

A -2058.0374

A-2058-9774

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SUPERIOR COURT OF NEW JERSEY
CRIMINAL DIVISION, CAMDEN COUNTY
INDICTMENT NO. 2469-10-95
A.D. NO. _____

STATE OF NEW JERSEY)
) TRANSCRIPT
vs.) OF
) TRIAL
DENNIS COPLING)

Place: Camden County Hall of Justice
101 South 5th Street
Camden, New Jersey 08103

Date: January 28, 1997

FILED
APPELLATE DIVISION

JUN 30 2004

Jan F. Lyons
CLERK

BEFORE:

HON. LINDA G. ROSENZWEIG, J.S.C. and a Jury

TRANSCRIPT ORDERED BY:

HAROLD KATZ, ESQ., Assistant Deputy Public Defender

APPEARANCES:

JOEL H. ARONOW, ESQ., Assistant County Prosecutor
Attorney for the State

ROBERT H. LEINER, ESQ.
Attorney for the Defendant

JUDY GERSTENFELD, C.S.R.
Official Court Reporter
Camden County Hall of Justice-Room 580
101 South 5th Street
Camden, New Jersey 08103

41

I N D E X

	<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
1					
2	<u>FOR THE STATE</u>				
3	Barbara Ann Buckhannon	9	33		
4	Lakesha Buckhannon	34/84	103		
5	104 Hearing	56	64		
6	Nathan Simmons	108	136	141/147	146
7	Benjamin Young	149	161	166	
8	Leervin Hill	168	179		
9	<u>EXHIBITS:</u>			<u>Ident.</u>	<u>Evid.</u>
10	S-21 Photographc			4	
11	S-22 Diagram-Map of City			4	
12	S-23 Diagram-McGuire Housing Development			4	
13	S-24 Photograph			4	
14	S-25 Photograph			4	
15	S-26 Photograph			4	
16	S-27 Photograph			4	
17	S-28 Photograph			4	
18	S-28 Photograph			4	
19	S-29 Photograph			4	
20	S-30 Photograph			4	
21	S-31 Photograph			4	
22	S-32 Photograph			4	
23	S-33 Photograph			4	
24	S-34 Photograph			4	
25					

<u>EXHIBITS:</u>	<u>Ident.</u>	<u>Evid.</u>
S-35 Statement of Nathan Simmons	141	
S-36 Statement of Benjamin Young	157	
D-1 Statement of Lakesha Buckhannon	65	
D-2 Statement of Nathan Simmons	137	

- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

1 (S-21, S-22, S-23, S-24, S-25, S-26, S-27, S-28, S-29,
2 S-30, S-31, S-32, S-33, S-34 marked for Identification.)

3 THE COURT: Yes, Mr. Aronow.

4 MR. ARONOW: Your Honor, Patricia Copling and Gary
5 Copling are both witnesses to this case. Patricia Copling had
6 appeared previous to the actual start of testimony. She was
7 personally served by my investigator, Joseph Forte. She was
8 made aware of the fact she was a witness to this matter and she
9 has been absent since this trial has begun.

10 THE COURT: I'm sorry, she was what?

11 MR. ARONOW: She was made aware of the necessity of
12 her testimony and she has absented herself since the beginning,
13 of the actual trial's beginning. If you recall, I had asked
14 your Honor to admonish her and I was going to allow her to be
15 present during the trial despite the fact she was a witness and
16 she saw fit not to reappear and we sent her -- we sent Gary
17 Copling Jr. --

18 THE COURT: Let me ask you before we move on to him.
19 As far as Patricia Copling is concerned, what day was she
20 issued a subpoena, what day was it returnable?

21 MR. ARONOW: Was returnable the 21st. At the
22 beginning of the trial she was advised her testimony was needed
23 during the trial. And I issued a subpoena every day,
24 continuing every day of the trial.

25 THE COURT: I understand that. And what about the

1 other witness?

2 MR. ARONOW: And Gary Copling, Jr. to my understanding
3 has not appeared at all despite having had a subpoena sent to
4 him by regular mail which was not returned and Sergeant Forte
5 advised me he hand-delivered a copy of the subpoena and
6 Patricia Copling, she advised him she knew his whereabouts and
7 would make sure he got it.

8 THE COURT: So was he every personally served?

9 MR. ARONOW: No.

10 THE COURT: He was served by leaving the subpoena --

11 MR. ARONOW: With his mother and we sent a subpoena
12 regular mail which was not returned.

13 THE COURT: All right. As to Gary Copling, Jr.,
14 though it's permissible to leave a subpoena with a member of
15 the household over the age of 14, but I'm not persuaded that
16 the mother is a member of his household. Obviously, they don't
17 live at the same address.

18 MR. ARONOW: No.

19 THE COURT: Well, I think the circumstances are
20 different for the two people. A bench warrant can be executed
21 and that can result in Patricia Copling being held in a secured
22 setting, I have no objection to. Gary Copling Jr., I'm a
23 little bit less comfortable that he was served properly. So
24 when the subpoena is returned as to him, he should not be
25 detained in any type of holding facility. He should be brought

1 in the courtroom. But a warrant is issued as to both.

2 MR. LEINER: Your Honor, I do not represent the
3 Copling family obviously. The only thing I can indicate for
4 the record is that Patricia Copling was here the 21st. I don't
5 know what she was informed by the Prosecutor on that day or
6 anything else. I just -- it is the defendant's mother and I
7 would hate to see her have to be held. However, I guess if she
8 appears, she can explain why she has not been here yet.

9 MR. ARONOW: It's highly irregular of a mother in a
10 double homicide to just disappear after evidencing such a
11 strong desire to be here on previous times.

12 THE COURT: Correct. I am satisfied, therefore, that
13 a bench warrant for the apprehension of both of them should
14 issue and therefore a bench warrant will be issued for Gary
15 Copling, Jr. and Patricia Copling.

16 Is there a request that they be 24-hour bench warrants
17 or daytime or what?

18 MR. ARONOW: Well, Judge, quite frankly, if they turn
19 themselves in, I don't have a problem with them just coming in
20 during the daytime. But limiting us only to daytime only means
21 they can hide by night or disappear by day and remain by night.

22 THE COURT: Suppose they're picked up at 4:30 in the
23 afternoon, what are you going to do with them? They'll be
24 jailed overnight.

25 MR. ARONOW: We'll make arrangements to contact the

1 emergent judge or your Honor.

2 THE COURT: To do what? What would the request be at
3 that point?

4 MR. ARONOW: The request will be -- well, your Honor,
5 quite frankly, if we only served them to reappear, I'm not
6 confident they will reappear.

7 THE COURT: There is an entire statute to covers that,
8 that's the material witness statute, and that is the statute
9 under which I'll be proceeding and that statute doesn't allow
10 you to incarcerate either of them.

11 Let me get the statute because that's what we need to
12 -- I'll be right back.

13 (Pause.)

14 (Defendant enters courtroom.)

15 THE COURT: The procedures which govern this
16 application are set forth in New Jersey Statute 2C:104-1 and
17 the statutes which follow. Essentially the statute provides
18 that the Court may issue a bench warrant for the apprehension
19 of a material witness. That warrant is of a different sort
20 than the usual bench warrant issued for a defendant. The
21 person apprehended is entitled to a hearing immediately upon
22 the warrant being executed. The person is to be brought before
23 the Court. Counsel is to be appointed and if the Court is not,
24 then the emergent duty judge is to be notified and under no
25 circumstances should the person be held in jail. The person

1 must be held in a nonrestrictive environment.

2 MR. ARONOW: I just spoke to Assistant Prosecutor
3 Wynne, Judge, we would be willing to put them up in a hotel if
4 need be.

5 THE COURT: I'm not going to issue the regular type of
6 bench warrant because I'm concerned that would be misunderstood
7 and these witnesses may then be housed in the jail and clearly
8 that would be contrary to the statute. So if you present me
9 with a proper order tailored to the facts of this particular
10 situation, in other words, if it complies with the statute,
11 I'll be glad to sign it, but I don't want to issue a regular
12 bench warrant.

13 MR. ARONOW: I just instructed my investigator to go
14 look for them since it's still daytime hours.

15 THE COURT: Then we're ready to bring the jury in.

16 MR. ARONOW: Yes.

17 (Jury enters courtroom at 9:40 a.m.)

18 THE COURT: Ladies and gentleman of the jury, good
19 morning.

20 THE JURY: Good morning.

21 THE COURT: Mr. Aronow, the State may call its next
22 witness.

23 MR. ARONOW: Thank you, your Honor. The State will
24 call Barbara Buckhannon to the stand.

25 THE COURT: Ms. Buckhannon, good morning. If you

1 would come forward to your left and be sworn.

2 B A R B A R A A N N B U C K H A N N O N, STATE'S WITNESS,
3 SWORN.

4 THE COURT: You may proceed.

5 MR. ARONOW: Thank you, your Honor.

6 DIRECT EXAMINATION BY MR. ARONOW:

7 Q Would you state your name for the record, please?

8 A Barbara Ann Buckhannon.

9 Q Barbara, in January of 1995 where did you live?

10 A 2726 Cramer Street, Camden, New Jersey.

11 Q And, Barbara, did anyone live with you at that time?

12 A Yes, my daughter Lakesha Shamone Buckhannon.

13 Q And how old was Lakesha back then, approximately two
14 years ago?

15 A Eighteen.

16 Q And did you know or do you know a Kirby Bunch, Jr.?

17 A Yes, I do.

18 Q And how did you know him?

19 A He's my daughter's stepbrother, my daughter's half-brother.

20 Q And did you have any relationship with him?

21 A Yes.

22 Q Would you describe that relationship?

23 A We were real close. He called, called me mom.

24 Q Did Kirby Bunch, Jr. have a nickname that he went by?

25 A Yes, K.C.

1 Q And approximately how old was Kirby in January of
2 1995?

3 A He was 19.

4 Q Barbara, have you ever been convicted of a crime?

5 A Yes.

6 Q And what was that crime?

7 A Theft by deception.

8 Q And when was that?

9 A In 1995.

10 Q What kind of sentence did you receive for that crime?

11 A Probation.

12 Q I'm going to show you what was previously marked Q-2
13 for Identification and I'm going to ask you if you recognize
14 the person that's depicted in that photograph?

15 A Yes.

16 Q And who is that?

17 A That's Kirby Bunch, Jr.

18 Q K.C.?

19 A Mm-hmm.

20 Q Is that a yes?

21 A Yes, it is.

22 Q Do you know a person by the name of Gary Copling, Jr.,
23 Barbara?

24 A Yes.

25 Q And how is it that you knew Gary Copling, Jr.

1 A He grew up with my daughter. They grew up. They were
2 neighbors. They grew up together.

3 Q And --

4 A They grew up.

5 Q And in January of 1995, approximately how old was Gary
6 Copling, Jr.?

7 A I believe 18.

8 Q And approximately how long had you known Gary Copling,
9 Jr.?

10 A Since he was about 8 years old, 7 or 8 years old.

11 Q And did you know if Gary Copling Jr. had a brother?

12 A Yes.

13 Q And what was his name or what is his name?

14 A Dennis.

15 Q And did you know Dennis Copling as well as you knew
16 Gary Copling, Jr.?

17 A Yes.

18 Q Is Dennis Copling in the courtroom today?

19 A Yes, he is.

20 Q Can you identify him?

21 A Sitting right there.

22 Q Can you describe the color of the clothing he's
23 wearing?

24 A He has a green suit and a brown shirt.

25 THE COURT: The record will reflect that the witness

1 has identified Dennis Copling.

2 Q Now, Barbara, calling your attention to Tuesday,
3 January 17th, 1995, did you see Gary Copling, Jr. on that day?

4 A Yes, I did.

5 Q And what were the circumstances of you seeing Gary
6 Copling, Jr. on that Tuesday, January 17th?

7 A He visited my house.

8 Q And which house was that?

9 A 2726 Cramer Street, Apartment B.

10 Q And did he do anything when he came to your house?

11 A Yes, he sat around and we talked for a while and then he
12 walked my dog -- my daughter's dog.

13 Q And what kind of dog did your daughter have?

14 A A white pitbull.

15 Q Do you know approximately when your daughter got that
16 dog?

17 A She got it in -- she got it for a Christmas present from
18 her boyfriend.

19 Q From Christmas from the year before?

20 A Yeah, the Christmas from the year before.

21 THE COURT: Meaning only a few weeks?

22 THE WITNESS: Yeah. Yes. Yes.

23 Q And approximately what time did Gary come over for the
24 dog?

25 A About 11:30, 11 o'clock, 11:30.

1 Q Can I ask you a favor, that just garbles what you
2 say. Put that right in here. Thanks.

3 Q Did you or Lakesha -- let me ask you, was Lakesha home
4 at the time?

5 A Yes.

6 Q Did you or Lakesha allow Gary to have the pitbull?

7 A Yes.

8 Q And let me ask you, prior to January 17th, 1995, had
9 Gary ever come for the pitbull previously?

10 A Yes.

11 Q On how many occasions?

12 A For the last -- for two weeks prior, about two weeks.

13 Q Okay. Had he been there every day?

14 A Yes.

15 Q And what was he doing with the dog, do you know?

16 A He was supposed to be training the dog for me.

17 Q And when you say training it, what do you mean?

18 A Like because this is me and my daughter, we didn't know
19 nothing much about dogs. He knew about pitbulls and he was
20 just training her, teaching her manners and everything.

21 Q And did -- when Gary took the dog on January 17th,
22 1995, were there any instructions to him with respect to
23 returning the dog?

24 A Yes, to have the dog back by 8 o'clock at night.

25 Q And why was that?

1 A Well, because that's when I will be back home. When he
2 came for the dog, he was leaving so I let him take her.

3 Q Did Lakesha allow him to take the dog?

4 A Yes, she left it up to me and I let him take her.

5 Q Did Lakesha have problems with Gary getting the dog on
6 that particular day?

7 A Yeah, she did.

8 Q Why is that?

9 MR. LEINER: Objection, your Honor, calls for hearsay.

10 Q Let me ask you this.

11 THE COURT: Sustained.

12 Q Did you say anything to Lakesha with reference to Gary
13 having the dog that day?

14 A Yeah, I told -- I, I shouldn't let the dog go.

15 Q And why did you feel that way?

16 A I can't really answer that. I just -- I don't know.

17 Q Were you -- you allowed him to have the dog?

18 A Mm-hmm.

19 Q Is that a yes?

20 A Yes.

21 Q And did Gary Copling to your knowledge return the dog
22 on January 17th, 1995?

23 A Yes.

24 Q Gary returned the dog?

25 A He returned the dog and he came back later on that night

1 and took the dog.

2 Q Okay. And when did he come back?

3 A About later on that night, about 10 o'clock that night.

4 Q And what happened with respect to Gary and the dog
5 eventually?

6 A He said he was robbed for the dog. He didn't come back
7 with the dog.

8 MR. LEINER: Objection, your Honor, hearsay.

9 Q Without reference to what Gary may have said, did
10 there come a time when Gary did not return the dog?

11 A Yes.

12 Q Did there come a time when you saw Gary after he had
13 the dog ultimately that night?

14 A Would you repeat that question, please?

15 Q Sure, I'm sorry. You indicated that Gary at one point
16 brought the dog back and then took the dog again; is that
17 correct?

18 A Mm-hmm.

19 Q Is that a yes?

20 A Yes.

21 Q And what I'm asking you, after the second time, did
22 you see the dog and Gary again on that night?

23 A No, no.

24 Q And was Lakesha home the entire night?

25 A No.

1 Q Where was Lakesha, do you know?

2 A School.

3 Q And did Lakesha come home at some point in time on the
4 night of January 17th, 1995?

5 A Yes.

6 Q Approximately what time did she come home?

7 A Around 8, 7:30, 8 o'clock.

8 Q Would you describe Lakesha's reaction when the dog was
9 not returned that particular night?

10 A Upset.

11 Q When you say upset, was she screaming and yelling
12 upset or how was she upset?

13 A She was crying.

14 Q And what occurred with respect to Lakesha that you are
15 personally aware of that night after the dog was not returned?

16 A She went to call her -- she went -- we went to call her dad
17 to see if -- to get in contact with her brother so she could
18 get her dog back.

19 Q Who was her dad?

20 A Kirby Bunch, Sr.

21 Q How was she going to try to get in touch with her dad?

22 A She called over her grandmother's.

23 Q What is the grandmother's name?

24 A Dorothy Bunch.

25 Q Did you have anything to do with any of the events

1 that followed on January 17th, 1995?

2 A I don't understand.

3 Q Did you go with Lakesha at some point in time to do
4 any of these things?

5 A Yes.

6 Q What did you do with Lakesha?

7 A We walked over to McGuire Apartments, we met with her dad
8 and her aunt and we tried -- we went there to see was her
9 brother, to try to get in contact with her brother and he
10 wasn't there. We left. It was, it was on our way home, and we
11 ran into Kirby Bunch, Jr. on High.

12 Q Is that the brother you were looking?

13 A Mm-hmm.

14 Q Yes?

15 A Yes.

16 Q Was Kirby with anyone?

17 A Yes.

18 Q Who was he with?

19 A A boy by the name of Nate.

20 Q Did you know Nate?

21 A No.

22 Q Now, once you located Kirby and he was with Nate, were
23 you present with anything that happened after that?

24 A Yes, we said a couple words, we spoke and he drove off.

25 Q And when you say he drove off, who are you referring

1 to as I --

2 A Kirby Bunch, Jr. and Nate, they drove off.

3 Q Okay. And was anybody with them or did you see
4 anybody with them on that particular occasion?

5 A No.

6 Q Where was Lakesha at that time?

7 A We were standing outside of the car talking to them. She
8 was with me.

9 Q Okay. Did you see -- do you know Latisha Fair?

10 A Yes, that's my niece.

11 Q And did you see Latisha Fair on January 17th, 1995?

12 A Yes.

13 Q And where did you see her?

14 A She was with us.

15 Q When you say us, who do you mean?

16 A She was with Lakesha and myself.

17 Q And approximately what time had she come to be with
18 you and Lakesha?

19 A All that day, we were together all that day.

20 Q Now, after you were with Lakesha and Latisha, did you
21 stay with them or did they -- what happened?

22 A They left me to go to McGuire's to -- it was still on the
23 17th?

24 Q Still on the 17th.

25 A Yes, we were still together.

1 Q Did they leave you at any point in time?

2 A Yes, they left me.

3 Q And did you have anything to do with anything else
4 that happened on January 17th, 1995?

5 A No.

6 Q Were you present when anything else happened on
7 January 17th, 1995?

8 A No.

9 Q Calling your attention to January 18th, the following
10 day, 1995, did you have occasion to be with any of the same
11 people?

12 A Yes.

13 Q Who?

14 A Lakesha and Latisha.

15 Q And where were you with them?

16 A At 2808 Mitchell Street.

17 Q And who's house is that?

18 A My sister Christine.

19 Q And how was it that you came to be at your sister
20 Christine's house?

21 A Well, we always, you know that's my sister, we always go
22 there and visit.

23 Q Was your sister home at the time that you were
24 visiting?

25 A Yes.

1 Q Were there any other people in the house?

2 A The children.

3 Q Okay. How many children were there?

4 A Four.

5 Q Who had children?

6 A Christine's children and Latisha's son.

7 Q Okay. How many children does Christine have?

8 A Four -- well, she have five now.

9 Q And Latisha had one?

10 A One.

11 Q And did there come a time when you saw Dennis Copling
12 on January 18th, 1995?

13 A Yes.

14 Q And approximately what time did you see Dennis
15 Copling?

16 A I'm not sure about the exact time, but I can say around
17 what time I saw him.

18 Q Okay. Around what time?

19 A Around 6:30, 7 o'clock.

20 Q Okay. And was it dark outside?

21 A Yes.

22 Q And where were you specifically at the time that you
23 saw Dennis Copling?

24 A At 2808 Mitchell.

25 Q Okay. Inside the residence or outside?

- 1 A Inside.
- 2 Q And how did you come to see Dennis?
- 3 A He came to the person's house we were at.
- 4 Q Okay. Did he come inside?
- 5 A Yes.
- 6 Q And would you describe Dennis' demeanor or attitude?
- 7 A He was upset.
- 8 Q And when you say he was upset, what led you to believe
- 9 that he was upset?
- 10 A The way he was talking when he came in the door.
- 11 Q And what specifically do you recall him saying?
- 12 A He wanted to know what happened with his brother.
- 13 Q Okay. And his brother being?
- 14 A Gary Copling.
- 15 Q And did he say it the way you and I are discussing it
- 16 right now?
- 17 A No.
- 18 Q How did he discuss it? How did he describe it?
- 19 A He was angry. He wanted to know what had happened with his
- 20 brother.
- 21 Q Okay. And did anyone talk to him at that time?
- 22 Without reference to what they said, did anybody attempt to
- 23 talk to him?
- 24 A Yes.
- 25 Q Did you attempt to talk to him?

1 A Yes.

2 Q What did he say to you?

3 A I was just trying to explain to him what had happened.

4 Q Based upon what you were told?

5 A Right.

6 Q And what was Dennis' reaction to what you were saying?

7 A He didn't have no reaction. He didn't want to hear
8 anything I had to say.

9 Q And would you describe what he said to you in response
10 to what you said?

11 A No, he just like ignored me over -- he just like ignored me
12 and was talking to my niece.

13 Q When you say your niece, who's that?

14 A Latisha.

15 Q What did he say with respect to Latisha?

16 A I can't say word for word for word, but he was upset. He
17 wanted to know what happened to his brother, what happened.

18 Q So what he was saying was directed then to Latisha and
19 not to you?

20 A Yes.

21 Q Where was Lakesha at this point?

22 A She was standing in the house.

23 Q And can you describe how Dennis was dressed that
24 evening?

25 A All I remember he had a black leather jacket. That's all I

1 remember.

2 Q Okay. And was he talking with Latisha the way you and
3 I are talking or was he using the same mannerisms that were you
4 explaining to me earlier?

5 A He was using the same mannerisms that I was explaining to
6 you earlier.

7 Q Did anything happen with Dennis and Latisha at the
8 house?

9 A They went outside. He asked her to come outside.

10 Q And did you say anything to Latisha before she went
11 outside?

12 A I told her don't go outside.

13 Q And why is that?

14 A I mean, how angry, that he was upset you know, so I just
15 didn't want her to go outside.

16 Q With respect to Latisha, did she ultimately go
17 outside?

18 A Mm-hmm.

19 Q Is that a yes?

20 A Yes.

21 Q And could you hear any of the conversation that was
22 taking place outside?

23 A No.

24 Q Did something happen between -- or did Dennis do
25 anything after Latisha went outside?

1 A Well, I didn't see him do anything when he went outside,
2 but I know I only go by hearsay.

3 Q Without reference to hearsay, what other people said,
4 did you do anything that night with respect to Dennis Copling?

5 A Yes, I left out of 2808 and I went to call the police.

6 Q And why did you leave 2808 to call the police?

7 A Because I was scared, I was upset, I was scared, um, I was
8 told that Dennis had a gun.

9 MR. LEINER: Objection, your Honor. May we approach?

10 THE COURT: Objection sustained.

11 (Sidebar discussion on the record.)

12 THE COURT: Mr. Leiner.

13 MR. LEINER: Your Honor, I would ask the jury to
14 disregard anything of that nature. That's the whole issue in
15 this case, I mean for identification, everything else. And for
16 only hearsay testimony, Mr. Aronow indicated he would admonish
17 this witness not to offer any hearsay testimony. We told him
18 right before he came in. I don't know if this witness is going
19 to continue testifying, needs further instruction outside the
20 presence of the jury or not. Things like this have very
21 serious impact on the jury.

22 I would just request that there not be an instruction
23 to the jury at this time, but at least something be done if
24 this witness is going to continue with her testimony like this
25 because her testimony is filled with hearsay and things of that

1 nature.

2 THE COURT: She was asked why she called the police
3 and she said I was upset and scared, I heard he had a gun. I
4 don't see this as a witness who is deliberately blurting
5 something out. It was responsive really to the question.

6 MR. LEINER: I would ask the Prosecutor then to
7 carefully phrase his questions so that he's aware what's in the
8 statement that may come out so things like that aren't
9 elicited.

10 MR. ARONOW: I think it's clear what I'm attempting to
11 do. I specifically instructed her we don't want to hear
12 anything anybody else had to say or hearsay. The witness used
13 hearsay herself.

14 THE COURT: I think you have admonished her.

15 MR. LEINER: I do believe he did, your Honor. I'm not
16 --

17 THE COURT: I think maybe with this particular
18 question in hindsight, if you had said without telling us what
19 you had heard and just tell us what you yourself saw, but
20 that's over, done with. There is no hearsay exception that
21 governs it at this point, is there?

22 MR. ARONOW: No.

23 THE COURT: So, I would simply tell the jury to
24 disregard the last statement about any weapon.

25 MR. ARONOW: Okay.

1 THE COURT: Okay.

2 (Sidebar discussion concluded.)

3 THE COURT: Ladies and gentlemen of the jury, I have
4 sustained the objection to the last answer by this witness. So
5 you should, therefore, disregard and ignore entirely the
6 statement that she made concerning hearing that the defendant
7 may have had a weapon. You should disregard that and pretend
8 that you never heard it and treat it as though you never heard
9 it. Thank you.

10 You may continue, Mr. Aronow.

11 BY MR. ARONOW:

12 Q Barbara, when you called the police, where did you
13 call the police from?

14 A A neighbor's house.

15 Q And why did you use a neighbor's house?

16 A Because nobody have a phone. My sister didn't have a
17 phone. The person whose house I was at didn't have a phone.

18 Q How far away did you have to go to call the police?

19 A About three houses down.

20 Q And did you, in fact, call the police?

21 A Yes.

22 Q And did you indicate to the police what your fears
23 where?

24 A Yes.

25 THE COURT: Do you want a tissue?

1 THE WITNESS: Yes, thank you.

2 Q Did the police arrive?

3 A Yes. Excuse me.

4 Q Was it the Camden Police?

5 A Yes, it was.

6 Q And what did they arrive in?

7 A In a paddy wagon.

8 Q Is that a van?

9 A Mm-hmm.

10 Q Marked police van?

11 A Yes.

12 Q And how many officers responded?

13 A Two.

14 Q And did you have any conversation with those officers?

15 A Yes.

16 Q And what did you tell those officers? Without
17 reference to what somebody else may have said, what did you
18 tell them?

19 A I told them that, that they needed to go to Westminster
20 Avenue to -- let me say this right -- to -- I was afraid that
21 it was going to be some violence going down and what, McGuire
22 Gardens and thought maybe they could stop it if there was
23 anything to go down.

24 Q And did the police listen to your concerns?

25 A Yes.

1 Q And did they ultimately leave?

2 A Mm-hmm.

3 Q Was there any other person present at the time that
4 you were discussing this with the police?

5 A Yes, my daughter.

6 Q Lakesha. Anyone else?

7 A Just the neighborhood people.

8 Q Let me ask you this: Was there anyone outside of 2808
9 Mitchell Street, was there anyone outside in terms of
10 neighborhood people?

11 A Yes.

12 Q How many?

13 A I can't say approximately, I can't.

14 Q Was there one person, two people?

15 A It was -- it was more than two.

16 Q And had they been out there earlier that evening that
17 you're aware of?

18 A Yes.

19 Q And with respect to discussions with the police, were
20 you present when Lakesha or anyone had some conversations with
21 the police?

22 A Yes.

23 Q Did there come a time when -- strike that. Did
24 Lakesha or Latisha stay at 2808 Mitchell Street with you?

25 A Yes.

1 Q And how about throughout the night on January 18th,
2 1995, did there come a time when they left?

3 A Yes.

4 Q At approximately what time was that?

5 A This was -- I'm not quite sure exactly, but I can say
6 around or about. This was about 8:30, something like that.

7 Q I'm going to show you a photograph which has been
8 marked S-21 for identification. I'm going to ask you do you
9 recognize that photograph?

10 A Yes, I do.

11 Q And who's in that photograph?

12 A My daughter Lakesha.

13 Q And where is she in that photograph?

14 A In the middle here.

15 Q Okay.

16 A Couple her classmates and Dennis Copling.

17 Q And where is Dennis in the photograph?

18 A He's in the back.

19 Q Do you know where that photograph came from?

20 A Yes, it's a graduation picture of my daughter from eighth
21 grade to high school, Woodrow Wilson.

22 Q Did you know a person by the name of Mark Winston?

23 A Yes, I did.

24 Q And how do you know Mark Winston?

25 A We grew up together.

1 Q And did Mark Winston have any nickname that you're
2 aware of?

3 A No.

4 Q I'm going to show you a photograph which has been
5 marked S-18 for Identification and ask you if you recognize the
6 person in that photograph?

7 A Yes, this is Mark.

8 Q Mark Winston?

9 A Mm-hmm.

10 Q Did there come a time when Dennis left 2808 Mitchell
11 Street?

12 A Yes.

13 Q And do you remember whether that was before or after
14 Lakesha and Latisha left?

15 A Before.

16 Q How long before?

17 A About a half-hour before.

18 Q Did Dennis Copling leave before or after the police
19 arrived?

20 A Before.

21 Q And approximately how much before?

22 A Say about 45 minutes.

23 Q I'm going to show you what's been marked S-22 for
24 Identification and ask you how long have you lived in the City
25 of Camden?

1 A All my life.

2 Q And the area where your sister lives, is that area
3 depicted on this map anywhere?

4 A Yes, over here, right-hand side, right on this area.

5 (Easel is set up.)

6 MR. ARONOW: Barbara, if you could step down for me,
7 please.

8 (Witness steps down.)

9 Q Could you indicate for the jury and for the Court
10 where 2808 Mitchell Street is approximately?

11 A 2808, around in here.

12 Q Okay. In the upper right portion of the diagram?

13 A Yes.

14 Q And you indicated previously in your testimony that
15 you had gone to see Kirby. Where was Kirby?

16 A On the 17th?

17 Q Yes.

18 A Okay. He was down here on Westminster Avenue.

19 Q In the left-hand portion of the map along the area
20 marked McGuire Gardens Apartments?

21 A Yes.

22 Q Do you know approximately -- let me ask you, have you
23 ever walked between 2808 Mitchell to McGuire Gardens?

24 A Mm-hmm.

25 Q Is that a yes?

1 A Yes.

2 Q How did you go when you walked? Where do you live?

3 A I live here at Cramer Street. Okay, I'm going to McGuire
4 Gardens, I would go, let me see, down here, straight down
5 Federal, okay, turn off on Marlton Pike, Kentucky Fried, go
6 that way down.

7 Q Which Kentucky Fried what are you referring to?

8 A To KFC.

9 Q Kentucky Fried Chicken, it's an eating establishment?

10 A Yes.

11 Q Where is that on the map?

12 A Somewhere along here.

13 Q Okay. And you said 2726 Cramer is where you lived?

14 A Mm-hmm.

15 Q Where is that approximately?

16 A Right here, let me see, okay, right here.

17 Q Okay.

18 A In this area.

19 MR. ARONOW: You can take your seat again.

20 (Witness resumes stand.)

21 Q Did you specifically see Dennis Copling with any
22 weapon on January 18th, 1995?

23 A No.

24 Q You indicated that Dennis had a black leather jacket?

25 A Yes.

1 Q Did you see Dennis' hands on January 18th, 1995?

2 A Just one.

3 Q Why is that?

4 A Because he had his other hand, his right hand in his right
5 pocket.

6 MR. ARONOW: I have no further questions of this
7 witness.

8 THE COURT: Mr. Leiner, you may cross-examine.

9 MR. LEINER: Thank you, your Honor.

10 CROSS-EXAMINATION BY MR. LEINER:

11 Q Ms. Buckhannon, isn't it true that on the 18th, Dennis
12 Copling never threatened you personally?

13 A No.

14 Q And he never did anything. In fact, you weren't
15 present with him when he was talking with Latisha outside?

16 A No, I wasn't.

17 Q You didn't hear any part of that conversation, did
18 you?

19 A No, I didn't.

20 Q In fact, the conversation -- your contact with Dennis
21 Copling that night was very limited, was it not?

22 A Yes, it was.

23 Q In fact, it was limited to the point he came into the
24 house, talked briefly, took Latisha outside and they talked and
25 he left; is that correct?

1 A Yes.

2 Q You never saw Dennis Copling that night again?

3 A No, I didn't.

4 MR. LEINER: I have no further questions.

5 THE COURT: Any redirect?

6 MR. ARONOW: Nothing.

7 THE COURT: Ms. Buckhannon, you may step down. Thank
8 you very much and you are excused. The State may call its next
9 witness.

10 MR. ARONOW: We call Lakesha Buckhannon.

11 THE COURT: Good morning. If you would please come
12 forward to your left and be sworn.

13 MR. ARONOW: Right up here.

14 L A K E S H A S H A M O N E B U C K H A N N O N, STATE'S
15 WITNESS, SWORN.

16 THE COURT: Mr. Aronow, you made proceed.

17 MR. ARONOW: Thank you, your Honor.

18 DIRECT EXAMINATION BY MR. ARONOW:

19 Q Can you tell the jury your name, please?

20 A Lakesha Shamone Buckhannon.

21 Q Lakesha, who's your mom?

22 A Barbara Buckhannon.

23 Q And in January of 1995, where did you live?

24 A 2726 Cramer Street.

25 Q Is that in the City of Camden?

- 1 A Camden.
- 2 Q Do you know Kirby Bunch?
- 3 A Yes.
- 4 Q Junior?
- 5 A Yes.
- 6 Q And who's Kirby Bunch, Jr.?
- 7 A Our brother.
- 8 Q And do you know Latisha Fair?
- 9 A Yes.
- 10 Q And who's Latisha Fair?
- 11 A My cousin.
- 12 Q Do you know Gary Copling?
- 13 A Yes.
- 14 Q How do you know Gary Copling?
- 15 A He's a friend of the family's.
- 16 Q Do you know Dennis Copling?
- 17 A Yes.
- 18 Q How do you know Dennis?
- 19 A He's a friend of the family.
- 20 Q In January of 1995, did you own a dog?
- 21 A Yes.
- 22 Q What kind of dog was it?
- 23 A A white pitbull.
- 24 Q And when did you get that dog?
- 25 A For Christmas of '95.

1 Q '95?

2 A '94, I'm sorry.

3 Q And did Gary Copling have anything to do with that
4 dog?

5 A Yes.

6 Q Prior to January 17th, 1995, what was Gary's
7 involvement with the dog?

8 A He was training it.

9 Q And where -- did he come to 2726 Cramer Street in
10 order to get the dog?

11 A Yes.

12 Q And on January 17th, 1995, were you home at some point
13 in time?

14 A When he came to get the dog?

15 Q Yes.

16 A Yeah, I was there.

17 Q And did he come and get the dog?

18 A Yes.

19 Q And did you want him to have the dog on that
20 particular day?

21 A No.

22 Q And why is that?

23 A I don't know why. I just didn't want -- I just didn't want
24 him to have the dog that day.

25 Q And did you have a conversation with your mother?

1 A Yes.

2 Q And as a result of that conversation, did Gary -- was
3 Gary allowed to take the dog that day?

4 A Yes.

5 Q And did you have to be anywhere on January 17th, 1995
6 after Gary took the dog?

7 A I had to be at school in Camden High at night classes.

8 Q And did you go to school on January 17th, 1995?

9 A Yes.

10 Q And approximately what time did you leave for school?

11 A Maybe quarter to five.

12 Q And did you, did you return from school to 2726 Cramer
13 Street?

14 A Yes.

15 Q And approximately what time was that?

16 A Maybe 9:30, quarter to 10.

17 Q And had you seen or did you see Gary Copling with your
18 dog at that approximate time?

19 A No.

20 Q Did you wait for Gary to bring the dog home?

21 A No.

22 Q What did you do?

23 A I went looking for him.

24 Q Okay. And who was with you?

25 A I was alone when I went to look for him.

- 1 Q And where did you go to look for him originally?
- 2 A 28th and Mitchell Street.
- 3 Q And why did you go to 28th and Mitchell?
- 4 A Because that's where, where he usually be.
- 5 Q Does anyone live at 28th and Mitchell?
- 6 A He was at Michele Butler's house.
- 7 Q And who is that?
- 8 A She's just somebody from the neighborhood.
- 9 Q Okay. And did you see Gary at Michele Butler's house
- 10 on January 17th, 1995?
- 11 A Yes.
- 12 Q And about what time was that?
- 13 A Like 10:30.
- 14 Q And did you have any conversation with Gary at that
- 15 approximate time?
- 16 A Yes.
- 17 Q And did Gary have the dog?
- 18 A No.
- 19 Q And based upon what Gary told you, what did you do?
- 20 A After, after he --
- 21 Q Well, without reference to what he said, what did you
- 22 do?
- 23 A I went to the phone booth and I called my aunt's house.
- 24 Q And what's your aunt's name?
- 25 A Queen.

- 1 Q And where does she live?
- 2 A On Westminster -- Berwick, Berwick Street.
- 3 Q In Camden?
- 4 A In McGuire Gardens.
- 5 Q Apartments?
- 6 A Yeah.
- 7 Q And why did you call Queen?
- 8 A I was calling to see if my brother was there.
- 9 Q And your brother, Kirby Bunch Jr.?
- 10 A Yes.
- 11 Q Does Kirby go by a nickname?
- 12 A K.C.
- 13 Q And did you get in contact with Kirby as a result of
- 14 talking through your aunt's house?
- 15 A When I called there, he wasn't there.
- 16 Q Okay. What did you do next?
- 17 A Then I called my grandmom's and he wasn't there either. So
- 18 my dad told me to -- I could find him on Westminster Avenue.
- 19 So I went around there. He was there.
- 20 Q Was he with anyone?
- 21 A Yes.
- 22 Q Who was he with?
- 23 A I believe his name is Nate.
- 24 Q Is he a friend of Kirby's?
- 25 A Yes.

- 1 Q Had you ever seen Nate before?
- 2 A Yeah.
- 3 Q And were they on foot?
- 4 A They was sitting in a grayish looking car, like a small
5 car.
- 6 Q And when you found Kirby and Nate, were you with
7 anyone?
- 8 A I was with my mom, Barbara Buckhannon, and Latisha Fair.
- 9 Q And did you have a conversation with your brother?
- 10 A Yes.
- 11 Q And what did you tell your brother?
- 12 A I told my brother that my dog was stolen, and that the
13 person Gary, I told him that he didn't --
- 14 Q Let me ask you this. Did you believe what Gary
15 Copling told you in reference to your dog?
- 16 A No.
- 17 Q Did you tell your brother that?
- 18 A Yes.
- 19 Q And as a result of that, what happened?
- 20 A My brother and Gary got into a fight.
- 21 Q And where was that?
- 22 A 2805 Mitchell Street, around that area.
- 23 Q Okay. And is that near where Michele Butler was?
- 24 A That's like maybe a block from where she lives.
- 25 Q Okay. And were you present when your brother Kirby

1 and Gary had a fight?

2 A Yes, I was.

3 Q And who else was there?

4 A Nate, Latisha Fair, and myself.

5 Q And how did you find Gary that night?

6 A He was at this lady name Marie's house and we knocked on
7 the door and he was there.

8 Q And what happened next?

9 A My brother knocked on the door and he asked for him. And
10 he came to the door, he told him to step outside.

11 Q Who told who to step outside?

12 A K.C. told Gary to step outside.

13 Q Did Gary comply? Did he come outside?

14 A Yeah, he came outside.

15 Q What happened next?

16 A They started fighting. He talked to him, asked him about
17 the dog.

18 Q K.C. asked Gary about the dog?

19 A Yes.

20 Q Without reference to what he said, there was a fight
21 after that?

22 A Yes.

23 Q And was anybody involved in the fight other than K.C.
24 and Gary Copling?

25 A No, no.

1 Q Can you describe the fight? What happened?

2 A K.C., he was fighting Gary, but he didn't fight him back.
3 He just balled up in a corner.

4 Q Who balled up in a corner?

5 A Gary Copling.

6 Q And did your brother hit him with his hands?

7 A Yes.

8 Q Did he hit him with anything else?

9 A Yes, he hit him with a bottle at first.

10 Q Who hit who?

11 A K.C. hit Gary with a bottle at first.

12 Q And then he hit him with his hands?

13 A The bottle bust, then he started hitting him with his
14 hands.

15 Q And where did he strike Gary with the bottle?

16 A Like on the back of his head or a shoulder. I couldn't
17 quite see where it was.

18 Q And you said Gary was all balled up. What does that
19 mean?

20 A He was just like balled up in a corner like trying to hide
21 his face and to protect his body, but --

22 Q And -- okay. Does K.C. continue to hit him?

23 A Yes.

24 Q Did K.C. kick him?

25 A Yes, yeah.

1 Q Did K.C. grab a hold of him by the neck?

2 A No.

3 Q What did K.C. do?

4 A He was just kicking him and hitting him.

5 Q Was Gary on the ground at that point?

6 A Yes.

7 Q And was K.C. saying things to Gary?

8 A No.

9 Q Did there come a time when they stopped fighting?

10 A Yes, when Gary started to run.

11 Q Okay. And did Gary ultimately get away?

12 A Yes.

13 Q Did K.C. chase after him?

14 A Mm-hmm.

15 Q And then what happened?

16 A Nothing.

17 THE COURT: What was your answer, yes or no?

18 THE WITNESS: Yes.

19 Q And then what happened?

20 A He didn't catch him. He started running, I don't know

21 where he went, but he started running. So then K.C. came back

22 around to the corner. He got back in the, in the car and he

23 took Latisha and me back to 2728 Cramer, sat there for like 15

24 minutes and my brother told me he would see me the next day and

25 I didn't.

1 Q He would see you the next day about what?

2 A He was coming to see me the next day.

3 Q Okay. Approximately what time was it when you got
4 dropped off by your brother K.C.?

5 A Maybe like about 11:30, 12 o'clock, 12:30 somewhere around
6 there.

7 Q It's your testimony that Nate didn't touch Gary?

8 A No.

9 Q Latisha didn't touch Gary?

10 A No.

11 Q And you didn't touch Gary?

12 A No.

13 Q The only one that touched Gary was K.C.?

14 A That's the only one.

15 Q And that Gary ran away ultimately?

16 A Mm-hmm.

17 Q On January 18th, the next day, 1995, did there come a
18 time when you saw Dennis Copling?

19 A Yes.

20 Q Could you point out Dennis in the courtroom, if he's
21 in the courtroom?

22 A Right there.

23 Q And what color clothing is he wearing?

24 A Green.

25 MR. ARONOW: Let the record reflect she's identified

1 the defendant.

2 THE COURT: The record will reflect that.

3 Q Can you describe the conditions when you saw Dennis
4 Copling on January 18th, 1995? Let me ask you this: Where
5 were you on January 18th, 1995 when you saw Dennis?

6 A Um, I was at Marie Covin's house.

7 Q And who's that?

8 A She's a distant cousin.

9 Q And was there anyone else with you at Marie Covin's
10 house?

11 A It was my mom, Barbara, and Latisha, it was Maria, her
12 seven kids and that's it.

13 Q Does Latisha have any kids?

14 A Yes.

15 Q How many?

16 A She has one son.

17 Q And was he there?

18 A Yes.

19 Q How old was he?

20 A He was about one at the time I believe.

21 Q And how old are Marie's kids approximately?

22 A They range from like 23 to like about maybe eight months.

23 Q And approximately what time did you see Dennis Copling
24 on that night?

25 A Between, between six and seven, around that time.

- 1 Q And where were you specifically inside of 2808
2 Mitchell when you say saw him?
- 3 A I was sitting in the living room.
- 4 Q And where was Latisha and where was your mom?
- 5 A My mom was sitting down also. Latisha, as Dennis was
6 coming in, talking to her, she was going out with him. She was
7 just --
- 8 Q Can you describe how Dennis was reacting or how he was
9 acting when he came in?
- 10 A He was -- he was, he was real upset.
- 11 Q Okay. And what -- did you hear him say anything when
12 he came in?
- 13 A Mm-hmm.
- 14 Q Did your mother attempt to talk to him?
- 15 A No.
- 16 Q Did he say anything to you, to Latisha or to your
17 mother?
- 18 A Yeah, he says, yeah.
- 19 Q What did he say?
- 20 A He said to Latisha he wanted to speak to her and --
- 21 Q Did he say why?
- 22 A No.
- 23 Q Did he say anything that would lead you to believe why
24 he was there?
- 25 A No.

- 1 Q What do you remember him saying?
- 2 A That he was looking for my brother, K.C.
- 3 Q What else did he say?
- 4 A He said that if we was there when he got back that he was
5 going to get us too.
- 6 Q Who's we?
- 7 A I guess me, my mom, Latisha, I guess who, you know,
8 everybody that was there I guess.
- 9 Q And was he talking as calmly as you and I are talking
10 right now?
- 11 A No, no.
- 12 Q How was he -- describe him, how was he talking?
- 13 A He was just like loud and angry.
- 14 Q And can you imitate the manner in which he was
15 talking?
- 16 A No. He just, he was just like real upset like, I don't
17 know, like crazy.
- 18 Q And do you recall observing how he was dressed that
19 night?
- 20 A I know he had on black and a hat, I get really remember.
- 21 Q Do you remember seeing his hands?
- 22 A They was in his pockets.
- 23 Q The whole time?
- 24 A Yep.
- 25 Q And what did you believe based upon seeing his hands

1 in his pocket?

2 MR. LEINER: Objection, your Honor, calls for
3 speculation.

4 THE COURT: The objection is sustained.

5 Q Let me ask you this: Lakesha, prior to January 18th,
6 1995, had you ever seen Dennis Copling with a gun?

7 A Yes.

8 Q And when?

9 MR. LEINER: Objection, your Honor. Can we approach?

10 THE COURT: Would you step down, please.

11 (Sidebar discussion on the record.)

12 MR. LEINER: I object to the relevance of the question
13 and the answer, your Honor. We're talking about events that
14 were reported by the State to have taken place on January 18th.
15 As of right now, no one is going to identify, no one has
16 testified yet whether or not he had a gun on the 18th, let
17 alone the relevance of the testimony is that he had a gun on
18 prior occasions.

19 What I'm saying is, your Honor, that the issue here is
20 the 18th and any testimony she's willing to offer in regard to
21 a prior date is not relevant.

22 MR. ARONOW: Certainly is relevant, Judge. Mr. Leiner
23 is on notice that both Lakesha and Latisha Fair, that the
24 defendant was observed prior to this occasion to have a
25 firearm. That clearly is relevant to whether or not he had the

1 ability to possess a firearm. It's clearly relevant with
2 respect to the belief whether he was armed on that particular
3 day.

4 Your Honor sustained the objection with respect to my
5 question perhaps because I was premature with respect to
6 setting a foundation as to how she would know why she believed
7 that. It's pure speculation, but I think based upon the fact
8 that she knew that the defendant had a firearm in the past and
9 that it was in the recent past, it's clearly admissible with
10 respect to his motive, his opportunity to have a gun. It's not
11 being offered as evidence that he's a bad person or had
12 committed a crime on previous occasions. It's being offered to
13 demonstrate the fact that he had the ability to obtain a
14 firearm and he could have been in possession of a firearm on
15 January 18th, 1995.

16 MR. LEINER: The issue here, your Honor, is not could
17 have. The issue is whether or not he had one. If someone is
18 prepared to come in and testify to the fact that he had one on
19 that particular day, that's fine. All this does is circumvent
20 that element, well, he had one on a prior occasion, he could
21 have had one that day. That gives rise to speculation in the
22 jury's mind. Speculation cannot be part of their deliberation.
23 I clearly think it's highly prejudicial under the
24 circumstances.

25 THE COURT: You have a lot more with this witness, I'm

1 assuming?

2 MR. ARONOW: Yes.

3 THE COURT: Evidence is relevant under Evidence Rule
4 401 whether he had a tendency in reason to prove or disprove
5 any fact of consequence to the determination of the action.
6 And the evidence is not being offered to show that he acted in
7 an unlawful way on a prior occasion by possessing a gun. The
8 evidence is offered instead to prove that he had the
9 opportunity to commit this offense because he, in fact, had a
10 weapon and provided that the time frame is reasonably close to
11 January 18th, 1995, I am satisfied that if somebody had a gun
12 at an earlier occasion, it has a tendency in reason to
13 establish that on a given date he also possessed that same gun
14 is the evidence.

15 The objection on the basis of relevance is overruled
16 provided that it's within the reasonably recent past.

17 How recent was it?

18 MR. ARONOW: On the 16th.

19 THE COURT: Two days before?

20 MR. ARONOW: Two days before.

21 THE COURT: The objection is clearly overruled. You
22 may proceed.

23 (Sidebar discussion concluded.)

24 BY MR. ARONOW:

25 Q Lakesha, before there was a break, I had asked you

1 whether you had ever seen Dennis Copling with a gun. Do you
2 recall that question?

3 A Yes.

4 Q And you indicated that you had; is that correct?

5 A Yes.

6 Q Approximately when with relationship to January 18th
7 had you seen Dennis Copling with a gun?

8 A With relation to January 18th?

9 Q Yeah. How -- did you see him with a gun on January
10 18th?

11 A No.

12 Q Did you see him with a gun on January 17th?

13 A No.

14 Q When did you see him with a gun?

15 A I'm not sure what the date was.

16 Q Okay.

17 A But it was maybe like a couple weeks before then when he
18 was in Michele's house and the gun was in a chair that I was
19 sitting in and I was told not to sit there because the gun was
20 there. But after I already sit in where the gun was, that's
21 when the gun was moved.

22 Q Okay. And you saw the gun? Is that a yes?

23 A Yes.

24 Q Can you describe it?

25 A It was just -- I'm not sure what kind of gun it was, but it

1 was a black, like a medium size gun.

2 Q When you say medium size, can you show us generally?

3 A Like about that big.

4 MR. ARONOW: About eight inches, Judge?

5 THE COURT: I can't see. Can you turn your hand
6 around?

7 THE WITNESS: Like about that big.

8 THE COURT: Nine inches.

9 Q And did Dennis say anything to indicate that it was
10 his gun?

11 A He picked it up.

12 Q And did you hear him say anything with respect to the
13 fact that the gun was his?

14 A He said not -- not to sit there 'cause the gun was there.

15 Q He told you that?

16 A Yeah.

17 Q And he picked up the gun and moved it?

18 A Yep.

19 Q And that's when you saw it?

20 A Yes.

21 MR. LEINER: Your Honor, may we approach?

22 THE COURT: Yes. At this time we'll take the
23 mid-morning refreshment break.

24 (Jury leaves courtroom at 10:40 a.m.)

25 THE COURT: Yes, Mr. Leiner.

1 MR. LEINER: Your Honor, the testimony is
2 substantially different than what was represented by the
3 Prosecutor in this matter with regard to the gun. We were
4 supposed to hear testimony on the 18th. Dennis Copling
5 possessed a gun and saw -- this witness was supposed to testify
6 she saw Dennis Copling possess this gun. I objected to that as
7 being relevant. However, now we have a scenario where several
8 weeks before she's in a particular place, the gun is at a
9 particular site. She's told not to sit there and Dennis
10 Copling moves that gun. That is highly prejudicial under the
11 circumstances. It does not tend to prove the offering of the
12 State in regard to what he offered in opposition to my
13 objection and it's just highly prejudicial. All it is proof of
14 is that Dennis Copling was near a gun where other people were,
15 the gun was present and he moved it. We argued many legal
16 theories. However, the further the circle is that we draw
17 around this particular weapon on a prior occasion, the more
18 highly prejudicial it becomes. The less probative it becomes.

19 I would suggest to your Honor this testimony, clearly,
20 clearly its probative value is substantially outweighed by its
21 prejudicial value.

22 THE COURT: The Court would certainly agree the
23 testimony was markedly different from what was represented at
24 sidebar that it would be. If I had realized it would be of
25 this character, I wouldn't have allowed it.

1 MR. ARONOW: Judge, it think the witness is mistaken.
2 I think it will come out with another witness' testimony,
3 number one, and I was surprised to hear a couple weeks because
4 my understanding is it was a lot more recent than that.

5 THE COURT: I do agree that any person can move a gun
6 for the safety of somebody who is about to sit on the gun. It
7 doesn't mean that is the person's gun, that it can be any
8 person's.

9 MR. ARONOW: That's why I asked if it was his gun and
10 she said it was.

11 MR. LEINER: I didn't hear that testimony.

12 THE COURT: I didn't hear that either. I'm going to
13 ask for a read back.

14 MR. LEINER: Quite frankly, your Honor, the Prosecutor
15 may be surprised because it's his witness. He should know
16 before offering a highly volatile piece of evidence like that
17 what this witness is going to say. I think, your Honor, I have
18 a real problem with this at this point and I don't know how to
19 cure it. I don't know whether it highlights it more, but I, I
20 think clearly unless something is shown, the jury should be
21 instructed to disregard the entire portion of, the portion of
22 testimony. I don't know quite how to put it right now.

23 THE COURT: Let's take it one step at a time. Let me
24 ask the reporter to read back the very last question or two
25 questions and answers asked of the witness.

1 (The portion of testimony was read by the reporter
2 from page 52, lines 9 to 20.)

3 THE COURT: Clearly the witness never stated that he
4 said the gun was his.

5 MR. ARONOW: Well, your Honor --

6 THE COURT: She answered in a way that's
7 non-responsive. You asked her if he said that the gun was his
8 and she simply answered that he picked the gun up and moved it,
9 but she never said, yes, he said the gun was his.

10 MR. ARONOW: What I would recommend, Judge, putting
11 her back on the stand outside the presence of the jury and
12 eliciting other information from her so we can know where it's
13 going.

14 THE COURT: I believe that's the proper way to proceed
15 and if she can re-enter the courtroom, you may ask her under
16 oath.

17 If you would resume the witness stand, Ms. Buckhannon.

18 (The witness resumes the stand.)

19 MR. ARONOW: On a side issue, Judge, I believe
20 Patricia Copling is here so I think that matter has been
21 resolved.

22 THE COURT: Very good. Thank you.

23 THE COURT: We're outside the presence of the jury
24 and, Mr. Aronow, you may continue.

25 DIRECT EXAMINATION BY MR. ARONOW:

1 Q Lakesha, I'm going to bring you back to the time when
2 you indicate that you almost sat on a gun. Did Dennis say the
3 gun was his that night?

4 A No, but he moved it.

5 Q Okay. Did he -- was anyone else present at that time?

6 A It was a whole lot of people in our house. It was like a
7 little party that we just had every, you know like every day we
8 just come and chill. Dennis wasn't usually there, but he was
9 there this day.

10 Q Okay. And did anyone else tell you not to sit in that
11 seat or it was Dennis?

12 A It was Dennis.

13 Q And what did Dennis do with it after he picked it up
14 and moved it?

15 A I'm sure -- I'm not sure he put it in his coat or side or
16 where, but he had the gun on him.

17 Q So he placed the gun on his person somewhere in his
18 coat, on his side?

19 A Yeah, yeah.

20 MR. ARONOW: Your Honor, I think that issue has been
21 clarified.

22 THE COURT: Not to the Court's satisfaction to be
23 honest with you, because the fact he then took possession of it
24 doesn't mean it was his in the first place. He may have just
25 felt it was dangerous for a gun to be sitting there and picked

1 it up with the intention of returning it to its rightful
2 owner.

3 I think this is a highly potentially prejudicial piece
4 of evidence if the gun was not his. If the jury is lead to
5 believe that it was based on this type of evidence, that's very
6 prejudicial. If she had said that the gun was his and that he
7 so stated or if there was another witness who said that he said
8 the gun was his, but merely exercising control over the gun, I
9 don't think is sufficient under the circumstances, particularly
10 since we dealing with a time period not two days before which
11 is what I previously understood, but instead two weeks before.

12 So, I'm willing to hear further argument, but at this
13 point I'm not inclined to allow this testimony and I am
14 inclined to tell the jury to disregard it. But perhaps I'm
15 misconstruing the evidence. I'll be glad to hear your
16 argument.

17 MR. ARONOW: The State would argue that someone who is
18 the only person that she testified to who doesn't sit there out
19 of a room full of people and he's the one that gets up and
20 moves the gun.

21 THE COURT: I don't know what happened before. There
22 could have been, you know it's speculative, there could have
23 been any number of circumstances which would have allowed the
24 defendant to know that the gun was there without it being his
25 gun. And without more, it could as easily been the gun of

1 anyone else in the room.

2 MR. ARONOW: Judge, the fact that this man had the
3 ability to possess it, obviously no one else said that's my gun
4 or something along these lines.

5 THE COURT: They wouldn't have it once he moved it,
6 what would have been the point? The evidence has to be, in
7 order for it to be relevant, it would have a tendency in reason
8 to prove that on the day in question he had possession of a gun
9 and if the only evidence is that on an occasion two weeks prior
10 to that he moved a gun off of a chair, is that the point?

11 MR. ARONOW: And place it either in his jacket or in
12 his waistband.

13 THE COURT: That's how he placed it in his jacket or
14 his waistband, but we don't know where it came from. I think
15 the situation would be different if she had seen him take it
16 out of his pocket as though he owned it, but simply putting it
17 in his waistband I don't think proves that it was his gun. It
18 just means on occasion he exercised control over it. Also I'm
19 concerned that it was two weeks prior. If these events had
20 happened two days before, that might also influence me, but at
21 this point we had conduct that is ambiguous and we have it
22 occurring two weeks prior to the day in question.

23 Under those circumstances, unless there's more
24 testimony that this witness has about the events that occurred
25 two weeks before, unless there is something else, I am going to

1 sustain the objection. You can ask her other questions if you
2 wish.

3 BY MR. ARONOW:

4 Q Lakesha, when you indicate it's about two weeks, do
5 you know exactly when it was in relationship to when your
6 brother was killed that you saw the gun?

7 A No.

8 Q Latisha Fair was there?

9 A No.

10 Q At that time?

11 A No, she wasn't there, no.

12 MR. ARONOW: Okay. Nothing further, Judge, with
13 respect to that issue.

14 MR. LEINER: Your Honor, can I just briefly question
15 the witness in regard to strictly that issue?

16 THE COURT: I'm prepared to rule. I don't think --

17 MR. LEINER: Your Honor, I have another issue.

18 THE COURT: It's the State that has to lay the
19 foundation. I don't think the State has done it, so if there
20 is another issue, we will get to that in a moment.

21 Under the circumstances for the reasons I explained a
22 few moments ago, the objection is sustained. The issue becomes
23 having to deal with the issue of the jury and I, I believe the
24 proper way to do that, unless there is an objection, Mr.
25 Leiner, would be for me to tell the jury that the testimony

1 they heard about the gun being on the chair two weeks ago or
2 two weeks prior to January 18th, 1995 should be entirely
3 disregarded. If you would prefer a different instruction, I'll
4 be glad to consider it.

5 MR. LEINER: Your Honor, my concern is that once the
6 bell has been rung, it's very difficult to unring that bell
7 again. I'm not sure that an instruction is going to be
8 sufficient in regard to this issue, especially in light of the
9 testimony of the prior witness in blurting out she heard Dennis
10 had a gun. Now this witness comes in and testifies about
11 something that occurred several weeks before that, and I have
12 this witness' statement and I don't see anything in regard to
13 that in her statement. But I do have a concern about that.
14 I'm not sure it is sufficient and I don't know what the answer
15 is at this point. I think it's a very critical piece of
16 testimony that links this person to a gun well beyond what the
17 State has offered so far and my understanding can't offer a
18 particular, particular murder weapon in this case or a
19 particular weapon in this case was never found and now to link
20 this defendant with a gun under those circumstances that were
21 described, I think is highly prejudicial at this point.

22 THE COURT: Well, the Court has sustained the
23 objection, so I think to ignore it and pretend that I had not
24 sustain the objection would be --

25 MR. LEINER: No, your Honor, I agree, I agree. I

1 don't know -- as I said in the beginning, I'm not sure what the
2 answer is here.

3 THE COURT: Well, there are two alternatives. I can
4 give a forceful instruction or I can declare a mistrial. I'm
5 not going to declare a mistrial. I believe that the
6 alternative is to give a forceful instruction.

7 MR. LEINER: I anticipated that. That's why I did not
8 request an instruction. I request that an instruction be
9 given.

10 THE COURT: I would give that instruction and at this
11 point we'll take a recess of about 15 minutes.

12 MR. LEINER: Thank you, your Honor.

13 THE COURT: Thank you.

14 (Recess.)

15 THE COURT: It occurred to me that the testimony ended
16 rather abruptly with the witness' statement that he put the gun
17 in his pocket. If he kept it in his pocket for a prolonged
18 period of time or if he left the house with it still in his
19 pocket that may change my evaluation of the probative versus
20 the prejudicial balance and it may lay enough of a foundation
21 since the definition of relevance is any evidence having a
22 tendency in reason to prove a fact. You may recall the witness
23 for the Rule 104(a) hearing and ask her those questions.

24 (Witness resumes the stand.)

25 THE COURT: We continue to be outside the presence of

1 the jury. Mr. Aronow, you may attempt to lay a further
2 foundation.

3 MR. ARONOW: Thank you, your Honor.

4 CONTINUED DIRECT EXAMINATION BY MR. ARONOW:

5 Q Lakesha, I'm bringing you back to the night when
6 you're talking about almost or sitting on the gun. Do you
7 remember that, what we were talking about?

8 A Yes.

9 Q Your testimony was that Dennis picked up the gun and
10 you couldn't remember whether he put his pocket in his jacket
11 pocket or his waistband; is that correct?

12 A Yes.

13 Q Did Dennis keep the gun the rest of the night?

14 A Yes, yes --

15 Q Go ahead. What were you going to say?

16 A They was playing cards around the table.

17 Q Who was that?

18 A Him and three other guys, everybody was playing cards or
19 whatever.

20 Q Okay.

21 A And he was on the other side of the table, so I couldn't
22 see whether or not he put the gun in his waist or his pocket or
23 where, but he had the gun because he moved it from where I was
24 sitting.

25 Q And you're indicating with your right hand, you're

1 using your right hand to show what he was doing?

2 A No, I'm just --

3 Q You're just talking about what he was doing?

4 A Yeah.

5 Q Okay.

6 A He was sitting on the other side of table so I couldn't see
7 whether he put it in his waist or his pocket.

8 Q But he moved the gun from --

9 A Yes, I was sitting on the couch against the window. He
10 moved the gun from underneath the pillow. Where he put it at,
11 I don't know.

12 Q Okay. But somewhere on his person?

13 A Yes.

14 Q How much longer were you there?

15 A I was there for like maybe a couple hours.

16 Q Couple hours in addition to that?

17 A Mm-hmm.

18 Q Did he ever take the gun out again and put it anywhere
19 else?

20 A No.

21 Q Did he keep it the entire time?

22 A Yes.

23 THE COURT: Did you see him leave or did you leave
24 before he left?

25 THE WITNESS: Yeah, I think I left before he did.

1 THE COURT: Was there any further -- or did anybody
2 talk to him about the gun?

3 THE WITNESS: No.

4 THE COURT: Did anybody ask him for the gun?

5 THE WITNESS: No, it wasn't a conversation about the
6 gun.

7 THE COURT: There was never any conversation?

8 THE WITNESS: No, we're playing cards. We didn't pay
9 the gun no attention after he moved it.

10 THE COURT: All right. Mr. Leiner, you may
11 cross-examine with respect to the foundation that has been
12 laid.

13 MR. LEINER: Thank you, your Honor.

14 CROSS-EXAMINATION BY MR. LEINER:

15 Q Ms. Buckhannon, you indicated that Dennis Copling sat
16 on the other side of the table at the card table after that?

17 A Yes.

18 Q So you couldn't see him at that point. You don't know
19 whether you -- you previously indicated you don't know whether
20 he put it in his pocket or his waistband. Is it possible he
21 could have handed it to someone else under the table?

22 A No.

23 Q You said you were there for a couple of hours. Were
24 you in that room for a couple more hours?

25 A Yes.

1 Q Did you ever go to the bathroom?

2 A No.

3 Q Did you ever leave at any time?

4 A No.

5 Q You said there was lot of people there?

6 A Yes.

7 Q Did you keep your eyes focused on Dennis Copling the
8 entire evening?

9 A No.

10 Q When did you first tell the Prosecutor about seeing
11 Dennis Copling with this weapon?

12 A When I gave my statement.

13 Q When you gave your statement?

14 A Yes.

15 Q When -- and you gave your statement to who?

16 A To the Camden County Police Station.

17 Q Was that a taped statement?

18 A Yes, I believe.

19 MR. LEINER: Your Honor, can I have something marked
20 for Identification?

21 THE COURT: Certainly you may. It may be marked as
22 Defendant's Exhibit 1 for Identification.

23 (D-1 marked for Identification)

24 BY MR. LEINER:

25 Q Miss Buckhannon, I'll show you what's been marked D-1

1 for Identification. Is that your statement?

2 A Yes.

3 Q Could you find in that statement that you gave to the
4 Prosecutor's Office where you stated the story you just told
5 both here, outside the presence of the jury and in the presence
6 of the jury in regard to that prior occasion when you saw
7 Dennis Copling with the weapon?

8 A It's not in here.

9 Q Who did you tell about the weapon?

10 A Sergeant, what's his name, Lieutenant or Sergeant Forte.

11 THE COURT: I'm going to stop you here because you're
12 really getting into the type of cross-examination that would be
13 before the jury and I think that cross-examination at this
14 point should be limited to the foundation that was laid by the
15 State and I think you're exceeding the parameters of Rule
16 104(a). I'm not saying deliberately, but you are.

17 MR. LEINER: I don't believe I've been notified. The
18 Prosecutor indicated I was on prior notice about this
19 particular story. There isn't anything in any statement or
20 anything I've seen in discovery that indicates this particular
21 story and scenario the way it happened.

22 THE COURT: But the Prosecutor's statement is not
23 evidence. I'm only talking about evidentiary foundation, so I
24 think you should confine your cross to the evidential
25 foundation that was laid and disregard any statements by the

1 Prosecutor that you were on notice or not.

2 MR. LEINER: That's fine, your Honor. No further
3 questions.

4 THE COURT: Anything else?

5 MR. LEINER: Yes, your Honor.

6 THE COURT: I'll be glad to hear your argument, Mr.
7 Leiner.

8 MR. LEINER: Yes, your Honor. This whole story is a
9 surprise to the defense and I think it's something that's very
10 material. The Prosecutor indicates that it's not intended to
11 prove anything other than the fact that he had the potential or
12 possibility to get this particular weapon. However, one of the
13 counts of the Indictment does read unlawful possession of a
14 weapon for unlawful purpose. I think that goes directly to
15 that issue and would cause the jury to speculate. I've had no
16 notice of this particular incident in the way and in the manner
17 it was described by this particular witness.

18 For that reason, on top of the highly prejudicial
19 nature of the testimony, I would suggest to the Court that this
20 portion of this witness' testimony should be stricken from the
21 record and the jury should be instructed and admonished to
22 disregard all portions of that testimony in regard to the
23 weapon and where and when it was found at that particular time
24 or when it was seen by this person, as she reports, on Dennis
25 Copling on that prior occasion.

1 THE COURT: So then you have two grounds for seeking
2 exclusion of the evidence. One is it's not relevant and,
3 secondly, that it is the result of a discovery violation.

4 MR. LEINER: Yes, your Honor.

5 THE COURT: Mr. Aronow.

6 MR. ARONOW: Well, number one, your Honor, Mr. Leiner
7 had free access to all witnesses in this case, so there can't
8 be an argument made that the State withheld discovery. The
9 State provided Mr. Leiner with written discovery that there is,
10 Judge, and, quite frankly, unless there are notes taken of a
11 conversation that I or anyone else has with a witness, there is
12 no discovery violation, number one.

13 Number two, I know as a matter of fact that Mr. Leiner
14 indicated to me he had an investigator contact a number of
15 witnesses. What witnesses were contacted I don't know. But
16 told me that their stories were consistent with the discovery
17 that was already in this case. And we have a statement from
18 Latisha Fair which indicates, and perhaps I was mistaken to
19 whether it was Lakesha or Latisha who said it, but clearly the
20 statement of Latisha Fair indicates that she was aware the
21 defendant had a Glock approximately one or two nights before
22 this incident.

23 THE COURT: Had a what?

24 MR. ARONOW: Glock, that's a type of 9 millimeter
25 semi-automatic handgun, Judge.

1 And, Judge, as far as that's concerned, there's
2 absolutely isn't a discovery violation with respect to the
3 State. Number two, the statement of Lakesha does say that he
4 had his hand in his pocket like he always do when he got a gun
5 and I think that by its very nature puts him on notice of the
6 fact that Lakesha Buckhannon was aware of the fact that the
7 defendant may have possessed a firearm and previously like he
8 always do.

9 This would become a discovery violation if the State
10 had spoken to this witness prior to her assuming the witness
11 stand and learned that on a prior occasion she had seen the
12 witness with a gun. If that information was then not provided
13 to the defense, then that arguably would be a discovery
14 violation because it would be evidence that the State would
15 have been proffering without giving the defendant any notice of
16 it so it would be aware that the State was aware this was going
17 to be the testimony before this witness took the stand. If
18 that's true, like I indicated, if there is no impediment to the
19 defense talking to a witness to find out what they're going to
20 say ahead of time, I don't know how that is a discovery
21 violation.

22 THE COURT: It is a discovery violation because you
23 know a fact you intended to prove and you haven't told the
24 defendant what these facts are. Seems to me that would be make
25 it a discovery violation. It's something you should have given

1 this defendant notice of. A defendant -- your argument is
2 anything that the defendant would have uncovered on his own is
3 not a discovery violation if you produce it in Court without
4 having told the defense and that's clearly not true.

5 MR. ARONOW: It's not Brady material, your Honor.
6 It's not exculpable material. I don't see that it is a
7 discovery violation.

8 MR. LEINER: Your Honor, in the course of preparation
9 for a trial, and especially one where the consequences are
10 great against my client, I think to have information come out
11 on the witness stand in regard to this, that statement, that
12 portion of this witness' statement in her statement she gave to
13 Detective Forte, you know had his hands in his pocket like he
14 always do when he has a gun, is clearly ambiguous, needs more
15 explanation and is not indicative that she's going to tell this
16 story that she saw him at a prior occasion in a party with a
17 gun where he picked up the gun, put it in his pocket and there
18 is a lot of information there. And to go through and say if
19 the investigator did talk to this witness and he came back and
20 said that this witness, his interview was consistent with the
21 statement she gave, that still doesn't mean there is not more
22 information that he didn't obtain from her and did not provide
23 to him, but did provide to the State and this is a critical
24 issue in this case, your Honor.

25 THE COURT: The pertinent rule is Rule 3:13-3(c)(6)

1 and under the rule, the State is obliged to provide the
2 defendant with names, addresses of any persons whom the
3 Prosecutor knows to have relevant evidence or information,
4 including a designation by the Prosecutor as to which of those
5 persons may be called as witnesses.

6 Now, with regard to the obligation to turn over a
7 signed statement, that obligation exists clearly as to a
8 defendant. And in addition, the State is obliged to turn over
9 under Section 7 a record of any statements signed or unsigned
10 by such persons. Such persons would include obviously
11 witnesses and the defendant. So, the State therefore would
12 have an obligation to turn over to the defendant any written
13 statement of the witness. Obviously, that has been done. So
14 the only question is whether the State had an obligation to in
15 some way memorialize this subsequent conversation in the form
16 of a writing or whether the State had an obligation to inform
17 the defense orally before the witness took the stand.

18 Mr. Leiner, from what source would that obligation
19 arise or come?

20 MR. LEINER: I believe it's a statement that was
21 given. She indicated she gave it to the Prosecutor's Office at
22 the same time she gave this particular statement and --

23 THE COURT: She doesn't say the Prosecutor's Office.
24 She said the police and she said it was contained in her
25 statement.

1 MR. LEINER: I'm sorry, I believe she indicated
2 Sergeant Forte who's a member of the Prosecutor's Office.

3 THE COURT: That's true.

4 MR. LEINER: Therefore, they were in possession of
5 this information, obviously knew that this witness was going to
6 testify in regard to this because the Prosecutor was prepared
7 with his questions in regard to that. And I think when you
8 have a piece of testimony that is potentially as prejudicial, I
9 can't keep in mind, your Honor, that everything that the
10 Prosecutor introduces is going to be prejudicial. The test
11 here is whether it's unduly prejudicial. I think it's also
12 unduly prejudicial on my other objection.

13 However, where you have some piece of testimony that
14 links this person, my client to a gun on a prior occasion, that
15 allows the jury to infer that he had a gun on the 18th and that
16 particular statement by this person was not provided to the
17 defense. I think it's clearly a violation in the whole sense
18 of unfairness with regard to that testimony in the ability for
19 me to prepare in regard to that testimony. For me to go out
20 and speculate that any one of the numerous witnesses in this
21 case may have said something about a gun would be ridiculous.
22 I don't think the fact that I have an investigator available to
23 me should also shift the burden to me to speculate that they
24 could come out and say anything other than what's in their
25 statement. And I think that it is misleading once you have a

1 statement from someone and it's indicated to you this is the
2 person's statement, to come in and then tell a separate story
3 about a prior occasion that's not contained in this statement.
4 I think it's unfair surprise. I think it's a discovery
5 violation and I think it's highly prejudicial based on the fact
6 what this witness related and for those reasons I request that
7 this testimony be excluded and that the jury be admonished in
8 regard to it.

9 MR. ARONOW: I don't agree, Judge. Number one, there
10 was no memorialization of this. It was a conversation. I can
11 represent the first time I became aware of it was when I had
12 come Lakesha into the Prosecutor's Office for purposes of
13 telling her what's going to happen at this trial and trial
14 prep.

15 THE COURT: Which I gather was sometime last week?

16 MR. ARONOW: Which was the 17th of January, and I did
17 not feel that it was my obligation to provide that information,
18 number one, because of the fact that they had Latisha Fair's
19 statement that talked about the fact that she'd seen the
20 defendant.

21 THE COURT: But that's a different witness, that's not
22 this witness.

23 MR. ARONOW: My understanding, Judge, like I said,
24 perhaps my understanding is incorrect, but my understanding was
25 that there was a previous occasion when the defendant was

1 observed in possession of a firearm that was recent to this
2 shooting and that was evidenced by Latisha Fair's statement and
3 I believe that the paragraph that I referred to with respect to
4 Lakesha Buckhannon's statement also puts them on notice to the
5 fact that there had been previous instances when the defendant
6 may have been in a possession of a gun.

7 THE COURT: I don't think it really puts them on
8 notice because if there had been an indication from you either
9 orally to Mr. Leiner or in writing of a particular day, then
10 Mr. Leiner would have sent out an investigator to find out
11 whether other people who were present in the room had a
12 different version of the incident in question or alleged
13 incident, so I don't think that it puts him on notice.

14 Specifically let me also say that from the additional
15 foundation that has been laid, I am satisfied that the evidence
16 should now be permitted unless it is a discovery violation, so
17 let me deal with the threshold issue first.

18 As I indicated earlier when we were at sidebar, the
19 evidence is relevant if it has a tendency in reason to prove or
20 disprove any fact of consequence to the determination of the
21 action. And that has been interpreted to mean whether the
22 evidence which is offered renders the desired inference more
23 probable than it would be without the evidence, State versus
24 Davis. And evidence is only irrelevant particularly in the
25 context of circumstantial evidence if it lacks -- I'm sorry, if

1 it does not justify any reasonable inference as to the fact in
2 question.

3 The bottom line is that even if the evidence by itself
4 does not prove the material fact, as long as it has a tendency
5 in reason to make it more likely that he had a gun on January
6 18th, then the evidence would be relevant. And after hearing
7 the additional testimony from this witness, I'm satisfied that
8 if the defendant picked up a gun that was on a chair, put it on
9 his person, kept it on his person for two more hours without
10 surrendering it to anybody else, I find that that evidence has
11 a tendency to prove on an occasion two weeks later the
12 defendant had the opportunity to possess a gun. So I find that
13 with this additional foundation I will now and I do now
14 reconsider the sustaining of the objection and now the
15 objection is overruled because I find that the evidence is
16 relevant.

17 That therefore makes -- and you can step down if you'd
18 like. You don't have to remain on the witness stand for this.

19 (Witness steps down.)

20 Therefore, the issue of whether there is a discovery
21 violation and what should be done about it becomes a
22 significant issue in this case and if there is anything further
23 that either side would like to argue, I'll be glad to hear it
24 and will recess for another few minutes so I can look into the
25 issue a little more closely before ruling on the discovery

1 issue.

2 Anything further from the State?

3 MR. ARONOW: Nothing, your Honor.

4 THE COURT: Mr. Leiner?

5 MR. LEINER: Nothing, your Honor.

6 THE COURT: All right, we stand in recess for a little
7 while.

8 (Recess.)

9 THE COURT: Counsel, I'm satisfied that under Rule
10 3:13-3(g), the State had a continuing duty to disclose other
11 information that it learned during the course of its pretrial
12 preparation and I specifically find that there was an
13 obligation on the part of the State to have informed the
14 defendant through his counsel that there would be testimony
15 produced through this witness that on an occasion two weeks
16 prior she saw the defendant with a gun in his presence.

17 Now, the fact that I have concluded that this is a
18 discovery violation, and I conclude that it is, does not
19 necessarily mean that the testimony should be excluded, that is
20 one, excluded or precluded, precluded, that the preclusion of
21 the testimony or the exclusion of the testimony is one of the
22 many sanctions that the Court can impose. The Court is
23 persuaded that the testimony is relevant and it would be unduly
24 harsh to the State to preclude the evidence.

25 What I will do, however, is to give the defendant

1 every reasonable opportunity and I will bend over backwards to
2 make sure that the defendant has every reasonable opportunity
3 to meet this newly produced testimony. Specifically, you can
4 cross-examine the defendant -- I'm sorry, the witness today on
5 this issue, Mr. Leiner. I will require and will order that she
6 be made available so you can send an investigator out to
7 discuss this issue with her. You can recall her and
8 cross-examine her during the State's case, if you wish.
9 Moreover, you may seek to interview any of the other people who
10 were present at the time that this incident with the gun
11 allegedly occurred some two weeks prior and, hopefully, if you
12 intend to call any of them, I would hope that you would have
13 that done and completed, in other words, the investigation I
14 would hope, have that completed by the time your case, if any,
15 would open. But if not, I would consider the reasons why you
16 were unable to do that and I will consider granting you
17 additional time if there is any remedy that the defendant would
18 seek other than those and also I'm going to give a limiting
19 instruction as to the use of testimony other than what I have
20 alluded that there be a remedy or sanction that the defense
21 seeks.

22 MR. LEINER: No, your Honor. The defense does seek the
23 exclusion of this testimony based on the reasons previously
24 given. And I think that when you couple the surprise with the
25 limited use of the testimony, it becomes even more prejudicial

1 and I seriously would request that your Honor reconsider this
2 testimony under the 403 balance scale.

3 THE COURT: Let me tell you the reason why I'm not
4 excluding it. If I were to exclude it, I would be making the
5 assumption that -- let me put it in a different way. I should
6 restore the defendant to the same position that he would have
7 been in had the evidence been presented to him in advance of
8 the witness taking the stand and to do that I should therefore
9 give you the opportunity to meet that evidence and to pursue
10 any additional witnesses and any additional cross-examination.
11 But to exclude the testimony would I think serve no valid
12 purpose other than to be a strong sanction against the State,
13 but it would do more than simply restore the defendant to the
14 status quo and it would give the defendant a distinct advantage
15 that I don't think he is entitled to.

16 In other words, if the evidence is relevant than the
17 State is entitled to produce it, the defendant should be
18 afforded every opportunity to meet it, but I do not think that
19 the discovery violation should result in the exclusion of the
20 evidence. I should make every attempt to level the playing
21 field and to give the defendant the opportunity to meet the
22 evidence, the same opportunity he would have had if this
23 evidence was turned over to him on January 17th, but I don't
24 think excluding the evidence is the proper remedy because it is
25 punitive and it tends to exclude relevant evidence and the

1 Court should not be excluding relevant evidence.

2 So, let me tell you what I believe the appropriate
3 limiting instruction should be. When the jury returns, I will
4 tell them that they have heard testimony that on a prior
5 occasion some two weeks before January 18th, 1995, the
6 defendant may have had a gun in his possession. The evidence
7 that he may have had a gun in his possession on a prior
8 occasion is not to be considered by them as proof that he
9 committed the crimes for which he is on trial here now.
10 Instead, the testimony about the gun two weeks prior is limited
11 to the issue of whether or not the defendant had access to a
12 gun on a prior occasion. And I will further tell the jury that
13 even if they are satisfied that beyond a reasonable doubt the
14 defendant had a gun on a prior occasion, that does not make him
15 guilty of the crimes that he's on trial for today. And that
16 even if he had a gun on a prior occasion, if they find that
17 there's a reasonable doubt as to his innocence, they must find
18 him not guilty notwithstanding the fact that he may have had a
19 gun on a prior occasion.

20 Is there anything further that the defense would ask
21 for in respect to a limiting instruction?

22 MR. LEINER: No, your Honor. Not to beat a dead
23 horse, but given your instruction, I'm slightly uneasy with the
24 relevance of the testimony. If they're not allowed to use this
25 to show that he had a gun on January 18th, what relevance does

1 it have to these proceedings that he had access to a gun two
2 weeks prior to that?

3 THE COURT: No, the fact that he had a gun two weeks
4 prior doesn't mean that they cannot consider that as evidence
5 that he continued to possess the gun two weeks later. All that
6 I am saying that they cannot do that. Just because he had a
7 gun two weeks earlier doesn't mean that he is guilty of
8 committing murder two weeks later. That is what the limiting
9 instruction is.

10 MR. LEINER: Thank you, your Honor.

11 THE COURT: Okay. Does the State wish to be heard on
12 the limiting instruction?

13 MR. ARONOW: No, Judge, the State finds that
14 satisfactory.

15 THE COURT: Why don't we bring the jury back.

16 MR. ARONOW: I think what I'm going to do is basically
17 elicit the further testimony of Lakesha Buckhannon with respect
18 to how long she saw the gun in possession and things of that
19 nature.

20 THE COURT: Yes.

21 MR. ARONOW: Whether the limiting instruction --

22 THE COURT: No, that's where we differ.

23 MR. ARONOW: Okay.

24 THE COURT: I'm going to give the limiting instruction
25 and you will continue and then I'll tell them they're about to

1 hear some other information about that.

2 MR. ARONOW, before, actually why don't you have
3 Latisha Fair --

4 MR. ARONOW: Lakesha Buckhannon.

5 THE COURT: Lakesha Buckhannon come in right now and I
6 will talk to her about being available.

7 MR. ARONOW: You will hold the jury back?

8 THE COURT: We'll hold the jury back now.

9 Will you just hold the jury outside for just one more
10 second? Thank you.

11 If I can ask you to please resume the witness stand,
12 Ms. Buckhannon.

13 (Lakesha Buckhannon resumes the stand.)

14 THE COURT: In a moment we're going to be bring the
15 jury back in. I have found and determined that the defendant
16 was not made aware in advance of the testimony that you have
17 just given about seeing the defendant with a gun two weeks
18 prior to January 18th and under our Rules of Court a defendant
19 is supposed to have an opportunity to know what all the
20 testimony is going to be so he can investigate it and challenge
21 it if he chooses to do so. So for that reason, you are going
22 to be subject to being recalled as a witness and I regret any
23 inconvenience or upset that may cause to you. I realize that
24 this trial causes you some emotional upheaval and I understand
25 that and I'm sorry to keep dragging you back in so to speak,

1 but you can talk to Mr. Aronow and Mr. Leiner a little bit
2 later about when somebody will be talking to you. You should
3 make yourself available, therefore, to be called back into
4 Court if you receive notice from Mr. Leiner, the defense
5 attorney, that he intends to call you as a witness. You would
6 have to be. I want you to know what would happen potentially
7 if you don't make yourself available. If you don't make
8 yourself available to be recalled later, then the defendant has
9 a right to ask me to strike the testimony that you have just
10 given here about the gun two weeks earlier. If they don't have
11 a chance to meet that, they have the right to ask me to strike
12 the testimony that you've given.

13 Do you have any questions about what I've just told
14 you?

15 THE WITNESS: No.

16 THE COURT: No. Counsel, anything further on that
17 subject?

18 MR. ARONOW: No.

19 MR. LEINER: No.

20 THE COURT: All right, we'll bring the jury back.

21 (Jury enters courtroom at 11:54 a.m.)

22 THE COURT: Ladies and gentlemen of the jury, before
23 the mid-morning recess you had heard some testimony of what
24 this witness observed on an occasion approximately two weeks
25 prior to January 18th, 1995 and she told you that she observed

1 the defendant pick up a gun and move it off the chair. Let me
2 explain to you that there is a very, very limited purpose for
3 which you can consider that evidence.

4 You may consider that evidence only as establishing
5 whether or not on a prior occasion the defendant had access to
6 a gun. And if you find that the State has proven beyond a
7 reasonable doubt that two weeks earlier the defendant had
8 access to a gun, that does not mean that he committed these
9 crimes some two weeks later. Instead, it's only offered to
10 show that he had access to a gun two weeks earlier. That is
11 the only purpose for which you can consider it and you can
12 consider that along with all of the other evidence in the case
13 to determine whether on January 18th, 1995, he also had access
14 to a gun and may have had the opportunity to commit these
15 crimes. But even if you find that he had a gun two weeks
16 earlier, that does not make him guilty of these crimes. So
17 that if you find that he had a gun two weeks earlier, if you
18 also find there's a reasonable doubt as to his guilt, then you
19 must find him not guilty even if you find that he had a gun
20 some two weeks prior.

21 So again, the limited purpose for which this evidence
22 is admitted is to show that two weeks earlier that he had
23 access to a gun or had opportunity to have a gun some two weeks
24 earlier. That does not make him guilty of the crimes at
25 issue. Your consideration of whether or not he's guilty of

1 these crimes must be based upon all of the evidence in the
2 case, including this evidence, but the fact that he had a gun
3 two weeks earlier does not make him guilty necessarily of these
4 crimes.

5 Any objection to the limiting instruction as given?

6 MR. LEINER: No, your Honor.

7 MR. ARONOW: No, your Honor.

8 THE COURT: Okay. With that, Mr. Aronow, you may
9 continue.

10 MR. ARONOW: Thank you, your Honor.

11 CONTINUED DIRECT EXAMINATION BY MR. ARONOW:

12 Q Lakesha, in your previous testimony you indicated that
13 Dennis Copling approximately two weeks before took this gun off
14 the chair and took it into his possession; is that correct?

15 A Yes.

16 Q Did you see where he placed the gun?

17 A No, I didn't.

18 Q On his person?

19 A Yes.

20 Q Did you -- what specifically did you observe with
21 respect to Dennis Copling and the gun on that evening after he
22 took it from the chair?

23 A Can you repeat the question?

24 Q Yeah. After you saw Dennis take the gun from the
25 chair, what did you see him do with it?

1 A He put it on him. I don't know where, but he put it on
2 him. Like I said, he was on the other side of the table so I
3 couldn't see where he was putting the gun, but he put it on
4 him. Where, I don't know.

5 Q When you, when you say other side of the table, what
6 was happening at the table?

7 A Cards, they were playing cards.

8 Q When you say who --

9 A Him and a couple other guys. I didn't remember who was
10 there. It was three other people that he was playing cards
11 with.

12 Q Okay. And when you say you can't, you couldn't see
13 him because of the table, what did you see in terms of his
14 motions, what did you observe him do?

15 A He stood behind the table and he had the gun in his hand.

16 Q Okay.

17 A But then he sat down, so I couldn't see.

18 Q All right. What did you see? Did you see any
19 movement of his arms or anything like that?

20 A Only that he was putting the gun somewhere.

21 Q Okay.

22 A Like the way I'm sitting, this was right here.

23 Q Okay. And say I'm Dennis, what did the table look
24 like?

25 A A round, a round, you know, a triangle table, rectangle

1 shaped table and somebody on the other side and somebody here
2 and somebody here.

3 Q Okay. Somebody on each side of the table?

4 A Yes, and I couldn't, you know, I couldn't see because of
5 the table. I couldn't see whether or not, you know, whether he
6 was putting it here and whether he was putting it here.

7 Q What is here or here? What are you referring to?

8 A Whether he was putting it in his pants, in his pocket, in
9 his jacket pocket. I don't know where.

10 Q Somewhere on his person?

11 A Mm-hmm.

12 Q Is that a yes?

13 A Yes.

14 Q Approximately how long after that took place were you
15 there at that place?

16 A We was there for maybe like two hours.

17 Q And did you at any time after Dennis picked up the gun
18 from the chair, did you at any time see him do anything else
19 with the gun?

20 A No, I didn't see the gun no more that night.

21 Q With respect to calling your attention back to January
22 18th, 1995, you indicated that Dennis came in to 2808 Mitchell?

23 A Mm-hmm.

24 Q Is that a yes?

25 A Yes.

1 Q At the time that -- strike that. After the incidences
2 occurred on January 17th, 1995?

3 A Yes.

4 Q Do you recall going to the Camden Police Station?

5 A Yes.

6 Q Did you give a statement to anybody, a Camden police
7 officer or an investigator from the Camden County Prosecutor's
8 Office with respect to what had happened on January 17th and
9 January 18th?

10 A Did I give a statement?

11 Q Yes.

12 A Yes, I did.

13 Q And I'm going to show you what's been marked D-1 for
14 identification and take your time to look at that document.

15 A This is my statement.

16 Q That's the statement that you gave to the police?

17 A Yes.

18 Q Is there anywhere in this statement, without referring
19 to exactly what it says, is there anywhere in your statement,
20 look through the statement, that -- where you indicated what
21 Dennis specifically said that night on January 18th at 2808
22 Mitchell?

23 MR. LEINER: Your Honor, objection. May we approach?

24 THE COURT: The objection is sustained.

25 Q Is there -- I asked you a question with respect to

1 what Dennis specifically said on January 18th, 1995; do you
2 recall that question?

3 A Yes.

4 Q Do you recall what Dennis specifically said on January
5 18th, 1995 about what he said when he came in?

6 A Okay, when he came in, he wanted to speak to Latisha
7 outside. She was trying to tell him what happened the night
8 before.

9 MR. LEINER: Your Honor, may I approach?

10 THE COURT: You may. If I can ask you to step down
11 just for a moment and have a sit in the front.

12 (Sidebar discussion on the record.)

13 MR. LEINER: Your Honor, I couldn't see whether or not
14 this witness was reading this statement. Her eyes were down.
15 I'm not sure whether the State asked her. She never indicated
16 along those lines. I just want to clarify she was not. I
17 couldn't see the statement itself.

18 MR. ARONOW: That wasn't my impression she was reading
19 as she was testifying.

20 MR. LEINER: I request until sometime that the
21 statement be removed from in front of her.

22 THE COURT: Okay.

23 MR. ARONOW: Sure.

24 (Sidebar discussion concluded.)

25 BY MR. ARONOW:

1 Q Lakesha, you were testifying that Latisha was trying
2 to explain to Dennis what had happened the night before?

3 A Yes.

4 Q Without reference to what specifically she said, okay,
5 what did Dennis say in response?

6 A He asked her to step outside.

7 Q Okay. Did you hear Dennis say anything that night
8 with respect to your brother, Kirby Bunch?

9 A Yes, yes.

10 Q What did you hear Dennis say?

11 A That he was going to look for him, that he was going to
12 kill him and if we was there when he got back, he was going to
13 get us too, meaning Barbara --

14 MR. LEINER: Objection, your Honor.

15 A -- and myself.

16 MR. LEINER: -- to what the person meant. She
17 testified as to what he said.

18 THE COURT: The objection is overruled. Why don't you
19 lay a foundation for how she knows what he meant by the word
20 "us."

21 Q Lakesha, who else was in the room when Dennis said
22 that?

23 A It was Marie Covin and her seven kids, Latisha Fair,
24 Barbara Buckhannon, myself, Latisha's one year old son, he was
25 one at the time, one or two years old and that's it, just us.

1 MR. LEINER: Your Honor, I further object. These
2 questions weren't even asked and answered.

3 MR. ARONOW: Judge --

4 THE COURT: The objection is overruled. This is to
5 lay a foundation as to how she knows who he meant by the word
6 "us." You may continue.

7 BY MR. ARONOW:

8 Q When Dennis made the remarks that you were referring
9 to saying he was going to get back and get you all, who was in
10 front of Dennis or present when Dennis said that?

11 A Barbara, Marie, Latisha, and the kids.

12 Q Okay. And was he pointing or gesturing when he said
13 that or was he talking to one person when he said that or
14 describe the manner in which he was saying it?

15 A He was talking to, you know, who was in the house. He was
16 talking to us.

17 Q Was it in a tone like we're talking now? How was it?

18 A No, he was loud, you know he was upset, he was outraged, he
19 was just loud.

20 Q Did there come a time when Dennis left 2808 Mitchell
21 Street on January 17th, 1995?

22 A Yes.

23 Q Do you recall approximately when he left?

24 A Maybe like 6:30, something like that.

25 Q Was it dark outside when Dennis came over?

1 A It was starting to get dark.

2 Q And at some point in time -- how long was Dennis at
3 2808 Mitchell?

4 A Maybe 10, 15 minutes.

5 Q And did he speak to Latisha before he left or did he
6 just leave?

7 A After he said what he said in the house, him and Latisha
8 went outside.

9 Q Before that, did you say anything to Latisha before he
10 went out the house?

11 A He asked her to go outside with him.

12 Q Why did you say to Latisha?

13 A I asked her not to go outside with him.

14 Q Why?

15 A Because I didn't want her to go out there with him.

16 Q Why?

17 A Because he kept saying he was going to get us. So if, if
18 she went outside with him, you know, why wouldn't he do
19 anything to her? But then I was thinking, you know, that since
20 they had, you know, relations before, that they was cool so he
21 probably would do nothing to her. But then I was just
22 worried. I told her not to go, but she went anyway.

23 Q And he had a conversation with Latisha outside?

24 A Yes.

25 Q And was the tone of Dennis' voice any different from

1 when he was in the house?

2 A It was the same, loud.

3 Q Could you still hear him?

4 A Yes.

5 Q Was he saying the same thing?

6 A He was just trying to get, you know, trying to find my
7 brother. He was just trying to get there. He didn't want to
8 hear nothing. He didn't want to hear no explaining.

9 Q What did he say in regard to that?

10 A What did he say?

11 Q When he said he didn't want to hear nothing, he didn't
12 want to hear explaining, are those his words? What did he say?

13 A He did not want to hear it. Then Latisha was telling him

14 --

15 Q Without reference to what she actually said, what was
16 she talking about?

17 A She was talking what had happened the night before which is
18 the 17th.

19 Q And is that when Dennis indicates he didn't want to
20 hear nothing?

21 A No, he didn't say he did not want to hear anything. He was
22 just like, you know, he just was, he wasn't trying to hear it.
23 He was not -- like he was overtalking her when she was trying
24 to explain, so he was, like he was going to go, go get him,
25 talking about K.C. and he left like 15, 10 or 15 minutes and he

1 left.

2 Q Did the police arrive at some point in time?

3 A They arrived 20 minutes to a half-hour after Dennis had
4 left.

5 Q And can you describe the police officers that came?

6 A It was a Hispanic officer, he had glasses, maybe like your
7 weight, maybe a little bit bigger, your height and it was a
8 white officer. I don't really remember what he looked like
9 because I was talking to the Hispanic officer.

10 Q Okay. And what did you tell the Hispanic officer?

11 A Because Dennis had just left there and he said he was going
12 to kill my brother and my brother was on Westminster where he
13 usually be and I told the paddy wagon number 309, I had asked
14 him to go to Westminster Avenue and --

15 THE COURT: Are you okay? Can I get you something?

16 THE WITNESS: Can I get some tissue?

17 THE COURT: Can you repeat the question?

18 BY MR. ARONOW:

19 Q What did you tell the Hispanic police officer?

20 A I told him to go to Westminster Avenue because that's where
21 my brother usually be and he say he couldn't just go there
22 because --

23 Q Without reference to what the police officer said to
24 you, did it appear to you that the police officer was listening
25 to your concerns?

1 A He listened, but he wasn't, you know, really concerned
2 because he said it was hearsay. So I wasn't really concerned,
3 you know. He, he had other calls to attend to, so he stood
4 there, he listened, you know, to what we had to say. After we
5 -- Latisha and I had saw he wasn't going to Westminster
6 Avenue, we left, we left and walked to Westminster Avenue.

7 Q And why was that?

8 A To look for my brother just to warn him, you know, that
9 somebody was looking for him.

10 Q And what were you going to tell him, specifically who
11 was looking for him?

12 A Yes.

13 Q And were you going to be specific?

14 A Dennis.

15 Q And were you going to tell him what Dennis said to
16 you?

17 A That he was going to kill him. By the time we had got
18 there, it was already done.

19 Q You made it to Westminster Avenue on January 18th,
20 1995?

21 A Yes.

22 Q Your brother was already dead?

23 A Yes.

24 Q How did you get to Westminster Avenue? Take your
25 time.

1 A I walked.

2 Q With who?

3 A Latisha.

4 Q When you arrived at Westminster Avenue, did you see
5 the police officer that you spoke to earlier?

6 A Yes.

7 Q Did you see the van again?

8 A Yes.

9 Q Did you say something to him?

10 A I asked him why didn't he go when we told him because if he
11 would have went, then none of that would have happen, but he
12 say he had other calls.

13 Q I'm going to show you what's been marked S-21 for
14 Identification. Do you have recognize that photograph?

15 A Yes.

16 Q And who's in that photograph?

17 A This is the eighth grade graduation picture. It's a school
18 friend, Jayme and Latisha and myself and Dennis.

19 Q Dennis Copling?

20 A Yes.

21 Q Do you know how this photograph came to be in the
22 possession of the police?

23 A Yes.

24 Q How is that?

25 A January the 18th, we was asked to come to the police

1 station. I carried the photo album to show them the picture of
2 Dennis and Gary and I gave them the picture.

3 Q You give the police that picture?

4 A Yes.

5 Q Did you have any other concerns about yourself
6 personally on January 18th, 1995 after you found out what
7 happened to your brother?

8 A I was scared, but I was like, I was just more in shock
9 about my brother. I didn't really care.

10 Q What were you afraid of?

11 A That he would come.

12 MR. LEINER: Your Honor, objection.

13 THE COURT: On the grounds of relevance?

14 MR. LEINER: Relevance.

15 THE COURT: I'll hear you at sidebar.

16 (Sidebar on the record.)

17 THE COURT: What's the relevance of her sentiments?

18 MR. ARONOW: Because she testified that he threatened
19 to come back and get them too if they were there when he came
20 back.

21 MR. LEINER: The testimony has already been given. I
22 don't see the relevance to continue to ask her whether or not
23 she was afraid at that point, whether she's afraid today or
24 not.

25 MR. ARONOW: I didn't ask her whether she was afraid

1 today. I asked that night. I think it is relevant because
2 it's relevant to hear whether or not the person who was present
3 and made threats was the person she had --

4 THE COURT: She's not the jury. That's for the jury
5 to decide. Objection is sustained.

6 MR. LEINER: Just one other issue, your Honor, before
7 it happens. With the last witness, Mr. Aronow presented a
8 picture of the victim. Your Honor, in light of my previous
9 objections and the fact we'll stipulate, I don't see any reason
10 to make this witness anymore upset and get closer to the
11 witness impact by showing the picture of the victim so she
12 cries more. It's an issue that would only --

13 THE COURT: Inflamm the jury.

14 MR. LEINER: -- inflame the jury, yes.

15 MR. ARONOW: One more remark. I had indicated I
16 expected to ask Lakesha that fact. I had told her what I
17 intended to do. It was she who brought up the fact. She
18 wanted to do it. It was not my idea. I don't think it
19 inflames the jury. Quite frankly, she's been through a lot and
20 if it's something that contributes to her peace of mind, it
21 certainly is an issue with respect to identification. I
22 thought I already presented the photograph of --

23 THE COURT: Not to her, to her mother.

24 MR. ARONOW: I'm not going to do that, Judge.

25 THE COURT: Very good. It shouldn't be done because I

1 don't think it adds anything to the proofs in the case, and all
2 it does is engender more sympathy.

3 MR. LEINER: Thank you.

4 (Sidebar conclude concluded.)

5 THE COURT: Where is the witness?

6 MR. ARONOW: I think she's composing herself, Judge.

7 THE COURT: Members of the jury, the objection to the
8 last question was sustained.

9 BY MR. ARONOW:

10 Q Lakesha, do you know anybody by the name of Mark
11 Winston?

12 A Yes.

13 Q And how do you know Mark Winston?

14 A I just know him from the neighborhood and my brother's
15 daughter's mom has a baby, baby brother Mark, that's how I know
16 him from the streets.

17 Q Do you know him by any other name other than Mark
18 Winston?

19 A Malik.

20 Q Is that his nickname?

21 A Yes.

22 Q I'm going to show you what's been previously marked
23 S-22 for Identification. Could you come down here for a
24 second?

25 (Witness steps down.)

1 Q Could you look on this map and tell the jury where the
2 fight between K.C. and Gary Copling took place on the 17th
3 approximately? Can you do it from the side? You have to
4 answer that question. You can't answer that question?

5 A Well, it was --

6 Q Did it happen near an apartment building?

7 A It happened around apartment buildings in a parking lot.
8 I'm not sure if it's this, if this would be the parking lot or
9 if this would be the parking lot, but it had been a parking lot
10 behind the apartment buildings.

11 Q And you're pointing to two squares on this map?

12 A Mm-hmm.

13 Q And one square has Mitchell Street on top and that
14 should be Saunders Street underneath?

15 A Yes.

16 Q Actually both blocks, that's Mitchell and Saunders
17 above and below?

18 A They happened like right -- like around here.

19 Q Okay. Can you be a little bit more specific?

20 A It happened on 28th and Mitchell.

21 Q Okay.

22 A So 28th and Mitchell would be right here.

23 Q Okay.

24 A The apartment building I guess would be here and Marie's
25 apartment was the -- was on the corner.

1 Q Do you know which corner?

2 A It happened here.

3 Q Okay. At 28th and Mitchell?

4 A Yes.

5 Q All right. Where you were on January 18th, 1995 when
6 you were at Marie's house, where was that?

7 A January 18th?

8 Q Yeah, the next day after the fight when you were at
9 Marie's house, Marie Covin's house?

10 A I wasn't at Marie's house on the 18th.

11 Q Were you with Latisha and your mom came in?

12 A That was the 17th. We was at Marie's house, 2808.

13 Q Okay. When were you at 2808, was that the night that
14 Dennis came?

15 A That was the 17th.

16 Q That was the night -- was it the night that Dennis
17 came?

18 A Yes.

19 Q Okay. Had the fight occurred the night before or the
20 same night?

21 A The night before.

22 Q Okay. When you were at 2808 Mitchell, where was
23 that? Is that near where the fight occurred?

24 A Yes.

25 Q How close or how far?

1 A Right on the side of her house, right on the side of her
2 house it happened.

3 Q Okay. And where do you live or where did you live at
4 that time?

5 A On 2726 Cramer.

6 Q Do you have an idea in relation to Marie's house?

7 A Maybe like around the corner. I live here.

8 Q And where did K.C. live? Where?

9 A McGuire.

10 Q Where did you go to see him?

11 A I went to my Aunt Queen's house in McGuire Gardens and then
12 to my grandmother's.

13 Q And where are they in relation to this map?

14 A (Witness indicating.)

15 Q Okay. You're pointing to the area that says McGuire
16 Gardens Apartments?

17 A Yes.

18 Q And where did you see the police van again?

19 A Right here, on Westminster Avenue.

20 Q And -- okay. And that was the same night that Dennis
21 was there, that was the night that Dennis was at 2808 Mitchell
22 Street?

23 A Yeah.

24 MR. LEINER: Objection, leading.

25 THE COURT: Your question should be rephrased. The

1 objection is sustained.

2 Q Do you recall whether Dennis Copling was at 2808
3 Mitchell Street the same night that your brother got killed?

4 A The same night? No, he was there -- no, he was there the
5 night before, the night before which was the 17th, my brother
6 was killed the 18th.

7 Q Right. Okay. When did this incident happen with
8 Dennis Copling?

9 A The 17th.

10 THE COURT: When you say this incident, what do you
11 mean exactly?

12 Q I'm not talking about the fight with Gary Copling.
13 I'm talking about when Dennis Copling came to where you, your
14 mother, Latisha, and the kids were all at.

15 A What day was it?

16 Q Well, I'm asking is that the same night you went
17 looking for your brother?

18 A Yeah.

19 Q Okay. And that was down here?

20 A Mm-hmm.

21 Q Yes?

22 A Yes.

23 Q Okay. How did you get there?

24 A Walked on foot.

25 Q With who, if anyone?

1 A Latisha and my mom.

2 MR. ARONOW: I have no further questions.

3 THE COURT: Mr. Leiner, you may cross-examine although
4 we're going five minutes.

5 MR. LEINER: Thank you, your Honor.

6 THE COURT: You may resume the witness stand.

7 (Witness resumes stand.)

8 CROSS-EXAMINATION BY MR. LEINER:

9 Q Ma'am, the night that you said that Dennis Copling
10 came to the house where your mother and Latisha Fair and Marie
11 were and all the kids were, you indicated that Dennis Copling
12 made certain statements in that house; is that correct?

13 A Yes.

14 Q In fact, you said it was a rather loud tone of voice;
15 is that also correct?

16 A Yes.

17 Q Was your mother in the room when those statements were
18 made?

19 A I can't hear you.

20 Q Was your mother in the room when those statements were
21 made?

22 A Yes.

23 Q And how close to Dennis Copling was she?

24 A He was between the door -- all right, like where the,
25 security guard is, whatever, like where he's sitting that would

1 be Dennis and my mom would be like where the lady in the green
2 is.

3 Q And where were you standing?

4 A I was sitting on a couch next to my mom.

5 Q Next to your mother?

6 A Mm-hmm.

7 Q Were you right next to your mother at the time?

8 A Yes.

9 Q Was your mother also sitting?

10 A Mm-hmm.

11 Q Dennis was rather loud when he was making these
12 comments; is that correct?

13 A Yes.

14 Q So anything that Dennis would have said, your mother
15 would have heard?

16 A Yes.

17 Q Now, you indicated also in your testimony on a prior
18 occasion some several weeks before that incident you had seen
19 Dennis at that party; is that correct?

20 A Yes, at -- yeah.

21 Q And you indicated that you went to sit down in a
22 particular location at that party on a chair or a couch?

23 A On a couch.

24 Q On a couch. And was anyone else sitting on that
25 couch?

1 A No.

2 Q You went to sit down and Dennis told you not to sit
3 there; is that correct?

4 A Yes.

5 Q And then you tell us that Dennis picked up what
6 appeared to you to be a weapon; is that correct?

7 A Yes.

8 Q And then he went and sat around the other side of the
9 table; is that correct?

10 A Yes.

11 Q How many other people were at the table?

12 A Three.

13 Q Was there someone sitting, someone sitting opposite,
14 across from Dennis?

15 A Yes.

16 Q With their back to you?

17 A Yes.

18 Q And there were people sitting on the sides; is that
19 correct?

20 A Yes.

21 Q And you also indicated that you could not see what
22 Dennis Copling was doing at that point, could you?

23 A No.

24 Q In fact, it's true that your vision was somewhat
25 blocked in regard to Dennis Copling; is that true?

1 A Yes.

2 Q You didn't see that gun anymore that night?

3 A No.

4 Q And do you know whether or not you left before or
5 after Dennis Copling?

6 A Before.

7 Q You weren't outside with Latisha and Dennis, were you?

8 A No, I was in the house.

9 Q Did you stay seated at the couch?

10 A Yes.

11 Q And I think you indicated that -- how far away is the
12 couch from the front door?

13 A That would be the couch where the lady in the green is
14 sitting.

15 Q Okay. And if -- where would the front door be?

16 A Where the security guard is.

17 Q You mean the door to the courtroom?

18 A Yes.

19 Q And the door was closed?

20 A It was like cracked.

21 Q Like cracked. It was wintertime, wasn't it?

22 A Yeah.

23 Q Was it cold?

24 A Kind of.

25 MR. LEINER: I have no further questions, your Honor.

1 THE COURT: Any redirect?

2 MR. ARONOW: No.

3 THE COURT: Okay. You may step down. You are
4 excused. At this point we'll take a luncheon recess and we'll
5 resume at 1:40. Again, just a reminder not to discuss the
6 testimony among yourselves in the meantime. We'll see you
7 after lunch.

8 (Jury leaves the courtroom at 12:28 p.m.)

9 (Luncheon recess.)

10 AFTERNOON SESSION

11 THE COURT: Yes, Mr. Leiner.

12 MR. LEINER: No, I was just standing when your Honor
13 came in.

14 MR. ARONOW: Judge, I indicated to Mr. Leiner before
15 we begin with the next witness, who's going to be Nathaniel
16 Simmons, that the State anticipates and would elicit testimony
17 made by Mark Winston, also known as Malik, on the ground that
18 Malik was a co-conspirator to the murder and the indictment,
19 even though under the 803(b)(5) hearsay exception doesn't
20 require there even to be a count of the indictment charging
21 conspiracy, it's clear that the statements of Malik to the
22 defendant are in furtherance of the conspiracy to commit murder
23 or certainly the conspiracy to commit a crime against Kirby
24 Bunch and that therefore the statements made by Malik should be
25 admissible.

1 THE COURT: As what was, a statement against people --

2 MR. ARONOW: It was a statement of a co-conspirator in
3 the furtherance of a commission of a crime.

4 THE COURT: Under Evidence Rule --

5 MR. ARONOW: (803(b)(5).

6 THE COURT: The jury is on its way now. I've been
7 here for 10 minutes. Bring it to my attention. We'll take a
8 break and I'll deal with the issue at the break.

9 (Jury enters courtroom at 1:51 p.m.)

10 THE COURT: The State may call its next witness.

11 MR. ARONOW: The State would call Nathaniel Simmons.

12 THE COURT: If you would please come forward to my
13 right and be sworn.

14 N A T H A N S I M M O N S, STATE'S WITNESS, SWORN.

15 THE COURT: You may proceed.

16 MR. ARONOW: Thank you, your Honor.

17 DIRECT EXAMINATION BY MR. ARONOW:

18 Q Would you tell the Court and jury your name again
19 please?

20 A Nathan Simmons.

21 Q And in January of 1995 where did you live, Nate?

22 A 2126 Westminster.

23 Q And where is that?

24 A McGuire Gardens.

25 Q And is that in the City of Camden?

1 A Yes.

2 Q And whose place was that?

3 A My mom's.

4 Q And did you -- did you know a person by the name of
5 Kirby Bunch, Jr. in January of 1995?

6 A Yes.

7 Q And how did you know Kirby?

8 A I've been living there for awhile, from being out there.

9 Q Did Kirby have a nickname?

10 A K.C.

11 Q And did you know a person by the name of Gary Copling,
12 Jr. in January of 1995?

13 A Yes.

14 Q And how did you know Gary?

15 A From being around.

16 Q Same type of way?

17 A Yes.

18 Q And did Gary go by a nickname that you're aware of?

19 A No.

20 Q With respect to Dennis Copling, did you know of a
21 Dennis Copling in January of 1995?

22 A Yes.

23 Q And did you know about him in the same manner?

24 A Yes.

25 Q Did you know a person by the name of Malik?

- 1 A Yes.
- 2 Q Did you know that person's real name in January of
3 1995?
- 4 A No.
- 5 Q You only knew him as Malik?
- 6 A Yes.
- 7 Q And how do you know that person?
- 8 A By seeing him around, around McGuire Projects a couple
9 times.
- 10 Q Around where you lived?
- 11 A Yes.
- 12 Q I'm going to show you a photograph which has been
13 marked S-2 for Identification. Do you recognize the person
14 that's in that photograph?
- 15 A Yes.
- 16 Q Who's that?
- 17 A K.C.
- 18 Q Kirby Bunch, Jr.
- 19 A Kirby Bunch, yeah.
- 20 Q I'm going to show you a person or a photograph marked
21 S-18 for Identification. Do you recognize the person in that
22 photograph?
- 23 A Yes.
- 24 Q Who's that?
- 25 A Malik.

1 Q Did you know Lakesha Buckhannon?

2 A Yes.

3 Q Who's she?

4 A I think that's K.C., Kirby Bunch sister.

5 Q Okay. And on January 17th, 1995, did you have
6 occasion to see Lakesha Buckhannon?

7 A Yes.

8 Q And who were you with on that particular day?

9 A Kirby Bunch.

10 Q And did you happen to see Gary Copling, Jr. on January
11 17th, 1995?

12 A Yes.

13 Q And where was it that you saw those people?

14 A At a house.

15 Q And where was it that you saw Gary Copling, Jr.?

16 A I don't know the exact house, but it was some apartment
17 complex.

18 Q In the City of Camden?

19 A Yes.

20 Q Do you know what street it was on?

21 A No.

22 Q Or what street it was near?

23 A No.

24 Q How did you get there?

25 A By car.

1 Q And who was driving?

2 A Kirby.

3 Q Did something happen between Kirby Bunch, Jr., K.C.,
4 and Gary Copling that you witnessed?

5 A Yes.

6 Q What did you witness?

7 A Witness that he grabbed him. It was like --

8 Q When you say he grabbed him, who grabbed who?

9 A When Kirby Bunch grabbed Gary, where my sister dog, and he
10 -- Gary got up to run and he grabbed him on his neck and
11 started to put him to sleep, then he woke up and I grabbed him
12 off of him.

13 Q Okay. You said somebody grabbed him and choked him
14 until he went to sleep?

15 A Yes.

16 Q Who did what to who?

17 A Kirby grabbed Gary and choked him to put him to sleep.

18 Q How did he do that?

19 A Grabbed him around his neck, choked him.

20 Q With his arm or with his hand?

21 A With his arm.

22 Q And what happened to Gary when that happened?

23 A He fell asleep and he kicked him and he woke back up and I
24 grabbed him off of him.

25 Q You grabbed who off of who?

- 1 A Grabbed Kirby off of the guy.
- 2 Q Why is that?
- 3 A Because, because I guess -- I don't know.
- 4 Q Did you say anything to Kirby with reference to Gary
- 5 and what was happening to Gary?
- 6 A No.
- 7 Q You just grabbed Kirby off of Gary?
- 8 A Yes.
- 9 Q And what did Gary do after that?
- 10 A He ran.
- 11 Q Did you see Gary again on January 17th, 1995?
- 12 A No.
- 13 Q What did you and K.C. do after that?
- 14 A We drove around for a while and then we went back to my
- 15 house.
- 16 Q And what house was that?
- 17 A 2126 Westminster.
- 18 Q Was Lakesha Buckhannon there when this happened?
- 19 A Yes.
- 20 Q And with respect to the following day, January 18th,
- 21 1995, did you have occasion to be with Kirby Bunch again that
- 22 day?
- 23 A Yes.
- 24 Q And where were you with him?
- 25 A In my house.

1 Q At 2126 Westminster?

2 A Yes.

3 Q And I'm going to show you a group of photographs that
4 have been marked S-31, S-32, S-33, and S-34. Do you recognize
5 what's shown in the photographs?

6 A Yes.

7 Q And what is shown in the photographs?

8 A Project, McGuire Projects homes.

9 Q And -- okay. Any specific area of the McGuire
10 Projects do you recognize?

11 A Yes.

12 Q And what specific area do you recognize?

13 A My house and neighbor's houses.

14 Q Okay. And could you -- by looking, do you know how
15 far from the end of the building was your house?

16 A Yes.

17 Q How far was it?

18 A Two doors down.

19 Q Okay. And so could you show where your house was?

20 A Yes, third one.

21 Q Third one?

22 A Yes.

23 Q Okay. So past two doors down?

24 A Uh-huh.

25 Q And in S-31 for identification which door would be the

1 door to your house, the one closest to the right of the photo
2 or the one closest to the left of the photo?

3 A Closest to the left.

4 Q How many total doorways are shown?

5 A One.

6 Q How many doorways?

7 A No, two.

8 Q On the photograph how many are shown?

9 A Three.

10 Q Okay. And yours is the furthest to the left?

11 A Yes.

12 Q And the photograph that's been -- strike that. Does
13 the photograph, which is marked S-31 for Identification, does
14 that fairly and accurately show what the doorway to your house
15 looked like around January of 1995?

16 A Yes.

17 Q And do you know -- strike that. How many doors are
18 there to get into 2126 Westminster Avenue?

19 A Two.

20 Q And do you know which door is shown in the photograph
21 which is marked S-31 for Identification?

22 A Yes.

23 Q Which door?

24 A Screen door.

25 Q What does that screen door enter into in the house?

1 A Kitchen.

2 Q Kitchen?

3 A Yes.

4 Q Would that be considered the backdoor or the front
5 door?

6 A Back.

7 Q And I'm going to show you what's been marked S-32 for
8 Identification. Is that a different angle of the same building
9 where 2126 Westminster Avenue is?

10 A Yes.

11 Q And does that also show where the doorway to your
12 property was?

13 A Yes.

14 Q And where, where's that in reference to the
15 photograph?

16 A Two doors down from the end.

17 Q Which is the end, to the right or to the left?

18 A To the right.

19 Q So it would be -- it would be actually the third door
20 up from counting from the right to the left?

21 A Yes.

22 Q The house that's shown or the doorway that's shown in
23 the left side of that photograph, where is that in relation to
24 your house, the two doorsteps that come together into one?

25 A I don't understand.

1 Q Do you know where the -- strike that. Next door to
2 your house, if you were to come out of your house, 2126
3 Westminster, from the kitchen door, still standing on your back
4 step?

5 A Uh-huh.

6 Q If you were to look to your right?

7 A Mm-hmm.

8 Q Are there additional --

9 A Yes.

10 Q -- doors to your right?

11 A Yes.

12 Q You already said that your -- there are two more doors
13 down on your left-hand side; is that correct?

14 A Yes.

15 Q Does that photograph, S-32 for Identification, show
16 both the residences to the right if you were standing?

17 A Yes.

18 Q And your threshold looking out and to the left?

19 A Yes.

20 Q Does that reasonably and accurately appear to resemble
21 what that area of your house looked like in December of 1995?

22 A Yes.

23 Q I'm going to ask you the same question with the
24 photograph that's been marked S-33 for Identification. Is that
25 another view of the building that contains 2126 Westminster

1 Avenue?

2 A Yes.

3 Q Is that the same building that's shown in the other
4 photographs except from the other end?

5 A Yes.

6 Q Does that photograph reasonably and accurately depict
7 how the building that contained 2126 Westminster looked on
8 January -- or in January of 1995?

9 A Yes.

10 Q And one last question. I'm going to ask you to look
11 at photograph S-34 for Identification and does that show a
12 slightly different view from the photograph that was just
13 before it?

14 A Yes.

15 Q The photograph which has been marked S-34 for
16 Identification, does that also reasonably and accurately show
17 the building which contains 2126 Westminster Avenue in January
18 of 1995?

19 A Yes.

20 Q To the left of the photograph, S-34 for
21 Identification, what do you see?

22 A See, that's the day care center.

23 Q Okay. There's a building there?

24 A Yes.

25 Q And what day care center is that?

1 A I don't know the name of it.

2 Q Okay. But there's a day care center there?

3 A Yes.

4 Q And if you were to look at these photographs, do any
5 of these photographs here show you a view from Westminster
6 Avenue?

7 A The -- just -- yes.

8 Q Which photograph?

9 A 34, S-34 and S-32.

10 Q Okay. And where would Westminster Avenue be if you
11 were standing in the photographer's position taking those
12 photographs?

13 A Which one?

14 Q If you were -- if you were the person taking the
15 picture and you were standing, where would Westminster Avenue
16 be in relationship to where you would be looking if you took
17 that picture?

18 A From in front.

19 Q Okay.

20 A In the front of it. From the side I mean.

21 Q Okay. Where would the street be and where would the
22 -- you know what? Strike that. I'm going to show you what's
23 been marked S-22 for Identification. Can you come down a
24 second.

25 (Witness steps down.)

- 1 Q Can you find Westminster Avenue on that map?
- 2 A Right there -- oh, that's -- right here.
- 3 Q Okay. And is that where the McGuire Gardens is?
- 4 A Yes.
- 5 Q And do you know what other streets are around 2126
- 6 Westminster Avenue?
- 7 A Yes.
- 8 Q What streets?
- 9 A Boyd and Berwick.
- 10 Q Can you locate those on the map as well?
- 11 A Here and here.
- 12 Q Are they're clearly marked Boyd and Berwick?
- 13 A Yes.
- 14 Q Do they appear to be accurately laid out the way you
- 15 understand the map of the City of Camden to be?
- 16 A Yes.
- 17 Q And from living in that area at that time?
- 18 A Yes.
- 19 Q How long did you live in that area?
- 20 A About seven, six years.
- 21 Q And where would 2126 -- where would the building be in
- 22 relationship to the map? If you could sort of stand along the
- 23 side so the jury could see where you're pointing to.
- 24 A Around about right here.
- 25 MR. ARONOW: Okay. Now, you can take your stand

1 please.

2 (Witness resumes stand.)

3 Q When you went to 2126 Westminster Avenue, did you stay
4 overnight there between January 17th and January 18th?

5 A Yes.

6 Q Was Kirby with you the entire time?

7 A Yes.

8 Q Was anybody else with you at some point in time on
9 January 18th, 1995?

10 A Yes.

11 Q Who was with you?

12 A Benjamin Young.

13 Q And who's Ben Young?

14 A Friend of mine.

15 Q Okay. And did there come a time when you, Kirby
16 Bunch, Jr. and Ben Young were all in 2126 Westminster Avenue
17 together?

18 A Yes.

19 Q And when was that? Do you recall when that was?

20 A About, about nine.

21 Q Nine, what time?

22 A 9:00 o'clock, 9 p.m.

23 Q 9 p.m.?

24 A Uh-huh.

25 Q Had you been together earlier?

1 A Yes.

2 Q And when you went to 2126 Westminster Avenue together,
3 what did the three of you do?

4 A We just, we just watched t.v. and listen to the radio.

5 Q And where were you inside of 2126 Westminster Avenue?

6 A In the living room.

7 Q Okay. And in relationship to the kitchen door area
8 which you just described, how would one get to the living room
9 from that room?

10 A You have to walk through the kitchen.

11 Q Okay. And then where?

12 A And then through, through two doors. That's it.

13 Q Okay. And is the living room connected in any way to
14 the kitchen?

15 A Yes.

16 Q How?

17 A It's, it's right, right together. It's like as soon as you
18 go out the kitchen, you go out of the kitchen in the living
19 room.

20 Q And was there any kind of furniture or anything like
21 that in the living room?

22 A Yes.

23 Q What kind of furniture was there?

24 A Sofa and sofa bed and t.v.s and radio. That's it.

25 Q When you say radio, do you mean stereo or radio?

1 A Radio.

2 Q And I'm going to show you what's been marked S-23 for
3 Identification. Does that diagram show you the location of
4 2126 Westminster Avenue, the apartment where you were that
5 evening, January 18th, 1995?

6 A Yes.

7 Q And does that -- does this diagram, which is marked S-
8 23 for Identification, does that show the location of 2126
9 Westminster in relationship to Westminster Avenue and the
10 McGuire Gardens Housing Project?

11 A Yes.

12 Q Is that an accurate --

13 A Yes.

14 Q -- portrayal of where 2126 Westminster Avenue is?

15 A Yes.

16 Q And you had indicated that it was the third door; is
17 that correct?

18 A Yes.

19 Q And is that correct on this diagram?

20 A Yes.

21 Q Now, with respect to this diagram, is there the area
22 -- come down here again and show us where the kitchen area
23 would be on this diagram.

24 (Witness steps down.)

25 A The kitchen would be right about here.

1 Q Okay. Where's the doorway itself?

2 A Right here.

3 Q Okay. And how about the screen door, where is the
4 screen door located?

5 A Right by the door, right there, about right there.

6 Q If one were to come in from the outside to get in
7 through the kitchen, okay, the outside door, where's the
8 doorway from the outside in?

9 A About right there.

10 Q Is that inside 2126 Westminster?

11 A That's inside.

12 Q Yeah. Where's the outside? Can you tell from this
13 photograph or from any diagram?

14 A No.

15 Q Okay. When you come in from the outside, how do you
16 get in?

17 A Through two doors, screen door and another door.

18 Q Okay. And is that -- is there a screen door and
19 another door on the inside or is that on the outside?

20 A That's on the outside.

21 Q Okay. And once you enter the screen door and the
22 other door, is there another door on the inside?

23 A No.

24 Q Okay. Is there a front door, a door on the other side
25 completely other side of the building?

1 A Yes.

2 Q And where is that?

3 A In the front.

4 Q Okay. And what room does that enter into?

5 A Living room.

6 Q The living room?

7 A Yeah.

8 MR. ARONOW: Okay. Now, go ahead, you can take your
9 seat again.

10 (Witness resumes stand.)

11 Q With respect to the evening of January 18th, 1995, did
12 anything happen while you, K.C. and Ben Young were in the
13 apartment?

14 A Yes.

15 Q What happened?

16 A We're sitting in there and Malik came in. He knocked on
17 the door, K.C. got up and opened the door and Malik came in.
18 He walked in the living room. Like Malik say, why you jump,
19 why you jump?

20 MR. LEINER: Objection, your Honor, hearsay.

21 THE COURT: Mr. Aronow.

22 MR. ARONOW: Your Honor, it's the State's position
23 that it's the statement of a co-conspirator and would clearly
24 be admissible.

25 THE COURT: Under 803(b)(5) the objection is

1 overruled. You may proceed.

2 Q What did Malik say?

3 A Malik say, why you jump, why you jump, my young boy? Like
4 why you jump my young boy? I said we ain't jump him. KC said
5 it's a fair fight. After that Malik say, well, you're going to
6 speak with his brother.

7 Q Okay. Let me stop you right there. When K.C. was
8 with you in the living room, were you with Young?

9 A Yes.

10 Q There was a knock at which door?

11 A The front.

12 Q And what happened with respect to -- Malik was allowed
13 in?

14 A Yes.

15 Q And Malik was the person that you identified in that
16 photograph?

17 A Yes.

18 Q And can you describe how Malik was dressed?

19 A He had, had a blue goose down jacket and he had no hat.

20 Q Was he wearing anything over his face?

21 A No.

22 Q Did you clearly know him as Malik?

23 A Yes.

24 Q When Malik came in, can you describe his attitude and
25 demeanor?

1 A Yes. He was kind of upset that he said we jumped his young
2 boy and he was --

3 Q What's the word young boy mean?

4 A Just little.

5 Q Is that a friend?

6 A Yes, his friend, but his young, his young friend.

7 Q All right. And with respect to the way he was acting,
8 how would you describe his temper?

9 A He was mad.

10 Q Was he yelling or was he talking like you and I are?

11 A He was yelling.

12 Q And did you or K.C. say anything at the time that he
13 was talking?

14 A Yes.

15 MR. LEINER: Objection, your Honor, to what K.C.
16 said. It's clearly hearsay.

17 MR. ARONOW: Well, I'm not talking what K.C. said.
18 I'm asking if they said anything while Malik was talking.
19 That's not hearsay.

20 THE COURT: Without telling what was said, if you can
21 answer that question yes or no.

22 THE WITNESS: Yes.

23 Q And it was you who said what?

24 A I said we ain't jump Gary.

25 Q Okay. And did he say anything to you in response?

1 A Told me to shut the fuck up.

2 Q Okay. Were those pretty much his exact words?

3 A Yes.

4 Q And did he say that in the tone of voice that he was
5 using earlier?

6 A Yes.

7 Q And did you shut the fuck up?

8 A Yes.

9 Q Now, at some point in time --

10 THE COURT: From now on I think we can all use a
11 shorter form of that word so we don't have to repeat that word
12 in the courtroom. Say "F" from now on.

13 Q Now, with respect to K.C., where was K.C. at this
14 point?

15 A He was still in the living room with me.

16 Q And where was Ben Young?

17 A In the living room.

18 Q And did anything else happen after Malik -- well,
19 well, strike that. You indicated that Malik said something
20 else in addition to after you said it was a fair fight?

21 A Yes.

22 Q After he used the shut the "F" up, what else did he
23 say?

24 A He said turn down, told Ben turn down the radio.

25 Q Did he say that in the same type of tone?

1 A Yes.

2 Q And did he say anything else with respect to anything
3 that happened after that?

4 A No.

5 Q Did you say something about talking to someone else's
6 brother?

7 A Yes, oh, yeah, I said, well, you got to speak to his, his
8 brother. We do that. You got to speak to his brother. He
9 said that two times. Then they walked in the kitchen. Gary --
10 I mean Malik and K.C. walked in the kitchen together.

11 Q And did they go out of your sight at that point?

12 A Yes.

13 Q Did there come a time when you saw anything else after
14 that?

15 A Yes.

16 Q And where were you looking from?

17 A From the hallway of my living room.

18 Q Okay. And where were you looking into?

19 A The kitchen.

20 Q And did someone else enter 2126 Westminster?

21 A Yes.

22 Q And how did that person get in?

23 A He, he -- the door was already open and he just opened the
24 door and came right in.

25 Q Okay. The one door was already opened and he just

1 opened the other one?

2 A Yes.

3 Q Which one did he open?

4 A The screen door.

5 Q And would you describe how this person was dressed?

6 A He had a black and white jacket with a black hoody, black
7 sweater and green pants and a mask.

8 Q What color pants?

9 A Green.

10 Q And were those light or dark green?

11 A Dark.

12 Q And what else?

13 A And with a half-mask.

14 Q What's a half-mask? What does that mean?

15 A Like just nose part was covered.

16 Q Okay. Nose and --

17 A Mouth.

18 Q You're pointing like this?

19 A And the mouth.

20 Q Okay. And had you ever seen a mask like that before?

21 A Yes.

22 Q And where did you see masks like that before?

23 A In the stores and on the streets.

24 Q Any stores in particular?

25 A Store on Federal, discount store, I don't know the name of

1 it.

2 Q Can you describe the mask other than the fact that it
3 covers your face? Is it a handkerchief for instance?

4 A No.

5 Q What's it made out of?

6 A Made out of like foam, like foam rubber, something like
7 that.

8 Q A ski mask kind of thing?

9 A Yes.

10 Q Did it go behind the person's head?

11 A Yes.

12 Q And the person you said was wearing a hoody?

13 A Yes.

14 Q How was he wearing a hoody with reference to the mask?

15 A He had the mask right here and then he had the hoody pulled
16 over towards his forehead.

17 Q So all you could see was eyes?

18 A Yes.

19 Q Could you tell the color of his skin?

20 A Yes.

21 Q What color?

22 A Black.

23 Q And could you tell approximately how tall this person
24 was?

25 A Yes.

1 Q How tall was he approximately?

2 A About six, six-two, six-three.

3 Q And how would you describe the build of this
4 individual?

5 A Kind of built.

6 Q Kind of built. You have said that you had known Gary
7 Copling prior to January of 1995; is that correct?

8 A Yes.

9 Q And you said you have known Dennis Copling prior to
10 January of 1995; is that correct?

11 A Yes.

12 Q Did either of those two individuals fit that general
13 description?

14 A Yes.

15 Q Which one?

16 A Dennis.

17 Q Is Dennis bigger than Gary?

18 A Yes.

19 Q When this person came in, was anything said to K.C.?

20 A Yes.

21 Q What was said?

22 A He said why you jump my brother, said that a couple times,
23 and then K.C. -- well, why you jump my brother, and that was
24 it.

25 Q K.C. said something in response?

1 A Yes.

2 Q And when this person said why did you jump my brother,
3 did he do anything?

4 A Yes, he started pulling out a gun from his inside pocket.

5 Q And when you say he started pulling out a gun, where
6 did the gun come from?

7 A In his inside pocket, inside pocket.

8 Q Okay. Of his clothing?

9 A Jacket.

10 Q His jacket. And when you say inside, you mean from
11 within?

12 A Yes.

13 Q Can you describe the gun that you saw?

14 A It was about, it was automatic, about that big.

15 Q Can you show the Judge how big you're talking?

16 THE COURT: Seven inches.

17 Q And you say it was an automatic. Do you know the
18 difference between an automatic and a revolver?

19 A Yes.

20 Q It was definitely an automatic?

21 A Yes.

22 Q What color was it?

23 A Black.

24 Q Did K.C. do anything when this person pulled the gun?

25 A Yes, he started struggling with him.

1 Q And what happened next?

2 A Then I heard a shot and then I turned around and ran.

3 Q And what about Ben Young, what did he do?

4 A He ran too.

5 Q Did you hear anymore shots?

6 A Yes.

7 Q Approximately how many?

8 A Four, four or five shots more.

9 Q Were you still in the house at 2126 Westminster when
10 you heard shots?

11 A I was just getting out of the door and I ran when I heard
12 the shot.

13 Q Did you happen to see where Malik was when this person
14 came in with the gun?

15 A Yes.

16 Q Where was Malik?

17 A He was behind K.C.

18 Q When you say behind him, can you describe how he was
19 standing in relation to K.C.

20 A He was just standing there, just standing there.

21 Q Did you have an opportunity to see or did you
22 recognize the person who had their face covered and had the
23 hoody over the top of his head?

24 A No.

25 Q Now, have you ever been convicted of a crime?

1 A Yes.

2 Q What crime were you convicted of?

3 A CDS charge.

4 Q Possession with intent to distribute?

5 A Yes.

6 Q And when was that?

7 A '95.

8 Q And did you receive a sentence as a result of that
9 charge?

10 A Yes.

11 Q What sentence did you receive?

12 A Three years probation.

13 Q And have you recently been arrested?

14 A Yes.

15 Q And when did that arrest take place?

16 A December of '96.

17 Q December of '96?

18 A Yes.

19 Q Approximately a month ago?

20 A Yes.

21 Q And what was that charge for?

22 A Receiving stolen property.

23 Q An automobile?

24 A Yes.

25 Q And is that charge currently pending in Camden County?

1 A Yes.

2 Q Have I or has anyone from my office offered you
3 anything in exchange for your testimony today?

4 A No.

5 Q Is your testimony freely and voluntarily given?

6 A Yes.

7 MR. ARONOW: I have no further questions of this
8 witness.

9 THE COURT: Mr. Leiner, you may cross-examine.

10 MR. LEINER: Thank you, your Honor.

11 CROSS-EXAMINATION MR. LEINER:

12 Q Mr. Simmons, you just indicated to the Prosecutor you
13 were convicted in 1995 of possession of CDS with the intent to
14 distribute; is that correct?

15 A Yes.

16 Q Were you a drug user back in 1995?

17 MR. ARONOW: Objection. What's the relevance?

18 THE COURT: The objection is overruled.

19 Q Were you a drug user in 1995?

20 A No.

21 Q Was anybody using drugs on January 18th in your house
22 in that particular day?

23 A No.

24 Q Was there any drugs in that house on that particular
25 day?

1 A No.

2 Q You indicated to the Prosecutor a moment ago that the
3 individual came in wearing a black ski mask and I think you
4 indicated you could not recognize that individual; is that
5 correct?

6 A Yes.

7 Q You didn't know who it was that came into the house,
8 did you?

9 A No.

10 Q You also described him as being how tall?

11 A About six-two.

12 Q About six-two. Do you remember giving the
13 Prosecutor's Office a statement in regard to this matter?

14 A Yes.

15 MR. LEINER: Your Honor, if I can have this marked for
16 Identification.

17 THE COURT: It will be marked Defendant's Exhibit 2
18 for Identification.

19 (D-2 marked for Identification.)

20 BY MR. LEINER:

21 Q Mr. Simmons, I want to show you what's been marked D-2
22 for Identification and I want to ask you if that's a transcript
23 of the statement that you gave to the police or Prosecutor's
24 Office regarding this matter?

25 A Yes.

1 Q And that is your statement?

2 A Yeah.

3 Q And you recall answering those questions?

4 A Yes.

5 Q And was your statement true and accurate at the time
6 you gave it?

7 A Yes.

8 Q I'd like to refer you to page 8 of that statement and
9 you were asked a question, the first full question at the top
10 of the page and the question is: All right, describe this
11 man. And were they asking you about the masked individual?

12 A Yes.

13 Q And how did you describe that person?

14 A Say about six-three, a little stocky.

15 Q So, it was your impression that the person that came
16 into the room that evening was very tall; is that correct?

17 A Mm-hmm.

18 Q Six-three and stocky is a pretty big individual, isn't
19 it?

20 A Yes.

21 Q Now, after Malik came in and he went back into the
22 kitchen with K.C., you indicated that another individual had
23 come in. Did you actually see him come in or hear him come in?

24 A Saw him come in.

25 Q You indicated also that after he talked to K.C. a

1 little bit, I believe in your testimony that they started to
2 argue; is that correct?

3 A Yes.

4 Q And the individual who you saw, who had a mask on,
5 pulled out a gun; is that correct?

6 A Yes.

7 Q And at that point is that when you turned to run?

8 A Yes.

9 Q Okay. So, you didn't actually see any shots fired,
10 you heard them fired as you were running out; is that correct?

11 A Yes.

12 Q And where did you run out of the building?

13 A The backdoor to my mom's house.

14 Q Okay. Out of the hall and out the backdoor. Did you
15 run through the kitchen?

16 A No.

17 Q You ran the other way?

18 A Yes.

19 Q Did anybody come with you?

20 A Yes.

21 Q Who came with you?

22 A My friend Ben.

23 Q Your friend Ben?

24 A Yes.

25 Q While you were in the hallway, where was Ben?

1 A Sitting on the couch.

2 Q And how far away from the doorway to the kitchen is
3 the couch?

4 A Not that far.

5 Q Okay. How far away is the couch from the kitchen?

6 A You could come from the kitchen into the -- in the living
7 room by just stepping in it.

8 Q Where was Ben? Ben was on the couch the whole time?

9 A Yes.

10 Q Did you see an individual come from, from where you
11 were standing? Could you see anybody come in?

12 A No.

13 Q So, after you see this gun come out, you turned to run
14 because you knew there was trouble?

15 A Yes.

16 Q So, you don't stick around, you don't see anything
17 that actually takes place in the kitchen, do you?

18 A No.

19 Q So, you don't know what happened in regard to the gun
20 or how it went off and what from anything you observed; is that
21 true?

22 A Yes.

23 Q One other individual -- when the other individual came
24 in, the one with a mask on, was he speaking in the same tone as
25 Malik?

1 A Yes.

2 Q Was he shouting?

3 A Yes.

4 Q That individual did everything he could to conceal his
5 identity is that true?

6 A Yes.

7 Q And other than seeing his eyes, you couldn't see any
8 other physical features in regard to that person; is that true?

9 A Yes.

10 MR. LEINER: I have no further questions.

11 THE COURT: Redirect.

12 REDIRECT EXAMINATION MR. ARONOW:

13 Q Nathaniel, do you remember the date when you gave the
14 statement to the police?

15 A Yes.

16 (S-35 marked for Identification.)

17 Q I'm going to show you what's marked S-35 for
18 Identification. Do you recognize that document?

19 A Yes.

20 Q Is that the statement that you gave to the police?

21 A Yes.

22 Q After this incident happened?

23 A Yes.

24 THE COURT: Is that the same as D-2?

25 MR. ARONOW: Yeah, I could use D-2, either way.

1 THE COURT: You can use your own exhibit. It doesn't
2 matter.

3 MR. ARONOW: Why don't we use D-2.

4 Q Let me show you what has been marked D-2 for
5 Identification. Does that document look the same as S-35?

6 A Yes.

7 Q And is that the statement that you gave to the police
8 after this happened?

9 A Yes.

10 Q Do you recall the date upon which you gave the
11 statement to the police?

12 A No.

13 Q Does that statement contain anything that would help
14 you remember the date that it was taken and in looking at that,
15 does that help refresh your memory as to when it was taken?

16 A Yes.

17 Q And when was it taken?

18 A Around January, I don't know.

19 Q Was it after this incident occurred? Was it within a
20 week after this incident occurred?

21 A No, it was more than that.

22 Q It was more than that?

23 A Yes.

24 Q Do you remember approximately when it was taken?

25 A I know it was in January.

1 Q Okay.

2 A I just don't know what date.

3 Q Now, the statement that you gave to the police, Mr.
4 Leiner asked you if there were anywhere, and he pointed out to
5 you, where you described the actual height of the individual;
6 is that correct?

7 A Yes.

8 Q And that was on page 8; is that correct?

9 A Yes.

10 Q And your testimony was about six-three, stocky, a
11 little stocky?

12 A Mm-hmm.

13 Q I'm going ask you to look at page 10.

14 MR. LEINER: Your Honor, may we approach?

15 THE COURT: I'd like to hear the whole question.

16 Q I'm going to ask you to look at page 10. Did the
17 police --

18 THE COURT: I don't want, Mr. Simmons, I don't want
19 you to answer the question, just listen.

20 Q Did the police ask you for a description of Dennis
21 Copling in your statement?

22 A Yes.

23 Q On the statement did you give the description of the
24 person who you saw?

25 THE COURT: I'll see you at sidebar.

1 (Sidebar discussion on the record.)

2 MR. LEINER: I would object, that this would be a
3 prior consistent statement of the witness and therefore
4 inadmissible unless there was a recent charge of fabrication.
5 I asked him only questions that deal with regard to that issue,
6 was in regard to the masked person. I never asked him anything
7 in regard to Dennis Copling's description that he may or may
8 not have given. Therefore, I think it would be a prior
9 consistent statement and would be inadmissible.

10 MR. ARONOW: Clearly not. His testimony was
11 approximately six-one, six-two, so Mr. Leiner utilized the
12 statement that the witness had said to the police on the date
13 of the statement that he was six-three in an effort to show
14 that it was wrong. I'm allowed to rehabilitate the witness to
15 show that he was also asked the description of the defendant on
16 the same date, he gave a similar description to identify the
17 witness.

18 THE COURT: You would only be allowed to show that on
19 a prior occasion he gave the statement saying that the masked
20 person was six-two, not to show that Dennis Copling was a
21 different height. That's not the same statement that was the
22 subject of cross.

23 MR. LEINER: Now --

24 THE COURT: Cross-examination was limited to the
25 height of the intruder, not the height of Dennis Copling.

1 MR. ARONOW: And he cross-examined him to show, to
2 demonstrate, I'm sure he's going to argue at some point in this
3 trial, that he was wrong about his height description and
4 general description of the person that committed this offense,
5 your Honor. And clearly he give descriptions that were
6 consistent with respect to the height of the perpetrator of
7 this offense, the height of Dennis Copling in the statement.
8 And clearly if you attack one, the other one becomes relevant
9 with respect to the fact that he said that they are both the
10 same size and build approximately. You can't cross-examine him
11 on one and not expect us to be able to say --

12 THE COURT: That's true. The whole thrust of the
13 testimony is going to show that Dennis Copling is not six-two
14 or six-three. So, for that reason, I will allow it. The
15 objection is overruled.

16 (Sidebar discussion concluded)

17 BY MR. ARONOW:

18 Q Do you recall the question, Nate?

19 A Yeah.

20 Q Okay. Was there a time when you give the police at
21 the time you gave your statement a description of Dennis
22 Copling?

23 A Yes.

24 Q And what was the description that you gave to the
25 police?

1 A Again about six, six-two or six-three, kind of chubby, big
2 weight, say taller than me, I said got a mole on his neck.

3 Q Dennis has a mole on his neck?

4 A Yes, on the left side of his neck.

5 MR. ARONOW: Okay, I have no further questions of this
6 witness.

7 THE COURT: Recross.

8 MR. LEINER: Briefly.

9 RE-CROSS-EXAMINATION BY MR. LEINER:

10 Q Mr. Simmons, you based your description of Dennis
11 Copling on your recollection of the last time you saw him; is
12 that correct?

13 A Yes.

14 Q How long before this alleged incident took place had
15 he seen Dennis Copling?

16 A About three weeks ago.

17 Q Three weeks before the incident?

18 A Yes.

19 Q And you gave, I think you indicated you gave this
20 statement sometime after the incident?

21 A Yes.

22 Q So, would it be fair to say it was about a month
23 between the time you gave the statement and the last time you
24 had seen Dennis Copling?

25 A Yes.

1 Q But you based your estimate in regard to the
2 individual who came in to your house that night on your
3 observations; is that correct?

4 A On my observation?

5 Q Well, what I mean by observation is when the
6 individual came in the house, you saw him come in the house,
7 you testified to that; is that correct?

8 A Yes.

9 Q So, when you gave your description to the police, you
10 based that on what you observed that evening; is that correct?

11 A Yes.

12 Q And so when you told the police that the individual
13 who came into the kitchen area with the mask on was six foot
14 three, you were basing that on your observations; isn't that
15 true?

16 A Yes.

17 MR. LEINER: I have no further questions.

18 RE-REDIRECT BY MR. ARONOW:

19 Q And you were also basing the description that you gave
20 to the police on, Dennis Copling's description on your
21 observations; is that correct?

22 A Yes.

23 THE COURT: Any recross?

24 MR. LEINER: No, your Honor.

25 THE COURT: Mr. Simmons, you may step down. You are

1 excused. Thank you.

2 MR. ARONOW: May I approach?

3 THE COURT: Yes.

4 (Sidebar discussion off the report.)

5 THE COURT: Next witness is going to be here in just a
6 moment or two. This will not be our regular mid-afternoon, but
7 we'll take a short break until he gets in the courtroom.

8 (Jury leaves the courtroom at 2:39 p.m.)

9 (Recess.)

10 SHERIFF'S OFFICER: Judge, is he to remain cuffed or
11 uncuffed?

12 THE COURT: Depends upon, I guess -- is there any
13 reason why he could not be uncuffed if you stand right here
14 behind him or do you prefer him to be cuffed? Ordinarily
15 somebody who is in custody is cuffed in the courtroom.

16 SHERIFF'S OFFICER: I would prefer he was cuffed, but
17 if you tell me otherwise.

18 THE COURT: No, then he'll remain that way then.

19 MR. ARONOW: And he needs to be sworn.

20 THE COURT: We'll do that when the jury comes in.
21 I'll ask Lucy to bring the Bible over.

22 (Jury enters the courtroom at 2:50 p.m.)

23 THE COURT: Ladies and gentlemen of the jury, the
24 State's next witness is already seated in the witness stand.
25 May I have the witness' name, please.

1 MR. ARONOW: Benjamin Young.

2 THE COURT: Mr. Young, if you would please rise and
3 place your left-hand on the Bible and raise your right hand as
4 well as you can.

5 BENJAMIN YOUNG, STATE'S WITNESS, SWORN.

6 THE COURT: You may proceed.

7 MR. ARONOW: Thank you, your Honor.

8 DIRECT EXAMINATION BY MR. ARONOW:

9 Q Would you tell the Court and jury what your name is
10 again?

11 A Benjamin Young.

12 Q And, Ben, where did you live in January of 1995?

13 A I lived on Morris Street.

14 Q In the City of Camden?

15 A Yeah.

16 Q And Ben, have you ever been convicted of a crime?

17 A Not -- yeah, now, now since, yeah.

18 Q Since January of 1995, is that what you say?

19 A No.

20 Q Recently have you been convicted of a crime?

21 A Recently.

22 Q When were you convicted of a crime?

23 A August 14.

24 Q Of what year?

25 A '96.

- 1 Q And were you just recently sentenced?
- 2 A Yeah.
- 3 Q In January of this year?
- 4 A Yes.
- 5 Q And how long of a sentence did you receive?
- 6 A Seven flat.
- 7 Q Seven flat?
- 8 A Yeah.
- 9 Q Seven years in New Jersey State's Prison, no period of
10 parole ineligibility?
- 11 A Yeah.
- 12 Q Do you know for what crimes you were given that
13 seven-year sentence?
- 14 A Yeah.
- 15 Q What?
- 16 A Conspiracy.
- 17 Q Conspiracy to do what?
- 18 A Armed robbery.
- 19 Q And any other charges?
- 20 A A drug charge.
- 21 Q Okay. Anything else?
- 22 A No, that's it.
- 23 Q Two drug charges?
- 24 A Yeah.
- 25 Q Possession with intent to distribute drugs?

1 A Yeah.

2 Q And possession of a handgun without a carry permit?

3 A Yeah.

4 Q And those were all convictions that you received one
5 conviction day of January 9th, 1997?

6 A Yes.

7 Q But those are different episodes, they didn't happen
8 at one time; correct?

9 A Correct.

10 Q And the total number of years you received for
11 everything is seven years in New Jersey State's Prison?

12 A Yes.

13 Q And you received sentences for the other crimes too,
14 but they all run at the same time; is that correct?

15 A Yes.

16 Q Did the sentence that you received on January 9th,
17 1997 have anything to do with your testimony today?

18 A No.

19 Q Was anything ever brought up with respect to your
20 testimony today with reference to the sentence you received on
21 these sentences?

22 A No.

23 Q On January 18th, 1995, were you in the area of 2126
24 Westminster Avenue in the City of Camden?

25 A Yes.

1 Q Were you there with anyone?

2 A Yes.

3 Q Who were you with?

4 A Nate and K.C.

5 Q Okay. And Nate, is that Nate Simmons?

6 A Yeah.

7 Q And K.C., do you know K.C.'s real name?

8 A Yeah.

9 Q What's his real name?

10 A Kirby Bunch.

11 Q Okay. And what were you doing with Nate and K.C.?

12 A We was just in the house talking, listening to music.

13 Q Where were you in the house?

14 A In the living room.

15 Q And are there one, ~~two~~ or more doors from the outside
16 to get into 2126 Westminster?

17 A There is a back door and front door.

18 Q What door would you have been closer to in that house?

19 A Front door.

20 Q And were the three of you together in the living room
21 at one time?

22 A Yes.

23 Q And could you describe the layout of the living room
24 briefly?

25 A Well, like near the stairs, near the stairs on the right

1 side was the couch and on the left side was like a little bed,
2 I mean me and Nate was sitting on the couch and K.C. was
3 sitting on the bed.

4 Q And did something happen while the three of you were
5 in the living room?

6 A Somebody knocked on the door.

7 Q Which door did someone knock on?

8 A The back.

9 Q And what room is directly adjacent to the back door?

10 A Kitchen.

11 Q And did anyone answer the door?

12 A Yeah.

13 Q Who?

14 A K.C. answered the door.

15 Q And did someone come in when K.C. answered the door?

16 A Yeah.

17 Q Did you see that person?

18 A Yeah.

19 Q And who was that person?

20 A Mark Winston.

21 Q Okay. Had you known Mark Winston previous to January
22 of '95?

23 A I used to see him around. I ain't know him like that.

24 Q When you say you didn't know him like that, you didn't
25 consider him a friend of yours?

1 A Yeah.

2 Q You just knew him from around?

3 A Yeah.

4 Q And did you know -- does Mark Winston or did Mark
5 Winston in January of 1995 have a nickname?

6 A Malik.

7 Q And when K.C. answered the door, what happened with
8 Malik?

9 A He let him in and they started talking, he started
10 conversating, I mean they was talking about why did they, why
11 they jumped, why they jumped some guy.

12 Q Okay. Who said what to who?

13 A Malik asked K.C. why did they jump the guy.

14 Q Okay. And Malik, was he asking in a tone like I'm
15 asking questions now?

16 A No, they was like kind of arguing.

17 Q Okay. And would you describe if you know how Malik
18 was asking K.C. questions?

19 A He was like, he was just like, why you all jump, why you
20 all jump my june-june (phonetic). He was like trying to
21 explain, I mean, how it happened.

22 Q And did Malik want to hear that?

23 A No, no, he just was like why you jump, that's all he kept
24 saying.

25 Q Okay. And did Malik say anything else?

1 A Yeah, he was like, he was like, well, you're going to have
2 to speak to my man about that.

3 Q Okay. And did he say who that man was?

4 A No.

5 Q What else -- did he say anything specifically about my
6 man?

7 A No, he was just like you're going to have to speak to my
8 man about, about that.

9 Q What happened after that?

10 A That's when somebody else came in.

11 Q Did you see that other person?

12 A No, I didn't see the other person.

13 Q How do you know they came in?

14 A Because when he came in, he hit like the front of the
15 stairs, it was like a metal part and it was loose, he hit that
16 part. Then like on the wall you can see another shadow coming
17 in from the door.

18 Q Another shadow?

19 A Yes.

20 Q The light was on in the kitchen?

21 A Yeah.

22 Q And approximately what time was this, do you recall?

23 A I don't know what time.

24 Q Was it dark outside or light outside?

25 A It was dark.

- 1 Q Was it evening or early morning, do you remember?
- 2 A It was in the evening.
- 3 Q Of January 18th, 1995?
- 4 A Yeah, I think so.
- 5 Q And where was Nate Simmons when this was all
- 6 happening?
- 7 A He was on the couch.
- 8 Q Was Nate Simmons closer than you to the kitchen?
- 9 A No, I was closer to the kitchen.
- 10 Q Did Nate -- was Nate in a position to observe what was
- 11 going on in the kitchen from where you could see?
- 12 A Yeah.
- 13 Q Did you hear anything between K.C. and this person who
- 14 came in?
- 15 A No. All I heard was, all I heard was K.C. saying hold,
- 16 hold, he was hold, hold, chill.
- 17 MR. ARONOW: Chill, C-H-I-L-L.
- 18 THE COURT: You're saying hold hold with a D?
- 19 THE WITNESS: Yeah, hold, hold.
- 20 Q And then what did you hear?
- 21 A Then he was like chill, chill. Then that's when Nate had
- 22 got up and he ran out the back door. Then I got up and that's
- 23 when I heard the shots.
- 24 Q How many shots did you hear?
- 25 A When I got up, I heard one shot. When I got to the door, I

1 heard like three more shots.

2 Q Did you actually see anyone get shot?

3 A No.

4 Q Once you got out the door, what did you do?

5 A I ran.

6 Q When you saw Mark Winston, Malik, was he wearing
7 anything over his face?

8 A No.

9 Q Do you remember what kind of clothing he was wearing?

10 A I remember he had on a black goose down jacket, coat.

11 Q And how big or how long was that jacket, do you
12 remember?

13 A It was like three-quarter, three-quarter inch.

14 Q And K.C., do you recall what K.C. was wearing that
15 night?

16 A No, no.

17 Q Do you recall giving a statement to the police in
18 reference to the circumstances surrounding this incident?

19 A Yeah.

20 Q And did that take place approximately February 8th,
21 1995?

22 A I don't know exactly what date.

23 Q I'm going to --

24 MR. ARONOW: Let's have it marked.

25 (S-36 marked for Identification.)

1 Q I'm going to show you what's been marked S-36 for
2 Identification. Do you recognize that?

3 A Yeah.

4 Q Is that the statement that you gave to the police?

5 A Yeah.

6 Q I'm going to ask you to read page 6 to yourself.

7 A The whole thing?

8 Q Yeah, take your time.

9 A Like chill, Nate chill.

10 Q Do not read it out loud, just read it to yourself.

11 A All right.

12 Q Have you had an opportunity to read that?

13 A Yeah.

14 Q Yes?

15 A Yeah.

16 Q Does reviewing that page of the statement refresh your
17 recollection with respect to anything that Malik may have said

18 --

19 MR. LEINER: Objection, your Honor.

20 Q -- to K.C.?

21 MR. LEINER: I don't think the witness has ever
22 indicated he needed his recollection refreshed.

23 THE COURT: That's correct, the last question that he
24 was asked where he said he didn't remember was the clothing
25 that K.C. had on. I don't think he was ever asked this

1 question.

2 MR. ARONOW: No, he was asked, Judge -- can we
3 approach?

4 THE COURT: Why don't you re-ask the question. It's
5 not necessary to re-approach. Ask him the question to see
6 whether he remembers or doesn't remember.

7 Q Do you recall what Malik said to K.C. after he first
8 came in, after Malik first came in?

9 A What he said after he came in?

10 Q Yes.

11 A He was like, like what's up? Why you jump my June-june?

12 THE COURT: Can you spell that word? What is that
13 word?

14 THE WITNESS: June-june, like he was saying like his
15 little son or something.

16 THE COURT: How do you spell that word?

17 THE WITNESS: June-june.

18 THE COURT: Okay. That helps.

19 BY MR. ARONOW:

20 Q And with respect to after that, did Malik say anything
21 with reference to the person coming in?

22 A He just, what's like, well, you're going to have to speak.
23 I think he said you're going to have to speak to his brother
24 about that.

25 Q Okay.

1 A I mean --

2 Q Do you recall using the word man, he got to talk to
3 his man or the man or something along those lines?

4 A No.

5 Q Do you recall him saying the word you got to speak to
6 his brother?

7 A Yeah, he said something like that.

8 Q And that was what K.C. said or -- correction, what
9 Malik said in reference to the person that next came in the
10 door?

11 A Yeah, he was saying that to K.C.

12 Q Malik was?

13 A Yeah.

14 Q Do you know Dennis Copling?

15 A Yeah.

16 Q How do you know Dennis?

17 A I used to be on 21st Street. I used to see him around that
18 area.

19 Q Okay. Do you know Gary Copling?

20 A Yeah.

21 Q How do you know him?

22 A Same thing.

23 Q How long did you know either one of them?

24 A Since like, '92, '93.

25 Q So approximately two to three years prior to this

1 incident?

2 A Yeah.

3 MR. ARONOW: I have no further questions of this
4 witness.

5 THE COURT: You may cross-examine.

6 MR. LEINER: Thank you, your Honor.

7 CROSS-EXAMINATION BY MR. LEINER:

8 Q Mr. Young, you indicated that after Malik came into
9 the house and went back in the kitchen with K.C., that you
10 stayed in the living room; is that correct?

11 A Yeah.

12 Q And you didn't really see or hear anything that took
13 place in the room after that, did you?

14 A I ain't what?

15 Q You didn't see or hear anything that took place in the
16 kitchen after that, did you?

17 A Yeah.

18 Q You saw what happened in the kitchen?

19 A No, I heard.

20 Q Okay. You heard some shots later on; is that correct?

21 A Yeah.

22 Q And you heard some shots after you saw Nate Simmons
23 run out the door?

24 A Yes.

25 Q You saw him running?

1 A Yes.

2 Q So you got up to run yourself?

3 A Yeah.

4 Q Is that when you saw him running?

5 A When I start getting up, that's when I heard the shot, you
6 know, but I never looked back. When I was going towards the
7 door, I heard more shots.

8 Q Now, you indicated that Nate was sitting on the couch
9 with you; is that correct?

10 A Yeah.

11 Q And is it a big couch, small couch?

12 A It was a love seat.

13 Q Love seat. So you guys were pretty close together; is
14 that correct?

15 A Yeah.

16 Q Now, in that house is there a little hallway where you
17 can go from the living room to the kitchen?

18 A It's right next to each other. Ain't no hall.

19 Q Okay. Now, a moment ago when the Prosecutor asked you
20 what Malik said to K.C., you indicated that in your original
21 testimony that you have to talk to my man about that; do you
22 remember using those words?

23 A Yeah.

24 Q Yet a minute ago you said something about a brother?

25 A Yeah.

1 Q You didn't know who he was referring to in either
2 case, did you?

3 A No.

4 Q You don't know whether it was the person coming in the
5 door or anybody else, do you?

6 A It had to be the person coming in the door.

7 Q But you didn't know that for a fact, did you?

8 A No, but it had to be the person coming in the door. Who
9 else it could have been?

10 Q But you didn't see anybody come in the door?

11 A I seen a third shadow.

12 Q You had saw a third shadow?

13 A Yeah, third shadow.

14 Q When did you see the third shadow?

15 A After you got to speak to my man about that.

16 Q After you got to speak to my man about that?

17 A That's when I heard somebody hit the metal door when you
18 first come in the door.

19 Q I'll going to refer you back to your statement and go
20 back to page 6 again. At the bottom of the page, page 6, the

21 question is: How did you know someone came into the kitchen?

22 Is that what that says?

23 A Yeah.

24 Q And your response, your answer on top page of page 7:

25 Because I heard them?

1 A Yeah.

2 Q Do you know where in your statement where you say you
3 saw shadows or anything like that?

4 A No.

5 Q Is it in your statement?

6 A I don't see it in there.

7 Q You didn't say anything about seeing shadows?

8 A What?

9 Q You didn't say anything to anybody before about seeing
10 any shadows?

11 A Yeah, I do believe I did.

12 Q Did you say that too?

13 A Whoever I was talking to.

14 Q Now, in regard to these convictions that you have, you
15 were just recently sentenced as the Prosecutor indicated; is
16 that correct?

17 A Yeah.

18 Q And you have two drug convictions?

19 A Yeah.

20 Q There are two separate incidents, are they, that you
21 were convicted for?

22 A Yeah.

23 Q And conspiracy to commit robbery, that's a separate
24 incident from the drug conviction, isn't it?

25 A Yeah.

1 Q And the possession to carry a firearm, that's another
2 separate incident, is it not?

3 A Yeah.

4 Q And were all those convictions handled right here in
5 Camden County?

6 A Yeah.

7 Q And was the Camden County Prosecutor's Office involved
8 in the handling of your case?

9 A What you mean?

10 Q Well, did they prosecute you?

11 A Yeah.

12 Q And you got one sentence in regard to that, didn't
13 you?

14 A Yeah.

15 Q Was it four years or seven years?

16 A Seven years.

17 Q Seven years flat?

18 A Yeah.

19 Q For all those you just got seven years; is that right?

20 A Yeah.

21 Q And no parole ineligibility; right?

22 A No.

23 MR. LEINER: No further questions.

24 THE COURT: Any redirect?

25 REDIRECT EXAMINATION BY MR. ARONOW:

1 Q And the possession to carry a firearm, that's another
2 separate incident, is it not?

3 A Yeah.

4 Q And were all those convictions handled right here in
5 Camden County?

6 A Yeah.

7 Q And was the Camden County Prosecutor's Office involved
8 in the handling of your case?

9 A What you mean?

10 Q Well, did they prosecute you?

11 A Yeah.

12 Q And you got one sentence in regard to that, didn't
13 you?

14 A Yeah.

15 Q Was it four years or seven years?

16 A Seven years.

17 Q Seven years flat?

18 A Yeah.

19 Q For all those you just got seven years; is that right?

20 A Yeah.

21 Q And no parole ineligibility; right?

22 A No.

23 MR. LEINER: No further questions.

24 THE COURT: Any redirect?

25 REDIRECT EXAMINATION BY MR. ARONOW:

1 Q Ben, has everything you said here today been the
2 truth?

3 A Yeah.

4 MR. ARONOW: Nothing further.

5 THE COURT: Anything else? Mr. Leiner, any other
6 questions.

7 MR. LEINER: No, your Honor.

8 THE COURT: Mr. Young, you may step down and if you
9 would follow the officer.

10 Are there any witnesses on behalf of the State?

11 MR. ARONOW: Mr. Hill, but we have something to
12 discuss of a legal nature prior to that witness, however.

13 THE COURT: All right. Why don't we do that at
14 sidebar. Let me see what's happening. Then I'll decide
15 whether to ask the jury to step out.

16 (Sidebar discussion on the record.)

17 MR. ARONOW: The next witness will be Leervin Hill,
18 L-E-E-R-V-I-N H-I-L-L, would be a witness, your Honor. The
19 photograph which has been previously identified as containing
20 the defendant, Lakesha Buckhannon, two of her three friends,
21 was a photograph that was utilized in part of the taking of his
22 statement, and that is what I believe was the basis of Mr.
23 Leiner's application for a Wade hearing.

24 If you recall, when we initially started this matter,
25 Mr. Leiner indicated he had an argument to make with regard to

1 this. I also have an argument to make with respect to that,
2 and your Honor would have to decide whether or not a hearing is
3 necessary. If not, I understand that Mr. Hill is in the tunnel
4 waiting for us.

5 THE COURT: I remember some vague reference to that a
6 few days ago. I haven't heard it mentioned since. Why would
7 there be a need for a hearing?

8 MR. LEINER: Your Honor, I wasn't referring to this
9 particular witness. Mr. Queensbury was my concern. And if and
10 when he's called to testify, I will, especially in light of the
11 statements --

12 MR. ARONOW: That's fine. I was mistaken in that
13 regard.

14 THE COURT: So we can bring this witness right now?

15 MR. ARONOW: He's in the same situation as Mr. Young,
16 so I don't know how long it's going to take him to get up here.
17 He's in the tunnel, I understand.

18 THE COURT: Seemed to have taken about five minutes,
19 so we'll just have the jury go back for five minutes and then
20 we won't be taking any real breaks because this is something of
21 a break. Okay.

22 (Sidebar discussion concluded.)

23 THE COURT: Ladies and gentlemen, the next witness,
24 just like Ben Young, is also in custody, so he's going to be
25 moved from the holding area into the courtroom and that takes a

1 few minutes. So rather than have you just sit here, I'll just
2 ask you to go back to the jury room while he is moved from
3 where he is in the courtroom and as soon as he is here, we'll
4 be ready to start.

5 (Jury leaves courtroom at 3:15 p.m.)

6 (Recess.)

7 (Jury enters courtroom at 3:30 p.m.)

8 THE COURT: The next witness is seated in the witness
9 stand. May I have your full name, please?

10 THE WITNESS: Leervin Hill.

11 THE COURT: Would you spell that, please.

12 THE WITNESS: L-E-E-R-V-I-N H-I-L-L.

13 THE COURT: And would you please rise and place your
14 left hand on the Bible and raise your right hand as well as you
15 can.

16 L E E R V I N H I L L, STATE'S WITNESS, SWORN.

17 THE COURT: And you need to keep your voice up, if you
18 would, so either of the jurors down at the end can hear you.

19 Mr. Aronow.

20 DIRECT EXAMINATION BY MR. ARONOW:

21 Q Would you give your name again, please?

22 A Leervin Hill.

23 Q Leervin, have you been convicted of a crime?

24 A Yes.

25 Q And what crime were you convicted of?

1 A Drugs.

2 Q Possession with intent to distribute?

3 A Yeah.

4 Q Within a thousand feet of a school?

5 A Yes.

6 Q And were you convicted on July 19th, 1996?

7 A Yes.

8 Q What sentence did you receive as a result of that
9 conviction?

10 A Three year term.

11 Q Three year flat sentence in New Jersey State Prison?

12 A Yes.

13 Q Are you presently serving that sentence?

14 A Yes.

15 Q That sentence -- that crime occurred after January
16 18th, 1995?

17 A Yeah.

18 Q Did I or anyone negotiate your sentence in exchange
19 for your testimony here today?

20 A No.

21 Q Do you know Kirby Bunch, Jr.?

22 A Yes.

23 Q Did you know him in January of 1995?

24 A Yeah.

25 Q Did you know him by any other name?

1 A K.C.

2 Q In January of 1995, where did you live?

3 A North Camden.

4 Q And can you give us an area without reference to the
5 exact street address?

6 A Third.

7 Q Third Street?

8 A Yeah.

9 Q Did you know a person by the name of Malik?

10 A Yeah.

11 Q Did you know his real name?

12 A No.

13 Q Did you know Dennis Copling?

14 A Yes.

15 Q In January of 1995?

16 A Yes.

17 Q And how long had you known Dennis Copling?

18 A For a minute.

19 Q Calling your attention to January 18th, 1995, did you
20 see Dennis Copling in the City of Camden?

21 A Yes.

22 Q Where did you see him?

23 A 26th Street.

24 Q 26th Street. And is there a cross street?

25 A High.

- 1 Q High. In the City of Camden?
- 2 A Yeah.
- 3 Q Is there anything near that intersection?
- 4 A Corner store.
- 5 Q And does that corner store go by any name?
- 6 A Pink Store.
- 7 Q The Pink Store. Because it was painted pink?
- 8 A Yeah.
- 9 Q The outside of the building was pink?
- 10 A Yeah.
- 11 Q In January of 1995?
- 12 A Yeah.
- 13 Q And do you recall approximately what time of the day
- 14 or night that you had gotten to the area of 26th and High?
- 15 A Couldn't tell, it was kind of dark.
- 16 Q Do you recall when it was that you observed Dennis
- 17 Copling at 26th and High?
- 18 A Like evening.
- 19 Q And do you recall where you were in the area of 26th
- 20 and High when you saw Dennis Copling?
- 21 A I was on a corner.
- 22 Q And can you describe for me how it was that you saw
- 23 Dennis Copling on that particular night?
- 24 A He was upset, he was mad.
- 25 Q He was mad?

1 A Yeah.

2 Q Can you describe it without just describing him as
3 being mad? What was he doing? What was he saying, if
4 anything?

5 A He was just pacing back and forth, I'm going to fuck this
6 nigger up.

7 Q Did he mention who that person was?

8 A No, he just kept saying that.

9 Q Kept saying he was going to fuck this person up?

10 A Mm-hmm.

11 Q Did he take a garment of clothing of yours?

12 A My mask.

13 Q What kind of mask?

14 A A face mask.

15 Q Can you describe it?

16 A Goes around here.

17 Q Goes around here. You're indicating the lower portion
18 of your face?

19 A Yeah.

20 Q Does it cover your nose?

21 A Yeah.

22 Q What color was it?

23 A Like brown and black.

24 Q Both colors, one side was one color?

25 A Yeah.

- 1 Q It was either black or brown?
- 2 A Yeah.
- 3 Q Was reversible?
- 4 A Yeah.
- 5 Q What kind of material was the mask made out of?
- 6 A I don't even know.
- 7 Q Was it cloth? Was it like clothing?
- 8 A Like a sponge-type.
- 9 Q Like a sponge?
- 10 A Yeah.
- 11 Q Did it have holes in it?
- 12 A Yeah.
- 13 Q Where?
- 14 A On the mouth, in the nose piece.
- 15 Q Underneath the nose?
- 16 A Yeah.
- 17 Q And the holes at the mouth was -- could you see, see
- 18 the mouth?
- 19 A No.
- 20 Q What kind of holes were they like?
- 21 A Little holes.
- 22 Q Like in a phone?
- 23 A Yeah.
- 24 Q So you could breathe through it?
- 25 A Mm-hmm.

1 Q Is that a yes?

2 A Yes.

3 Q Did you see how Dennis Copling came to be at 26th and
4 High on that particular evening?

5 A Came walking.

6 Q He was on foot?

7 A Yeah.

8 Q Was he with anyone else?

9 A No.

10 Q Can you describe, other than the fact that he took
11 your mask, can you describe the way he was dressed?

12 A All black.

13 Q Was he wearing a jacket or a coat?

14 A Leather coat.

15 Q Leather. What color was that?

16 A Black.

17 Q What color were his pants?

18 A Black.

19 Q What color were his shoes?

20 A I think it was black, too.

21 Q And was he wearing anything on his head?

22 A A hat.

23 Q What kind of hat?

24 A Timberland.

25 Q And was that black too?

- 1 A Black with gold writing.
- 2 Q How did it come about that Dennis Copling took a mask
3 from you at 26th and High?
- 4 A How did he what?
- 5 Q How did it happen?
- 6 A He asked me could he get it. I said no.
- 7 Q And then what happened?
- 8 A He grabbed it, so I walked off.
- 9 Q He grabbed it from around your neck?
- 10 A Yeah.
- 11 Q How is it attached?
- 12 A Like straps like.
- 13 Q You could tear it apart and put it back together
14 again, velcro?
- 15 A I guess that's what it's called.
- 16 Q Where did he go after that happened?
- 17 A He just walked off.
- 18 Q Did you see him at the corner store?
- 19 A Yeah.
- 20 Q Did you have an opportunity to hear him say anything
21 else?
- 22 A No.
- 23 Q How many times did he talk to you about what he was
24 going to do?
- 25 A For a little bit.

1 Q When you say a little bit, more than once?

2 A Twice.

3 Q The Dennis Copling that you saw on January 18th, 1995,
4 did he have any distinguishing features bodywise?

5 A Yes, something on his neck.

6 Q Something on his neck?

7 A Yeah.

8 Q what was it? What did it look like?

9 A A raisin.

10 Q Like a raisin. Was that something you could clearly
11 see when you approached him?

12 A Yeah.

13 Q Is the person who approached you and took your mask on
14 January 18th, 1995 present in the courtroom today?

15 A Yeah.

16 Q And where is he?

17 A Right there.

18 Q What color clothing is he wearing?

19 A Green.

20 Q When he was talking about what he was going to do to
21 this person, did you take him seriously?

22 A No.

23 Q Did you laugh?

24 A I ain't laugh around him.

25 Q Was anybody else with you?

- 1 A Yeah.
- 2 Q Who?
- 3 A Norty.
- 4 Q How old was Norty in January of '95?
- 5 A Thirteen I think.
- 6 Q Did he laugh?
- 7 A He was -- when he left, he just laughed.
- 8 Q Did you -- when this all happened, did you approach
- 9 the police about what happened?
- 10 A No.
- 11 Q How did it come about that you became involved in this
- 12 case?
- 13 A I was sitting in my car and he just ran down, came running
- 14 to the car.
- 15 Q The police?
- 16 A Yeah, these undercovers.
- 17 Q And they located you?
- 18 A On 26th.
- 19 Q 26th and High?
- 20 A Yeah.
- 21 Q Couple days later?
- 22 A Mm-hmm.
- 23 Q Is that a yes?
- 24 A Yes.
- 25 Q Did you see the person that you knew as Malik in the

1 area of 26th and High on January 18th, 1995?

2 A Came around earlier, I think earlier.

3 Q At the time that you saw Dennis Copling, had you seen
4 Malik?

5 A No.

6 Q Do you know anybody by the name of Donny Parker,
7 Fahim?

8 A No.

9 MR. ARONOW: Your Honor, I'd like the record to
10 reflect that he's identified the defendant Dennis Copling both
11 with respect to his appearance and I'd also like the Court to
12 acknowledge the fact that Mr. Copling has a distinguishing
13 birth mark on his neck.

14 THE COURT: When you say you would like the Court to
15 acknowledge, how would I do that, ask him to rise?

16 MR. ARONOW: Yes.

17 THE COURT: No way of knowing or seeing, this is
18 non-testimonial and it will be permitted.

19 Mr. Copling, if you would come forward a little bit
20 right in the middle here and turn your body so that you're
21 facing the back wall. Is what you're trying to demonstrate
22 visible to the jury?

23 MR. ARONOW: Could you turn to your left slightly?

24 BY MR. ARONOW:

25 Q Mr. Hill, the raisin, as you refer to it, can you see

1 that?

2 A Yeah.

3 Q And where is that on Mr. Copling?

4 A Here.

5 Q Left side of his neck?

6 A Yeah.

7 MR. ARONOW: Indicating with his hands. Thank you.

8 THE COURT: Mr. Copling, you may be seated.

9 MR. ARONOW: I have no further questions of this
10 witness.

11 THE COURT: Mr. Leiner, you may cross-examine.

12 MR. LEINER: Thank you, your Honor.

13 CROSS-EXAMINATION BY MR. LEINER:

14 Q Mr. Hill, you indicated on that particular day -- what
15 time again was that when you saw Dennis Copling on the 18th?

16 A In the evening.

17 Q Early evening, late evening?

18 A It was getting dark.

19 Q Getting dark. And you were with your friend Norty?

20 A Yes.

21 Q Where was Norty when Dennis Copling first approached
22 you?

23 A 26th Street.

24 Q 26th Street. And where was Norty in relation to you?

25 A Next to me.

1 Q Next to you. Who's Norty again? What's his name?

2 Norty what? Glass his last name?

3 A I don't know.

4 Q You don't know if that's his last name. Can you
5 describe him?

6 A Short.

7 Q He's short. How long have you known Norty?

8 A For a long time.

9 Q Long time. He's a friend of yours?

10 A Yeah.

11 Q Where does he live?

12 A I don't know where he live.

13 Q You don't know where he lives. But Norty was with you
14 that night; right?

15 A Yeah.

16 Q When you saw Dennis Copling and you said he was making
17 these comments, he didn't mention any names or anything, he
18 just was walking up and down; isn't that true?

19 A Yeah.

20 Q And when he grabbed the ski mask, how did he grab it
21 from you?

22 A Just grabbed it like that.

23 Q I'm sorry?

24 A Like he just grabbed it like this.

25 THE COURT: Demonstrating from under the chin, pulling

1 it under the chin.

2 Q Did he grab it with both hands, one hand?

3 A One hand.

4 Q Where was his other hand?

5 A I guess down.

6 Q Okay. He had both of his hands visible to you, didn't
7 he?

8 A Yeah.

9 Q Didn't look like he was hiding anything, did he?

10 A No.

11 Q And this is in the early evening hours of January
12 18th; is that correct?

13 A Late evening.

14 Q I'm sorry?

15 A Late evening, like getting dark.

16 Q Getting dark. Five, 5:30?

17 A I don't know what time.

18 Q By the way, how tall are you?

19 A Six-two.

20 Q Six-two. Mr. Copling is shorter than you, isn't he?

21 A Yeah.

22 Q Excuse me?

23 A Yeah.

24 Q This sentence you received for your conviction in
25 regards to drugs, you got a three-year flat sentence?

1 A Yeah.

2 Q And that was for possession of CDS in a school zone
3 with the intent to distribute; is that correct?

4 A Yes.

5 Q Could have gotten a lot more time for that offense,
6 couldn't you?

7 A Yeah.

8 Q In fact, you could have gotten a period of parole
9 ineligibility for that offense, couldn't you?

10 A I guess.

11 MR. ARONOW: Your Honor, given the fact that it's only
12 being offered for the purposes of impeachment and given the
13 fact that there is absolutely no indication that the State
14 entered into any type of negotiation with the defendant or his
15 attorney, I don't know how that's possibly relevant.

16 THE COURT: Well, it's up to the jury to evaluate the
17 truthfulness and credibility of all testimony and, therefore,
18 for that reason the testimony is relevant and the objection is
19 overruled.

20 BY MR. LEINER:

21 Q What did you do the rest of the night, Mr. Hill?

22 A Road around.

23 Q You drove around. Until what time?

24 A I don't know what time. Till I got tired.

25 Q Who were you driving with?

1 A Norty.

2 Q Norty. Norty, the person you don't know his last name
3 and you don't know where he lives, right?

4 A Yes.

5 Q A person who's been a friend of yours for many years?

6 A Not many year.

7 Q You said a long time?

8 A Yeah, but not many, however you saying it.

9 Q Well, you tell me how long have you known him?

10 A For like a while.

11 Q For a while.

12 MR. LEINER: I have no further questions, your Honor.

13 THE COURT: Any redirect?

14 MR. ARONOW: Nothing further.

15 THE COURT: Mr. Hill, you may step down, if you would
16 go out that way, thank you.

17 Are there any other witnesses today on behalf of the
18 State?

19 MR. ARONOW: No, your Honor.

20 THE COURT: We're scheduled then for 9 o'clock
21 tomorrow morning in terms of the next witness?

22 MR. ARONOW: Yes.

23 THE COURT: Ladies and gentlemen, you are excused for
24 the day and we'll resume tomorrow morning at 9 o'clock and if I
25 can ask you to come about 5 of 9 and again a reminder not to

1 read any newspaper accounts that may pertain to this case.

2 Have a nice evening. See you in the morning.

3 (Jury leaves the courtroom at 3:45 p.m.)

4 THE COURT: Counsel, it's relatively early, it's a
5 quarter to four. Is there any evidence issue or any ruling
6 that either side can anticipate the Court would have to make
7 tomorrow that we can now deal with today in the time that
8 remains?

9 MR. ARONOW: Not that I can think of presently.

10 MR. LEINER: Your Honor, if I could just briefly ask
11 the Court to indulge me in regard to an earlier ruling your
12 Honor made and I'm doing this to complete the record. Given
13 the nature of this case and potential penalty my client faces,
14 I just want to make the record clear. I understand your
15 Honor's ruling is what it is. I just like to point out a
16 couple of things in regard to the previous testimony that was
17 admitted regarding the prior occasion when Mr. Copling, the
18 witness testified that she saw him with a weapon.

19 Your Honor has given me the opportunity to go out and
20 investigate and then recall that witness if I so desire and I
21 appreciate that. However, your Honor, there are certain things
22 that we may not be able to do in that time span. First, your
23 Honor, there is the issue because of the nature of the
24 testimony and also the surprise going back now some two years
25 later in reconstructing a potential alibi, we're not sure

1 exactly when that party would have taken place. We have very
2 limited information in regard to witnesses, who else was
3 there. So it's going to be difficult to construct it, that
4 it's going to put my client in a position where he may be
5 forced to testify in a sense because of the fact that this has
6 been a surprise and it will make it very difficult on the
7 defense to go out and combat this particular portion of the
8 State's case. And I think it is critical, especially critical
9 at this stage.

10 THE COURT: But bear in mind, even if you had been
11 made aware of this testimony by the State, the Prosecutor's
12 Office didn't become aware of it until January 17th, 1997, so I
13 don't know why we're talking about going back two years because
14 the discovery violation, as I understand it, is a violation
15 that's only been of 10 days duration anyway. So even if there
16 had not be a discovery violation, you would still have the
17 problem you are describing. Even if you learned it on January
18 17th, you would still have to reconstruct something that
19 happened two years earlier.

20 MR. LEINER: Actually the testimony of the witness was
21 that she told Sergeant Forte at the time she gave her statement
22 which is almost two years ago. Sergeant Forte is an
23 investigator with the Prosecutor's Office. The Prosecutor's
24 Office had that information within their knowledge two years
25 ago. Therefore, there is a span of two years.

1 This Prosecutor himself did not come into knowledge of
2 that according to his representation. I have no reason to
3 doubt Mr. Aronow. He's always been honorable and up front with
4 me. However, your Honor, it's a bigger problem than just
5 because the Prosecutor is trying the case finds out about it at
6 a later date does not mean that the State has met their
7 obligation. There are certain information that has to come to
8 light, especially if the State is in possession of it for a
9 long period of time and I think knowledge has to be imputed not
10 to condemn or attack Mr. Aronow. However, the State had it in
11 its possession. Their internal problems or reasons why this
12 information was not related to Mr. Aronow is not Mr. Copling's
13 problem. The problem arose with the fact that the witness took
14 the stand and told, said she told Sergeant Forte about this two
15 years ago when she gave her statement.

16 THE COURT: I don't recall her saying that she
17 specifically alluded to the incident of two weeks prior. All
18 that I recall her saying was in her statement she mentioned
19 that he had his hand in his pocket like he always did whenever
20 he had a gun in his pocket. So, I am not as persuaded as you
21 appear to be that she was as explicit with Sergeant Forte two
22 years ago as she was on the stand here. You may well be right,
23 but I think you're interpreting her remark a little bit
24 different than I am.

25 MR. LEINER: The reason I'm interpreting because I

1 asked her on cross-examination after I gave her her statement,
2 I said that's not in your statement, did you ever tell anybody,
3 tell to Forte, and it was related both to the jury and outside
4 the presence of the jury, and she says, yes, at that time I
5 told that to Sergeant Forte. That leads me to believe and
6 deduce I think from her own testimony based on my question in
7 cross-examination that she did relay that particular story to
8 Sergeant Forte at that time. That's why I'm bringing this up.
9 I'm not speculating about what she meant in regard to that
10 statement. It was after I presented her with it on the stand,
11 she said it's not in the statement, that I asked her follow-up
12 questions in regard to that.

13 MR. ARONOW: Obviously, the State doesn't agree.
14 Number one, Sergeant Forte was with me January 17th, 1997 when
15 we spoke to Lakesha Buckhannon, and so obviously he was present
16 at the time that she discussed it with me in preparation for
17 her trial testimony. We've already gone through the facts that
18 the State doesn't believe that a discovery violation occurred.
19 However, the State would certainly take the position that if a
20 discovery violation occurred, it didn't take place between
21 January 17th and now, not two years prior. I don't agree with
22 Mr. Leiner's interpretation. I agree with your Honor, what I
23 think Lakesha Buckhannon was indicating with respect to her
24 knowledge of that circumstance and, Judge -- number one.

25 Number two, the defense is in possession of each and

1 every item of discovery that I'm aware of and if the item was
2 not contained in a statement, your Honor, or contained in some
3 other report of Sergeant Forte or whatever, then the State is
4 going to presume that it was not mentioned to Sergeant Forte or
5 it would have been in his report.

6 What issue that raises with respect to the credibility
7 of Lakesha is ultimately up to the jury to decide, but I can't,
8 based upon the fact that she had difficulty remembering other
9 things today, quite expected, considering her problem with
10 testifying and her emotional state, your Honor, it's the
11 State's position that your Honor ruled and I respectfully
12 disagree with your Honor's ruling because, your Honor, there
13 wasn't a discovery violation.

14 THE COURT: You said that three times. I don't know
15 how you can stand there and tell me there wasn't a discovery
16 violation. I'm not going to get in a long discussion with you
17 about it, but I don't understand how the State can say that.
18 It is to me a blatant and clear discovery violation. Let's
19 move on from there, but it was clear.

20 MR. ARONOW: Irrespective, your Honor, it's -- we're
21 not talking about two years ago. We're only talking about 10
22 day ago and I don't see the grave prejudice that's being
23 described by the defendant.

24 THE COURT: Well, at this point what we're talking
25 about is conjecture. The defense is asserting now that there

1 may be problems in reconstructing what happened two years ago.
 2 Until the Court is conclusively told that there is a problem of
 3 reconstructing it, I don't see any basis for me to reconsider
 4 the ruling that I've already made. So at this point nothing
 5 has changed from the way the situation was when I ruled earlier
 6 today and I see no reason at this point to reconsider my
 7 ruling. That is the ruling of the Court.

8 MR. LEINER: Thank you, your Honor.

9 THE COURT: That completes this matter.

10 MR. LEINER: Good evening, your Honor.

11 (Court adjourned.)

12 -----

13 C E R T I F I C A T I O N

14 I, Judy Gerstenfeld, C.S.R., License Number XI00370, an
 15 Official Court Reporter in and for the State of New Jersey, do
 16 hereby certify the foregoing to be prepared in full compliance
 17 with the current Transcript Format for Judicial Proceedings and
 18 is a true and accurate non-compressed transcript to the best of
 19 my knowledge and ability.

17 Judy Gerstenfeld April 25, 1997
 18 Official Court Reporter Date
 19 Camden County Hall of Justice

19
20
21
22
23
24
25