourth
16 floor, you may do that if you want to, fine.

17 The other thing that I want you to understand is
18 that the verdict sheet, please, the original, make sure
19 that that's returned and any notes that you may have, of
20 course, they're all destroyed. All the evidence will be
21 collected by my Court Officers.

22 All right. With that, that completes your
23 tour of duty and we thank you and the same thing equally
24 applies, of course, to our two alternates, Ms. Marlowe
25 and Mr. Reilly, thank you. We wish you a pleasant night.

1 (Whereupon, jury is excused.)

2 THE COURT: Please, Officers, make sure that
3 they are escorted from here and then out to their cars.

4 A SERGEANT: They've already been assigned, your
5 Honor.

6 THE COURT: All right, thank you.

7 Check all the evidence, please.

8 THE COURT CLERK: They have to get it out of the
9 jury room.

10 THE COURT: I believe the only thing you have in
11 evidence, Mr. Gonzalez, was the diagram?

12 MR. GONZALEZ: That's correct.

13 THE COURT: See if that's there so you can
14 acknowledge receipt of it.

15 THE COURT CLERK: Here's the bullets.

16 MR. GONZALEZ: Judge, I acknowledge receipt of
17 the evidence.

18 THE COURT: All right, Ms. Furlong, please?

19 MS. FURLONG: Judge, I believe there's another
20 envelope containing a live round.

21 THE COURT CLERK: It's here.

22 THE COURT: It's here, that never went into the
23 jury room, it's right here.

24 THE DEFENDANT: Damn.

25 THE COURT: Mr. Moultrie, relax.

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PENGAD CO., BAYONNE, N.J. 07002 - FORM 7ED-25

1 THE DEFENDANT: Your Honor --

2 THE COURT: Please.

3 THE DEFENDANT: How can I?

4 THE COURT: Well, listen, all I can indicate is
5 that if you do not, then they're gonna restrain you and
6 that's not necessary, sir. Just take it easy and we'll get
7 to you in a moment.

8 Is all the evidence --

9 MS. FURLONG: From what I can glean, your Honor,
10 yes, it's all present.

11 THE COURT: All right. Including the live round
12 that was not sent into the jury room that was just turned
13 over to you?

14 THE COURT CLERK: Yeah, she just received it.
15 Is that correct?

16 MS. FURLONG: Correct, your Honor.

17 THE COURT: All right, thank you.

18 Sentence date?

19 THE COURT CLERK: June 28th, that's a short date,
20 two weeks.

21 THE COURT: June the 28th, I don't know if we
22 will, but anyway, June the 28th.

23 MR. GONZALEZ: Judge, I won't be here.

24 THE COURT: All right, when will you be here?

25 MR. GONZALEZ: The following Friday.

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PENGAD CO., DAYTONE, N.J. 07005 - FORM

1 THE COURT: What's the next date?

2 THE COURT CLERK: Thursday, July 5th.

3 MR. GONZALEZ: All right.

4 THE COURT: July the 5th.

5 Was there any bail here at all?

6 MR. GONZALEZ: Yes, there was, Judge.

7 MS. FURLONG: Judge, the State has an application.

8 THE COURT CLERK: Yes, it's 10,000 over 2500.

9 THE COURT: Was that bail ever posted?

10 MR. GONZALEZ: No, Judge.

11 THE COURT: Your application?

12 MS. FURLONG: Judge, the State asks that all bail
13 be revoked.

14 THE COURT: Well, you understand, the other bail
15 has never been made and there is now a guilty verdict as to
16 all counts and they're all serious in nature and therefore,
17 the bail will be revoked.

18 Now -- all right. Mr. Moultrie, the only thing
19 I can suggest to you is that under the circumstances, I
20 think it was your mother and I don't know who else was here
21 and they became very emotional as you saw. There's no
22 problem becoming emotional, we can all understand that, but
23 it becomes a problem when they become disruptive and as a
24 result of that, you saw what had to be done, automatically
25 everybody comes in and then they had to put you down and so

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PENGAD CO., BAYONNE, N.J. 07002 - FORM

1 forth and escort everyone out. Of course, that became
2 necessary under the circumstances, we don't know what's
3 going on.

4 I've never had a problem with you here during the
5 course of this trial, you always acted --

6 THE DEFENDANT: No, you haven't, your Honor.

7 THE COURT: I understand that.

8 THE DEFENDANT: But they had no right to hit my
9 sister.

10 THE COURT: I'm explaining that and there was a
11 little display of emotion this morning by your sister and
12 maybe that was a, you know, an indication of maybe what
13 would happen; but she indicated that she would restrain
14 herself and which we thought she would but we can't control
15 all the other emotions that are here.

16 THE DEFENDANT: Thank you.

17 THE COURT: All I can indicate to you, sir, is
18 that at this posture, you'll be escorted back and a PSI
19 report will be made and I will impose sentence on July the
20 5th, 1990, of this year, and that's all I can indicate to
21 you.

22 Now, if you cause any disturbance, well, then
23 you know what will happen; so, it would be advisable not to
24 do so.

25 Mr. Gonzalez will be in touch with you, I suppose,

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PENGAD CO., BAYONNE, N.J. 07002 - FORM

1 during the interim. With that, the Court is now in
2 recess.

3 The only thing I request of the Court Officer
4 is that there are members here of the victim's family and
5 I request that they remain here until all the other -- the
6 niece, the mother and/or sister and what have you of the
7 Defendant's family is off the premises and then they may
8 leave. The thing also is to have the jurors on the fourth
9 floor when they report there, I would like to see that they
10 are escorted to their particular cars, et cetera, and
11 there's no contact between them and, of course, members of
12 the family of Mr. Moultrie, okay?

13 THE DEFENDANT: Your Honor, there's no lie
14 detector tests, is there nothing that you can take? This
15 is not necessary.

16 THE COURT: Hold it, hold it. Whatever you have
17 to say, say it to your lawyer. Your lawyer will take it
18 up, there's always grounds for appeal and they will certainly
19 look into it and whatever they may have.

20 (Whereupon, Defendant exits.)

21 4:35 p.m.

22 THE COURT: Indicate to the members of the family
23 that they should pay attention to the lieutenant.

24 (Whereupon, proceedings are concluded.)
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FENGAD CO., BAYONNE, N.J. 07002 - FORM FED-38

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HEMLOCK CERTIFICATE
ERASABLE

I, LYDIA FUCCI, a Certified Shorthand
Reporter and Official Court Reporter of the
State of New Jersey, do hereby state that the
foregoing is a true and accurate transcript
of my stenographic notes.

Lydia Fucci, CSR
LYDIA FUCCI, C.S.R.
Official Court Reporter

Dated: February 15, 1991

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PENGAD CO., BAYONNE, N.J. 07002 - FORM FED-25

A 6676-8974

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, ESSEX COUNTY
Ind. No. 148-1-90
App. Div. No.

REC'D
APPELLATE DIVISION

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3 THE STATE OF NEW JERSEY,)
4 Plaintiff,))
5 vs. *Esteeck*))
6 DEREK MOULTRIE,))
7 Defendant.))

Steno. Trnpt FEB 25 1991
of
Sentencing *R. Romille*
Clerk

Place:
Essex County Courts Bldg,
Newark, N.J. 07102

Date:
July 5, 1990

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11
12 BEFORE:

ANTHONY J. IULIANI, J.S.C.

FILED
APPELLATE DIVISION

FEB 25 1991

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14
15 TRANSCRIPT ORDERED BY:

Office of the Public Defender (Frank J. Soltis,
ADPD)

R. Romille
Clerk

16
17
18 APPEARANCES:

MARY ELLEN FURLONG, Ass't Pros., Attorney for
the State

19
20 FRANK GONZALEZ, ADPD, Attorney for the Defendant

21
22
23 Joseph F. Chiusano, CSR
Essex County Courts Bldg,
Newark, N.J. 07102, Rm 710

FMRRN TRANSCRIPT

NATIONWIDE: 1-800-255-9040

CORBY GROUP N.J.

1120

1 THE COURT: This is on the sentencing of State
2 versus Derek Moultrie.

3 Good afternoon, Miss Furlong.

4 MISS FURLONG: Good afternoon.

5 MR. GONZALEZ: Good afternoon, Judge.

6 THE COURT: First thing I want to impress here is --
7 very strongly is that we do not have a problem that came
8 about at the time the verdict was being delivered by the
9 jury foreperson, and I don't want the same thing to happen
10 here.

11 Now, I don't know if there's any members of your
12 family here, Mr. Moultrie, or not.

13 MR. GONZALEZ: No, Judge.

14 THE COURT: If they are, they have to be advised
15 that at the first sign of any disturbance or emotion, they'll
16 just have to be excluded from this courtroom; is that under-
17 stood, gentlemen?

18 MR. GONZALEZ: Yes, Judge.

19 THE COURT: All right.

20 We're ready to proceed.

21 You may go forward.

22 MR. GONZALEZ: Yes, Judge, thank you.

23 Judge, in the matter of Derek Moultrie, Indictment
24 148-1-90, I've reviewed the Presentence Report with Mr.
25 Moultrie.

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1 Judge, there's only one change, apparently it's on
2 the typo under attorney, we have Jim Hardaker, Esq., as the
3 attorney.

4 THE COURT: Oh.

5 MR. GONZALEZ: Of course I'm the attorney of
6 record.

7 THE COURT: Other than that correction on the
8 PSI, are there any other corrections, additions, or dele-
9 tions?

10 MR. GONZALEZ: No, Judge.

11 THE COURT: Everything else is in good order?

12 MR. GONZALEZ: Yes, Your Honor.

13 THE COURT: Then I'll hear you in mitigation of
14 sentence.

15 MR. GONZALEZ: Yes, Judge, thank you.

16 Judge, I respectfully ask you to be as lenient as
17 possible with Mr. Moultrie and impose the least sentence
18 allowed by law, which is 30 years.

19 Judge, Mr. Moultrie is 29 years of age. He's a
20 graduate --

21 THE COURT: He's not a graduate -- graduate of
22 high school and one year business --

23 MR. GONZALEZ: Weequahic High School, one year
24 of business. This appears to be only his second indictable
25 conviction. So it could be stated, Judge, that Mr. Moultrie

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PENGAD CO., BAYONNE, N.J. 07002 FORM 740

MEMORANDUM

ERASABLE

1 knows how to live a law-abiding life when he's out on the
2 street to the extent that he has graduated from high school,
3 and this appears to be only his second indictable conviction

4 THE COURT: Also, he was, if you look at the PSI
5 Report when I read it, that he was on probation for 2 third-
6 degree offenses in '86 -- I think it was '88, I forget.

7 MR. GONZALEZ: That is correct, Judge.

8 THE COURT: You take a look at it.

9 MR. GONZALEZ: 1986.

10 THE COURT: And he was given three years'
11 probation.

12 MR. GONZALEZ: Correct, Judge.

13 THE COURT: Therefore, he would have been on pro-
14 bation when this crime was committed of kidnapping, murder,
15 et cetera; is that correct?

16 MR. GONZALEZ: That is correct, Judge.

17 THE COURT: Just point that out to you also.

18 MR. GONZALEZ: Judge, in mitigating sentence, I
19 would point out to three factors under 2C:44-1. Factor
20 number 3, the defendant acted under strong provocation, and
21 also factor number 5, the victim of the defendant's conduct
22 induced or facilitated its commission, and I make that
23 argument because if we take Mr. Moultrie's argument at face
24 value, he believed at the time of the incident that Mr. Mott,
25 the victim in this case, had taken his \$500 gold chain.

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HEMLOCK

1 So it could be argued that mitigating factor number 3 and
2 mitigating factor number 5 would apply.

3 I would also argue that factor number 7, the
4 defendant has no history of prior delinquency. As I indi-
5 cated, he does have some indictable convictions. However,
6 the PSI indicates he has no known juvenile court history.

7 Judge, we've already got a person who's lost his
8 life, Mr. Victor Mott. I don't see any reason why we also
9 have to destroy totally the life of another person,
10 Mr. Derek Moultrie.

11 As you know, you must impose 30 years minimum
12 without parole on Mr. Moultrie, that means that he won't
13 be out until the age of 59. I would respectfully submit
14 that 30 years is sufficient punishment. Thirty years is
15 sufficient deterrence. And I don't see any benefit to
16 either Mr. Moultrie or to society to impose a greater
17 sentence. The minimum, Judge, allowed by law would be fair
18 taking all the circumstances into account, not only the
19 facts relevant to this case but also the background of
20 Mr. Moultrie. So I would ask that you impose the minimum.

21 Judge, we have Mr. Jeffrey Goldston who's a
22 friend of Mr. Moultrie, he wishes to address the Court.

23 THE COURT: Of course.

24 MR. GOLDSTON: Jeffrey Goldston, G-o-l-d-s-t-o-n.

25 THE COURT: Good afternoon, Mr. Goldston.

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MR. GOLDSTON: Good afternoon, Your Honor.

THE COURT: Yes, sir?

MR. GOLDSTON: I know the seriousness of the case and the charges at the hand. I'm also an officer of the law, and this, on behalf of Mr. Moultrie, been a personal friend for the past 10, 15 years. I do know a little about his character. We did thousands of on-the-road together traveling in shows and parties and family things, too. But I know these are major, serious charges. Just asking the Court, if possible, as the lawyer asked you, to show any kind of leniency, the Court to take into consideration due to the problem of the situation.

THE COURT: What are these --

MR. GOLDSTON: I'm a Sergeant of Security Police.

THE COURT: Where?

MR. GOLDSTON: East Orange General Hospital.

THE COURT: What kind of shows did you do and what kind of parties did you look over -- You said we did a lot of shows, a lot of partying. Shows I do, but partying I don't. I have an idea, but I want to be rather explicit or you to be explicit.

MR. GOLDSTON: No problem, Your Honor. As you can see, Mr. Moultrie is a little heavier now than he was when we --

THE COURT: I didn't know him before.

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MR. GOLDSTON: We did a lot of fashion shows together, live, cable TV, and we did security for various groups, Blue Magic, Brown -- and we did different kinds of shows, benefits and things of that nature throughout the last 10, 15 years in Georgia, North Carolina. Different states.

THE COURT: Okay.

I appreciate that.

Anything else you'd like to say?

MR. GOLDSTON: No, Your Honor, that's it.

THE COURT: Anyone else, Mr. Gonzalez?

MR. GONZALEZ: No, Judge.

THE COURT: Mr. Moultrie, is there anything that you would like to say in your own behalf before I impose sentence on you?

THE DEFENDANT: Your Honor, I appreciate all the help that you had gave me through this trial and everything the Prosecutor was going along wasn't right, you stopped her.

Speaking on Jeffrey, I didn't know he was going to speak on him. I'd like to thank him for that, that's about all, Your Honor.

THE COURT: All right. Thank you.

Anything else?

MR. GONZALEZ: No, Judge.

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PENGAD CO., BAYONNE, N.J. 07002 FORM 740

1 THE COURT: I'll hear from you then, Miss Furlong.

2 MISS FURLONG: Judge, I didn't hear Mr. Gonzalez
3 make any mention of the merger here, and I would like to
4 give him an opportunity before I state my position on the
5 merger of the offenses. As Your Honor is aware, he was
6 found guilty of felony murder, the underlying felony kidnap-
7 ping -- I have a position as far as merger and an applica-
8 tion before the Court as far as sentencing, give Mr. Gonzalez
9 an opportunity to address that before I begin my argument.

10 THE COURT: Well, are you suggesting that there's
11 a merger here of kidnapping with another count?

12 MISS FURLONG: Judge, I'm suggesting --

13 THE COURT: Or are you suggesting --

14 MISS FURLONG: Merger of felony murder with murder.
15 However, the kidnapping -- and I have case law,
16 State versus Stenton, 174 N.J.Super.402, which the defendant
17 was found guilty of many counts.

18 THE COURT: Was found guilty of robbery.

19 MISS FURLONG: And there was the robbery and then
20 a rape and then there was the purposeful and knowing murder.

21 THE COURT: There was not a merger.

22 MISS FURLONG: A merger of the felony murder with
23 the knowing murder, you can't punish someone under our
24 Constitution for the same crime twice, but as far as the
25 kidnapping or, in that case, the robbery and the rape, those

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PENGAD CO., BAYONNE, N.J. 07002 FORM 740

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1 were found to be independent and the Judge sentenced the
2 defendant to a consecutive sentence for the robbery and the
3 rape of that case, and that's the State's case, that
4 Mr. Moultrie be sentenced consecutive --

5 THE COURT: You're now talking about merger.
6 Your argument is, and I think that the case you cited,
7 there was also another case, State versus Cohen.

8 MISS FURLONG: State versus Rodriguez and State
9 versus Arigus I believe also.

10 MR. GONZALEZ: Judge, we have no problem with
11 the felony murder and the purposeful murder merging.
12 For that matter, I would also argue that counts 4 and 5, the
13 third-degree possession of a weapon and the second-degree
14 possession of a weapon for an unlawful purpose, also merge.

15 I'm also cognizant under the case the Prosecutor
16 just mentioned that kidnapping, the underlying felony,
17 would not merge. Nevertheless, I would ask that all these
18 matters run concurrent.

19 THE COURT: Well, in going over this matter and
20 looking at the various crimes which he committed, being
21 familiar with the Code and the cases that you cited, all
22 you have to do is look under Title 2C to find the cases
23 cited by the Prosecutor, that kidnapping here is --
24 a question of merger. However, the felony murder count,
25 count 2, merges into the felony and knowing murder, that's

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PENGAD CO., BATONNE, N.J. 07002 FORM 740

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-COTTON CONTENT-

1 rather clear.

2 Again, look at the cases, the citations, and
3 really, one of the basic reasons that there would be a
4 merger there, and that's State versus Cohen, 112 N.J.,
5 because of the transferred intent. If you look at the cases
6 and review them thoroughly in debt, you'll find the
7 transferred intent is the key for merger. So I have no
8 problem with that.

9 MR. GONZALEZ: Judge, my only problem with Miss
10 Furlong --

11 THE COURT: You have also the other point before
12 you go on, just to get it clear, is the other counts
13 possession of a gun without a permit, certainly that's an
14 independent situation or crime; I don't believe that merges
15 anywhere. Then you have the other crime which is the second-
16 degree offense, possession of a gun for an unlawful purpose
17 or to use it against the person or property of another.
18 I believe that is a merger, I believe, into count 3, which
19 is the knowingly and felony murder.

20 Then that leaves the other count, which is the
21 escape charge, that certainly is not a merger. The serious
22 question is whether it should be either concurrent or con-
23 secutive. We'll address that at the appropriate time.

24 ANY QUESTIONS ON THE QUESTION OF MERGER? THAT'S
25 it?

HEMLOCK
ERASABLE
- DOT ON CONTENT -

1 MISS FURLONG: Judge, I may be wrong, but it was
2 my understanding that possession of a weapon for an unlaw-
3 ful purpose wouldn't merge, that it stood on its own.

4 THE COURT: I think it merges with purposeful and
5 knowing murder. The other question is should there or
6 should there not be a Graves' Hearing. I don't know. I put
7 it to you. There's no question there should be an independent
8 finding.

9 Should there, Miss Furlong?

10 MISS FURLONG: I think it should be as Your Honor
11 mentioned before, in light of judicial economy, I think
12 having a Graves' Hearing would be ridiculous under the --

13 THE COURT: I make mention of it so we don't have
14 it down the road "What happened to a Graves' Hearing?"

15 MR. GONZALEZ: Judge, I would agree.

16 THE COURT: Would you agree with Miss Furlong
17 and the Court?

18 MR. GONZALEZ: Yes.

19 THE COURT: With that, I will hear you on
20 sentencing.

21 MISS FURLONG: Judge, I have two members of the
22 victim's family I believe that would like to be heard.

23 Judge, Miss Mott is too distraught, she can't
24 speak.

25 THE COURT: You are the mother of the decedent?

1 MISS FURLONG: Niece.

2 THE COURT: Niece. I'm sorry.

3 Why don't you gain your composure, if you can,
4 Ma'am, I'll hear you if you'd like to say anything.
5 If you want a few minutes, you can sit down. It's up to
6 you.

7 MISS FURLONG: No, Judge, she'd prefer to sit
8 down.

9 THE COURT: This Court will recognize that she
10 is here and she attempted to speak at the time of sentencing.
11 Anyone else?

12 MISS FURLONG: Judge, Richard Mott, the brother
13 of the victim, is here. I'd like to give him an opportunity
14 to speak.

15 MR. MOTT: Richard Mott, name is Richard Mott.

16 THE COURT: What is your name?

17 MR. MOTT: Richard Mott.

18 THE COURT: All right, Mr. Mott.

19 MR. MOTT: I sat here through the length of the
20 trial and I've heard everything. I also heard the charac-
21 ter witness, and I know Derek Moultrie, me and him drink
22 beer together on many occasions. Me, for one, didn't think
23 he was the type of person that would do this, but through-
24 out the trial I heard things, things that I've known, you
25 know, and I'm only here to see that justice is served.

1 THE COURT: You're here in order to speak on
2 behalf of your brother who is no longer here, and I think
3 you'd be here to speak for him. The question is why shouldn't
4 I put him away for life.

5 MR. MOTT: Why?

6 THE COURT: Or why not?

7 MR. MOTT: Why not.

8 THE COURT: That's my decision; it's a heavy one.

9 MR. MOTT: Your Honor, I heard Mr. Gonzalez talk
10 about a gold chain. No one has ever proven that my brother
11 took a gold chain. That's his word against my brother's
12 who's not here to defend himself, which I know if it had
13 been taken, he would not have been walking in the streets
14 looking for this man to help him finish moving to wherever
15 he had moved to that day, had never been calling home looking
16 for this man to pick him up to come finish moving. And the
17 viciousness of the murder itself is enough --

18 THE COURT: And the what?

19 MR. MOTT: The viciousness.

20 THE COURT: The viciousness. Seven shots.

21 MR. MOTT: Yes.

22 THE COURT: I remember all the details.

23 MR. MOTT: I'm glad you know.

24 THE COURT: Thank you very much.

25 Anyone else?

1 MISS FURLONG: No, Your Honor, I believe that's --

2 THE COURT: Then I'll hear you, Miss Furlong.

3 MISS FURLONG: Your Honor, in light -- First I
4 have my arguments as far as -- I'm addressing, Your Honor,
5 the reason I went into what the State's request was as far
6 as a consecutive sentence because the remarks I'm about to
7 make go towards that end.

8 Your Honor sat through the trial, it was a'
9 lengthy trial. Many witnesses. And the one thing I believe
10 should stand out in Your Honor's memory after the course of
11 the trial is even after the verdict came in, the defendant,
12 and up to this very moment as far as my understanding, has
13 professed his innocence, that he did not commit this crime.

14 Also even in the mitigating statements --

15 THE COURT: He even went more than that. He said
16 "Why wasn't I given a lie detector?"

17 MISS FURLONG: Correct, Your Honor. Even when
18 you asked the defendant today here in court to get up and
19 speak for himself, he thanked Your Honor for putting the
20 Prosecutor in her place because I was trying to do something
21 improper. Just want to address that briefly, that what I
22 did as a Prosecutor is to present my case, and Your Honor
23 sits and makes rulings. Now, be that as it may, it just,
24 again, points out the bold, brassen nature nature of this
25 offense.

1 I can't characterize the events that happened that
2 evening. Not only was this man -- a man who really didn't
3 know the defendant that well, helped him move, there was no
4 question of that, helped him move, went home and had a few
5 drinks, he left. Then he went -- the defendant went on a
6 rampage looking for the victim. A girl friend of the defen-
7 dant, Miss Woods, testified at length that each time the
8 victim kept saying "I didn't take your gold chain, Man.
9 What are you doing this to me for?" Here's an individual
10 who professes "I didn't take it." They went through this
11 whole driving around, shaking him down, rolling up his socks,
12 a nightmare. The girl friend testified 2-and-a-half hours,
13 2-and-a-half hours they rode the victim around not knowing
14 his fate.

15 It's true, Your Honor, it said the victim's not
16 here to say how he felt. How did it culminate? Seven shots,
17 not one. Seven. No help. They even have the nerve, the
18 defendant specifically, to have his girl friend do a U-turn
19 and make sure the victim was down.

20 Now, Judge, if that doesn't show a cold, callous,
21 brazen nature, I don't know what does, and then after that,
22 have the nerve to try to cover up his tracks again.
23 The girl friend stops, makes a phone call, so the defendant
24 calls the house and says "Oh, this is Derek. Oh, did you
25 see Victor? I haven't, I'm looking for him. Somebody is

1 looking for him," to cover up his tracks again.

2 Then we have the incident when we get all the way
3 down to Plainfield, when we finally go to make the apprehen-
4 sion. He's up in a cubby-hole for 2-and-a-half hours and it
5 takes him -- get out. He escapes from Newark Homicide.

6 I could go at great length with everyone of the
7 aggravating factors in 2C. Everyone is applicable to this
8 defendant, there are no mitigating factors. He abused the
9 judicial system, he escapes, he's in custody, "Not me, I'm
10 not listening to him." His contempt of the values that we
11 as Americans place on society is so readily apparent by the
12 acts of this case, I've never seen a case that's come to
13 this courtroom where the defendant has violated the victim's
14 rights, in police custody, decides "Hey, I'm not staying
15 here, I'm leaving."

16 Your Honor, I heard Mr. Gonzalez mention that
17 Derek Moultrie is only 29 years of age, and why, why give
18 him more than 30. Unfortunately, Your Honor, Victor Lamont
19 Mott will never have another year added to his age, and he
20 was also a young man, in his thirties. Now, if that --
21 that should not be taken into consideration by the Court,
22 give him a lighter sentence because he's only 29. Don't
23 give him any more than 30 because that isn't enough punish-
24 ment (as heard). There's no punishment -- You heard the
25 victim's brother say -- there's nothing but life that

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21 that should not be taken into consideration by the Court,
22 give him a lighter sentence because he's only 29. Don't
23 give him any more than 30 because that isn't enough punish-
24 ment (as heard). There's no punishment -- You heard the
25 victim's brother say -- there's nothing but life that

1 ever satisfies. Even that won't bring the victim back.
2 I ask Your Honor that in light of all the circumstances,
3 the heinous nature of this act, it wasn't just an argument,
4 it wasn't heat of passion, the jury didn't find that, the
5 jury had all the facts before them, they found not only the
6 felony murder, they found the kidnapping, they found the
7 purposeful and knowing murder and the weapons' charges.
8 There was no other way, that's the way the verdict came out,
9 and the defense put forth was he had nothing to do with it,
10 Cathy Woods was the shooter. The jury found contrary to
11 that; they found guilty on all counts not just purposeful
12 and knowing murder, but felony murder as well as purposeful
13 and knowing and kidnapping. The reason I cited the case
14 State versus Statson, in deciding the consecutive nature or
15 how to do the merger, the Court should pay attention to the
16 legislative intent behind the individual crimes that the
17 defendant is charged under. He's charged with kidnapping.
18 I want to point that ^{out} /for a reason. Our kidnapping statute
19 is first degree, but it has a 30-year time period on it,
20 and I highlight that because contrary to other first-degree
21 crimes -- for example, first-degree robbery, which is
22 20, sexual assault, which is 20, kidnapping first-degree
23 where they find the victim isn't released unharmed, has a
24 30-year maximum, and I point that out to the Court because
25 that expresses the legislative intent of the serious nature

1 of a kidnapping offense. It's one of the highest offenses
2 that the Legislature had even elevated to an extra 10-year
3 sentence on the first degree.

4 THE COURT: Fifteen to 30.

5 MISS FURLONG: Thirty is the max, Judge.

6 THE COURT: Fifteen to 30, but --

7 MISS FURLONG: No different than -- They're
8 speaking of a presumptive on the 15 to 30.

9 THE COURT: I don't think there's any presumptive --

10 MISS FURLONG: Well --

11 THE COURT: -- on the kidnapping, if you read
12 some of the cases. I don't think anywhere it's been clearly
13 stated that there is a presumptive term or sentence such as
14 like in a first-degree presumptive 15, second-degree pre-
15 sumptive 7. I just --

16 MISS FURLONG: Have the Court cognizant of the --
17 aware because in the case I cited, State versus Stetson,
18 you look at the legislative intent as far as the nature of
19 the specific offense. The sentence that can be given on a
20 first-degree kidnapping where the victim is not released
21 unharmed, the max is 30 as opposed to other first-degree
22 crimes, robbery, first-degree aggravated sexual assault,
23 and arson, their max is 20. So I point that out to show you
24 the legislative intent, how the Legislature feels the
25 seriousness of a --

1 THE COURT: State versus Bryant (Curtis) 217 N.J.,
2 Certification denied, suggesting that there is no 2C:44-1 --
3 -1F, presumptive sentence for kidnapping.

4 Go ahead, please.

5 MISS FURLONG: Your Honor, in light of all that,
6 I would ask that defendant be sentenced on the first-degree,
7 purposeful and knowing murder, to a 30-year prison term.
8 In addition, I would ask for a consecutive term.

9 Your Honor, I believe the time discretion, and that
10 that should be consecutive under State versus Yarborough
11 to the murder.

12 MR. GONZALEZ: Judge, I just have one correction
13 there, at least clear on the record. I don't believe that
14 heat of passion and manslaughter was ever charged to the
15 jury.

16 THE COURT: In this case?

17 MR. GONZALEZ: In this case.

18 THE COURT: It was not. It wasn't called for.

19 MR. GONZALEZ: Well, Judge, I asked for it.

20 THE COURT: You did, but I did not because the
21 facts did not logically or the evidence would not logically
22 sustain your position.

23 MR. GONZALEZ: I'm just commenting on what the
24 Prosecutor said. They had heat of passion to consider.

25 MISS FURLONG: No, Judge, Mr. Gonzalez said

1 heat of passion. That's what my comment was.

2 THE COURT: I ruled at that time I did not allow
3 it. I state it again; therefore, that's on the record.

4 Anything else, Miss Furlong? Anyone else to be
5 heard from?

6 MR. GONZALEZ: No, Judge.

7 MISS FURLONG: Judge, I believe there's a correc-
8 tion on the PSI, I didn't hear Mr. Gonzalez mention it.
9 The Probation Officer indicated that on his adult court
10 history, there's an aggravated assault, it has a date that
11 it was dismissed. It's my understanding it's not dismissed,
12 that he still has pending --

13 THE COURT: Pending, was not dismissed?

14 MISS FURLONG: No, Judge.

15 THE COURT: If it's a pending matter, I won't
16 consider it here.

17 MISS FURLONG: I understand. But I wanted the
18 PSI to accurately reflect --

19 THE COURT: However, it will be corrected to
20 indicate it's still a pending matter.

21 MISS FURLONG: Mr. Gonzalez said, I will say,
22 the defendant' doesn't have an extensive indictable convic-
23 tion history. However, I would ask the Court to be cogni-
24 zant of the fact that the -- he was on probation as your
25 Honor indicated the time that he committed this offense and

1 also he was in possession of a weapon. Again, we have the
2 same situation here.

3 THE COURT: Was that weapon ever recovered?

4 MISS FURLONG: Your Honor, the defendant pled guilty
5 to it.

6 THE COURT: I say -- I know what he did. Just
7 curious to know whether or not that particular weapon was
8 ever recovered or could have been one in the carved-out
9 phone book from Cincinnati. I just mention it, that's all.

10 MISS FURLONG: Judge, I don't think it matters.

11 THE COURT: I just mention it because there was a
12 gun there, and I'm cognizant that was a prior and I'm cogni-
13 zant that while he was on probation, within the year a
14 weapon was placed in a hollowed-out Cincinnati telephone
15 book. His friend, who just testified, does a lot of
16 traveling throughout the country. Very interesting. Very
17 interesting.

18 THE DEFENDANT: Never been in Cincinnati.

19 THE COURT: I'm not addressing you, sir.
20 I just said it's very interesting. I didn't make any
21 further comment.

22 Well, I guess the first issue to be addressed
23 is whether the kidnapping should be either consecutive or
24 concurrent. And, of course, the kidnapping statute is a
25 very interesting statute because it does make a distinction

1 between, you know, first-degree and lesser degrees, harm to
2 the victim, in a safe place, downgrades it. There is manda-
3 tory sentencing, that the victim is under 16 and whether or
4 not it was for ransom or other purposes, sexual attack.
5 It's a rather interesting statute. You have the increase
6 in the term. The ordinary base term is now increased from
7 a homicide or first-degree, rather, which is normally 10 to
8 20 years. Kidnapping now in the first degree is between 15
9 and 30 years, yet, but there is no presumptive term like
10 there is in the ordinary first-degree sentence. But the
11 ordinary term is 15 to 30 years which tacks on an extra
12 10 years to the max base term. So, therefore, and it's
13 also interesting to note the amendment of 1986 does provide
14 that in the last sentence of that paragraph, C sub 2, for
15 consecutive kidnapping and homicide, the sentence is where
16 a victim of kidnapping is also the victim of a homicide --
17 now, I don't know whether or not that is mandatory or dis-
18 cretionary, but I know as far as the kidnapping statute,
19 and I don't want to be repetitive, there's a lot to it to
20 really understand exactly what the legislators had in mind
21 when they passed it, they also indicate kidnapping is
22 treated like a homicide or murder. Well, we have all these
23 principles in mind, I will keep that in mind as we go along
24 in the sentence that I have to impose.

25 I may indicate that I sat as the trial Judge in

1 this matter and certainly familiar with all the facts that
2 have been presented. And I recall many -- many of the
3 statements made by various witnesses who appeared and just
4 what occurred during the course of this trial.

5 Before we get actually into the various aggravat-
6 ing factors and mitigating factors, if any, I would like to
7 indicate, first of all, a pronouncement of judgment of
8 sentence, I consider it among the most solemn and serious
9 responsibilities of any trial Judge.

10 I also would like to indicate that our New Jersey
11 Penal Code now, which came into effect late September of
12 1979, and all the cases that came down interpreting that
13 statute and giving us the guidelines that State versus Roth
14 and others, that it does require that an inexorable focus
15 be put on the offense rather than the defendant.

16 I would also like to indicate that there are
17 mandated sentences to be imposed in the case of purposeful
18 or knowing murder and that there is a specific parole
19 ineligibility term, which is for 30 years, and that the
20 sentence to be imposed in any homicide, purposefully or
21 knowingly, is of course 30 years to life, and all I'm saying
22 at this time is that because of all that has been indicated
23 by our Legislature, that the Court here is required of
24 course to impose a sentence within that particular range
25 unless of course there are other aggravating or mitigating

1 circumstances that may either just -- or a greater or
2 lesser term of imprisonment. Therefore, I indicate all
3 these principles as I understand the sentencing to be, to
4 keep it in mind when we start looking into the nature of
5 the offenses whether or not they should be consecutive or
6 concurrent and whether or not there should be either
7 mergers or not.

8 What we have here, first of all, is to go over
9 some of the comments made here by the various -- by
10 either Miss Furlong or Mr. Gonzalez concerning the incident
11 or incidents and the testimony that was related to this
12 Court.

13 Well, we first start as an aggravating factor --
14 well, the nature of the offense. Well, what happened as I
15 recall it, and you have someone apparently who was a friend
16 of Mr. Moultrie who apparently gave him assistance to the
17 home of his girlfriend down in Plainfield, I suppose
18 it was supposed to be a happy arrangement. Whatever happened
19 during the course of that movement or after, after the
20 movement it seems to me Mr. Moultrie, the victim, even
21 Cathy Woods, started to do some drinking and they had some
22 discussion. Whether or not the real motive is the taking
23 of a gold bracelet or something else, I'll never know, and
24 I suppose only the parties involved will know. However,
25 it was the taking of a so-called \$500 gold band that

1 necessitated a rather extensive few hours being spent
2 driving from Plainfield to Newark, back to Plainfield,
3 back to Newark, looking for -- obtaining information of
4 the victim. All those hours going on as to why. Finally
5 making the inquiries, looking around, stopping, asking
6 questions, going to a bar; from that bar, down the street,
7 back up the street, finally finding the victim, talking to
8 him, taking him, put him in the back, this gun pushed under
9 the seat, outside the seat, asking questions as to what was
10 going on, finally led to an area whereby both the victim and
11 the defendant were there by themselves near an empty lot
12 or railroad crossing, and from the autopsy report it does
13 indicate, whether from the side of the head or from the
14 front, that there were apparently 7 shots pumped into the
15 body of the victim. Now, if that, in itself, 7 shots, doesn't
16 connote to this Court in an especially heinous type of crime,
17 I don't know what would. And I think that's, in itself, a
18 rather strong aggravating factor. The fact that Mr. Gonzalez
19 indicated that well, he's 29 years of age and, therefore,
20 will be punished for a long period of time and that he has
21 a life. Certainly he has. On the other side of the coin,
22 the victim, for whatever reason, has no life. That's what
23 makes it so serious. It is serious because the taking of
24 somebody's life, purposeful, knowing, in conjunction with
25 other crimes is the crime that must be punished severely

1 to its fullest extent.

2 What you do is read about, seems like here in
3 Essex County they got more murders going on or situation
4 and incidents of uselessness, of sheer --"I'm the law, I
5 can do anything I want. I can stand in front of someone and
6 pump 7 shots into him. I'm master, I'm controller." Well,
7 I'll tell you, in this courtroom and before this Judge, that
8 will not go unpunished and to its severest. That's what the
9 Legislature wants. I think the law-abiding citizens want it.
10 I think they demand it, they must have it. Without it, we
11 are in a -- I would almost term it as an uncivilized
12 society. We can't live that way. We live by rules and reg-
13 ulations, they must be obeyed.

14 As to whether or not he would or would not commit
15 another offense or the risk of doing so, well, he doesn't
16 have a serious type or wrong type of criminal activity,
17 at least not in the PSI Report, but he does have a prior
18 conviction, albeit third-degree offenses with a gun and
19 so forth. He was on probation, and what brings me to the con-
20 clusion that I think the risk is necessitated or may be
21 because while on probation, he commits another offense for
22 which he is found guilty of kidnapping, felony murder,
23 possession of purposeful murder, possession of a weapon
24 without a permit, possession of a gun to use it unlawfully
25 on the person or property of another, and escape.

1 If this does not connote to this Court that the risk of this
2 individual and his background and his character would indi-
3 cate that he would or may commit another offense --

4 Of course another aggravating factor is I would not say the
5 extent of his prior criminal record but I certainly would
6 indicate that he has a prior record, serious enough in that
7 it is a possession of a gun. Guns are not permitted.

8 If one walks around with a gun, things can happen not only
9 to the detriment of the victim but also to the detriment of
10 the one who commits it, because then that person has to
11 stand the rest of his life with that on his conscience
12 regardless of what the Court does. There is, of course,
13 the absolute need to deter this defendant and others from
14 violating the law. The need not only to protect others
15 both generally and specifically, but also to remove
16 Mr. Moultrie from our society so he can't do anything again
17 or even think about it or even attempting to do what he
18 did here for a very, very, very, very, very long time.

19 So these, specifically, without going in any
20 greater detail, do I find are the aggravating factors.

21 You have here -- I'd like to comment also, the
22 brother of the victim indicated he can't understand it.
23 True, nobody knows whether or not the victim ever actually
24 took the chain or not. Well, that's of no comment, that's
25 of no moment here. I have to agree with the Prosecutor

1 that certainly the acting itself by riding around, having
2 somebody in the car, from the testimony of Miss Woods
3 repeating "Do you have it? Give it up. In the face of this,
4 aren't you going to give it up?" That's cruel. That's
5 toying with someone. It's just not permitted. It may well
6 be brazen.

7 Well, as to the mitigating factors, what can we
8 find, if anything? Let's take a look at the mitigating
9 factors that are under our statute. Did his conduct either
10 cause or threaten any serious harm or did it not? That's a
11 mitigating factor under 2C:44-1. Certainly the response is
12 that his conduct did cause the most serious harm resulting
13 in death.

14 What's the next mitigating factor? Did he contem-
15 plate that his conduct would cause or threaten serious harm?
16 A review of the transcript itself, what I -- here certainly
17 is not a mitigating factor of all the time spent. So that's
18 no.

19 Did the defendant act under some strong provoca-
20 tion? What the -- defendant here act under what provoca-
21 tion? Because he may have stated that -- words came out
22 that he was sick and tired of people of using him, so he
23 pumps 7 bullets into somebody's head and body? Where are
24 we going? That's not a mitigating factor.

25 Was there any substantial grounds tending to

1 excuse or justify the defendant's conduct, though failing
2 to establish a defense? I can't find any.

3 Was the defendant's conduct induced or facilitated
4 its commission or, I should say, that of the victim?
5 Certainly not here.

6 Can the defendant compensate in any way the victim
7 for what happened? Certainly not.

8 Does the defendant have no history of any prior
9 delinquency or criminal activity or, for that matter, led a
10 law-abiding life? Certainly not.

11 Did the defendant's conduct or was it the result
12 of circumstances unlikely to recur? Well, the only thing
13 that would make me say yes is that the victim is dead,
14 can't kill himself twice, but I don't find that as a mitigat-
15 ing factor.

16 Does the character and the attitude of defendant
17 indicate that he is unlikely to commit another offense?
18 The flat answer to that is as far as I can see is no.

19 Can the defendant particularly likely or is he
20 likely to respond affirmatively to a probationary treatment?
21 None is required under the law. Can't do it. Can't give
22 it to him. It's not a mitigating factor.

23 Would the imprisonment of the defendant entail
24 excessive hardship to himself or to his dependents? No.
25 Flatly no.

1 The willingness of the defendant to cooperate with
2 law enforcement authorities, the answer to that is no.

3 And the last mitigating factor --

4 THE DEFENDANT: I was in an elevator accident, I'm
5 standing here too long.

6 THE COURT: Under no circumstances, all right?

7 Is the youth of the defendant here or the conduct
8 in any way been influenced? No.

9 Therefore, when you go through all the mitigating
10 factors, I come up with zero; therefore, I conclude that the
11 aggravating factors certainly preponderate, and no question
12 in my mind that under all the circumstances, that they
13 clearly and substantially, and I'm convinced of that, out-
14 weigh zero mitigating factors.

15 Under count 1 of the indictment, kidnapping,
16 according to all the reasons I've indicated as far as the
17 aggravating factors and zero mitigating factors, the ordinary
18 term being between 15 and 30 years, having come to the con-
19 clusions that I have, I will impose the following sentence
20 upon count 1: I hereby sentence you, Mr. Derek Moultrie, to
21 the custody of the Commissioner of the Department of
22 Corrections for the term of 25 years imposed and until
23 released in accordance with the law. There is a penalty of
24 \$30 to be paid to the Violent Crimes Commission Board.
25 There's also jail credit as I see from the PSI of 298 days.

1 This sentence, as to whether or not it will run concurrent
2 or consecutive, I will hold that in abeyance.

3 As to count 2, for the various reasons that we've
4 already discussed which deals with the felony murder and
5 for the cases that I did cite, State versus Cohen and
6 Stephenson (as heard) and others, and because felony murder
7 really is a crime of transferred intent, I come to the con-
8 clusion that that count will merge into count 3, which is a
9 guilty finding of purposeful or knowing murder.

10 As to count 3, which is a conviction for the
11 purposeful or knowing murder of the victim, Victor L. Mott
12 on September the 11th, 1989 here in the City of Newark and
13 within this jurisdiction of Essex County, for the reasons
14 that I've already indicated as to the aggravating factors,
15 without repeating them at any great length here, and the
16 zero mitigating factors, well, that I found zero mitigating
17 factors, and for the very reason that they certainly do
18 preponderate, that is the aggravating factors, and there's
19 no question in my mind, in my own good conscience that they
20 certainly not only preponderate but they are clearly and
21 without any -- Strike that -- I'm clearly convinced
22 that they substantially outweigh zero mitigating factors,
23 and even not having to find that because there is a manda-
24 tory parole ineligibility term, but I indicate that for
25 the type of sentence that I will impose in the following

1 manner: Under count 3, for the conviction, as I indicated,
2 of purposeful or knowing murder, I hereby sentence you,
3 Mr. Derek Moultrie, to the custody of the Commissioner of
4 the Department of Corrections for the term of your natural
5 life imposed and until released in accordance with the law.
6 Thirty years of that sentence must be served before you are
7 eligible for parole.

8 Is that clear, sir?

9 The jail-credit term of course is, as I indicated,
10 298 days.

11 As to count 4, again, the aggravating factors,
12 the risk of committing another offense, the prior history,
13 the need to deter not only generally but specifically,
14 zero mitigating factors, this being a third-degree offense
15 which is the possession of a gun without a permit, you are
16 not entitled to any presumptive non-custodial term here,
17 and I do find that the aggravating factors certainly pre-
18 ponderate here; however, not to the extent to impose the
19 maximum term of 5 years but I will impose the following
20 sentence: Under count 4, I hereby sentence you, Mr. Moultrie,
21 Derek Moultrie, to the custody of the Commissioner of the
22 Department of Corrections for the term of 4 years imposed
23 and until released in accordance with the law. This
24 sentence is to run concurrent to the sentence I've imposed
25 under count 3 and also count 1. There's a penalty of \$30

1 that must be paid to the Violent Crimes Commission Board.

2 As to count 5, which I believe is the count for
3 second-degree possession of a gun for an unlawful purpose,
4 for sentencing purposes, I will merge that into counts 1 and
5 3.

6 As to count 6, which is the escape, that being a
7 third-degree offense, again the aggravating factors I find
8 here is that you -- well, the prior record and, of course,
9 the need to deter, I find zero mitigating factors and, there-
10 fore, you are not entitled to any presumption of non-custo-
11 dial.

12 In addition, thereto, the crime here was one of
13 escape, and that presents a question as to whether or not
14 under Yarborough that I come or I'd like to state for the
15 record that, 1, the nature of that escape after he was found
16 in the attic of Cathy Woods' home and romping around there
17 and so forth, then arrested, then brought to the Newark
18 Street jail here, then, you know, handcuffed to the wall,
19 he then escaped. Still can't figure out how he did it.
20 When I saw what was marked into evidence, together with the
21 bolting tools, somebody must have helped you out because I
22 say that because the whole thing was cut by cutters. That's
23 very interesting. But the fact is you did escape, they
24 found you somewhere in Paterson or Passaic. I find that
25 particular crime and that particular objective of the escape

1 is totally independent predominantly of any other crimes
2 that you were being arrested for and then subsequently
3 indicted for. I also find it's a separate act, you might
4 say even of violence, in custody, handcuffed, escapes, they
5 have to put out a hunt for you in a different county. Now,
6 I come to the conclusion also that it was committed at a
7 different time or place, and because you were in custody in
8 Newark, you were arrested in Plainfield, and I don't think
9 that it was so closely committed in time and place so that
10 you may constitute it as a single period of aberrant pro-
11 cedure: Cathy Woods making the stop at some store, then her
12 going to bed, then whoever went to bed, then the police sub-
13 sequently coming down there. The only reason why the police
14 did come there, because someone spotted the license plate
15 of Cathy Wood. If it wasn't for that, who knows whether you
16 would have been caught. All that passing of time, you going
17 into the attic, that's not a single aberrant pattern of
18 behavior, it's a distinct crime, and I come to that con-
19 clusion. Not a question of multiple victims but here the
20 victim in this case with the escape is not the decedent but
21 the victim is the State. You escaped from the custody of
22 the State. So I find that as being a separate victim.

23 I also come to the conclusion that there are no
24 free crimes in our system of society, and for all these
25 reasons, I indicate, and I clearly do not indicate or count

1 the aggravating factors being the same or similar to the
2 others, I only found 2 here as opposed to the others, but
3 the nature of that cutting, the escape, the followup, the
4 police looking someone else's car obtained and searching,
5 certainly would indicate to me that the type of sentence to
6 be imposed here is one of consecutive rather than one of
7 concurrent. And for these various reasons, I'll impose the
8 following sentence under count 6, which is a third-degree
9 crime of escape: I hereby sentence you, sir, on this par-
10 ticular crime, Mr. Moultrie, to the custody of the Commissioner
11 of the Department of Corrections for the term of 5 years im-
12 posed and until released in accordance with the law. This
13 term of 5 years certainly is to run consecutive to the
14 sentence that I've imposed or sentences that I've imposed
15 under counts 1, 3, and, I believe, 4. There's a penalty of
16 \$30 that must be paid to the Violent Crimes Commission
17 Board. Also indicate that I'm also satisfied, and I think
18 you alluded to it earlier, that the presumptive term of
19 noncustodial did not apply, and I was also convinced that
20 the aggravating factors, although being two, outweighed
21 zero mitigating factors.

22 I believe this concludes this matter.

23 For all the circumstances that I indicated, I'm
24 glad that you brought that to my attention, that although
25 there may be some bases that it should be consecutive,

1 I find and I come to the conclusion that the kidnapping in
2 itself is -- well, it was or may be or is related to the
3 serious crime of the purposeful and knowing murder and that
4 the act itself would lead this Court to run it concurrent
5 rather than consecutive to the sentences I've already
6 imposed. Therefore, to make it perfectly clear, sir, as I
7 see it, you stand to serve a sentence of life and the
8 minimum or, let's say, the parole ineligibility date before
9 you are considered for that would seem to be at least
10 30 years and then 5 years consecutive to that.

11 I think that concludes the matter.

12 Anything further?

13 THE DEFENDANT: Your Honor, could I say something
14 on behalf of my family?

15 THE COURT: Yes, you may.

16 THE DEFENDANT: I'm going to get it out because
17 no one else came. My brother, he had a warrant on him.
18 He has a warrant on him. So I'm going to bring that out,
19 let you know why I'm saying this. Okay. He's scared to
20 come here because the Mott family threatened my mother
21 they're going to get everyone one by one. They jumped my
22 brother at the bus stop with bats, he's scared to come here.

23 THE COURT: Mr. Moultrie, hold it. If you're
24 making any allegations here about the victim's family
25 threatening anyone else, you certainly can bring that to

1 the attention of the police authorities, the Prosecutor's
2 now alerted.

3 THE DEFENDANT: He's afraid to come in.

4 THE COURT: Look, I can't get into that.
5 I'm not going to get into that.

6 Is there anything else you want to say about
7 someone not being here, maybe your sister or your mother?

8 THE DEFENDANT: I told them to stay home.

9 THE COURT: I don't know. But I'm not getting
10 into that, Mr. Moultrie.

11 THE DEFENDANT: Okay.

12 MISS FURLONG: Judge, if I may, I don't believe
13 you mentioned 2 things. One, the right to appeal.

14 THE COURT: I'm going to get to that.

15 MISS FURLONG: And I just want to make the State's
16 position clear, the State's position was that the possession
17 of the weapon for an unlawful purpose, it doesn't really
18 make a difference as far as the overall sentence, does not
19 merge, and I just wanted --

20 THE COURT: I did merge it because without the
21 weapon, a purpose of it, you wouldn't have the murder.
22 But I did, and you're on the record.

23 Let me finish before I go any further.

24 You do have the absolute right, sir, Mr. Moultrie,
25 to appeal this sentence or sentences which I've imposed here

1 today and all the various counts under this indictment
 2 within a period of 45 days before today; is that clear to
 3 you?

4 THE DEFENDANT: Forty-five days.

5 THE COURT: Of course if you cannot afford an
 6 attorney, this Court will appoint you -- I said this
 7 Court will appoint an attorney to represent you on the
 8 appeal. Understand that, Mr. Moultrie?

9 THE DEFENDANT: Uh-huh.

10 THE COURT: Any questions about that?

11 THE DEFENDANT: No.

12 THE COURT: Thank you.

13 Does that conclude this matter?

14 MR. GONZALEZ: Yes, Judge.

15 THE COURT: Miss Furlong?

16 MISS FURLONG: Fine, Your Honor.

17 THE COURT: Thank you.

18 * * * * *

19
 20 C E R T I F I C A T E

21 I, JOSEPH F. CHIUSANO, CERTIFIED SHORTHAND
 22 REPORTER AND OFFICIAL COURT REPORTER, C.S.R. CERTIFICATE
 23 NO. X100395, do hereby certify the foregoing to be a true
 24 and accurate transcript of the proceedings in the above-
 25 entitled matter.

Joseph F. Chiusano
 Joseph F. Chiusano, CSR
 Official Court Reporter

Dated: Nov-11, 1990