

1 The State of Ohio)

2 County of Lorain) SS: 75

3 IN THE COURT OF COMMON PLEAS

4 The State of Ohio,)

5 Plaintiff,)

6 vs.)

NO. 95CRO46838

7 Raymond Agustus Smith,)

8 Defendant.)

9
10 * * *

11 COMPLETE TRANSCRIPT OF TESTIMONY TAKEN DURING
12 THE TRIAL IN THE ABOVE-CAPTIONED CAUSE BEFORE THE
13 HONORABLE KOSMA J. GLAVAS, PRESIDING JUDGE OF SAID
14 COURT, COMMENCING ON TUESDAY, NOVEMBER 28, 1995.

15 * * *

16 APPEARANCES:

17 Appearing on behalf of the State of Ohio:

18 Gregory A. White,

19 Lorain County Prosecuting Attorney, by

20 Jonathan Rosenbaum,

21 Assistant County Prosecuting Attorney.

22 Appearing on behalf of the Defendant:

23 Harvey Bruner, Esq. and

24 Bret Jordon, Esq.

25 * * *

1 A That is correct.

2 MR. BRUNER: One moment, your
3 Honor.

4 I have nothing further, your Honor.

5 MR. ROSENBAUM: Nothing.

6 THE COURT: Thank you, you may
7 step down, Mr. Leiby.

8 (Witness excused.)

9 * * *

10 THE COURT: Ladies and
11 gentlemen, it is now twelve noon and we will take
12 our afternoon luncheon recess.

13 I will say to you that Ms. Skinner indicated
14 that she has contacted Moss' on your behalf and
15 that they will be holding some tables for you at
16 this point. Recognizing that you do have a
17 distance to go to get there, we will return at
18 1:30, gives you about an hour and a half at this
19 point.

20 Remember the admonitions previously given
21 about not discussing this case amongst yourselves
22 or letting anyone discuss it with you.

23 (Whereupon, a luncheon recess was had.)

24

25

I N D E XWITNESSES:DIRECTCROSSREDIRECTRECROSSSTATE'S:

Michael Beaman -	2	12	16	17
Heather Neilson Raaf, M.D. -	18	37	45	45
Sharon Rosenberg -	48	58	64	65
Linda Luke -	66	72		
John Homoki -	76	98	102	103
Sharon Hopkins -	105	113		
Sandra Williams -	133	138		
Brian Howington -	139	147	157	158
Terry Hopkins -	161	183	214	215
Joann Fike -	217	225		
Alan Leiby -	233	253		
State rested -	261			

DEFENDANT'S:

Gerald Mielcarek -	263	268	269	269
Defendant rested -	271			

REBUTTAL:STATE'S:

James Drozdowski -	272	273		
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	<u>EXHIBITS:</u>	<u>MARKED</u>	<u>OFFERED</u>	<u>ADMITTED</u>
2	<u>STATE'S:</u>			
3	1-A)			
4	thru) - Photos in cemetery -	P/M	6	6
	1-P)			
5	2 - Coroner's verdict,			
6	autopsy, protocol, etc.-	P/M		
7	2-A)			
8	thru) - Coroner's photos -	P/M	22	22
	2-CC)			
9	3 - Cuyahoga County Trace			
10	Evidence Lab report -	P/M		
11	3-A)			
12	thru) - Photos of car -	P/M		
	3-D)			
13	3-E - Blood sample and hair -	P/M		
14	3-F - Cigarette lighters,			
15	cough syrup, black metal-	P/M		
16	3-G - Brown steak knife -	P/M		
17	3-H - Victim's clothes -	P/M		
18	3-I - Piece of trunk liner -	P/M		
19	4 - Court file to Grand Jury			
20	on Raymond Smith 8-27-93 -	P/M		
21	5 - Court file to Grand Jury			
22	on Danny Smith 9-1-93 -	P/M		
23	6 - Arrest report on Raymond			
24	Smith 8-19-93 -	P/M		
25	7 - Arrest report on Danny			
	Smith 8-12-93 -	P/M		
	8 - Police daily log 9-15-93 -	P/M		
	9 - Confidential informant			
	agreement -	P/M		

	<u>EXHIBITS:</u> (Cont.)	<u>MARKED</u>	<u>OFFERED</u>	<u>ADMITTED</u>
1				
2	<u>STATE'S:</u> (Cont.)			
3	10 - Tape 6-7-93 -	P/M		
4	11-A - Raymond Smith tape 7-5-94 -	P/M		
5	11-B - Second Raymond Smith			
6	tape 1-11-95 -	P/M		
7	11-C - Transcripts of 11-A			
8	and 11-B -	P/M		
9	12 - Photo of dog -	P/M		
10	13 - Michael Smith deposition -	P/M		

DEFENDANT'S:

None

Note: P/M indicates exhibit was
previously marked

STATE'S CASE

Thereupon, the State of Ohio, in order to further maintain the issues on its part to be maintained, called MICHAEL BEAMAN as a witness and, after being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION OF MICHAEL BEAMAN

BY MR. ROSENBAUM:

Q Will you state your name, please, sir?

A Detective Michael Beaman.

Q Spell the last name for the Reporter, please?

A B-E-A-M-A-N.

Q Okay.

A Badge No. 1115.

Q How long have you served the City of Cleveland as a Police Officer, Detective?

A Sixteen and a half years.

Q And how long have you been a Detective?

A Been a Detective for the last, approximately eight years.

Q And how long have you served on the Homicide Unit?

A Last three years.

Q As a result of your position on the Homicide Squad for the City of Cleveland, were you summoned to a cemetery on January 19th of '94?

1 A Yes, I was.

2 Q Will you tell the Court and jury why you were so
3 summoned, sir?

4 A We received a call approximately 9:55 hours of a
5 male's body found in the cemetery, possible victim of
6 a homicide.

7 Q And what did you do, sir?

8 A We responded to the scene.

9 Q And what does the normal response of such a call
10 for the Cleveland Police Department involve?

11 A Basically just getting -- making sure all the
12 materials you need for the investigation is in the car
13 and going to the scene to see what you have.

14 Q What goes to the scene?

15 A Myself, my partner. We usually bring along our
16 Scientific Investigation Unit and other personnel
17 that is already on the scene.

18 Q And who was on the scene when you arrived there?

19 A Supervisors from the Fifth District along with
20 several other zone cars.

21 Q Can you tell the Court and jury briefly what you
22 did when you arrived and what the Scientific
23 Investigation Unit did?

24 A When I arrived to the scene we were led into the
25 cemetery. The entranceway is off the south side of

1 Quincy Avenue. Once you go up in the cemetery we found
2 the victim's body laying in the second driveway which
3 runs east and west.

4 At that time we immediately started trying to figure
5 out what type of wound is on the body that is visible at
6 this point, gathering evidence, things of that sort.

7 Q Did you instruct the Scientific Investigation Unit
8 to do anything?

9 A We instructed them to take photos. They assisted in
10 picking up evidence around the body or possible evidence
11 around the body.

12 Q Will you describe the weather conditions on January
13 19th of 1995?

14 A Ninety-four?

15 Q I am sorry, '94.

16 A It was extremely cold. As a matter of fact it was
17 recorded as the coldest day in Cleveland history.

18 Q Do you have any idea what the temperature was?

19 A I believe it was minus 46 degrees wind chill factor.

20 Q Did the cold affect your normal movements?

21 A Yes, it did. First of all, my pen wouldn't write,
22 even had trouble with a pencil, caused my joints in my
23 hand to lock up. Several times I had to get in the car
24 to let my hands warm to continue working.

25 Q Sir, I would like to hand you some photographs that

1 have been marked for identification as State's Exhibits
2 1-A through 1-P, ask you to look at them, please.

3 Do you recognize those photographs, sir?

4 A Yes, I do.

5 Q Are they some of the photographs that you had the
6 Scientific Investigation Unit people take at your
7 direction?

8 A Yes, they are.

9 Q Do they truly and accurately depict the scenes they
10 represent?

11 A Yes, they do.

12 MR. ROSENBAUM: Your Honor, with
13 the Court's permission, I would move admission
14 and ask that the Detective be permitted to hold
15 them up one at a time and show them to the jury.

16 MR. BRUNER: I am going to enter
17 my objection on the grounds previously mentioned.

18 THE COURT: They shall be
19 admitted.

20 Exceptions noted, Mr. Bruner.

21 * * *

22 WHEREUPON, STATE'S EXHIBITS 1-A THROUGH 1-P,
23 HERETOFORE MARKED FOR IDENTIFICATION, WERE OFFERED AND
24 ADMITTED INTO EVIDENCE.

25 * * *

1 MR. ROSENBAUM: Can we approach one
2 moment?

3 THE COURT: Sure.

4 (Whereupon, the following proceedings
5 occurred at the bench out of the hearing of the jury.)

6 MR. ROSENBAUM: For the record I
7 would like to know what the specific objection
8 was.

9 MR. BRUNER: We filed a motion
10 previously claiming the gruesome photographs and
11 in addition to that, these are duplicative.

12 (Whereupon, the following proceedings
13 occurred back in the hearing of the jury.)

14 Q Sir, I would like you to start with State's Exhibit 1-A
15 at the top and tell the jury what that is?

16 THE COURT: And as you show or
17 say something about each one of the photos,
18 indicate what number it is.

19 A State's Exhibit 1-A, this exhibit shows a distant shot
20 of the victim's body laying in the driveway, which I
21 explained earlier, in the cemetery.

22 MR. ROSENBAUM: Could he pass that
23 down, your Honor?

24 THE COURT: As long as they have
25 been admitted into evidence, he may.

1 A State's Exhibit 1-B shows a photo of the victim's upper
2 garment we found away from the body laying on the snow bank.

3 Exhibit 1-C is a photo of a bent 32 caliber shell
4 casing which was found in the snow by the victim's body.

5 1-D is a small spring, metal spring. It was collected.
6 It was believed to be possibly a firing pin for an automatic
7 weapon, also blood spots in the snow.

8 1-E shows a large blood stain with small hairs in it,
9 possible firing mechanism that was found on the scene and
10 again, an unspent 32 caliber shell, a bullet.

11 State's Exhibit 1-F shows a closeup picture of the
12 victim as he was found lying on his stomach in the driveway.
13 It also shows a very close shot of a wound that we observed
14 on his left shoulder and a massive amount of blood around
15 his face.

16 1-G shows a closeup shot of the victim's face as he
17 was turned over by the Coroner's Office upon their arrival.
18 Also, on the left side of his throat is a large wound.

19 State's Exhibit 1-H shows a closeup of the victim's
20 chest area covered with blood, also shows a picture of a
21 knight or a horse which was tattooed on his body.

22 1-I is another distance shot of the victim's body as
23 it lays in the driveway of the cemetery.

24 1-J, once again just another shot of the victim's body
25 lying in the driveway.

1 1-K is a little bit closer view of the victim's body
2 laying in the driveway. It shows some tire tracks and blood
3 stains away from the victim's body.

4 1-L, another photo of the victim's body laying in the
5 driveway and a little bit clearer view of the blood stains
6 and the tire tracks.

7 Q Detective, do those go right through the blood stains?

8 A Some of them do, yes. In fact -- yeah, they do.

9 Q Okay.

10 A 1-M, again another shot showing the tire tracks that
11 appear at that time to miss it, appeared to go away from the
12 body, going eastbound, a photo of the body as it lays in the
13 cemetery, shows where the upper garments were found in the
14 left-hand corner south of his head and a pack of Winston
15 cigarettes laying in the driveway and again the tire tracks
16 and the body.

17 1-N, as in Nancy, shows a pack of Winston cigarettes
18 laying in the driveway and again the tire tracks, a pack of
19 cigarettes found lying on the ground not far from the body.

20 1-O is a closeup of a red cigarette lighter and a
21 quarter found near the body.

22 1-P is a closeup of a green Bic lighter which was also
23 found in the area near the body and a very important picture
24 of possible boot print.

25 THE COURT: Ladies and

1 gentlemen, you will have those in the jury room
2 when you start your deliberations. This is just
3 a quick view at this point.

4 You may proceed.

5 Q Sir, I would like to place before you what has been
6 marked for identification as State's Exhibit 3-E, ask you to
7 look at it and tell the Court and jury if you are able to
8 identify it?

9 A Do you want me to open it?

10 Q If you need to.

11 A You can see that the writing is a little rough from
12 trying to write in the cold weather. Looks like a blood
13 sample that was taken from the 'scene and a suspected hair.

14 Q Were blood, hair and body samples taken for later
15 analysis from the scene at your direction?

16 A Yes.

17 Q And were those analyses performed?

18 A Yes.

19 Q Can you tell the Court and jury who performed the
20 analysis on the blood and hair?

21 A That would have been done by the Cuyahoga County
22 Coroner's Office, Trace Evidence Division.

23 Q So, the samples were given to them for analysis?

24 A Yes.

25 Q What happened to the samples after the analysis?

1 A After their completion and we received their report,
2 all evidence was returned to our property room.

3 Q Sir, I would like to hand you what has been marked
4 for identification as State's Exhibit 3-F.

5 Would you look at that, please, and see if you can
6 recognize that?

7 A Some of the items that were found in the area of
8 the body. It is a pack of Winston cigarettes, a red Bic
9 lighter, green Bic lighter, a bottle of Tavist Cough
10 Syrup and a piece of black metal.

11 Q Officer, some of those items are depicted in the
12 pictures that you have displayed?

13 A Yes, all of the items are except the cough syrup.

14 Q I would like to hand you State's Exhibit 3-G and ask
15 if you can identify the contents of it, please?

16 A This is a brown steak knife with a wooden handle,
17 five inch, silver blade, that was found around the scene
18 -- well, actually found inside the victim's outer garment,
19 coat.

20 Q And I would like to hand you some clothing that has
21 been marked for identification as State's Exhibit 3-H.

22 Can you identify that, please?

23 A Yes, those are the clothes that you will see in the
24 pictures that was laying on the snow mound, the victim's
25 shirt and coat. The pants were worn by the victim at the

1 time.

2 Q Were all the items that you identified seized by the
3 Cleveland Police Department at your direction, sir?

4 A Yes.

5 Q And were they housed prior to bringing them to trial
6 in the property room at the Cleveland Police Department?

7 A All except for the clothes.

8 Q Where were they held?

9 A They were held at the Coroner's Office.

10 Q And except for the analysis done on the items and the
11 time they were with the Coroner's Office, are they in the
12 same condition today as when they were impounded at your
13 direction or by yourself?

14 A Yes, they are.

15 Q Now, did you know who the victim of this crime was
16 right away, sir?

17 A No.

18 Q Can you tell the Court and jury how his identity was
19 made?

20 A Well, for about a week or so we done the routine thing,
21 fingerprints, checking of missing person files or
22 descriptions to see if they matched.

23 We received a number of calls from other municipalities
24 of missing persons that matched that description and we had
25 to confirm fingerprint checks with those people.

1 My partner and I also, after coming up with negative
2 results on the identity, we started to concentrate on the
3 tattoo on his chest, the horse and the knight, tried to
4 learn more about the tattoo because we figured if we could
5 find out who did that and it seemed to be a rare one, we
6 could find out who the victim was. That also led to
7 negative results.

8 Approximately a week and a half, two weeks later,
9 we received a call from an officer who works for the
10 Cleveland Police Department, Sergeant David Roth and he
11 had been contacted by the Lally family as a result of
12 their missing reports in Elyria, and checking against
13 those reports and the family coming to the Coroner's
14 Office, they identified his body.

15 MR. ROSENBAUM: I have no other
16 questions, your Honor.

17 THE COURT: Mr. Bruner, you
18 may inquire, sir.

19 MR. BRUNER: Thank you.
20
21
22

23 CROSS-EXAMINATION OF MICHAEL BEAMAN

24 BY MR. BRUNER:

25 Q Good morning, Detective Beaman, how are you?

1 A Good morning, Mr. Bruner.

2 Q There is no question that based upon your investigation
3 this homicide appears to have taken place at this cemetery,
4 correct, from the blood and everything you found there?

5 A It appears some things happened there, yes.

6 Q Based upon your experience as a homicide detective of
7 these number of years, it appears -- the homicide appears to
8 have taken place in Cuyahoga County, correct?

9 A Yes, it appears that the majority of whatever happened
10 to Mr. Lally happened there.

11 Q Okay. Now, I think you said that there were boot
12 prints?

13 A In one of the pictures there was. You have to look at
14 it real hard. You can make out what appears to be a boot
15 print.

16 Q Did you make any measurements of that?

17 A No, I did not.

18 Q There is also, if I am not mistaken, there are tire
19 tracks?

20 A Right.

21 Q Did you check anything about the tire tracks?

22 A In what respect, sir?

23 Q Can you tell what kind of a tire it was from or did
24 you make prints of the tire tracks?

25 A No, I did not.

1 Q Did you ever do that?

2 A No, I have not.

3 Q Do you know other officers that have?

4 A There have been investigations that I read about that
5 do that.

6 Q The tire tracks in the snow were pretty clear?

7 A Appeared to be fine to me, but I am not an expert to
8 evaluate that.

9 Q Were there other boot marks in the area around the
10 body?

11 A I don't recall.

12 Q Did you get any fingerprints off the lighters?

13 A They all produced negative results as far as the
14 lighters and the cough syrup.

15 Q Now, I think you told the ladies and gentlemen of
16 the jury at some point you concentrated on the tattoo
17 on the chest?

18 A Yes.

19 Q Why was that tattoo so unusual?

20 A When we got to the Coroner's Office, discussing it
21 with the Coroner's Office, that had been used in the past
22 as identifying people. Tattoo shops, I guess they record
23 what tattoos they put on people and noticing the tattoo,
24 we found that there were several shops in the eastern
25 suburbs that deal with what they call dungeon and dragon

1 tattoos and that is what that tattoo was.

2 Q There is a game called Dungeons and Dragons?

3 A I never played it.

4 Q Kids now play it?

5 A Right.

6 Q Is that what that tatoo is related to, some kind of
7 gang activity?

8 A There is a name for that, but it is Dungeon and Dragon
9 Collections.

10 Q Is it related to gang activity?

11 A Not that I know of, no.

12 Q Related to drug activity?

13 A No.

14 Q So, it is related to Dungeons and Dragons?

15 A It is like a comic book. When we went to a comic
16 business shop in Willoughby, we looked at tattoos that
17 they do to try to help us identify him.

18 Q When was the first time you knew about who he was?

19 A About two weeks after the body was found, sometime
20 in February, I believe.

21 Q You found this steak knife on his person?

22 A It was inside the jacket, like the clothes were
23 laying on the snow and the steak knife was inside the
24 jacket.

25 Q Okay. Wasn't laying in the snow?

1 A No.

2 Q Even though this homicide happened in Cuyahoga County,
3 you didn't do much further investigation, is that correct,
4 after it was turned over to Elyria?

5 A I don't understand your question.

6 Q What did you do other than turn the body over, turn
7 the body over to the Coroner's Office?

8 A Identifying him and our investigation. After
9 identifying him, it led us to Elyria.

10 MR. BRUNER: I have nothing
11 further.

12

13

14

15 REDIRECT EXAMINATION OF MICHAEL BEAMAN

16 BY MR. ROSENBAUM:

17 Q It is fair to say that you participated in the
18 investigation to its conclusion?

19 A Yes, I did.

20 Q That you worked it with Elyria?

21 A Yes, I did.

22 Q Now, was the knife in the pocket of the clothing
23 or within a fold of the clothing?

24 A Just within a fold, if I recall correctly.

25 MR. ROSENBAUM: No other questions.

RECROSS-EXAMINATION OF MICHAEL BEAMAN

BY MR. BRUNER:

Q You said it was in a pocket, now it is in a fold?

A No, I said it was inside the coat, more or less inside of the fold of the coat. If it was laying in the snow, we would have photographed it.

MR. BRUNER: Nothing further.

MR. ROSENBAUM: Nothing.

THE COURT: Thank you, you may
step down.

(Witness excused.)

* * *

1 occurred at the bench out of the hearing of the jury.)

2 THE COURT: How long?

3 MR. BRUNER: Not much.

4 THE COURT: Okay.

5 (Whereupon, the following proceedings

6 occurred back in the hearing of the jury.)

7 THE COURT: You may

8 cross-examine, Mr. Bruner.

9

10

11

12 CROSS-EXAMINATION OF HEATHER NEILSON RAAF, M.D.

13 BY MR. BRUNER:

14 Q Dr. Raaf, the Cuyahoga County Coroner's Office usually
15 investigates, as you stated, homicides or questionable
16 deaths in Cuyahoga County?

17 A Yes.

18 Q Correct?

19 A Yes.

20 Q And as far as you know, and I guess you looked at the
21 scene, this death occurred in Cuyahoga County, correct?

22 A Yes.

23 Q Now, I think you testified that under all the
24 circumstances here, you don't believe that the gunshot
25 was fatal, is that correct?

1 A Yes.

2 Q And the bruises in and of themselves probably weren't
3 fatal, is that correct?

4 A Yes.

5 Q That it was a combination of the gunshot that was not
6 fatal, the bruises that weren't fatal, and probably
7 exposure?

8 A Yes, also the brain injuries.

9 Q Now, the brain injuries that you talked about, when
10 you get a blow on one side of the head, you can have
11 bruising on the other side, isn't that true?

12 A True, under certain circumstances.

13 Q It is not the fact that you might have had two
14 blows, you might have had one on one side of the head
15 and it also caused bleeding on the other side?

16 A Not in that case, no.

17 Q That is known as a contra-coup injury?

18 A That is where the head is accelerating and strikes
19 an object.

20 Q In this case you don't believe that happened?

21 A No.

22 Q But at any rate his death was a combination of
23 those factors, correct?

24 A Yes.

25 Q Now, we also had substances in his blood, correct?

1 A Yes.

2 Q And what were those substances?

3 A As part of the works of an autopsy, I collect body
4 fluids, including whatever I can get. Blood, urine, bile,
5 which is from the gallbladder, fluid from the back of the
6 eye and stomach contents and what was found in the body
7 was cocaine in the blood and urine and also cocaine
8 metabolized. That means that not only was there the
9 original apparent component cocaine, but the body had
10 started to break it down and break down the product.

11 Q Could you explain that to the jury?

12 If it is in the urine and the blood was taken more
13 recently and when the body begins to break it down, it
14 is a little bit in the past.

15 Am I saying that correct?

16 A More or less, right.

17 Q Tell them how that is done?

18 A Cocaine is broken down fairly quickly in the body
19 so the first place you find it and you find what is
20 called the apparent component, the original is in the
21 body and finding it in the blood tells you nothing
22 about how they got it, whether it was inhaled,
23 injected or smoked or whatever.

24 It has gotten into the blood and all that can put
25 it into the blood. As it circulates through the body,

1 it gets broken down and winds up in the body fluids
2 which then filter through the kidney and the kidney
3 pushes them out into the urine and then eventually
4 they collect in the urine and in the bladder and
5 then out.

6 First of all, finding cocaine in the blood,
7 which ordinarily would break down originally, means
8 that he probably used it fairly recently, but also
9 finding it in the urine meant that he used it long
10 enough before that it had a chance to circulate,
11 break down and collect in the urine and then be in
12 the urine in the bladder.

13 Q Fairly recently, what do you mean by that?

14 A Probably within an hour. It is a little hard to
15 say because you are looking at what might be one gram.
16 You don't know if he had a little bit recently or he
17 had a lot longer before and that was what was left,
18 but probably since a lot breaks down within the first
19 hour, he probably had used some within an hour of his
20 death, roughly.

21 Q All right. What are the effects of cocaine?

22 Can you tell the ladies and gentlemen of the jury?

23 A Cocaine is a stimulant. It seems to make you feel
24 more alert, more energetic, more self-confident, hyper,
25 perhaps.

1 Q More aggressive, perhaps?

2 A That, too, it can.

3 Q And you also said it was metabolized in his body?

4 A Right.

5 Q What does that mean?

6 A In order to get rid of certain kinds of drugs and
7 get them into the urine, the body has to modify them and
8 basically that is what metabolism is, it is not found in
9 the various areas of the body.

10 Cocaine gets down right in the blood stream and all
11 that does is put it into components that can be sent out
12 in the urine or readily filtered out.

13 Q To be metabolized, when would he have had to take
14 the cocaine in relation to the time of the death?

15 A Again, it can happen within an hour, so it is going
16 on all the time from the minute you start taking it.

17 Q Now, in reviewing the photographs, did you see any
18 boot marks on his body?

19 A No, I didn't see any marks that had a particular
20 object associated with them.

21 Q And assuming he was stomped to death, is it unusual
22 for you to find boot marks on somebody stomped to death?

23 A It is more unusual to find them than not to find
24 them.

25 Q But you didn't find any here?

1 A Correct.

2 Q Did you find any tire marks on this individual?

3 A No.

4 Q Did he appear to have been crushed by the weight of
5 a car?

6 A I wouldn't have been able to tell from the injuries,
7 no.

8 Q So, your answer is no?

9 A The answer is no, did not appear that there was
10 nothing that would have told me that.

11 Q I think your notes indicate that his left earlobe
12 was pierced three times?

13 A I do note that as the overall examination.

14 Q Some of the abrasions on the skin -- you said he
15 had a number of abrasions where the skin looks like it
16 was scraped off?

17 A Yes.

18 Q Would that come from the blow?

19 A Possibly.

20 Q In AA through CC, you showed the jury photographs
21 of his fingers?

22 A Correct.

23 Q And there was some scrapes and bruises on the
24 fingers, correct?

25 A Yes.

1 Q Do you know if those came from him fighting,
2 trying to hit somebody?

3 A They could.

4 Q They could have?

5 A Yes.

6 Q Some of the other abrasions that you mentioned,
7 the ones on his arm, could they have come from him
8 fighting as well?

9 A Yes.

10 Q With cocaine, is there any way you can tell
11 whether someone has taken -- I am sure as a Coroner
12 you know the difference between crack cocaine and
13 powder cocaine?

14 A Yes, I do.

15 Q Is there any way you can tell which one of
16 those Mr. Lally took?

17 A No, there is no way.

18 Q And the effects of cocaine is much more -- I
19 don't know how to describe it -- effective than
20 powder, I suppose?

21 A In general, yes, mainly because it is very
22 concentrated and by smoking it, it gets inhaled,
23 gets into the blood rapidly and the effect of
24 cocaine, the greater effect is the more rapid
25 increase in your bloodstream of a concentration

1 of cocaine.

2 It is the change in concentration that makes
3 someone get the effect faster, I guess faster
4 changes means a more profound effect, and not
5 knowing which, I couldn't say the effect.

6 Q The crack cocaine, to the ladies and gentlemen
7 of the jury, is the one that is cracked up, I think?

8 A Yeah, it is the one that is smokable because it
9 is soluble and it has a lower -- I think it is called
10 evaporation point so you can smoke it and then when it
11 is inhaled, it goes right across mucous membranes and
12 the little air sacs of the lungs and gets into the
13 blood and that is where you get a high concentration
14 and it is a quicker effect than powder which most
15 people inhale and the powder sits on the nose and
16 gets absorbed.

17 Q And the bruises, they could come from him swinging,
18 correct?

19 Him being involved in a fight?

20 A Yes, there is no way to tell exactly how those
21 were acquired.

22 MR. BRUNER: I have nothing
23 further, your Honor.

24

25

REDIRECT EXAMINATION OF HEATHER NEILSON RAAF, M.D.

BY MR. ROSENBAUM:

Q The injuries that Mr. Bruner asked you if they come from fighting, you cannot tell if he is fighting as the aggressor or fighting to save his life, can you?

A No, I can't tell.

Q Now, are his injuries inconsistent with being beaten and struck by a vehicle while he is laying on the ground or consistent with that?

A They are consistent with that.

MR. ROSENBAUM: I have no other questions.

THE COURT: Mr. Bruner?

RECROSS-EXAMINATION OF HEATHER NEILSON RAAF, M.D.

BY MR. BRUNER:

Q His injuries are consistent with a vehicle hitting him?

A You said striking him on the ground or hitting him on the ground.

Q How about the vehicle rolling over him with the weight of the vehicle on him?

A It could do that, yes. These are what are called brush burn-type injuries, road rash is another thing that people

1 call it. That is sort of a motorcycle term.

2 I say consistent with because that is what it looks
3 like, but I cannot say where he got them or when.

4 Q The bruises on the body could have come from exposure
5 to the snow?

6 A I thought you were talking about the head.

7 No, the ones on the chest were deeper scrapes. The
8 one area I am not sure about could be from dragging. I
9 am not sure of the subsequent freeze. That is the part
10 where I am not sure about the face.

11 Definitely on the body those are real road rash-type
12 abrasions, burns, as we call them, and I thought at first
13 that the body was dragged causing those.

14 Anything that scrapes a body along a rough surface
15 gives that kind of abrasion or parallel scrapes.

16 MR. BRUNER: I have nothing
17 further.

18 MR. ROSENBAUM: Nothing.

19 THE COURT: You are excused.

20 (Witness excused.)

21 * * *

22 THE COURT: Ladies and
23 gentlemen, it is ten minutes to eleven. I
24 think even though we had a fire drill, we
25 have not had our break this morning and it

1 is time that we did that, take a short recess
2 at this point.

3 Remember the admonitions that I have
4 given you in the past about discussing this
5 matter amongst yourselves, letting anybody
6 discuss it with you or in your presence and
7 with that, we will take a short recess.

8 (Whereupon, a short recess was had.)

9 (Whereupon, the jury was returned to the
10 courtroom and the following proceedings occurred.)
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1 Thereupon, the State of Ohio, in order
2 to further maintain the issues on its part to be
3 maintained, called HEATHER NEILSON RAAF, M.D. as a
4 witness and, after being first duly sworn, was examined
5 and testified as follows:

6 DIRECT EXAMINATION OF HEATHER NEILSON RAAF, M.D.

7 BY MR. ROSENBAUM:

8 Q Will you state your name, please?

9 A I am Dr. Heather Neilson Raaf, R-A-A-F.

10 Q And are you employed?

11 A Yes.

12 Q Will you tell the Court and jury what you do for a
13 living?

14 A I am a forensic pathologist.

15 Q Where do you practice?

16 A At the Cuyahoga County Coroner's Office.

17 Q Are you board certified in forensic pathology?

18 A Yes.

19 MR. BRUNER: We will stipulate
20 to the qualifications, your Honor.

21 THE COURT: Fine. So be it.

22 Q How long have you served Cuyahoga County as a Deputy
23 Coroner, Ma'am?

24 A Four and a half years.

25 Q Can you tell the Court and jury briefly what the

1 practice of forensic pathology entails?

2 A This is a special branch of medicine which involves the
3 study of deaths that are considered for coroner's cases and
4 these are cases that are defined in law deaths due to
5 accident or homicide.

6 These aren't always known in advance, but these are
7 deaths that are either due to some unnatural circumstances
8 or people who have died mysteriously in natural
9 circumstances where they are not under a doctor's care
10 and not expected to die.

11 Q Did you perform the autopsy on the victim that concerns
12 the case before this Court and jury?

13 A Yes.

14 Q And I would like to hand you a series of photographs
15 that have been marked for identification State's Exhibits
16 2-A through 2-CC and ask if you can recognize them, Ma'am?

17 A Yes, yes.

18 Q How is it that you can recognize those photographs?

19 A I do remember the case. It was unusual, but I think
20 the most important thing is that these are all identified
21 with a plate with his unique case number on it.

22 Every autopsy, every case that comes to us is assigned
23 a unique number and all of the documents and photographs
24 associated with that case have that number properly in
25 them so that you know those are part of that case.

1 Q Were those photographs taken at your direction and
2 under your control?

3 A Yes.

4 Q And were they taken in your presence?

5 A Yes.

6 Q Did you go to the scene where the victim's body was
7 found?

8 A I did, but not with the body present. It was a day
9 or two later.

10 Q Do those photographs truly and accurately depict the
11 scenes that they represent?

12 A These? Yes.

13 MR. ROSENBAUM: Your Honor, with
14 the Court's permission I would like to be able
15 to hold each up, identify it, and explain the
16 significance of the photograph.

17 THE COURT: If you ask for
18 their admission?

19 MR. ROSENBAUM: I do.

20 THE COURT: Okay. May I see
21 them, please?

22 THE WITNESS: Yes.

23 THE COURT: Mr. Bruner, have
24 you seen these?

25 MR. BRUNER: Yes. I would object

1 for the record on the grounds set forth in the
2 previous motion.

3 THE COURT: Okay. They shall be
4 admitted at this point.

5 * * *

6 WHEREUPON, STATE'S EXHIBITS 2-A THROUGH 2-CC,
7 HERETOFORE MARKED FOR IDENTIFICATION, WERE OFFERED AND
8 ADMITTED INTO EVIDENCE.

9 * * *

10 Q Doctor, if you would please identify each one and as
11 you identify it, could you please refer to them by the
12 number that appears on the back of the picture?

13 (Whereupon, the jury was excused from the
14 courtroom along with everyone else due to the fire
15 alarm sounding.)

16 (Whereupon, the jury was returned to the
17 courtroom and the following proceedings occurred.)

18 THE COURT: Ladies and
19 gentlemen, you have got a little bit of
20 everything so far. This happens on occasion
21 and the Court appreciates your cooperation
22 in getting your wraps and getting outside of
23 the courtroom and the courthouse as quickly
24 as possible.

25 Ladies and gentlemen, you recall when

1 the fire alarm went off we were in the direct
2 examination of the Doctor, and, Mr. Rosenbaum,
3 you may continue your direct examination of Dr.
4 Raaf.

5 BY MR. ROSENBAUM:

6 Q Would you take the photograph marked States's Exhibit
7 2-A, hold it up and explain the significance to the jury,
8 please?

9 A Yes. This is the photograph of Mr. Lally's face.
10 This is the first photograph that was taken when the body
11 was brought to the Coroner's Office and I know that because
12 there is a white sheet under there and he is not on the
13 autopsy table yet.

14 We always take what you might call an incoming
15 photograph just as the body looked as it is brought through
16 the door. This shows a lot of dirt and some dry blood and
17 so on on his face.

18 The next photograph, 2-B, is completely cleaned up.
19 Again, just a picture of his face for general information
20 and identification purposes, but without all the dirt and a
21 number of injuries are visible, but you can also see those
22 closer up on subsequent photographs that I had taken.

23 All of those have the same case number on them and you
24 will see that somewhere in each of these photographs.

25 2-C is a photograph of his left eye close up, shows a

1 lot of scraping all around the eye and two little skin
2 tears. In the autopsy report I use medical terminology,
3 skin tears are lacerations. One cut here kind of
4 "L-shaped," a little tiny one there.

5 Next one is 2-E. This also shows -- up over his
6 mouth it shows several things. There is an entrance
7 gunshot wound here. I didn't shave away the moustache.
8 In other areas of the body I might shave away the hair
9 on an entrance wound. On the face we try not to make
10 too many changes. Little spot that I thought might be
11 stippling. I don't know if you want to explain that
12 now or come back to it.

13 Q I would like you to explain it.

14 A When a gun is fired, what actually makes the bullet
15 go out the end of the gun is a mini explosion where the
16 gunpowder is ignited and that literally blows a bullet
17 out of the gun and behind the bullet are the components
18 of this explosion.

19 There is, perhaps, a little bit of flame. There is
20 smoke and there are fragments of unburned and partially
21 burned gunpowder and the smoke is very light. It only
22 travels out about six to eight inches. If it deposits
23 on the skin, you will get a powdery stuff on the entrance
24 wound that is called fouling. I didn't see any here.

25 However, the partially burned gunpowder is left here

1 like grains of sand. If the person is within two to three
2 feet, that is about as far as that will travel. It will
3 strike the skin and it is heavy enough to imbed itself
4 in the skin and that is called stippling. Some call it
5 tattooing and after you wash off the face, it is still
6 there and I thought that looks like it.

7 I wasn't sure at the time. I was able to confirm it
8 later on by examination. There is an entrance wound here.
9 There is scrapes on the nose and on the skin. He has
10 another split in his lip here, another one there, bruises
11 all around his mouth and there is a split in the upper
12 lip that you can see better on other photographs.

13 2-F is showing the lower lip pulled down. You can see
14 on the most inner part of the lower lip the dark bruises
15 and there is also a skin split. He received a blow hard
16 enough to split his lip on the tooth behind it and that is
17 what happened right here. You can also get a little idea
18 of the split in the upper lip skin. Splits happen when skin
19 gets squashed between two hard surfaces.

20 Many of you have seen a child fall on the sidewalk and
21 the skin is often torn when they hit the sidewalk and you
22 get splits right in there. This is the same kind of thing.
23 A blow that strikes the lip against his teeth is enough to
24 cause it to split.

25 This is the lower lip and there is a corresponding

1 picture here, this is 2-G, and this is showing the same
2 thing with the upper lip peeled up. It is hard to see
3 there is a nose here. This is the upper lip peeled up.
4 It has a split right in the middle and a lot of dark
5 coloration which is bruising and you can just see a
6 little bit of the upper tooth right there and you can
7 also see the split in the lower lip.

8 Now, this is 2-H. I have just a couple of holders
9 to pull the lip back on the right side of the mouth
10 because there were three teeth knocked out on the right
11 side of the mouth. I believe that one or more were
12 probably knocked out by the bullet that went through
13 the right side of his lip and you see the scrapes on
14 his chin as well.

15 If I may just briefly reverse the order of these
16 because it makes a little more sense.

17 2-J, this is part of an autopsy, when you have
18 wounds in the head and neck, to do a special dissection
19 and take out the organ, including the tongue; 2-J is a
20 picture of the tongue. This is the top of the tongue
21 and this is the back and there is a crease in the tongue
22 where the bullet passed by, a deep crease wound there.

23 Also, there are some smaller splits in the top of
24 the tongue, probably if he bit down on his tongue when
25 he received a blow to the face that could have drove

1 his tooth into the tip of the tongue and I believe that
2 is how those got to be there.

3 This is 2-I. This is a difficult photograph to
4 understand, but this is the final step of the neck
5 dissection. It was trying to discover where the bullet
6 ended up and this is what you are seeing, is the top of
7 the head way up here.

8 The autopsy incision has been made here and the
9 flap of skin from the autopsy has been peeled up and
10 then I have dissected into the neck and pulled up what
11 is basically the back of the throat like that and you
12 may see a small dark mark there which is where the
13 bullet went through the back of the throat and then
14 in the area of bleeding which is where the bullet
15 struck the front of the spine, the back of the throat
16 and the back of the spine and all of this is the front
17 part of the spine as seen from the inside of the body.

18 These are generally in order of head, trunk and
19 extremities.

20 Now, the next two are views of the scalp area.
21 The scalp is opened during autopsy and they are designed
22 to show bruises.

23 Now, this is 2-K. This is the scalp peeled back,
24 bruise, causes bleeding on the inside of the scalp.
25 The scalp is cut across this way and part is peeled

1 forward and part is peeled back so it can all be put
2 back together again and the body can be viewed later
3 for funerals, so we have this peeled back and forward
4 and all of this red area is bruising that caused
5 bleeding into the tissues of the scalp and the outer
6 surface of the scalp.

7 ^{M-3} 2-L, similarly, this is the left side of the head
8 and it shows bruising on the skull and then the
9 corresponding area of scalp that have bruises and that
10 is bleeding into the soft tissue basically.

11 A similar picture from the top, 2-M as in Mary, is
12 from the top, scalp peeled back here for this and showing
13 bruises at the top of the scalp in the tissue on the
14 outside of the scalp.

15 The next picture, 2-N, shows several things. First,
16 the scrapes on the side of his face by the left eye, the
17 nose and a few smaller ones on his left cheek, a large
18 bruise on his left ear and a number of shallow cuts on
19 the neck.

20 Part of the neck dissection was to explore how deep
21 they were and whether they injured anything. They weren't
22 very deep. They went into the first layer of muscle, but
23 they didn't hit the jugular vein or carotid artery. These
24 are superficial even though there are a large number of
25 them.

1 Q Is a scrape different than a bruise?

2 A Yes.

3 Q How so?

4 A A scrape is where the surface of the skin gets scraped
5 up. A bruise, the skin is intact, but there is bleeding
6 underneath to give it a type of bluish, purplish color.

7 Q Is a bruise like that caused by a blow?

8 A Yes, it could be or it could be from something brushing
9 across the surface and there is a component of both because
10 the eye was swollen, so probably there is both a bruise
11 from the blow and a scraping effect of rubbing up the skin.

12 Q If the body were struck by a car, would that account
13 for the combination of one or both?

14 A There is nothing indicating that it says it was a car
15 and not some other object.

16 2-0 is various injuries to the right side of the body.
17 There is a bruise again on the ear, like right there. Kind
18 of a scrape effect. Part of the cutting of the neck came
19 across and you see a little bit of it there and another
20 scrape here, bruise up here on the shoulder and you can
21 start to see some scrapes on the body.

22 I probably better go back and remind you, in the
23 autopsy protocol the scrapes will be called abrasions
24 because I was using medical terminology for those.

25 Now, we are getting on to the trunk section. The

1 first picture shows the body before it was cleaned up.
2 It is just a full length picture on the autopsy table.
3 You have seen all the injuries of the head already and
4 I will go to greater detail, but this is to document
5 and we have pictures from all angles.

6 This is from the left side, this is from the right
7 side and I will go into greater detail later. The
8 number plate is right there.

9 The last one is a picture of his back, just with
10 the body tilted up to the side.

11 Q That is number --

12 A I am sorry, 2-R. 2-S is a closer view of the trunk
13 showing a series of scrapes or abrasions going across the
14 front of the trunk, also a little bit more on the left
15 side underneath the tattoo on his chest.

16 2-T shows closer up view of the scrapes on the right
17 side of his chest, parallel scrapes.

18 2-U, this shows what I took to be a deep cut, a scrape
19 around it on the back of his left shoulder, not, you know,
20 deep into the chest cavity, but not a superficial cut,
21 fairly deep.

22 Q Can you offer an opinion as to what caused that?

23 Was it a sharp object, a blunt object?

24 A It appeared to be a sharp object, but again it has no
25 characteristics that would allow me to say precisely what

1 made that.

2 Q Okay.

3 A 2-W, this is a picture of his right arm. There are
4 a few little small scrapes here, but there is kind of a
5 larger scrape of the elbow and it is to partially show
6 that and this one, 2-X, is just a closer view with the
7 arm a little twisted, of the scrape on his elbow.

8 These abrasions are bright red in life. You know,
9 when there is life in skin, over time they darken. As
10 that area dries, it is drying of the abrasion. That is
11 what the dark color is about.

12 Moving onto 2-Y, this is the left arm, similarly
13 documenting scrapes and perhaps some bruises up here,
14 scrapes on the elbow. This reddish color is from blood
15 settling. After someone dies and doesn't have blood
16 pressure to keep blood going around and around, it all
17 settles into the lowest part of the body and that is
18 where it is at this point.

19 Now, it happened that we received the body I think
20 before the blood had settled in any one area and the
21 fact that it is on his back is more indicative of the
22 fact that the body was on the back from the time that
23 he was brought in rather than he was necessarily found
24 that way.

25 2-Z, this is his right knee. There is a small

1 scrape or abrasion on the right knee that I have
2 documented with the photograph.

3 2-AA is a left hand. There are small scrapes on
4 the first finger and the middle finger. You can probably
5 hardly see them from here.

6 2-BB, a slightly different view of the left first
7 finger showing the scrapes on the top of the finger.

8 The last one, 2-CC, is the right hand. There is a
9 whole area of skin that is scraped off the finger and
10 that is this area here. The medical term for a flap of
11 skin is avulsion.

12 When you read where it says the flap of skin is
13 avulsion, that is what it means, lifted off. (Indicating
14 throughout)

15 Q Doctor, as a result of your examination of Mr.
16 Lally's body, were you able to conclude a minimum number
17 of times that he was struck?

18 A It is difficult to give a precise number. We sat
19 and discussed this before and looked and I think I can
20 tell you how we did this, just an estimate.

21 There is a blow here, little bit of a black eye and
22 a scrape, another one here, sometimes this can be a single
23 surface and blow, but when it is on two different surfaces,
24 that can't hit a flat object at the same time.

25 There is at least two blows there, probably two to the

1 mouth, one on either side, but it is hard to say, again
2 just giving an estimate, it is about four and then I think
3 the rest of the way of looking at it was to look at the
4 scalp.

5 Looking at the left and right side, there is all kinds
6 of different surfaces that couldn't have been impacted
7 simultaneously. There must be four plus one, two, three
8 -- that is seven -- and we already counted four, so we
9 have at least eleven. I would say that is a minimum,
10 but I am just estimating what I can separate as separate
11 surfaces that couldn't have been impacted simultaneously.
12 (Indicating)

13 Q And that is above the neck and shoulders?

14 A Right, and then we have a series of scrapes on the
15 left, on the right, scrapes here and here, and it is
16 difficult to say precisely how those could have happened
17 and then there is the one on the back of the shoulder.
18 (Indicating)

19 Q The cut?

20 A Right.

21 Q If someone were to testify that the victim wouldn't
22 stay down, we stomped him to death, would that be
23 consistent with what you found?

24 MR. BRUNER: Objection.

25 THE COURT: Overruled.

1 She may answer if she can.

2 A Yes.

3 Q Now, were you able to calculate an estimated time of
4 death as a result of your examination?

5 A I made an attempt. I should explain first of all to
6 the jury, that when you try to estimate time of death in
7 real life it is very different from what you see on
8 television and read in books where someone says, "Mr. X
9 died exactly at 10:30 last night," that is truly fiction
10 and we really can't make any kind of an estimate at that
11 precisely.

12 All I can give you is a window of time. In this
13 case it was very difficult because these were extreme
14 conditions and most estimates that we make are based on
15 the body at room temperature and under normal conditions
16 and then I can kind of give an idea, again with a range
17 of time, and I had to go to a fair amount of trouble for
18 this case because the body, the temperature that night
19 got down to 20 below zero, and the body was partially
20 clothed and outdoors and this is just way beyond what
21 is normal, so I did some special calculations and made
22 an estimate, which you have to just realize is an
23 estimate.

24 From rectal temperature there was a rectal
25 temperature of 70 degrees at 12:30, right when the body

1 was brought into the coroner's office. Trying to take
2 into account the temperature of the night before, the
3 weight of the body, the fact that it was windy rather
4 than still and the clothing was light, I estimated or
5 used a formula that gave me a figure of seven hours
6 from the time of death, plus or minus three.

7 So that is a rather broad window, from 12:30
8 backwards seven hours is back to 5:30 and plus or
9 minus three means somewhere between 2:30 and 8:30
10 and that is the best that I could do.

11 Q And that would be 2:30 to 8:30 a.m.?

12 A Yes.

13 Q Now, can you tell the Court and jury what actually
14 caused Mr. Lally's death, why he died?

15 A I believe it was a combination of things. The
16 bullet wound I do not think was fatal. It didn't strike
17 the spinal cord itself or any vital organ. I am sure it
18 hurt, but it was not fatal.

19 Then he received a number of blows to the head.
20 You saw all those bruises and those caused brain injuries.
21 There was also a skull fracture which is visible on an
22 x-ray that was taken at our office which I did see with
23 my own eyes and there was enough time for the brain to
24 swell.

25 I believe it was a combination of the bullet wound

1 and the head injuries that appeared to be from blows that
2 were the cause of death.

3 There is no way to know for certain and if there
4 wasn't a component of exposure as well, if he was left
5 there not quite dead, exposure would be part of this,
6 low temperature with inadequate clothing, but that is
7 not something that I would be able to know for certain.

8 Q Did you prepare a report of your findings, Doctor?

9 A Yes.

10 Q And have you referred to that report as the protocol?

11 A Yes.

12 Q Is it also referred to as the Coroner's verdict?

13 A No, the verdict is a separate document. This is the
14 protocol and then there is a verdict which is a statement
15 of circumstances.

16 Q I would like to hand you an exhibit which consists of
17 two documents which I am going to staple together marked
18 as State's Exhibit 2 for identification purposes.

19 Will you look at that, please?

20 A Yes.

21 Q Do you recognize those documents?

22 A Yes, the top two pages are the Coroner's verdict.

23 This is a statement of circumstances that is prepared at
24 the Coroner's Office. It is not something that I have
25 any part in. It is just an official statement that is.

1 typed up by secretaries who are probably trained to do
2 that kind of preparation.

3 And then the second part is the autopsy protocol
4 itself which is what is done under my direction and
5 that is composed of a summary outline of all of the
6 wounds and injuries and some natural diseases and then
7 the full description follows that, including a description
8 at the end, the microscopic description and then there is
9 an initial at the bottom of the last page that says, "R.C.
10 for H.R." which means that Robert Challener proofread this
11 for me.

12 I was out having surgery. That is why there are two
13 initials at the bottom.

14 Q Are both of those documents true and accurate copies
15 of business reports kept in the ordinary course of business
16 of the Cuyahoga County Coroner's Office?

17 A Yes.

18 Q Is the top document, the verdict, does it bear the
19 official seal of the County Coroner's Office?

20 A Yes.

21 MR. ROSENBAUM: I have no other
22 questions, your Honor.

23 THE COURT: Counsel, please
24 approach.

25 (Whereupon, the following proceedings

1 Thereupon, the State of Ohio, in order
2 to further maintain the issues on its part to be
3 maintained, called SHARON ROSENBERG as a witness and,
4 after being first duly sworn, was examined and
5 testified as follows:

6 DIRECT EXAMINATION OF SHARON ROSENBERG

7 BY MR. ROSENBAUM:

8 Q Would you state your name, please, Ma'am?

9 A Sharon Rosenberg.

10 Q Spell the last name for the Reporter, please?

11 A R-O-S-E-N-B-E-R-G.

12 Q Are you employed, Ma'am?

13 A Yes, sir.

14 Q Will you tell the Court and jury where you work?

15 A I am employed by the Cuyahoga County Coroner's Office
16 in the Trace Evidence Laboratory. That is, of course, in
17 Cleveland, Ohio.

18 Q And are you in charge of the Trace Evidence Laboratory?

19 A I am a co-supervisor there. Our laboratory has two
20 sections. One is the trace evidence section, of which I am
21 supervisor of. The other section is the DNA and serology
22 department, another section of which my colleague, Linda
23 Luke, is in charge of.

24 Q Will you tell the Court and jury what the duties of
25 your section of the Trace Evidence Lab are, Ma'am?

1 A Our section has a variety of duties involving the
2 collection and examination of some evidentiary materials.
3 We do not deal with the serology part. My colleague will
4 discuss that further, but my work includes the examination
5 of clothing, examination of a person's hands, collecting
6 of various evidentiary hair fibers, gunshot residue, et
7 cetera, on the clothing.

8 We are going to be working directly with the
9 pathologist to see if there is information on the shooting
10 that correlates with findings on the body which could
11 include such things again as looking for hairs and
12 fibers or defects or holes on the clothing that might
13 be indicative of where a wound occurred on the body and
14 then trying to correlate it with the clothing.

15 We also will get various items of possible evidence
16 submitted to us by various members of the law enforcement
17 community and our job is to examine them and see if we
18 have something of relevance that is connected with the
19 particular case that we are working on.

20 This will vary depending upon the nature of the case
21 that we have. For instance, if we are dealing with a case
22 involving gunshots or stabbing, there will be certain
23 possible evidentiary material that will differ than if we
24 are dealing with a case in which an automobile or some
25 sort of a vehicle has struck someone and left the scene.

1 So it varies on what the patient has died from and what
2 we have to work with.

3 Q Can you tell the Court and jury what function your
4 section of the laboratory performed in the investigation
5 concerning the death of Ronald Lally?

6 A Yes, sir.

7 Our initial work involved examination of Mr. Lally's
8 hand, checking for the presence or absence of gunshot
9 residue and checking for whether or not there was
10 indications of holding a metal object such as a gun.

11 In addition, my work involved the examination of his
12 clothing and in addition, we would examine materials
13 submitted that was examined both grossly, that is with
14 the naked eye, and microscopically and a determination
15 made if we had correlation between his clothing and
16 material that was submitted for evidentiary comparison.

17 Q Were you able to determine if Mr. Lally touched a
18 weapon or fired a weapon?

19 A Let me get my report out if I may, please, so I can
20 be official.

21 Q Maybe I could hand you what has been marked for
22 identification as State's Exhibit 3.

23 A All right. Yee, what I have is a copy -- this is
24 the record and we will --

25 THE COURT: Mr. Bruner, you

1 have seen these?

2 MR. BRUNER: Yes, your Honor.

3 Q Can you identify what is State's Exhibit 3, Ma'am?

4 A Yes. This is a copy -- this is the report of the
5 material itself, a culmination of all the material that
6 was done on this particular case by the Trace Evidence
7 Laboratory so it is not only my section, but the DNA
8 and serology section also.

9 Q To the best of your knowledge, is that a true and
10 accurate record kept in the ordinary course of business
11 of the Cuyahoga County Coroner's Office?

12 A Yes.

13 Q A true and accurate copy of the report?

14 A This should be everything that had been checked.

15 THE COURT: Ma'am, examine it
16 and see if it is. Should be is not good enough.

17 THE WITNESS: All right.

18 MR. BRUNER: Your Honor, I will
19 stipulate that it is an accurate report.

20 THE COURT: Thank you.

21 Q Would you tell the Court and jury if you were able to
22 determine whether or not Mr. Lally had contact with a piece
23 of metal or a firearm?

24 A All right. The test that is used to examine for --

25 THE COURT: Ma'am, please just

1 answer the question.

2 MR. ROSENBAUM: I think she is, your
3 Honor.

4 THE COURT: I think it calls for
5 a specific answer.

6 A (Continuing) -- on the test that is the trace metal
7 detection test which is used for contact with a metal
8 object, there is no reaction to Mr. Lally's hand.

9 On the gunshot residue test which involves initially
10 collection of swabs from the hand and then testing by
11 myself, we note that one of the components of the ammunition
12 was in a significant level on the right back of the hand.
13 However, the other components were not present at a
14 significant level.

15 So, from the laboratory standpoint, we have an
16 inconclusive reaction on the back of the right hand and
17 not consistent on the palm or tips of the right hand and
18 not consistent on either area of the left hand for gunshot
19 residue.

20 Q So, from a scientific point of view, you cannot
21 conclude that he fired a weapon, is that correct?

22 A We have no evidence of that.

23 Q Now, can you tell the Court and jury what other
24 functions you performed concerning Mr. Lally?

25 A Another function included examination of his clothing

1 and also Dr. Raaf submitted some stomach contents which we
2 call gastric, which were examined for quantity and quality.
3 There were also various hairs present on the body.

4 These were compared -- if you would like I can go
5 through the clothing first, or how would you like it, sir?

6 Q Fine.

7 A When this gentleman came to us, his two upper garments
8 were not present on the body. They included a jacket. It
9 is a blue winter weight jacket described as having red/brown
10 staining on the collar and back and the right sleeve was
11 pulled inside out.

12 When I received it he also was wearing -- what came in
13 with him was a purple top with a purple design, black trim
14 on the collar, scattered red/brown staining on that
15 clothing.

16 He had a pair of faded jeans, scattered red spots on
17 those, a pair of white brief-style underpants, otherwise
18 jockey style, one pair of white socks and a pair of black
19 Nike athletic shoes.

20 These articles were inspected and verified by myself
21 under my supervision and they have been in our custody
22 until yesterday when I brought them here to Court.

23 In addition, the clothing was taped by another member
24 of my department who is no longer employed at the office
25 and the taping of the clothing, the material, was examined.

1 Hairs were found on it that were consistent with that of
2 the victim.

3 We take reference hairs on our patients so that if we
4 need them later on they can be compared also.

5 Q If I could stop you for one minute.

6 Can you identify the clothing that is contained in
7 State's Exhibit 3-H?

8 A Yes, this is the clothing items. We do not wash
9 anything, but we do place it in a cedar bag for storage
10 and for bringing out to wherever we need to go with it.
11 It contains the clothing. It contains a red evidence
12 tag which indicates a member of our department will have
13 looked at it.

14 It does have my writing on it.

15 THE COURT: Clothing items
16 of the victim?

17 THE WITNESS: Yes.

18 Q Will you tell what, if anything, you were able to
19 conclude from analyzing these clothes?

20 A On the taping from the clothing, as I indicated,
21 there was hair found that was consistent with that of Mr.
22 Lally.

23 There were also two black dog hairs recovered on the
24 taping and we eventually received in reference sample from
25 a dog by the name of Cleo and these hairs were compared

1 with the hairs that were taken off the jacket and we felt
2 that they were consistent in shape and color and that
3 includes microscopic examination of them.

4 Q Can you tell the Court and jury who brought you the
5 known hairs from Cleo?

6 A Yes. I have a submission time also. Detective Leiby
7 of the Elyria Police Department brought in the hairs listed.
8 We have them listed as dog hair of Cleo. That is her name
9 and she is listed as a brindle boxer and this was brought
10 in on January 13th, '95, at 2:05 in the afternoon.

11 Q So you found hairs on Mr. Lally's clothes that were
12 consistent with the sample Leiby brought from Cleo?

13 A Two black hairs, two dog hairs and we identified them
14 as dog hairs as compared to human or something else by
15 physical examination.

16 THE COURT: The answer is yes?

17 THE WITNESS: Yes.

18 Q Is there anything else that you were able to learn from
19 examining Mr. Lally's clothing or his body that you have not
20 touched upon?

21 A Again, gastric contents were present and I had a
22 quantity of half a liter, that is 500 cc's, of material.
23 It was brown liquid containing pieces of elbow macaroni
24 and whole kernel corn and this report would have gone to
25 the pathologist for listing for time of death.

1 We had hair that I took off from the body that was
2 consistent with that of Mr. Lally's reference sample,
3 referenced hair, and we had blood samples submitted for
4 the serology department to analyze.

5 In addition, we received in evidence -- it was
6 brought in by one of the ambulance drivers -- it consisted
7 of a blood sample in a coin envelope. This was analyzed
8 -- do you want me to discuss the analysis?

9 Q Just tell the results.

10 A We found that it was consistent with human blood and
11 Blood Group A was determined on this blood sample that was
12 found west of Mr. Lally's body.

13 We had suspected hairs found at the scene. This
14 was consistent with our patient and we had brought in
15 by the ambulance driver a knife. The description is a
16 Regent-Sherwood stainless steel Japan serrated steak knife.

17 We have the presence of human blood, Blood Group A,
18 on the sample that was submitted by the pathologist. It
19 was consistent. It is a Blood Group A and various enzymes
20 and DNA were done for further comparison.

21 Three teeth came in. That material was submitted to
22 Dr. Raaf for her to in turn give it to a dentist and I
23 don't have a finished report on that. I don't know what
24 he found.

25 Q Ma'am, I would like to hand you what has been marked

1 for identification as 3-G and ask if you can identify the
2 content of that envelope?

3 A Yes, this is a property envelope from the Cleveland
4 Police Department and it contains a variety of information
5 on the outside, including where the material was located.
6 It has our writing, the reference number 218051, which is
7 the case number that was assigned when Mr. Lally came to
8 us as a patient.

9 This case number stays with all paper work, not only
10 with the body, but all paper work, all evidence, everything
11 is referenced back to this number and we have another
12 number listed here.

13 There is also another envelope inside. It has the
14 case number and the trace evidence reference number on it
15 and we can refer back to that at all times. Even when a
16 person's name changes, we can use the case number as a
17 reference point and we have -- within here we have the
18 knife I just described that was submitted to the serology
19 department.

20 MR. ROSENBAUM: I have no other
21 questions of this witness, your Honor.

22 THE COURT: Mr. Bruner?
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CROSS-EXAMINATION OF SHARON ROSENBERG

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BY MR. BRUNER:

Q Mrs. Rosenberg, how are you?

A Fine, sir.

Q On your Exhibit 3 which you have in front of you, these are the reports of the Trace Evidence Department that you work in, correct?

A Yes, sir. This is referenced to page 3 of our report.

Q Thank you. On the second sheet of this 12-page report it indicates trace metal detection test?

A Yes, midway through it does.

Q And it says, "No reaction"?

A Yes.

Q That means to you that he did not have any metal in his hand, is that correct?

A It means from the laboratory standpoint we cannot show that he had contact with a metal object. We know among living people not everybody reacts on this test. My former supervisor had a very, very dry hand and she could hold a metal object for an indefinite period of time and not react with it, whereas some of the rest of us who have moist hands will react with the metal.

Q Let's assume that it is extremely cold outside and your hands are not moist at all, very dry, from the cold.

It wouldn't be unusual to have a nonpositive reaction

1 to holding a metal gun at that point, correct?

2 A That is correct. A negative only means the laboratory
3 does not have supporting evidence and we are only part of
4 the function of an investigation.

5 Q Does it mean necessarily that he was not holding a
6 gun?

7 A Negative does not rule out simply from the laboratory
8 standpoint we have no supporting evidence.

9 Q In addition to that, your laboratory, I am sure, is
10 familiar that there are guns that are not metal, correct?

11 A We know that guns may not have exposed metal, like
12 keys. There are a variety of things that can affect our
13 test so we are only limited to what the laboratory can
14 show.

15 Q Ms. Rosenberg, let's look at the atomic absorption
16 test on page 2.

17 A Yes.

18 Q That says in here -- I believe that is the test to
19 determine if he fired a firearm?

20 A That is a test we use to see if a person has fired
21 a gun recently or some other form of a firearm, a rifle,
22 shotgun, what have you, and we know again this is a
23 laboratory test. It is only part of the examination.

24 In this particular test we had only one of the
25 components of the primer from the ammunition showing on

1 the back of the hand, of the right hand.

2 The rest of the hand did not show anything else.
3 We cannot draw a conclusion. We can simply say there
4 was no evidence of the firing of a gun, but again that
5 does not rule out, depending upon the individual
6 ammunition and the weapon and also to how the hands
7 have been treated.

8 All of this can affect how the laboratory gets
9 its results, so again, a negative or a nonsignificant
10 reaction does not rule out, it simply means that from
11 the laboratory standpoint we do not have supporting
12 evidence.

13 Q If I understand you correctly, there was some
14 evidence of a bullet found on the hand?

15 A No. What I am looking for are components of the
16 primer of the ammunition which is the first explosive
17 that will start the bullet actually projecting out of
18 the gun.

19 To consider that it is consistent with gunshot
20 residue I need two elements, namely, antimony and barium
21 in the same location. In this instance I only had the
22 antimony present on the back of the right hand. I did
23 not find it on any other areas of either hand.

24 I also did not have the barium or the lead showing
25 up on this so the laboratory cannot make a positive

1 statement out of an inclusive or negative result.

2 Q So you had partial gunpowder, is that what you are
3 saying?

4 A All I am saying is that I found one of the components
5 that I am looking for, but I did not find the other. I
6 cannot make an absolute statement. I cannot make any
7 statement other than antimony was present on the right
8 back.

9 We cannot make a statement. We can only say it is
10 inconclusive on the right back and a negative on the
11 right palm and the left hand, both palm and back.

12 Q So, it is inconclusive as opposed to negative because
13 part was there.

14 Is that correct?

15 A On the back of the right hand we have an inconclusive
16 reaction. On the rest of the hand portions tested we have
17 a negative reaction.

18 Q But again, that is affected by the -- can be affected
19 by the cold and the way his hands are, correct?

20 A It could be affected by that. It could also be
21 affected by whether he actually was firing a weapon or
22 whether he was in close proximity to a weapon being fired
23 at him.

24 We use the gunshot residue test both for information
25 as to whether an individual was actually firing or shielding

1 against a weapon being discharged.

2 Depending on the distance from a muzzle of the firearm
3 to the subject, we can at times pick up material from the
4 gunshot when we know specifically through other information
5 that a person didn't fire, but that he had his or her hand
6 close enough to the muzzle from where the material was
7 being deposited.

8 Q I want you to turn to page 7 of your report. I am
9 sorry, page 8 of your report -- I am sorry, page 6.

10 A Six, sir?

11 Q Right. Now, it is my understanding that page 6 are
12 tests that were made on a car, is that correct?

13 A A scene visit was made to a vehicle in the Elyria
14 Sewer Plant garage, material was collected and brought
15 back to the laboratory for analysis and we have a variety
16 of things that were obtained as reference material.

17 That is, samples, such as from the seat, carpet, et
18 cetera, and then material that was found to compare, such
19 as from the reference paint was compared with the clothing
20 of the victim and there was material to see if we had any
21 connection from this with our patient, from the vehicle
22 to the patient.

23 Q All right. Now, Ms. Rosenberg, there was an
24 examination on a 1992 blue Chrysler Convertible, is that
25 correct?

1 A Let me verify. Yes, its license was UZM 349, Lorain
2 County issuance.

3 Q And that was done on 12-12-94?

4 A Yes, that is when some of the people went, that is
5 members of trace evidence, and a member of our photography
6 department.

7 Q And page 6, it says, "Taping underneath the car"?

8 A Yes.

9 Q You are looking for fibers underneath the car?

10 A Looking for anything that can be used to connect a
11 particular vehicle or person with another set of material.

12 Q And that taping underneath the car, it says, "No
13 material of significance noted," is that correct?

14 A Yes.

15 Q And molding black, reference paint blue from door,
16 it says, "No apparent paint smears noted on victim's
17 clothing"?

18 A That is correct.

19 Q Underneath car, fiber found in radiator grille,
20 vegetative material?

21 A Right.

22 Q Not human?

23 A No. For any of us that drive, you can pick up all
24 sorts of items that your car passes through.

25 Q And with regard to page 8, the rear tires, there

1 were no significant findings on the rear tires, correct?

2 A That is correct. That means they were examined and
3 we did not have anything to tie in with this particular
4 case from the evidence that was collected.

5 Q The blood grouping that was done, I thought you said
6 it was Group A?

7 A Yes, the fluid blood was Group A as the major group
8 and then various enzymes done as well as DNA and this is
9 used to further define the individual identity of our
10 patient to be utilized if we get material with blood
11 in it to compare.

12 MR. BRUNER: I have nothing
13 further, your Honor.

14 THE COURT: Mr. Rosenbaum?

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18 REDIRECT EXAMINATION OF SHARON ROSENBERG

19 BY MR. ROSENBAUM:

20 Q Ma'am, does it surprise you that there was nothing of
21 significance found on the bottom of this car when it was
22 examined approximately 12 months after the crime?

23 A No.

24 MR. ROSENBAUM: Thank you.

25 THE COURT: Mr. Bruner?

RE CROSS-EXAMINATION OF SHARON ROSENBERG

BY MR. BRUNER:

Q By the way, on the victim you said some hairs were taken from the victim?

MR. ROSENBAUM: Your Honor, I object.

Beyond the scope.

THE COURT: I am going to permit it.

Q You said some hairs were taken from the victim, correct?

A Yes.

Q No hairs were found that matched Raymond Smith, correct?

A I do not believe we did get a reference sample from Mr. Smith. I know the hairs that we got in, there were some hairs that matched the victim.

Q Your answer is no?

A We did not compare anything from Mr. Smith.

MR. BRUNER: I have nothing further.

MR. ROSENBAUM: No other questions.

THE COURT: You may step down, Ma'am.

(Witness excused.)

1 consistent with both Stan Jalowiec and Mr. Lally.

2 Is that correct?

3 A That is correct.

4 Q And not consistent with Raymond Smith?

5 A That is correct.

6 Q And no further DNA testing was done on the knife?

7 A Correct.

8 Q To determine whether or not, as you did in the
9 trunk --

10 A The quantity was not sufficient for further testing.

11 Q But there was no further testing?

12 A That is correct.

13 MR. BRUNER: I have nothing
14 further.

15 MR. ROSENBAUM: I have nothing
16 further.

17 THE COURT: Thank you, Ma'am.
18 You may step down.

19 (Witness excused.)

20 * * *

21 THE COURT: Ladies and
22 gentlemen, that being the case, we will take our
23 noon recess at this time.

24 The admonitions that I have given you about
25 discussing this matter with anyone, letting anyone

1 discuss it with you or in your presence apply.

2 Do not form or express any opinion on this
3 case until it is finally submitted to you, do not
4 read anything in the newspaper or listen to the
5 TV is you happen to be around either of them.

6 I am not at all sure that it is reported at
7 this point. However, if you do see something, do
8 not read it or look at it.

9 (Whereupon, a luncheon recess was had.)

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AFTERNOON SESSION, TUESDAY, NOVEMBER 28, 1995

(Whereupon, the jury was returned to the courtroom and the following proceedings occurred.)

THE COURT: Ladies and gentlemen, members of my staff have indicated to me that you had a little bit of difficulty eating within the period of time allocated because of the shortness of restaurants and the multitude of people and I think that you did make a request to see if we could get at least reservations for a spot at Moss', is that correct?

THE JURORS: Yes.

THE COURT: As long as we remember to do it, that is fine. We will make an effort to do that for you tomorrow.

Ladies and gentlemen, as you recall when we adjourned for lunch we had just finished the examination of one of the State's witnesses and we are now prepared to proceed with further witnesses at this point.

1 in the plastic bag on the table before you?

2 A Yes, I can.

3 Q And what is that, Ma'am?

4 A I am going to refer to our trace evidence number.
5 State's Exhibit 3-I refers to our number 38-95E-11. It
6 is a trunk liner piece which I removed samples. You can
7 still see the discoloration that was tested out to be
8 blood and this is where I generated DNA consistent with
9 Ronald Lally.

10 Q Where did you get that piece of trunk liner from?

11 A This came from a '92 blue Chrysler convertible,
12 Ohio license plate UZM 349, from the trunk.

13 Q Is that the vehicle that is depicted in the pictures
14 marked 3-A through 3-D?

15 A That is correct.

16 Q And did you take any other items from the car in an
17 attempt to gather evidence?

18 A Yes, I did several tapings for fibers.

19 Q Can you tell the Court and jury what, if anything,
20 you were able to ascertain from your analyzing the items
21 that you took from the car?

22 A From the trunk liner of the automobile to Ronald Lally,
23 noted blood to say that the blood was consistent with Ronald
24 Lally and not consistent with the blood that I received from
25 Raymond Smith, Stan Jalowiec and Danny Smith.

1 Q And can you tell us how you made that determination
2 briefly?

3 A Sure. Ronald Lally, we received a blood sample. From
4 the blood sample I determined the DQ Alpha was 1.1, the poly
5 markers LDLR his type was AA, GYPA his was AB, hemoglobin,
6 HBGG he was AA, D7F8 he was AA, and the GC he was ACC.

7 Q Now, these abbreviations that you named, they are
8 identifying markers in Mr. Lally's or anybody's blood, is
9 that correct?

10 A They identify the DNA contained in human beings.

11 Q And you were able to ascertain, based on this analysis,
12 that the blood in the trunk was consistent with whose blood?

13 A Ronald Lally.

14 Q And not consistent with --

15 A Raymond Smith, Danny Smith and Stan --

16 Q Jalowiec?

17 A Right.

18 Q Now, were you able to, based upon your knowledge and
19 training, give a value as to how rare or how common blood
20 markers like Mr. Lally's are in population?

21 A Yes, I was.

22 Q And will you explain to the Court and jury briefly
23 what I have mentioned and the significance of what you
24 are about to say?

25 A Every one of us falls within a category, again like

1 Thereupon, the State of Ohio, in order
2 to further maintain the issues on its part to be
3 maintained, called LINDA LUKE as a witness and, after
4 being first duly sworn, was examined and testified as
5 follows:

6 DIRECT EXAMINATION OF LINDA LUKE

7 BY MR. ROSENBAUM:

8 Q Will you state your name, please?

9 A Linda Luke, L-U-K-E.

10 Q Are you employed, Ma'am?

11 A Yes, I am.

12 Q Will you tell the ladies and gentlemen how, please?

13 A I am employed by the Cuyahoga County Coroner's
14 Office, Trace Evidence Department.

15 MR. BRUNER: Defense counsel

16 is well aware of her qualifications. We will
17 stipulate them for the record.

18 Q Will you tell the Court and jury briefly what your
19 duties are then, Ma'am?

20 A My duties vary from case to case. It involves the
21 collection and examination of all possible evidentiary
22 material. I analyze blood and semen and their components
23 and I am involved with victims of violent death.

24 Q Does DNA analysis play a role in this?

25 A Yes, it does.

1 Q Will you tell the Court and jury exactly what is meant
2 by that?

3 A DNA is another genetic marker passed on to individuals
4 like A, AB, O Group. We fall within -- on the DQ Alpha, one
5 of the tests, we fall within 21 groups. Another one is
6 called poly markers A, B, O, four categories.

7 Q It is just another marker or identifying method to use
8 to identify blood or fluids from the body?

9 A That is correct.

10 Q Were you called upon to do so in the matter that is
11 before this Court?

12 A Yes, I was.

13 Q And will you tell the Court and jury when and where
14 you did that and what -- first of all, maybe I could hand
15 you what has been marked for identification as State's
16 Exhibit 3 and ask if you can identify that, Ma'am?

17 A Yes.

18 Q What is that?

19 A State's Exhibit 3 is a copy of the report that was
20 generated by the Trace Evidence Department.

21 Q And you are a part of that department?

22 A Yes, I am.

23 Q So your findings are in there as well?

24 A Yes, they are.

25 Q Is that a true and accurate copy of the record kept

1 in the ordinary course of business of the Cuyahoga County
2 Coroner's Office?

3 A Yes, it is.

4 Q I would like to hand you four photographs marked as
5 State's Exhibits 3-A through 3-D and ask you to examine
6 that.

7 Do you recognize those photographs?

8 A Yes, I do.

9 Q Were they taken by yourself or under your direction
10 and control?

11 A They were taken by my direction.

12 Q Do they truly and accurately depict the scenes they
13 represent?

14 A Yes, they do.

15 Q And what are they photographs of, Ma'am?

16 A State's Exhibit 3-A is a photograph showing the car
17 that was examined by myself.

18 State's Exhibit 3-B is another view of the car.

19 State's Exhibit 3-C is showing the trunk area and
20 State's Exhibit 3-D is showing the back seat area.

21 Q Did you take or attempt to take any samples of
22 evidentiary material from the car depicted in those
23 photographs?

24 A Yes, I did.

25 Q And can you identify State's Exhibit 3-I which is

1 AB, ADO. Within a certain population there is a certain
2 percentage of people that fall within, so on the DQ Alpha.
3 Mr. Lally was .019. Along with the poly markers he turned
4 out to be four out of 100,000 in the white population.

5 Then when you apply that to the trunk liner again, you
6 come up with four out of 100,000 in the white population.

7 Q So you are saying that out of the white population
8 there are only four people in 100,000 that could give
9 blood with the markers you found?

10 A Correct.

11 Q How about in the black population?

12 A Two out of 1,000,000.

13 Q So, it is fair to say Mr. Lally's blood markers are
14 relatively rare?

15 A That is correct.

16 Q Ma'am, I would like to hand you what has been marked
17 for identification as State's Exhibit 3-G, ask if you could
18 look at that, please.

19 Do you recognize the contents of that exhibit?

20 A Yes, State's Exhibit 3-G refers to our Trace Evidence
21 Number 113-94E-32. It was also resubmitted in '95 and it
22 refers to our Trace Evidence Number 58-95E-13.

23 Q And did you perform any function or examination on
24 that knife?

25 A It was performed by the serology department. It was

1 determined that the blood on this knife was not enough for
2 the presence of blood positive for human protein and the
3 blood group was A.

4 Q Is that consistent with Mr. Lally's blood group?

5 A Yes.

6 Q Is it consistent or inconsistent with any of the
7 others, Jalowiec, Dan Smith or Raymond Smith, if you know?

8 A I know. Raymond Smith's blood group was O, Stan's was
9 blood group A and Danny was blood group B.

10 Q Is there anything else that you did or found, any other
11 evidence that was significant in this matter as a result of
12 your examination of the car and your analyses?

13 A May I go through the report?

14 Q Please.

15 A No, sir.

16 MR. ROSENBAUM: I have no other
17 questions.

18 THE COURT: Mr. Bruner, you
19 may cross.
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23 CROSS-EXAMINATION OF LINDA LUKE

24 BY MR. BRUNER:

25 Q Ms. Luke, the blood grouping on the knife then, was

1 Thereupon, the State of Ohio, in order
2 to further maintain the issues on its part to be
3 maintained, called JOHN HOMOKI as a witness and, after
4 being first duly sworn, was examined and testified as
5 follows:

6 DIRECT EXAMINATION OF JOHN HOMOKI

7 BY MR. ROSENBAUM:

8 Q Will you state your name, please, sir?

9 A John Homoki.

10 Q Spell the last name for the Reporter?

11 A H-O-M-O-K-I.

12 Q Are you employed, sir?

13 A Yes, sir.

14 Q Will you tell the Court and jury what you do for a
15 living?

16 A Patrolman for Elyria Police Department, presently
17 assigned to the Neighborhood Impact Unit.

18 Q How long have you served the City of Elyria as a
19 Police Officer?

20 A Three and a half years.

21 Q Prior to that what did you do for a living?

22 A I did 20 years in the United States Air Force. I
23 retired from the Air Force in 1988 as an E-8, a First
24 Sergeant, and immediately upon retirement I entered the
25 building trades, worked for Steve Silvester Builders

1 and Westview and Avon Concrete.

2 Q Were you on duty on September 15th of 1993?

3 A Yes, sir, I was working in the afternoon shift.

4 Q And on that shift, on that date, did you answer a
5 disturbance call on Middle Avenue?

6 A Responded to a call at Mr. Hero's on Middle Avenue.

7 Q And can you tell the Court and jury what you found
8 when you arrived there, sir?

9 A Yes, sir. Entered -- I was northbound on Middle
10 Avenue, turned right onto Sederis and entered the Mr.
11 Hero's lot.

12 Q Go ahead, please?

13 A Northbound on Middle Avenue, turned right to Sederis
14 Lane and entered the Mr. Hero lot in a marked unit.

15 Q Did you recognize anyone when you arrived there?

16 A As I turned into Sederis, I recognized Stanley
17 Jalowiec walking who immediately turned and exited the
18 area and left across Middle Avenue.

19 Q Did you recognize anyone else?

20 A Ron Lally and Danny Smith talking in front of the
21 doorway.

22 Q How is it that you knew Ronald Lally?

23 A He worked for me as a truck driver when I worked
24 for Balson Concrete.

25 Q Did you ascertain who made the complaint, who

1 called for help?

2 A No, sir. At that point I did not know who called
3 for help.

4 Q Did you later learn who called?

5 A Yes, sir. As I exited my vehicle, Lally hurriedly
6 came across the lot directly towards me and towards my
7 vehicle. He approached me and recognized me and
8 immediately made contact with me at the door of my
9 vehicle as I exited.

10 Q And what did he state the nature of his complaint
11 was?

12 MR. BRUNER: Objection.

13 THE COURT: Mr. Rosenbaum,
14 is that an 804 matter?

15 MR. ROSENBAUM: No. I would like
16 to hear the nature of the objection first.

17 THE COURT: Hearsay?

18 MR. BRUNER: Yes, exactly.

19 THE COURT: Okay. Hearsay.

20 MR. ROSENBAUM: Can we approach?

21 THE COURT: Sure.

22 (Whereupon, the following proceedings
23 occurred at the bench out of the hearing of the jury.)

24 MR. ROSENBAUM: Nature of his
25 complaint would not be hearsay by definition

1 because it is not offered for the truth of the
2 matter asserted.

3 MR. BRUNER: Your Honor, my
4 client is not present at this conversation.
5 It is '93. I am having a hard time trying to
6 figure out how it relates to the case and it
7 is absolutely hearsay.

8 MR. ROSENBAUM: The rule states
9 nothing about his client being present or
10 otherwise anywhere in the rule. It is not in
11 the rule, has nothing to do with it.

12 MR. BRUNER: If the statement
13 of a man to a police officer is not hearsay,
14 under the circumstances I don't know what it
15 is.

16 MR. ROSENBAUM: Only if it is
17 offered for the truth of the matter asserted.

18 THE COURT: I am going to
19 sustain the objection.

20 MR. BRUNER: Thank you, your
21 Honor.

22 (Whereupon, the following proceedings
23 occurred back in the hearing of the jury.)

24 Q In any event, Mr. Lally approached you and voiced his
25 concern?

1 A That is correct.

2 Q As a result of that, did you turn to speak to anyone
3 besides Mr. Lally?

4 A Yes, sir. After Lally expressed his concern to me and
5 told me what was going on, I walked across the lot to speak
6 to Danny Smith.

7 Q Would you describe the condition that Mr. Lally was in
8 when he made the statement?

9 A Ron Lally was extremely upset. He was excited and Ron
10 Lally was a six foot two inch truck driver who was afraid of
11 nothing. He was in fear at this point.

12 MR. BRUNER: Objection.

13 THE COURT: Officer, again, you
14 know that aspect of it, that he was afraid of
15 nothing.

16 At this point, continue.

17 Q Did you observe his demeanor and his condition?

18 A He was excited and upset.

19 Q Was he afraid?

20 MR. BRUNER: Objection.

21 A Yes, sir.

22 THE COURT: How do you know
23 he was afraid?

24 THE WITNESS: I spent a year
25 with Ron Lally as a driver.

1 THE COURT: Sustained.

2 Disregard.

3 Q Did you know him personally?

4 A Yes, sir.

5 Q As a human being are you able to detect the reaction
6 of fear in fellow human beings?

7 MR. BRUNER: Objection.

8 THE COURT: Tom, read me back
9 those questions.

10 (Whereupon, the previous two questions were
11 re-read by the Notary.)

12 THE COURT: I am going to
13 overrule -- he is asking can he ascertain whether
14 a person is in fear. At this point I am going to
15 overrule the objection and allow him to answer
16 that.

17 A Yes, I can.

18 Q And was Mr. Lally afraid?

19 A Yes, sir, he was afraid.

20 THE COURT: How?

21 Tell us how you are aware of this thing.

22 How can you tell us that a person is in fear?

23 Am I in fear right now?

24 THE WITNESS: No, sir.

25 THE COURT: How do you know?

1 THE WITNESS: You exhibit no
2 evidence whatsoever of being in fear.

3 THE COURT: Okay. Okay. Go
4 ahead. Proceed.

5 MR. ROSENBAUM: At this time I would
6 ask the witness again, your Honor, what Mr. Lally
7 stated to him.

8 MR. BRUNER: Objection.

9 THE COURT: Sustained.

10 MR. ROSENBAUM: Could I be heard
11 again?

12 THE COURT: Yes, you may.

13 (Whereupon, the following proceedings
14 occurred at the bench out of the hearing of the jury.)

15 MR. ROSENBAUM: Without conceding
16 the merits of his first objection, I argue to the
17 Court that it is an exception to the hearsay rule
18 if it were hearsay to begin with.

19 MR. BRUNER: Is he talking about
20 excited utterance, your Honor?

21 THE COURT: I will continue to
22 sustain under those circumstances, 803.2.

23 MR. ROSENBAUM: The Court feels it
24 is not an excited utterance?

25 THE COURT: I don't think it

1 comes under those circumstances at this point.

2 The objection is sustained.

3 (Whereupon, the following proceedings
4 occurred back in the hearing of the jury.)

5 Q In any event, you stated you approached another human
6 being or individual that was there?

7 A Yes, sir, I walked across the lot.

8 Q Who did you speak to when you walked across the lot?

9 A Danny Smith.

10 Q What was his condition, sir?

11 A He was agitated.

12 Q Do you have any other --

13 A He was agitated, it was apparent that the two of them
14 had just been arguing. They were both excited, they were
15 both agitated.

16 Q And did you inquire of Mr. Smith anything?

17 A I asked Mr. Smith what the problem was.

18 Q And what did Mr. -- what is Mr. Smith's first name?

19 A Danny.

20 Q And you knew him from the past?

21 A I had previous contact with Danny Smith.

22 Q And what did Mr. Danny Smith say to you?

23 MR. BRUNER: Objection.

24 THE COURT: Sustained again.

25 MR. ROSENBAUM: Could we be heard,

1 please?

2 THE COURT: Yes, I will give
3 you every opportunity to be heard at this point.

4 (Whereupon, the following proceedings
5 occurred at the bench out of the hearing of the jury.)

6 MR. ROSENBAUM: I have two people
7 in a heated confrontation --

8 THE COURT: Danny Smith, not
9 Ray.

10 MR. ROSENBAUM: That has nothing
11 to do with anything.

12 THE COURT: I think it does.

13 MR. BRUNER: I would like to be
14 heard on this.

15 THE COURT: Okay, fine.

16 Ladies and gentlemen, just relax at this
17 point. Let's go into the chambers. Bring your
18 client in, Mr. Bruner, and let's proceed with
19 this thing.

20 (Whereupon, the following proceedings
21 occurred in the Court's chambers with the Defendant
22 and counsel present.)

23 MR. ROSENBAUM: Your Honor, we
24 have two people in a heated confrontation. The
25 witness has testified --

1 THE COURT: At least one year
2 and maybe even longer prior to the incident. Go
3 ahead.

4 MR. ROSENBAUM: No, it is not one
5 year.

6 MR. BRUNER: September 15th, '93..
7 He was killed in January --

8 THE COURT: Okay. All right.

9 MR. ROSENBAUM: As I understand it,
10 there is no time required, 801.2, no reference
11 that the defendant has to be there. We have to
12 establish that the statement is truthful because
13 they are --

14 THE COURT: How can that
15 establish the truthfulness of the statements that
16 were made at each other?

17 Arguing with each other, that is fine.

18 MR. ROSENBAUM: Judge, I don't write
19 the rules. I don't write the regulations. When
20 people are talking in the heat of emotion, that
21 is an excited utterance and the statement is
22 deemed reliable and I am trying to say or find
23 the case --

24 MR. BRUNER: Your Honor, if I
25 may be heard.

1 THE COURT: Let him finish.

2 MR. ROSENBAUM: There is no other
3 requirement to the excited utterance and I know
4 the Supreme Court in State vs. Huertas cited this
5 and I am trying to see if it was an issue in the
6 Court of Appeals opinion.

7 That is all the State has to establish and
8 that was done here.

9 THE COURT: Mr. Bruner?

10 MR. BRUNER: Your Honor, first
11 of all I believe it is hearsay and excluded under
12 the rules. I believe it is not an excited
13 utterance.

14 It says a statement relating to a startling
15 event or condition made while the declarant was
16 under the stress of excitement caused by the
17 event or condition.

18 There is nothing in evidence that there was
19 a startling event or condition. All we have is
20 an argument between the two of them.

21 Second of all, and I think more important,
22 that pertains to something between the victim --
23 the alleged victim here and Danny Smith, who is
24 not on trial here today.

25 Raymond Smith is on trial here today, not

1 Danny Smith, and if the State thought that the
2 evidence was so important, he should have tried
3 them together.

4 THE COURT: Mr. Bruner, at
5 this point that --

6 MR. BRUNER: I strike that,
7 your Honor.

8 THE COURT: Yes, it is not
9 relevant to Raymond's trial. This is an
10 argument between --

11 MR. ROSENBAUM: It is relevant,
12 your Honor. The position of the State in this
13 case is that this man was killed because both
14 Danny Smith and Raymond Smith were arrested as
15 a result of this guy's wire and if the testimony
16 is permitted, we are going to hear he threatened
17 him because he is a snitch.

18 When a guy shows up at your house and
19 threatens you because you are a snitch, that is
20 a startling event. When you call the police and
21 run up to the police and tell them --

22 THE COURT: I think at this
23 point I understand where you are coming from
24 more so now than I did before, but I think the
25 sequence of events should be --

1 MR. ROSENBAUM: Your Honor, the
2 State has to start somewhere.

3 THE COURT: I understand that.

4 MR. ROSENBAUM: And these are
5 excited utterances and they may be statements
6 against penal interest.

7 THE COURT: Was this man at
8 that time under arrest or indictment?

9 MR. ROSENBAUM: Yes.

10 THE COURT: If you could
11 establish that as far as the evidence is
12 concerned, I will go with it because I
13 understand what the theory of this case is.

14 MR. BRUNER: But, your Honor,
15 this is not Danny Smith's trial and I understand
16 what the theory is and I understand he is under
17 indictment.

18 This is an argument four months prior to
19 his death, having nothing to do with it, it
20 appears, because he is not even present with
21 Raymond Smith.

22 THE COURT: This case was not
23 in existence at that time, but it has something
24 to do with the death of Lally or whatever the
25 name is.

1 MR. BRUNER: It might be
2 appropriate in Danny's trial, not this trial.

3 MR. ROSENBAUM: It is a relevant
4 motive for all of these people.

5 THE COURT: At this point if
6 you can establish that background as far as the
7 evidence is concerned, Mr. Rosenbaum, I will
8 permit that testimony.

9 MR. ROSENBAUM: What evidence?

10 THE COURT: This man was already
11 indicted for a previous case which involved these
12 people.

13 MR. BRUNER: Which man, Danny
14 Smith?

15 THE COURT: No, Raymond Smith.

16 MR. ROSENBAUM: Both were.

17 My evidence would have been if the first
18 statement which I said was not hearsay, which was
19 not offered for the truth of the matter asserted
20 but merely that this was his --

21 THE COURT: Does this witness
22 know whether or not this man was under indictment?

23 MR. ROSENBAUM: The Court can take
24 judicial notice of that and I will show the
25 witness the Court's file with the date of the

1 indictment if need be, but my point is that the
2 nature of the complaint was, he confided in this
3 witness, the victim did, that he was a snitch and
4 that he had wore a wire against these guys and
5 they were there to threaten him.

6 THE COURT: Now, you have
7 established the chronology of the event which I
8 didn't have in my mind at the time and under the
9 circumstances I understand in what direction you
10 are coming, what direction you are going and what
11 direction you are coming.

12 Under those circumstances, if you can show
13 it so we have it in the record, I will permit this
14 testimony.

15 MR. BRUNER: Your Honor, may I be
16 heard?

17 THE COURT: Say what you want.

18 MR. BRUNER: You are allowing
19 evidence of an argument between two parties who,
20 one is not a defendant here, the other is the
21 victim.

22 THE COURT: Two parties under
23 indictment for the same offense.

24 MR. BRUNER: Not the two parties.

25 THE COURT: Dan and Raymond.

1 MR. BRUNER: Dan and Raymond
2 were. We understand that, but he is trying to get
3 in evidence of an argument that occurred between
4 Dan and Lally, not Raymond and Lally, and this is
5 four months before this shooting.

6 I don't think there is any evidence in the
7 record that at that time Danny Smith had the tapes
8 that we were talking about previously in opening
9 statements, that he knew this man was -- even had
10 a wire.

11 MR. ROSENBAUM: I don't have to
12 prove he had the tapes to know it.

13 THE COURT: Well, okay.

14 Mr. Bruner?

15 MR. BRUNER: I think it is
16 absolutely hearsay and any situation between Mr.
17 Lally and Mr. Smith would not come under the
18 excited utterance. There is no event that has
19 been stated by anyone that has made Mr. Lally
20 excited.

21 He is angry about something he just
22 discussed with Mr. Smith, obviously so is Mr.
23 Smith.

24 THE COURT: And you are not
25 equating angry with excited?

1 MR. BRUNER: No.
2 MR. ROSENBAUM: Or fear?
3 MR. BRUNER: It says a statement
4 describing or explaining an event or condition
5 made while the declarant was perceiving the event
6 or condition.

7 MR. ROSENBAUM: The threatening of
8 a witness, that is the startling event, correct?

9 MR. BRUNER: I object.

10 I have put it on the record. I think it is
11 inadmissible.

12 THE COURT: I am overruling your
13 objection and we are going to proceed.

14 (Whereupon, the following proceedings
15 occurred back in the hearing of the jury in the
16 courtroom.)?

17 THE DEFENDANT: As a result of the
18 conversation in the chambers, the objection raised by
19 Mr. Bruner is hereby overruled, provided certain things
20 are established at this point.

21 Mr. Rosenbaum, you may proceed to do so.

22 BY MR. ROSENBAUM:

23 Q Sir, I would like to back up a bit. I would like to
24 hand you a Court file which I have marked as State's Exhibit
25 4.

1 Do you want to see these?

2 MR. BRUNER: Yes.

3 Your Honor, can we approach, please?

4 (Whereupon, the following proceedings
5 occurred at the bench out of the hearing of the jury.)

6 MR. BRUNER: The date of this
7 discussion was September 15th, '93?

8 MR. ROSENBAUM: Right.

9 MR. BRUNER: These people were
10 not indicted until September 2nd, '94.

11 THE COURT: What is the date
12 they were bound over?

13 MR. BRUNER: August 2nd.

14 MR. ROSENBAUM: And here is the
15 arrest report.

16 THE COURT: Okay.

17 MR. BRUNER: I am still
18 objecting.

19 THE COURT: Proceed.

20 BY MR. ROSENBAUM:

21 Q I would like to hand you what has been marked for
22 identification as State's Exhibit 4 which is a Lorain County
23 Common Pleas Court file pertaining to Raymond Smith, ask you
24 to look inside that document on the transcript and ascertain
25 for the Court and jury from that document what day the

1 charges against Raymond Smith were bound over from the
2 Elyria Municipal Court to the Grand Jury for consideration?

3 A 8-27-93, August 27th, '93.

4 Q I would like to hand you what has been marked for
5 identification as State's Exhibit 6, ask if you could look
6 at it, please.

7 Do you recognize that document?

8 A Yes, sir, it is a face sheet for an arrest report.

9 Q From what police department?

10 A Elyria Police Department.

11 Q And can you tell the Court and jury the name of the
12 person whose arrest is detailed in that report?

13 A Raymond A. Smith.

14 Q And what was the date of his arrest?

15 A 8-19-93.

16 Q And is there a report detailing the circumstances
17 of that arrest at the bottom?

18 A Yes, sir, there is a brief narrative at the bottom.

19 Q Is that a true and accurate copy of a report kept
20 in the ordinary course of business of the Elyria Police
21 Department?

22 A Yes, sir, it is.

23 Q I would like to hand you State's Exhibit 7, ask if
24 you can look at this, please.

25 Do you recognize that document?

1 A Yes, sir, it is an arrest report face sheet.

2 Q For whom?

3 A Danny Smith.

4 Q And does it show the date of his arrest?

5 A 8-12-93.

6 Q And I would like to hand you another Court file
7 marked as State's Exhibit 5, ask if you will tell the
8 Court and jury when Danny Smith's case was bound over
9 for consideration by the Grand Jury of this County?

10 A 9-1-93.

11 Q And what date did you say that you went to answer
12 the disturbance call by Mr. Hero?

13 A 9-15-95.

14 Q And again, I will ask you to describe the condition
15 of the complainant, Mr. Lally?

16 A He was agitated, he hurried across the parking lot
17 towards my cruiser.

18 Q What was the date again of that, your call?

19 THE COURT: If I may, Mr.
20 Rosenbaum, I have it on my notes.

21 MR. ROSENBAUM: Well, I think
22 he misstated the year.

23 THE WITNESS: 9-15-93.

24 Q So, again, Mr. Lally's condition when you arrived was
25 what?

1 A He hurried across the parking lot and it is probably
2 150 feet across the lot, hurried across the lot to get out
3 of the area that he was in and approached me in a speedy
4 fashion, recognized me, looked at me, he was excited, he
5 was agitated, it was very apparent that he was afraid and
6 that was why he came towards me.

7 Q Did he tell you why he was afraid at that time?

8 MR. BRUNER: Objection again
9 for the record.

10 THE COURT: Overruled.

11 Q Did he?

12 A Yes, sir. His immediate statement to me was, "John,
13 these guys are going to fuck me up," is what his statement
14 was.

15 Q Did he tell you why?

16 A I asked him, "Ron, what is going on?"

17 He stated that he had been involved in cocaine, had
18 been arrested for the same, that he, in fact, had agreed
19 to work part of his charges off, that he had made several
20 controlled buys wearing a wire, that he had bought drugs
21 from these individuals and that they had threatened to
22 kill him.

23 Q As a result of that, sir, what did you do?

24 A I told him to stay at my car, walked across the lot
25 and spoke to Danny Smith.

1 Q And by this time Jalowiec was where?

2 A He was already all the way across -- as I approached
3 Danny I yelled across the street to Stan Jalowiec and told
4 him to stand by. He was across Middle Avenue now in the
5 area of the muffler shop which is across the street from
6 Mr. Hero.

7 Q What did you do when you approached Danny Smith?

8 A I approached Danny and asked him, "What is going on
9 here?"

10 Q What condition was Danny Smith in at that time?

11 A Danny Smith was excited. It was apparent he was very
12 angry at the time. He pointed across the parking lot and
13 his statement was --

14 MR. BRUNER: Objection.

15 THE COURT: Again, wait a
16 minute.

17 Overruled.

18 A Direct statement to me was, "That punk ass bitch,"
19 and he pointed to Ron Lally, "is going to get his."

20 Q Did you ask him anything else?

21 A I stated, "Danny, are you threatening Ron," and he
22 looked at me and said, "There is no reason to threaten
23 the mother fucker."

24 Q Then what happened, sir?

25 A I told him to stay where he was. I walked back.

1 I asked Ron if, in fact, he wanted to pursue charges for
2 intimidation, if he wanted to sign a warrant.

3 He said all he wanted to do was get out of the area.

4 Q And then what did you do, sir?

5 A I offered to get in touch with the individual who he
6 worked for. He said that wasn't necessary. He had the
7 number, if he wanted to get in touch with him, he would,
8 and Lally exited the area.

9 I then went back and talked to Danny Smith and he
10 and Jalowiec exited the area.

11 MR. ROSENBAUM: I have no other
12 questions, your Honor.

13 THE COURT: Mr. Bruner, you
14 may cross.

15

16

17

18 CROSS-EXAMINATION OF JOHN HOMOKI

19 BY MR. BRUNER:

20 Q Patrolman Homoki, did you review that report in front
21 of you prior to testifying today?

22 A Yes.

23 Q Did you refresh your recollection with the use of that
24 report?

25 A My memo?

1 Q The document in front of you?

2 A It is a memo.

3 Q A memo of that incident?

4 A Yes, sir. There was no report on the incident. It
5 was a daily only.

6 Q When did you make up that memo?

7 A It was considerable time after the initial call.

8 Q A considerable time after the initial call?

9 A Yes.

10 Q What would that be, a month, two months?

11 A No, it was -- the memo was written after, in fact, I
12 became aware that Ron Lally had been murdered.

13 Q That is when the memo was written, after you were
14 aware of that?

15 A Yes, sir.

16 Q Now, you reviewed that prior to testifying?

17 A Yes, sir.

18 MR. BRUNER: Your Honor, could
19 I have an opportunity to look at it?

20 THE COURT: His report?

21 MR. BRUNER: Yes.

22 THE COURT: Yes.

23 MR. BRUNER: Thank you.

24 Q Officer, this report was prepared about a year after
25 the incident that you have described, is that correct?

1 That is what your report says?

2 A Yes, sir.

3 Q So, 9-15-93 -- you prepared that report, over a year --
4 that would be past September of '94, is that correct?

5 A I don't know what the date -- I couldn't tell you what
6 the date was on it, sir.

7 Q I thought you said that the incident that you
8 remembered was on September 15th, '93?

9 A Yes, sir.

10 Q And you prepared this report that documents that
11 incident on or after a year?

12 A Okay, sir.

13 Q So, it would be at least in September of '94?

14 A Yes, sir.

15 Q And you remember all the events clearly a year later?

16 A Yes.

17 Q After your patrols every day, dealing with people every
18 day?

19 A Yes.

20 Q At any rate, you also remember that Mr. Lally indicated
21 to you that at that time he had been arrested, correct?

22 A Yes, sir.

23 Q And that he was trying to work off his charges?

24 A Yes.

25 Q He didn't tell you he was trying to change his life

1 around, did he?

2 He didn't, did he?

3 A No, he did not.

4 Q As a matter of fact, with that incident he didn't want
5 anybody charged with intimidation, even though he had this
6 threat on his life, correct?

7 A No, he did not.

8 Q He didn't want to file any charges or do anything about
9 it?

10 A Yes.

11 Q Without him filing a complaint, you didn't do anything
12 about it, correct?

13 A That is right.

14 Q Did you report it to Detective Leiby at that time?

15 A I did mention it to Detective Leiby in passing the next
16 time I saw him.

17 Q And no charges were filed against Danny Smith or
18 Stanley Jalowiec?

19 A Yes, sir.

20 Q As a matter of fact, on September 15th, '93, Ray Smith
21 was not present?

22 A No, he was not.

23 Q And he is not the one who made any threats to Lally?

24 A No, sir.

25 MR. BRUNER: I have nothing.

1 further.

2 THE COURT:

Mr. Rosenbaum?

3
4
5
6 REDIRECT EXAMINATION OF JOHN HOMOKI

7 BY MR. ROSENBAUM:

8 Q You referred that you made a daily?

9 A Daily report, yes.

10 Q At the time this occurrence occurred?

11 A Yes.

12 Q What is that, sir?

13 A Daily is a permanent record of the log for call-ins for
14 any call that is received at the police station where a unit
15 is dispatched or action is taken.

16 Q I would like to hand you --

17 MR. BRUNER:

Can I see that, Jon?

18 Q (Continuing) -- what I have marked for identification
19 as State's Exhibit 8 and ask you to look at it, please.

20 Do you recognize that document, sir?

21 A Yes.

22 Q What is that?

23 A It is a copy of the daily entry card that would be made
24 from the radio call.

25 Q Is that the daily entry card that pertains to your call

1 concerning Ron Lally, Dan Smith and Stan Jalowiec on
2 September 15th, '93?

3 A Yes.

4 Q Is it a true and accurate copy of the report kept in
5 the ordinary course of business in the Elyria Police
6 Department?

7 A Yes, sir.

8 MR. ROSENBAUM: I have nothing
9 further.

10 THE COURT: Mr. Bruner?

11

12

13

14 REXCROSS-EXAMINATION OF JOHN HOMOKI

15 BY MR. BRUNER:

16 Q That doesn't relate the entire incident as set forth in
17 the report a year later, does it?

18 A No, sir, it does not.

19 Q Obviously your memory of the incident would be clearer
20 when you wrote that incident sheet?

21 A I did not write this daily, sir, the dispatcher does
22 that.

23 Q So you didn't even write that note?

24 A No, sir, I did not.

25 Q What I am asking you is, obviously your memory of the

1 events would be clearer the day it happened or the next day
2 as opposed to a year later?

3 A Yes, sir.

4 MR. BRUNER: Nothing further.

5 THE COURT: Mr. Rosenbaum?

6 MR. ROSENBAUM: Nothing.

7 THE COURT: Thank you, sir. You
8 may step down.

9 (Witness excused.)

10 * * *

1 night a couple nights before that.

2 Q And was your brother able to tell you what happened
3 to Ron Lally?

4 MR. BRUNER: Objection.

5 THE COURT: She may answer yes
6 or no.

7 A Yes.

8 Q Did you learn from your brother at that time where he
9 was killed and who did it?

10 MR. BRUNER: Objection.

11 A Yes.

12 THE COURT: Overruled.

13 Q And did your brother tell you a specific city?

14 A Yes.

15 MR. ROSENBAUM: I have no other
16 questions, your Honor.

17 THE COURT: Mr. Bruner, you
18 may cross-examine.

19

20

21

22 CROSS-EXAMINATION OF SHARON HOPKINS

23 BY MR. BRUNER:

24 Q Mrs. Hopkins?

25 A Miss.

1 Thereupon, the State of Ohio, in order
2 to further maintain the issues on its part to be
3 maintained, called SHARON HOPKINS as a witness and,
4 after being first duly sworn, was examined and
5 testified as follows:

6 DIRECT EXAMINATION OF SHARON HOPKINS

7 BY MR. ROSENBAUM:

8 Q Will you state your name, please?

9 A Sharon Hopkins.

10 Q Will you spell the first and last name for the
11 Reporter, please?

12 A S-H-A-R-O-N; H-O-P-K-I-N-S.

13 Q Do you think you think you can talk a little louder,
14 please?

15 A Uh-huh.

16 Q How old are you?

17 A Twenty-three.

18 Q Are you employed?

19 A Yes.

20 Q Where do you work?

21 A Ridge Tool.

22 Q Do you have children?

23 A Yes.

24 Q How many children do you have?

25 A Three.

1 Q Do you know the Defendant in this case who is seated
2 under my right hand? (Indicating)

3 A Yes.

4 Q What is his name?

5 A We call him Pops, but Raymond Smith.

6 Q How is it that you know -- do you know his last name?

7 A Yeah.

8 Q What is it?

9 A Smith.

10 Q How is it that you know him?

11 A I went to school with his son.

12 Q Did you have any business dealings with him?

13 A No.

14 Q Did you ever buy anything from him?

15 A No.

16 Q Did you ever buy anything from his son?

17 A No.

18 Q Now, do you remember a very cold day in January of '94
19 when you saw a car belonging -- a maroon convertible?

20 A Uh-huh.

21 THE COURT: Yes or no.

22 A Yes.

23 Q Can you begin at the beginning of that evening and
24 describe the events that took place?

25 A We had all gone uptown --

1 Q Who is we?

2 A Danny Smith, his girlfriend, Tammy, my brother, Terry,
3 his girlfriend, Misty, Pops and Michael Smith all went
4 uptown and Stan also.

5 Q Stan who?

6 A Jalowiec. Is that his last name?

7 Q Do you know?

8 A I can't remember his last name.

9 Q And when you say you went uptown, did you go to a
10 specific place?

11 A We had gone up to Razzles's.

12 Q What is that, a bar?

13 A Yes.

14 Q In what city?

15 A Elyria.

16 Q And about what time did you arrive there?

17 A Probably about ten or eleven.

18 Q How did you get there?

19 A I rode with Danny and his girlfriend.

20 Q And did they pick you up?

21 A They just live across the street so I walked over to
22 their house.

23 Q Where did they live at the time?

24 A Pinegrove Apartments, right across from my apartment.

25 I can't remember the name.

1 Q What street is your apartment on?

2 A David Drive.

3 Q What city is that in?

4 A Elyria.

5 Q And did you stay at Razzle's for a long time?

6 A We stayed there till the place closed.

7 Q Then what happened?

8 A We had gone across the street, over to Mom's Open
9 Kitchen.

10 Q Who went directly across the street to Mom's?

11 A Danny Smith, Tammy, me, Mike and Pops.

12 Q What happened to your brother and Misty?

13 A They had gone home already.

14 Q Do you have any idea what time that would be?

15 A They left the same time we went over to Mom's.

16 Q Which would be when?

17 A About 2:15, 2:30.

18 Q So what happened at Mom's Open Kitchen?

19 A I think they eat and ate for a little bit and then
20 we left.

21 Q Who is "they"?

22 A Danny and Pops and Mike. Tammy didn't eat anything.

23 Q Did you eat?

24 A No.

25 Q What happened next?

1 A We had all left. We went to get in the car to go
2 somewhere -- I thought we were going home, but we --

3 Q Why did you go with them?

4 A They were giving me a ride to my house.

5 Q So you left Mom's Open Kitchen about what time?

6 A 2:45, three maybe.

7 Q And what happened?

✓ 8 A We drove to Middle Avenue.

9 Q Who was driving?

10 A Danny.

11 Q And whose car is this?

✓ 12 A Danny's car, as far as I knew.

13 Q And how are people seated in the car?

14 A Danny is driving. Tammy is in the passenger seat, Mike
15 is sitting -- I am in the middle, Mike and Pops on the
16 outside doors.

17 Q Who is behind the driver, if you remember?

18 A I think it was Michael.

19 Q Then what happened?

20 A We went out on Middle Avenue somewhere right past these
21 tracks and we dropped off Pops and Mike and there wasn't
22 even a house. There was a house across the street. I
23 thought they were going to go to there, but they went over
24 to a barn where there is some woods and barns.

25 Q Who went into the barn and the woods?

1 A Pops and Mike.

2 Q The Defendant?

3 A Yes.

4 Q And Michael?

5 A Uh-huh.

6 Q And Danny, you and Tammy remained in the car?

7 A Yes.

8 Q What happened after the two exited the car and went
9 into the woods by the barn?

10 A We went over, back across the tracks and went into
11 the parking lot and parked there and turned the lights off.
12 I don't know what we were waiting for.

13 Q How long did you wait?

✓ 14 A Probably about five or ten minutes and then a LeBaron
15 had gone by.

16 Q Had you seen this car before?

17 A I seen it go into the apartments a lot across the
18 street from my house. I saw it go there.

19 Q Do you know why it was there or who had it or who owned
20 it?

21 A No.

22 Q What kind of roof did this car have?

✓ 23 A It was convertible.

24 Q So, where was that convertible LeBaron going?

25 A Right over to where Mike and Pops were.

1 Q So, it went by you across the tracks?

2 A Uh-huh.

3 Q And then went to where the two were dropped off?

4 A Yes.

5 Q Then what happened?

6 A It waited back by there and we sat there and then
7 the car come back by again, back across the tracks.

8 Q It went northbound, towards town?

9 A Yes.

10 Q How long a period of time before it came back
11 southbound and crossed the tracks again?

12 A About three or four minutes.

13 Q And the whole time you are sitting there with the
14 lights off?

15 A Yes.

16 Q After it came back the first time, did the car you
17 were in remain there?

18 A Yeah. At that point Danny had Tammy come over to
19 the driver's seat and he went in the passenger's.

20 Q When did they switch?

21 After you saw the car for the second time?

22 A After it came back, after it picked them up.

23 Q Did it move at any time after it was parked there?

24 A No.

25 Q The one you are in?

1 A No.

2 Q Then the car comes by southbound, the LeBaron?

3 A Saw it go by again. They sat there, waited for it
4 to go towards downtown and then at that point we drove
5 to follow it.

6 Q And at this time Danny is driving?

7 A Yes.

8 Q Who was seated where?

9 A Tammy in the passenger seat and I sat behind Danny.

10 Q Did you follow the LeBaron?

11 A Yes.

12 Q What happened?

13 A We had followed it and signaled for it to pull over at
14 the first street that we came to, the first street on the
15 right.

16 Q Did it pull over?

17 A Yes.

18 Q Were you able to tell who was in the car?

19 A I could not tell because the window was too small.

20 Q Were you able to tell who was driving?

21 A After Danny told me to get out of the car and asked
22 if they picked up his brother.

23 Q Describe what happened?

24 A Danny ducked down in the seat so you couldn't see
25 him and he said, "Ask them --

1 MR. BRUNER: Objection to what
2 Danny said.
3 THE COURT: Just what happened,
4 okay?
5 THE WITNESS: All right.
6 A I asked --
7 THE COURT: Sustained.
8 Q Did you go up to the car?
9 A No, I just stepped one foot out of the car and I asked
10 what I was told to ask.
11 Q What did you ask?
12 A If his brother was picked up.
13 Q And did you get an answer?
14 MR. BRUNER: Objection.
15 I don't object to whether or not she got an
16 answer.
17 A I don't really remember.
18 Q Were you able to tell if his brother was picked up?
19 A There was four people in the car.
20 Q Did you recognize any of them?
21 A Stan was driving. At that point I could recognize
22 him because he stepped out of the car. He is the one
23 that answered me.
24 Q And you don't know who the other three were?
25 A I could not positively say.

1 Q Whatever answer you got, did you relay it back to
2 Danny?

3 A Yes, and he said, "Fine," and we drove away.

4 Q And what happened after that?

5 A They dropped me off at my apartment and that was it.
6 They went home.

7 Q Now, at any time -- so you went home that night?

8 A Uh-huh.

9 Q Did you later learn that something happened to Ron
10 Lally after that?

11 A A few days later my brother had told me.

12 MR. BRUNER: Objection.

13 THE COURT: Not what your
14 brother told you, but just what happened.

15 Q Is the answer you did learn something happened to
16 Ron Lally?

17 A Yes.

18 Q Did you learn he died?

19 A Yes.

20 Q And did you learn this in a conversation with your
21 brother?

22 A Yes.

23 Q Did you state anything to your brother as a result
24 of hearing this?

25 A I told him what had happened the other night, the

1 Q Did you make a statement to the police?

2 A No.

3 Q You did not make a written statement to the police?

4 A Later on I did.

5 Q When did you do that?

6 A Probably end of winter, early spring this year.

7 THE COURT: Ask for an
8 examination of that statement, your Honor.

9 THE COURT: Mr. Rosenbaum?

10 MR. ROSENBAUM: Sure.

11 THE COURT: In camera?

12 MR. BRUNER: Yes.

13 THE COURT: Ladies and
14 gentlemen, this is six typewritten pages on
15 this statement. The Court is going to have
16 to take time to examine this document so I am
17 going to send you back to the jury room until
18 that is accomplished and then we will continue
19 on.

20 (Whereupon, the jury was excused for a short
21 recess.)

22 (Whereupon, the following proceedings
23 occurred in the Judge's chambers out of the hearing
24 of the jury.)

25 THE COURT: I have read over the

1 statement of Sharon Hopkins who testified on the
2 stand. I found the statement to be -- and this is
3 a guesstimate -- 95% what she testified to.

4 I don't find any inconsistencies, but I find
5 some things that she did not testify to. I have
6 no problem, Mr. Bruner, with you looking it over.

7 MR. BRUNER: Thank you.

8 THE COURT: That is all that I
9 need to put on the record.

10 MR. ROSENBAUM: If he finds
11 something, we will talk about it.

12 THE COURT: Yes.

13 MR. BRUNER: Give me a few
14 minutes to sit at the table?

15 THE COURT: Surely.

16 (Whereupon, Mr. Bruner reviewed the statement
17 of Sharon Hopkins.)

18 MR. BRUNER: Your Honor, you are
19 correct. There are really no inconsistencies or
20 additional things. The only thing that I find is
21 that she describes the color of the car as being
22 gold or two tone.

23 There are a number of additional things.

24 MR. ROSENBAUM: I didn't ask what
25 the color of the car was.

1 MR. BRUNER: There are additional
2 things which I intend to ask her about, but really
3 no real inconsistencies.

4 THE COURT: Ready to go back?

5 MR. WIGHTMAN: Sure.

6 (Whereupon, the jury was returned to the
7 courtroom and the following proceedings occurred.)

8 THE COURT: Ladies and
9 gentlemen, as they say in the football game, this
10 was not a charged time out. Okay. You are still
11 entitled to your afternoon recess.

12 The Court has reviewed the statement and we
13 have done it on the record at this point and, Mr.
14 Bruner, we are ready to proceed.

15 MR. BRUNER: Thank you, your
16 Honor.

17

18

19

20 CROSS-EXAMINATION OF SHARON HOPKINS (Cont.)

21 BY MR. BRUNER:

22 Q Miss Hopkins, is that correct?

23 A Uh-huh.

24 Q Could you answer yes or no?

25 A Yes.

1 Q Thank you. Miss Hopkins, on that night you testified
2 that you were with Danny Smith, right?

3 A Yes.

4 Q Your brother?

5 A Yes.

6 Q And you know Mr. Smith as Pops, is that right?

7 A Yes.

8 Q And Mike Smith, right?

9 A Yes.

10 Q And Stan?

11 A Yes.

12 Q And you were with them from at least ten o'clock,
13 correct?

14 A Yes.

15 Q Where were you before ten o'clock?

16 A At home.

17 Q Did you have any drinks at home?

18 A No.

19 Q And you went to Razzle's, which is a bar?

20 A Yes.

21 Q And you went to this bar probably to drink?

22 A Yes.

23 Q How many drinks did you have at the bar?

24 A I could not say.

25 Q Did you have two?

1 A I had enough.

2 Q Did you have five?

3 A I don't know how many I had.

4 Q What do you drink normally?

5 A Beer.

6 Q You were there from ten or eleven o'clock until
7 the time the bar closed, correct?

8 A Yes.

9 Q That is about 2:30 in the morning?

10 A Yes.

11 Q Is that right?

12 A Yes.

13 Q And you had -- you don't know how many beers you had,
14 right?

15 A No. It was too long ago to remember.

16 Q Pretty good guess that you had quite a bit to drink,
17 correct?

18 A Yes.

19 Q And when you left the bar you were pretty hazy about
20 everything, right?

21 A I was not hazy. I was pretty -- well, I was drunk,
22 but I still remember what happened.

23 Q You were drinking and I think you put it in your
24 statement, you said something else about your statement,
25 didn't you?

- 1 A Yeah, but I do not recall saying that.
- 2 Q I think you said that you were F'd up, is that right?
- 3 A Yes.
- 4 Q You talk like that, right?
- 5 A I don't normally talk like that.
- 6 Q On a statement to the police you do, yes?
- 7 A Yes.
- 8 Q So you left the bar and you go to eat, is that right?
- 9 A Everybody else had ate.
- 10 Q Everybody else had ate?
- 11 A Uh-huh.
- 12 Q You go to Mom's Kitchen and you go with the same
- 13 people, is that correct?
- 14 A All except for my brother and his girlfriend.
- 15 Q Did you have any crack cocaine on the way to the
- 16 Kitchen?
- 17 A No.
- 18 Q You are out at 2:45 in the morning, you worked the
- 19 next day?
- 20 A No, I did not work at that time.
- 21 Q Do you have any kids at home?
- 22 A I had one.
- 23 Q Who was watching your kid?
- 24 A My brother.
- 25 Q Your brother, Terry?

1 A My other brother.

2 Q Now, all during the time that you were with Ray Smith,
3 Pope, there is no discussion about anybody by the name of
4 Ronald Lally, is there?

5 A No, but I wasn't talking to them.

6 Q You didn't hear any discussion about that, did you?

7 A No.

8 Q And getting in the car, you go to Mom's Kitchen and
9 there is no discussion about Ron Lally, correct?

10 A No.

11 Q You don't even know who he is, do you?

12 A No, I don't.

13 Q What day is this that we are talking about -- you
14 have been to the bar before, I presume, right?

15 A Yes.

16 Q And I presume you probably were at the bar with Ray
17 and you were friends with him, right?

18 A Basically.

19 Q You have been friends with Ray and Danny and everybody
20 else?

21 A I was mainly friends with Tammy.

22 Q Tammy was Danny's girlfriend?

23 A Yes.

24 Q What day did you go to the bar that you gave a
25 statement about, do you know?

1 A I could not say the exact day, but I know it was back
2 in '94, in January.

3 Q You are sure of that, right?

4 A Yes.

5 Q Absolutely positive, correct?

6 A Yes.

7 Q Okay. What were you doing the next day?

8 A What did I do the next day?

9 Q Yes.

10 A I slept till probably maybe eleven, got up with my
11 son, sat down and watched TV with him.

12 Q Do you know what you were doing the day after that
13 in January of '94?

14 A Yes, I could say that, too. I talked to my brother
15 about what was said.

16 Q Miss Hopkins, you go to Mom's Kitchen, right?

17 There is no discussion about Ron Lally, you said that,
18 right?

19 A Yes.

20 Q No one is threatening anybody, everybody is having a
21 good time, right?

22 A Yes.

23 Q Is that correct?

24 A As far as I knew. I did not know what was going on
25 with their conversation.

1 Q Were you sitting at the same table with them?

2 A No, I was not.

3 Q Who were you sitting with?

4 A I was sitting at a table down the middle of the
5 restaurant.

6 Q Who were you sitting with?

7 A I was sitting by myself.

8 Q And everybody else was where?

9 A They were at another table.

10 Q So, four or so people --

11 A The table was full so I sat at another table.

12 Q You didn't sit with them?

13 A No.

14 Q You had a number of drinks.

15 Did you have any more drinks at Mom's Kitchen?

16 A They don't serve drinks.

17 Q Okay. So at that point in time you get into a car,
18 if I am correct, with Raymond Smith and Danny Smith,
19 right?

20 A Correct.

21 Q And his girlfriend?

22 A Yes.

23 Q And Mike Smith?

24 A Yes.

25 Q And yourself?

1 A Uh-huh.

2 Q In Danny's car, I think you testified to?

3 A Yes.

4 Q And it is dark, late at night, right?

5 A Yes.

6 Q And you go to -- I think you said somewhere on Middle
7 Avenue?

8 A Yes.

9 Q And you are sure about that because you are so clear
10 about everything that happened, correct?

11 A Yes.

12 Q You are not clear about the number of beers you had?

13 A No.

14 Q Right?

15 A No.

16 Q You are not clear about telling the police that you
17 were F'd up, you had no problem with that, right?

18 A I don't recall telling them that.

19 Q You don't recall telling them that?

20 A No.

21 Q Do you want me to show it to you?

22 A I seen it.

23 Q So when you reviewed your statement, you saw you told
24 the police that you were F'd up?

25 A Yes.

1 Q And I don't want to subject the ladies and gentlemen
2 of the jury to what that word is, but we know what that
3 is, right?

4 A Yes.

5 Q Okay. You left Mom's Kitchen, it is dark. At some
6 point in time you see that Raymond and Michael are dropped
7 off, right?

8 A Yes.

9 Q At some point in time Danny parks, you see Raymond and
10 Michael going into the woods, I think you said?

11 A There was trees and there was a barn, looked like a
12 little wooded area.

13 Q Okay. And did you see what they were doing in there?

14 A No, I didn't pay attention once they were dropped off.

15 Q You didn't pay attention?

16 A When we drove away I thought I was going home.

17 Q Then you parked by the woods.

18 How far from where they were dropped off did you park?

19 A We parked on the other side of the tracks. I couldn't
20 say how far it was.

21 Q You couldn't say how far it was?

22 A No.

23 Q One hundred feet, 500 feet, do you know?

24 A I can't say five feet or yards. It was like over half
25 a block.

- 1 Q Not a great deal of street lights around there?
- 2 A No.
- 3 Q So it is dark, right?
- 4 A Right.
- 5 Q Okay. And at some point in time you see this other car
- 6 coming, correct?
- 7 A Yes.
- 8 Q And you are parked?
- 9 A Yes.
- 10 Q Where in the car are you?
- 11 A I am in the back seat.
- 12 Q In the back seat.
- 13 Is this a two door or four door?
- 14 A Four door.
- 15 Q And Danny is in the front and Tammy is in the front?
- 16 A Yes.
- 17 Q Anybody in the back with you at this point?
- 18 A No.
- 19 Q And at some point in time I think you see a LeBaron
- 20 convertible?
- 21 A Yes.
- 22 Q What color is that?
- 23 A I couldn't say exactly. It could have been two tone,
- 24 it could have been one color. There was only one street
- 25 light so I couldn't tell.

1 Q Well, you told the police that it was --

2 MR. ROSENBAUM: Your Honor, could
3 we approach the bench?

4 THE COURT: Yes.

5 (Whereupon, the following proceedings
6 occurred at the bench out of the hearing of the jury.)

7 MR. ROSENBAUM: I object to him
8 using the statement to cross-examine on
9 inconsistencies.

10 THE COURT: Yes, don't use the
11 statement.

12 MR. BRUNER: I am not using it.

13 MR. ROSENBAUM: Yes, you are.
14 He also did it in the other questions.

15 THE COURT: All right.

16 (Whereupon, the following proceedings
17 occurred back in the hearing of the jury.)

18 Q You thought the color of the LeBaron was two tone?

19 A A two-tone color.

20 Q What color was the two tone?

21 A I couldn't say exactly. There was not much light
22 to see. I said there was only one street light that I
23 noticed and I could not say what color the car was.

24 Q Did you ever tell anyone it was gold?

25 MR. ROSENBAUM: Objection.

1 THE COURT: Sustained.

2 Q Did you ever tell anybody what color you thought it
3 was?

4 MR. ROSENBAUM: I object to that
5 question as well.

6 THE COURT: Well, I will
7 permit that. I know what we discussed without
8 noting my discussion at this point.

9 MR. BRUNER: Thank you, your
10 Honor.

11 A I thought it was gold and a dark color. The top
12 part was gold, I thought it might have been.

13 Q You thought the top part of the car was gold?

14 A Yes, LeBaron's top half is one color, bottom half is
15 another color from the two tone.

16 Q And at that point in time, or at some point in time
17 the car goes by, you are asked by Danny eventually to go
18 up to that car, is that correct?

19 A Yes.

20 Q You don't see Ray Smith get into that car?

21 A No.

22 Q You didn't see Michael Smith get into the car?

23 A No.

24 Q You didn't see Ray Smith get in or out of the car,
25 right?

1 A No.

2 Q And you don't know who Ron Lally is, correct?

3 A Correct.

4 Q So, when you go up to the car --

5 A I didn't go up to the car.

6 Q I thought you testified that you went up to the car?

7 A No, I said I stepped one foot out of the car.

8 Q Out of Danny's car?

9 A Yes.

10 Q What did you do, yell over to the other car?

11 A I just spoke softly because it was not that far from

12 me.

13 Q How far was it?

14 A It was parked right in front of us.

15 Q Were you able -- you said you saw Stan Jalowiec?

16 A Yes.

17 Q And as to anybody else in the car, you didn't know

18 who was sitting in that car, correct?

19 A Correct.

20 Q During that whole time you were sitting there, there

21 was no discussion about Ron Lally, correct?

22 A Right.

23 Q And there was no discussion about hurting anyone,

24 correct?

25 A Correct.

1 Q And there is no discussion about Danny or Ray, about
2 anything involving Ron Lally, correct?

3 A Correct.

4 Q As a matter of fact, Danny asked you to check with
5 the driver of that car who turned out to be Stan if his
6 brother was in the car, right?

7 A Yes.

8 Q Not if his brother was in the car?

9 A Yes.

10 MR. BRUNER: I have nothing
11 further, your Honor.

12 MR. ROSENBAUM: I have no other
13 questions, your Honor.

14 THE COURT: Thank you, Ma'am,
15 you may step down.

16 (Witness excused.)

17 * * *

18 THE COURT: Let's take our
19 recess here. Then we will resume with your next
20 witness.

21 Ladies and gentlemen, this is a charged time
22 out, okay, at this point.

23 The admonitions that I have given you
24 regarding discussing this at this point, not
25 letting anyone discuss it with you still hold

1 and with that, as soon as Ms. Skinner gets here,
2 we will recess.

3 (Whereupon, a short recess was had.)

4 (Whereupon, the following proceedings
5 occurred out of the hearing of the jury.)

6 THE COURT: Deputy, I would
7 like to make an announcement because it has been
8 some time. It gets disturbing when people are
9 coming in and out of the courtroom in large
10 amounts.

11 Today was an unusual situation because of
12 the students. Deputy, as of tomorrow, once we
13 get into session, be very discreet -- members of
14 the press can come in, but as far as anybody else,
15 at a discreet moment, maybe bringing in a witness
16 or something like that, then they can be allowed
17 entrance to the courtroom.

18 THE DEPUTY: Fine, your Honor.

19 (Whereupon, the jury was returned to the
20 courtroom and the following proceedings occurred.)
21
22
23
24
25

1 Thereupon, the State of Ohio, in order
2 to further maintain the issues on its part to be
3 maintained, called SANDRA WILLIAMS as a witness and,
4 after being first duly sworn, was examined and
5 testified as follows:

6 DIRECT EXAMINATION OF SANDRA WILLIAMS

7 BY MR. ROSENBAUM:

8 Q Will you state your name, please?

9 A Sandra Williams.

10 Q Will you spell the first and last name for the
11 Reporter, please?

12 A S-A-N-D-R-A; W-I-L-L-I-A-M-S.

13 Q Are you employed, Ma'am?

14 A Yes, I am.

15 Q Will you tell the Court and jury where you work?

16 A Parker-Hannifin Airborne.

17 Q What do you do there?

18 A I am a lead assembler.

19 Q Did you know a person by the name of Ronald Lally?

20 A Yes, I did.

21 Q How is it that you knew him, Ma'am?

22 A I was his fiance.

23 Q For how long did you date him?

24 A Thirteen years.

25 Q At the time of his death were you still dating or

1 going with him?

2 A Yes, sir.

3 Q Was there a time in there where you broke up or
4 anything?

5 A A few times.

6 Q Why was that?

7 What would Ron do that would upset you?

8 A He stole from me.

9 Q Do you know why he stole from you?

10 A Yes, sir.

11 Q Would you tell everybody, please?

12 A For drugs.

13 Q Was he addicted to crack cocaine?

14 A Yes, he was.

15 Q And did he struggle with this for a very long period
16 of time?

17 A Yes, he did.

18 Q Do you know if, in June of '93, he had taken something
19 else from you?

20 A Yes.

21 Q What did he take?

22 A A microwave.

23 Q And did he sell that for drugs?

24 THE COURT: I didn't hear what
25 he took.

1 THE WITNESS: A microwave oven.

2 A Yes, he did.

3 Q Now, did he live with you?

4 A On and off.

5 Q So you had a place and he had a place?

6 A At times, yes, most of the time he was with me.

7 Q In September of '93, was he with you?

8 A No.

9 Q Where was he staying, do you know?

10 A No.

11 Q What was your address at that time, Ma'am?

12 A 59 Yorktown Lane.

13 Q Is that an apartment?

14 A Yes, in Elyria.

15 Q Now, did anything unusual happen to you on or about

16 September 7th of '93?

17 A Yes.

18 Q Will you describe the events that occurred on that

19 date, please?

20 A A man came to my yard. I was standing outside my

21 house talking to some friends. A man came to the yard --

22 Q Do you know who this man is?

23 A His name is Danny Smith.

24 Q And do you know Danny Smith?

25 A My future son-in-law told me who it was. I did not

1 know who it was at the time.

2 Q Were you able to later identify a picture of him with
3 Detective Leiby?

4 A Yes.

5 Q And you learned that person's name was Danny Smith?

6 A Yes.

7 Q Did you know if Ron had any contact with Danny Smith
8 prior to that day?

9 A No.

10 Q Describe what happened, please?

11 A He came in. He said that he knew where Ron was --

12 MR. BRUNER: Objection.

13 THE COURT: Just describe
14 what happened at this point without stating
15 things. You had conversation and go on from
16 there.

17 A He came to the house, to my yard, and started a
18 conversation with me.

19 Q As a result of that conversation did you react or
20 how did you feel after that conversation?

21 A I was scared.

22 Q What was the purpose of that conversation?
23 Did it pertain to Ron Lally?

24 A Yes.

25 Q Was it an attempt to persuade or dissuade him from

1 doing anything?

2 A Yes.

3 Q Will you tell the Court and jury the nature of that
4 conversation?

5 MR. BRUNER: Objection.

6 THE COURT: Back to where
7 we were before. At this point I am going to
8 permit it.

9 Overruled. Exceptions granted to you.
10 Mr. Bruner.

11 MR. BRUNER: Thank you, your
12 Honor.

13 Q Go ahead, please.

14 A He said that he knew where Ron was at and that Ron
15 would feel real bad if anything happened to any members
16 of his family or myself.

17 Q Did he also indicate to you anything about the
18 victim's parents, Ron Lally's parents?

19 A Yes, he said he knew where they live and it would
20 be a shame if their trailer happened to get blown up.

21 MR. ROSENBAUM: I have no other
22 questions, your Honor.

23 THE COURT: Mr. Bruner?
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CROSS-EXAMINATION OF SANDRA WILLIAMS

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BY MR. BRUNER:

Q Miss Williams?

A Yes.

Q Mrs. Williams?

A Miss.

Q Have you ever seen this man here, Ray Smith?

(Indicating)

A No, sir.

Q Has he ever called you as far as you know?

A No, sir.

Q You never seen him?

A No.

Q He never threatened you?

A No, sir.

Q Never threatened Mr. Lally's parents, to your knowledge?

A Not to my knowledge, no.

MR. BRUNER: I have no other questions.

MR. ROSENBAUM: I have nothing.

THE COURT: Thank you, Ma'am, you may step down.

(Witness excused.)

* * *

1 Thereupon, the State of Ohio, in order
2 to further maintain the issues on its part to be
3 maintained, called BRIAN HOWINGTON as a witness and,
4 after being first duly sworn, was examined and
5 testified as follows:

6 DIRECT EXAMINATION OF BRIAN HOWINGTON

7 BY MR. ROSENBAUM:

8 Q Will you state your name, please, sir?

9 A Brian David Howington.

10 Q Spell the first and last name for the Reporter?

11 A B-R-I-A-N; H-O-W-I-N-G-T-O-N.

12 Q Are you employed at this time, sir?

13 A Yes.

14 Q Would you tell the Court and jury what you do?

15 A I am a window cleaner.

16 Q For what business?

17 A H & B Window Cleaning.

18 Q Did I ask you how old you are?

19 A No, 24.

20 Q Do you know the Defendant seated under my right
21 hand? (Indicating)

22 A Yes, I do.

23 Q What is his name?

24 A Raymond Smith.

25 Q How is it that you know him, sir?

1 A Just through my aunt.

2 Q What is your aunt's name?

3 A Corrine Fike, Joann Fike.

4 Q Why is it that you know the Defendant through your
5 aunt, Joann Fike?

6 A He used to frequent her house, coming over there.

7 Q And did he ever borrow her car?

8 A Not him, himself.

9 Q Who would borrow your aunt's car?

10 A His son.

11 MR. BRUNER: Objection as
12 to relevancy, your Honor.

13 THE COURT: Overruled.

14 I will let him answer this one.

15 Q Do you know why his son would borrow your aunt's car?

16 MR. BRUNER: Objection.

17 A He didn't have one.

18 THE COURT: Do you know why
19 he would borrow your aunt's car?

20 Yes or no.

21 Do you know? Yes or no is the answer to
22 that.

23 THE WITNESS: No.

24 THE COURT: You don't know?

25 THE WITNESS: No.

- 1 Q What kind of car is that, sir?
- 2 A Chrysler LeBaron.
- 3 Q Do you know what year or not?
- 4 A Not for sure.
- 5 Q Does it have a hard top or soft top?
- 6 A Soft top.
- 7 Q Did you know Danny Smith?
- 8 A Yes.
- 9 Q Why is it that you know Danny Smith?
- 10 A Through the same reasons, him frequenting my aunt's
- 11 house.
- 12 Q Did you ever have any business dealings with Danny
- 13 Smith?
- 14 A No.
- 15 Q Did you ever buy anything from him?
- 16 A No.
- 17 Q Now, did there come a time in January that you went
- 18 somewhere in your aunt's car and met a man later
- 19 identified as Ron Lally?
- 20 A Yes.
- 21 Q Do you recall the exact date in January?
- 22 A No, I don't.
- 23 Q What year would that have been?
- 24 A Ninety-three, I believe.
- 25 Q Think.

1 MR. BRUNER: Objection, your
2 Honor.

3 THE COURT: Ninety-three is
4 what he said.

5 Q Would it be this last January or the one before?

6 A The one before.

7 Q All right. Well, do you know what January it was?
8 Now I am confused.

9 THE COURT: Wait a minute,
10 wait a minute.

11 This last January was January, '94,
12 correct?

13 THE WITNESS: Okay, yes.

14 Q So it is January of '94?

15 A Yes.

16 Q Will you describe the events of that evening as best
17 you can for the Court and jury, please?

18 A I went with --

19 Q What happened, who came to your house or your aunt's
20 house?

21 A When I met him -- I don't understand.

22 THE COURT: Mr. Rosenbaum, ask
23 the question over again.

24 Q You were at your aunt's house that evening?

25 A Yes.

- 1 Q Did you go somewhere in her car?
- 2 A Yes, I did.
- 3 Q Who did you go with, if anyone went with you?
- 4 A Stan Jalowiec.
- 5 Q How did he get to your aunt's house, do you know?
- 6 A No, I don't.
- 7 Q What time did he arrive there?
- 8 A Approximately six o'clock.
- 9 Q And did you leave with him?
- 10 A Yes, I did.
- 11 Q What time did you two leave?
- 12 A Around eight.
- 13 Q Eight p.m. at night?
- 14 A Yes.
- 15 Q Will you tell the Court and jury what happened from
- 16 that time period on?
- 17 A We went to a couple bars. He asked me to take him
- 18 to a friend's house.
- 19 Q Were you driving?
- 20 A Yes, I was.
- 21 Q Did your aunt know you had the car?
- 22 A I believe she left and the car was in my possession
- 23 so, yes.
- 24 Q So you went to some bars with Stan?
- 25 A Yes.

1 Q Would that be in Elyria?

2 A Yes.

3 Q And then Stan asked you to do what?

4 A To go to one of his friend's house.

5 Q How did he know it was time to go to a friend's house?

6 MR. BRUNER: Objection.

7 A I am not sure.

8 MR. BRUNER: Withdrawn.

9 THE COURT: Okay.

10 Q Did he have any kind of device with him that would
11 indicate to contact anyone?

12 A He had a beeper.

13 Q And so what happened then?

14 A We went to Ron's house.

15 Q Where was that?

16 A On Middle Avenue.

17 Q By anything, do you recall?

18 A Mr. Hero.

19 Q Was it a house or apartment?

20 A It is an apartment.

21 Q What happened when you went there?

22 A We went upstairs and we were partying for a little
23 while.

24 Q What does that mean?

25 A We were smoking crack.

1 Q Who was?

2 A Me, Ron, Stan and Ron's roommate.

3 Q Do you know his name?

4 A No, I don't.

5 Q What happened then, sir?

6 A We stayed there for a little while and somehow the
7 conversation got brought up, we went back to my aunt's
8 house.

9 Q And what time would this be that you left for your
10 aunt's again?

11 A Approximately ten maybe.

12 Q Then what happened?

13 A We went back there, partied some more and shot some
14 pool and Stan got another message or a page.

15 Q Then what happened?

16 A He asked to borrow the car.

17 Q And what did you say?

18 A At first I told him no.

19 Q Then what happened?

20 A He continually asked me to use the car and I
21 eventually let him.

22 Q And did he leave?

23 A Yes, he did.

24 Q Did he leave alone?

25 A No, Ron went with him.

1 Q What time would this have been?

2 A Around midnight.

3 Q So, at approximately midnight Stanley Jalowiec left
4 your aunt's house with Ron Lally?

5 A Yes.

6 Q When was the next time you saw anybody concerned with
7 this event?

8 A Sometime early in the morning, early a.m.

9 Q How much later would that be?

10 A Maybe four or five hours.

11 Q So, you are talking four or five in the morning?

12 A Yes.

13 Q And who did you see?

14 A Stan and Raymond.

15 Q The Defendant in this case?

16 A Yes, sir.

17 Q And where did you see them at?

18 A They came to my aunt's house where I was staying.

19 Q And why did they come there, if you know?

20 A They had her car.

21 Q They were returning it?

22 A Yes.

23 Q Did you see the car?

24 A Yes, sir.

25 Q What condition was the car?

1 A It was frozen.

2 Q Do you know why it was frozen?

3 A They washed it.

4 Q What was the weather like?

5 A Cold.

6 Q You are talking what kind of cold?

7 A Real cold, like cold that you wouldn't forget. I
8 mean, it was freezing.

9 MR. ROSENBAUM: I have no other
10 questions of this witness, your Honor.

11 THE COURT: Mr. Bruner?

12

13

14

15 CROSS-EXAMINATION OF BRIAN HOWINGTON

16 BY MR. BRUNER:

17 Q Mr. Howington, did you make a statement to the police?

18 A Excuse me?

19 Q Did you make a statement to the police?

20 A Yes.

21 MR. BRUNER: Your Honor, I would
22 ask for it.

23 MR. ROSENBAUM: We are getting it,
24 your Honor.

25 THE COURT: Gentlemen, same

1 situation?

2 MR. BRUNER: Yes.

3 THE COURT: Ladies and
4 gentlemen, just relax here.

5 MR. BRUNER: It is lengthy, your
6 Honor.

7 THE COURT: Ladies and
8 gentlemen, let's do this. Let's send you to the
9 jury room so you can relax a little more. This
10 is a lengthy statement and again the admonitions
11 that I have given you hold at this point. As soon
12 as we get the work that needs to be done completed
13 with the statement, we will call you back.

14 (Whereupon, the jury was excused for a short
15 recess.)

16 (Whereupon, the following proceedings
17 occurred in the Court's chambers with the Defendant and
18 counsel present.)

19 THE COURT: Yes, I have read
20 through the statement and offhand I can say there
21 is a lot more than what was examined upon.

22 At this point on the portion that was
23 examined upon, it is about 90% accurate. There
24 is -- I don't know if you want to call it
25 inconsistencies, but there is a hazy area around

1 -- as far as the time as to when he came back and
2 also a little bit different, I think, as to when
3 and I can only say that it was -- I think at this
4 point it was Lally as to when he came into the
5 picture it is not quite -- I think not quite the
6 same, but they end up the same and there you are,
7 Harvey.

8 MR. BRUNER: Thank you, your
9 Honor.

10 (Whereupon, Mr. Bruner examined the statement
11 of the aforementioned witness.)

12 (Whereupon, the jury was returned to the
13 courtroom and the following proceedings occurred.)

14 THE COURT: We are now ready
15 to proceed with the cross-examination of this
16 witness.

17 Mr. Bruner, you may continue.

18 MR. BRUNER: Thank you, your
19 Honor.

20 BY MR. BRUNER:

21 Q Mr. Howington, your aunt is Corrine Fike?

22 A Yes.

23 Q You live with her at times?

24 A I used to.

25 Q Used to?

1 A Yes.

2 Q And at the time when you were living with her, she
3 owned a Chrysler LeBaron?

4 A Yes.

5 Q What color was that?

6 A Blue.

7 Q It was a blue color?

8 A Yes.

9 Q What color top?

10 A Black.

11 Q Black top?

12 A Dark blue, black.

13 Q It wasn't gold or two tone?

14 A No.

15 Q Now, I think you testified about the night in
16 question that Stanley Jalowiec came to your aunt's
17 house?

18 A Yes.

19 Q And you were there?

20 A Yes.

21 Q Was your aunt there?

22 A I am not sure. I don't know.

23 Q And it wasn't unusual for Stan to come to your
24 aunt's house?

25 A No.

1 Q He was friends with her?

2 A Yes.

3 Q How old is your aunt, by the way?

4 A About 36.

5 Q And Stan came in and apparently the two of you went
6 to bars after that?

7 A Correct.

8 Q About eight o'clock at night?

9 A Yes.

10 Q Did you have some drinks at the bars?

11 A Yes.

12 Q And how many drinks did you have?

13 A Four or five maybe.

14 Q What were you drinking?

15 A Beer.

16 Q Stan have some beers, too?

17 A Yes.

18 Q You didn't, at the bars, pick up a man by the name
19 of Ron Lally, correct?

20 A No.

21 Q After that you were driving your aunt's car?

22 A Yes.

23 Q You had a number of beers, you were driving your
24 aunt's car and you went with Stan to get Ron Lally, is
25 that correct?

- 1 A Yes.
- 2 Q To get a person?
- 3 A Yes.
- 4 Q You didn't know who that person was?
- 5 A No.
- 6 Q And he was picked up somewhere, I think you said?
- 7 A His home.
- 8 Q At his home?
- 9 A Ron's home.
- 10 Q And then you all went over to your aunt's house?
- 11 A Correct.
- 12 Q And this was about what time?
- 13 A Around ten.
- 14 Q And Mr. Jalowiec didn't drag Ron into the car, did he?
- 15 A No.
- 16 Q And Ron came willingly?
- 17 A Yes.
- 18 Q And went back to your aunt's house?
- 19 A Yes.
- 20 Q And I think you said that before you went to your
- 21 aunt's house you partied, right?
- 22 A While we were at Ron's house.
- 23 Q Okay. So that means that you did, correct?
- 24 A Yes.
- 25 Q And Ron, correct?

1 A Yes.

2 Q And Stan.

3 Were you partaking or partying with cocaine?

4 A Yes.

5 Q Is that crack cocaine?

6 A Yes.

7 Q You had some, right?

8 A Yes.

9 Q And Stan and Ron?

10 A Yes.

11 Q Okay. How long were you at Ron's house partying?

12 A An hour, maybe two.

13 Q An hour or maybe two?

14 A Yes.

15 Q In addition to the crack cocaine, did you have any
16 other drugs?

17 A No, sir.

18 Q Just crack cocaine?

19 A Yes.

20 Q Did you have any alcohol, other alcohol?

21 A Just what we had at the bar.

22 Q Okay. And then you drove back to your aunt's house?

23 A Yes.

24 Q After drinking and having crack cocaine, you drove
25 back to your aunt's house?

- 1 A Yes. And you got to your aunt's house safely?
- 2 A Yes.
- 3 Q And you partied some more, right?
- 4 A Yes.
- 5 Q You and Ron Lally and Stan Jalowiec?
- 6 A Yes.
- 7 Q And Ray Smith was not anywhere around?
- 8 A No, sir.
- 9 Q You knew who he was at that time?
- 10 A Yes, sir.
- 11 Q And how long were you partying at your aunt's house?
- 12 A Another hour, maybe two.
- 13 Q Another hour, maybe two?
- 14 A Yes, sir.
- 15 Q Let's figure this out. You left about eight o'clock
- 16 to go to the bar, right, with Stan?
- 17 A Yes.
- 18 Q Before you get Ron Lally, correct, and you are at the
- 19 bar a couple hours maybe?
- 20 A Maybe.
- 21 Q So maybe it is ten, 10:30 you get to Ron's house?
- 22 A Yes, sir.
- 23 Q 10:30, eleven o'clock, is that right?
- 24 A Sounds about right.
- 25 Q And then an hour there of partying and then you go

1 back to your aunt's house?

2 A Yes, sir.

3 Q So it is about midnight when you get back to your
4 aunt's house?

5 A Around eleven, 11:30 maybe.

6 Q More partying?

7 A Right.

8 Q You had enough partying so that you weren't really
9 thinking quite clearly, right?

10 A I would say that, yes.

11 Q Crack cocaine doesn't make you think tremendously,
12 does it?

13 A No.

14 Q Now, when you leave, or when Stan leaves, I think you
15 said Stan and Mr. Lally left?

16 A Correct.

17 Q You didn't know who he was?

18 A No.

19 Q Did you ever learn his name that night?

20 A Not really, no, I never remembered.

21 Q When did you learn his name, by the way?

22 A When I was questioned by the police.

23 Q In '95 when you made that statement?

24 A Correct.

25 Q That is the first time you learned his name?

1 A Well, I was told when I met him, but I didn't
2 remember it.

3 Q Okay. So he left with Stan, right?

4 A Correct.

5 Q And he left willingly, correct?

6 A Correct.

7 Q There was no one dragging him out of the house at
8 gunpoint?

9 A Correct.

10 Q Stan didn't grab him by the neck and drag him out
11 of the house?

12 A No, sir.

13 Q And stick him in a car?

14 A No, sir.

15 Q And you have no idea where they went after that,
16 correct?

17 A No, sir.

18 Q As a matter of fact, until the car was brought back
19 and you testified to it, you had no idea where Stan and
20 Ron had been, correct?

21 A No, sir.

22 Q And there was no discussion before Stan left about
23 any harm coming to Ron Lally?

24 A No, sir.

25 Q And no discussion about any harm coming to him even

1 when they came back?

2 A No, sir.

3 MR. BRUNER: I have nothing
4 further.

5 THE COURT: Mr. Rosenbaum?

6

7

8 REDIRECT EXAMINATION OF BRIAN HOWINGTON

9 BY MR. ROSENBAUM:

10 Q Sir, is cocaine a stimulant?

11 MR. BRUNER: Objection.

12 Is he an expert?

13 MR. ROSENBAUM: I think he has
14 some particular knowledge that most people
15 don't have.

16 THE COURT: I don't know that
17 he is an expert. I think this. Let me say this.
18 If you know, sir, if you know -- and I am very
19 serious when I say that -- you may answer it.

20 If you don't, you don't.

21 A Yes.

22 Q So when you use it, does it make you less aware of what
23 is going on around you, like alcohol, or make you more
24 aware?

25 A I believe it makes me more aware.

1 MR. ROSENBAUM: I have no other
2 questions.

3 THE COURT: Mr. Bruner?
4
5

6 RE CROSS-EXAMINATION OF BRIAN HOWINGTON

7 BY MR. BRUNER:

8 Q So it makes you think clearly, is that your testimony,
9 that crack cocaine makes you think clearly?

10 Is that right?

11 A I didn't say clearly. I said it makes me think more
12 and it makes me pay attention more.

13 Q Pay attention to the things, that the drugs enhance
14 your attention to, right?

15 A Yes.

16 MR. BRUNER: Nothing further.

17 MR. ROSENBAUM: Nothing further.

18 THE COURT: You may step down.

19 (Witness excused.)

20 * * *

21 THE COURT: Ladies and
22 gentlemen, it is a quarter to four, counsel
23 having advised the Court that the next witness
24 would go beyond four o'clock, we have ordered
25 a shuttle for you. Hopefully it will be here

1 shortly. We will take our evening recess at
2 this point.

3 The admonitions that I have given you in
4 the past about discussing this at home when you
5 go home certainly will apply. I am sure they
6 are going to be asking you what happened and
7 you tell them that you have a Judge that will
8 not let you talk about it. There is a reason
9 for that, you know.

10 You have gotten the opening statements,
11 you are starting to get the evidence. You have
12 not received all of the evidence, you have only
13 received one side. You will receive the other
14 side and then the closing arguments and
15 instructions.

16 It is not fair to start your deliberations
17 until you receive everything that you need to
18 have in order to start your discussions and with
19 that, do not read anything about it at this point
20 and we will recess and reconvene tomorrow morning.
21 If you will try to be here by 8:15, we will try to
22 get started by 8:30.

23 (Whereupon, the trial in the above-entitled
24 matter was adjourned to reconvene on Friday, the 1st
25 day of December, 1995, at 8:30 a.m.)

MORNING SESSION, FRIDAY, DECEMBER 1, 1995

(Whereupon, the jury was returned to the courtroom and the following proceedings occurred.)

THE COURT: Good morning, ladies and gentlemen. I hope that you all had a pleasant evening and a good night's sleep.

As you recall when we adjourned last night we were still in the State's case.

Mr. Rosenbaum, you may call your next witness.

1 Thereupon, the State of Ohio, in order
2 to further maintain the issues on its part to be
3 maintained, called TERRY HOPKINS as a witness and,
4 after being first duly sworn, was examined and
5 testified as follows:

6 DIRECT EXAMINATION OF TERRY HOPKINS

7 BY MR. ROSENBAUM:

8 Q Will you state your name, please, sir?

9 A Terry Hopkins.

10 Q Will you spell the first and last name for the
11 Reporter, please?

12 A T-E-R-R-Y; H-O-P-K-I-N-S.

13 Q Are you employed at this time, sir?

14 A Yes.

15 Q Will you tell the Court and jury what you do?

16 A I am a -- lay carpet.

17 Q How long have you done that for?

18 A About three weeks.

19 Q Do you have a criminal record, sir?

20 A Yes, I do.

21 Q Will you tell the Court and jury what it is, please?

22 A Attempted aggravated burglary, attempted felonious
23 assault.

24 Q You served any time for that?

25 A Yes, I did.

1 Q Do you know the Defendant in this case who is seated
2 immediately below my right hand? (Indicating)

3 A Yes, I do.

4 Q How is it that you know him, sir?

5 A Through his son.

6 Q What is his name?

7 A Raymond.

8 Q Do you know the last name?

9 A Smith.

10 Q What is his son's name that you know?

11 A Danny.

12 Q How is it that you know Danny Smith?

13 A Went to school with him, used to see him out.

14 Q Do you have any other relationship with him?

15 A He became a friend after awhile, but that is how I
16 knew him, from school and stuff. We was friends.

17 Q So you have known Danny for how long then?

18 A Five or six years probably.

19 Q Did you know a person by the name of Ron Lally?

20 A No, I didn't.

21 Q Now, do you remember a night in January of '94 where
22 you were downtown Elyria at some bars with the Defendant
23 and some other people?

24 A Yes.

25 Q Do you recall what the date was?

- 1 A No, I don't.
- 2 Q So it was in January?
- 3 A Yes.
- 4 Q Can you tell the Court and jury of what year?
- 5 A Ninety-four. I think it was '94.
- 6 Q And will you describe the events of that evening
- 7 that pertain to the Defendant and his son, Danny?
- 8 A We went out one night and we were all out about
- 9 drinking --
- 10 Q Who would "we" be?
- 11 A Me, Danny, Tammy, my sister Sharon. I think it was
- 12 just us.
- 13 Q Was anybody there with Danny?
- 14 A Yes, Tammy.
- 15 Q And did you have a girlfriend there?
- 16 A Yeah.
- 17 Q And her name was?
- 18 A Misty.
- 19 Q And your sister?
- 20 A Sharon.
- 21 Q Was there?
- 22 A Right.
- 23 Q What bar were you drinking at?
- 24 A Razzle's, a lot of them, but mostly at Razzle's.
- 25 Q Do you know a person by the name of Stan Jalowiec?

1 A Yes.

2 Q How do you know him?

3 A Through Danny.

4 Q Did you see Stanley that night?

5 A No.

6 Q After you were drinking, what, if anything, did you
7 do and with whom?

8 A After that we went to Mom's Open Kitchen, ate
9 breakfast, me, Tammy, Danny, my sister and Misty and
10 from there --

11 Q Did the Defendant go?

12 A No, he didn't.

13 Q Then what happened?

14 A We went home -- I went to my sister's apartment and
15 then from there I went to Danny's because at the time I
16 was staying at Danny's apartment.

17 Q What time would this be?

18 A It was pretty late or early, whatever you want to call
19 that, about, I would say about three in the morning, 3:30
20 in the morning.

21 Q Danny was there?

22 A Yes.

23 Q Would you describe his condition, how he appeared, to
24 the Court and jury?

25 MR. BRUNER:

Objection.

1 THE COURT: Did you observe him?
2 THE WITNESS: Yes, I did.
3 THE COURT: Overruled.
4 A He was nervous, bothered. I asked him what was wrong
5 with him.
6 Q Did he reply?
7 A Yeah.
8 Q What did Danny say?
9 MR. BRUNER: Objection.
10 THE COURT: At this point who
11 was present, who was there?
12 THE WITNESS: Me and Danny.
13 THE COURT: Just the two of you
14 alone?
15 THE WITNESS: Right.
16 THE COURT: Sustained.
17 MR. ROSENBAUM: Could we approach,
18 please?
19 THE COURT: It is the same
20 request again as before.
21 Correct, Mr. Rosenbaum, setting up the same
22 scenario.
23 MR. ROSENBAUM: I am setting up a
24 hearsay exception, absolutely different.
25 THE COURT: Yes, approach.

1 please.

2 (Whereupon, the following proceedings
3 occurred at the bench out of the hearing of the jury.)

4 MR. ROSENBAUM: The exception I
5 would tender to the Court is that this is a
6 statement against penal interest.

7 MR. BRUNER: As to my client?

8 MR. ROSENBAUM: That would be --
9 well, it would be 803.1 and I believe 804.3
10 applies, but I would have to bring Danny in to
11 plead the Fifth first for that and I suppose
12 remotely 802 would apply also; 803.3 explains
13 why he feels how he does.

14 THE COURT: Harvey?

15 MR. BRUNER: Your Honor, may I
16 say that there comes a point in time when things
17 have to relate to Ray Smith.

18 MR. ROSENBAUM: This is absolutely .
19 going to relate to him.

20 MR. BRUNER: I know what you did
21 with regard to the previous witness. At this
22 point in time Ray is not present. He doesn't
23 know where he is. Danny is making a statement.
24 It does not relate to Ray Smith.

25 All prejudicial to allow this hearsay

1 statement.

2 MR. ROSENBAUM: The statement does
3 relate to Ray. He is going to say they did it.

4 MR. BRUNER: Then you are
5 interpreting Danny's statement to Ray and it
6 becomes his trial, not Ray's.

7 MR. ROSENBAUM: He said it didn't
8 relate to his testimony, it does.

9 MR. BRUNER: Your Honor, if you
10 are taking Danny's admission and prejudicing the
11 jury with regard to that statement, I think there
12 comes a time when hearsay is out when it doesn't
13 relate to my client.

14 THE COURT: Give me a chance to
15 look at this and I will make a ruling in a second.

16 The objection is overruled.

17 (Whereupon, the following proceedings
18 occurred back in the hearing of the jury.)

19 THE COURT: You will have your
20 exceptions, Mr. Bruner.

21 Mr. Rosenbaum, you may continue.

22 BY MR. ROSENBAUM:

23 Q So you were inquiring of Danny why he was in what
24 condition?

25 A What was wrong with him, why was he -- he said he

1 was sick.

2 Q What did he say?

3 A He said that they did it, meaning they killed --

4 MR. BRUNER: Objection, your
5 Honor, and ask that that be stricken and the
6 jury be instructed to disregard that.

7 Q Did you inquire what he meant by that?

8 MR. BRUNER: Your Honor, I
9 would ask that the jury be instructed on that.

10 THE COURT: At this point,
11 ladies and gentlemen, you will disregard
12 anything other than what the statement was,
13 "They did it."

14 Q Did you ask him what he meant by that?

15 A Yeah.

16 Q And what was his response?

17 MR. BRUNER: Objection.

18 THE COURT: Overruled.

19 A He just kind of looked at me like, you know --

20 Q Now, had Danny ever had any previous discussions
21 with you about doing what they did?

22 A Yes.

23 Q Will you detail them for the Court and jury, please?

24 First of all, tell us when these discussions took
25 place as best you can recall.

1 A Well, it was awhile ago at a bar I seen him.

2 Q Was it before this night you are talking about?

3 A Yeah, it was before this.

4 Q How much before, if you can say?

5 A A few months. I told him if he needed something
6 taken care of to let me know, if he had to beat somebody
7 up, you know.

8 Q Why did you say that?

9 A He was having some trouble collecting some money or
10 something and I was just bragging and talking.

11 Q So you offered your services to him to beat someone
12 up?

13 A Yeah, if he needed me to collect the money is what I
14 said and anyway, he come to me later, after that, and he
15 asked if I would take care of this thing for him, this
16 problem.

17 Q What does that mean?

18 A Killing somebody.

19 MR. BRUNER: Objection, your
20 Honor.

21 THE COURT: Well, wait a
22 minute at this stage.

23 That objection is sustained.

24 Let's build a little more background.

25 Q Tell me what exactly did Danny say to you when he came

1 to you?

2 MR. BRUNER: Objection.

3 THE COURT: Overruled.

4 MR. BRUNER: Your Honor, there
5 is no time frame or nothing.

6 THE COURT: Okay. I was under
7 the impression that it was several months before
8 the incident at the bar, correct?

9 THE WITNESS: Yes.

10 Q And what exactly did Danny say, as best you can recall
11 it?

12 A Just what I said.

13 Q And what was that?

14 A To kill somebody.

15 Q And what was your response?

16 A I didn't want no part of nothing like that.

17 Q Did Danny ask anything else of you on that subject?

18 A No. After that he pretty much left it alone.

19 Q Did he ever inquire if you wouldn't do it, if you
20 had any other information that might help him?

21 A Yes.

22 Q What was that?

23 A If I knew anybody else to do it.

24 Q After that night when Danny said to you, "They did
25 it," you knew what happened?

- 1 A I grabbed my chest and I left.
- 2 Q And where did you go?
- 3 A I went to my sister's apartment.
- 4 Q Did you ever return back to Danny's apartment then?
- 5 A Yes.
- 6 Q When?
- 7 A The next morning.
- 8 Q And what transpired then, who was there?
- 9 A Michael, Raymond, Stanley and Danny.
- 10 Q And did they have any conversation in your presence
- 11 about what they had done the night before?
- 12 A Yes.
- 13 Q What did they say?
- 14 MR. BRUNER: Objection as to
- 15 "they."
- 16 Who is "they"?
- 17 Q Who specifically was in this conversation?
- 18 Let me ask you this.
- 19 What did Stanley say, if anything, about the night
- 20 before?
- 21 A That they had killed the guy.
- 22 Q Did they say how?
- 23 A Yeah.
- 24 Q What did they say?
- 25 A They said that they --

1 MR. BRUNER: Objection.
2 THE COURT: Again, "they,"
3 who is "they"?
4 You are talking to Stanley?
5 Q Who was in this conversation?
6 Is this between you and one person?
7 A We were all in the same room.
8 Q Who was all of you people?
9 A Stan, Raymond, Danny, me, Tammy was in the back
10 bedroom.
11 Q Describe the conversation as to who said what as
12 best you can?
13 A Stan said that they had done it. See, I can't
14 remember who said what exactly. I am going with the
15 whole conversation that went on between us.
16 I can't say specifically who said what.
17 Q What happened?
18 A They said that they had shot the victim and they
19 had run him over with a car and stepped on him and
20 stabbed him with something or something like that.
21 Q In what tone were they relating this?
22 A Like they were bragging about it.
23 Q Did they say anyone else was there, or who did
24 they indicate was there --
25 MR. BRUNER: Objection.

1 Q (Continuing) -- when this was done?

2 MR. BRUNER: Objection.

3 Q Did they indicate whether anybody else was there?

4 Yes or no.

5 A No.

6 Q They did say something about Mike?

7 A Yes.

8 Q What did they say about Mike?

9 A They said he was --

10 MR. BRUNER: Objection.

11 Who is "they"?

12 Five people we are talking about.

13 THE COURT: Under the
14 circumstances I think they are relating back
15 the same incident and the same people that
16 were there were Danny, Raymond, Stan and your
17 sister and yourself, the five of you; is that
18 correct?

19 THE WITNESS: At the time of
20 the incident when it happened?

21 THE COURT: No. This
22 conversation -- was your sister there?

23 THE WITNESS: No.

24 THE COURT: I thought she was
25 in the back?

1 THE WITNESS: No, I said Tammy,
2 that is Danny's girlfriend.
3 THE COURT: All right. Proceed.
4 Q What in this same conversation did they indicate about
5 Mike?
6 A That he was panicking.
7 Q Did they say where he was at the time that this guy
8 died?
9 MR. BRUNER: Objection.
10 A I think they said he was in the car.
11 Q And that he was panicking?
12 A Uh-huh.
13 Q Did Danny ever admit to you that he discussed with
14 other people trying to get them to do this for him?
15 MR. BRUNER: Objection.
16 THE COURT: You can answer
17 that yes or no.
18 A Yes.
19 Q Would you tell what Danny said to the Court and jury,
20 please?
21 MR. BRUNER: Objection.
22 THE COURT: Overruled.
23 A As far as what, you mean --
24 Q Who did he speak to and did he offer anything to
25 accomplish this goal?

1 A He offered to pay for somebody, to buy somebody a car
2 if they would do it. He asked me if I knew somebody and
3 he said he offered to buy this person a car because he
4 knew that I knew he wanted a car.

5 Q Was there a specific person in mind here?

6 A Yes.

7 Q Who was that?

8 A Carl Hartman.

9 Q Was there a specific car in mind?

10 A Yes.

11 Q What was it?

12 A Red BMW.

13 Q So, Danny told you he would buy Carl a red BMW if he
14 killed this person?

15 A Yes.

16 Q Did you know who this person was?

17 A Yes, I know him.

18 Q Who was the person?

19 A He was a close friend.

20 Q I am talking about Carl Hartman?

21 A Yes.

22 Q Now, when you say that Danny wanted you to kill
23 someone, did he ever tell you who he wanted killed?

24 A No.

25 Q Did you know what this person had done that he wanted

1 killed?

2 A Yes.

3 Q What was that?

4 MR. BRUNER: Objection.

5 THE COURT: How do you know?

6 THE WITNESS: He told me.

7 MR. BRUNER: Objection.

8 THE COURT: Under those

9 circumstances, it will be sustained.

10 MR. ROSENBAUM: Could we approach?

11 THE COURT: All right, come on
12 up.

13 (Whereupon, the following proceedings
14 occurred at the bench out of the hearing of the jury.)

15 MR. ROSENBAUM: It would be the
16 State's position that these are not hearsay
17 because these statements are made in furtherance
18 of the conspiracy and under 801(D)(2) he lists
19 attempts to get people to carry out the
20 conspiracy and they are not hearsay.

21 MR. BRUNER: Your Honor, again
22 this is Raymond's trial, not Danny's trial.
23 This is Danny's trial so far.

24 I think he should have tried him first.
25 At any rate, with all due respect, I think there

1 comes a time when hearsay has to be kept out.

2 THE COURT: At this point we
3 have gone as far as we can go.

4 MR. ROSENBAUM: This is different.
5 Danny's efforts for him to recite people are not
6 hearsay. Statements made by members of the
7 conspiracy, are not hearsay. He keeps saying
8 this is hearsay. This is not hearsay by
9 definition.

10 THE COURT: All right. Go
11 ahead, Harvey.

12 MR. BRUNER: Your Honor, it is
13 an out-of-court statement that he is trying to
14 show the truth.

15 MR. ROSENBAUM: It is not hearsay
16 by definition; 801(D)(2)(e).

17 THE COURT: A statement by a
18 co-conspirator of a party during the course and
19 in furtherance of the conspiracy upon independent
20 proof of the conspiracy.

21 MR. ROSENBAUM: I think we
22 established the conspiracy.

23 MR. BRUNER: I understand proof.

24 MR. ROSENBAUM: State versus Martin
25 says --

1 MR. BRUNER: He has shown proof
2 of Danny's conspiracy.

3 THE COURT: The Court will
4 retract that and overrule the objection.

5 (Whereupon, the following proceedings
6 occurred back in the hearing of the jury.)

7 Q My question was, did Danny ever tell you why he was
8 trying to get this person killed?

9 A Yes.

10 Q And why was that, sir?

11 MR. BRUNER: Objection again.

12 THE COURT: Overruled.

13 You may answer.

14 A He said because he had informed the police of his
15 doings.

16 Q Now, do you know a person by the name of Queen Bee?

17 A Yes.

18 Q And do you know her real name?

19 A That is all I know her by.

20 Q Does she have a car?

21 A Yes.

22 Q What kind of car?

23 A Blue LeBaron convertible.

24 Q Did you ever see anyone in that car on the night that
25 Danny was upset and made the admission to you?

1 A Yes, I did.

2 Q Was it before the admission?

3 A Yes.

4 Q Who was in possession of the car that you saw?

5 A Raymond, Stan and Mike.

6 MR. ROSENBAUM: I have no other
7 questions, your Honor.

8 THE COURT: Do we have a
9 statement?

10 MR. BRUNER: Yes, that is the
11 first thing I am going to ask for, your Honor.

12 THE COURT: I figured you
13 would.

14 Ladies and gentlemen, as the statement is
15 rather lengthy, the Court has to review it at
16 this point. Rather than keep you sitting here,
17 I will return you to the jury room and as soon
18 as the Court is finished doing what it has to
19 do, you will again be brought back in.

20 The admonitions that I have given you
21 regarding discussing this case amongst yourselves
22 or letting anyone discuss it with you still hold
23 at this point and as soon as Ms. Skinner gets
24 into the room I will return you to the jury room.

25 (Whereupon, the jury was excused for a short

1 recess.)

2 (Whereupon, the following proceedings
3 occurred in the Judge's chambers with the Defendant
4 and counsel present.)

5 THE COURT: Gentlemen, I have
6 read through the statements. I have read the
7 first statement that took place on January 4th,
8 '95, even more thoroughly than I did the other
9 two.

10 There are some inconsistencies. They all
11 end up in the same position that was testified
12 to. The other statements had a lot more
13 information than what was testified to at
14 this point and Mr. Bruner, there you are.

15 MR. BRUNER: Thank you, your
16 Honor.

17 THE COURT: The
18 inconsistencies that I see do not seem to be
19 totally and completely significant. It might
20 be identification of people who may have been
21 there, this type of thing, so take your time
22 and look at it.

23 (Whereupon, Mr. Bruner examined the
24 statement of Terry Hopkins.)

25 THE COURT: How about as far

1 as the inconsistencies are concerned, Mr. Bruner?

2 MR. BRUNER:

Yes, your Honor.

3 The statement has many additional statements
4 than to what Mr. Hopkins testified, but the main
5 inconsistency, Mr. Hopkins testified that he saw
6 Ray, Mike and Stanley Jalowiec in that LeBaron
7 that evening.

8 In his statement he says on page 18, on his
9 initial statement, or I am sorry, the last
10 statement, the one on January 6th I believe it
11 is, he didn't see Ray in the car, his sister did.

12 He was across the street. He didn't see
13 anyone in the car and what he knows about it, he
14 knows from his sister Sharon.

15 In addition to that, in another phone
16 conversation on page 7, I think of his first or
17 second phone conversation, he indicates Sharon
18 says who was in the car, not him.

19 That is a clear inconsistency to his
20 testimony.

21 In addition to that he testified under oath
22 that Carl Hartman was offered a red BMW by Danny.
23 In the statement, on page 9, the question by
24 Detective Leiby was, "Didn't Danny offer him a
25 red BMW?"

1 And to that statement he said, "I don't know
2 what he offered him."

3 That is a clear inconsistency.

4 As to everything else, there is a bunch of
5 additional questions that I will get into, but
6 specifically, as to the statement, that is what
7 I want to ask him about.

8 THE COURT: Mr. Rosenbaum?

9 MR. ROSENBAUM: Just those two
10 things. The one is inconsistent. It would
11 depend on the timing of the other, but I concede
12 he should be permitted to ask, but I assume we
13 are not going to have, like we have tried to
14 do before, create inconsistencies?

15 THE COURT: I don't think we
16 will at this point.

17 MR. BRUNER: No, I would like
18 to show him that statement as to his statement
19 as to his sister's view of the car anyway.

20 THE COURT: And again, when
21 you get to that question I think, Mr. Leiby, if
22 you can look up that area or whatever it is.

23 MR. BRUNER: Page 18 and 9 of
24 one of the phone conversations and also to the
25 red BMW, that is page 9. Page 18 is as to his

1 sister and then page --

2 THE COURT: That appears twice?

3 MR. BRUNER: Page 7 on one of
4 the phone conversations.

5 THE COURT: Okay.

6 Ready to bring them back in?

7 MR. BRUNER: Yes.

8 (Whereupon, the jury was returned to the
9 courtroom and the following proceedings occurred.)

10 THE COURT: Ladies and
11 gentlemen, the Court will report to you that the
12 necessary housework that had to be done has been
13 done and we are now ready to proceed with the
14 cross-examination of this witness, Mr. Bruner,
15 at this point.

16 Deputy, the rule is still to be enforced.

17 THE DEPUTY: Yes, your Honor.

18 MR. BRUNER: Thank you, your
19 Honor.

20
21
22
23 CROSS-EXAMINATION OF TERRY HOPKINS

24 BY MR. BRUNER:

25 Q Mr. Hopkins, you are a convicted felon, correct?

1 A Yes.

2 Q And I think you are convicted of aggravated --
3 attempted aggravated burglary?

4 A Yes.

5 Q And attempted felonious assault?

6 A Yes.

7 Q That was for beating up your girlfriend, right?

8 A No.

9 Q Okay. How long were you in prison as a result of
10 that?

11 A Nine months.

12 Q What was your original sentence?

13 A Five to fifteen years.

14 Q Five to fifteen years and you were in prison nine
15 months?

16 A Yes, sir.

17 Q How did you get out of prison?

18 A Shock probation.

19 Q Did Detective Leiby of the Elyria Police Department
20 talk to Judge Glavas about your cooperation here to get
21 out?

22 A Yes.

23 Q So you got out on shock probation after nine months
24 as a result of your testimony in this case, correct?

25 A Yes.

1 Q Until you were approached as far as you knew you were
2 going to do five to fifteen years in prison, correct?

3 A Yes.

4 Q By the way, when were you eligible for parole when you
5 initially went?

6 A July of '98.

7 Q When did you get out of prison?

8 A Two months ago, September 23rd.

9 Q September of '95?

10 A Yes, sir.

11 Q Three years earlier, right?

12 A Uh-huh.

13 Q It is important for you to get out of prison, wasn't
14 it?

15 A Yep.

16 Q Now, on the night that you talked about here, you
17 went to Raffle's, correct?

18 A Razzle's.

19 Q I am sorry, Razzle's, Raffle's is in Cleveland.
20 You went there to drink, correct?

21 A Yes.

22 Q And you were drinking with who?

23 A Danny, Sharon, Misty, myself and Tammy.

24 Q Danny, Sharon, Misty, yourself and Tammy?

25 A Yes.

- 1 Q That is it?
- 2 A Yes.
- 3 Q No one else was there?
- 4 A No. I mean there was other people there, not just
- 5 us.
- 6 Q What time did you get there?
- 7 A About 8:30, nine o'clock I would guess.
- 8 Q What time did you leave the bar?
- 9 A We closed it.
- 10 Q You closed it.
- 11 I don't presume you were sitting there talking, you
- 12 were drinking?
- 13 A We left at 2:30 in the morning.
- 14 Q You were drinking, right?
- 15 A Yes.
- 16 Q What do you drink, Mr. Hopkins?
- 17 A Beer.
- 18 Q Only beer?
- 19 A Liquor, too.
- 20 Q Liquor, too?
- 21 A Uh-huh.
- 22 Q What were you drinking that night?
- 23 A Beer and liquor.
- 24 Q Beer and liquor?
- 25 A Yes, sir.

1 Q Okay. From 8:30 to ten o'clock, how many beers did
2 you have?

3 A I don't remember.

4 Q Three, four?

5 A I don't remember.

6 Q How many did you have by two o'clock that night, five,
7 six, ten?

8 A Quite a few.

9 Q Quite a few, right?

10 A Yes.

11 Q That can mean a lot of things to a lot of people,
12 right?

13 Quite a few can be to you ten, to me four?

14 A Yes.

15 Q How many is quite a few?

16 A More than ten.

17 Q More than ten. Okay. So you had more than ten beers.

18 How many glasses of liquor did you have?

19 What kind of liquor do you drink?

20 A Any kind. I don't remember how many.

21 Q You don't remember how many?

22 A No.

23 Q Do you drink Scotch?

24 A No.

25 Q Do you drink bourbon?

1 A Whatever.

2 Q Whiskey?

3 A Whatever.

4 Q Okay. So you don't remember whatever you were drinking
5 that night, is that right?

6 A No, that was two years ago.

7 Q Okay. But it would be fair to say, Mr. Hopkins, that
8 you had a number of drinks, too, liquor I am talking about?

9 A No.

10 Q You didn't?

11 You testified initially you had beer and liquor.

12 A But not a substantial amount.

13 Q Not a substantial amount?

14 A I had a couple maybe.

15 Q Maybe four?

16 A No, a couple.

17 Q A couple, that is two, three?

18 A About two, probably as far as I could remember. That
19 was a long time ago, like I said.

20 Q It is hard to remember what day of the week you were
21 drinking, right?

22 A Yeah.

23 Q So you left this bar and you closed it at about 2:30
24 at night, right?

25 A Yes.

- 1 Q Are you driving?
- 2 A No.
- 3 Q You are not driving?
- 4 A No.
- 5 Q Who is driving?
- 6 A My girlfriend.
- 7 Q So you are with the same people you testified to?
- 8 A No, after the bar we went to Mom's Open Kitchen and
- 9 ate breakfast.
- 10 Q Were you with the same people when you left from
- 11 Razzle's and went to Mom's?
- 12 A Yes.
- 13 Q Did you drive from Razzle's to Mom's?
- 14 A No, it is across the street.
- 15 Q You walked?
- 16 A Yes.
- 17 Q Who did you walk with?
- 18 A Danny, Tammy, Misty and Sharon.
- 19 Q Was it cold outside?
- 20 A Yes.
- 21 Q How cold was it?
- 22 A I don't remember.
- 23 Q You don't remember how cold it was?
- 24 A No, but it was cold.
- 25 Q Very cold or kind of cold?

1 A It was cold.

2 Q And you walked there and you are sure that you went
3 there with Sharon, is that correct?

4 A Yes.

5 Q And you were sitting there with Sharon, is that
6 right, at Mom's?

7 A Yes.

8 Q Who were you sitting with at Mom's?

9 A You just said Sharon.

10 Q You were with a number of people, who else?

11 A Stan -- not Stan, Danny, Tammy, Misty and me and
12 my sister.

13 Q Not Pops, Ray Smith?

14 A No.

15 Q And he wasn't at Razzle's?

16 A I didn't see him.

17 Q You didn't see him in or at Mom's, correct?

18 A No, I didn't.

19 Q Sharon wasn't sitting alone at a table by herself,
20 right?

21 A No.

22 Q She wouldn't do that?

23 A No.

24 Q Okay. And you were not discussing during that night
25 up until that time a guy by the name of Ron Lally with

1 Danny at that time, correct?

2 A I never knew who Ron Lally was.

3 Q Danny didn't appear to be nervous, excited?

4 He was drinking and laughing and eating and having a
5 good time with the rest of you?

6 A He wasn't eating.

7 Q Was he drinking?

8 A Yeah.

9 Q By the way, in addition to the drinking, did you have
10 anything else?

11 Did you have any marijuana?

12 A No.

13 Q You partook in marijuana, correct, at that time?

14 A I said no.

15 Q That night you did not?

16 A No.

17 Q How about cocaine?

18 A No, I did not.

19 Q You didn't have any cocaine?

20 A No.

21 Q How about your sister?

22 A No.

23 Q Or anybody in your party?

24 A No.

25 Q So up until that time, at what time did you go

1 to Mom's, three o'clock in the morning maybe?

2 A About 25 to three, the bar closed and we went.

3 Q The bar closes at 2:30, right?

4 A Yes.

5 Q So, at 2:30 you walk over to Mom's, you are there
6 about 20 to three, so far you have not seen Ray Smith,
7 correct?

8 A I had seen Ray Smith earlier in the car with Stan
9 and Mike.

10 Q You saw Ray Smith earlier parked in a car with Stan
11 and Mike?

12 A Right.

13 Q Was there a fourth person in the car?

14 A I didn't see a fourth person, no.

15 Q Where was that car?

16 A In the alley between Mom's and I think it is a music
17 store or something over there.

18 Q When would you have seen it earlier?

19 A You can look out the window of Razzle's. You can see
20 it right out of the window.

21 MR. BRUNER: Let me have the
22 statement for a moment.

23 Can I have the statement, your Honor?

24 THE COURT: Yes.

25 MR. BRUNER: Thank you.

1 Q Now, there came a time before you testified here
2 today -- do you need water or something like that?

3 A No, I am okay.

4 Q There came a time when you made a statement to
5 Detective Leiby about this case, right?

6 Do you remember that?

7 A Yes.

8 Q Do you remember giving him a statement about what
9 you saw that night?

10 A Yes.

11 Q Okay. And you told him the truth then, is that
12 correct?

13 A Yes.

14 Q You are telling these ladies and gentlemen --

15 A I talked to Detective Leiby two times. At one time
16 I did not know anything.

17 Q Would that statement have taken place on, I believe,
18 January 6th -- sometime in January, '95, is that correct?

19 A Yes.

20 Q You went to the police station?

21 A Yes.

22 Q You made a taped statement?

23 A Yes.

24 Q And you were telling him the truth about everything
25 then, right?

1 A From what I remembered.

2 Q From what you remembered?

3 A Yeah.

4 Q Do you remember telling Detective Leiby -- he asked
5 you, "You were able to see Raymond Smith in the car and
6 Stan Jalowiec," and your answer was, "I am not able, my
7 sister --

8 And he said, "Oh, your sister Sharon," and your
9 answer was, "I was across the street outside of Razzle's."

10 He said, "Okay, your sister Sharon was there and able
11 to see who was in the car," and your answer was, "Right"?

12 You didn't see who was in the car, did you?

13 A I did.

14 Q But you forgot to tell him that, is that right?

15 A I don't know.

16 Q Do you remember having a phone call with Detective
17 Leiby about the same thing?

18 A Yes.

19 Q I think that is page 7.

20 You had that phone call with him at about the same
21 time in January of '95, right?

22 A I don't know.

23 Q It is December of '95 now?

24 A Yes.

25 Q You testified, or you told Detective Leiby when she

1 pulled the car up that is when it was, when she pulled
2 the car up. I think that is when she seen them, because
3 I specifically had asked her who was in the car.

4 I said, "Well, who was that, Stan and them," and
5 she said, "Yeah, Stan and Pops and his brother, because
6 I guess his brother was trying to talk to my sister, or
7 whatever."

8 Do you remember saying that?

9 A Yes.

10 Q You didn't tell him at that point you had seen who
11 was in the car, you told him your sister seen it, correct?

12 A Yes.

13 Q Now you are saying something different to the ladies
14 and gentlemen of the jury?

15 A I seen Stan in the car and I asked her who else was
16 in the car.

17 Q You seen Stan in the car and asked her who else was
18 in the car?

19 A Yes, and when she told me --

20 Q She told you and that is what you are telling the
21 ladies and gentlemen of the jury, what she told you?

22 A Yes.

23 Q Okay. That is not what you observed, it is what
24 she observed, correct?

25 A Yes.

1 Q So you didn't see somebody in the car, it was her
2 and you got that from her and that is what you told the
3 police?

4 A I did see somebody in the car.

5 Q How far from that car were you?

6 A About 20 yards, 25 yards.

7 Q Did you see Stan driving?

8 A Yeah, he was driving.

9 Q Who was in the back?

10 A Mike was in the back.

11 Q And is there a large street light over the car, did
12 it illuminate the interior of the car?

13 A No.

14 Q Who was in the front?

15 A Raymond was in the front.

16 Q Raymond and as far as you know, no one is in the back?

17 A I seen three people in the car. I seen Stan for sure
18 and my sister told me that Raymond and Mike were in the car .
19 and Mike is a big guy.

20 I seen Mike in the back.

21 Q Let's get this straight. You saw Stan in a car.

22 Is that what your testimony is now?

23 A Yes.

24 Q You didn't see Raymond, your sister told you Raymond
25 was there, right?

1 A Yes.

2 Q Of course, your view of all this took place after you
3 had all your drinks at Razzle's?

4 A Yes, it did.

5 Q And you were crystal clear about everything that was
6 going on, right?

7 A No, not exactly.

8 Q You were kind of messed up, right?

9 A Yeah.

10 Q Now, your testimony is that you went -- then went to
11 Mom's Kitchen, right?

12 A Yes.

13 Q No discussion about anything happening to Ron Lally,
14 right?

15 A No.

16 Q As a matter of fact, I think your testimony was like
17 three or four months before Danny had asked you to beat
18 him up, right?

19 A No.

20 Q Because you are good at that thing, beating people up?

21 A No.

22 Q Well, excuse me. You went to prison for attempted
23 felonious assault.

24 That is trying to hurt somebody, right?

25 A Uh-huh.

1 Q Who was that somebody that you attempted to hurt?

2 A Jason Justin.

3 Q Excuse me?

4 A Jason Justin.

5 Q What did you do to him?

6 MR. ROSENBAUM: Objection.

7 THE COURT: Sustained.

8 Q He asked you to beat somebody up, you didn't know
9 who that somebody was, right?

10 A No, he didn't.

11 Q Danny?

12 A He didn't ask me to beat nobody up.

13 Q He requested that you beat somebody up?

14 A No, he didn't.

15 Q He talked about beating somebody up?

16 A No, he didn't.

17 Q Okay. I thought you said you were kind of drunk
18 and you kind of volunteered to help him?

19 A That was another time, that was before then.

20 Q That is what I am talking about. I am talking
21 about three or four months before.

22 A I didn't know what you were talking about.

23 Q Forgive me, it is my fault. Let's talk about three
24 or four months before.

25 You said that he requested that you beat somebody up?

1 A He said he was having trouble collecting some money
2 and I told him if he needed help collecting money, that
3 I would do it, help him.

4 Q Help him?

5 A Yes.

6 Q And you knew that that meant to beat somebody up?

7 A I guess.

8 Q Ray never asked you to beat anybody up?

9 A No.

10 Q He never asked you to kill anybody?

11 A No, he didn't.

12 Q He never asked you to take a witness out for him,
13 did he?

14 A No.

15 Q You never had any conversation or discussion with
16 Ray about any of that, did you?

17 A No.

18 Q Now, at that point -- let's go back to that night.
19 You go to Mom's, right?

20 A Yes.

21 Q And your testimony is that you are sitting with
22 your sister Sharon and your girlfriend?

23 A And Danny and Tammy.

24 Q And Danny and Tammy, right?

25 A Yes.

1 Q And you leave there, right?

2 A Yes.

3 Q And how do you get out of there, what car do you
4 drive?

5 A I don't drive. My girlfriend gives me a ride.

6 Q So she drove you out of there?

7 A Yeah.

8 Q Had she been drinking?

9 A Yes.

10 Q How about your sister, where does she go?

11 A She left with Danny and Tammy.

12 Q She left with Danny and Tammy?

13 A Yes.

14 Q She didn't leave with Ray and Michael?

15 A No.

16 Q They didn't get in a car with her, right?

17 A No.

18 Q Now, at some point in time you see Danny?

19 There was a conversation with you that evening,
20 right?

21 A What?

22 Q That evening, later on, you went and where did you
23 go, to the Knight's Inn?

24 A No, I went home. We thought we went to the Knight's
25 Inn. After I thought about it, I didn't go to the

1 Knight's Inn.

2 Q You told the police that you went to the Knight's Inn?

3 A I also told him that that wasn't right, that I don't
4 remember later.

5 Q At one point you told him that you went to the Knight's
6 Inn, correct?

7 MR. ROSENBAUM: Your Honor, this is
8 what we discussed, I think.

9 MR. BRUNER: I will withdraw
10 that.

11 Q Did you go to the Knight's Inn?

12 A No.

13 Q Okay. Did you ever tell anyone you went to the
14 Knight's Inn?

15 A Yes.

16 Q Who did you tell?

17 A Detective Leiby.

18 Q And when did you do that?

19 A When he interviewed me.

20 Q Okay. That was in January of '95, right?

21 MR. ROSENBAUM: Your Honor, can
22 we approach?

23 THE COURT: Yes.

24 (Whereupon, the following proceedings
25 occurred at the bench out of the hearing of the jury.)

1 MR. ROSENBAUM: He is now using
2 the statement to correct inconsistencies and
3 even though he said he would not, he went
4 ahead and did it anyway.

5 THE COURT: At this point
6 continue, but be careful.

7 MR. BRUNER: I understand.

8 MR. ROSENBAUM: Why should he
9 be permitted to continue?

10 You are using the statement to create
11 one inconsistency.

12 THE COURT: I am going to
13 overrule the objection, but, Mr. Bruner, be
14 careful.

15 MR. BRUNER: I understand,
16 your Honor.

17 THE COURT: Okay.

18 (Whereupon, the following proceedings
19 occurred back in the hearing of the jury.)

20 Q Your testimony here is that you did not go to the
21 Knight's Inn?

22 A Correct.

23 Q Is your memory better today than it was in January?

24 A What is that supposed to mean?

25 Q I asked you a question.

1 Is your memory better today?

2 THE COURT: Well, Mr. Bruner,

3 I think the question -- I think you ought to say,

4 "Is your memory about the incident better today?"

5 Q I am sorry. I will say it that way.

6 Is your memory about the incident better today than it
7 was that day?

8 A No, it is not.

9 Q Okay. Now, your testimony today is, where did you go
10 with your girlfriend?

11 A To my sister's apartment.

12 Q I think your testimony previously was you went -- at
13 some point you talked to Danny that night?

14 A Yes, I did.

15 Q And all the time he was with you when you were
16 drinking at Razzle's, you went to Mom's, he was not
17 excited or nervous or anything like that, correct,
18 isn't that correct?

19 A I really don't remember.

20 Q Okay. And then you saw him what time?

21 A About 3:30, maybe four, in the morning I seen him.

22 Q Three, 3:30, four in the morning?

23 Let's figure this out.

24 You get to Mom's about 25 to three, right?

25 A Yes.

- 1 Q How long of a time did you spend at Mom's?
- 2 A I don't know, about half hour, 45 minutes.
- 3 Q Okay. And then you go to your sister's apartment?
- 4 A Yes.
- 5 Q By the way, where was your sister when you go to her
- 6 apartment?
- 7 A She was with Danny and Stan, I mean Danny and Tammy.
- 8 Q Who was at your sister's apartment?
- 9 A Nobody.
- 10 Q Does she have a child?
- 11 A Yes.
- 12 Q Where was her child?
- 13 A With my mother.
- 14 Q You get to the apartment, no one is there, you don't
- 15 go to sleep at 3:30 in the morning?
- 16 A No, I don't live there.
- 17 Q You don't live there?
- 18 A No.
- 19 Q What did you go there for?
- 20 A I waited for Danny to come home.
- 21 Q Danny was living there?
- 22 A No, I stayed at Danny's apartment for about a month.
- 23 Q Didn't you have a key to Danny's?
- 24 A No.
- 25 Q To just go in?

1 A No.

2 Q So you then went to Danny's apartment about what time?

3 A Three, 3:30, four o'clock, something like that.

4 Q At that point in time you have a conversation with
5 Danny?

6 A Yeah, when I went back to go home.

7 Q You said he was nervous?

8 A Right. On the way up the steps to the apartment.

9 Q He looked sick?

10 A Yes.

11 Q He didn't look sick at any time before?

12 A No.

13 Q Ray wasn't there, right?

14 A No.

15 Q You didn't have any discussion with Ray Smith at
16 that point, correct?

17 A No.

18 Q And Danny is the one that said, "They did it,"
19 right?

20 A Yes.

21 Q They is what he said?

22 A Yes.

23 Q But you didn't see -- I think if I got this correct
24 -- you didn't even see Ray at any time that night?

25 A Yes.

- 1 Q Is that right?
- 2 A Yes.
- 3 Q Up until that point?
- 4 A I didn't even see him that night.
- 5 Q Okay. Now, that is what, 3:30, four o'clock in the
- 6 morning that you hear this from Danny?
- 7 A Yes.
- 8 Q How did you get from your sister's apartment to
- 9 Danny's?
- 10 A They only live right across the street.
- 11 Q Walked across?
- 12 A No, drove.
- 13 Q Drove across, you did?
- 14 A Me and my girlfriend.
- 15 Q And how much time did you spend at Danny's?
- 16 Were you staying there that night?
- 17 A I was going to stay there that night. After I
- 18 found out what happened, I left and went back to my
- 19 sister's.
- 20 Q After he stated, "They did it," you left?
- 21 A Yes.
- 22 Q And you went to your sister's?
- 23 A Yes.
- 24 Q Did you go to sleep?
- 25 A Yes.

1 Q How long did you sleep?
2 A I don't know. I have no idea.
3 Q What time did you get up?
4 A I don't know.
5 Q You don't know?
6 A I don't remember.
7 Q At some point in time you said you were back at
8 Danny's and you saw Stan?
9 A Yes.
10 Q What time was that?
11 A I don't remember what time it was.
12 Q Was it the next day?
13 A Yes.
14 Q Was it in the afternoon?
15 A I don't remember.
16 Q You don't remember?
17 You remember everything else exactly, but you
18 don't remember?
19 A I can't remember what time.
20 Q Was it in the morning?
21 A I just said I don't remember.
22 Q Was it at noon?
23 A I don't remember.
24 Q Was it at three in the afternoon?
25 A I don't remember.

- 1 Q What were you doing the next morning?
- 2 A The next morning?
- 3 Q Do you remember?
- 4 A I don't remember.
- 5 Q Or that night?
- 6 A That night, what night?
- 7 Q The night that you saw Stan; the next day, what
- 8 were you doing that night?
- 9 A I don't remember.
- 10 Q And you saw Stan there, correct?
- 11 A At the apartment.
- 12 Q Whatever time it was?
- 13 A You said I saw Stan there.
- 14 Q At Danny's apartment?
- 15 A Yes.
- 16 Q The next day?
- 17 A Yes.
- 18 Q Whatever time it was?
- 19 A It was the next day.
- 20 Q And who was there?
- 21 You testified Stan was there?
- 22 A Raymond, Stan, Mike, Tammy and myself.
- 23 Q Raymond, Stan, Mike, Tammy and yourself?
- 24 A Right.
- 25 Q Your sister Sharon wasn't there?

1 A No.

2 Q Danny's girlfriend Tammy was there?

3 A Yes.

4 Q And I think you testified that Stan was talking to
5 you, correct?

6 A They were all talking to me.

7 MR. BRUNER: Well, let's
8 approach for a moment, your Honor, if we can.

9 (Whereupon, the following proceedings
10 occurred at the bench out of the hearing of the jury.)

11 MR. BRUNER: I have to look
12 throughout my notes, but in the statement he
13 says Stan is the one doing the talking.

14 THE COURT: There might be --

15 MR. BRUNER: Stan is the one
16 admitting, so I would like to think Stan is the
17 one doing the talking.

18 THE COURT: I think there might
19 be a inconsistency.

20 MR. ROSENBAUM: What page is that?

21 MR. BRUNER: Page 4, page 5 --
22 page 4 is the phone call, too.

23 Your Honor, I am going to withdraw that.

24 THE COURT: Very well.

25 (Whereupon, the following proceedings

1 occurred back in the hearing of the jury.)

2 BY MR. BRUNER:

3 Q I think in your direct testimony that you said Stan
4 was doing the most of the talking, right?

5 He is the one that you remember talking, isn't that
6 correct?

7 A No.

8 Q You just said this morning that he did the talking and
9 you couldn't remember, but you remembered Stan specifically,
10 right?

11 A I said they were talking about it. They were all
12 talking about it to me.

13 Q All talking about it?

14 A Yes.

15 Q Okay.

16 Q Stan was talking about it specifically, wasn't he, to
17 you?

18 A Yes, talking about what he had done.

19 Q Stan was talking about what he had done?

20 A Yes.

21 Q Stan said that he had the gun, correct?

22 A Yes.

23 Q And Stan said he pulled the trigger, correct?

24 A I don't remember.

25 Q But you know that Stan had the gun, right?

1 A Right, because he had it days before that, the gun
2 itself. I mean possession of the gun.

3 Q He had possession of the gun days before that?

4 A Right.

5 Q Ray didn't?

6 A Yes, he didn't.

7 Q He did not, correct?

8 A Yes, you are right.

9 Q Thank you. And Ray, before that meeting that you
10 had with Stan, where Stan said he had the gun that night,
11 Ray had no discussion about this, right?

12 None before that date?

13 MR. ROSENBAUM: I object to that
14 question. It is not his testimony.

15 THE COURT: Sustained.
16 Ask it in a different manner.

17 Q Prior to your going over to Danny's apartment that
18 day, the next day after you went to sleep at your
19 sister's --

20 A Yes --

21 Q (Continuing) -- you had no discussions with Raymond
22 about the request that Danny made to you, right?

23 A No.

24 THE COURT: No, you did not,
25 or no, that is not so?

THE WITNESS:

Me and Raymond

didn't talk about Danny's request.

Q And you didn't discuss anything with Danny about Raymond, correct?

A As far as what?

Q What his requests were to you?

A No.

Q Is that correct?

A Correct.

Q Thank you. I think at one point you also testified that Danny promised a BMW to Carl Hartman, correct?

A Correct.

Q He is a buddy of yours?

A Yes.

Q And I think your testimony under oath this morning was that he was promised a BMW by Danny because he needed a car?

A Yes.

Q And you remember talking about that with Detective Leiby when you gave your statement in January of '95?

A Yes.

Q And Detective Leiby asked you, "Danny actually offered to buy Carl a red BMW in trade for working with him," that is what the Detective said?

A Yes.

1 Q And your answer was, "I don't know what he offered
2 him, but Carl told me he didn't want no part of it
3 either"?

4 A Yes.

5 Q So you don't know what Carl was offered at all,
6 correct?

7 A I do know.

8 Q From Detective Leiby?

9 A I was acting like I didn't know nothing. I didn't
10 want to involve him. I was asked not to involve him.

11 Q Ray didn't offer Carl Hartman anything?

12 A No, he didn't.

13 Q He didn't offer you anything?

14 A No, he didn't.

15 Q As far as you know, he didn't have any discussions
16 with anyone about that, right?

17 A As far as I know.

18 Q And for your testimony here today, you saved yourself
19 three years in prison, correct?

20 A Yes.

21 MR. BRUNER: I have nothing
22 further.
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REDIRECT EXAMINATION OF TERRY HOPKINS

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BY MR. ROSENBAUM:

Q Sir, what day did you go to prison?

A January 23rd.

Q Of what year, '95?

A Right.

Q And what day did you give the statement to Leiby?

A I don't remember.

Q Was it long before you went to prison?

A No, it wasn't.

Q Well, it was before you went to prison?

A Yes, it was.

Q Did Mr. Leiby promise you then that he would get you out of prison early?

A At that time?

Q Yes.

A No.

Q So you gave the statement without that promise?

A Yes.

Q Before you even got sent to prison?

A Right.

Q Now, was Danny Smith drinking with you at the bar?

A Yes, but not as much as everybody else was.

Q Okay. Now, do you know who had the gun?

Let me ask you this.

1 The Defendant was, even though he didn't solicit you
2 to kill anyone before, was participating or talking in the
3 conversation the next day about doing the deed, right?

4 MR. BRUNER: Objection.

5 A Yes.

6 THE COURT: Overruled.

7 It is leading, Mr. Rosenbaum. If you would
8 stop at this point.

9 Q Now, who was participating in this conversation about
10 this bragging?

11 A Stan and Raymond.

12 Q And --

13 A And Mike and Danny and all of them right there in the
14 living room.

15 Q And did the Defendant say any of that was not true in
16 your presence?

17 A No.

18 MR. ROSENBAUM: I have no other
19 questions.

20 THE COURT: Mr. Bruner?

21

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23 RE-CROSS-EXAMINATION OF TERRY HOPKINS

24 BY MR. BRUNER:

25 Q Detective Leiby, after you made the statement and

1 when you agreed to testify here, got you out of prison,
2 isn't that right?

3 A Yes.

4 Q Just that simple, correct?

5 A I suppose.

6 Q Okay. So you had a tremendous incentive to sit
7 here, correct, three years of your life?

8 A Yes.

9 MR. BRUNER: I have nothing
10 further.

11 MR. ROSENBAUM: I have no other
12 questions.

13 THE COURT: Thank you, sir,
14 you may step down.

15 (Witness excused.)

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1 THE COURT: Mr. Bruner?

2 MR. BRUNER: I would like to
3 look at her statement, your Honor.

4 THE COURT: Okay.

5 Ladies and gentlemen, the same routine that
6 we have had in the past comes to pass again.

7 We will take a short recess while the Court
8 has the opportunity to review the statement and
9 take whatever necessary and appropriate steps
10 need to be taken regarding it.

11 The admonitions that I have given you about
12 discussing this matter amongst yourselves, letting
13 anyone discuss it with you still hold more so now
14 than ever at this point.

15 (Whereupon, the jury was excused for a short
16 recess.)

17 (Whereupon, the following proceedings
18 occurred in the Judge's chambers with the Defendant
19 and counsel present.)

20 THE COURT: Gentlemen, I have
21 read the statements. There are two big
22 inconsistencies in the statement of December
23 27th, '94, which was taken in Mr. O'Toole's
24 office whereby Ms. Fike indicated that she had
25 given the keys directly to somebody for the car

1 and I think it was Danny.

2 The other inconsistency is that after the
3 car was returned she stated at that point that
4 she and Mr. Smith went to the grocery store.
5 A subsequent statement was taken on January
6 11th of '95 where both of these points were
7 clarified by Mrs. Fike.

8 As far as anything else is concerned in
9 there, I do not see any other inconsistencies.

10 There is, again, additional information
11 that was not testified to.

12 MR. BRUNER: That is it? Okay.

13 I am not going to worry about it. Let's
14 take care of this.

15 THE COURT: All right.

16 (Whereupon, the jury was returned to the
17 courtroom and the following proceedings occurred.)

18 THE COURT: Ladies and
19 gentlemen, again the necessary housework that
20 needed to be done has been done and we are now
21 ready to proceed with the cross-examination of
22 this witness.

23 Mr. Bruner, you may proceed.

24 MR. BRUNER: Thank you, your
25 Honor.

1 Thereupon, the State of Ohio, in order
2 to further maintain the issues on its part to be
3 maintained, called JOANN FIKE as a witness and, after
4 being first duly sworn, was examined and testified as
5 follows:

6 DIRECT EXAMINATION OF JOANN FIKE

7 BY MR. ROSENBAUM:

8 Q Will you state your name, please?

9 A Joann Fike.

10 Q Spell the name for the Reporter?

11 A J-O-A-N-N; C-O-R-R-I-N-E; F-I-K-E.

12 Q How old are you, Ma'am?

13 A Thirty-six.

14 Q Are you employed anywhere?

15 A No.

16 Q How do you exist?

17 A I receive social security. I am a widow.

18 Q Do you know the Defendant in this case who is seated
19 immediately under my right hand? (Indicating)

20 A I do.

21 Q What is his name?

22 A Raymond Smith.

23 Q How is it that you know him, Ma'am?

24 A Through his son.

25 Q And what is his son's name?

1 A Daniel Smith.

2 Q How long have you known the Defendant?

3 A About two, three years.

4 Q And how long have you known Danny Smith?

5 A About the same.

6 Q What is your relationship with Danny Smith, or what
7 was it?

8 A Drugs.

9 Q What do you mean by "drugs"?

10 A I used to do drugs.

11 Q Where did you get your drugs?

12 A From Danny Smith.

13 Q Did you buy these from Danny Smith?

14 A Yes.

15 Q Did you pay money for them?

16 A On occasion, yes.

17 Q And on other occasions, did you obtain drugs by
18 other methods?

19 A Yes.

20 Q What was that?

21 A I would let him use my car.

22 Q What kind of a car are we talking about?

23 A I have a '92 LeBaron.

24 Q Does it have a hard top or soft top?

25 A It is convertible.

1 Q I would like to hand you four pictures that have
2 been marked for identification as State's Exhibits 3-A
3 through 3-D and ask you to look at them, please.

4 Do you recognize the vehicles in those pictures?

5 A Yes, I do.

6 Q And how is it that you recognize it?

7 A That is my car.

8 Q Did the police ever come and get your car?

9 A Yes, they did.

✓ 10 Q Now, did you lend your car to anyone in January of
11 '94?

12 A Yes.

13 Q Was it extremely cold one time that someone took it?

14 A Yes.

15 Q Did you know they were going to take your car on this
16 occasion?

17 A No, not that particular night, I did not.

18 Q Will you tell the Court and jury what you recall of
19 that night?

20 A I had been out with a friend and when I came home my
21 automobile was gone.

22 Q What time was this that you realized your car was gone?

✓ 23 A I came home about 2:30, three in the morning.

24 Q Did your car reappear?

25 A Not until several hours later.

- 1 Q What time would it be when you next saw your car?
- 2 A I would say five or six in the morning.
- 3 Q Will you describe the condition of your car?
- 4 A It was a sheet of ice. It was covered with ice.
- 5 Q Do you recall what the weather was like?
- 6 A It was extremely cold.
- 7 Q Was it as cold as you ever remember it being?
- 8 A Very cold. It was below zero.
- 9 Q And who brought your car back to you?
- 10 A Stan and Mr. Smith.
- 11 Q Stanley who?
- 12 Do you know his name?
- 13 A Jalowiec.
- 14 Q And the Defendant in this case?
- 15 A Yes.
- 16 Q And did you see anything else unusual about your
- 17 car other than it being a sheet of ice?
- 18 A There was blood in the car.
- 19 Q Did you remark about what you saw that you thought
- 20 was blood?
- 21 A Yes, I did.
- 22 Q And did anyone respond to you what happened?
- 23 A I was told that there was a fight in downtown Elyria.
- 24 Q Who told you that?
- 25 A Mr. Smith and Mr. Jalowiec.

1 Q Did you see blood anywhere else besides on your car?

2 A I noticed Stan had his knuckles bleeding.

3 Q Did anyone tell you where this fight might have
4 occurred?

5 A Behind Mom's Open Kitchen.

✓ 6 Q Now, did anyone ever replace any parts on your car
7 before the police impounded it?

8 A Yes.

9 Q After that night?

10 A Yes.

11 Q Will you tell the Court and jury about that, please?

12 A Danny replaced the front tires.

13 Q Danny Smith?

14 A Yes.

15 Q When did that happen?

✓ 16 A I want to say April, it was towards the springtime.

17 Q Now, after they brought your car back frozen and
18 with blood on it, what happened?

19 A I gave Mr. Smith a ride to his son's house.

20 Q Do you know if he stayed there?

21 A No, he went upstairs and came back down and we went
22 back to my house.

23 Q What did you do?

24 A Smoked crack.

25 Q Who smoked crack?

1 A Myself and Mr. Smith and Mr. Jalowiec.

2 Q Raymond Smith, the Defendant in this case?

3 A Yes.

4 Q For how long did you do that with the Defendant
5 and Stan Jalowiec?

6 A A couple hours.

7 Q When you went to get the drugs with Raymond Smith,
8 where was Stanley?

9 A At my house.

10 MR. ROSENBAUM: I have no other
11 questions, your Honor.

12 THE COURT: Mr. Bruner?

13 MR. ROSENBAUM: Wait, I do have
14 one.

15 Q I would like to hand you a photograph that is marked
16 for identification as State's Exhibit 12.

17 Do you recognize the dog in that picture?

18 A I do.

19 Q Whose dog is that?

20 A My dog.

21 Q And do you know if Mr. Leiby, Detective Leiby, ever
22 came and got hair samples from your dog?

23 A Yes, he did.

24 MR. ROSENBAUM: I have no other
25 questions.

CROSS-EXAMINATION OF JOANN FIKE

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BY MR. BRUNER:

Q Mrs. Fike?

A Miss Fike.

Q Miss Fike, you admitted that at that time you had a crack problem, is that correct?

A Yes.

Q And that, in fact, in addition to buying crack, you gave your car to people or gave your car to persons at that time in exchange for crack, is that right?

A Yes.

Q That was to Danny Smith?

A Yes.

Q And on the night in question, you said you were out somewhere?

A Yes.

Q You were out till 2:30 in the morning?

A Yes.

Q And were you doing crack that night with somebody?

A No.

Q You were not?

A No.

Q Do you have any children?

A Yes, I do.

Q How many kids do you have?

- 1 A I have one daughter.
- 2 Q How old?
- 3 A She is 14.
- 4 Q She lives with you?
- 5 A Yes, she does.
- 6 Q And I think you testified that you got home about
- 7 2:30 or three that evening?
- 8 A Yes.
- 9 Q And it was cold outside?
- 10 A Yes.
- 11 Q And then did you go to bed?
- 12 A No.
- 13 Q You did not go to bed?
- 14 A No.
- 15 Q You stayed up?
- 16 A Yes, I did.
- 17 Q And you don't work, correct?
- 18 A Correct.
- 19 Q And you stayed up and you were up until you saw
- 20 your car that night?
- 21 A Yes.
- 22 Q You had no idea at that point who had your car?
- 23 A I knew Stan had the car.
- 24 Q You knew Stan had the car?
- 25 A Yes.

1 Q Did you give him the keys?

2 A No, sir.

3 Q How did you know he had the car?

4 A Because my nephew gave him the keys.

5 Q Your nephew, Brian Howington?

6 A Yes.

7 Q And Brian Howington had given him the keys.

8 Did you know that he was partying with crack at
9 your house?

10 A I know he had on other occasions, yes.

11 Q You didn't know he did that night?

12 A No, I wasn't home.

13 Q When you got home that night, who was at your
14 house?

15 A Just Brian.

16 Q Okay. You never, at your house, saw an individual
17 by the name of Ron Lally?

18 A No, sir.

19 Q And did you know who he was?

20 A No, sir.

21 Q And you knew that Brian gave Stan the car.

22 Did you see Brian at your house before you left
23 that night?

24 A I don't recall.

25 Q You don't recall?

1 A No.

2 Q Did you see Ray at your house before you left that
3 night?

4 A I don't recall.

5 Q You don't recall?

6 A No, sir.

7 Q Do you recall who was at your house when you left
8 that evening?

9 A I think Brian was there, just Brian and I.

10 Q Brian and yourself?

11 A Yes.

12 Q And your daughter?

13 A No, she was at a sitter.

14 Q At any rate, Stan ended up with your car because of
15 Brian, correct?

16 A Yes.

17 Q And you have no idea what happened to your car until
18 you saw it the next day?

19 A That is correct.

20 Q You don't know who was in it, who drove it, where it
21 went, where it ended up at, correct?

22 A No.

23 Q And when it got back to your house, at -- I think
24 you said 5:30, six o'clock in the morning, is that right?

25 A It was getting to be daylight.

- 1 Q You are still up?
- 2 A Yes, I was panicking, I was very scared.
- 3 Q You were scared because your car was missing?
- 4 A Absolutely.
- 5 Q But you knew Brian had given it to Stan?
- 6 A They weren't returning it. I don't understand what
- 7 the process was.
- 8 Q Stan was a friend of yours, right?
- 9 A An acquaintance.
- 10 Q How many times have you given your car away to
- 11 people for crack prior to this time?
- 12 A Several.
- 13 Q How many numbers would you say?
- 14 A More times than I care to admit.
- 15 Q So you were panicking about your car, is that what
- 16 you are saying?
- 17 A Yes.
- 18 Q Okay. And that morning you are still up and when it
- 19 came back, I think you testified that you saw Stan, correct?
- 20 A Yes.
- 21 Q And I think you testified that you saw Ray?
- 22 A Yes.
- 23 Q And you said Stan had some blood on his knuckles,
- 24 correct?
- 25 A Yes.

- 1 Q And your car was a sheet of ice, right?
- 2 A Yes.
- 3 Q How cold was it outside?
- 4 A Extremely cold. It was below zero, freezing.
- 5 Q It was below zero?
- 6 A I would say.
- 7 Q And you don't know where your car had been, correct?
- 8 A No, sir.
- 9 Q Now, Stan told you that there was a fight, is that
- 10 right?
- 11 A Yes.
- 12 Q Okay. And then I think you said that after that
- 13 point you went -- did you go in your car at that point?
- 14 A Yes.
- 15 Q With Raymond?
- 16 A Yes.
- 17 Q Okay. To Dan's house?
- 18 A Yes.
- 19 Q Is that correct?
- 20 A Yes.
- 21 Q To get some crack, is that correct?
- 22 A He wanted a ride over there. I wasn't exactly sure.
- 23 I waited downstairs and he went up.
- 24 Q You didn't go in the house?
- 25 A No, sir.

1 Q How long was he up there?

2 A I don't recall.

3 Q Not long?

4 A No.

5 Q And he came back down, you went back to your house?

6 A Yes.

7 Q So you didn't know who was up in that house, correct?

8 A No, sir.

9 Q Ray never had any discussions with you about Lally,
10 correct?

11 A No.

12 Q Dan Smith never had any discussions with you about
13 Ron Lally, correct?

14 A No, sir.

15 Q And Stan never had any discussions with you about
16 him, correct?

17 A No.

18 Q You went back to your house with Ray Smith?

19 A Yes.

20 Q And Ray was with you for awhile?

21 A Yes.

22 Q Do you know what time he left your house?

23 A I don't recall. Danny came and picked him up.

24 Q Danny came and picked him up?

25 A Yes.

1 Q Do you know what time he came and picked him up?

2 A I don't recall.

3 Q Do you know if Ray had to be at Court the next day?
4 Did he say anything about that?

5 A No.

6 Q So, you don't know what time?

7 A No.

8 Q Was it ten o'clock, eleven o'clock, twelve o'clock?

9 A Ten o'clock.

10 Q Ten o'clock the next morning?

11 A Yes.

12 Q And Danny picked him up?

13 A Yes.

14 Q Was anyone else in the car with Danny that you know of?

15 A His brother.

16 MR. BRUNER: One moment, your
17 Honor.

18 THE COURT: Surely.

19 MR. BRUNER: I have nothing else.

20 THE COURT: Mr. Rosenbaum?

21 MR. ROSENBAUM: I have no other
22 questions, your Honor.

23 THE COURT: You may step down,
24 Ma'am.

25 (Witness excused.)

1 Thereupon, the State of Ohio, in order
2 to further maintain the issues on its part to be
3 maintained, called ALAN LEIBY as a witness and, after
4 being first duly sworn, was examined and testified as
5 follows:

6 THE COURT: Officer Leiby,
7 you know the routine?

8 MR. LEIBY: Yes, sir.
9
10

11 DIRECT EXAMINATION OF ALAN LEIBY

12 BY MR. ROSENBAUM:

13 Q Will you state your name, please, sir?

14 A Alan L. Leiby. I am a Detective for the City of
15 Elyria.

16 Q Did you say what police department you work for?

17 A City of Elyria.

18 Q Spell the last name?

19 A L-E-I-B-Y.

20 Q How long have you served the City as a Police
21 Officer?

22 A Eighteen years.

23 Q And how long have you been assigned to the Detective
24 Bureau?

25 A I have been in and out twice, but a total of about

1 eight years.

2 Q And were you -- do you know a person by the name of
3 Ronald Lally?

4 A I did.

5 Q How is it that you came in contact with him, sir?

6 A Mr. Lally had contacted our officer in charge advising
7 him that he had a drug problem and he was going to reform
8 himself and he felt the best way he could do that was to
9 turn in his supplier.

10 The officer in charge immediately had me come in
11 because at the time I worked narcotics.

12 Q Did you meet with Mr. Lally?

13 A I did.

14 Q What action, if any, did you take?

15 A We signed him up as an informant for the City of
16 Elyria.

17 Q I would like to hand you State's Exhibit 9 and ask
18 you to look at them, please?

19 A The first page is an Elyria Police Department
20 confidential --

21 THE COURT: Have you seen
22 these, Mr. Bruner?

23 MR. BRUNER: Yes, your Honor,
24 I have.

25 THE COURT: Proceed.

1 A (Continuing) -- Elyria Police Department confidential
2 informant agreement. This is a standard form that we make
3 all informants sign in the presence of two officers and is
4 dated -- this form was signed by Mr. Lally at seven o'clock
5 in the morning at 125 Court Street with me as the primary
6 handling officer and my partner, Detective Scott Ashley,
7 as a secondary handling officer.

8 Q What was 125 Court Street?

9 A That was the Drug Unit.

10 Q At that time?

11 A At that time.

12 Q The next page?

13 A A CI log. This is used by the investigators to
14 maintain some record of what the informant has done for
15 us. This log -- he was assigned CI No. 110, again with
16 me as the control officer and Ashley as the secondary
17 officer.

18 It gives a name Ronald J. Lally aka Big Ron/Pony
19 Tail, initially giving an address of 59 Yorktown Lane,
20 Colonial Meadows Apartments in Elyria and there is a
21 place to list associates, people that he may be able
22 to buy from and then down below a record of an arrest
23 made from CI information.

24 I have written in in ink, in my own handwriting,
25 on the date of 6-7-93, Case No. 93-14317. That would

1 be an Elyria Police Department case, Dan Smith.

2 Q Sir, have you seen the photographs of the decedent
3 in this case?

4 A I have.

5 Q Were you able to recognize the person depicted in
6 those photographs?

7 A I was.

8 Q Will you tell the Court and jury if you know that
9 person?

10 A I do. That is Ronald J. Lally.

11 Q That is the person that agreed to be your informant?

12 A Yes, sir.

13 Q Now, what, if anything, did Mr. Lally do as an
14 informant?

15 A Mr. Lally only made two controlled buys. He made
16 that one on that morning and he made a second one a
17 short time thereafter, but as do a lot of informants,
18 he drifted back to crack and then we were having trouble
19 locating him.

20 Q Now, did you say on June 7th of '93 he made a
21 controlled buy?

22 A The morning he signed the agreement was the first
23 buy, I believe.

24 Q And where did he make that buy at?

25 A West River Road at Dan Smith's apartment. That

1 would have been in -- I don't have that address or my
2 notes in front of me.

3 It was at a complex on West River Road in Elyria.

4 Q Did you follow him over there?

5 A We did.

6 Q Did you take steps to record the conversation that
7 Mr. Lally would have had with whomever he was buying
8 drugs from?

9 A Right. Mr. Lally was wired up. We put a monitoring
10 device on him. The receiver was put in my car. I used
11 Detective Eichenlaub and Ashley as backups to assist me.

12 We provided Mr. Lally with marked buy money. We
13 xerox the money nowadays rather than marking it so there
14 are no marks on it.

15 We provided him with the buy money and sent him to
16 the apartment complex and watched him enter the building.

17 Q And did you say you wired him?

18 A Yes.

19 Q Was a tape made of this transaction?

20 A The receiver is equipped with a tape recorder and we
21 make a tape of every transaction.

22 Q So you can overhear what was going on?

23 A That is correct.

24 Q I would like to hand you what has been marked for
25 identification as State's Exhibit 10 and ask if you can

1 identify that, please?

2 A Yes, this tape also has my writing on it. It is a
3 copy of the original buy tape that I made and it is dated
4 6-7-93, buy tape, Lally, Smith and Smith, Elyria Police
5 Department No. 93-14317 which would be our Elyria number.

6 Q You said Lally's voice is on that tape?

7 A Yes.

8 Q And another name?

9 A Raymond Smith and Danny Smith.

10 MR. BRUNER: Objection, your
11 Honor.

12 Could we approach?

13 THE COURT: Yes.

14 (Whereupon, the following proceedings
15 occurred at the bench out of the hearing of the jury.)

16 MR. BRUNER: He identified
17 Raymond Smith. There is no foundation as to how
18 he knows it is Raymond Smith on the tape.

19 There has been no testimony to that.

20 THE COURT: Back up and do that.
21 Identify how he knows Raymond Smith, that he would
22 be able to tell that at the time.

23 The objection will be sustained.

24 (Whereupon, the following proceedings
25 occurred back in the hearing of the jury.)

1 Q Detective, how is it that you know Raymond Smith is one
2 of the Smiths?

3 A Part of the procedure of the drug buy at that time was
4 once the informant returns to the vehicle, he was returned
5 to the drug office and he was debriefed and in debriefing
6 he listened to the tape and explained what transpired as
7 he listened to the tape.

8 Q Now, as a result of that purchase, was anyone arrested?

9 A There were.

10 Q And who would that be?

11 A Raymond and Danny Smith.

12 Q I would like to hand you two pieces of paper that have
13 been marked for identification as State's Exhibits 6 and 7,
14 previously identified, and ask if you recognize them?

15 A These are copies of arrest reports that I provided to
16 you. One is a face sheet for Danny Smith and one for 46
17 West River Road North, Apartment L. That would have been
18 where the buy occurred and the complaint number is 93-21550.

19 That would have been assigned to him as an arrest
20 number and it indicates that we picked Danny up on a warrant
21 for drug trafficking as a result of my controlled buy and at
22 the bottom of both of these reports it indicates that I was
23 the primary arresting officer in both.

24 Q And the date of the report is the date that the arrest
25 was effectuated?

1 A That is correct.

2 Q Now, those charges are filed in what court, sir?

3 A Those are filed in Elyria Municipal Court.

4 Q All right. Do they come to there by this?

5 A Yes, that is correct.

6 Q Is that what happened to the charges against the
7 Defendant and the son Danny?

8 A It is.

9 Q I would like to hand you two colored folders marked
10 as State's Exhibits 4 and 5 and ask you if you can identify
11 them, please?

12 A Yes, sir. These are two files that yourself and I
13 retrieved from the Common Pleas Court file upstairs.

14 Q To what do they pertain, sir?

15 A Exhibit 4 is Docket Number 93CRO44157, Raymond Agustus
16 Smith, filed 9-29-93 and it is a shuck on Raymond's case
17 for my charges.

18 The second file is 93CRO44167 for Danny Smith, also
19 dated 9-29-93.

20 Q And does that second shuck pertain to your charges
21 against Danny Smith?

22 A It does.

23 Q They both arose from the buy that Ron Lally made on
24 June 7th of '93?

25 A That is correct.

1 Q Did those cases ever come to trial?

2 A No, sir.

3 Q Were they set for trial?

4 A Yes, they were.

5 Q Do those reflect on what date they were to go to
6 trial?

7 A Yes, sir. We were to go on the 19th.

8 Q Of what year?

9 A Nineteen ninety-four.

10 Q Did they proceed to trial?

11 A No, they were recalled.

12 Q What happened to those cases?

13 A They were dismissed and reading from the file, the
14 State's primary witness is now deceased.

15 Q After the dismissal of those cases, sir, did Danny
16 Smith run afoul of the law again?

17 A He did.

18 Q Will you tell the Court and jury how?

19 MR. BRUNER: Objection.

20 Can we approach?

21 THE COURT: Yes.

22 (Whereupon, the following proceedings
23 occurred at the bench out of the hearing of the jury.)

24 MR. BRUNER: Your Honor, I
25 understand why he is presenting the indictments

1 here. It is his theory of the case.

2 I want to object to the indictment for the
3 record.

4 However, he is getting into questions
5 regarding Danny Smith who is not the Defendant
6 here. Any convictions of Danny Smith would
7 ultimately prejudice my client and has nothing
8 to do with my client.

9 MR. ROSENBAUM: I have no intention
10 of mentioning that he was convicted, just that he
11 ran afoul of the law.

12 MR. BRUNER: That is another
13 charge.

14 MR. ROSENBAUM: The point is this,
15 your Honor.

16 As a result of those charges, he contacted
17 us and began the process that led to this and
18 Raymond's statement.

19 THE COURT: I will let it in
20 for that limited purpose only, that limited
21 purpose at this point.

22 (Whereupon, the following proceedings
23 occurred back in the hearing of the jury.)

24 THE COURT: I will permit
25 the question for this limited purpose only.

1 Q So it is your testimony then that Dan Smith again
2 ran afoul of the law?

3 A Danny Smith did, yes.

4 Q As a result of the charges he was facing, did you
5 have contact with him?

6 A I did.

7 Q Can you tell the Court and jury when and under what
8 circumstances?

9 A June of '94 Danny Smith contacted me and wanted to
10 make a deal on his charges in exchange for a statement
11 about his father and wanted to know what could I promise
12 him. I made no statement.

13 Q And a statement about his father regarding any
14 specifics?

15 A The homicide investigation.

16 Q What homicide?

17 A Ron Lally.

18 Q Did he offer to perform any services for you?

19 A On 4-28-94 -- correction, let me back up here.

20 At one point in time he offered to wear a wire and
21 talk to his father concerning the homicide.

22 Q Did he indicate to you why or how his father was
23 involved?

24 A No, he kept telling me that his father wouldn't
25 tell him the whole story, that I would have to speak

1 with him directly.

2 Q Did you ever speak to his father, the Defendant in
3 this case directly?

4 A I did.

5 Q And when was that, sir?

6 A We arranged an interview of 7-5-95, myself, Detective
7 Beaman and Detective Hasan. Both officers from the
8 Cleveland Police Department were present along with
9 Raymond Smith at the Elyria Police Department.

10 Q So, Mr. Smith came to the police department on his
11 own?

12 A Yes, sir.

13 Q And he gave a statement?

14 A That is correct.

15 Q And I would like to hand you an exhibit that has
16 been marked for identification as State's Exhibit 11-A
17 and ask if you can identify it?

18 A This has Complaint Number 94-4525. That is the
19 Elyria Police Department complaint number assigned to
20 my portion of the homicide investigation when the
21 Cleveland police came to us and requested assistance
22 in that. It has that number as well as 7-5-94
23 indicating the date.

24 It has Ray Smith on it, indicating who was
25 interviewed and then my secretary, when she transcribed

1 the statement, put a "T" on it.

2 Q Whose statement is that a tape of?

3 A A statement of Raymond Smith to myself, Detective
4 Hasan and Detective Beaman.

5 Q Does he indicate that he has knowledge of the
6 homicide of Ron Lally in that tape?

7 MR. BRUNER: Objection.

8 The tape speaks for itself.

9 THE COURT: The tape will
10 speak for itself, assuming that it is admitted.

11 A It does.

12 Q Is that a true and accurate copy of the interview you
13 had with the Defendant in this case to the best of your
14 knowledge?

15 A Yes, this is the original.

16 Q Now, did you have a subsequent conversation with the
17 Defendant?

18 A I did.

19 Q When was that, sir?

20 A Telephone conversation. I was contacted on January
21 11th by Dan Smith. After Ray's first statement, Dan called
22 me and asked me if I was satisfied --

23 MR. BRUNER: Objection as to
24 what Dan asked him.

25 A Okay.

THE COURT:

Do you recall?

1

2

A I was contacted again and advised that Mr. Smith would be willing to make another statement.

3

4

Q Mr. Smith being the Defendant?

5

A Raymond Smith, yes.

6

Q Did he make another statement?

7

A He did.

8

Q On what date?

9

A When I was advised of this I told Dan Smith that before I would speak any further with his father, I needed something from him, the name of the second person involved.

10

11

Q Okay.

12

13

A Shortly thereafter, on 1-11-95 I received a telephone call from Raymond Smith and that is this tape here. Raymond Smith 1-11-95, and it has the Complaint Number 94-4525 and my note, the secretary transcribed it, 200, which is my badge number, 11, which would be the 11th tape that she transcribed for me.

14

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Q Is that marked?

20

A 11-B.

21

Q Is that a true and accurate conversation you had over the telephone with the Defendant?

22

23

A It is. I tape recorded this.

24

Q And does the Defendant reveal who the third person there with him was?

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MR. BRUNER:

Objection.

A He only says it was Stan.

THE COURT:

Again, the tape

speaks for itself.

Q Now, you indicated that those tapes were transcribed, sir?

A Yes, sir.

Q I would like to hand you a folder marked State's Exhibit 11-C, ask you to look at the contents of that folder and tell the Court and jury if you recognize the contents?

A Yes, sir. These are the statements that I placed in this folder earlier today.

The first page is a xerox copy of a rights warning given to Mr. Smith on 7-5-94. There is a transcript of a statement. The statement is dated July 5th, '94.

As I indicated, we have a page separation here and then we have a taped telephone conversation between myself and Ray Smith dated 1-11-95.

Q To the best of your knowledge is State's Exhibit 11-C a true and accurate transcription of the conversations depicted in State's Exhibits 11-A and 11-B?

A It is.

Q Now, I would like to hand you a photograph that has been marked for identification as State's Exhibit 12, ask you to look at it and tell the Court and jury if you

1 recognize it?

2 A Yeah, that is Cleo.

3 Q What is Cleo?

4 A Boxer that belongs to Corrine Fike. This has a label
5 on the back that I affixed to the photograph. It has my
6 initials on it. Photograph taken 1-6-95 by Detective A.
7 L. Leiby, No. 200, Elyria Police Department.

8 Photo depicts Cleopatra, a registered female brindle
9 boxer, age approximately four years old, the property of
10 Joann Corrine Fike who owned the dog since it was a pup.

11 I took the photograph.

12 Q What is the significance of Cleo or what role does
13 Cleo play?

14 A The trace evidence lab in Cleveland advised me that
15 they found dog hair on the jacket of Ron Lally and the
16 tapings of the vehicle revealed dog hair in the seat of
17 the vehicle and they asked me if I knew if the owner of
18 the vehicle had a dog.

19 I followed up and learned that she did. I obtained
20 her permission. I photographed the animal and plucked a
21 few hairs.

22 Q What did you do with them?

23 A They were given to the Cleveland Trace Evidence Unit
24 for evaluation.

25 Q Now, did you have a chance to speak with Danny Smith

1 several times?

2 A Yes, sir.

3 Q Did he ever acknowledge to you whether or not the
4 events that took place concerning the driving up and down
5 Middle Avenue on the night in question took place?

6 MR. BRUNER: Objection.

7 THE COURT: The form of the
8 question primarily at this point?

9 MR. BRUNER: That and --

10 THE COURT: Sustained.

11 Ask it in a different way.

12 Q What, if anything, did Mr. Danny Smith say to you
13 regarding any driving on Middle Avenue?

14 MR. BRUNER: Objection.

15 THE COURT: Again, Danny

16 Smith's statement at this point.

17 I am permitting it. Overruled.

18 A Danny Smith -- on a conversation on 1-7-95, Dan Smith
19 admitted to me that he did, in fact, drive his father and
20 his brother south on Middle Avenue and dropped them off
21 down in that area somewhere because his aunt lived down
22 there.

23 That was on the same date that he offered to wear a
24 wire and record his father's conversations concerning the
25 homicide.

1 Q Now, eventually I take it your investigation led to
2 indictments and an arrest in this case?

3 A That is correct.

4 Q After that did another witness come forward?

5 A That is correct.

6 Q What was the name of that witness?

7 A Michael Smith.

8 Q And in efforts to preserve Michael's statement, was
9 a deposition taken?

10 A It was.

11 Q Did you attend that?

12 A I did.

13 Q And who else was present at the deposition?

14 A The defense attorneys, all three defendants whose names
15 I don't have a list of --

16 Q Let me ask you this.

17 Can you identify what has been marked for
18 identification as State's Exhibit 13?

19 A Yes, sir. It has been on the table and I have looked
20 at it briefly. This is a copy of the transcript from that
21 deposition.

22 Q And it was taken by a court reporter?

23 A That is correct.

24 Q To the best of your knowledge is it a true and accurate
25 transcript?

1 A To the best of my knowledge.

2 Q In addition to that, may I ask, were the defendants
3 present?

4 A They were, that is correct.

5 Q Does the second page indicate who was present?

6 A On behalf of the State of Ohio, Gregory A. White,
7 Prosecuting Attorney, by Jonathan A. Rosenbaum, Assistant
8 Prosecuting Attorney.

9 On behalf of the Defendant, Raymond Smith, Thomas J.
10 Elwell, Jr.

11 On behalf of the Defendant, Daniel Smith, Michael
12 J. Duff, Esq. and Smith & Smith by Daniel G. Wightman,
13 Esq.

14 And on behalf of the Defendant, Stanley Jalowiec,
15 Grunda & Grunda by Joseph C. Grunda.

16 Also present, Detective Al Leiby, Detective Duane
17 Whitely, Patty Lane, Probation Officer, Gerald Mielcarek,
18 Investigator, Raymond Smith, Daniel Dean Smith and
19 Stanley Jalowiec.

20 Two people that are not indicated on here were the
21 deputies that were guarding the prisoners that day.
22 That was James Drozdowski and Deputy Bush.

23 Q Now, on the last page of that deposition of the
24 transcript, the court reporter did not get everything
25 that the Defendant, Raymond Smith, said.

1 She got one word of that, is that correct?

2 A Correct.

3 Q What is the one word?

4 A Kill.

5 Q Were you present when that line was spoken?

6 A I was.

7 Q Did you hear what Mr. Smith said?

8 A I certainly did.

9 Q Can you tell the Court and jury what this Defendant
10 said to the witness, Michael Smith?

11 A Mr. Smith stated, "I raised the boy, now I got to
12 kill him."

13 MR. ROSENBAUM: I have no other
14 questions of this witness, your Honor.

15 THE COURT: Mr. Bruner?

16 And before you proceed, I may indicate
17 to the jury at this point that since this
18 deposition was taken, Mr. Raymond Smith has
19 changed counsel and this is why Mr. Bruner
20 was not present at this deposition.

21 MR. BRUNER: Thank you, your
22 Honor.

23

24

25

CROSS-EXAMINATION OF ALAN LEIBY

1

2 BY MR. BRUNER:

3 Q You said, Detective Leiby, that your informant, Ron
4 Lally, came in because he wanted to reform his life?

5 A That is correct.

6 Q In your experience as a Police Officer, do people
7 become informants to reform their lives or do they become
8 informants to save themselves from criminal charges?9 A No, we have had several people come in that have hit
10 rock bottom, thinking that they are going to be able to
11 improve their lifestyle by helping us make arrests.12 Q Did you refer Mr. Lally for drug treatment at that
13 time?

14 A No, sir.

15 Q Did you get him into a program to help him reform
16 his life?

17 A No, sir.

18 Q You used him as an informant in the buy of crack
19 cocaine?

20 A That is correct.

21 Q Now, as a matter of fact, after the first couple of
22 buys, I think you said he filtered back into the life of
23 crack cocaine?

24 A That is correct, after two.

25 Q Based upon the statements of Mr. Lally, he is he one

1 that identified Ray Smith as being the one involved in
2 that buy?

3 A That is correct.

4 Q As a matter of fact, the buy was from -- directly from
5 Dan Smith, wasn't it, most of it?

6 A Dan Smith actually provided the product, that is
7 correct.

8 Q Okay. And Mr. Lally came back to you and identified
9 him.

10 Do you know if he was on crack cocaine at that time
11 or not?

12 A He had been searched prior to the buy.

13 Q That is not what I asked you.

14 Do you know if he had taken crack cocaine before that
15 buy or not?

16 A No.

17 Q He was searched and didn't have it on him and you gave
18 him money?

19 A Right.

20 Q But you didn't know before he came down to your office
21 if he participated in it or not?

22 A One of the policies we have, if the informant appears
23 intoxicated, we will not use them. He could have used it
24 without appearing intoxicated.

25 Q Intoxicated?

1 A Meaning drugs or alcohol. When I say "intoxicated,"
2 I mean under the influence of.

3 Q You don't know whether he did or not?

4 A No, sir, I do not.

5 Q Okay. Now, you don't deny that you assisted Mr.
6 Hopkins in getting out of prison, do you?

7 A No, sir.

8 Q You don't deny that, correct?

9 A No, sir.

10 Q Did you go to Judge Glavas and speak to him about
11 granting him shock probation for cooperation?

12 A As I have with several people, yes.

13 Q So you did do that and Judge Glavas did, in fact,
14 grant him shock probation?

15 A I am sure it was not based solely on me.

16 Q You know that your comments helped as a Police
17 Officer involved in the case?

18 A Yes.

19 Q If you didn't want him to and you asked him not to,
20 he would weigh that, too?

21 A That is correct.

22 Q Now, you spoke to Dan Smith in this, correct?

23 A That is correct.

24 Q You took a statement from him, too?

25 A That is correct.

1 Q And in that statement I believe he told you that
2 with regard to that drug case he thought he was going
3 to get probation, didn't he?

4 A Yes, I believe you are right.

5 Q He told you that?

6 A Yes.

7 Q As a matter of fact, he told you that he thought
8 that the case set for trial, I think it was 1-25-94, was
9 continued, isn't that what he said?

10 He thought the lawyer continued that case?

11 A I believe you are correct.

12 Q And, in fact, he didn't think he had to go to Court
13 on the 20th of January, even though the docket shows that
14 he did?

15 A I believe you are right.

16 Q And it is not unusual for an attorney to go ask for
17 a continuance, that happens all the time around here and
18 in every courthouse, right?

19 A Right.

20 Q So, did you contact his attorney and ask him if he
21 went for a continuance or if he told him he was going to
22 get probation?

23 A I spoke with Mr. Rose and he couldn't remember.

24 Q So his attorney didn't remember whether or not he
25 told him he might get probation?

1 A He could not be specific.

2 Q As a matter of fact, Danny denied ever being at the
3 shooting, correct?

4 A Yes.

5 Q Denied any involvement in it, really, correct?

6 A That is correct.

7 Q Now, let's talk about, for a minute, Michael Smith.

8 A Okay.

9 Q You and Mr. Rosenbaum arranged to take his deposition,
10 correct?

11 A That is correct.

12 Q That was in June of '95?

13 A Yes.

14 Q I am sure you have looked over that transcript?

15 A Right.

16 Q At the end of that transcript Mr. Smith is asked if
17 he would be available for the trial?

18 A That is correct.

19 Q I believe it is by Mr. Elwell who was representing
20 Mr. Smith, is that correct?

21 A Yes.

22 Q And he indicates that he --

23 MR. ROSENBAUM: To coin a phrase
24 from the defense, the transcript will speak for
25 itself as well.

1 I object.

2 THE COURT: Sustained.

3 Q At any rate, in June of '95 you expected him to be
4 at this trial, correct?

5 A I hoped he would be here, yes.

6 Q And I think your testimony was that at the end of
7 the deposition --

8 MR. ROSENBAUM: I am objecting.
9 your Honor.

10 MR. BRUNER: I am not asking
11 about the transcript.

12 Q Your testimony was that Ray Smith had a statement
13 about Michael Smith?

14 A That is correct.

15 Q And what kind of room were you in, by the way?

16 A We were in a jury room.

17 Q And the jury room is here?

18 A It would have been that room. I don't remember which
19 one.

20 Q I believe Ray Smith was there, right?

21 A Correct.

22 Q His lawyer, at the time, Tom Elwell, was there?

23 A Correct.

24 Q And the other Defendants were there, Danny Smith, Stan
25 Jalowiec and their lawyers, Mike Duff was there for Danny

1 Smith and Jalowiec had Mr. Grunda?

2 A Correct.

3 Q And I presume that Ray Smith was not sitting next to
4 you?

5 A No, sir, he was sitting with his attorney, right.

6 Q Were you on one end of the table and Ray on the other
7 end of the table?

8 A That is correct.

9 Q And Ray was sitting next to his lawyer?

10 A That is correct.

11 Q Next to probably the other defense lawyers?

12 A It was a fairly crowded table.

13 Q So the comment that you heard, that you testified to,
14 was from the other end of the table?

15 A Correct.

16 Q The Court Reporter only picked up the word "kill"?

17 The Court Reporter only picked up the word "kill"?

18 A Yes.

19 Q There is no doubt that at the time that comment was
20 made Mr. Elwell was there, right?

21 A Correct.

22 Q And Mr. Duff?

23 A Correct.

24 Q And Mr. Duff's investigator -- I can't pronounce the
25 name -- but he was there?

1 A That is correct.

2 MR. BRUNER: One moment, your
3 Honor.

4 I have nothing further, your Honor.

5 MR. ROSENBAUM: Nothing.

6 THE COURT: Thank you, you may
7 step down, Mr. Leiby.

8 (Witness excused.)

9 * * *

10 THE COURT: Ladies and
11 gentlemen, it is now twelve noon and we will take
12 our afternoon luncheon recess.

13 I will say to you that Ms. Skinner indicated
14 that she has contacted Moss' on your behalf and
15 that they will be holding some tables for you at
16 this point. Recognizing that you do have a
17 distance to go to get there, we will return at
18 1:30, gives you about an hour and a half at this
19 point.

20 Remember the admonitions previously given
21 about not discussing this case amongst yourselves
22 or letting anyone discuss it with you.

23 (Whereupon, a luncheon recess was had.)

24

25

AFTERNOON SESSION, FRIDAY, DECEMBER 1, 1995

(Whereupon, the jury was returned to the courtroom, the State offered all the State's exhibits which were admitted.)

THE COURT: Mr. Rosenbaum, for the record at this point, with the jury present, does the State have any more witnesses to call in its case in chief?

MR. ROSENBAUM: The State rests, your Honor.

THE COURT: Very well.

And at this point, ladies and gentlemen, the housework that needed to be done in anticipation for this, and this is just for the record, has already been done so that we don't have to send you back out again at this point.

All the evidence that has been admitted as far as the State is concerned is admitted and that, again, I will say to you if it does not follow sequence exactly 1, 2, 3, 4, 5, don't look -- if it is 1, 2, 3, 7 and 8, don't look for 4, 5 and 6 because what you have is what you get at this point.

* * *

STATE RESTED.

* * *

THE COURT: Mr. Bruner, you
may proceed.

MR. BRUNER: Yes, your Honor.

I would like to call Mr. Mielcarek at this
time.

DEFENDANT'S CASE

Thereupon, the Defendant, in order to further maintain the issues on his part to be maintained, called GERALD MIELCAREK as a witness and, after being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION OF GERALD MIELCAREK

BY MR. BRUNER:

Q Would you state your full name?

A Gerald Mielcarek.

Q Mr. Mielcarek, what is your occupation?

A Private investigator.

Q Where are your offices located?

A 2834 Broadway in Lorain.

Q And how long have you been a private investigator?

A Approximately seven years.

Q Did you have the opportunity to sit in on the deposition of Michael Smith?

A Yes, sir, I did.

Q And who were you there for at that time?

A I was requested to be there by Attorney Duff who represents a co-Defendant.

Q Did you have an opportunity to hear the testimony of Mr. Smith?

A Yes, sir.

1 Q Where did that take place?

2 A In the jury room down in the basement of this building.

3 Q And where were you seated in relation to Raymond Smith?

4 A Across the table from him, probably about three feet
5 away.

6 Q And where was Detective Leiby seated?

7 A Across the table and further to the left on the other
8 end of the table.

9 Q He was a little farther away than you?

10 A Yes, sir.

11 Q At the end of that deposition, did you happen to hear
12 a comment by Ray Smith?

13 A Yes, sir.

14 Q And was there something said by Mr. Rosenbaum before
15 that comment was made?

16 A Yes, sir.

17 Q Do you recall what that was?

18 MR. ROSENBAUM: Objection.

19 THE COURT: Overruled.

20 A I believe Mr. Rosenbaum was responding to a question
21 by Attorney Elwell if myself, the investigator, would have
22 an opportunity to locate Michael Smith at a later time and
23 speak to him in regards to the case.

24 Q Were you given that opportunity?

25 A No.

1 Q Why not?

2 MR. ROSENBAUM: Objection.

3 Q If you know?

4 THE COURT: Counsel approach.

5 (Whereupon, the following proceedings
6 occurred at the bench out of the hearing of the jury.)

7 MR. BRUNER: I want to ask him
8 what was said about him being in danger.

9 MR. ROSENBAUM: Doesn't the
10 deposition speak for itself?

11 MR. BRUNER: No.

12 MR. ROSENBAUM: Yes, it does.

13 MR. BRUNER: Because there is
14 nothing in there about the comment that Ray made.

15 THE COURT: All it says is
16 "kill."

17 MR. ROSENBAUM: What he is talking
18 about is in the deposition.

19 MR. BRUNER: He saw some things
20 based upon that?

21 He saw the reaction of the people.

22 THE COURT: Of who?

23 MR. BRUNER: Of Ray Smith and how
24 it was said and what was said.

25 THE COURT: Proceed.

1 (Whereupon, the following proceedings
2 occurred back in the hearing of the jury.)

3 Q Did anybody make a comment about danger to Michael
4 Smith?

5 A Yes, sir, Attorney Rosenbaum stated that --

6 MR. ROSENBAUM: Objection.

7 It is the same question. The deposition
8 speaks for itself.

9 THE COURT: If that appears --
10 was that a matter of record on the deposition?

11 If that is the case, then, yes, the
12 deposition does speak for itself.

13 Q Okay, based upon that comment, did Ray Smith say
14 anything?

15 A Yes.

16 MR. ROSENBAUM: Objection.

17 He cannot speak for Ray Smith.

18 MR. BRUNER: Your Honor, there
19 is one word that the Court Reporter got.

20 MR. ROSENBAUM: He cannot say what
21 Raymond Smith spoke.

22 Is he clairvoyant?

23 THE COURT: He said, "Did he
24 say anything?"

25 MR. ROSENBAUM: No, he didn't. He

1 asked him what.

2 (Whereupon, the question was re-read by the
3 Reporter.)

4 MR. ROSENBAUM: He can't say what
5 he spoke, only why he spoke, so I object to that
6 question and ask that the answer be stricken.

7 He has asked to speculate about a comment.

8 THE COURT: All right.

9 The objection is sustained.

10 BY MR. BRUNER:

11 Q At the end of the deposition did Ray Smith say
12 something?

13 A Yes, he did.

14 Q Okay. And did you see his expression at that time?

15 A Yes, sir, I was looking directly at him.

16 Q And what did he say?

17 A The way I recall, he stated pretty much the same as
18 what Detective Leiby stated. He stated, "That is my son,
19 I raised him," and then he shrugged his head and shrugged
20 his shoulders, "and now I am going to kill him?"

21 And I took it as a question.

22 MR. ROSENBAUM: Objection.

23 Q How did he appear?

24 Did he appear threatening to Michael Smith?

25 A I didn't take it that way, no.

1 MR. ROSENBAUM: Objection.

2 Q So you said he shrugged his shoulders?

3 A Yes.

4 Q And that was it?

5 Was there anything else that he said?

6 A Not from my point, no.

7 MR. BRUNER: I have nothing
8 further.

9

10

11

12 CROSS-EXAMINATION OF GERALD MIELCAREK

13 BY MR. ROSENBAUM:

14 Q You are employed by who?

15 A Private investigator for Midtown Security.

16 Q In this case you were employed by whom?

17 A Attorney Duff.

18 Q On behalf of what Defendant?

19 A Danny Smith.

20 Q And your job is to do what?

21 A To investigate witnesses.

22 Q To gather evidence that would clear Mr. Smith or
23 assist in the defense?

24 A Yes, sir.

25 MR. ROSENBAUM: I have no other

1 questions.

2

3

4

5

REDIRECT EXAMINATION OF GERALD MIELCAREK

6

BY MR. BRUNER:

7

Q Were you hired for Raymond Smith?

8

A No, sir.

9

MR. BRUNER:

I have nothing

10

further.

11

12

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RECROSS-EXAMINATION OF GERALD MIELCAREK

15

BY MR. ROSENBAUM:

16

Q But you have cooperated and spoke with Mr. Bruner and
17 advised and met with him how many times during this trial?

18

A I met Mr. Bruner how many times?

19

Q Did you understand my question?

20

A No, sir.

21

Q How many times has he come to the back of the courtroom
22 and spoke with you and you advised each other on things that
23 pertained to the case?

24

A Two or three times, sir.

25

Q That is all?

1 A Yes.

2 Q Possibly more?

3 A I don't believe so.

4 Q Has he conferred with your employer, Mr. Duff?

5 A I can't speak for Mr. Duff.

6 Q You weren't present when they were talking?

7 A Yes.

8 Q Isn't the defense trying to assist each other in these
9 matters in the defense of these three Defendants and working
10 together?

11 MR. BRUNER: Objection.

12 THE COURT: Okay at this point.

13 Whether they are working together or not is
14 not important.

15 MR. BRUNER: I am objecting to
16 that.

17 THE COURT: Sustained.

18 MR. ROSENBAUM: I have no other
19 questions.

20 MR. BRUNER: I have nothing
21 further.

22 THE COURT: You may step down,
23 sir.

24 (Witness excused.)

25 * * *

1 MR. BRUNER: Your Honor, at this
2 time the defense rests.

3 * * *

4 DEFENDANT RESTED.

5 * * *

6 THE COURT: Is there any
7 rebuttal?

8 MR. ROSENBAUM: I need a couple
9 minutes.

10 THE COURT: Fine.

11 (Whereupon, a short recess was had.)

12 (Whereupon, the jury was returned to the
13 courtroom and the following proceedings occurred.)
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REBUTTAL TESTIMONY

Thereupon, the State of Ohio, in order to further maintain the issues on its part to be maintained, called JAMES DROZDOWSKI as a witness and, after being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION OF JAMES DROZDOWSKI

BY MR. ROSENBAUM:

Q Sir, will you state your name and spell the last name for the record, please?

A Deputy James Drozdowski, D-R-O-Z-D-O-W-S-K-I.

Q How long have you served as a Deputy Sheriff?

A Since June of this year.

Q And prior to that were you in law enforcement?

A Yes, I was the Police Captain of Grafton for seven and a half years.

Q As one of your duties as a Deputy Sheriff, did you transport any of the Defendants to a deposition of Michael Smith that occurred in the basement of this building?

A Yes, I did.

Q And were you present at the end of that deposition?

A Yes, I was.

Q And did you hear Ray Smith make a comment to Michael Smith?

A Yes.

1 Q Did he threaten him?

2 A Yes.

3 MR. BRUNER: Objection.

4 THE COURT: Overruled.

5 Q Did you have occasion to observe the Defendant and his
6 demeanor when he made those statements?

7 A Yes, I did.

8 Q Was he serious?

9 A I felt so, yes.

10 MR. ROSENBAUM: Nothing further.

11 THE COURT: Mr. Bruner?

12

13

14

15 CROSS-EXAMINATION OF JAMES DROZDOWSKI

16 BY MR. BRUNER:

17 Q Deputy, you work in law enforcement, right?

18 A Yes, sir.

19 Q You are there making sure that Raymond Smith, as your
20 prisoner, doesn't do anything, correct?

21 A Yes, sir.

22 Q Isn't that your job?

23 A Yes, sir.

24 Q How far from Ray Smith were you?

25 A Approximately two to three feet away.

- 1 Q So, did you see Mr. Mielcarek there?
2 Did you see him, do you know who he is?
3 A No, I don't.
4 Q Would you please stand up?
5 Did you see him there?
6 A I believe so. He was sitting over to the side.
7 Q And when that comment was made, did Mr. Smith shrug
8 his shoulders, do you remember that?
9 A I don't recall.
10 Q Did he say something like, "I raised my son"?
11 A Yes, he did.
12 Q And did he shrug his shoulders after that?
13 A I remember him turning, yes. As far as shrugging
14 his shoulders, I don't remember.
15 Q Did he turn towards Mr. Mielcarek or to you?
16 A He turned towards the other person sitting next to
17 him.
18 Q Who was Mr. Elwell?
19 A No, there was a Mr. Jalowiec sitting next to them.
20 They were three together. We had them together.
21 Q You didn't take the threat enough that you threw him
22 in jail and put him in chains?
23 A He was already in jail and handcuffs.
24 Q You didn't grab him and throw him against the wall?
25 A No, sir. He did not get out of the chair, no, but

1 when he turned and made the comment, I was surprised.

2 MR. BRUNER: I have nothing
3 further.

4 MR. ROSENBAUM: I have no other
5 questions.

6 THE COURT: Thank you, you
7 may step down.

8 (Witness excused.)

9 * * *

10 MR. ROSENBAUM: I have no other
11 witnesses.

12 THE COURT: Very well.

13 * * *

14 (End of Testimony.)

15 * * *

C E R T I F I C A T E

The State of Ohio,)
County of Lorain.) SS:

I, Thomas B. Masterson, Official Court Reporter of
the Court of Common Pleas, Lorain County, Ohio, do hereby
certify that this is a correct transcript of the testimony
in this case.

I further certify that this is a complete
transcript of said testimony.

IN TESTIMONY WHEREOF, I have hereunto subscribed
my name this 23rd day of January, 1996.



Thomas B. Masterson
Notary Public, State of Ohio
Lorain County Courthouse
Elyria, Ohio 44035
My Commission Expires 10-10-96