

COURT OF APPEALS
FILED
LORAIN COUNTY

Oct 9 3 24 PM '96

CLERK OF COMMON PLEAS
DOCHAS ATHERGARY

9th APPELLATE DISTRICT

STATE OF OHIO,)
COUNTY OF LORAIN.)

IN THE COMMON PLEAS COURT

STATE OF OHIO,)

Plaintiff,)

VS.)

DANIEL D. SMITH,)

Defendant.)

CASE NO. 95-CR-046839

APPEALS NO. 96-CA-006463

ENTERED

* * *

Volume 1. From the following proceedings held before
the Honorable Kosma J. Glavas, taken before me, Cathlene M.
Acierto, Registered Professional Reporter and Notary
Public, in and for the State of Ohio, at the Lorain County
Court of Common Pleas, 308 Second Street, Elyria, Ohio,
Thursday, April 18, 1996, beginning at 8:43 a.m.

* * *

APPEARANCES:

ON BEHALF OF THE STATE OF OHIO:

Gregory A. White, Prosecuting Attorney, by
Jonathan E. Rosenbaum, Assistant
Prosecuting Attorney

ON BEHALF OF THE DEFENDANT:

Michael J. Duff, Esq.
Daniel G. Wightman, Esq.

* * *

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 534

I N D E X

THURSDAY, APRIL 18, 1996 at 8:43 a.m.
(Volume 1, page 1)

FRIDAY, APRIL 19, 1996 at 8:43 a.m.
(Volume 1, page 30)

MONDAY, APRIL 22, 1996 at 9:12 a.m.
(Volume 2, page 175)

TUESDAY, APRIL 23, 1996 at 8:45 a.m.
(Volume 3, page 372)

WEDNESDAY, APRIL 24, 1996 at 9:20 a.m.
(Volume 3, page 471)

THURSDAY, APRIL 25, 1996 at 8:35 a.m.
(Volume 4, page 655)

FRIDAY, APRIL 26, 1996 at 2:15 p.m.
(Volume 4, page 788)

STATE'S WITNESSES DIRECT CROSS REDIRECT RECROSS VOL.

MICHAEL BEAMAN 6 20

DR. HEATHER NIELSON-RAAF
(Not Transcribed)

LINDA LUKE
(Not Transcribed)

SCOTT ASHLEY 31 40 64/71 67/72 1

JOHN HOMOKI 74 82 108/121 115/122 1

SANDRA WILLIAMS 124 128 148 1

LYNNE ALTPATER 150 154/176 188 193 1/2

BRIAN HOWINGTON 196 209 224 2

CARL HARTMAN 226 239 296/307 303/308 2

TERRY HOPKINS 308 322 359/368 365 2

CATHLENE M. ACIERTO, RPR - (216) 965-4498

2 STATE'S WITNESSES DIRECT CROSS REDIRECT RECROSS VOL.

4	JOANN CORRINE FIKE	417	425	452	452	3

6	ALAN LEIBY	504	534	595	598	3

7 | * * *

8 DEFENDANT'S DIRECT CROSS REDIRECTRE CROSS VOL.

10 RAYMOND SMITH (Took the Fifth - Page 604) 3

11	STANLEY JALOWEIC	611	613	617	3

12	

12	MIKE PROVENZA	618	624	628	3

13	DANIEL SMITH	631/656	693	749	3/4

14

* * *

EXHIBITS	

			ADMITTED
17	STATE'S EXHIBITS	MARKED	IDENTIFIED NOT ADMITTED

18	1-A-1-Q - Photos at scene	P/M	13	12

19 2 - Coroner's Verdict P/M Dr. Raaf 603

20

21	2-A - 2-CC - Photos P/M from Autopsy (exclude D & V)	Dr. Raaf	603

22	3 - Trace Evidence Report	515	603

23

24	3-A - 3-D - Photos of P/M	420	603

25	Lebaron

CATHLENE M. ACIERTO, RPR - (216) 965-4498

	STATE'S EXHIBITS	MARKED	ADMITTED IDENTIFIED	NOT ADMITTED
1				
2	3-E - Hair & Blood	P/M	Dr. Raaf	603
3	Sample			
4	3-F - Envelope of	P/M	Dr. Raaf	603
5	Cigarettes, Red & Green			
6	Bic lighter, Tavist			
7	Cough Syrup			
8	3-G - Steak Knife	P/M	Dr. Raaf	603
9	3-H - Box of Victim's	P/M	Dr. Raaf	603
10	Clothing			
11	3-I - Trunk Lining	P/M	Dr. Raaf	603
12	3-J - Bullet	P/M	Dr. Raaf	603
13	4 - R. Smith File	P/M	39	603
14	5 - D. Smith File	P/M	39	603
15	6 - Arrest Rpt of	P/M	37	603
16	R. Smith			
17	7 - Arrest Rpt of	P/M	37	603
18	D. Smith			
19	8 - Daily Rpt from	86	86	603
20	Elyria Police			
21	8-A - Incident Report	86	86	603
22	9 - Informant Agreement	P/M	34	603
23	10 - Buy tape of 6/7/93	P/M	36	603
24	11-B - Release Form	P/M	238	603
25	C - Check for \$50	P/M	239	603
	D - F - Bribe tapes	P/M	302	603
	G - Transcript	P/M	522	603
	12 - Photo of dog	P/M	425	603
	12-A & B - Micro tapes	P/M	523	603

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Index Cont'd

STATE'S EXHIBITS	MARKED	ADMITTED	
		IDENTIFIED	NOT ADMITTED

13-A - Transcript from Tape of 1-7-95	P/M	532	603
B - Miranda Warning for D. Smith	P/M	532	603
C - Tape of 1-7-95	P/M	532	603

* * *

DEFENDANT'S	MARKED	ADMITTED	
		IDENTIFIED	NOT ADMITTED

A - File of Carl Hartman	P/M	292	756
B - Transcript of Tape 4-28-94	542	Orie Camillo	756
C - Transcript of Tape 1-11-95	542	Orie Camillo	756
D - Transcript of Tape 4-28-94	542	Orie Camillo	756
E - Transcript of Tape 1-7-95	542	Orie Camillo	756
F - Transcript of Tape 7-5-94	542	Orie Camillo	756
G - Transcript of Tape 10-23-95	542	Orie Camillo	756

* * *

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 538

1

2

3

THE COURT:

Good afternoon,

4

ladies and gentlemen. I trust you all had a good lunch.

5

6

7

8

Ladies and gentlemen, as you recall when we adjourned for lunch, we had just finished the opening statements of both counsel? At this point we are now ready to proceed with the presentation of evidence.

9

Mr. Rosenbaum, your first witness, please.

10

MICHAEL BEAMAN,

11

a Witness herein, called on behalf of the State of Ohio,

12

after being first duly sworn, testified and said as

13

follows:

14

THE COURT:

Good afternoon,

15

Officer.

16

THE WITNESS:

Good afternoon.

17

THE COURT:

You pretty much know

18

the routine, I think. Speak directly into the mike. Thank

19

you, sir.

20

DIRECT EXAMINATION OF MICHAEL BEAMAN

21

BY MR. ROSENBAUM:

22

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

23

A. Detective Michael Beaman, B, as in boy, E A M A N.

24

Q. Are you employed, sir?

25

A. Yes, I am.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

1 Q. Will you tell the Court and jury what you do for a
2 living?

3 A. I am presently assigned to the Cleveland Police
4 Department, Homicide Unit.

5 Q. And how long have you served the City of Cleveland as
6 a police officer?

7 A. Sixteen-and-a-half years.

8 Q. How long have you been a detective?

9 A. About eight years.

10 Q. And how long have you served on the Homicide Unit,
11 sir?

12 A. About three-and-a-half years.

13 Q. As a result of your current assignment on the
14 homicide squad, were you summoned to a cemetery in the city
15 of Cleveland on January 19th of 1994?

16 A. Yes, I was.

17 Q. Will you tell the Court and jury what the name of
18 that cemetery was and briefly where it is in your city?

19 A. It's known as the Woodland Cemetery, and it's
20 located, it sits between the street known as Woodland and
21 Quincy Avenue.

22 Q. Is that on the East Side, West Side?

23 A. It's on the East Side of Cleveland.

24 Q. Can you tell the Court and jury what time you were
25 summoned there?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 540

1 A. At 0955 hours in the morning.

2 Q. And will you tell the Court and jury your duties,
3 your duty as a result of that call?

4 A. We were summoned to the scene in connection with, I
5 think, the male victims body in the cemetery.

6 Q. What were you to do?

7 A. Conduct an investigation as to how the body got
8 there.

9 Q. Briefly, what does that entail?

10 A. It entails causing photographs to be taken;
11 confiscating possible evidence on the scene; identifying
12 the victim, if possible at that time; notifying families;
13 and if it's deemed homicide or appears to be a homicide,
14 try to figure out who did it.

15 Q. Did you go there alone, sir?

16 A. No, I did not.

17 Q. Can you tell the Court and jury who you went with?

18 A. I was in company with my partner, Detective Moore,
19 and we also took along a scientific investigation unit; we
20 often call our SIU unit.

21 Q. What is their function?

22 A. To assist in gathering any evidence on the scene and
23 conduct examination into that evidence.

24 Q. Were there any other police personnel present at your
25 arrival?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 541

1 A. Yes. There were supervisors from the 5th district,
2 along with other zone cars.

3 Q. And can you tell the Court and jury briefly what you
4 did when you first arrived there, sir?

5 A. When we first arrived, we viewed the victim's body
6 lying in the cemetery in the second driveway after entering
7 the cemetery. We then caused photos to be taken of the
8 body, things found around the body. Directed certain
9 evidence that was found in the cemetery to be confiscated.

10 Q. Will you describe for the Court and jury the weather
11 conditions of January 19th of 1994?

12 A. It was extremely cold. It was quoted as one of the
13 coldest days in Cleveland history.

14 Q. Do you have any idea what the temperature or the
15 windchill factor temperature was?

16 A. Yes. It was minus 46 degrees windchill factor.

17 Q. Did it cause any unusual troubles as a result of that
18 temperature?

19 A. Yes. We had problems getting our pens to write,
20 pencils wouldn't even write, caused joints in our hands to
21 lock up, which led to us getting in and out of the cars
22 warming our hands so our fingers could move in order to
23 write.

24 Q. Did you ask the SUI unit to photograph the scene,
25 sir?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 542

1 A. Yes.

2 Q. And did they take photographs?

3 A. Yes, they did.

4 Q. I would like to hand you what has been marked as
5 State's Exhibits 1-A through 1-P and ask you to look at
6 them, please.

7 THE COURT: Before you do,
8 Officer --

9 MR. WIGHTMAN: Can we approach, Your
10 Honor?

11 THE COURT: Have you seen these?

12 MR. WIGHTMAN: I'd like to.

13 THE COURT: Is that what you
14 wanted?

15 MR. WIGHTMAN: Yes.

16 (Defense attorneys reviewing photographs.)

17 THE COURT: Proceed, Officer.
18 And as you identify each picture, indicate by letter
19 exhibit number.

20 THE WITNESS: Okay.

21 THE COURT: Thank you.

22 BY MR. ROSENBAUM:

23 Q. First of all, sir, do you recognize that group of
24 photographs?

25 A. Yes, I do.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 543

1 Q. And how was it that you recognize them?

2 A. These are the photos taken under my direction at the
3 crime scene.

4 Q. Do those photographs truly and accurately depict the
5 scenes they represent?

6 A. Yes, they do.

7 MR. ROSENBAUM: Your Honor, at this
8 time I would move their admission and then ask permission
9 for the detective to show them and explain them to the
10 jury.

11 MR. WIGHTMAN: Objection, Your Honor.

12 THE COURT: I think at this point
13 he ought to indicate on each one of them and then we will
14 worry about the admission at this point. Go ahead. Go
15 through the whole pack and identify them.

16 MR. WIGHTMAN: Your Honor, we ask
17 they not be explained to the jury until they're admitted.

18 THE COURT: He's asking for the
19 admission.

20 MR. WIGHTMAN: We are objecting to
21 the admission of the several of the photographs.

22 THE COURT: And we will have the
23 opportunity. Right now we are introducing them as exhibits
24 and then we will worry about the admission.

25 MR. ROSENBAUM: I've asked him what

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 544

1 they were, and I've move for their admission.

2 THE COURT: Okay. At this point
3 you're raising objections?

4 MR. WIGHTMAN: Yes, Your Honor, we
5 object.

6 THE COURT: Ladies and gentlemen,
7 there's something we need to discuss outside of your
8 hearing. We will return you to your jury room at this
9 point and bring you back as quickly as we can.

10 (The jury was excused. Thereafter,
11 discussion was had concerning the
12 admission of State's Exhibits 1-A through
13 1-Q, and the exhibits were admitted.)

14 * * *

15 (The following took place within the
16 presence and hearing of the jury.)

17 THE COURT: Ladies and gentlemen,
18 the houseworking that I indicated had to be done is now
19 done, and we are now ready to proceed. Mr. Rosenbaum.

20 BY MR. ROSENBAUM:

21 Q. Sir, I neglected to identify State's Exhibit 1-Q. Is
22 that also present in that stack of photographs?

23 A. Yes, it is.

24 Q. And does that also truly and accurately depict the
25 scenes it represents?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 545

1 A. Yes.

2 MR. ROSENBAUM: Your Honor, at this
3 time, again, I'll request the Court that the pictures be
4 admitted and the detective be permitted to hold them up to
5 the jury and explain the significance of the photographs.

6 MR. WIGHTMAN: Note my objection on
7 the record.

8 THE COURT: Yes. Yes, you may do
9 so, Officer.

10 A. Okay. 1-A, State's Exhibit 1-A is a picture of the
11 victim's body lying in the driveway and you can see my
12 partner and myself measuring off the width of the driveway.

13 1-B, State's Exhibit 1-B is a picture of a snow mound
14 where items of clothing belonging to the victim were found.

15 Exhibit 1-C, again, a picture of the snow with the
16 spent shell casing, splatters of blood on the ground.

17 Q. Is there a shell in that casing?

18 A. Yes, I said a shell casing.

19 Q. Oh, I'm sorry.

20 A. A shell casing. Exhibit 1-D, again, a picture of the
21 snow, the ground. It has a spring, believed at that time,
22 to be a firing spring of some type, and some prints from a
23 tire, maybe even a boot.

24 State's Exhibit 1-E is a close view of the snow with
25 a large blood stain, small hairs in it, and there's a small

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 546

1 mechanism and an unspent bullet filed in the snow.

2 State's Exhibit 1-F, this is a close-up picture of
3 the victim lying face down, large amount of blood around
4 his head area, and it shows an injury to his left
5 shoulder.

6 Exhibit 1-G, this is a close-up photo of the victim's
7 face as he was being turned over, and it shows a large
8 wound to the left side of his neck and to his face.

9 Exhibit 1-H, this is a photo of the victim's chest.
10 Again, a large amount of blood, but at the time we were
11 specifically concentrating on a tattoo that was found on
12 his Chest.

13 Exhibit 1-I, it's a distance shot of the victim's
14 body lying in the roadway of the cemetery.

15 1-J, other shot of the body lying a little bit in the
16 roadway, a little bit closer view.

17 Q. Can you tell the Court and jury what direction the
18 camera is facing in those last two photographs?

19 A. Okay. This photo, 1-I, little rough, but it appears
20 to be the camera is facing east. But again, my bearing's a
21 little bit off on this. But looking at certain items
22 around the body -- no, I change that. It appears to be
23 west, facing west. This particular photo, 1-J, this I
24 would have to say is, I would think is west, facing west,
25 I'm sorry, facing the east, facing the east.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 547

1 1-K is a closer view of the victim's body. You can
2 see tire marks in the road, blood in the roadway, and
3 again, the victim's body laying in the roadway.

4 Q. Does that show tire tracks?

5 A. Yes, it does. Exhibit 1-L, again, a closer view of
6 the body laying in the roadway, blood stains, the tire
7 tracks, and again, you can see a closer view of the victim
8 before he was turned over.

9 Q. Did the tire tracks go right through the blood
10 stains?

11 A. Yes. It appears as though the tire tracks are right
12 through the blood stains. 1-M, again, another photograph
13 of the victim's body lying in the road, showing the tire
14 tracks from other angle from the opposite angle.

15 Exhibit 1-N shows a picture of the snow, the ground,
16 tire tracks, and a pack of Winston cigarettes that were
17 found on the scene.

18 1-O is a picture of a red lighter and a quarter that
19 was found around the victim's body. This picture also
20 shows some boot prints that were in the snow.

21 1-P, again, picture of the ground. It shows a very
22 distinct boot print in the snow and a green lighter that
23 was also found on the scene.

24 1-Q is a picture of the snow. And again, in each one
25 of the pictures you can see how much snow was in on the

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 548

1 ground, and this one shows tire tracks coming down one of
2 the side of the embankments of snow.

3 (Counsel showing exhibits to defense attorneys.)

4 BY MR. ROSENBAUM:

5 Q. Sir, I would like to place before you manila envelope
6 that's been marked as State's Exhibit 3-E; would you look
7 at it, please?

8 MR. WIGHTMAN: I'm sorry, I didn't
9 hear the exhibit.

10 THE COURT: 3-E.

11 Q. Do you recognize that first envelope that's been
12 marked as State's Exhibit 3-E?

13 A. Yes, I do.

14 Q. Would you tell the Court and jury what it contains or
15 what it contained at one time and how it pertains to this
16 investigation?

17 A. This is a manila container containing blood samples
18 and hair found at the scene. It's a Cleveland police
19 evidence envelope that has writing on the front explaining,
20 explaining what it is. The writing is pretty, well, I
21 would just say messed up. It shows you how cold it was.
22 You had to keep making your pen marks, you know, to keep
23 your pen writing. And inside we have a blood sample and
24 hair that was taken at the scene.

25 Q. Was hair also taken?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 549

1 A. Yes.

2 Q. What was the purpose of seizing those things, sir?

3 A. To have examined at the coroner's office.

4 Q. And was that in fact done?

5 A. Yes, it was.

6 Q. And what happened to the items after the coroner's
7 office performed their analysis on it?

8 A. The blood samples and things were, and clothing that
9 was found on the scene was left at the coroner's office,
10 and the certain items, other items that were found at the
11 scene went back to our SIU unit for testing.

12 Q. That middle envelope, sir, that would be marked as
13 3-F, can you identify it and its contents, please?

14 A. Yes. This would be the cigarettes found on the
15 scene, cough syrup that was found on the scene. Each one
16 of these items are shown in the photographs that I just
17 showed you. Red lighter. Here's the black metal piece
18 that was in one of the photographs. These were all items
19 that were shown in the photograph.

20 Q. They were seized from the scene?

21 A. Yes, they were.

22 Q. Can you identify the contents in the manila envelope
23 marked State's Exhibit 3-G, please?

24 A. This is a wooden handled stake knife that was found
25 within the fold of the victim's jacket.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 550

1 Q. So the jacket was depicted in the picture laying on
2 the snow bank?

3 A. Yes.

4 Q. And wooden handled stake knife was folded inside the
5 jacket?

6 A. Yes.

7 MR. WIGHTMAN: Objection on the
8 leading question Your Honor.

9 THE COURT: Sustained.

10 Q. Was it inside the jacket pocket?

11 MR. WIGHTMAN: Objection.

12 THE COURT: Where did you find
13 it?

14 THE WITNESS: Folded up, the jacket
15 was folded.

16 THE COURT: And where did you
17 find the knife?

18 THE WITNESS: Laying inside the
19 jacket.

20 THE COURT: Thank you.

21 BY MR. ROSENBAUM:

22 Q. And does that mean inside the pocket or not?

23 A. No.

24 Q. Sir, I've placed before you a box that contains some
25 clothing which has been marked for identification purposes

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 551

1 as State's Exhibit 3-H. Can you identify that clothing,
2 sir?

3 A. Yes, I can.

4 Q. And how is that, sir?

5 A. These were the items, garment items were found laying
6 on the snow bank, and these are the pants, undershorts,
7 socks and shoes worn by the victim.

8 Q. Are all the items today that you've identified in
9 substantially the same condition, except for any analysis
10 performed on them, as when you compounded them on January
11 19th of 1994?

12 A. Yes, they are.

13 Q. Are they either in the custody of the Cuyahoga County
14 coroner's office, your department, or in the courthouse
15 after the various trials started since their impoundment?

16 A. This is true..

17 Q. Did you know who the victim of this crime was, were
18 you able to identify the body?

19 A. It took us approximately two to three weeks to
20 identify the victim.

21 Q. And how did that happen, sir?

22 A. A family member contacted the Cleveland Police
23 Department.

24 Q. And who did you identify the body as belonging to?

25 A. The body was positively identified as that of Ronald

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 552

1 Lally.

2 Q. By whom?

3 A. Family members.

4 MR. ROSENBAUM: I have no other
5 questions, Your Honor.

6 THE COURT: Wightman or Mr. Duff.

7 MR. WIGHTMAN: Thank you, Your
8 Honor.

9 CROSS-EXAMINATION OF MICHAEL BEAMAN

10 BY MR. WIGHTMAN:

11 Q. Good afternoon, Detective.

12 A. Good afternoon.

13 Q. Based on your experience and what you observed at the
14 scene, does it appear that Ronald Lally was killed at the
15 cemetery?

16 A. Yes.

17 Q. So your testimony is the homicide occurred in
18 Cuyahoga County, correct, sir?

19 A. It appears as though most of whatever was done to
20 Mr. Lally happened at that cemetery, yes.

21 Q. Because that's where you found the blood, right?

22 A. The blood.

23 Q. The murder weapon?

24 A. Well, we found the knife, yes with his blood on it.
25 We found all the items that you've seen before you.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 553

- 1 Q. And that's where the body was located?
- 2 A. And that's where the body was located, sir.
- 3 Q. Let me ask you a few questions about the evidence you
- 4 found. You located a Bic type lighter, correct?
- 5 A. Yes.
- 6 Q. Did you attempt to take fingerprints off that
- 7 lighter?
- 8 A. Yes.
- 9 Q. Did you recover any fingerprints off that lighter?
- 10 A. Negative prints.
- 11 Q. Does that mean you found no print or couldn't
- 12 identify any print, whose they were?
- 13 A. There were no prints of any substantial use found on
- 14 any of the items taken.
- 15 Q. No prints of any substantial use?
- 16 A. No prints I would say.
- 17 Q. Including the steak knife?
- 18 A. Including the steak knife, sir.
- 19 Q. That was checked for prints?
- 20 A. Everything was checked, yes.
- 21 Q. The cigarette package?
- 22 A. Yes.
- 23 Q. I believe there was cough syrup; is that correct?
- 24 A. Yes, sir.
- 25 Q. Did you ever identify who owned those items, sir?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 554

1 A. No, I didn't.

2 Q. You made several references to photographs that
3 included impressions of a boot or a shoe; is that right?

4 A. Yes.

5 Q. Did you attempt to identify that particular boot or
6 shoe?

7 A. No, sir.

8 Q. How about the size?

9 A. No, sir.

10 Q. Did you measure it for size, sir?

11 A. I don't recall measuring it for size, no.

12 Q. All right. You don't know what type of footwear that
13 was then?

14 A. No.

15 Q. The tire marks, did you make any attempt to identify
16 the type of tire caused the various tire marks you've shown
17 through the various photographs?

18 A. Negative.

19 Q. None at all?

20 A. No.

21 Q. To your knowledge, is it possible to identify a
22 specific tire from an impression of a tire mark?

23 A. To my knowledge, no. But I can't say it's never been
24 done.

25 Q. Needless to say, no attempt was made to do that in

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 555

1 this case?

2 A. No, sir.

3 Q. Now, you state that the cemetery is located between
4 Woodland and Quincy in Cleveland?

5 A. Yes.

6 Q. That's on the East Side of Cleveland?

7 A. Yes.

8 Q. How far from Downtown Cleveland is that,
9 approximately?

10 A. Approximately 10, 15 miles.

11 Q. Ten or fifteen miles?

12 A. Maybe a little more.

13 Q. Do you know --

14 A. Not much more.

15 Q. Do you know what block it would correspond?

16 A. The cemetery runs between East 65th and East 59th.

17 Q. And those blocks --

18 A. And Quincy and Woodland.

19 Q. And those blocks run from downtown, correct?

20 A. They're east of downtown, yes.

21 Q. And is this north or south of Euclid Avenue?

22 A. That would be south of Euclid Avenue.

23 Q. Approximately how far, sir?

24 A. Euclid Avenue, I would say, would be about 15 miles.

25 Q. Fifteen miles?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 556

1 A. Give or take a little.

2 Q. Would you think perhaps you're a little bit incorrect
3 on that distance, sir?

4 A. I could be. Now, I could tell you how many streets
5 if you give me a moment, how many miles.

6 Q. Do you know how many blocks it would be from Euclid?

7 A. Okay. For our five blocks.

8 Q. All right. So that's far short than 15 miles,
9 correct?

10 A. That's according if you're running them or not.

11 Q. Yes. Do you know how far the cemetery is from
12 Elyria, Ohio?

13 A. No, I don't.

14 Q. Any idea? No idea?

15 A. No idea.

16 Q. Is there a bus station located in Cleveland?

17 A. Yes, there is.

18 Q. Do you know where it's located at?

19 A. It's located on approximately 18th and Chester.

20 Q. And that's on the East Side?

21 A. That's on the East Side.

22 Q. East 18th, sir?

23 A. Yes.

24 Q. What kind of bus station is that; do you know?

25 A. That would be a Greyhound bus station.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 557

1 Q. You mentioend the victim's tattoo and you took a
2 photograph of that, correct?

3 A. Yes, sir.

4 Q. What does that tattoo appear to be?

5 A. Well, we later learned it to be, it was learned to be
6 a knight on a horse taken from a caricature of Dungeons and
7 Dragons.

8 Q. How big a tattoo is that?

9 A. Pretty nice size tattoo.

10 Q. Can you give us the dimension of it?

11 A. Maybe about four-and-a-half inches, the horse from
12 its nose to its tail.

13 Q. Did you attempt to identify the victim through that
14 tattoo, sir?

15 A. Yes.

16 Q. Went to local tattoo parlors?

17 A. Yes, we did.

18 Q. You were not successful in doing that, correct?

19 A. No.

20 Q. Does the Woodland Cemetery have gates or is it open
21 at all times?

22 A. It has gates, but the gates entering through the
23 particular driveway from Quincy are left open for police
24 patrols.

25 Q. They're open all night?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 558

1 A. Yes.

2 Q. What time did you receive the call that the body was
3 found, sir?

4 A. At 9:55 in the morning.

5 Q. That would have been on January 19th, correct?

6 A. That's correct.

7 Q. Do you know when the body was in fact discovered?

8 A. I would say not long before then.

9 Q. Shortly before then?

10 A. Shortly before then.

11 Q. You were not the first one at the scene then,
12 correct?

13 A. No.

14 Q. Was the body discovered, to your knowledge, exactly
15 where those photographs depict it to be?

16 A. To my knowledge, that's where it was discovered.

17 Q. Right in the middle of the driveway?

18 A. Yes.

19 Q. Could you tell us, please, the exact date that the
20 victim was identified?

21 A. I don't recall the exact date. I do know it was
22 weeks later, two to three weeks later.

23 Q. And is that a result of a family member --

24 A. Yes.

25 Q. -- making inquiry about a missing person at that

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 559

1 time?

2 A. Right. We were checking missing persons. We had it
3 in the newspapers about the body being found, and
4 eventually I learned that a family member had contacted the
5 coroner's office and thought it might be a relative.

6 MR. WIGHTMAN: If I could have just
7 one moment, Your Honor.

8 Officer Beaman, did your work on this case basically
9 end after the evidence was recovered and after the body was
10 identified?

11 A. No.

12 Q. Have you continued to be involved in it, sir?

13 A. Yes.

14 Q. All right. When did you first talk to Detective
15 Leiby?

16 A. After the body was identified.

17 Q. Do you know when, sir?

18 A. A year or two later. I don't know the exact dates.

19 Q. Okay. So as I understand it then, the body's
20 identified several weeks after it's found?

21 A. Yes.

22 Q. Identified as Ron Lally, correct?

23 A. Right.

24 Q. Did Detective Leiby get a hold of you, sir?

25 A. No, I contacted him.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 560

1 Q. And can you tell us why you contacted Detective
2 Leiby?

3 A. Well, after the body was identified, came to Elyria,
4 I talked to, started interviewing people that knew him,
5 starting with his wife, or girlfriend. And after learning
6 information from her, then I went to the police department
7 and that's when I met Detective Leiby.

8 Q. Okay. So did she give you the name of Detective
9 Leiby to speak with?

10 A. I don't recall.

11 Q. You don't recall. And Detective Leiby was the first
12 Elyria police officer you spoke with about this case, sir?

13 A. I believe so. I'm not sure.

14 Q. You're not sure.

15 MR. WIGHTMAN: Thank you, sir,
16 nothing further.

17 THE COURT: Mr. Rosenbaum.

18 MR. ROSENBAUM: I have no other
19 questions, Your Honor.

20 THE COURT: Thank you, Officer,
21 you may step down. Next witness, please.

22 (Witness excused.)

23 (Thereupon, Dr. Heather Nielson-Raaf
24 testified.)

25 THE COURT: Counsel, please

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 561

1 approach.

2 (Conference at the bench between the Court
3 and counsel, as follows:)

4 THE COURT: I think no matter
5 what, we are going to have to break. I don't think we can
6 finish.

7 MR. ROSENBAUM: Can I run out and see
8 if that's all right with her?

9 MR. DUFF: What's that?

10 THE COURT: I've got to leave.
11 He's got to bring this witness back, but he's going to
12 check and see.

13 (The following took place within the
14 presence and hearing of the jury.)

15 MR. ROSENBAUM: That would be fine,
16 Your Honor.

17 THE COURT: Okay, thank you.
18 Ladies and gentlemen, it's ten minutes to 4:00. Normally
19 we would go beyond this time. I have a doctor's
20 appointment today at 4:15, so I have to go there, and I
21 dare not miss it because if I do I may not be here
22 tomorrow. I don't know. Not really. Not really. But I
23 have to go for this and therefore, we all benefit from
24 this. We will all take an early break at this point.

25 Ladies and gentlemen, we will adjourn for the

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 562

1 evening. The admonitions that I've indicated to you before
2 hold more so than ever now. Please do not discuss this
3 matter amongst yourselves or with anyone else, including
4 members of your family. Please do not read anything about
5 this case, please do not have anybody read to you, please
6 do not have anybody talk to you about this matter. And
7 with these admonitions, we will take our evening recess,
8 our evening adjournment at this point and reconvene
9 tomorrow morning at 8:15 and hopefully start right at 8:30
10 if we can. Thank you.

11 (The Court adjourned for the day.)

12 * * *

13 (Friday, April 19, 1996 at 8:43 a.m.)

14 (After having discussion concerning
15 conflicts with two of the jurors, the
16 jurors were dismissed and replaced by the
17 alternate jurors.)

18 THE COURT: Good morning, ladies
19 and gentlemen.

20 Ladies and gentlemen, as you look around you, you see
21 that you folks have a new look and are, quite frankly,
22 I will say this to you, that the fact that there are
23 now only 12 of you was something that was necessary
24 and had to be done, and please do not think any more
25 about it, or attach any kind of significance to it at

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 563

1 this point. That means that we are now down to 12.
2 Now, everybody make doubly sure that you don't get
3 sick and that you are here. I'm kidding, of course.
4 Obviously, we cannot control this. We're running with
5 just exactly what we need because any one, any one
6 missing at this point we won't be able to proceed
7 until that person is able to come back. So under
8 those circumstances -- and that's all that I'm going
9 to say about this at this point time.

10 As you recall, ladies and gentlemen, when we
11 adjourned yesterday, we had just completed the
12 testimony of the doctor, and we are now ready to
13 proceed with the next witness. Mr. Rosenbaum, next
14 witness, please.

15 (Thereupon, Linda Luke testified and was
16 excused.)

17 * * *

18 THE COURT: Next witness,
19 please, Mr. Rosenbaum.

20 SCOTT ASHLEY
21 a Witness herein, called on behalf of the State of Ohio,
22 after being first duly sworn by the Court, testified
23 and said as follows:

24 THE COURT: Good morning.

25 DIRECT EXAMINATION OF SCOTT ASHLEY

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 564

1 BY MR. ROSENBAUM:

2 Q. Sir, you will state your name, please?

3 A. Scott Ashley.

4 Q. Will you spell your first and last name for the
5 reporter, please?

6 A. S-C-O-T-T A-S-H-L-E-Y.

7 Q. Are you employed, sir?

8 A. Yes.

9 Q. Will you tell Court and Jury what you do for a
10 living?

11 A. I work for Elyria Police and Narcotics Unit.

12 Q. How long have you served the City of Elyria as a
13 police officer?

14 A. About six years.

15 Q. How long have you been assigned to the Narcotics
16 Unit?

17 A. About four years.

18 Q. Are you familiar with an individual by the,
19 individual by the name of Ron Lally?

20 A. Yes, I am.

21 Q. How is it that you know him, sir?

22 A. He worked for our drug unit as a confidential
23 informant.

24 Q. What exactly is a confidential informant, sir?

25 A. A confidential informant is a person that we use for

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 565

1 means to carry out our drug operations as far as what.
2 we need done. I can't buy the drugs. A person can;
3 we use them.

4 Q. So what exactly do they do, briefly?

5 A. They would buy drugs from other people that we cannot
6 buy from ourselves.

7 Q. And do you take any precautions or do you make any
8 effort to gather evidence?

9 A. Yes, we do.

10 Q. And how do you do that?

11 A. We would search the individual we are using, we would
12 wire them with a transmitter so we could hear what was
13 going on. We would give him marked police buy money
14 to make the purchase, and we would try to watch them
15 go in and out of the place where we are sending him.

16 Q. I'd like to hand you a photograph that has been
17 marked as State's Exhibit 2-B and ask you to look at
18 it, sir. Do you recognize the person who is depicted
19 in that photograph?

20 A. Yes, I do.

21 Q. And who is that, sir?

22 A. It's Ron Lally.

23 Q. That's the person that you used as a confidential
24 informant?

25 A. Yes.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 566

1 Q. You guys want to see this stuff? I would like to
2 hand you what has been marked as State's Exhibit 9,
3 sir, and ask you to look at it. Do you recognize that
4 document?

5 A. Yes, I do.

6 Q. What is it?

7 A. It's a Confidential Informant Agreement with the
8 Elyria Police Department.

9 Q. What exactly is the informant agreement?

10 A. It's an agreement that we provide for the individual
11 that's working for us, some of the outlining things of
12 how we want them to work, the rulings of how we do
13 business.

14 Q. Whose confidential informant agreement is that, sir?

15 A. Ronald J. Lally.

16 Q. Can you tell the Court and jury what day the document
17 was executed?

18 A. Be June 7th of 1993.

19 Q. Is your signature or initials on that document?

20 A. Yes, it is.

21 Q. Is Ron Lally's?

22 A. Yes, it is.

23 Q. Is Detective Leiby's?

24 A. Yes.

25 Q. At that time was Detective Lieby assigned to the

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 567

1 Narcotics Unit?

2 A. Yes, he was..

3 Q. Was he in charge of this, using Ron Lally as an
4 informant, or were you?

5 A. He was in charge of him.

6 Q. And did you do anything to utilize Mr. Lally's offer
7 to be a confidential informant?

8 A. Yes, we did.

9 Q. And on what date did you do that, sir?

10 A. Be on June 7th of 1993.

11 Q. Same day he came in and signed up?

12 A. Correct.

13 Q. What did you utilize him to do?

14 A. To purchase drugs from Danny Smith.

15 Q. And did you in fact take him anywhere with a
16 listening device?

17 A. Yes.

18 Q. Where?

19 A. On West River by the mall.

20 Q. And whose apartment was he going to?

21 A. Danny Smith's.

22 Q. And did Mr. Lally succeed in purchasing drugs?

23 A. Yes, he did.

24 Q. Can you tell the Court and jury, briefly, who he
25 purchased drugs from, how much, and at what value?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 568

1 A. I remember him going to there, to Danny Smith's
2 apartment. He made contact with Raymond Smith, who
3 was Danny's father. Danny was sleeping at the time.
4 Danny woke up, and I don't recall exactly what the,
5 how much the purchase was, I just know it was crack
6 cocaine and that he delivered the crack cocaine back
7 to us.

8 Q. And were you able to take a tape-recording of that
9 transaction because of the electronic listening
10 device?

11 A. Yes, I was.

12 Q. I would like you to look at State's Exhibit 10, which
13 is before you, ask you if you recognize that, sir?

14 A. Yes, I do.

15 Q. Can you tell the Court and jury what that is?

16 A. This would be the buy tape of the morning of June
17 7th, 1993, Danny Smith.

18 Q. Is that a true and accurate copy of the drug
19 transaction that Ronald Lally engaged in with Danny
20 Smith and father Raymond Smith?

21 A. Yes, it is.

22 Q. Is State's Exhibit 9 the original or true and
23 accurate copy of the true informant agreement?

24 A. Yes, it is.

25 Q. Is it the original or copy?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 569

1 A. It's the original.

2 Q. Is that a business record kept in the ordinary course
3 of the business in the Elyria Police Department?

4 A. Yes.

5 Q. I would like to place before you two documents which
6 have been marked as State's Exhibits 6 and 7 and ask
7 you to look at them, please. Do you recognize those
8 documents, sir?

9 A. Yes, I do.

10 Q. Can you tell the Court and jury what they are?

11 A. State's Exhibit 6 is an arrest report of Raymond A.
12 Smith on, looks like, August 19 of 1993. And State's
13 Exhibit 7 is an arrest report of Danny Smith on August
14 12th, 1993.

15 THE COURT: Could you please give
16 me the date of the first one, 6, please?

17 THE WITNESS: Be August 19th.

18 THE COURT: '93?

19 THE WITNESS: 1993.

20 THE COURT: Thank you.

21 Q. And the second document is?

22 THE COURT: August 12th?

23 A. August 12th, 1993.

24 Q. That would be the arrest of whom?

25 A. Danny Smith.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 570

1 Q. Now, what were Raymond and Danny Smith arrested for
2 on those dates?

3 A. Aggravated trafficking in drugs.

4 Q. Is that pertaining to the purchase that Ron Lally
5 made as a confidential informant?

6 A. Yes, it was.

7 Q. Are those true and accurate copies of records kept in
8 the ordinary course of business of the Elyria Police
9 Department?

10 A. Yes, they are.

11 Q. When someone is arrested on charges like that, at
12 what court do they first go to, sir?

13 A. To Elyria Muni Court.

14 Q. And then does the matter stay at that court?

15 A. No, it doesn't.

16 Q. Where does it go?

17 A. To goes over to Common Pleas Grand Jury.

18 Q. This court?

19 A. Yes.

20 Q. I would like to -- do you want to see this these?

21 MR. DUFF: No.

22 Q. I'd like to hand you what's been marked as State's
23 Exhibits 4 and 5 and ask you if you can identify this?

24 A. Yes, I can.

25 Q. What is State's Exhibit 4, sir?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 571

1 A. It would be the indictment, Common Pleas Court, for
2 Raymond Augusta Smith.

3 Q. And in fact, is that the whole file for the drug
4 charge against him?

5 A. Yes, it is.

6 Q. Is that the file for the drug charge that arose from
7 the buy that Ron Lally made as a confidential
8 informant on June 7th of 1993?

9 A. Yes, it is.

10 Q. And can you identify State's Exhibit 5, please?

11 A. It's the indictment for Danny D. Smith.

12 Q. For what, sir?

13 A. For the trafficking in drugs.

14 Q. For?

15 A. Common Pleas Court.

16 Q. What occasion? Is it the buy that Ron Lally made for
17 you as a confidential informant on January, on June
18 7th, 1993?

19 A. Yes.

20 Q. Do you know --

21 THE COURT: And that, too, also
22 is the file and not only the indictment; is that
23 correct?

24 THE WITNESS: Correct.

25 Q. Now, do you know what happened to those cases?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 572

1 A. They were dismissed.

2 Q. Why was that, sir?

3 A. Because we did not have the confidential informant.

4 Q. Were they set for trial?

5 A. Yes, they were.

6 Q. But the State was unable to proceed at trial?

7 A. Correct.

8 MR. ROSENBAUM: I have no other
9 questions, Your Honor.

10 THE COURT: Mr. Duff.

11 MR. DUFF: Yes, Your Honor.

12 THE COURT: Hold it a

13 second,

14 Mr. Duff.

15 MR. DUFF: Is he a witness,
16 Mr. Medders.

17 MR. ROSENBAUM: Medders, no.

18 THE COURT: Proceed, sir.

19 CROSS-EXAMINATION OF SCOTT ASHLEY

20 BY MR. DUFF:

21 Q. How long have you been a detective, sir?

22 A. About four years.

23 Q. How long have you been a police officer?

24 A. Six years.

25 Q. Okay. And you've been in the Detective Bureau

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files
Box 4 of 5

Page 573

1 working in narcotics how long?

2 A. About four years.

3 Q. Four years. And you've handled a lot of drug cases?

4 A. Yes.

5 Q. Do you know Detective Lieby, right?

6 A. Yes.

7 Q. He was your boss?

8 A. He was my partner at the time.

9 Q. Partner. He has quite a bit of experience on the
10 narcotics and detective business?

11 A. Yes.

12 Q. All right. And you -- I need the chalkboard.

13 THE COURT: It's got a grease
14 pencil. It's there.

15 Q. You're quite familiar with criminal law are you not,
16 sir?

17 A. I know what's in the book.

18 Q. You know what the penalties are for certain offenses?

19 A. I have to read some of them.

20 Q. But some you know off the top of your head?

21 A. Some of them.

22 Q. How about if I sell less than the bulk amount of
23 cocaine to someone, such as what occurred in this
24 case, okay, do you know the penalty for that, a felony
25 three?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 574

1 A. I don't recall the penalty.

2 Q. Would you agree the penalty's about two years.

3 MR. ROSENBAUM: Objection. If he
4 doesn't know, he doesn't know.

5 MR. DUFF: I'm asking would he
6 agree.

7 THE COURT: Would you agree?

8 MR. ROSENBAUM: Your Honor, that
9 isn't --

10 A. I don't know.

11 Q. Does that sound about right, two years?

12 A. It may be.

13 Q. Is there -- tell the jury what actual time is
14 mandatory time.

15 THE COURT: If he knows.

16 Q. Do you know what actual mandatory time is on the, a
17 drug case?

18 A. In different parts of it, yes.

19 Q. What's it mean, tell the jury?

20 A. For different drug cases they set a mandatory for
21 amount sold, a mandatory jail sentence.

22 Q. So that someone's not eligible for probation and to
23 go to prison; is that right?

24 A. Correct.

25 Q. If they have a mandatory, if they're charged with a

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 575

1 mandatory offense; is that correct?

2 A. Correct.

3 Q. These, this charge against Danny Smith did not
4 conclude any mandatory sentence, did it?

5 A. No.

6 Q. All right. So he would have been eligible for
7 probation then, correct?

8 A. That's what the judge saw fit to give.

9 Q. Yeah. But as far as you know, as your experience,
10 Officer?

11 A. Yes.

12 Q. Okay. Now, there was an agreement you signed with
13 Mr. Lally; is that correct?

14 A. Yes.

15 Q. Before we get into that, Raymond Smith was arrested
16 for his activity on June 7th, 1993 at Danny Smith's
17 apartment; is that correct?

18 A. Can you repeat the question?

19 Q. Raymond Smith was arrested and charged with his
20 activity for selling drugs on June 7th, 1993 to Ronald
21 Lally; is that correct?

22 A. Correct.

23 Q. So was he charged with the same offense as Danny?

24 A. Correct.

25 Q. Danny was arrested first on August 12th; is that

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 576

1 correct?

2 A. Correct.

3 Q. And then Ray was arrested on August 19th, is that
4 correct, for the same offense?

5 A. Correct.

6 Q. So the allegation was by you and Detective Leiby that
7 Raymond and Danny had sold Ron Lally drugs; is that
8 right?

9 A. Correct.

10 Q. I'm sorry?

11 A. Correct.

12 Q. Now, you've testified previously in the case against
13 Raymond Smith, is that correct, Stanley Jaloweic?

14 A. Yes.

15 Q. Stanley Jaloweic?

16 A. Yes.

17 Q. All right. And you testified you were not aware
18 previously, you were not aware that Ron Lally was --
19 well, let's go about it this way. Tell the jury how
20 normally an informant comes to work for someone like
21 you, you or Detective Leiby. Tell us how that works
22 in your own words. Do you know what I mean by that?

23 A. Yes.

24 Q. Tell us.

25 A. They either have -- they have a couple different

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 577

1 reasons for working. Some can be pending charges that
2 they can work off as far as if they can buy from
3 somebody, we use that in consideration for their
4 charges; also, for money, we do pay people money for
5 buying drugs for us; and some just do it for other
6 personal reasons.

7 Q. All right. And you testified previously you didn't
8 know if Ron Lally was working off a drug case; is that
9 correct?

10 A. Yes.

11 Q. You did not know that?

12 A. I did not remember. I don't remember.

13 Q. You don't remember?

14 A. Correct.

15 Q. All right. So you don't, you can't tell this jury
16 what happened to bring Ron Lally -- were you there
17 when he walked in?

18 A. I believe we were called in the morning.

19 Q. Really early in the morning, about seven o'clock,
20 right?

21 A. Yes.

22 Q. Were you, did you ask him what brought him to the
23 Narcotics Bureau?

24 A. I'm sure we did.

25 Q. And you can't recall what his problem was?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 578

1 A. I don't remember.

2 Q. All right. So your testimony is you cannot recall if
3 he was working off a drug case or not?

4 A. That's true.

5 Q. That's your answer?

6 A. Yes.

7 Q. State's Exhibit 9, the agreement he signed, is that
8 the agreement he signed?

9 A. Yes.

10 Q. All right. May I have it. That agreement indicates,
11 does it not, sir -- can I step by the witness, Your
12 Honor?

13 THE COURT: Certainly.

14 Q. Now, I'll read it to you. That agreement says that
15 "I understand that no drug officer may make explicit
16 promise or predictions regarding the likely disposition of
17 any criminal proceedings that are pending against me."
18 That agreement indicates that he had criminal charges
19 against him at that time, does it not?

20 MR. ROSENBAUM: Objection. Your
21 Honor, it does not say that.

22 Q. Did I just read that right, Detective? Did I read
23 that correctly?

24 MR. ROSENBAUM: We will stipulate it
25 says that.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 579

1 MR. DUFF: Can I cross-examine?
2 MR. ROSENBAUM: State the inference
3 you're trying to make.

4 MR. DUFF: Mr. Rosenbaum, can I
5 do my cross-examination?

6 THE COURT: Gentlemen, please
7 address the Court. Proceed with what your question is
8 at the present time.

9 BY MR. DUFF:

10 Q. Why don't you read to the jury that whole last
11 paragraph there and agreeing to work. Why don't you
12 just read that to them?

13 A. "Agreement: Elyria Drug Unit. I understand that no
14 drug officer may make explicit promises or predictions
15 regarding the likely disposition of any criminal
16 proceedings that are pending against me, but that the drug
17 officer will make their best efforts to make the prosecutor
18 or authorities aware at which times as matters can be
19 discussed."

20 Q. All right. So that agreement indicates that he had
21 criminal charges pending against him; is that right?

22 MR. ROSENBAUM: Objection.

23 THE COURT: Sustained. It does
24 not necessarily mean -- he may answer. Overruled. He
25 may answer if he knows.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

1 Q. Does it indicate that, sir?

2 A. No.

3 Q. It doesn't indicate that. When you say that "the
4 likely disposition of any criminal proceedings that
5 are pending against me," that does not indicate to you
6 that he had pending criminal charges when he signed
7 that agreement?

8 A. No.

9 Q. That doesn't indicate that?

10 A. No.

11 Q. That language means something else to you?

12 A. It's a standard form.

13 Q. No. I want you to tell me what that language means.

14 MR. ROSENBAUM: Objection, Your
15 Honor.

16 THE COURT: He may give you
17 whatever he thinks that languages means at this point.

18 Q. What does that language, the following language
19 regarding the likely disposition of any criminal
20 proceedings that are pending against me," what does
21 that mean in your mind?

22 A. If all you do is look at the form --

23 Q. Just answer the question, sir.

24 A. Yes, it says that.

25 Q. It says that?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 581

1 A. Yes.

2 Q. Well, that's the contract you had, right, with
3 Mr. Lally?

4 A. Yes.

5 Q. Raymond Smith is on that drug tape, is he not, that
6 drug buy tape?

7 A. Yes.

8 Q. His voice is on there; is that right?

9 A. Yes.

10 Q. Now, do you know if Ron Lally had any other name,
11 nicknames?

12 A. I believe he did.

13 Q. Do you know what they were? Was he known as Big Ron?

14 A. Yes. On the back of the form it had him as Big Ron
15 and Pony Tail..

16 Q. Pony Tail and Big Ron. He is quite a big guy, was he
17 not?

18 A. He was a tall guy. I don't remember how big he was.

19 Q. How tall are you, Officer?

20 A. Six foot.

21 Q. He's a lot taller than you, wasn't he?

22 A. Taller than me.

23 Q. 6'4", would you go with that?

24 A. Probably.

25 Q. A big man?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 582

1 A. He was tall. I don't know as far as statute. I
2 don't remember how much he weighed or whatever.

3 Q. Did he indicate to you that he had a crack cocaine
4 problem?

5 A. I don't recall.

6 Q. Okay. So you don't know that one way or the other?

7 A. I don't remember if he did or didn't.

8 Q. Okay. You had no more dealings with this person
9 after, Mr. Lally, you had no more dealings with him
10 after June 7th, 1993, did you?

11 A. I didn't.

12 Q. Now, Danny was sleeping when this individual went to
13 Danny's apartment?

14 A. As best I can recall, yes.

15 Q. And Ray did the talking?

16 A. At first, yes.

17 Q. Now, Detective, you've handled -- how many drug cases
18 have you been involved in since you've been a
19 detective?

20 A. Probably a few hundred.

21 Q. A few hundred. And you've got a tape, you got a tape
22 in this case, did you not?

23 A. Correct.

24 Q. And you conducted surveillance on him while he went
25 in the apartment?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 583

1 A. Yes.

2 Q. Before he went in the apartment, he was patted down
3 by you guys and by you and Officer Leiby?

4 A. I don't recall exactly who patted him down.

5 Q. But you would have patted him down and searched him?

6 A. Correct.

7 Q. Make sure he himself had no crack cocaine on him?

8 A. Correct.

9 Q. You would have given him marked buy money?

10 A. Correct.

11 Q. Did you recover any marked buy money in this case?

12 A. No.

13 Q. All right. So the purpose of this is to make sure
14 the individual has no contraband on him when he goes
15 in to make the buy, correct?

16 A. Correct.

17 Q. And then you conduct surveillance, you watch him go
18 in, you watch him go out, right?

19 A. We try as best we can.

20 Q. You did this in this case, right?

21 A. Yes.

22 Q. And as soon as he comes, you search him to see what
23 he has, right?

24 A. Yes.

25 Q. He came out with crack cocaine, right?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

1 A. Yes.

2 Q. You would agree in your experience of handling over
3 two hundred cases, if you have a tape and you have
4 surveillance and you have someone going into a
5 residence clean, without any contraband, and coming
6 out with crack cocaine, have you ever had any cases
7 that resulted in convictions based upon that, without
8 using an informant to testify?

9 A. Yes, we have.

10 Q. All right. So it's still possible to convict
11 somebody without an informant where you have the tape
12 and where you have constant surveillance, as in this
13 case, and then you have a positive result for crack
14 cocaine coming out of a residence; is that right?

15 A. Yes.

16 Q. You would agree the quantity of cocaine involved in
17 this case that was purchased from Dan and Ray was a
18 small amount, would you not?

19 A. Yes.

20 Q. Well, tell us, what was the amount, what would it
21 look like?

22 A. I don't even remember how much he bought.

23 Q. How many pieces? I mean, tell the jury what crack
24 comes in. Comes in rocks, does it not?

25 A. Yes.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 585

- 1 Q. What's a rock?
- 2 A. One rock would be about the size of an aspirin, about
- 3 \$20.
- 4 Q. One rock size of an aspirin. You can't recall how
- 5 many rocks were purchased in this case?
- 6 A. No.
- 7 Q. How many rocks -- well, we've used some terms I'd
- 8 like to explain to the jury. Less than bulk amount,
- 9 tell the jury what that means. That's what was
- 10 involved in this case, correct?
- 11 A. Yes.
- 12 Q. Tell the jury what that term means.
- 13 A. Be less than 25 unit doses of crack cocaine.
- 14 Q. Less than 25 rocks?
- 15 A. Yes.
- 16 Q. And what happens when, if I were to sell more than 25
- 17 pieces of crack, what happens then? What's the
- 18 significance of that legally?
- 19 A. You're looking at mandatory time.
- 20 Q. Mandatory time, where you can't get probation, right?
- 21 A. Correct.
- 22 Q. And that was not the case in this case?
- 23 A. No, it wasn't.
- 24 Q. You don't know how many rocks were purchased from
- 25 Danny?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 586

1 A. I don't remember.

2 Q. Or from Ray?

3 A. (The witness shakes head.)

4 Q. You would agree -- do you have that agreement?
5 Detective, you would agree Detective Leiby has a lot
6 of experience in this business, right?

7 A. Yes.

8 Q. And he's got a lot of influence around the
9 courthouse; is that right?

10 A. I don't know.

11 Q. Let me ask you. You've handled two hundred drug
12 case, right?

13 A. Yes.

14 Q. Have you ever done and met with a judge in private
15 without a prosecutor or a defense attorney there to
16 talk about some defendant's case that's pending before
17 that judge, have you ever done that?

18 A. I haven't, no.

19 Q. Do you understand what I'm saying?

20 A. I know what you're saying.

21 Q. So you have never privately gone to meet with a
22 judge, such as Judge Glavas, Judge McGough, Judge
23 Zaleski or to Judge Janas, the four common pleas
24 judges?

25 A. Yes.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 587

1 Q. You know all four of these people?

2 A. Yes.

3 Q. You know them to say "Hi" to them if you see Judge
4 Glavas out in the hallway, right?

5 A. Yes.

6 Q. You have never, in your two hundred cases, gone and
7 met privately with a judge without a prosecutor or
8 defense attorney and talked about a defendant's
9 pending criminal case before that judge, have you?

10 A. No.

11 Q. Why haven't you done that?

12 A. I haven't done it. I had no need to do it.

13 Q. Never done that. That's not something a detective
14 would usually do without prosecutors, is it?

15 A. I don't know.

16 Q. Well, in two hundred cases, you never had the chance
17 to do it without the prosecutor?

18 A. I haven't the need to talk to the judge.

19 Q. Well, you've talked to judges with the prosecutor
20 present, have you not, privately?

21 A. Yes.

22 Q. And you've talked to judges with the prosecutor and
23 defense attorneys there privately, have you notA?

24 A. Yes.

25 Q. So that's usually how it occurs, either you have a

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 588

1 prosecutor there with the judge or you have a defense.
2 attorney there; is that correct?

3 A. Yes.

4 Q. Now, the people that this informant was going to ---
5 it's got a place on this list called "Informant's
6 Associates." What's that mean?

7 A. Be other people that he could probably deal with.

8 Q. All right. People, that is, he was going to set up
9 or inform on, or whatever you want to call it, right?

10 A. Yes.

11 Q. And the names there, and I'll read them. Would you
12 like to read them? Do you recall them?

13 A. I don't recall them.

14 Q. All right. The names indicated there, what's the
15 number 1864 in the case? Is that his number?

16 A. No, that would be South Park Apartments.

17 Q. That's where he resideed?

18 A. Yes.

19 Q. The names of the people who he was going to inform on
20 on indicated there are Poor Mike; is that correct?

21 A. Yes.

22 Q. Who is Poor Mike?

23 MR. ROSENBAUM: Objection.

24 THE COURT: If you know.

25 MR. ROSENBAUM: Objection. There's

CATHLENE M. ACIERTO, RPR - (216) 965-4498

1 no relevance to exactly who that person is, and it
2 could compromise confidential matters.

3 MR. DUFF: Object.

4 THE COURT: Wait a minute. Wait
5 a minute. Mr. Duff, you don't object.

6 MR. DUFF: I object to his
7 objection.

8 THE COURT: You don't object to
9 an objection at this point.

10 MR. DUFF: You know what I'm
11 saying.

12 THE COURT: Can you explain the
13 relevance of that question at this point?

14 MR. DUFF: I'll move on. I
15 don't want to make a big deal of it.

16 THE COURT: The only point is I
17 don't want to compromise an individual.

18 BY MR. DUFF:

19 Q. We can agree that Poor Mike isn't Michael Smith, is
20 it?

21 A. Not that I remember, no.

22 Q. Do you know who Michael Smith is?

23 A. Yes.

24 Q. Danny's brother?

25 A. Yes.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 590

- 1 Q. It's not him, is it?
- 2 A. I don't believe so.
- 3 Q. It's not Danny Smith, is it?
- 4 A. No.
- 5 Q. It's not Raymond Smith, is it?
- 6 A. No.
- 7 Q. It's not Stan Jaloweic, is it?
- 8 A. No.
- 9 Q. Let's move on. Shawn. Again, it's not Michael?
- 10 A. No.
- 11 Q. It's not any of the individuals I just named, is it?
- 12 A. No, it's not any of the names you mentioned.
- 13 Q. Some Girl. We know it's not any people I just named,
- 14 right, Some Girl that he was going to do?
- 15 A. Correct.
- 16 Q. That's some female he was going to buy drugs from; is
- 17 that right?
- 18 A. Yes.
- 19 Q. You didn't have a name for her?
- 20 A. No, we didn't.
- 21 Q. And a young guy named Bo. That's not one of the
- 22 people I just identified, is it?
- 23 A. No, it's not.
- 24 Q. And another guy named Eman; is that correct?
- 25 A. Yes.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 591

1 Q. That's no one I just identified, right?

2 A. Right.

3 Q. Those were the targets of Mr. Lally's pursuits; is
4 that correct?

5 A. Yes.

6 Q. And as far as you know, he never got any of those
7 targets; is that right?

8 A. As far as I know.

9 Q. So these targets aren't, aren't done by Mr. Lally,
10 right?

11 A. As far as I know they weren't.

12 Q. Well, you know of only this buy from Mr. Lally,
13 right, from Mr. Smith, the two Smiths?

14 A. Yes.

15 Q. So how is it on the morning of June 7th -- you were
16 sleeping, is that right, you got a call to come into
17 the drug unit?

18 A. Yes.

19 Q. What shift had you worked?

20 A. I don't remember.

21 Q. Well, if you were sleeping that morning, is it fair
22 to assume you had worked the night before?

23 A. I'm sure I worked the day and night before.

24 Q. All right. And you were awoken in the middle of your
25 sleep in the morning to come down to the drug unit?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 592

1 A. Correct.

2 Q. Is that correct?

3 A. Go to the police station was where we went.

4 Q. Was that where you went, or did you go to other place
5 with the drug unit, Elyria Police had a drug unit?

6 A. We went, as far as I remember, we went to the police
7 station first.

8 Q. But there's a separate head quarters where you meet
9 with informants, are there not? There used to be.

10 A. There's -- we have a drug unit that's separate from
11 the police station.

12 Q. All right. And you used to have a black door that
13 was kind of strange looking; is that correct?

14 A. Yes.

15 Q. You're no longer there; is that right?

16 A. That's right.

17 Q. But you were at this time at the place with the black
18 door?

19 A. Yes.

20 Q. Did you go there with Mr. Lally?

21 A. Yes.

22 Q. That was, that was located in close proximity -- that
23 was located next door to the Court Street Cafe; is
24 that correct?

25 A. Yes.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

1 Q. Just took Mr. Lally there?

2 A. Yes.

3 Q. All right. And you went over these names with him,
4 right?

5 A. Yes.

6 Q. You and Detective Leiby?

7 A. Yes.

8 Q. Anybody else there?

9 A. Detective Eichenlaub.

10 Q. Eichenlaub. Detective Leiby, was he awoken, buzzed,
11 paged, told to get up and come down there?

12 A. I'm sure he was.

13 Q. All right. And how is it then that he would, this
14 Mr. Lally was sent then to Danny and Ray's house early
15 that morning?

16 A. He said he could purchase crack cocaine from them.

17 Q. Well, he didn't say that. He listed the names of the
18 people he could do, did he not? Did you suggest to
19 him, "Let's go get Danny and Ray"?

20 A. No.

21 Q. Well, we would agree that Danny and Ray are not some
22 of the targets he said he could do listed there on the
23 document; is that right?

24 MR. ROSENBAUM: Objection. That's
25 two different questions.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 594

1 Q. I'll simplify. You would agree that Danny and Ray's
2 name are not on the target sheet, right?

3 A. Yes.

4 Q. And those are names of people he told you he could
5 do, right?

6 A. Yes.

7 Q. Did you suggest or did Detective Leiby suggest that
8 he go and get drugs from Danny and Ray if you know?

9 A. You can't do that.

10 Q. I didn't ask you can. I'm asking if you did.

11 A. No, we didn't.

12 Q. So can you explain why Danny and Ray's name is not on
13 the target sheet if you didn't suggest it to him?

14 A. I can't explain why it's not on there.

15 Q. Because those are the people -- it's important that
16 he tells you who he can do, right?

17 A. Right.

18 Q. Because it's improper for the police, in your
19 opinion --

20 MR. ROSENBAUM: Objection.

21 Q. Well, no, you just said you cannot give names to
22 people to go do; is that right?

23 A. Right.

24 Q. Why can't you do that, tell the jury?

25 A. Because if he doesn't deal with them, he can't buy

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 595

1 them from them. I can suggest anyone if he can't
2 purchase stuff from them; he won't be able to.

3 Q. No, no.

4 A. That's exactly the reason.

5 Q. You don't, your drug unit doesn't have a policy that
6 it's improper for police to suggest names of people to
7 go target and get this person for drugs? Do you have
8 that policy, yes or no?

9 A. Yes.

10 Q. That policy exists that you don't want to give
11 people's names like if someone comes in and says they
12 can buy drugs, you have a policy where you don't say,
13 "Why don't up go buy drugs from Mike Duff," right, you
14 don't do do that kind of coaching stuff, do you?

15 A. No.

16 Q. And you wouldn't do that, would you?

17 A. No.

18 Q. You want them to buy drugs from their targets that
19 they can do, that they know, right?

20 A. From people they deal with.

21 Q. Right. They know they can buy from?

22 A. Correct.

23 Q. That didn't occur in this case, did it, Detective,
24 according to that sheet?

25 MR. ROSENBAUM: Objection. That's

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 596

1 two different questions.

2 MR. DUFF: I'll simplify it.

3 THE COURT: Okay.

4 Q. He did not buy drugs from those people he targeted on
5 that sheet; is that correct?

6 A. He did not buy from the people that --

7 Q. Yes or no, Officer?

8 A. Yes.

9 MR. DUFF: Nothing else.

10 REDIRECT EXAMINATION OF SCOTT ASHLEY

11 BY MR. ROSENBAUM:

12 Q. Did he buy drugs from the people he orally told you
13 were his major suppliers?

14 A. Yes.

15 Q. And who was that?

16 A. Danny Smith.

17 Q. Now, how many -- do you know how many lawyers go to
18 see judges without police officers and prosecutors?

19 MR. DUFF: Object. What kind
20 of lawyer?

21 Q. One just like this guy.

22 THE COURT: Just plain lawyer.

23 The question is lawyers. Period. You can recross.

24 Q. Do you know how many lawyers that represent criminals
25 go to see --

CATHLENE M. ACIERTO, RPR - (216) 965-4498

1 MR. DUFF: Object.

2 Q. -- judges without policemen or prosecutors?

3 MR. DUFF: Object to criminals.

4 MR. WIGHTMAN: Defendants.

5 MR. DUFF: Defendants, Your
6 Honor.

7 THE COURT: All right. Use the
8 word.

9 MR. ROSENBAUM: No, pardon me.

10 THE COURT: Criminal, that's this
11 question. That's his question. Overruled.

12 Q. Do you know?

13 A. No.

14 Q. Do you have any knowledge how many lawyers go to see
15 judges without policemen or prosecutors regarding
16 defendants?

17 A. I don't know.

18 Q. Do you know how many other police officers go see
19 judges without prosecutors or defense lawyers?

20 A. I don't know.

21 Q. Now, do all CI's sign that form when they come in,
22 potential CI's?

23 A. They usually do, yes.

24 Q. Is it policy to do that?

25 A. Yes.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

1 Q. Whether they have cases pending or not?

2 A. Correct.

3 Q. Is it fair to infer that because that says any case,
4 there be no promise on any case, that a case exists?

5 A. No.

6 Q. Now, Mr. Duff asked you if you ever got a conviction
7 with a tape and without an informant. Have you ever
8 been to trial without an informant where the police
9 didn't see the buy?

10 A. No.

11 Q. Can you get a conviction without an informant if you
12 have a confession?

13 MR. DUFF: Object.

14 THE COURT: I don't know that he
15 can. Can you ask for a conviction, I think.

16 Q. Have you obtained convictions in cases without
17 informants where the defendant confessed?

18 A. Yes.

19 Q. Can you go to trial without an informant even if you
20 have a tape and no confession and maintain your burden
21 of proof?

22 A. I don't believe so.

23 MR. DUFF: Object.

24 THE COURT: I don't believe so.

25 You may direct your questions.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

1 Q. Have you ever been involved in a trial without an
2 informant?

3 A. No.

4 Q. What was the case if it's pushed to trial and there's
5 no informant?

6 A. Usually found not guilty.

7 MR. DUFF: Object.

8 Q. And there's a dismissal, right?

9 A. Correct.

10 Q. Now, do you know who Stanley Jaloweic is?

11 A. Yes.

12 Q. Did Ron Lally buy any drugs from Stanley Jaloweic?

13 A. No.

14 Q. How much time was Stanley Jaloweic looking at because
15 Ron Lally bought drugs from him?

16 A. None.

17 Q. Did Stanley Jaloweic ever have a drug case pending
18 against him as a result of a buy Ron Lally made?

19 A. No.

20 MR. ROSENBAUM: I have no other
21 questions, Your Honor.

22 THE COURT: Mr. Duff.

23 RE CROSS-EXAMINATION OF SCOTT ASHLEY

24 BY MR. DUFF:

25 Q. Stan Jaloweic had no drug case, right? Is that

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 600

1 right?

2 A. I don't know.

3 Q. You don't know. I thought you just said that --

4 MR. ROSENBAUM: No.

5 THE COURT: No, no. The
6 question --

7 MR. ROSENBAUM: That's not what he
8 said.

9 THE COURT: The question was as a
10 result of Ron Lally buying.

11 Q. Do you know if Stanley Jaloweic had drug cases?

12 A. I don't know.

13 Q. All right. Do you know anything about the
14 relationship between Stan Jaloweic and Raymond Smith?

15 MR. ROSENBAUM: Object as beyond the
16 scope.

17 MR. DUFF: No, it's not. Goes
18 right to what he brought up.

19 MR. ROSENBAUM: I didn't bring the
20 relationship.

21 THE COURT: He didn't bring up
22 the relationship. I'll permit this if the officer
23 knows.

24 Q. Do you know anything about such relationship?

25 A. Yes.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 601

1 Q. Tell us about what you know between Stan and Ray.

2 MR. ROSENBAUM: Objection.

3 THE COURT: No, there is a
4 relationship. That's it.

5 Q. There's a relationship there between Stan and Ray as
6 far as you know?

7 A. Yes.

8 Q. And does that relationship involve, as far as you
9 know, a homosexual relationship?

10 MR. ROSENBAUM: Objection.

11 THE COURT: Sustained.

12 Q. Stanley certainly had drug cases, right?

13 MR. ROSENBAUM: Objection.

14 Q. If you know.

15 MR. ROSENBAUM: Objection. It's
16 asked and answered. He said he doesn't know.

17 THE COURT: He didn't know,
18 correct.

19 MR. DUFF: Can we approach, Your
20 Honor, Mr. Wightman and I and Mr. Prosecutor.

21 (Conference at the bench between the Court
22 and counsel, as follows:)

23 MR. DUFF: Judge, this stuff
24 about Ray and Stan is crucial to our defense.

25 THE COURT: What do you mean?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 602

1 What stuff are you talking about?

2 MR. DUFF: That I believe
3 there's evidence that the prosecutor and police know
4 of that Ray and Stan had a homosexual relationship.
5 Mr. Rosenbaum, let me finish. Judge, I know it's a
6 little -- Judge, what we are saying, he's saying he's
7 never, that Stan did not buy drugs from Lally, okay,
8 and therefore he had no reason to --

9 THE COURT: No, no, no. He
10 didn't say the question that Mr. Rosenbaum asked if
11 there has been any conviction or any arrest of Stanley
12 for buying drugs from Lally, I mean, Lally buying
13 drugs from Stan. That was a specific question at this
14 point.

15 MR. DUFF: Dan, can you flesh
16 it out a little better than I can?

17 MR. WIGHTMAN: Well, Your Honor, the
18 inference drawn from that question, Jaloweic had no
19 motive.

20 THE COURT: Bullshit.

21 MR. ROSENBAUM: That was a result of
22 their question.

23 THE COURT: Yes.

24 MR. ROSENBAUM: Of lying.

25 THE COURT: That's your question.

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Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 603

1 MR. ROSENBAUM: If they said their
2 motive is, if you have a small drug crime there
3 wasn't, can't have a murder. Now we have a guy with
4 no drug crime. That's all I established.

5 MR. DUFF: There's reasons why
6 he would go along. These are homosexual lovers.

7 MR. ROSENBAUM: There's reasons why
8 your guy would --

9 MR. DUFF: He's knows
10 about it.

11 MR. ROSENBAUM: He knows it.

12 MR. DUFF: Let me ask him.

13 MR. ROSENBAUM: You cannot.

14 THE COURT: I'm not going to
15 allow any cross-examination and recross-examination on
16 homosexuality. It's goes way beyond the scope at this
17 point.

18 MR. DUFF: That's -- Your Honor.

19 (Thereupon, the following took place
20 within the hearing of the jury.)

21 THE COURT: Mr. Rosenbaum.

22 MR. ROSENBAUM: I have one, yes, Your
23 Honor.

24 REDIRECT EXAMINATION OF SCOTT ASHLEY

25 BY MR. ROSENBAUM:

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 604

1 Q. Do you know if there was a relationship between
2 Stanley Jaloweic and the defendant?

3 A. Between --

4 Q. Stanley Jaloweic and Danny Smith?

5 A. No.

6 Q. You don't know if there was one?

7 A. I don't know if there was anything.

8 Q. One or not. I have no other questions.

9 Q. THE COURT: Mr. Duff.

10 RE CROSS-EXAMINATION OF SCOTT ASHLEY

11 BY MR. DUFF:

12 Q. You know of one such relationship between Ray and
13 Stan, correct?

14 MR. ROSENBAUM: What such
15 relationship?

16 MR. DUFF: I'm asking the
17 questions.

18 THE COURT: Wait a minute. We
19 are still playing within the confines of the rules,
20 okay. The question was of a relationship between --

21 MR. DUFF: All right, I'll
22 withdraw it then.

23 THE COURT: Okay.

24 MR. DUFF: You're saying it's
25 beyond the scope.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 605

1 THE COURT: Yes.Yes. You may
2 ask --

3 MR. ROSENBAUM: I have no other
4 questions.

5 THE COURT: -- pertaining to that
6 question.

7 MR. DUFF: Right.

8 THE COURT: Okay.Anything
9 further?

10 MR. ROSENBAUM: I have nothing
11 further.

12 THE COURT: Thank you, Officer.
13 You may step down.

14 (Witness excused.)

15 THE COURT: Ladies and gentlemen,
16 it's 10:35. Let's take a morning recess at this time.
17 The admonitions I've given you in the past about
18 discussing this matter with anyone, letting anybody
19 discuss it with you, letting anybody read to you, you
20 reading anything about it still holds. And with that
21 we will take a short recess. Thank you.

22 (A brief recess was had.)

23 THE COURT: Good morning again,
24 ladies and gentlemen.

25 Ladies and gentlemen, as you recall, we had just

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Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 606

1 finished the examination and cross-examination of one
2 of the State's witnesses, and we are now ready to
3 proceed with the next witness. Mr. Rosenbaum, please.

4 JOHN HOMOKI
5 a Witness herein, called on behalf of the State of Ohio,
6 after being first duly sworn by the Court, testified
7 and said as follows:

8 THE COURT: Officer, you know the
9 routine.

10 THE WITNESS: Yes, sir.

11 THE COURT: Thank you.

12 DIRECT EXAMINATION OF JOHN HOMOKI

13 BY MR. ROSENBAUM:

14 Q. State your name, please, sir.

15 A. John Homoki.

16 Q. Would you spell your last name for the reporter.

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

18 Q. Are you employed?

19 A. Yes, sir. Elyria Police Department.

20 Q. Tell the Court and jury how long you have served in
21 city as a police officer.

22 A. Three years and 11 months, sir.

23 Q. Are currently assigned to any particular unit or
24 division of the police department?

25 A. Yes, sir. I'm presently assigned to the Narcotics

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 607

1 Division.

2 Q. And how long have you served in that division?

3 A. Four months.

4 Q. And prior to that were you assigned to a separate
5 unit of the police?

6 A. Prior to that it was the Neighborhood Impact Unit for
7 14 months.

8 Q. Prior to becoming a police officer, what did do you
9 with your life?

10 A. I served 20 years in the United States Air Force,
11 retired 1988 as a senior master sergeant, as a first
12 sergeant. Immediately upon retirement, I got out and
13 went into the building trade. I worked for a year with
14 Steve Sylvester Builders. After that I worked for Avon
15 Balsum Concrete.

16 Q. At Avon Balsum Concrete did you become acquainted
17 with a man whose name was Ron Lally?

18 A. Yes, sir. My first season I managed the Balsum
19 plant on Butternut Ridge Road, and Ron Lally was one of my
20 drivers that year.

21 Q. Did you get to know him pretty well?

22 A. Yes, sir, very well.

23 Q. Could you describe his size?

24 A. 6'3", 6'4", 200 plus pounds, large imposing figure.

25 Q. Do you know the person who's seated immediately below

CATHLENE M. ACIERTO, RPR - (216) 965-4498

1 my right hand?

2 A. Yes, sir.

3 Q. What's his name?

4 A. Danny Smith.

5 Q. How long have you known him for?

6 A. Probably three-and-a-half years.

7 Q. How many times do you think you've seen him in your
8 travels?

9 A. Numerous times.

10 Q. Do you know a person whose name is Stanley Jaloweic?

11 A. Yes, sir.

12 Q. How long have you known Stanley?

13 A. Probably the same amount of time, three-and-a-half
14 years.

15 Q. How many times do you think you've encountered
16 Stanley Jaloweic in your travels?

17 A. Numerous times.

18 Q. Do you know if Stanley Jaloweic and the defendant
19 have any type of relationship?

20 A. Yes, sir. I routinely work night shift and Stan
21 Jaloweic and Danny Smith were a pair, they generally
22 were together, were seen together out in the street in
23 the city when we saw them.

24 Q. When you would see the two of them, were they
25 accompanied by Raymond Smith?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

1 A. No, sir.

2 Q. Now, were you on duty on September 15th of 1993?

3 A. Yes, sir. I was working on overtime shift, afternoon
4 shift.

5 Q. Did you have occasion to see Stanley Jaloweic and the
6 defendant?

7 A. Yes, I did, sir.

8 Q. Will you describe the circumstances of that
9 encounter, sir?

10 A. I was on routine patrol in a marked unit, in uniform,
11 and was detailed to a disturbance call at Mr. Hero at
12 Sixth and Middle Avenue, Elyria. I approached from
13 the south, and as I entered, Sadaris Lane, which is
14 the entrance to the parking lot for Mr. Hero, I
15 observed Stanley Jaloweic crossing Middle Avenue
16 westbound, going across the street away from Mr. Hero,
17 and observed Danny Smith in front of the side doors
18 to Mr. Hero right at the parking lot.

19 Q. Did you encounter anyone else at that time?

20 A. Yes, sir. As I brought my car to a stop and opened
21 my door, Ron Lally hurriedly approached the vehicle.

22 Q. Could you describe his appearance and his demeanor?

23 A. He was obviously upset. He hurried across the
24 parking lot. He recognized me and called me by my
25 first name. He was excited.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 610

1 Q. Did he appear out of character for the person you
2 knew?

3 A. Yes, sir, extremely so.

4 Q. What did he say to you, sir?

5 MR. DUFF: Object.

6 THE COURT: Overruled. And that
7 is on as per Rule 801(D)(e), (D)(2)(e).
8 Co-conspirator.

9 MR. DUFF: This is the victim,
10 Your Honor.

11 MR. ROSENBAUM: Can we approach?

12 THE COURT: Sure.

13 (Conference at the bench between the Court
14 and counsel, as follows:)

15 MR. DUFF: Object.

16 THE COURT: I'm sorry.

17 MR. ROSENBAUM: I'd like to hear the
18 nature of the objection, Your Honor.

19 MR. DUFF: Dan.

20 MR. WIGHTMAN: With the Court's
21 permission, it's a hearsay objection, Your Honor. We
22 are talking about a statement of somebody outside of
23 the court.

24 MR. ROSENBAUM: And we think that
25 argument to the Court, if it's excited utterance, it's

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 611

1 an exception to the hearsay rule.

2 MR. WIGHTMAN: We would state the
3 foundation as --

4 THE COURT: Develop that and let
5 a little more, little more.

6 MR. ROSENBAUM: All right.

7 THE COURT: Very well.

8 (Thereupon, the following took place
9 within the hearing of the jury.)

10 BY MR. ROSENBAUM:

11 Q. You described Mr Lally as excited and upset; is that
12 correct?

13 MR. DUFF: Object.

14 A. Yes, sir.

15 MR. DUFF: Leading.

16 Q. Could you further describe --

17 THE COURT: He was just
18 confirming the previous testimony.

19 Q. -- how he appeared?

20 A. As I approached the lot, as I brought my car to a
21 stop, neither the individuals was near the vehicle.
22 In fact, they were at the door, which is probably a
23 hundred or hundred and fifty feet.

24 Q. And neither --

25 A. Neither Mr. Smith or Mr. Lally were near the vehicle.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 612

1 Mr. Lally hurried to the point of almost running
2 across the parking lot to get to the cruiser. He was
3 speaking rapidly and almost yelling at me as I opened
4 the door, and he tried to make contact with me. From
5 my past experience with him, it was very obvious to me
6 that he was excited and there was a problem that he
7 was trying to address.

8 Q. And would you tell the Court and jury then what he
9 said to you?

10 MR. DUFF: Object.

11 THE COURT: Overruled.

12 A. His first statement to me -- well, the first thing I
13 did was ask Ron, "What is the problem?" He
14 immediately looked at me and said, "John, these guys
15 are going to fuck me up." That was his quote.

16 Q. Then what happened?

17 A. I asked he be more specific. "Ron, what's going
18 on?" He asked if he could speak in confidence. I
19 told him that he could. He stated that he had worked
20 with the Narcotics Department, that he had --

21 MR. DUFF: Object.

22 THE COURT: Overruled. I mean,
23 I'll give you a continuing objection.

24 MR. DUFF: Continuing objection
25 of Lally's --

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 613

1 THE COURT: Yes.Yes. I will
2 give you that.

3 Q. Go ahead, please

4 THE COURT: Proceed.

5 A. He stated that he worked with the Narcotics
6 Department, that he was a witness against these
7 individuals and that they had just threatened his
8 life.

9 Q. Then what happened?

10 A. I told him to stay by my vehicle. I walked across
11 the lot and approached Danny Smith.

12 Q. And did you speak to Danny Smith?

13 A. Yes, I did. I asked Danny what was going on, what
14 the problem was in the lot.

15 Q. And what did he say?

16 A. He stated that there was no problem, pointed to Ron
17 Lally and said, "That punk son of a bitch is going to
18 get his."

19 Q. Where was Stanley Jaloweic at this time?

20 A. Stanley had crossed Middle Avenue. He was out of my
21 line of sight. He had crossed Middle Avenue. He was
22 standing by the muffler shop across the street from
23 Mr. Hero.

24 MR. ROSENBAUM: I have no other
25 questions, Your Honor.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 614

1 THE COURT:

Mr. Duff or

2 Mr. Wightman.

3 CROSS-EXAMINATION OF JOHN HOMOKI

4 BY MR. DUFF:

5 Q. Detective, did you -- this happened when, 9-15, 9:34;
6 is that right?

7 A. Yes, sir.

8 Q. You were in uniform at that time?

9 A. Yes, sir.

10 Q. Now, why don't you tell the jury how police officers
11 work as things happen and you encounter things while
12 you're on duty. You make reports on them, do you not?

13 A. Yes, sir.

14 Q. Tell the jury what the purpose of that is. Why do
15 you make reports on incidents?

16 A. Well, we make a report on incidents of significant
17 basis there. We would you make a report so that if in
18 fact you have to refer to the case later you have case
19 notes.

20 Q. You have a complete record of it and an accurate
21 record, right?

22 A. Yes, sir.

23 Q. How long have you been a police officer?

24 A. Four years. Three years 11 months.

25 Q. All right. And these reports that you make are quite

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 615

1 detailed, right?

2 A. Depending upon the incident, yes.

3 Q. And you realize as a police officer how important
4 they are, because if a case comes to trial, you want
5 to have an accurate and complete description of what
6 occurred?

7 A. Yes, sir.

8 Q. That's the reason for the report, right?

9 A. Yes, sir.

10 Q. And did you make on, 9-15-93, did you make a report
11 of this incident?

12 A. No, sir.

13 Q. In fact, you didn't make any report of this incident
14 until September of '94; isn't that right?

15 A. Yes, sir.

16 Q. Did you, were you requested to make that report by
17 Detective Leiby?

18 A. I don't remember if I was requested or if I
19 volunteered to make it.

20 Q. Well, Detective Leiby, didn't he suggest to you that
21 you better make a report in regard to that incident a
22 year later?

23 A. I can't say that Detective Leiby did tell me that.

24 Q. He might have?

25 A. He could have, yes.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 616

1 Q. All right. Now, daily. What is a daily in police
2 officer jargon?

3 A. A daily entry is a report of every call that we are
4 assigned to. The dispatcher, as soon as they get a
5 call and assign a police officer to it, they make a
6 routine daily and it's given a number for tracking
7 purposes for the call.

8 Q. Is that written by the dispatcher --

9 A. Yes, sir.

10 Q. -- who sends you to a scene of a call?

11 A. Yes, sir.

12 Q. Did you get such a call on this case?

13 A. Yes, sir.

14 Q. Do you have a copy of that daily?

15 A. I don't have a copy of that daily, no.

16 MR. DUFF: May we see it, Your
17 Honor?

18 Do you have a copy of your report that you wrote a
19 year later?

20 A. Not with me, no.

21 MR. DUFF: Do you have it? May
22 I see it?

23 MR. ROSENBAUM: Yeah, I have it.

24 MR. DUFF: May we see it, Your
25 Honor?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 617

1 THE COURT: If you have it,
2 produce it, Mr. Rosenbaum, please.

3 (The document was produced to counsel.)

4 MR. DUFF: Can I have a minute,
5 Your Honor?

6 THE COURT: Certainly.

7 MR. DUFF: I'd like to have
8 these marked, Your Honor.

9 MR. ROSENBAUM: They are. The log
10 has been previously marked as State's Exhibit 8.

11 MR. DUFF: The log?

12 MR. ROSENBAUM: Yeah. So the other
13 one should be 8-A.

14 MR. DUFF: So that was marked.

15 MR. ROSENBAUM: That's A. That's
16 8-A.

17 MR. DUFF: Well, they're not
18 marked, Judge.

19 THE COURT: Do we know --

20 MR. ROSENBAUM: It should be in the
21 box from the prior. That's why we had to get these
22 out.

23 THE COURT: Those are copies or?

24 MR. ROSENBAUM: These are, as were
25 the other copies.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 618

1 THE COURT: These are your
2 records?

3 MR. ROSENBAUM: No, it's all right.

4 THE COURT: Please mark them.
5 then, Cathy.

6 (State's Exhibits 8 and 8-A marked for identification.)

7 BY MR. DUFF:

8 Q. If I may, Your Honor.

9 So your testimony was that, is that Detective Leiby
10 may have requested you write this up a year later,
11 right?

12 A. Yes, sir. I can't say for sure if he did or not.

13 Q. Let me try to refresh your memory. Handing you
14 State's Exhibit 8-A, take a look at that and read
15 that.

16 THE COURT: First of all --

17 Q. Take a look --

18 THE COURT: -- ask him to
19 identify it, please.

20 Q. What is that document?

21 A. It's an incident -- well, it's a memo for record
22 regarding the incident, and it does state --

23 Q. Let me ask the question.

24 A. Yes, sir.

25 Q. It's a memo for record?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 619

1 A. Yes, sir.

2 Q. Tell us what that is in police jargon.

3 A. Basically, it's a memo on my computer disk that would
4 be for my reference regarding this incident.

5 Q. That's entered on your computer disk?

6 A. Yes.

7 Q. Is that entered anywhere else in the official Elyria
8 police files? Do you understand what I mean, sir?

9 A. A copy was given to Detective Leiby.

10 Q. All right. Is there a central location where Elyria
11 police keeps all their records?

12 A. There --

13 Q. No answer. Quiet, sir. Is there a central location?

14 A. There are several.

15 Q. All right. And was this deposited in one of those
16 several central record keeping areas?

17 A. I couldn't tell you. It was not by me.

18 Q. You never deposited it in an official place where
19 Elyria police keeps their records?

20 A. I didn't.

21 Q. What is that document, it's a memo record, right?

22 A. Yes, sir.

23 Q. And you wrote it?

24 A. Yes, sir.

25 Q. When did you write that?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 620

1 A. 9-15-94.

2 Q. All right. A year after the alleged incident, right?

3 A. Yes, sir.

4 Q. And does it say at whose request you did that?

5 A. Detective Leiby.

6 Q. May I see that? In fact, you wrote the following,
7 did you not: "This report is being written at the
8 request of Detective Al Leiby," right?

9 A. Yes.

10 Q. Now, handing you what has been marked for
11 identification purposes as State's Exhibit 8. Take a
12 look at that and tell me if you recognize that
13 document.

14 A. It is a daily that I was detailed on.

15 Q. The daily that you were detailed on, that was written
16 by the dispatcher, right?

17 A. Yes, sir.

18 Q. And what's the date of that document?

19 A. 15 of September '93.

20 Q. All right. May I have it back, sir?

21 A. (Witness complies.)

22 Q. Now, on there there is no mention, is there, of Danny
23 Smith or Stanley Jaloweic?

24 A. No, sir.

25 Q. They are not mentioned, are they?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 621

1 A. No, sir.

2 Q. And you have no records from September of '93,
3 wherein, there is any indication -- let me rephrase
4 that. You have no police records or documents from
5 September of '93, when this alleged incident took
6 place, documenting Danny Smith or Stanley Jaloweic
7 being involved in the incident, do you, sir?

8 A. No, sir.

9 Q. The only time Danny Smith gets involved in official
10 police records in this incident is a year later, at
11 the request of Detective Leiby, right?

12 A. Yes, sir.

13 Q. And Stanley Jaloweic gets his name, gets thrown into
14 at that time, right?

15 A. Yes, sir.

16 Q. Now, Ron talked to you, right, Ron Lally?

17 A. Yes, sir.

18 Q. He told you he was working off a case he had where he
19 got busted for crack cocaine, right?

20 A. He told me that he was working with the Narcotics
21 Department.

22 Q. Did he tell you he had been busted for crack cocaine,
23 Officer?

24 A. I was aware that he had been busted for crack cocaine
25 before he talked to me at that point. I was aware of

1 his problem.

2 Q. I'll ask it one more time. Did he tell you he had
3 been busted for crack cocaine, Officer, yes or no?

4 A. I'm not sure.

5 Q. Why don't you look at your memo record and see the
6 third paragraph and see if you indicate that on there,
7 sir. Do you indicate on there, sir, that he indicated
8 to you that he had been busted for crack cocaine?

9 A. Yes, he does.

10 Q. No. Do you indicate that, sir?

11 A. Yes, I do.

12 Q. All right. May I have it, sir. You state on there,
13 do you not, sir, that Ron stated he had been in
14 trouble and had been busted for doing crack cocaine?

15
16 A. Yes, sir.

17 Q. He stated, "Cooperated with the Narcotics Agency and
18 made several buys," correct?

19 A. Yes, sir.

20 Q. You're in the Narcotics Unit, are you not?

21 A. Yes, sir.

22 Q. We've got some idea how it works. Let's get a little
23 bit of it from you, sir. You get -- I get busted for
24 drugs or an individual gets busted for drugs, I come
25 to you and I want to work if off?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

1 A. Yes, sir.

2 Q. All right. You have a policy, do you not, on working
3 things off such as that, you have rules?

4 A. Yes, sir, we do.

5 Q. And usually you got to do three people for every
6 single charge you have; is that correct?

7 A. It's at the discretion of the prosecutors.

8 Q. But that's the normal rule?

9 A. If you are charged with simple possession?

10 Q. Right.

11 A. And you could give me three dealers.

12 Q. And you'll forget about me?

13 A. I can't tell you that I would forget about you. That
14 would be, the prosecutor would dispose of the case.
15 That's not my decision.

16 Q. I wouldn't go to jail, right?

17 A. Right.

18 Q. That would be the deal if I get busted, I do three
19 other people and then I don't go to jail, right?

20 A. Yes.

21 Q. All right. So it appears from your memo that's what
22 was occurring here with Mr. Lally, right?

23 MR. ROSENBAUM: Your Honor, I object.
24 Why doesn't he ask if he knows if that's what's going
25 on instead of trying to create the impression that's

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5

Page 624

1 what's going on through some kind of appearance?

2 THE COURT: Mr. Rosenbaum, I
3 can't answer that question, but I would sustain the
4 objection. Get going on it, Mr. Duff, at this point.
5 Let's get right to it.

6 Q. That's what he told you, right, that he was working
7 off these drug charges?

8 A. He told me he was working with the Narcotics
9 Department.

10 Q. Officer, he told you that he had been busted for
11 crack cocaine and working with narcotics?

12 A. That's exactly what he told me.

13 Q. That he's working if off, right?

14 A. I don't know that he was working it off.

15 Q. You don't know. Did you testify previously in cases?

16 A. Yes, sir.

17 Q. All right. Page 96 of the previous testimony.
18 You're saying now that he didn't tell you he was
19 working this off; is that what you're saying?

20 A. I'm saying --

21 Q. Answer my question, Officer. Are you saying, yes or
22 no, that he didn't tell you that he was working these
23 cases off?

24 A. I'll go with exactly what I put in my report. He
25 told me he had been busted for crack cocaine and that

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 625

1 he was working with narcotics.

2 Q. All right. Page 96. You testified in a case
3 involving Raymond Smith, did you not, sir?

4 A. Yes, sir.

5 Q. And do you recall saying this, "Did he tell you why?"
6 Your answer: "I asked him, 'Ron what is going on?'
7 He said, he stated that he had been involved in
8 cocaine, had been arrested for the same, that he in
9 fact had agreed, he in fact had agreed to work part of
10 his charges of off." Did you testify to that
11 previously?

12 A. If that's --

13 Q. Do you want to take a look?

14 A. If that's what is written.

15 Q. I do not to mislead you, sir. Take a look at it. Is
16 that what you said previously?

17 A. Yes, that's what I said.

18 Q. All right. So you previously testified that he was
19 working these off, right?

20 A. Yes, sir.

21 Q. All right. Now, I think you said -- and it's real
22 important to be precise in these matters, correct?

23 A. Yes, sir.

24 Q. You said that Ron Lally told you that, and I'll
25 quote, I think you said on your direct "that punk son

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 626

1 of a B is going to get his."

2 MR. ROSENBAUM: Objection.

3 A. Yes.

4 MR. ROSENBAUM: Objection. That's
5 not what Ron Lally said.

6 Q. Let me ask the question. Is that what you testified
7 to?

8 A. That Ron Lally said that.

9 Q. To you?

10 A. No.

11 Q. No. I'm sorry. Right, Mr. Prosecutor. I'm sorry.
12 I'm a little confused. I got it straight. I meant to
13 ask. Is that what Danny Smith allegedly said
14 according to you today?

15 A. Yes, sir.

16 Q. That he said, and I want to quote it, "That punk son
17 of a B is going to get his"?

18 A. Yes, sir.

19 Q. And that's his exact words?

20 A. I could not swear that that was his exact words.
21 That was his reference.

22 Q. All right. What do you mean "reference"?

23 A. His reference was --

24 Q. No. What do you mean by the term "reference"?

25 A. Basically, that was what he was telling me.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 627

1 Q. Are those his words or yours?

2 A. I would not swear to you that that was his exact
3 words.

4 Q. Have you previously testified in any of these cases
5 as to his exact words, yes or no?

6 A. Yes. As I recall them, yes.

7 Q. All right. You have previously testified on two
8 occasions, one occasion involving Raymond Smith and
9 one versus Stanley Jaloweic, right?

10 A. Yes.

11 Q. Now, do you recall stating the following -- page 97,
12 Mr. Prosecutor -- in a case of Raymond Smith that
13 "What condition -- question by the prosecutor: "What
14 condition was Danny Smith in at that time?" "Danny
15 Smith was excited." It goes on, then there's an
16 objection, then your answer was, "Direct statement to
17 me was, 'That punk --' I'll say it.

18 THE COURT: Say it.

19 Q. All right. "That punk ass bitch," and he pointed at
20 Ron Lally, "is going to get his." Is that what you
21 testified to previously?

22 A. Yes, sir.

23 Q. All right. That you said he said "That punk ass
24 bitch is going to get his"?

25 A. Yes, sir.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 628

1 Q. All right. Now, that was a quote. That was a quote,
2 sir?

3 A. Yes, sir, as I recall that was a quote.

4 Q. All right. And when was the trial involving Raymond
5 Smith, when did you testify in that case?

6 A. It was the first trial. I couldn't tell you.

7 Q. All right. That was back in November of '95, right?

8 A. Yes, sir.

9 Q. And your memory of these events was better in
10 November of '95 than it is now, right?

11 A. I don't think so.

12 Q. It's the same, huh? I'm sorry?

13 A. Yes, sir.

14 Q. You're not like most people, your memory doesn't get
15 worse as time goes on of events that occurred a long
16 time ago; are you like most people or not, Officer?

17 A. Yes, sir.

18 Q. So your memory will fade with time, will it not?

19 A. Yes, sir.

20 Q. That's what you testified to on November of '95,
21 correct?

22 A. Yes, sir.

23 Q. And that was a quote, right?

24 A. Yes, sir.

25 Q. Now, do you recall testifying in a case of Stanley

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 629

1 Jaloweic?

2 A. Yes, sir.

3 Q. And when was that conducted?

4 A. I think it was in March.

5 Q. March of this year?

6 A. Yes, sir.

7 Q. All right. Do you recall being asked, page 40 41,
8 "He stated to me nothing was going on. He stated to
9 me and pointed towards Ron. I asked him what the
10 problem was. He pointed towards Ron, he said, 'That
11 snitch will get his.' That was his statement." Did
12 you make that statement, sir?

13 A. Yes, sir.

14 Q. All right. That's substantially different than "that
15 punk ass bitch is going to get his," isn't it? Is
16 that different?

17 A. The wording is different, yes, sir.

18 Q. And that was a quote, too, was it not, sir?

19 A. Yes, sir.

20 Q. And today it -- all right. When you first saw Danny
21 Smith and Ron Lally, they were together?

22 A. Yes, sir. They were in close proximity to the doors
23 of Mr. Hero.

24 Q. Danny was coming out of the door, wasn't he?

25 A. He was near the door. I don't know that he was

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 630

1 coming out the door. He was near the door.

2 Q. There was no fight going on between them, was there?

3 A. No, there was not a fight.

4 Q. And they were standing in close proximity. What's
5 close proximity, how close?

6 A. Probably eight to ten feet from each other.

7 Q. So this far?

8 A. Yes, sir.

9 Q. There was nobody threatening or pushing or shoving?

10 A. Not that I could see.

11 Q. You didn't see anything like that?

12 A. No.

13 Q. And did Danny Smith have any foods in his hands that
14 he had just purchased at Mr. Hero?

15 A. I don't recall.

16 Q. He might have?

17 A. He could.

18 Q. You don't recall that one way or the other?

19 A. No, sir.

20 Q. Did you talk to Mr. Jaloweic at that time?

21 A. No, sir, I did not.

22 Q. You never said anything?

23 A. I told him to stay in the area. I think, as I
24 approached, I think I told him to stay in the area.

25 Q. You think that or you did?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 631

1 A. As best I recall, I told Stanley not to leave the
2 area until I had determined what was going on.

3 Q. Well, did you previously testify, page 42, in the
4 case of Stanley Jaloweic as to the following. Do you
5 recall saying this. "Question: By that time, as you
6 pulled around, I believe it was your testimony that
7 Stanley Jaloweic was already heading across the street
8 leaving before you even arrived; isn't that correct?"
9 And your answer was, "If I recall, sir. Well, as you
10 approach a disturbance call, you slow as you enter the
11 area to see who is in the area and what is going on.
12 As I approached Sadaris to turn right, I saw Stanley
13 to start to cross the street heading away from the
14 area." Is that what you said?

15 A. Yes, sir.

16 Q. "Question: Away from the area?

17 "Answer: Yes. He was heading away.

18 "He wasn't part of the conversation of you and
19 Mr. Lally?

20 And your answer was, "No, sir, he was not."

21 A. No, sir, he was not.

22 Q. So did you talk to him or not?

23 A. I couldn't swear that I did or not.

24 Q. All right. Now, in this 8-A you also included quotes
25 in there as to what Mr. Smith allegedly said, right,

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 632

1 did you do that, sir? Did you enclose --

2 A. Yes, sir.

3 Q. All right. And in there it was, your quotes were --
4 tell us what's in quotes, that Danny Smith allegedly
5 said when you wrote this in September of '94. What
6 did you include in quotes?

7 MR. DUFF: Where's the other
8 two, 97, 41? I need that other one, Dan.41 and 97.
9 I'm sorry. Do you --

10 A. You're referring to the quotes that you've already
11 referenced?

12 Q. Yeah, what you have in --

13 A. First one is not as a quote.

14 Q. No, no, no. Let me reask it then, sir. You have an
15 area --

16 A. You've shown me three quotations.

17 Q. I'm asking you the fourth paragraph, the area in
18 quotes that you included when you wrote this in
19 quotes.

20 A. Okay.

21 Q. What -- you typed this, right?

22 A. Yes. That was a separate statement.

23 Q. Okay. I'll ask the questions.

24 A. Go ahead.

25 Q. You typed this, right, Officer?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 633

1 A. Yes, sir.

2 Q. And you know what the use of quotations are for?

3 A. Yes, sir.

4 Q. And what are they for?

5 A. To state exactly what this individual said.

6 Q. And in there you said that Danny said there was no
7 reason to threaten, and what was the words you put in
8 quotes?

9 A. Can I contents.

10 Q. No, just answer the question, please, sir.

11 THE COURT: Just answer the
12 question.

13 Q. What did you put into quotes?

14 A. I put into quotes that Mr. --

15 Q. Smith?

16 A. -- Smith stated that Mr. Lally was a punk mother
17 fucker.

18 Q. Hold on. I'll ask the question. What date did you
19 do that?

20 A. That was during this incident.

21 Q. What date was that, sir?

22 A. 9-15, 90 --

23 Q. '94?

24 A. No, the date of the original daily.

25 Q. No, no, the date you --

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 634

1 A. The date I typed this?

2 Q. Yes.

3 A. 9-15-94.

4 Q. '94. So the term attributed to Mr. Smith at that
5 time when it was closest in time to the event that
6 something was reduced to writing, right?

7 A. Yes, sir.

8 Q. I'll call it PMF. Right, that's the quote?

9 A. Yes, sir.

10 Q. Right?

11 A. Yes, sir.

12 Q. Then in the Raymond Smith testimony in November of
13 '95, the term you said was PAB, punk ass bitch, right?

14 A. You're talking about two separate quotes, but, yes.

15 Q. I know what I'm talking about, sir. Then this spring
16 your testimony was "That snitch will get his," right?
17 Is that correct?

18 A. Yes, sir.

19 MR. DUFF: Just a minute, Your
20 Honor I'm looking at my notes.

21 Couple other questions, Officer. You knew that
22 decedent, did you not, sir?

23 A. Yes, I did.

24 Q. He had some nicknames?

25 A. Ron.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 635

1 Q. Did you know if he had any nicknames?

2 A. No, I did not. I couldn't tell you if he had a
3 nickname.

4 Q. All right. You never heard him called Big Roh?

5 A. No.

6 Q. How about, who was the other one, Pony tail?

7 A. No.

8 Q. Did he have a pony tail?

9 A. Yes, he did.

10 Q. You would agree he had a large and imposing figure?

11 A. Yes, sir.

12 Q. You indicated, you said he had a crack cocaine
13 addiction?

14 A. I knew that from him working for me.

15 Q. Okay. So how long ago was that, what year was that?

16 A. Probably would have been the summer of 1988. Would
17 have been the first, yeah, would have been the first
18 summer.

19 Q. All right. Let's go by this way. When did you get
20 out of the service, sir?

21 A. Retired in February of '88.

22 Q. February of '88. And you started work for -- what
23 was the name of the company?

24 A. Balsum Avon Concrete.

25 Q. Where did you meet Mr. Lally?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

1 A. The Balsum Company.

2 Q. And '88 he had a crack problem?

3 A. Yes, sir.

4 Q. And how long did you know him at that time, how long
5 did you work with him?

6 A. Worked with him from March through November, which
7 would --

8 Q. Do you know how long previous to that he had a crack
9 problem?

10 A. No, sir.

11 Q. Did he tell you --

12 A. No, sir. Sir, he never informed he had a crack
13 problem.

14 Q. Do you know Sandra Williams?

15 A. Yes, I do.

16 Q. That's his girlfriend?

17 A. It was, yes.

18 Q. I understand that, sir. That was his girlfriend?

19 A. Yes.

20 Q. Was she his girlfriend for a long time?

21 A. The best of my knowledge she was during that time
22 there.

23 Q. You knew her from knowing him?

24 A. Yes.

25 Q. Did she appear to care a lot about him?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 637

1 A. Yes.

2 Q. Were they in love?

3 A. I couldn't say that.

4 Q. I mean, as far as you know?

5 A. They had a relationship, yes.

6 Q. Now that we are talking about relationships, do you
7 know anything about a relationship between Stanley
8 Jaloweic and Raymond Smith?

9 A. No, sir.

10 Q. You don't know anything about such a relationship?

11 A. No, sir.

12 Q. Have you ever been advised of such a relationship?

13 MR. ROSENBAUM: Objection.

14 MR. DUFF: I haven't asked
15 it yet.

16 THE COURT: He said he knows of
17 no relationship at this point.

18 Q. Have you ever been advised of such a relationship
19 by --

20 MR. ROSENBAUM: Objection.

21 Q. -- by Detective Leiby?

22 THE COURT: Again, he said he
23 knows of no relationship, okay.

24 MR DUFF: That's a different
25 question, though, Your Honor. Detective Leiby ever

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 638

1 told him about such a relationship.

2 MR. ROSENBAUM: Objection. That's
3 objectionable. Whether it's a different question or
4 not, Your Honor, it's objectionable.

5 THE COURT: Again, whether he was
6 advised, you're bringing in hearsay.

7 MR. DUFF: I want to know if he
8 was advised --

9 THE COURT: Was he advised
10 whether there was a relationship.

11 MR. DUFF: Right, that was the
12 question.

13 THE COURT: The answer would be
14 what?

15 MR. DUFF: Yes or no, and then
16 the perhaps the other --

17 THE COURT: What if it's yes?

18 MR. DUFF: Then I may not be
19 allowed to go any further, Your Honor.

20 THE COURT: Well, sustained.

21 MR. DUFF: All right.

22 BY MR. DUFF:

23 Q. How many narcotic cases have you handled in the
24 Narcotics Bureau?

25 A. Since my entry into the bureau?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 639

1 Q. Yes.

2 A. Ten, twelve.

3 Q. You're not very experienced in this area?

4 A. No, sir.

5 Q. Detective Leiby, he's got a lot of experience?

6 A. Yes, sir, he worked in Narcotics for a period of
7 time.

8 Q. Detective Ashley's got a lot, too, does not he?

9 A. Yes.

10 Q. He's been around the block a few times?

11 A. Yes, sir.

12 Q. He's handled well over two hundred cases?

13 A. Yes, sir.

14 Q. You'd agree he's a very experienced narcotics
15 officer?

16 A. Yes, sir.

17 Q. You've been a police officer four years?

18 A. Yes, sir.

19 Q. Let me ask you this. In those four years, have you
20 ever had an occasion to meet privately with a judge
21 outside the presence of a prosecutor?

22 MR. ROSENBAUM: Your Honor, I object
23 as to relevance.

24 MR. DUFF: It's relevant, highly
25 relevant.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 640

1 THE COURT: I'll let it in.

2 Q. Have you had occasion to meet privately outside the
3 prosecutor, a defendant, and talk about a defendant's
4 case currently on that judge's docket?

5 A. No, sir.

6 Q. You've never done anything like that?

7 A. Not that I know of, no.

8 MR. DUFF: Nothing else, Your
9 Honor.

10 THE COURT: Mr. Rosenbaum.

11 REDIRECT EXAMINATION OF JOHN HOMOKI

12 BY MR. ROSENBAUM:

13 Q. Do you know if that is common practice in this
14 courthouse?

15 A. No, sir. As far as I know it is not.

16 Q. Do you know if -- the question is, do you know if it
17 is or isn't?

18 MR. DUFF: Object, asked and
19 answered.

20 A. No, sir, I do not.

21 MR. DUFF: He answered it, Your
22 Honor.

23 THE COURT: No, he answered it
24 was not common practice. The question is, do you know
25 whether it was common practice.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 641

1 MR. DUFF: He said, "As far as I
2 know it was not." We can read it back, Your Honor.

3 THE COURT: All right. Fine,
4 read it back.

5 MR. ROSENBAUM: Is this my turn to
6 ask questions?

7 THE COURT: Read it back. Let's
8 see what it says. I know it's your direct
9 examination. Read it back.
10 (The requested portion was read.)

11 THE COURT: Proceed,
12 Mr. Rosenbaum.

13 BY MR. ROSENBAUM:

14 Q. Now, I want to explore that question further. Do you
15 know for a fact whether that goes on or not?

16 MR. DUFF: Object, asked and
17 answered. He's told you what the personal knowledge
18 is.

19 THE COURT: Overruled. He may
20 answer this one.

21 Q. Do you know if that goes on, that policemen go to see
22 judges --

23 MR. DUFF: Object.

24 Q. -- without prosecutors or criminal defense lawyers?

25 A. No, I do not.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 642

1 Q. Do you know if defense lawyers go to see judges
2 without prosecutors or policemen?

3 MR. DUFF: Object. About what?
4 Your Honor, I could go see you about a million things.

5 THE COURT: Rephrase that,
6 Mr. Rosenbaum.

7 Q. Do you know if defense lawyers go to see judges about
8 their client's pending cases without prosecutors or
9 police officers?

10 A. I couldn't tell you if they did or not.

11 Q. Do you know if it's right or wrong to do that?

12 MR. DUFF: Object. It's asking
13 for his opinion.

14 THE COURT: Well --

15 MR. DUFF: He's not qualified to
16 give that, Your Honor.

17 THE COURT: Well, I think he is
18 at this point. Yes, you may answer that.

19 A. I would say that it's unethical.

20 Q. Now, when you testified twice, Mr. Duff pointed out
21 in this matter, correct?

22 A. Yes, sir.

23 Q. Were you permitted to take your police report, which
24 has been marked as State's Exhibit 8-A, to the stand?

25 A. Yes, sir.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 643

- 1 Q. In the prior two trials?
- 2 A. In the first one, I believe I was.
- 3 Q. Well, was it, did you take it to the stand when you
- 4 testified?
- 5 A. No, I did not.
- 6 Q. Was it brought out later?
- 7 A. It was brought to me.
- 8 Q. So you testified each time from memory, correct?
- 9 A. Yes, sir, I have.
- 10 Q. And then it comes out later?
- 11 A. Yes, sir.
- 12 Q. Have you attempted to tell us substantial truth as
- 13 best you can recall it as a human being?
- 14 A. Yes, sir.
- 15 Q. Each time?
- 16 A. Yes, sir.
- 17 Q. Do you have a photographic memory?
- 18 A. No, sir.
- 19 Q. Do you remember exact quotations from what people
- 20 tell you from a month ago?
- 21 A. It would depend on the quotation, but it would be
- 22 doubtful.
- 23 Q. How about a year ago?
- 24 A. More doubtful.
- 25 Q. Are you able to retain the gist of that conversation,

CATHLENE M. ACIERTO, RPR - (216) 965-4498

1 though?

2 A. Yes.

3 Q. On all of them or some?

4 A. Some of them.

5 Q. Did you understand the significance of this encounter
6 on September 15th of 1993 at the time?

7 A. At the point of the encounter it was significant
8 because it was criminal intimidation that was going
9 on. There was, in fact, no report written because
10 the complainant did not want to pursue that.

11 MR. DUFF: Object. It's not
12 responsive.

13 THE COURT: Significance. I
14 think he did indicate that as far as --

15 MR. DUFF: But then he added to
16 it, Your Honor.

17 Q. Let me ask you this. Why wasn't a complete report
18 written at that time?

19 A. Because at that point in time Mr. Lally chose not to
20 pursue the charges, the alternatives that I gave him,
21 and stated that all he wanted to do was clear the area
22 and be left alone.

23 Q. And did you get him out of there?

24 A. Yes, sir, I did.

25 Q. Does your daily reflect that?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 645

1 A. Yes, sir.

2 Q. Now, the daily doesn't mention Danny Smith or Stanley
3 Jaloweic by name, does it?

4 A. No, it does not.

5 Q. Is there reference made to them in the report,
6 though?

7 A. In the report?

8 Q. In the daily. Are they referred to in the daily,
9 although not by name?

10 A. Yes, sir, they are.

11 Q. And by how?

12 A. Well, the daily's listed as disturbance and it
13 reflects drug dealers in the Mr. Hero parking lot.

14 Q. Who are the drug dealers in the parking lot?

15 A. Would be Daniel Smith and Stanley Jaloweic.

16 Q. Had Mr. Lally wanted to press charges and not just
17 have you get him out of there, would you have prepared
18 a detailed report?

19 MR. DUFF: Object.
20 Hypothetical.

21 THE COURT: Sustained at this
22 point. Sustained at this point.

23 Q. What would have been the policy and your reaction at
24 that time had the victim wanted to press charges?

25 MR. DUFF: Object.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 646

1 THE COURT: Well, no, he's
2 stating the policy at this point.

3 MR. DUFF: If something would
4 have happened hypothetically, which didn't occur.

5 THE COURT: What would -- okay,
6 fine. If something would have happened, I think he
7 can testify to that. Overruled.

8 A. Policy would have been to arrest both individuals, to
9 do a complete report, and charge them with criminal or
10 felony intimidation.

11 Q. Are there -- how often does it happen that you come
12 upon the scene of a crime and the victim does not
13 desire to press charges?

14 MR. DUFF: Object. No relevance
15 to this, how often other times it occurs.

16 THE COURT: No, I think it has
17 relevance. Overruled. You may answer.

18 A. There are numerous times when we come upon the scene
19 of a crime and the victim elects not to pursue.

20 Q. And when that happens are reports written?

21 A. Very seldom is a detailed report written, unless, in
22 fact, somebody pursues the charges.

23 MR. ROSENBAUM: I have no other
24 questions, Your Honor.

25 THE COURT: Mr. Duff.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 647

1 MR. DUFF: Thank you, Your
2 Honor.

3 RE CROSS-EXAMINATION OF JOHN HOMOKI

4 BY MR. DUFF:

5 Q. Do you consider this or -- you considered this at
6 that time a significant encounter, right?

7 A. Yes, sir.

8 Q. That's what you just used, those words?

9 A. Yes, sir.

10 Q. Now, you agree that, I think you told the prosecutor,
11 your memory fades after time and you're like everybody
12 else, right?

13 A. Yes, sir.

14 Q. So your memory was fading when you wrote this report
15 in September of '94, right, from the date it allegedly
16 occurred, right?

17 A. Yes, sir.

18 Q. Now, I want to know if Jaloweic or Smith, Danny Smith
19 are named in this State's Exhibit 8? Are they named
20 there?

21 A. No, sir, they are not.

22 Q. It references a drug dealer, right? Right?

23 A. It's plural.

24 Q. Drug dealers, right?

25 A. Drug dealers.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 648

1 Q. And only after talking to Detective Leiby and writing
2 that report did those drug dealers get a name, right?

3 MR. ROSENBAUM: Objection.

4 THE COURT: He may answer that.
5 Overruled.

6 Q. Do you want me to rephrase it?

7 A. Please.

8 Q. Only after you talked to Detective Leiby and it --
9 only after you talked to Detective Leiby did those
10 drug dealers get a name in September of '94, right?

11 A. Yes, sir, when I wrote that report.

12 Q. All right. And you, sir, you definitely know that
13 you, when you're writing of quotation marks, you
14 understand that, right?

15 A. Yes, sir.

16 Q. And you, as a police officer, know how important it
17 is to be precise and to be accurate, correct?

18 A. Yes, sir.

19 Q. That's what you're taught, correct?

20 A. Yes, sir.

21 Q. You didn't -- all right. You didn't write that
22 daily, did you?

23 A. No, sir, I did not.

24 Q. The dispatcher wrote that?

25 A. Yes, sir.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 649

1 Q. You have no records from that incident that indicates
2 anything happened that day between you and Danny
3 Smith, right, you yourself have no records from that
4 date?

5 A. Prior to this 8-A?

6 Q. I'm asking if you have any records that you prepared
7 on September of '93 when this incident allegedly
8 occurred, according to you, do you have any records to
9 verify that occurred?

10 A. No, sir.

11 Q. And you would agree that's a significant encounter if
12 it occurred because that's a felony, right, if I go
13 around and intimidate a witness?

14 A. It's a felony if in fact I have a witness that states
15 that it happened.

16 Q. No, answer my question. You consider it a
17 significant encounter because if this allegedly
18 occurred, that's a felony, right?

19 A. Yes, sir.

20 Q. And all felonies are real important to police
21 officers, right?

22 A. Yes, sir.

23 Q. More important than misdemeanors, right?

24 A. Yes, sir.

25 Q. Because they carry more time in prison, right?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 650

1 A. They're more significant crimes.

2 Q. The punishment's more severe?

3 A. Yes, sir.

4 Q. Now, you said it was unethical for an attorney to
5 meet privately with a judge about a case on his
6 docket, is that right, is that what you said on
7 redirect?

8 A. Yes, I guess.

9 MR. ROSENBAUM: Your Honor, can we
10 approach the bench, please?

11 THE COURT: Sure.

12 (Conference at the bench between the Court
13 and counsel, as follows:)

14 MR. ROSENBAUM: I don't know why he's
15 attempting to down this road. I guess I do know why.
16 But you have a man here that likes to brag about
17 passing out tickets to judges and to law clerks to
18 more sporting events than I've ever seen. He's trying
19 to make it an issue what goes on the courthouse. I
20 don't think it's relevant to this case. He's not
21 going to call on the judge to say that, and I
22 certainly don't think he's going to say that your
23 decision or your integrity was immuned (imputed?) by
24 Detective Leiby coming in here.

25 MR. DUFF: I'm not saying that.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 651

1 MR. ROSENBAUM: I know you're not,
2 but he's trying to create the impression that Leiby's
3 done something wrong. But comparison to what he does
4 on a daily basis in this building, it's nothing, and
5 he's, you're going to make this relevant.

6 THE COURT: Mr. Duff, you're not
7 on trial.

8 MR. ROSENBAUM: But he has put on
9 trial what goes on here.

10 THE COURT: You're treading in
11 very, very delicate areas at this point.

12 MR. ROSENBAUM: If you're going to
13 keep this up, you're going to find yourself up there.

14 MR. DUFF: I'm going to be on
15 the --

16 MR. ROSENBAUM: I'll be calling you.

17 MR. DUFF: You can't call me.

18 MR. ROSENBAUM: I can and I will.

19 And there are plenty of lawyers in the same boat.

20 MR. DUFF: You can't.

21 MR. ROSENBAUM: Watch me.

22 MR. WIGHTMAN: We would ask that be
23 stricken from the record, the statement from the
24 prosecutor.

25 MR. ROSENBAUM: It's --

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 652

1 MR. ROSENBAUM: There are things
2 that go on in the courthouse that probably aren't
3 technically ethical, but everybody overlooks it because of
4 the nature of this community. If he starts on this, it's
5 going -- it's irrelevant and it's ugly.

6 MR. DUFF: It's not irrelevant.

7 THE COURT: Act accordingly.
8 Let's get back to this.

9 MR. ROSENBAUM: Are we going to be
10 able to go --

11 THE COURT: Let's see what the
12 next question is going to be.

13 MR. WIGHTMAN: Can make a brief
14 response, Your Honor?

15 THE COURT: Yes.

16 MR. WIGHTMAN: The relevancy of the
17 question Mr. Duff's been asking is concerning this
18 case that this officer went directly to a judge to
19 achieve a --

20 THE COURT: Concerning this case?

21 MR. DUFF: Right. No, no,
22 not --

23 THE COURT: That's this case.

24 MR. ROSENBAUM: This is the judge
25 that granted Carl Hartman --

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 653

1 THE COURT: That's not what.--

2 MR. ROSENBAUM: How many times have
3 you dropped off a bottle of liquor to a judge?

4 THE COURT: Let's go back at it.
5 Let's hear the question.

6 (Thereupon, the following took place
7 within the hearing of the jury.)

8 THE COURT: Mr. Duff, proceed.

9 MR. DUFF: If I can have a
10 minute, Your Honor.

11 (Discussion between defense counsel held off the record.)

12 MR. DUFF: Nothing.

13 THE COURT: Mr. Rosenbaum.

14 REDIRECT EXAMINATION OF JOHN HOMOKI

15 BY MR. ROSENBAUM:

16 Q. Mr. Duff asked you if felonies were significant
17 crimes?

18 A. Yes, sir.

19 Q. And you have been in the drug unit for a while,
20 right?

21 A. Yes, sir.

22 Q. So is a felony drug offense that has no mandatory
23 time or actual incarceration a significant offense by
24 his definition?

25 A. By his definition, yes.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 654

1 MR. ROSENBAUM: I have no other
2 questions.

3 THE COURT: Mr. Duff.

4 RE CROSS-EXAMINATION OF JOHN HOMOKI

5 BY MR. DUFF:

6 Q. There's mandatory and there's non-mandatory drug
7 cases, right?

8 A. Yes, sir.

9 Q. And certainly, mandatory cases where there's no
10 chance of probation are much more significant; is that
11 correct?

12 MR. ROSENBAUM: Objection.

13 THE COURT: Overruled. If you
14 know. If you know.

15 A. I couldn't answer the question. I'm not sure.

16 Q. How about to you as a narcotics officer, much more
17 you'd rather bust --

18 MR. ROSENBAUM: I object as to
19 relevance.

20 THE COURT: At this point, the
21 point is that has been made. It's gone over with and
22 gone into again at this point. I mean, I'll let you
23 inquire, but he said as far as -- he doesn't know
24 whether it's more significant or not.

25 Q. Well, you would agree, sir, would you not, that it's

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 655

1 more significant for you as a narcotic officer to
2 arrest somebody for a mandatory time than it is for a
3 probational, non-mandatory offense?

4 MR. ROSENBAUM: Objection.

5 THE COURT: He may answer if he
6 knows.

7 A. To me, I'm not sure that it is that much more
8 significant, the penalties we are talking about.

9 Q. You know the what the bulk amounts are in drugs, sir?

10 MR. ROSENBAUM: Objection.

11 A. Yes, sir.

12 THE COURT: And you're going
13 beyond at this point.

14 MR. DUFF: I'll drop it.

15 THE COURT: Mr. Rosenbaum.

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

18 THE COURT: Thank you, Officer,
19 you may step down.

20 THE WITNESS: Thank you, sir.

21 (Witness excused.)

22 THE COURT: Counsel, please
23 approach.

24 (Conference at the bench between the Court
25 and counsel, as follows:)

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 656

1 THE COURT: Can you get your
2 direct in 15 minutes?

3 MR. ROSENBAUM: Yes.

4 THE COURT: Okay, bring him in.

5 MR. DUFF: Who is it?

6 THE COURT: I don't know who it
7 is.

8 MR. DUFF: Cross will be longer,
9 Your Honor.

10 THE COURT: I know. We won't do
11 the cross.

12 (Thereupon, the following took place
13 within the hearing of the jury.)

14 THE COURT: Next witness, please,
15 Mr. Rosenbaum.

16 SANDRA WILLIAMS
17 a Witness herein, called on behalf of the State of Ohio,
18 after first being duly sworn by the Court, testified
19 and said as follows:

20 DIRECT EXAMINATION OF SANDRA WILLIAMS

21 BY MR. ROSENBAUM:

22 Q. State your name, please.

23 A. Sandra Williams.

24 Q. Are you employed, ma'am?

25 A. Yes, sir.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 657

- 1 Q. Can you tell the Court and jury what you do for a
2 living?
- 3 A. I work at Parker Hannafin.
- 4 Q. What do you do there?
- 5 A. I'm a lead assembler.
- 6 Q. How long have you worked there, ma'am?
- 7 A. Twenty-two years.
- 8 Q. Do you know a person by the name of Ronald Lally?
- 9 A. Yes, sir.
- 10 Q. How did you know him, ma'am?
- 11 A. I was engaged to him.
- 12 Q. Can you identify the person whose face is depicted in
13 State's Exhibit 2-B?
- 14 A. Yes.
- 15 Q. Who is that?
- 16 A. Ron Lally.
- 17 Q. How long did you know him for?
- 18 A. Thirteen years.
- 19 Q. Were you still dating him at the time of his death?
- 20 A. Yes, sir.
- 21 Q. Did you live together at times?
- 22 A. Yes, sir.
- 23 Q. Did you always live together?
- 24 A. Yeah, basically.
- 25 Q. Did he have a place his own, though?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

1 A. At the time of his death, yes.

2 Q. Did you break up with him anywhere in those 13 years?

3 A. Yeah, about the last year of his life.

4 Q. And did you break up at other times during the
5 relationship?

6 A. Once for about three months.

7 Q. What caused the problems in your relationship?

8 A. Drugs.

9 Q. What do you mean by that?

10 A. He was smoking crack and I didn't like it.

11 Q. He was an addict?

12 A. Yes.

13 Q. When did he become an addict, if you know?

14 A. About four years --

15 Q. Did he --

16 A. -- before he died.

17 Q. Did he do things as a result of that, that would
18 upset you?

19 A. Yeah.

20 Q. What were -- what was that?

21 A. He stole things from me.

22 Q. Like what?

23 A. Money, jewelry, VCR, microwave.

24 Q. Did he admit doing this to you after he would do it?

25 A. Yeah.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 659

- 1 Q. And how did he feel about it?
- 2 A. He always he said felt bad about it.
- 3 Q. But could he stop, or did he stop?
- 4 A. No.
- 5 Q. Did he steal anything from you in June of 1993?
- 6 A. Yeah, my microwave.
- 7 Q. Did he admit that to you?
- 8 A. No, not right away.
- 9 Q. Where was his place that he had separate from yours
- 10 at the time that he died?
- 11 A. On Middle Avenue, an apartment across from the high
- 12 school.
- 13 Q. Is that by Mr. Hero?
- 14 A. Yes.
- 15 Q. Is it next to Mr. Hero?
- 16 A. Yes, right across the alley.
- 17 Q. Now, have you ever seen the person who's seated below
- 18 my right hand?
- 19 A. Yes, sir.
- 20 Q. Do you know his name?
- 21 A. Danny Smith.
- 22 Q. When did you learn his name?
- 23 A. When he came into my yard.
- 24 Q. When was that?
- 25 A. In September of '93.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 660

1 Q. Do you know if it was on the 7th?

2 MR. DUFF: Object.

3 A. I can't recall.

4 Q. What happened when he came to your yard?

5 A. He was making threats against Ron.

6 Q. Tell the Court and jury exactly what the defendant
7 said to you, as best you can recall it.

8 A. He said that I should tell Ron that they knew where
9 he was at and they knew where his family lived and it
10 would be a shame if his family got hurt.

11 Q. Did he say, or did he indicate knowledge of what type
12 of structure, Ron Lally's structure lived in?

13 A. Yes.

14 Q. What did he say?

15 A. He knew that he lived in a mobile home.

16 Q. And did he say what faith might befall this mobile
17 home?

18 A. It might be blown up.

19 MR. ROSENBAUM: I have no other
20 questions, Your Honor.

21 CROSS-EXAMINATION OF SANDRA WILLIAMS

22 BY MR. DUFF:

23 Q. Did you give a statement to any police officers in
24 regard to this case?

25 A. When he came to the house.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

1 Q. When who --

2 A. Danny.

3 Q. No, no. Did you ever make a statement to the, a
4 police officer, Detective Leiby or any other
5 individual?

6 A. Yes.

7 Q. Did you write it out?

8 A. I didn't write it, no.

9 Q. Did you give a taped statement?

10 A. Yes, they did tape it.

11 Q. All right.

12 MR. DUFF: We'd ask for that,
13 Your Honor.

14 THE COURT: Very well.

15 MR. DUFF: Let me finish. Can I
16 finish?

17 How many statements did you give that were taped?

18 A. Just one, I believe.

19 Q. All right. Do you want to take time to think about
20 that? Are you sure?

21 A. As best as I can remember, yeah, it was only once.

22 Q. Do you know the date that you gave this taped
23 statement?

24 A. No, I can't remember.

25 Q. Did you ever write anything down in regard to this

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 662

1 case?

2 A. I can't remember.

3 Q. You don't know if you ever wrote anything down?

4 A. I don't remember, no.

5 Q. All right.

6 MR. DUFF: We'd ask for the
7 statement.

8 THE COURT: Okay. Ladies and
9 gentlemen, something that has to be done. I get the
10 statement at this point. I get the taped statement at this
11 point. It's an in-camera inspection, correct? And
12 ladies and gentlemen, we've reached a point where I have to
13 examine certain things and that has to be done
14 certainly outside of your hearing and your viewing at
15 this point.

16 While the clock on the wall says five minutes to
17 12:00, it's probably a good time to take our noon recess at
18 this point. I'm looking for myself at this point. I'll
19 take a while to listen. Let's come back, let's come back
20 at 1:15, so that we can get started as close to that time
21 as possible.

22 The admonitions that I've given in the past about
23 discussing this matter amongst yourselves, letting anyone
24 discuss it with you, letting anybody read anything to you
25 you, reading anything to yourself about that, please do not

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 663

1 do so. And with that, we will take our noon recess.

2 (The noon recess was had.)

3 (The Court had an in-camera inspection of
4 the taped statement of Sandra Williams and
5 made the finding there no inconsistencies
6 on the record.)

7 (The following took place within the
8 presence and hearing of the jury.)

9 THE COURT: Good afternoon,
10 ladies and gentlemen. Ladies and gentlemen, as you recall,
11 we had finished the direct examination of this witness,
12 started the cross-examination of this witness, and as a
13 result of certain housework that this court had to do out
14 of your hearing, we adjourned at that point.

15 But glad to report to you this housework has been
16 completed and the results of said housework has been
17 entered into the record, and we are now ready to proceed
18 further with the cross-examination of this witness.

19 Mr. Duff.

20 MR. DUFF: Yes, Your Honor.

21 BY MR. DUFF:

22 Q. Miss Williams, is that it?

23 A. Yes.

24 Q. Miss Williams, I'd like to ask you a few questions if
25 I may; is that all right?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

1 A. Yes.

2 Q. Okay. As I understand it, you're not able, on your
3 direct examination, you were not able to recall the date
4 that this alleged incident occurred?

5 A. Which incident?

6 Q. The incident where you claim Danny Smith came over to
7 your house, you don't recall the date?

8 A. I don't recall the date.

9 Q. If I were to suggest to you a date of 9-7-93, would
10 that be consistent with what you recall?

11 A. Probably, yes.

12 Q. Okay. You wouldn't quibble with that?

13 A. No.

14 Q. All right. Now, as I understand it, you spoke to
15 Detective Leiby other than coming to court, you testified
16 in the previous cases; is that right?

17 A. Yes, sir.

18 Q. Both cases. Did you testify in the Raymond Smith
19 case?

20 A. Yes, sir.

21 Q. Stanley Jaloweic case?

22 A. Yes, sir.

23 Q. All right. Now, other than those cases, in talking
24 to Detective Leiby under those conditions you spoke to
25 Detective Leiby, you gave him a taped statement, correct?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 665

1 A. Yes.

2 Q. All right. And that was done January 3rd of 1995; is
3 that correct?

4 A. Somewhere around in there, yeah.

5 Q. Would you argue with that?

6 A. No.

7 Q. All right. Now, where had you given that statement
8 at?

9 A. The police station.

10 Q. All right. You met with and saw him down there?

11 A. Yes.

12 Q. And you had spoken to him one other time before that;
13 is that correct?

14 A. Yes.

15 Q. He had called your house looking for Ron. Detective
16 Leiby had called your house looking for Ron back in
17 September of '93; do you recall that?

18 A. No.

19 Q. You don't recall the date of 9-20-93 when Detective
20 Leiby called your house looking for Ron?

21 A. No, sir.

22 Q. All right. How about the date, you don't recall the
23 date or you don't recall the phone conversation at all?

24 A. I don't recall the phone conversation at all.

25 Q. Well, if you were to tell you that you discussed

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 666

1 that --

2 MR. ROSENBAUM: Objection.

3 MR. DUFF: Can I finish?

4 THE COURT: Let's hear the
5 question.

6 Q. If I were to tell that you discussed that phone call
7 with Detective Leiby on the tape --

8 MR. ROSENBAUM: Objection.

9 MR. DUFF: I'm not trying to
10 impeach, I'm trying to refresh her recollection, Your
11 Honor.

12 THE COURT: Again, at this point
13 you're using that --

14 MR. DUFF: To refresh her
15 recollection.

16 THE COURT: Well, not necessarily
17 to refresh. Can you think very hard about that as to
18 whether or not there was any other kind of conversation?

19 THE WITNESS: No, I can't remember.

20 MR. DUFF: Can I play the tape
21 to refresh her --

22 MR. ROSENBAUM: Objection. He
23 shouldn't be mentioning that tape in front of the jury.
24 It's a limited use that he gets to hear it for and he's
25 exceeded it.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 667

1 MR. DUFF: Outside the presence
2 of the jury. Can that be accomplished, Your Honor, to
3 refresh her recollection, listening to a tape to refresh
4 her recollection of conversation.

5 THE WITNESS: I don't know.

6 THE COURT: Ladies and gentlemen,
7 I'm going to return you to your jury room at this point.
8 Again, an item has come up at this point that has to be
9 done outside of your hearing. Admonitions that I've given
10 in the past about discussing these matters or letting
11 anyone discuss them with you, reading about this case,
12 letting anybody read to you, still hold. With that we will
13 take hopefully what amounts to a very short recess.

14 (Discussion was had without the
15 presence and hearing of the jury as to
16 whether the tape would be played to
17 refresh the witness' recollection. The
18 judge listened to the tape again and ruled
19 it was not necessary to play the tape.)

20 (The following took place within the
21 presence and hearing of the jury.)

22 THE COURT: Mr. Duff, continue
23 your questioning.

24 MR. DUFF: Thank you, Your
25 Honor.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 668

1 BY MR. DUFF:

2 Q. Now, there's been some conversation between you and
3 me as far as a phone call on September 20th, 1993; is that
4 correct?

5 A. Yes, sir.

6 Q. Do you recall any time prior to 1-3-95, this date
7 over here, when you gave the taped statement at the police
8 station, do you recall ever telling anyone, including
9 Detective Leiby, the gentleman under my hand here, about
10 this alleged incident with Danny Smith?

11 A. I talked to Detective Leiby just shortly after Danny
12 had left my yard.

13 Q. All right. On 9-7-93?

14 A. Yes, sir.

15 Q. Did you make a police report on that?

16 A. No, sir.

17 Q. You didn't make a police report, you didn't file a
18 complaint?

19 A. No, sir.

20 Q. Where did you talk to Detective Leiby at allegedly?

21 A. I called him.

22 Q. You called him. Do you know the date of that call?

23 A. 9- 7-93.

24 Q. Did you call the police on 9-7-93?

25 A. Yes.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 669

1 Q. All right. Now, well, if there would be evidence
2 forthcoming in this case that you talked to Detective Leiby
3 on September 20th, 1993, would there be such evidence
4 forthcoming in this case, you don't recall? Did you
5 mention to him on September 20th anything about there
6 incident 1993?

7 A. I don't remember talking to him on that date.

8 Q. Well, I asked you to assume there's evidence
9 forthcoming.

10 MR. ROSENBAUM: Objection.

11 MR. DUFF: It's got a good faith
12 basis, Your Honor.

13 THE COURT: She says she doesn't
14 recall having talked to him on that date. How can she
15 assume anything at this point?

16 MR. DUFF: Can I reframe?

17 THE COURT: Frame it.

18 Q. Assume Detective Leiby were to testify in this case
19 that he spoke to you September 20th, 1993, all right. Do
20 you know if you mentioned to him this alleged incident
21 with Danny Smith on that date?

22 MR. ROSENBAUM: Objection.

23 THE COURT: She says she doesn't
24 recall that conversation.

25 MR. DUFF: All right.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 670

1 THE COURT: Sustained.

2 MR. DUFF: Thank you, Your
3 Honor.

4 Now, Danny -- Ron was, you've been dating him since
5 when? What year did you start dating him?

6 A. 1981.

7 Q. 1981. And I think your testimony in the previous
8 cases was that for the last four years of your relationship
9 he was a crack addict, right?

10 A. Yes, sir.

11 Q. He was also hooked on pills and Valium; is that
12 correct?

13 A. Yes, sir.

14 Q. All right. So, if he died in January of '94, that
15 means he would have been addicted to crack, in your view,
16 going back to, what, 1990, January of '90?

17 A. Yeah.

18 Q. And he had no problem before that?

19 A. No, sir.

20 Q. Okay. So your testimony is that before 1990, Ronald
21 had no drug problem?

22 A. I can't say he didn't have. He did drugs, but it
23 wasn't a problem.

24 Q. It wasn't, he wasn't addicted to crack cocaine?

25 A. Right.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 671

1 Q. Okay. Would it surprise you to tell you -- do you
2 know Detective Homoki?

3 A. Yes, sir.

4 Q. Would it surprise you to tell you that he said Ron
5 was a crack addict as far back as 1988, would that surprise
6 you of that testimony?

7 A. No.

8 Q. All right. Now, you know Danny's black, right?

9 A. Yes.

10 Q. All right. Is it true you told Detective Leiby you
11 couldn't recognize Danny?

12 A. No, sir, I didn't say that.

13 Q. You never said you couldn't recognize him?

14 A. I don't believe I ever said that, no.

15 Q. You never told Detective Leiby that you would not
16 recognize Danny?

17 A. I don't remember ever saying that, no.

18 Q. Okay. All right. Now, you loved Ron Lally, right?

19 A. Very much.

20 Q. More than anybody else in the world?

21 A. Short of my grandchildren.

22 Q. Next to your grandchildren?

23 A. Short of my grandchildren.

24 Q. You were with him 13 years, right?

25 A. Yes, sir.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 672

1 Q. You upset with Danny because you think he might have
2 had a role in this killing?

3 A. No, not particularly.

4 Q. Doesn't bother you?

5 A. Well, yes, it bothers me, but why, I can't be upset
6 with him. It wouldn't bring Ron back.

7 Q. How about the fact that Danny's black, does that
8 bother you?

9 A. No, sir.

10 Q. Did you ever go to a KKK meeting?

11 A. No, sir.

12 Q. You never went to a KKK meeting?

13 A. No, sir.

14 Q. You never told Detective Leiby you went to a KKK
15 meeting in Lodi, Ohio?

16 A. That is not what I told Detective Leiby.

17 Q. Just answer my question. Did you ever tell Detective
18 Leiby that you and Ron Lally went to a KKK meeting in Lodi,
19 Ohio, did you ever tell him that, yes or no?

20 A. No.

21 Q. Did you ever go to a KKK meeting?

22 A. Meeting, no.

23 Q. Did you ever go to a KKK, KKK event, yes or no?

24 A. No.

25 Q. Event?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 673

1 A. No.

2 Q. Did you ever go to any kind of KKK --

3 MR. ROSENBAUM: Your Honor, is there
4 some relevance to this?

5 MR. DUFF: A lot.

6 MR. ROSENBAUM: Maybe we can approach
7 the bench and hear.

8 THE COURT: Can you tie it in?

9 MR. DUFF: I can tie it in.

10 MR. ROSENBAUM: I would like to hear
11 the relevance at the bench, if it please the Court.

12 THE COURT: Come on.

13 (Conference at the bench between the Court
14 and counsel, as follows:)

15 THE COURT: He's
16 cross-examining.

17 MR. DUFF: All right, I'll do
18 it.

19 THE COURT: I don't go for the
20 double-barrel anymore.

21 MR. DUFF: I can handle it. The
22 relevancy is she has feelings against blacks and Danny is
23 black.

24 THE COURT: I don't think he
25 has --

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 674

1 MR. DUFF: That's what I'm
2 trying to bring out.

3 MR. ROSENBAUM: She's answered that
4 question. She said she doesn't.

5 MR. DUFF: I'm trying to explore
6 that.

7 MR. ROSENBAUM: You are not.

8 THE COURT: You better word what
9 he went to, exactly what he went to.

10 MR. ROSENBAUM: She said she doesn't
11 have feelings against blacks. She doesn't have particular
12 bad feelings about Danny, and she hasn't attended a rally.

13 THE COURT: He didn't ask if she
14 had gone to a rally, it was whether she went to a meeting.

15 MR. ROSENBAUM: She didn't go to the
16 rally either. She said she did not go to the event. Yes,
17 she did. You're trying to twist what happened. That's not
18 what she said. She knew that they stage a thing. She went
19 to watch. She wasn't attending that rally. It's like
20 going to a fire. It doesn't mean you set it.

21 THE COURT: All right.

22 MR. DUFF: That's redirect, Your
23 Honor.

24 MR. ROSENBAUM: No, it's not.

25 THE COURT: Proceed, please.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 675

1 MR. ROSENBAUM: He's trying to create
2 a wrongful impression.

3 BY MR. DUFF:

4 Q. Let me ask you this, Ms. Williams. Did you ever go
5 to a KKK meeting to just watch and not participate?

6 A. Yes, sir.

7 Q. Thank you. How many times did you go to KKK
8 meetings?

9 A. Just the one time. It wasn't a meeting.

10 Q. Thank you. Whatever it was. And that was in Lodi,
11 Ohio?

12 A. Yes, sir.

13 Q. Who did you go there with?

14 A. Ron and a couple other friends.

15 Q. All right. And you're not a member of KKK?

16 A. No, sir.

17 Q. You think that's funny?

18 A. Well --

19 MR. ROSENBAUM: I do. I think it's
20 ludicrous.

21 MR. DUFF: Object.

22 MR. ROSENBAUM: What you do --

23 THE COURT: All right.

24 MR. ROSENBAUM: I object to this.

25 THE COURT: All right. At this

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 676

1 point get your questions out, Mr. Duff, whether she thinks
2 it's funny or not.

3 BY MR. DUFF:

4 Q. Now, let's talk about this alleged incident in
5 September of the '93, the 7th. You claimed there are a lot
6 of people present during this thing, correct?

7 A. Yes.

8 Q. During this alleged threat; is that right?

9 A. There were four people.

10 Q. Four. Mike Tolvert was there, right?

11 A. Yes, sir.

12 Q. William Pierce was there, right?

13 A. Yes, sir.

14 Q. Duane Moore was there?

15 A. No, sir.

16 Q. Linda Dennis was there?

17 A. Yes, sir.

18 Q. And this was in broad daylight, right?

19 A. Yes, sir.

20 Q. And he didn't directly threaten you, did he, Danny,
21 according to you?

22 A. No, he did not.

23 Q. He told you he was mad and upset with Ron over this
24 thing, right?

25 A. Yes.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 677

1 Q. Is William Pierce your son-in-law?

2 A. Yes.

3 Q. Who is Duane Moore?

4 A. A friend of Rons.

5 Q. Okay. Linda Dennis is who?

6 A. My friend.

7 Q. How about William Pierce, he's your future son-in-law
8 or is your son-in-law?

9 A. At the time he was my future son-in-law. Now --

10 Q. Who is he?

11 A. Now he's married to my daughter.

12 Q. What's her name?

13 A. Audra.

14 Q. Audra?

15 A. Yes.

16 Q. Was she present?

17 A. No.

18 Q. Who is Ralph Zinner?

19 A. It was a friend of Rons.

20 Q. Did you tell Detective Leiby --

21 MR. ROSENBAUM: Can we approach the
22 bench?

23 THE COURT: Yes.

24 (Conference at the bench between the Court
25 and counsel, as follows:)

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 678

1 MR. ROSENBAUM: This is clearly,
2 again, an improper use of that tape.

3 MR. DUFF: I haven't asked the
4 question.

5 MR. ROSENBAUM: Which has happened
6 with the KKK is also improper use of that tape. He would
7 not have that. There was no inconsistent statement. He is
8 improperly using it. It should be stricken. Now he wants
9 to go into the tape about what did you tell Detective
10 Leiby.

11 MR. DUFF: Judge, there is no
12 rule of law that says if I hear relevant information on
13 in-camera examination -- let me finish.

14 MR. ROSENBAUM: Why in camera?

15 THE COURT: Why is it in camera?
16 For one purpose.

17 MR. DUFF: You determine
18 inconsistencies. If there other pertinent, relevant things
19 it is subject to cross. I'm --

20 MR. ROSENBAUM: You show me a case
21 and you'll never hear me say anything.

22 MR. DUFF: I'm exploring on
23 cross.

24 MR. ROSENBAUM: You don't know about
25 it until you have it.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 679

1 MR. DUFF: What am I supposed to
2 do, erase it from my mind?

3 MR. ROSENBAUM: That's why the rule
4 was drafted. You don't even get to see it. In some court
5 of appeals, you don't get to hear it. He determines it.

6 MR. DUFF: Not this one.

7 MR. ROSENBAUM: You're violating the
8 rule and I think the Court's --

9 MR. DUFF: No, I'm not.

10 MR. ROSENBAUM: The remarks about the
11 KKK should be stricken.

12 MR. DUFF: No. Judge, before
13 you allowed us to go, I thought as other things --

14 THE COURT: I thought there was
15 more material in the tape.

16 MR. DUFF: You said other things
17 I might be able to explore.

18 THE COURT: Go ahead. All right.
19 At this point continue.

20 (The following took place within the
21 hearing of the jury.)

22 MR. DUFF: Nothing else, Your
23 Honor.

24 THE COURT: Mr. Rosenbaum, any
25 redirect?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 680

1 MR. ROSENBAUM: I made a motion to
2 strike some testimony about the KKK.

3 MR. DUFF: Object to that, Your
4 Honor.

5 THE COURT: I will deny that at
6 this point.

7 REDIRECT EXAMINATION OF SANDRA WILLIAMS

8 BY MR. ROSENBAUM:

9 Q. Have you ever subscribed to the ideals of the KKK?

10 A. No, sir.

11 Q. Do you believe in them?

12 A. No, sir.

13 Q. Do you detest them?

14 MR. DUFF: Object.

15 A. Yes.

16 THE COURT: Overruled.

17 Q. Did you go to this meeting in Lodi just to witness
18 the spectacle that may happen with the Klan and the police?

19 A. Yes, sir.

20 Q. Did the Klan ever show up?

21 A. No, sir.

22 MR. ROSENBAUM: I have no other
23 questions.

24 THE COURT: Mr. Duff.

25 RECROSS-EXAMINATION OF SANDRA WILLIAMS

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 681

1 BY MR. DUFF:

2 Q. And you and Ron drove all the way to Lodi just to
3 watch what might happen, right?

4 A. Yes, sir.

5 Q. And you're saying it was just to watch a KKK
6 function?

7 A. Yes, sir.

8 Q. Was that your idea or Ron's?

9 A. It was a group idea.

10 Q. Both of yours idea?

11 A. Yes, sir.

12 MR. DUFF: That's it.

13 THE COURT: Mr. Rosenbaum.

14 MR. ROSENBAUM: I have no other
15 questions.

16 THE COURT: Thank you, ma'am, you
17 may step down.

18 (Witness excused.)

19 THE COURT: Mr. Rosenbaum.

20 LYNNE ALTPATER

21 a Witness herein, called on behalf of the State of Ohio,
22 after being first duly sworn by the Court, testified and
23 said as follows:

24 THE COURT: Adjust that
25 microphone so you can speak directly into it if you would,

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 682

1 please, and speak up so that everybody can hear you. You
2 have to get a little bit close to it.

3 DIRECT EXAMINATION OF LYNNE ALTPATER

4 BY MR. ROSENBAUM:

5 Q. State your name, please?

6 A. Lynne Altpater.

7 Q. Spell your first and last name for the reporter.

8 A. L-Y-N-N-E A-L-T-P-A-T-E-R.

9 Q. Are you employed, ma'am?

10 A. Yes.

11 Q. Where are you employed?

12 A. Bob Evans.

13 Q. Are you married?

14 A. Yes.

15 Q. Do you have children?

16 THE COURT: How long have you
17 worked at the Bob Evans?

18 THE WITNESS: Two-and-a-half years.

19 Q. Do you know the person that's seated immediately
20 under my right hand?

21 A. Yes.

22 Q. What's his name?

23 A. Danny Smith.

24 Q. How is it that you came to meet Danny Smith?

25 A. Up town in the bars.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 683

- 1 Q. Did you meet him through someone else?
- 2 A. No. Well, other people we were around. I don't
- 3 really remember exactly.
- 4 Q. Where did you work before you worked at Bob Evans?
- 5 A. For a doctor, Dr. Mark Miceli.
- 6 Q. How long ago did you work there?
- 7 A. Three years ago.
- 8 Q. And how long did you work for the doctor?
- 9 A. Two years.
- 10 Q. Did you know the defendant when you worked for
- 11 Dr. Miceli?
- 12 A. Yes.
- 13 Q. Did there ever come a time when the defendant came to
- 14 you for help for a predicament he was in?
- 15 A. Yes.
- 16 Q. Can you tell the Court and jury when that was?
- 17 A. I don't remember the dates, but I remember it was a
- 18 couple years ago.
- 19 Q. Was it before Ron Lally died?
- 20 A. Yes.
- 21 Q. Can you describe for the Court and jury what he came
- 22 to you for, what he did, what he said?
- 23 A. He just asked me if I could help get him some kind of
- 24 poison or something like that.
- 25 Q. Did he say what he was going to do with the poison?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 684

1 A. No, not really.

2 Q. Did he ask you -- what did you tell him?

3 A. That I couldn't get anything like that.

4 Q. Did he want you to get something for him before the
5 poison?

6 A. Just, like, I don't know, he didn't know exactly what
7 he wanted. I had assumed it was chloroform.

8 Q. What did he describe?

9 A. Something that would maybe make someone go to sleep
10 or something like that.

11 Q. Knock them out?

12 A. Something like that, yeah.

13 Q. And after you couldn't get him that, what was his
14 request?

15 A. If I had access to poison.

16 Q. That would kill someone?

17 A. He didn't exactly say kill anybody.

18 Q. What did he say about it?

19 A. He just, he really didn't tell me what he actually
20 wanted it for. I can't really remember what all was said.
21 It was quite a while ago.

22 Q. Did he say anything to you about taking care of a
23 person?

24 A. Yeah, he mentioned something about that.

25 Q. Well --

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 685

1 MR. DUFF: Object. He's leading
2 a little bit, Your Honor.

3 Q. And what you recall --

4 THE COURT: Okay. Mr. Rosenbaum,
5 if you can refrain. I understand the difficulties, but if
6 you can refrain from leading, please.

7 Q. As best you can recall, how did he phrase it?

8 A. To take care of somebody.

9 Q. And did he say why this person needed to be taken
10 care of?

11 A. I knew that.

12 Q. And what was that?

13 A. Because he was going to testify against him in court.

14 MR. DUFF: Object.

15 THE COURT: Overruled.

16 MR. DUFF: It's her known
17 processes, Your Honor.

18 THE COURT: You can cross.

19 Q. Now, are you afraid today?

20 A. No.

21 Q. Did you ever go to attorney Duff's office?

22 A. Yes.

23 Q. Did you make a tape there?

24 A. Yes.

25 Q. And what did you tell attorney Duff?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 686

1 A. I don't even remember.

2 Q. Did you tell the truth today?

3 A. Yes.

4 Q. Would you lie in this courtroom for anyone or
5 anything?

6 A. No.

7 MR. ROSENBAUM: I have no other
8 questions.

9 THE COURT: Mr. Duff or Mr.
10 Wightman.

11 MR. DUFF: Yes, Your Honor.

12 CROSS-EXAMINATION OF LYNNE ALTPATER

13 BY MR. DUFF:

14 Q. Mrs. -- how do you say that last name?

15 A. Altpater.

16 Q. Mrs. Altpater, as I understand it, you've given some
17 previous statements to Detective Leiby; is that right?

18 A. Yes.

19 Q. I think two of them, right?

20 A. I believe so. No, I think it was only once.

21 Q. Well, my notes indicate --

22 A. I spoke to him once at my house and once at the
23 police station.

24 Q. Hold on. Let me ask the question. All right. And
25 was that statement taped that you gave Detective Leiby?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 687

1 A. At the police station?

2 Q. Yeah.

3 A. Yes.

4 Q. You don't know whether that was?

5 A. No.

6 Q. Did you ever write a statement down for him?

7 A. No.

8 Q. You just gave one taped statement?

9 A. Yes.

10 Q. And you gave a statement, taped statement at my
11 office?

12 A. Yes.

13 MR. DUFF: We ask to see the
14 taped statement.

15 (Conference at the bench between the Court
16 and counsel.)

17 THE COURT: All right. Ladies
18 and gentlemen, again, same procedure. I'm truly sorry, but
19 that's the way it has to be.

20 Ladies and gentlemen, the same procedure. You'll
21 have to return to your jury room at this point. The
22 admonitions I've given you about discussing this amongst
23 yourselves, letting anyone discuss it with you, reading
24 anything, letting anyone read to you, still hold. With
25 that, it will hopefully be a short recess.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 688

(The jury was excused and the Court had an in-camera inspection of the taped statement of Lynne Altpater. After which, the Court, on the record, indicated there were a couple inconsistencies.)

(The following took place within the presence and hearing of the jury.)

THE COURT: Good afternoon, ladies and gentlemen.

Ladies and gentlemen, the work that needed to be done has been done, and we can now continue with the cross-examination of this witness. Proceed, Mr. Duff.

MR. DUFF: Thank you, Your Honor.

BY MR. DUFF:

Q. Mrs. Altpater, or Lynne, which do you prefer?

A. Lynne is fine.

Q. All right, thank you. Lynne, I'd like to ask you a few questions if I could. Is that all right?

A. Yes.

Q. All right. You admit that you came to my office along with your husband back in October of '95?

A. Yes.

Q. And you were with your husband Richard; is that correct?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 689

1 A. Yes.

2 Q. And also present was a private investigator, Gerald
3 Mielcarek?

4 A. Yes.

5 Q. Did he bring you to my office? How did you get
6 there?

7 A. I came on my own.

8 Q. With your husband?

9 A. Uh-huh.

10 Q. And you met Gerald Mielcarek there?

11 A. I'm not sure his name being that.

12 Q. Butch?

13 A. Yes.

14 Q. You met Butch at my office?

15 A. Yes.

16 Q. And apparently he talked to you some other time out
17 at your house, Butch did. How did you know to come to my
18 office?

19 A. Danny asked me to.

20 Q. Danny asked you to. And so how did you know Butch?

21 A. Oh, I met him. He asked me to come in, too.

22 Q. Did you tell Butch that Detective Leiby told you not
23 to talk to Danny's lawyers, did you tell him that?

24 A. He preferred that I didn't.

25 Q. Detective Leiby preferred that you not talk to

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 690

1 Danny's lawyers?

2 A. Yes.

3 Q. Did he tell you and Richard that?

4 A. Yes.

5 Q. Okay. And as I understand it, you gave me a taped
6 statement. You knew I was taping that, right?

7 A. Yes.

8 Q. I told you I was taping it, right?

9 A. Yes.

10 Q. And your husband was present and so was Butch?

11 A. Yes.

12 Q. Okay. And you can't recall what you told me?

13 A. No, not exactly. Not everything, no.

14 Q. All right. Now, as I understand it, you've given
15 count statement at my office?

16 A. Uh-huh.

17 Q. You gave a statement to Detective Leiby on January
18 6th, 1995; is that correct, approximately?

19 A. Approximately.

20 Q. All right. And where was that taken? Was that done
21 at your house, Detective Leiby came to your house?

22 A. He a came to my house, yes.

23 Q. Was your husband present?

24 A. No.

25 Q. All right. That was the first statement you gave; is

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 691

1 that correct?

2 A. I talked to him, yes.

3 Q. Well, is that the first statement you gave?

4 A. I assume so.

5 Q. All right. Well, do you know of any other statements
6 you gave before that?

7 A. Yes. When I went to the police station.

8 Q. I know. I'm going to get to that.

9 A. Okay.

10 Q. Did you give another statement on 1-19-95 after that
11 one at the police station?

12 A. Yes.

13 Q. All right. We will mark the first one as being done
14 at home, right?

15 A. Right.

16 Q. And the second one, 1-19-95, at police station,
17 right?

18 A. Yes.

19 Q. You're married to Richard Altpater?

20 A. Yes.

21 Q. Guys got any kids?

22 A. Yes, two.

23 Q. Ages and names?

24 A. Sixteen, Star; Brandy is 14.

25 Q. All right. How long you guys been married?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 692

1 A. Eighteen years.

2 Q. And then you gave another statement to me in October
3 of '95?

4 A. Yes.

5 Q. Taped statement, right?

6 A. Yes.

7 Q. At my office?

8 A. Yes.

9 Q. In Lorain, Ohio?

10 A. Yes, sir.

11 Q. Now, how many years did you say you've been married?

12 A. Eighteen.

13 Q. All right. And it's true that Detective Leiby talked
14 to you and your husband about helping your husband out of
15 some legal situation he was in, right?

16 A. He talked to my husband about it, right.

17 Q. You were present, you heard about it. You were told
18 about it.

19 A. I heard. I wasn't there.

20 Q. You talked to me about it, right?

21 A. Yes.

22 Q. Your husband's drug case, right?

23 A. Yes.

24 Q. And that was a drug abuse charge, right?

25 A. Yes.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 693

1 Q. And Detective Leiby promised him, yes or no, that if
2 he gave a statement involving Danny Smith that he would
3 take care of that case, right?

4 A. He would help him with it, yes.

5 Q. And you're upset with Detective Leiby because he
6 didn't help him with it, right?

7 A. No, not exactly.

8 Q. You don't recall?

9 A. I was upset at the time, yeah, but it happens, so
10 there's nothing I could do about it.

11 Q. Your husband got probation in that drug case, right?

12 A. Yes.

13 Q. And he felt because what he said about Danny Smith he
14 shouldn't even get probation, right?

15 A. Yes.

16 Q. He was, you and your husband were mad at Detective
17 Leiby because your husband got probation for a drug abuse
18 offense when, according to you guys, he shouldn't have
19 gotten anything, right?

20 A. In a way, yes. I felt that way at the time.

21 Q. That's what you told me?

22 A. That's what I said at the time.

23 Q. All right. And you came to my office in October and
24 you told me that Danny asked you for poison to kill a cat
25 problem he had, right?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 694

1 A. Right.

2 Q. That he had cats getting in his trash at his
3 apartment building, right?

4 A. Right.

5 Q. And that that was why he wanted some poison, right,
6 that's what you told me?

7 A. Right.

8 Q. And you worked for a doctor and he thought maybe you
9 could get him something to kill some cats, right?

10 A. Correct.

11 Q. And in fact, that's what you told me in October, and
12 you also told Detective Leiby that back on January 6th of
13 '95, didn't you?

14 A. Yes.

15 Q. Where you spoke to him at your home?

16 A. Yes.

17 Q. So you told me and you told Detective Leiby, when you
18 first talked to him, that the poison was for cats, right?

19 A. Yes.

20 Q. And not for any people, right?

21 A. The first conversation we had.

22 Q. The first conversation and with me, right?

23 A. Right. But the first conversation --

24 Q. Just answer my questions.

25 MR. ROSENBAUM: Your Honor, she is

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Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 695

1 trying.

2 Q. The first conversation you had with Detective Leiby
3 you told him the poison was for cats, and you confirmed
4 that in your conversation with me in October, right?

5 A. Yes.

6 Q. Then you told me when we met in October that you guys
7 lied to Detective Leiby to save your husband from getting
8 18 months, did you tell me that?

9 A. I don't recall making that statement.

10 Q. You don't recall that. Want me to play that for you?

11 A. Yeah.

12 Q. Would hearing that refresh your memory about what you
13 told me?

14 A. It would help.

15 Q. We will play it. Can I adjust, unless you want to
16 use yours, we will see how it goes.

17 THE COURT: Get the right spot.
18 Got the right side?

19 MR. DUFF: I don't know, Judge.
20 Can I look at it? It should have been playing by now.
21 Yeah, it's the right side. Back it up. Maybe I didn't
22 back it up. No, I didn't back it up.

23 THE COURT: Okay.

24 BY MR. DUFF:

25 Q. If I may, before I play it, I told you on this tape I

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Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 696

1 just wanted the truth, right?

2 A. Yes.

3 Q. And I didn't want to play games. I just wanted the
4 truth, right?

5 A. Yes.

6 MR. DUFF: I don't know what
7 speed, Your Honor.

8 (The following is from the tape:)

9 MR. MIELCAREK: All right. This is
10 October 23rd. We are at Michael Duff's office. I am
11 Gerald Mielcarek, and it's 7:35 p.m. I also have present
12 Richard Altpater. Spell the last name.

13 MR. ALTPATER: A-L-T-P-A-T-E-R.

14 MR. MIELCAREK: And your wife, Lynne?

15 MR. ALTPATER: Same last name.

16 MR. MIELCAREK: And you understand

17 I'm recording this conversation; is that correct?

18 MR. ALTPATER: Yes.

19 MR. MIELCAREK: And you're aware of
20 that?

21 MR. ALTPATER: Yes.

22 MR. MIELCAREK: And consent your
23 permission?

24 MR. ALTPATER: Yes.

25 MRS. ALTPATER: Yes.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 697

1 MR. MIELCAREK: Now, you're here for
2 purposes of being questioned for, about what you know about
3 the Daniel Smith case?

4 MR. ALTPATER: Yes.

5 MR. MIELCAREK: Do you know Danny
6 Smith?

7 MR. ALTPATER: Pretty good.

8 MR. MIELCAREK: Do you know anything
9 about his involvement in this case?

10 (The tape was stopped.)

11 MR. ROSENBAUM: Your Honor, I object.
12 Can we stop the tape a minute?

13 MR. DUFF: I'll stop it, Judge.

14 MR. ROSENBAUM: Is he going to
15 confront her about her statement?

16 MR. DUFF: I did. I did. And
17 refresh her recollection.

18 THE COURT: He asked --

19 MR. ROSENBAUM: You're interviewing
20 Richard Altpater.

21 MR. DUFF: No, she is sitting
22 there.

23 MR. ROSENBAUM: I thought the Court
24 gave permission for him to play her --

25 THE COURT: Her statement.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 698

1 MR. DUFF: Judge, it takes
2 about two minutes. It would be easier to pay the whole --

3 MR. ROSENBAUM: I don't know it would
4 be easy or --

5 THE COURT: The other --

6 MR. DUFF: Well, there's lot of
7 stuff I'd like to confront her with. Do you want to go
8 through --

9 MR. ROSENBAUM: I want you to do
10 what's proper.

11 THE COURT: Her statement you can
12 play, not his.

13 MR. DUFF: Her statement's on
14 his.

15 THE COURT: Find her statement.

16 MR. DUFF: That's her statement,
17 Your Honor. Where was the last question I asked her that
18 she denied?

19 MR. ROSENBAUM: She didn't deny
20 anything.

21 MR. ROSENBAUM: You offered this to
22 refresh her recollection.

23 MR. DUFF: And play the tape.
24 Would do that, Your Honor? I know it's impermissible to
25 play the whole tape. Save us a lot of time.

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Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 699

1 (The requested portion was read.)

2 THE COURT: I don't want anybody
3 else's statement on the record besides this witness'
4 because it's this witness' statement, recollection that
5 you're trying to make.

6 MR. DUFF: She was there, Your
7 Honor.

8 MR. ROSENBAUM: Wouldn't it be -- I
9 think counsel knows it's proper to do this out of the
10 hearing of the jury as well.

11 MR. DUFF: No, it's not.

12 THE COURT: Well, yes. At this
13 point what we are trying to -- give me the tape, would you,
14 please, Mr. Duff. You say it's a short tape?

15 MR. DUFF: Five, seven minutes.

16 THE COURT: Okay.

17 MR. DUFF: But there's a lot of
18 areas I want to go over with her, Judge.

19 THE COURT: Let me find this area
20 in particular so that we can play it so that we can refresh
21 her recollection as to that statement.

22 MR. DUFF: Judge, how about
23 this. I will ask her, if I can, I will ask her about
24 certain things. If she recalls them, fine. If she
25 doesn't, then we can do it all at once so we don't have to

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Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 700

1 come back and forth.

2 THE COURT: Fine.

3 MR. DUFF: All right.

4 MR. ROSENBAUM: I do not withdraw my
5 objection about him playing Richard Altpater's --

6 THE COURT: I understand that,
7 Mr. Rosenbaum.

8 MR. ROSENBAUM: And it should be done
9 out of the presence of the jury.

10 THE COURT: I'm going to do it
11 the way we did the last one. The way I went back and found
12 it.

13 MR. DUFF: That's totally
14 different, Your Honor. That's in camera.

15 THE COURT: Proceed..

16 MR. DUFF: Now, could I have my
17 last question that I asked her?
18 (The requested portion was read.)

19 THE COURT: Now, you're trying to
20 refresh her recollection.

21 BY MR. DUFF:

22 Q. Would hearing the tape do that, would that refresh
23 your recollection as to what you exactly told me?

24 A. It would help. I don't recall what I
25 said.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 701

1 Q. And you sat there right in front of my desk with your
2 husband, correct?

3 A. Yes, I remember that.

4 Q. All right. Now, I'll go through the other items and
5 then we can -- is that how you want to do it, Judge?

6 THE COURT: Proceed.

7 Q. All right. Did you also tell me that when we talked
8 about the poison being for cats, you admitted that?

9 A. Yes.

10 Q. And you also told me that "I never considered Danny
11 serious when it came to anything about chloroform"; is that
12 correct?

13 A. Yes.

14 Q. That you said Danny was a big clown, right?

15 A. Yes.

16 Q. And that you'd have to know him to understand what
17 your stakes are, right?

18 A. Yes.

19 Q. And you told me back then that Detective Leiby
20 approached you guys about, about making a statement about
21 Dan, right?

22 A. Yes.

23 Q. And did you tell me that you guys played along with
24 Detective Leiby so that the 18 month drug case would get
25 dropped, did you tell me that?

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Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 702

1 A. I don't recall making that statement either.

2 Q. Did you tell me that Detective Leiby was a lying SOB
3 because he didn't get the 18 month sentence dropped?

4 A. I don't remember making that statement either.

5 Q. Did you tell me that they used you, Detective Leiby?

6 A. I don't recall making that statement either.

7 Q. And you told me that Detective Leiby wanted you guys
8 to agree to these statements about Danny asking for poison
9 to kill a person, right, that he wanted you to agree to
10 that?

11 A. Those statements are true.

12 Q. That's not the question. The question is, did you
13 tell me that Detective Leiby wanted you guys agree to say
14 that?

15 A. I'm confused.

16 THE COURT: I am too. I am too.

17 MR. DUFF: Your Honor, the
18 easiest way would be to play the tape.

19 THE COURT: No, it's not the
20 easiest way.

21 MR. DUFF: I think it is

22 THE COURT: Well, I don't.

23 BY MR. DUFF:

24 Q. Was your husband sitting there this whole time?

25 A. Yes, my husband was there.

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Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 703

1 Q. Did you object anytime he said anything about this
2 case to me?

3 MR. ROSENBAUM: Objection.

4 MR. DUFF: It's --

5 MR. ROSENBAUM: I think not, and if
6 we are going to argue this point of law --

7 THE COURT: I don't think it is
8 either. Proceed at this point. We are trying to get this
9 person's taped statement.

10 MR. DUFF: I'd like to play it.
11 I'd like to play it.

12 THE COURT: I will listen to it.
13 I will see. There's only one issue. There's only one
14 issue that we have to determine

15 MR. DUFF: No, there's not.
16 Your Honor, the -- do you want to do this in front of them
17 or what?

18 THE COURT: Let's go into
19 chambers. We're not going to be out here forever..

20 (Whereupon, argument was had in chambers.)

21 (Thereupon, the following took place
22 within the presence and hearing of the
23 jury.)

24 THE COURT: Ladies and
25 gentlemen, back on the record. Court has listened to that

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Lorain County Prosecutor's Files

Box 4 of 5
Page 704

1 tape and it has some question, and that question has to be
2 answered on a legal basis and that can't be done right now.
3 And quite frankly, we've reached a point where we probably
4 can no longer proceed today on this matter.

5 I disappointed you, I know. I'm going to disappoint
6 you, I know, by sending you home before five o'clock, okay,
7 and that's what has to be.

8 I want some law on this matter, and I've got to give
9 the attorneys time to submit me some law on this particular
10 issue of law that we are hung up on at the point, at this
11 point. Therefore, ladies and gentlemen, we will adjourn
12 for the day.

13 You will go home, and the advice that I will give you
14 at this point is go home, relax, spend a great weekend with
15 your family, clean out the garage, which is what I think
16 I'm going to have to do, and that type of thing. Do not
17 think about this case. Do not read about this case. Do
18 not talk about this case. Do not have anybody talk to you
19 about this case. Do not have anybody read to you about
20 this case.

21 When I say "don't think about this," I can't order
22 that, obviously. It's just an advice I think you ought to
23 just relax and put it out of your mind and have a good
24 weekend and come back Monday morning refreshed and ready to
25 proceed with this matter.

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Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 705

1 At this point, with those admonitions I've given, we
2 will stand adjourned for the evening and reconvene again
3 Monday morning at 8:15. Thank you folks. Thank you very
4 much.

5 (The Court adjourned for the day.)

6 * * *

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25 CERTIFICATE

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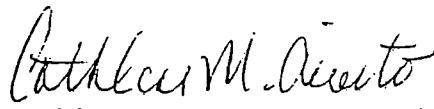
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1 I, Cathlene M. Acierto, Registered Professional
2 Reporter and Notary Public, in and for the State of Ohio,
3 do hereby certify:

4 That said proceedings was taken before me at the
5 time and place set forth and was taken down by me in
6 shorthand and thereafter reduced to computerized
7 transcription under my direction and supervision, and I
8 hereby certify the foregoing deposition is a full, true and
9 correct transcript of my shorthand notes so taken.

10 I further certify that I am neither counsel for nor
11 related to any party to said action nor in anywise
12 interested in the outcome thereof.

13 IN WITNESS WHEREOF, I have hereunto subscribed my
14 name this 9th day of October, 1996.

15
16
17 
18 Cathlene M. Acierto, RPR
19 Notary Public, State of Ohio
20 My commission expires 8/3/00
21
22
23
24
25

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Lorain County Prosecutor's Files

Box 4 of 5
Page 707

COURT OF APPEALS

175

FILED
LORAIN COUNTY

OCT 9 3 25 PM '96

IN THE COMMON PLEAS COURT

9th APPELLATE DISTRICT

STATE OF OHIO,)
COUNTY OF LORAIN.)

STATE OF OHIO,)

Plaintiff,)

VS.)

DANIEL D. SMITH,)

Defendant.)

CASE NO. 95-CR-046839

APPEALS NO. 96-CA-006463

* * *

Volume 2. From the following proceedings held before
the Honorable Kosma J. Glavas, taken before me, Cathlene M.
Acierto, Registered Professional Reporter and Notary
Public, in and for the State of Ohio, at the Lorain County
Court of Common Pleas, 308 Second Street, Elyria, Ohio,
Monday, April 22, 1996, beginning at 9:12 a.m.

* * *

APPEARANCES:

ON BEHALF OF THE STATE OF OHIO:

Gregory A. White, Prosecuting Attorney, by
Jonathan E. Rosenbaum, Assistant
Prosecuting Attorney

ON BEHALF OF THE DEFENDANT:

Michael J. Duff, Esq.
Daniel G. Wightman, Esq.

* * *

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 708

(Whereupon, argument was had.)

* * *

(The following took place within within
the presence and hearing of the jury.)

THE COURT: Good morning, ladies
and gentlemen. I see some of you have some sunburns, what
have you, either watching the ball game, playing games,
working in the yard, one of the three. I hope you all had
a good, quiet, pleasant weekend with your families and what
have you.

Ladies and gentlemen, as you remember, when we
adjourned Friday evening at around 4:10 there was, we
adjourned for the purpose of getting a question resolved,
question of law resolved. And I'm glad to report to you
that that question of law is no longer with us at this
point and that we are ready to proceed with the
cross-examination of this witness.

Now, ma'am, I will remind you that you are still
under oath at this point, okay?

THE WITNESS: Okay.

THE COURT: Mr. Duff, you may
continue with your cross-examination.

MR. DUFF: Thank you.

CONTINUED CROSS-EXAMINATION OF LYNNE ALTPATER

BY MR. DUFF:

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Lorain County Prosecutor's Files

Box 4 of 5
Page 709

1 Q. I think you said it was okay to call you Lynne; is
2 that right?

3 A. Yes.

4 Q. I think we left off -- as you recall, you had
5 given -- can you see this, ma'am?

6 A. No. It doesn't matter. You would have to move it up
7 here for me to see it, so you might as well leave it there.

8 Q. I can do that if you want.

9 A. That's fine.

10 Q. As you recall, to refresh your memory as to what you
11 testified to on Friday, on 1-6-95 I think you gave a
12 statement to Detective Leiby at your house; is that
13 correct?

14 A. Uh-huh.

15 Q. All right. And in that statement you told him that
16 this poison Danny asked you about, you understood it to be
17 for cats; is that correct?

18 A. Yes.

19 Q. All right. Then at the police station, on 1-19-95,
20 you gave another statement to Detective Leiby; is that
21 correct?

22 A. Yes.

23 Q. And then you came to my office in October of '95 and
24 gave a statement, right?

25 A. Uh-huh.

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Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 710

1 Q. Do you recall telling me that the poison was for cats
2 at my office?

3 A. Yes.

4 Q. And you knew I was taping that conversation; is that
5 correct?

6 A. Yes.

7 Q. And I told you just to tell me the truth; isn't that
8 right?

9 A. Uh-huh.

10 Q. And do you recall me asking you, page 11, okay, "Do
11 you know of anybody that Danny asked to do any harm to
12 Mr. Lally?" And your answer was no at that time. Do you
13 recall that question and answer at my office?

14 A. No.

15 MR. DUFF: All right. May I
16 approach, Your Honor?

17 THE COURT: Yes.

18 Q. Do you see me ask you the question?

19 THE COURT: Would you point to
20 the page.

21 MR. DUFF: I did.

22 THE COURT: Okay.

23 Q. "Do you know of anybody that Danny asked to do any
24 harm to Mr. Lally?" And you said, "No"; is that correct?

25 A. Yeah, I said that.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files
Box 4 of 5

Page 711

1 Q. All right. You further said that Danny was just a
2 big clown, right?

3 A. Yes.

4 Q. And you still go along with that, that Danny's just a
5 big clown?

6 A. Yes.

7 Q. In fact, he baby-sitted your kids, right?

8 A. Well, he was with them. He took them to the ice
9 cream stand a few times.

10 Q. Did he watch your kids?

11 A. No, he never watched them.

12 Q. All right. Did you tell me he watched your kids?

13 A. I don't recall saying that.

14 Q. Page 18. Did you say, Mrs. Altpater, "He even
15 watched my kids and stuff. We went to dinner together. I
16 mean, he was just like a family member for Christ's sake."
17 Is that what you said at my office?

18 A. Yeah, I said that.

19 Q. So he did watch your kids?

20 A. Well, I guess he did. He walked them to the ice
21 cream stand.

22 Q. Did you tell me he watched your kids?

23 A. Yes.

24 Q. And in fact, I think you testified -- well, at the
25 time you had this conversation with Danny about these cats,

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Lorain County Prosecutor's Files

Box 4 of 5
Page 712

1 you weren't even, you weren't even working at the doctor's
2 office, were you?

3 A. Yes.

4 Q. You were working at the doctor's office?

5 A. I believe so.

6 Q. All right. Do you recall telling me, page 18, "Oh,
7 God. It was months before all that happened, months before
8 all that happened. In fact, I didn't think I was working
9 at the doctor's office when that happened anyway." Do you
10 recall telling me that?

11 A. No, I don't recall me saying that.

12 Q. Do you want to read that?

13 A. (Reading.)

14 Q. Did you tell me that? That's what it indicates isn't
15 it?

16 A. That's what it indicates.

17 Q. All right. And your testimony is that you told --
18 well, you would agree you told me that he wanted to get
19 this poison because there are cats crawling on his cars; is
20 that right?

21 A. Yes.

22 Q. Is that right?

23 A. Yes.

24 Q. If I could have a moment, Your Honor.

25 Now, did you tell me you didn't really know anything

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Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 713

1 about this case?

2 A. I don't remember.

3 Q. You don't remember telling me at my office. You
4 might have said that?

5 A. I might have said that.

6 Q. All right. But you didn't know anything about this
7 case really?

8 A. Just what little bit I do know.

9 Q. No. But didn't you tell me you don't know anything
10 about this case?

11 A. I really don't feel that I do, no.

12 Q. Did you tell me that Detective Leiby, at my office,
13 did you tell me that Detective Leiby lied to you in regard
14 to this case?

15 A. I don't recall that, no.

16 Q. Page 13. Question by me: "So Leiby lied to you?"
17 Your response: "Yeah, he did." Do you recall telling me
18 that?

19 A. I don't recall making that statement, no.

20 Q. Do you recall telling me that you were just playing
21 along with Detective Leiby's game, you were just saying
22 what he wanted to hear?

23 A. No, I don't remember saying that.

24 Q. Do you recall?

25 A. No.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

1 Q. You don't remember saying that? Page 14.

2 MR. ROSENBAUM: Just hold it a
3 minute, would you please.

4 MR. DUFF: Page 14.

5 MR. ROSENBAUM: Could we approach the
6 bench.

7 (Conference at the bench between the Court
8 and counsel, as follows:)

9 MR. ROSENBAUM: He is misrepresenting
10 the answers in this transcript.

11 MR. DUFF: No, I'm not.

12 MR. ROSENBAUM: It says "Mrs.
13 Altpater." It's her, the answer.

14 MR. DUFF: No, it wasn't.

15 MR. ROSENBAUM: Yes, it is.

16 THE COURT: Wait a minute.

17 MR. DUFF: Right there. Right
18 there. That was the one.

19 MR. ROSENBAUM: Leiby, Mrs. Altpater.

20 MR. DUFF: Right.

21 MR. ROSENBAUM: It's not on page 14.

22 MR. DUFF: I said 14, John. You
23 got the wrong page.

24 MR. ROSENBAUM: Just be very careful
25 with who.

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Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 715

1 MR. DUFF: I know.

2 THE COURT: Proceed.

3 (The following took place within the
4 hearing of the jury.)

5 BY MR. DUFF:

6 Q. Let me go back for a moment. You told me, did you
7 not, that Detective Leiby lied to you; is that correct?

8 A. I don't remember that, no.

9 Q. You might have said that?

10 A. I might have, but I don't remember it.

11 Q. Now, did you further tell me that you were just
12 playing along with Detective Leiby's game, did you tell me
13 that at my office?

14 A. I don't remember saying that. I remember my husband
15 saying that.

16 Q. Pardon?

17 A. I remember my husband saying that.

18 Q. Page 14. Question by me: "So you were just playing
19 along with his game." "Mrs. Altpater: Right." Did you
20 say that?

21 A. I don't remember.

22 Q. You might have said that?

23 A. I might have.

24 Q. Did Detective Leiby tell you that Danny Smith would
25 never see the light of day again?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 716

1 A. Excuse me?

2 Q. Did you tell me he said that to you?

3 A. I don't think he said those exact words.

4 Q. No. No, I'm asking did you tell me that Detective
5 Leiby told you that Danny Smith would never see the light
6 of day again?

7 A. I don't remember saying that. I don't remember.

8 Q. Page 15. Did you make the statement, and I'll quote
9 it, "Yeah, he told us, he, Danny, would never see the light
10 of day again." Did you say that to me at my office?

11 A. Yeah.

12 Q. When you told -- well, let's put it this way. At my
13 office you told me that you told Detective Leiby this
14 poison was for cats, correct?

15 A. In the beginning when we first had a conversation,
16 yes, I did.

17 Q. All right. Let me just ask the questions. This is
18 what you told me at my office on October of '95?

19 A.. Yes.

20 Q. That you initially told Detective Leiby the poison
21 was for cats. Then did you further tell me that he didn't
22 believe it, he said that Danny wanted the poison for
23 something else? Did Detective Leiby -- page 17. Did
24 Detective Leiby tell you that Danny Smith wanted this
25 poison for something other than cats? Did you tell me

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1 that?

2 A. I don't remember.

3 Q. All right. Page 17. Did you make the statement to
4 me, "Mrs. Altpater: "Yes, I did, but he didn't believe it.
5 He said that he, Danny, wanted the poison for something
6 else. I said, 'whatever. I don't know what he wanted it
7 for.'" Did you tell me that?

8 A. I don't remember.

9 Q. You might have said that?

10 A. I might have.

11 MR. DUFF: If I could have a
12 minute, Your Honor.

13 THE COURT: Sure.

14 Q. Well, yeah, you testified earlier on
15 cross-examination that your husband had a pending drug
16 abuse case, correct?

17 A. Yes, he did.

18 Q. And that was there was some talk between Detective
19 Leiby and the two of you in regard to help on that case; is
20 that correct?

21 A. I'm actually unclear about all that. I don't
22 remember which and how conversations took place, whether it
23 was before or after his drug charges.

24 Q. But you certainly wouldn't want your husband to go to
25 prison, would you?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

1 A. No. And he didn't.

2 Q. Well, I know that. Just answer the question. You
3 wouldn't want him to go to prison, would you?

4 A. No.

5 Q. And Detective Leiby told you two that he could help
6 you in regard to that case?

7 A. Detective Leiby never told me anything.

8 Q. You were there when he said that, correct?

9 A. No, I was --

10 Q. You heard Detective Leiby say that to your husband?

11 A. I was never present when Detective Leiby --

12 Q. You didn't testify that Detective Leiby told the two
13 of you he could --

14 A. I don't recall that, no. And if I did, I was
15 confused.

16 Q. You were confused. So you'd admit you told several
17 different stories in this case, haven't you?

18 A. No, I have not.

19 Q. You haven't told several different stories?

20 A. No.

21 Q. You additionally told Detective Leiby it was for
22 cats?

23 A. Right.

24 Q. Just answer my question. Then the 19th of January
25 you told Detective Leiby a totally different story, didn't

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 719

1 you? You didn't mention any cats in the 19th of January
2 statement, did you?

3 A. I guess not.

4 Q. So you changed your story, right?

5 A. Well, if you let me explain, I can tell you.

6 Q. No, I'm just asking did you change your story?

7 A. No, I did not change my story.

8 Q. You didn't. From killing cats to killing people, is
9 that a significant change in your mind, yes or no?

10 A. No.

11 MR. DUFF: Just one second, Your
12 Honor and I'll be done.

13 Q. At my office we talked about, you and I, we talked
14 about getting this drug case, that Detective Leiby was
15 going to help you with your, your husband with this drug
16 case, correct?

17 A. I don't remember.

18 Q. All right. Did you tell me that you're upset with
19 Detective Leiby because he never did nothing on that drug
20 case like he was supposed to?

21 A. I don't remember. Detective Leiby never spoke to me
22 about the drug case, so how could I be mad at him for
23 anything?

24 Q. Well, you care about your husband?

25 A. Yeah, I care, but I was never presented with --

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 720

1 Q. But he was and that would upset you, wouldn't it?

2 A. If Detective Leiby would have told me himself, yes,
3 that would have upset me.

4 Q. You told me he never did anything to help out the
5 drug case and that upset you, right?

6 A. He never did help with the drug case.

7 Q. He was supposed to, right?

8 A. I don't know. That's between my husband and him. He
9 didn't tell me that.

10 Q. You didn't know that?

11 A. No.

12 Q. I'm asking if you knew that.

13 A. No.

14 Q. You didn't know that?

15 A. No.

16 Q. You know you're under oath now?

17 A. Yes.

18 MR. DUFF: All right. Nothing
19 else, Your Honor.

20 THE COURT: Any redirect?

21 REDIRECT EXAMINATION OF LYNNE ALTPATER

22 BY MR. ROSENBAUM:

23 Q. Mrs. Altpater, can you tell the Court and jury why
24 you went to attorney Duff's office?

25 A. Because Danny was calling me at my home and I just

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Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 721

1 figured just maybe he'd leave me alone.

2 Q. Well, is that your only concern?

3 A. Yeah. I was afraid.

4 Q. You were afraid?

5 A. Yeah.

6 Q. That if you didn't go --

7 A. Yeah.

8 Q. So you went to attorney Duff's office?

9 A. Right.

10 Q. Did Danny Smith, the defendant, want you to make a
11 taped statement there?

12 A. He didn't ask me to make a taped statement. He just
13 asked me to go see his attorney, and I did.

14 Q. As a result of that, did you tell the truth at
15 attorney Duff's office?

16 A. Not exactly, no. I didn't tell him all of this. I
17 couldn't remember what I told Detective Leiby in the first
18 place all of it.

19 Q. Did you tell Detective Leiby the truth in the first
20 place?

21 A. Yes, I did.

22 Q. Now, what is the truth?

23 MR. DUFF: Object.

24 THE COURT: Overruled. You have
25 a right to go back.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 722

1 Q. Let me put it this way. You wanted to explain why
2 you said cats and things.

3 A. When Detective Leiby first came to my home, I did not
4 want to get involved and I didn't want anything to do with
5 it, and Danny did approach me with the poison for cats at
6 one time. I wanted to leave, but the Detective kept
7 pushing and pushing and I finally admitted the truth and
8 went on what actually happened.

9 Q. And what was that?

10 A. That Danny asked me for poison. He didn't say
11 exactly who he wanted it for, didn't know the person
12 anyways, and I didn't believe it. And that's all there is
13 to it.

14 Q. Was it for a person that was going to testify against
15 him?

16 A. Yes, I did know that.

17 MR. DUFF: Object. He's
18 leading, Your Honor.

19 THE COURT: Sustained.

20 Q. Now, is that the truth?

21 A. Yes.

22 MR. DUFF: Object to that.

23 Q. Did you tell that to attorney Duff?

24 A. No, I did not.

25 Q. And you knew when you went to see attorney Duff that

CATHLENE M. ACIERTO, RPR - (216) 965-4498

1 he was Danny's lawyer?

2 A. Yes.

3 Q. And that's why Danny wanted you to go there?

4 A. Yes.

5 Q. Do you know anything about chloroform?

6 A. Just what you see on TV.

7 Q. Do you know if chloroform evaporates when you put it
8 in trash to kill cats?

9 A. I have no idea.

10 MR. DUFF: Object to the
11 prosecutor --

12 THE COURT: That's, okay. If we
13 can keep from leading, it would be fine, please.

14 Q. So is it fair to say to the Court and jury that all
15 those things that Mr. Duff cross-examined you on from that
16 statement were not based on the truth?

17 A. No. Yes.

18 Q. Do you understand my question?

19 A. I'm a little confused.

20 Q. Mr. Duff spent a very long time pointing out things
21 in the transcript --

22 MR. DUFF: Object.

23 Q. -- and tape you made.

24 THE COURT: Things. Disregard
25 the word "little." Just things.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

1 MR. DUFF: Just, I disagree with
2 his characterization of a very long time that I spent doing
3 that.

4 THE COURT: Time was spent, okay.
5 Proceed.

6 BY MR. ROSENBAUM:

7 Q. Let me put it to you this way. Are the things you
8 said to attorney Duff in his office the truth?

9 A. Not all of it, no.

10 Q. And is the whole truth -- what is the whole truth
11 about what we are here for?

12 MR. DUFF: Object, asked and
13 answered.

14 THE COURT: I'm not too sure it
15 has been. You may answer. Overruled.

16 A. Can you ask me that again.

17 Q. Why did Danny Smith come to you in his request?

18 A. He asked me for poison.

19 Q. To do what with it?

20 A. To basically move one person from one point to
21 another, or to take care of somebody.

22 Q. And you understood that person to be, to have what
23 relationship or role with Dan Smith?

24 A. He was going to testify against Danny in a drug case.

25 MR. DUFF: Object.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 725

1 THE COURT: Overruled.

2 Q. Did you tell this to attorney Duff?

3 A. No, I did not.

4 Q. Why?

5 A. Because I was afraid to. I didn't want to be
6 involved in any of this.

7 MR. ROSENBAUM: I have no other
8 questions.

9 THE COURT: Mr. Duff.

10 RE CROSS-EXAMINATION OF LYNNE ALTPATER

11 BY MR. DUFF:

12 Q. Well, you were afraid of me? Was I threatening you?

13 A. No, I wasn't afraid of you.

14 Q. You met in my office at 7:35 during a weekday night
15 with your husband; is that right?

16 A. Yes.

17 Q. And another gentleman was there by the name of Butch,
18 right?

19 A. Yes.

20 Q. Did anybody scare you or threaten you?

21 A. You're not the one I was afraid of.

22 Q. Just answer my question.

23 A. No.

24 Q. Did I tell you just tell me the truth about what you
25 know?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 726

1 A. Yes, you did.

2 Q. So you'd agree, and you just testified, that it's
3 only after Leiby pressured and pushed you, and those were
4 your words, that you changed your story, right?

5 A. I didn't change my story; I told the truth.

6 Q. Well --

7 A. I didn't want to be involved.

8 Q. It's hard to know the truth at this point. You've
9 told so many different stories. How do you keep track of
10 your stories?

11 MR. ROSENBAUM: Your Honor, I object
12 to that.

13 THE COURT: Duff, please.

14 Q. How do you keep track of your stories?

15 A. Because I know what the truth is. Would you want to
16 be involved in this?

17 Q. Just answer --

18 THE COURT: Ma'am, please. Settle
19 down everybody, please. settle down.

20 Q. Do you have a method for keeping track of your
21 stories?

22 MR. ROSENBAUM: Objection. She's
23 answered it twice.

24 MR. DUFF: No, she hasn't.

25 MR. ROSENBAUM: Yes. She said she

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 727

1 knows the truth.

2 THE COURT: Let her say it again.

3 Q. You have a way, a method to keep track of your
4 different stories you've told in this case?

5 A. Everything I told is the truth.

6 Q. Now you're saying you lied to me, right?

7 A. I didn't lie to you. I didn't lie to you. I just
8 didn't tell you all of what I told Detective Leiby.

9 Q. Miss, please. You lied to Detective Leiby when you
10 talked to him about cats, right?

11 A. No, that is the truth. There was a conversation
12 about cats.

13 Q. There was a conversation about cats, but Detective
14 Leiby directed it to people, killing people, right, he
15 pressured you?

16 A. He did not direct it towards people. He said there
17 was more to it and he knew I wanted to tell him.

18 Q. Did you just tell this jury he pressured you and
19 pushed you into saying it was people?

20 A. I felt pressured, yes.

21 Q. Over your husband's pending drug case, right?

22 A. No, before that.

23 Q. That had nothing do with your pressure?

24 A. No.

25 Q. Nothing at all?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 728

1 A. No. When I first spoke with Detective Leiby, it was
2 before my husband was charged.

3 MR. DUFF: Hold on, Judge.
4 Nothing else, Your Honor.

5 MR. ROSENBAUM: I have no other
6 questions, Your Honor.

7 THE COURT: Thank you, ma'am.
8 You may step down.

9 THE WITNESS: Thank you.

10 (Witness excused.)

11 BRIAN HOWINGTON

12 a Witness herein, called on behalf of the State of Ohio,
13 after being first duly sworn by the Court, testified and
14 said as follows:

15 THE COURT: Sir, speak directly
16 into that microphone. Thank you.

17 DIRECT EXAMINATION OF BRIAN HOWINGTON

18 BY MR. ROSENBAUM:

19 Q. Will you state your name, please, sir?

20 A. Brian David Howington.

21 Q. Just spell your first and last name for the reporter,
22 please.

23 A. B-R-I-A-N, H-O-W-I-N-G-T-O-N.

24 Q. Are you employed, sir?

25 A. Yes, sir, I am.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 729

- 1 Q. What do you do at this time?
- 2 A. I am a window cleaner.
- 3 Q. How old are you?
- 4 A. Twenty-four.
- 5 Q. Do you know the defendant who's seated immediately
- 6 under my right hand?
- 7 A. Yes, sir.
- 8 Q. Can you tell the Court and jury his name?
- 9 A. Danny Smith.
- 10 Q. How is it that you know him?
- 11 A. I met him through my aunt.
- 12 Q. What's your aunt's name?
- 13 A. Joann Fike.
- 14 Q. And how is it that you met him through your aunt?
- 15 A. I lived with her and he used to come over there.
- 16 Q. Do you know a person by the name of Raymond Smith?
- 17 A. Yes, sir.
- 18 Q. How is that you know Raymond?
- 19 A. I met him through my aunt.
- 20 Q. Do you know Stanley Jaloweic?
- 21 A. Yes, sir.
- 22 Q. How is that you know Stanley?
- 23 A. Through my aunt.
- 24 Q. What did, what relationship did your aunt have with
- 25 these people?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

- 1 A. For crack.
- 2 Q. What exactly do you mean by that?
- 3 A. Buying, smoking.
- 4 Q. Who bought crack, who smoked crack?
- 5 A. She bought crack and --
- 6 Q. From whom?
- 7 A. Mainly Danny.
- 8 Q. And she would use it?
- 9 A. Yes, sir.
- 10 Q. Would you use it?
- 11 A. Yes, sir.
- 12 Q. Did you ever buy any from Raymond or did your aunt,
- 13 if you know?
- 14 A. Not from Raymond really.
- 15 Q. How about Stanley?
- 16 A. Yes.
- 17 Q. Did you purchase crack from Danny Smith?
- 18 A. Not personally, no, sir.
- 19 Q. You got it through your aunt?
- 20 A. Yes, sir.
- 21 Q. How long did this go on for?
- 22 A. I was around maybe six to eight months living there.
- 23 Q. And that was going on the whole time?
- 24 A. Yes, sir.
- 25 Q. Do you still use crack cocaine?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 731

1 A. No, sir.

2 Q. Do you use cocaine?

3 A. No, sir.

4 Q. When did you stop?

5 A. Sometime in winter of '94.

6 Q. Do you know how your aunt paid for this crack?

7 MR. DUFF: Object.

8 THE COURT: He may answer if he
9 knows.

10 MR. DUFF: It would have to be a
11 foundation as to how he knows, Your Honor, how he might
12 know.

13 THE COURT: Well, he's lived
14 there with her at this point. You may answer if you know,
15 if you don't know.

16 A. She either paid cash or rented her car, whatever.

17 Q. When you say "rent the car," what do you mean?

18 A. Trade it.

19 Q. She would let them use it?

20 A. Yes, sir.

21 Q. What kind of car does your aunt have?

22 A. Chrysler Lebaron.

23 Q. Hard top or soft?

24 A. Soft top.

25 Q. Who would borrow this car in exchange for crack?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

- 1 A. Danny, Stan.
- 2 Q. Do you know Ron Lally?
- 3 A. I met him one time, sir.
- 4 Q. When was that?
- 5 A. Sometime in January of '94.
- 6 Q. Can you tell the Court and jury on what circumstances
- 7 this occurred?
- 8 A. I went to his house with Stan.
- 9 Q. And can you tell us what time of day?
- 10 A. It was in the evening, late evening. Maybe tenish,
- 11 10:00 at night. I can't be for sure.
- 12 Q. And you went to Ron Lally's house?
- 13 A. Yes, sir.
- 14 Q. Where was it?
- 15 A. On Middle Avenue.
- 16 Q. And this would be a late evening in January of '94,
- 17 you said?
- 18 A. Yes, sir.
- 19 Q. How did Stanley get to be with you that night?
- 20 A. He came to my aunt's house and we went out to the
- 21 bars.
- 22 Q. What did you use for transportation?
- 23 A. My aunt's Lebaron.
- 24 Q. So Stanley came to your house and the two of you went
- 25 out to the bars?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

1 A. Yes, sir.

2 Q. What time would this be about?

3 A. Maybe 8:00, 9:00. I'm not positive other than that
4 general area.

5 Q. Then what happened?

6 A. We were at the bar and he asked me if I wanted --

7 MR. DUFF: Object.

8 THE COURT: Not what anyone
9 said.

10 Q. What bar were you at?

11 A. Power Slams.

12 Q. And Stanley made a request of you?

13 A. Yes, sir.

14 Q. And as a result of that request, what did the two of
15 you do?

16 A. We went over to Ron's house.

17 Q. And where was that; do you remember?

18 A. On Middle Avenue.

19 Q. By anything?

20 A. Mr. Hero restaurant.

21 Q. Did you actually -- is it a house or an apartment?

22 A. An apartment.

23 Q. Did you go inside?

24 A. Yes, sir.

25 Q. Describe what happened there.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5

Page 734

1 A. We went up there and we smoked crack for a while, for
2 a little while.

3 Q. That would be about what time of night?

4 A. 10:00, tenish, elevenish maybe.

5 Q. And who was smoking crack?

6 A. Ron, Stan, Ron's roommate, and myself.

7 Q. How long did you do this for?

8 A. Maybe an hour. I'm not sure about that.

9 Q. And then what happened?

10 A. We left and went back to my house, my aunt's
11 house.

12 Q. That would be about what time now?

13 A. Could have been around midnight, maybe 11:00, 12:00.

14 Q. How did you get to your aunt's house?

15 A. My aunt's car.

16 Q. And what did do you at your aunt's house?

17 A. We shot pool, smoked some more and that's about it.

18 Q. Where is your aunt's house; do you know the address?

19 A. Yes, sir.

20 Q. Where is it?

21 A. 112 Greenway Drive.

22 Q. What city?

23 A. Elyria.

24 Q. County?

25 A. Lorain.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 735

1 Q. State?

2 A. Ohio.

3 Q. And how long did you stay there smoking crack and
4 shooting pool?

5 A. We all stayed there. I didn't leave. They stayed
6 maybe an hour, maybe two. I can't be for sure.

7 Q. And what time did, what time would this be then if
8 they left?

9 A. Maybe one, two o'clock.

10 Q. Do you know if anything triggered the breaking up of
11 this party?

12 MR. WIGHTMAN: Objection, Your
13 Honor. There's not a foundation. It's a leading question.

14 THE COURT: You can ask it a
15 different way. Sustained.

16 Q. What caused the breakup of this party?

17 A. I believe Stan got a page.

18 MR. WIGHTMAN: Object as to what he
19 believes and ask it be stricken.

20 THE COURT: Ask him again,
21 Mr. Rosenbaum. Do you know or do you believe?

22 A. I know he got a page.

23 Q. So what did Stanley do then?

24 A. Used the phone.

25 Q. And then what?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 736

1 A. He asked me if --

2 MR. WIGHTMAN: Object to the
3 hearsay, Your Honor.

4 Q. Did Stanley make another request of you then after he
5 used the phone?

6 A. He asked me if I could use the car.

7 MR. WIGHTMAN: Object and ask that
8 it be stricken.

9 THE COURT: You can't tell us --
10 well, I think this wouldn't -- wouldn't that fall under
11 801(D)(2)(e)?

12 MR. ROSENBAUM: It would if the Court
13 felt there was a prima facie case of conspiracy at this
14 point.

15 MR. WIGHTMAN: We better approach on
16 this, Your Honor.

17 THE COURT: Yes.

18 (Conference at the bench between the Court
19 and counsel, as follows:)

20 MR. WIGHTMAN: Your Honor, we object
21 to the witness testifying as to what Stanley Jaloweic said
22 at that time as hearsay.

23 THE COURT: It could be an
24 exception to the hearsay.

25 MR. ROSENBAUM: It's not hearsay by

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 737

1 definition if it's a statement made in conspiracy.

2 THE COURT: Yes.

3 MR. WIGHTMAN: But Your Honor, we
4 feel the State has not at this time established a
5 conspiracy by prima facie evidence independent of the
6 damage in this case.

7 MR. ROSENBAUM: Your Honor, I would
8 like to point out to the Court this is his third trial and
9 that the deposition of Michael Smith, although not produced
10 in this trial and a part of this case, and Court has
11 knowledge of that. So I think there is independent
12 establishment of a conspiracy before the Court that will
13 certainly make this direct.

14 MR. WIGHTMAN: Your Honor, the one
15 thing Michael Smith deposition, Danny Smith, this defendant
16 has nothing to do with it. But beyond that, it's not been
17 introduced as evidence.

18 THE COURT: Wait a minute. Wait
19 a minute. Who, what, why do you say that? Michael's
20 deposition --

21 MR. WIGHTMAN: The fact is the
22 deposition is not in evidence in this case.

23 THE COURT: It's not.

24 MR. ROSENBAUM: It doesn't have to be
25 in evidence for the jury. In fact, I could have asked for

CATHLENE M. ACIERTO, RPR - (216) 965-4498

1 a pretrial hearing and put that evidence in. It is before
2 the Court that the Court is aware of it. There was
3 substantial evidence that the Court is aware of that would
4 let the Court believe that there is a prima facie case.

5 MR. WIGHTMAN: Your Honor. Go
6 ahead, I'm sorry.

7 MR. ROSENBAUM: I also think the
8 testimony of what we've heard so far about this man --

9 THE COURT: Asking for poison.

10 MR. ROSENBAUM: Asking for poison
11 and --

12 MR. WIGHTMAN: I would like to make
13 a point, Your Honor. I don't think the Court could
14 consider, but what's heard from the witness stand in this
15 case --

16 THE COURT: I think --

17 MR. ROSENBAUM: Consider the opening
18 statements of counsel, too.

19 MR. WIGHTMAN: Your Honor, that's
20 not evidence, and moreover, the deposition is not.

21 THE COURT: I think under the
22 circumstances at this stage of the game that at least the
23 beginnings of a conspiracy has been shown in this matter,
24 and therefore, would come into the exception of
25 801(D)(2)(e). Overruled.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 739

1 MR. WIGHTMAN: Thank you.

2 (Thereupon, the following took place
3 within the hearing of the jury.)

4 BY MR. ROSENBAUM:

5 Q. Let me put it to you this way, sir. As a result of
6 the request Stanley made of you, what happened?

7 A. He borrowed the car.

8 Q. And went where or -- and left?

9 A. Yes, sir.

10 Q. Did anyone go with him?

11 A. Ron did, sir.

12 Q. And this would be about what time?

13 A. Maybe 1:00, 2:00 in the morning.

14 Q. Now, did you want him to take the car at that time?

15 A. No, sir..

16 Q. But what happened?

17 A. He continued to ask me.

18 MR. WIGHTMAN: Again, Your Honor,
19 for the record, I'm going to object to the continuance of
20 the hearsay.

21 MR. ROSENBAUM: That's not hearsay,
22 that's a statement.

23 THE COURT: He's not saying what
24 it was, what he was saying. He continued to ask. Okay, I
25 know it's close. Go ahead.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 740

1 BY MR. ROSENBAUM:

2 Q. And what time did Stanley Jaloweic leave with Ron
3 Lally and your aunt's car?

4 A. About 1:00 or 2:00.

5 Q. And what did you do?

6 A. I stayed home.

7 Q. Now, did you see Stan or Raymond Smith or Danny Smith
8 or anyone later?

9 A. I saw Stanley and Raymond.

10 Q. What time would that be?

11 A. Early morning, maybe 5:00, 6:00. I can't be for
12 sure.

13 Q. And would you tell the Court and jury the
14 circumstances of that?

15 A. They brought the Lebaron back.

16 Q. Did you see the Lebaron?

17 A. Yes, sir.

18 Q. And what condition was it in?

19 A. Covered with ice.

20 Q. Do you know how the ice got there?

21 A. They said they washed it.

22 MR. WIGHTMAN: Objection again, Your
23 Honor, for the record.

24 THE COURT: Who was "they"?

25 THE WITNESS: Stan and Raymond.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 741

1 THE COURT: Overruled. Again,
2 801(D) (2) (e).

3 Q. And what was the weather like at this time, sir?

4 A. Freezing cold.

5 Q. Do you mean like freezing, 32 degrees?

6 A. Below zero. It was below zero.

7 MR. ROSENBAUM: I have no other
8 questions, Your Honor.

9 THE COURT: Mr. Wightman.

10 MR. WIGHTMAN: Thank you, Your
11 Honor.

12 CROSS-EXAMINATION OF BRIAN HOWINGTON

13 BY MR. WIGHTMAN:

14 Q. Brian, have you talked to Detective Leiby about this
15 case?

16 A. Yes, sir.

17 Q. Did you talk to other police officers about it?

18 A. No, sir.

19 Q. And did you give Detective Leiby a statement, sir?

20 A. Yes, sir.

21 Q. Was that a recorded statement?

22 A. Yes, sir.

23 Q. Did you write a statement out for him?

24 A. No, sir.

25 Q. Did you sign a statement?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 742

1 A. I don't recall.

2 Q. But you're sure that a statement was recorded?

3 A. Yes, sir.

4 Q. And how many statements did you give Detective Leiby?

5 A. One.

6 Q. You're sure only one, sir?

7 A. Yes, sir.

8 Q. All right, thank you.

9 MR. WIGHTMAN: Your Honor, we'd
10 like the opportunity to --

11 THE COURT: Ladies and gentlemen,
12 we've come to that spot again, okay. Take a short recess.
13 Hopefully, it will be a short one. And the admonitions
14 I've given about discussing amongst yourselves, letting
15 anyone discuss with you, reading anything about this,
16 letting anyone read to you, please do not at this stage.
17 And with that we would take, hopefully, a short recess.

18 (A brief recess was had.)

19 * * *

20 (The Court stated its findings on the
21 in-camera inspection of the taped
22 statement of Brian Howington.)

23 (The following took place within the
24 presence and hearing of the jury.)

25 THE COURT: Good morning again,

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 743

1 ladies and gentlemen,. we are ready to resume.

2 Ladies and gentlemen, may I just say I know that it
3 gets a little tiresome, and it gets tiresome for us too;
4 however, those are the rules that we have to play by. And
5 unfortunately, that's what we have to do. And unless the
6 rule makers come up with something new and something
7 different, we are going to have to continue to do it that
8 way. It's no ones fault. It's just the way the system
9 works.

10 As you recall, ladies and gentlemen, we were in the
11 midst of the cross-examination of this witness.

12 And Mr. Wightman, you may continue your
13 cross-examination, sir.

14 MR. WIGHTMAN: Yes. Thank you, Your
15 Honor.

16 BY MR. WIGHTMAN:

17 Q. Brian, what is your aunt's name again?

18 A. Joann Fike.

19 Q. Does she go by a different name as well?

20 A. Corrine.

21 Q. What name does she use more often; do you know?

22 A. Corrine.

23 Q. Corrine?

24 A. Yes, sir.

25 Q. And she's a friend of Stanley's; is that correct?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 744

1 A. Yes, sir.

2 Q. And Danny Smith?

3 A. Yes, sir.

4 Q. And Ray Smith?

5 A. Yes, sir.

6 Q. Is that a correct statement? How did Stan Jaloweic
7 come to her residence the night this happened?

8 A. I don't know, sir.

9 Q. Did you pick him up?

10 A. I don't believe I did, no, sir.

11 Q. You're not sure about that, though?

12 A. No, I'm not sure.

13 Q. Were you smoking crack cocaine prior to seeing Stan
14 that evening?

15 A. No, sir.

16 Q. Were you drinking prior to seeing Stan that evening?

17 A. No, sir.

18 Q. But you admit that you were smoking crack during the
19 evening, correct?

20 A. Yes, sir.

21 Q. And Stan was also smoking crack?

22 A. Yes, sir.

23 Q. And this other guy, Ron was smoking crack as well?

24 A. Yes, sir.

25 Q. And you've had experience at that point in time

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 745

1 smoking crack, right, this wasn't your first time?

2 A. Correct.

3 Q. Would you say you had smoked a lot that evening or a
4 little?

5 A. A little.

6 Q. Were you feeling the affects of it?

7 A. Yeah. Yes, sir.

8 Q. Do you think that that consumption of that crack
9 cocaine makes your memory a little failed or difficult to
10 remember about what happened that night?

11 A. Not really, no, sir.

12 Q. You don't think it affected it at all?

13 A. No, sir.

14 Q. You were drinking, too, though, correct?

15 A. Yes, sir.

16 Q. How much had you had to drink?

17 A. Maybe four or five beers.

18 Q. And that happened during this time period we are
19 talking about?

20 A. Yes, sir.

21 Q. And again, you don't think that affected your,
22 affects your ability to remember what happened that night?

23 A. No, sir.

24 Q. Okay. So you have a clear recollection of what
25 happened, correct?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 746

1 A. Pretty much, yes, sir.

2 Q. All right. So Stan comes to Corrine's house. You're
3 living there, right?

4 A. Yes, sir.

5 Q. And you don't know how he got there?

6 A. No, sir.

7 Q. And you and Stan end up going to the bar, correct?

8 A. Yes, sir.

9 Q. Having some drinks. At that point in time did you
10 know who Ron Lally was?

11 A. No, sir.

12 Q. Was there any discussion about Ron Lally?

13 A. No, sir.

14 Q. At that point in time had you seen Danny Smith?

15 A. Not that I remember, sir, no, sir.

16 Q. You don't remember, right?

17 A. No, sir.

18 Q. And you hadn't seen Ray Smith at that point in time?

19 A. No, sir.

20 Q. Okay. So after you had a few drinks at the bar, then
21 you went over to this apartment on Middle Avenue?

22 A. Yes, sir.

23 Q. And who was driving?

24 A. Me, I was.

25 Q. How did you find your way there?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 747

- 1 A. They pointed, you know, told me what direction to go.
- 2 Q. Stan pointed out what way for you to go?
- 3 A. Yes, sir.
- 4 Q. And did Stan appear to be a friend of Ron Lally's?
- 5 A. Yes, sir.
- 6 Q. They knew each other, correct?
- 7 A. Yes, sir.
- 8 Q. And was, when they arrived there, what happened?
- 9 A. We went upstairs into his apartment.
- 10 Q. What did you do up there?
- 11 A. We smoked crack.
- 12 Q. Okay. So, again, it was Stan and you, this Ron
- 13 Lally, and another fellow you say?
- 14 A. Yes, sir.
- 15 Q. And you don't know the other fellow's name?
- 16 A. No, sir.
- 17 Q. How long were you there?
- 18 A. Maybe an hour, maybe two. I'm not sure.
- 19 Q. And now, you've left then again, you're driving at
- 20 that point?
- 21 A. Yes, sir.
- 22 Q. And Lally went with you, correct?
- 23 A. Yes, sir.
- 24 Q. Now, up to that point, or at that time, did you hear
- 25 any threats from Stan towards Ron?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 748

- 1 A. No, sir.
- 2 Q. Did you see anything you thought was threatening?
- 3 A. No, sir.
- 4 Q. How did they appear, did they appear to be friendly
- 5 with each other?
- 6 A. Yeah. Yes, sir.
- 7 Q. Were they in a good mood?
- 8 A. Yes, sir.
- 9 Q. Partying, right?
- 10 A. Right, we were.
- 11 Q. You guys were all partying?
- 12 A. Yes, sir.
- 13 Q. Enjoying yourself, correct?
- 14 A. Yeah.
- 15 Q. And you went over to your aunt's again. You went
- 16 over there and played pool; is that a correct statement?
- 17 A. Yes, sir.
- 18 Q. And also to go over to smoke crack, right?
- 19 A. Yes, sir.
- 20 Q. And this was going to be the evening, right?
- 21 A. Yes, sir.
- 22 Q. You weren't going to the bar or anything, you were
- 23 going to sit in and joke, smoke crack and shoot pool?
- 24 A. Yes, sir.
- 25 Q. That's not unusual, is it?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

1 A. No, sir.

2 Q. Was your aunt home at that time?

3 A. No, sir.

4 Q. Was there anybody else home at that time?

5 A. I don't believe so, no, sir.

6 Q. So it would have just been you and Stanley and Ron
7 Lally?

8 A. Correct, yes, sir.

9 Q. Had you ever met Ron Lally before?

10 A. No, sir.

11 Q. You didn't know who he was, right?

12 A. No, sir.

13 Q. Did you feel a little bit uncomfortable about having
14 him at your aunt's house?

15 A. No, sir..

16 Q. It was not a problem?

17 A.. No, sir.

18 Q. Everybody was kind of behaving themselves?

19 A. Yes, sir.

20 Q. You already mentioned you were a little reluctant to
21 let Stan use your aunt's car; is that right?

22 A. Yes, sir.

23 Q. You knew one of the reasons you let him take it was
24 because she often let him use it, right?

25 A. Yes, sir.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 750

1 Q. So that wasn't an unusual thing, was it?

2 A. No, sir.

3 Q. All right. And you testified that Stanley received a
4 page, correct?

5 A. Yes, sir.

6 Q. That happened in your presence?

7 A. Yes, sir.

8 Q. Were you there when he made the phone call?

9 A. I think he was upstairs when he used the phone, sir.

10 Q. Isn't it a fact, Brian, that he came back and told
11 you he had to pick up a girl and take her home?

12 A. I don't remember, sir.

13 Q. You don't recall that?

14 A. No, sir.

15 Q. He didn't tell you why he needed the car?

16 A. I don't remember, sir.

17 Q. All right. Now, you did give a statement to
18 Detective Leiby, correct?

19 A. Yes, sir.

20 Q. Okay. And that was in, I believe, January of 1995.
21 Does that sound right?

22 A. Yes, sir.

23 Q. You don't recall telling --

24 MR. ROSENBAUM: Objection. Beyond
25 the scope of the use of the tape.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files
Box 4 of 5
Page 751

1 MR. DUFF: Could we approach,
2 Your Honor?

3 (Conference at the bench between the Court
4 and counsel, as follows:)

5 MR. WIGHTMAN: Judge, I am simply
6 going to ask him the question if he made statement to
7 Detective Leiby.

8 MR. ROSENBAUM: He made two
9 statements because of the tape.

10 THE COURT: The thing is the tape
11 is being used only for inconsistencies at this point,
12 certainly not to feed you additional information.

13 MR. WIGHTMAN: But Your Honor, I
14 think we've had this argument once before.

15 THE COURT: Yes.

16 MR. WIGHTMAN: I think the Court
17 allowed us to cross-examine on new information. You can't
18 impeach using the tape.

19 THE COURT: Well --

20 MR. ROSENBAUM: I think I made the
21 same objection and the Court recognized that I was correct
22 but permitted in that one incident doesn't make a change in
23 the law.

24 THE COURT: At this point you
25 can't use the tape to cross-examine him on at this point.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 752

1 MR. WIGHTMAN: Information comes to
2 my attention.

3 MR. ROSENBAUM: It's hearsay anyway.

4 MR. WIGHTMAN: We've qualified it.

5 MR. ROSENBAUM: You qualified what?

6 THE COURT: The objection is
7 sustained. You can ask your question if you get the
8 information differently.

9 (Thereupon, the following took place
10 within the hearing of the jury.)

11 BY MR. WIGHTMAN:

12 Q. Now, sir, you testified that you don't recall what
13 why Stan needed the car?

14 A. Yes, sir.

15 Q. And have you forgotten why he told you?

16 A. Yeah, I don't remember why he needed it.

17 Q. But you did remember before, right, earlier?

18 A. If that's, I guess. I don't remember saying --

19 Q. Well, do you recall ever saying that he needed, he
20 needed the car, Stan told you he needed the car to pick up
21 a girl?

22 MR. ROSENBAUM: Objection.

23 THE COURT: Sustained. Wait.

24 All right. I sustained it, but can you answer that
25 question?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 753

1 THE WITNESS: I don't remember.

2 THE COURT: Okay.

3 Q. You don't remember saying that, sir?

4 A. No, sir I don't.

5 THE COURT: Okay.

6 Q. Now, you've testified before in this, or related
7 case, correct?

8 A. Yes, sir.

9 Q. Did you have a chance to review your transcript of
10 those testimonies?

11 A. Yes, sir.

12 Q. Prior to this morning?

13 A. Yes, sir.

14 Q. All right. When did you read those, sir?

15 A. Friday.

16 Q. Now, did you see Dan Smith at all that night that
17 this all happened?

18 A. I don't believe so, no, sir.

19 Q. In fact, you saw Stan early in the evening, then you
20 saw Ray and Stan later, correct?

21 A. Yes, sir.

22 Q. And Danny was not with them when they brought the car
23 back?

24 A. No, sir.

25 Q. And you happened to see Dan on occasions after this,

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 754

1 correct?

2 A. Yes, sir.

3 Q. Okay. Did Dan ever say anything to you about this
4 thing?

5 A. No, sir.

6 Q. When Stan and Ron Lally left in the Lebaron car, were
7 they still friendly?

8 A. Yes, sir.

9 Q. Okay. Were they, did you notice any threats made by
10 Stan towards Ron?

11 A. No, sir.

12 Q. And is it correct to say you don't know where they
13 were going at that point?

14 A. Correct.

15 Q. Were they, when did they last smoke crack cocaine
16 before they left?

17 A. Could have been doing it as they were walking out the
18 door.

19 Q. So that was continuing, right?

20 A. Yes, sir.

21 Q. And who was -- well, if you know, was Ron buying the
22 crack from Stan?

23 A. I don't know that, sir.

24 Q. Who provided the crack?

25 A. Stan.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 755

- 1 Q. You did not, correct?
- 2 A. No, sir.
- 3 Q. Were you paying for it?
- 4 A. No, sir.
- 5 Q. Am did you guys meet any girls when you were out at
- 6 the bars?
- 7 A. No, sir.
- 8 Q. You didn't. And he brought the car -- excuse me.
- 9 When they brought the car back, there was Stanley and Ray,
- 10 as you testified, correct?
- 11 A. Yes, sir.
- 12 Q. And you state that there were blood spots?
- 13 A. Yes, sir.
- 14 Q. On the car?
- 15 A. Yes.
- 16 Q. The rear end of the car?
- 17 A. Excuse me?
- 18 Q. The rear area of the car?
- 19 A. Yes, sir.
- 20 Q. Did Stan, you say, had a little bit of blood on him?
- 21 A. Yes, sir.
- 22 Q. And again, Danny was not there, correct?
- 23 A. Correct.
- 24 Q. Now, were you actually awake when they came back?
- 25 A. No, I was sleeping. I heard the garage door opener,

CATHLENE M. ACIERTO, RPR - (216) 965-4498

1 you know, open.

2 Q. Okay. And your aunt was there at that time?

3 A. Yes, sir.

4 Q. Did they explain to you what happened?

5 A. Said they got in a fight.

6 Q. Did they say where?

7 A. In Elyria.

8 Q. Let me ask you this, Brian. Who let, who gave you
9 the transcripts to read?

10 A. I believe it was Whitely, Detective Whitely.

11 Q. Was that in preparation for your testimony here this
12 morning?

13 A. Just to make sure, you know, I knew what I was
14 talking, you know.

15 Q. Making sure you were consistent with your previous
16 testimonies?

17 A. I guess. Just to review them.

18 MR. WIGHTMAN: Thank you, Brian. I
19 have nothing else.

20 THE COURT: Mr. Rosenbaum.

21 REDIRECT EXAMINATION OF BRIAN HOWINGTON

22 BY MR. ROSENBAUM:

23 Q. Why did this conversation about a fight come up?

24 A. Well, she asked why, my aunt's car, she asked why the
25 car was, you know, frozen. They said they were in a fight

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 757

1 and they tried to wash it.

2 Q. Okay. Did you see anything or did your aunt point
3 out anything on the car that they tried to wash off?

4 A. There was little spots of blood.

5 Q. So your aunt asked -- what did your aunt ask?

6 A. Asked, you know --

7 MR. WIGHTMAN: I'm going to object
8 Hearsay.

9 THE COURT: Sustained.

10 MR. ROSENBAUM: He brought this up.

11 THE COURT: Yeah, I know, but
12 it's still hearsay. Still hearsay at this point.

13 Q. Okay. What did they say about the fight?

14 MR. WIGHTMAN: Same objection, Your
15 Honor.

16 MR. ROSENBAUM: He brought up that
17 they were fighting. It is hearsay, but he started it.

18 THE COURT: Yeah, but.

19 MR. ROSENBAUM: He brought up they
20 said they were in the fight and I want to know why.

21 MR. WIGHTMAN: Again, Your Honor,
22 objection.

23 THE COURT: Do you know why?

24 THE WITNESS: I'm not exactly sure
25 why they were fighting.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 758

1 BY MR. ROSENBAUM:

2 Q. No. I meant why the conversation was taking place.

3 A. Because the car was in the condition that it was.

4 Q. And what condition was that?

5 A. Frozen.

6 Q. And?

7 A. Ice covered with spots of blood.

8 MR. ROSENBAUM: I have no other
9 questions.

10 THE COURT: Mr. Wightman.

11 MR. WIGHTMAN: Nothing further

12 THE COURT: Thank you, you may
13 step down, sir.

14 (Witness excused.)

15 THE COURT: Next witness,
16 please.

17 KARL HARTMAN

18 a Witness herein, called on behalf of the State of Ohio,
19 after being first duly sworn by the Court, testified and
20 said as follows:

21 DIRECT EXAMINATION OF KARL HARTMAN

22 BY MR. ROSENBAUM:

23 Q. Will you state your name, please, sir?

24 A. Carl Edward Hartman.

25 Q. How old are you, sir?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 759

- 1 A. Twenty-five.
- 2 Q. Are you employed at this time?
- 3 A. Yes, sir.
- 4 Q. What do you do?
- 5 A. I work for Plastic Components.
- 6 Q. Would you -- I'm sorry, could --
- 7 A. I sand plastic parts.
- 8 Q. Would you spell your first and last name for the
- 9 reporter, please?
- 10 A. K-A-R-L H-A-R-T-M-A-N.
- 11 Q. Do you know this person who's seated immediately
- 12 below my right hand?
- 13 A. Yes, sir.
- 14 Q. What's his name?
- 15 A. Danny Smith.
- 16 Q. How long have you known Danny Smith?
- 17 A. I've known of him for a while, about probably 10
- 18 years.
- 19 Q. How is it that you became closer acquainted with him?
- 20 A. Through Terry Hopkins.
- 21 Q. Who is Terry Hopkins?
- 22 A. A good friend of mine.
- 23 Q. Do you know his father, Raymond Smith?
- 24 A. No.
- 25 Q. Do you know Stanley Jaloweic?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 760

1 A. No. I just seen Stanley for the first time in the
2 last trial.

3 Q. Did Danny Smith, the defendant in this case, ever
4 request you to do an illegal contact for him?

5 A. Yes, sir.

6 Q. When did that first start?

7 A. Well, he first brought it to me probably about two
8 years ago.

9 Q. Do you know what month or what year?

10 A. Not exactly, but it was in the wintertime. Two times
11 and then one time. It was just, it was warm.

12 Q. Can you tell the Court and jury how this came about?

13 A. Yes. Well, Terry brought him over to me one time and
14 just said he had to talk to me.

15 Q. That was the first time?

16 A. Yes.

17 Q. And where would over to you have been at?

18 A. To my mother's house. And they just said they'd get
19 back to me.

20 Q. Was there any conversation there at that point?

21 A. No, not at that point.

22 Q. Well, what happened when Danny Smith came to your
23 mother's house?

24 A. He waited out in the car and Terry told me he had to
25 talk to me about something, taking care of some business

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files
Box 4 of 5

Page 761

1 for him, and he just said he would get back to me, and he
2 did.

3 Q. Did you have any idea what kind of business that
4 would be?

5 A. Not at the time, the first time.

6 Q. Well, when did they come back to you?

7 A. Probably a couple months later.

8 Q. And where did this take place?

9 A. At Lake Ridge Motel.

10 Q. And what happened?

11 A. He just wanted me to make sure that some guy didn't
12 make it to the stand.

13 Q. Who is he?

14 A. Danny Smith.

15 Q. And was that what he said to you?

16 A. Yes.

17 Q. And what did you say to that?

18 A. We just got talking about it, and I asked him what he
19 wanted me to do and --

20 Q. Is there a conversation at your sister's house also?

21 A. Yeah, after that.

22 Q. It was after that?

23 A. Yes.

24 Q. So what else happened. Tell as best you can what
25 transpired at the hotel.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files
Box 4 of 5

Page 762

1 Q. He was just talking about what he wanted me to do,
2 and first it was just, you know, beat him up, break his
3 legs, and then it was, like, don't make it to the stand
4 after we talked for a while. And then he brought up some
5 poison. I told him I didn't want a part of it, and him and
6 Terry left after that.

7 Q. Now, do you have any idea why they would come to you?

8 A. They think I'm in that line of work. They think I'm
9 a bad ass.

10 Q. Are you in that line of work?

11 A. No, sir.

12 Q. Have you been convicted for doing anything like that?

13 A. No.

14 Q. Do you have a record?

15 A. Yes.

16 Q. What is that for?

17 A. I had gotten in a fight out in Wellington.

18 Q. What were you convicted of?

19 A. Aggravated assault.

20 Q. Did you go to prison for that?

21 A. I got put on probation for that.

22 Q. So how did you leave it during this second meeting at
23 the hotel with Danny Smith?

24 A. How did we leave it?

25 Q. Yeah.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

1 A. Just told him I didn't want no part of it and he
2 left, him and Terry left.

3 Q. Did you ever see him again on the same subject?

4 A. Yeah. I moved out of that hotel, moved in with my
5 sister, and Terry brought him over then to my sister's
6 house. And we got to talking about it again, and I told
7 him again I didn't want no part of it. He just said he had
8 someone to take care of it.

9 Q. Did he tell you who?

10 A. Said Stanley and his Dad.

11 Q. Who said that to you?

12 A. Danny Smith.

13 Q. When was that?

14 A. I can't remember the exact date. Probably even the
15 month because it was probably two years ago. But I was in
16 prison since then. I mean, I didn't even think about those
17 dates, keeping no dates or anything like that. I didn't
18 think nothing would happen.

19 Q. Did you later learn that something did happen?

20 A. Yes.

21 Q. How did you learn that?

22 A. Terry followed me. Terry Hopkins told me --

23 MR. DUFF: Object as to what
24 Terry Hopkins told him.

25 THE COURT: There's no, he found

CATHLENE M. ACIERTO, RPR - (216) 965-4498

1 out, you found out from Terry Hopkins. Period.

2 THE WITNESS: That it was done .

3 THE COURT: Okay.

4 MR. DUFF: Object.

5 Q. Now, since then --

6 THE COURT: Hold it. Hold it,
7 Mr. Rosenbaum. Again, not what anybody told you, but you
8 have found out what had happened from Terry Hopkins,
9 period, correct?

10 THE WITNESS: Yes.

11 Q. Then have you had contact with the defendant, Danny
12 Smith?

13 A. Yeah, phone calls, and a visit at the jail.

14 Q. And how long has this been going on?

15 MR. DUFF: Object.

16 THE COURT: Overruled.

17 A. Phone call's been, went on for probably a month,
18 maybe a little over a month.

19 Q: Can you tell the Court and jury when this started?

20 A. In December.

21 Q. Of what year?

22 A. Of '95.

23 Q. So it was just this past December?

24 A. Right.

25 Q. And what were the nature of the phone calls?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 765

1 MR. DUFF: Object.

2 THE COURT: Without telling us
3 exactly, what was the subject matter?

4 Q. This is your phone call with who, sir?

5 A. Danny Smith.

6 THE COURT: Okay, with Danny
7 Smith. Okay, you may say that, yes.

8 MR. DUFF: Why we --

9 A. Is that what you're asking me?

10 THE COURT: Want a continuing
11 objection on this or what?

12 MR. DUFF: Yes.

13 THE COURT: Conversation with the
14 defendant.

15 MR. DUFF: After the fact.

16 THE COURT: After the fact.
17 Still a conversation with the defendant.

18 MR. ROSENBAUM: Could we approach the
19 bench?

20 THE COURT: Sure.

21 (Conference at the bench between the Court
22 and counsel, as follows:)

23 MR. ROSENBAUM: It would be after
24 what fact?

25 MR. DUFF: After the defendant's

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 766

1 charges, the offense, somebody's having conversation with
2 him.

3 MR. ROSENBAUM: This is for the
4 bribery.

5 MR. DUFF: I understand that. I
6 want an objection for it.

7 MR. ROSENBAUM: It's not after the
8 fact in my opinion. It pertains to the bribery.

9 MR. DUFF: I'd like a limiting
10 instruction as to the relevancy. This has no relevancy
11 about the murder, only on the bribery.

12 MR. ROSENBAUM: I dispute that.

13 THE COURT: Prepare one and give
14 me one, so I could look at it, what kind of a limiting
15 instruction?

16 MR. ROSENBAUM: I'm objecting to its
17 relevance.

18 THE COURT: I'm saying prepare
19 it to me and let me look at it.

20 (Thereupon, the following took place
21 within the hearing of the jury.)

22 BY MR. ROSENBAUM:

23 Q. So can you describe to the court and the jury the
24 nature of the conversation that the defendant was having
25 with you?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

1 A. It was about me coming in and giving a statement to
2 his lawyer a couple times and to mess up Terry Hopkins'
3 testimony, to say he was lying.

4 Q. Did he want you to tell the truth?

5 A. No.

6 Q. He wanted you to do what?

7 A. Wanted me to lie, to lie.

8 Q. To discredit who?

9 A. Terry Hopkins and myself.

10 Q. What about Detective Leiby?

11 A. Yes, him too.

12 Q. Now, did you eventually contact Detective Leiby as a
13 result of these calls?

14 A. Yes, a day later after the first call.

15 Q. And what happened then?

16 A. We set up a recorder.

17 Q. And did the defendant persist in making these calls
18 to you?

19 A. Yes, sir.

20 MR. DUFF: Object.

21 THE COURT: Overruled. Proceed.

22 Q. Thank you. And did you continue to record these
23 calls?

24 A. Yes, sir.

25 Q. Can you tell the Court and jury, as best you recall,

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 768

1 how many times the defendant called you on this issue?

2 A. Probably eight to twelve times.

3 Q. And were each of them taped?

4 A. Eight of them was. There was a couple times I wasn't
5 at home when he called.

6 Q. And the defendant would be where when he called you?

7 A. The county jail.

8 Q. What did he want you to do?

9 A. Wanted me to say Terry was lying and go up to his
10 lawyer and give a statement about that, and wanted me to
11 say Mr. Leiby was framing him and that he was making me do
12 this, and he just wanted me basically to lie to destroy the
13 testimony of Terry and myself.

14 Q. Were you to do this for anything?

15 A. For some money.

16 Q. How much money?

17 A. About 300 bucks. First it was 300, we talked about
18 300. And he gave me \$50 and that was it.

19 Q. There was supposed to be more money after a certain
20 thing happened?

21 A. Yeah, after I made a taped statement.

22 Q. Where was this taped statement to be made at?

23 A. Mr. Duff's office.

24 Q. How much were you to receive after you made the taped
25 statement?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 769

- 1 A. 350.
- 2 Q. How much?
- 3 A. About 350.
- 4 Q. 350?
- 5 A. Yes.
- 6 Q. And how would the defendant know that you had been to
- 7 Mr. Duff's office?
- 8 A. His mother would have been there, or his girlfriend
- 9 would have been waiting, meet me up there.
- 10 Q. And then did, in these final meetings, were
- 11 negotiations with the defendant, were they over the phone?
- 12 A. Yes.
- 13 Q. Did you ever go to see him anywhere?
- 14 A. Yes.
- 15 Q. Where was that at?
- 16 A. The county jail.
- 17 Q. And how did you get to see him at the county jail?
- 18 A. Went in there to see him.
- 19 Q. As of what?
- 20 A. He put me on his list.
- 21 Q. The visitor list?
- 22 A. Yes.
- 23 Q. And while you were at the county jail, did he
- 24 actually give you partial payment in anticipation of your
- 25 cooperation through lies?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 770

1 A. \$50.

2 Q. And how did you get that, sir?

3 A. He released it off his books.

4 Q. I would like to hand you a document that has been
5 marked as State's Exhibit 11-B and ask if you recognize
6 that, sir?

7 A. Yes, sir.

8 Q. Did you sign that?

9 A. Yes.

10 Q. Can you tell the Court and jury when you signed it?

11 A. 2-8 of '96.

12 Q. And why did you sign it?

13 A. Because that was a payment for me to take care of
14 some business.

15 THE COURT: What is it,
16 Mr. Rosenbaum, have him identify it.

17 Q. Can you tell the Court and jury what that document
18 is?

19 A. It's a release for money.

20 Q. Okay. From the jail?

21 A. Yes, release.

22 Q. And the amount of money was how much?

23 A. \$50.

24 Q. And did you get that \$50?

25 A. No. I gave the check to one of the detectives.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

1 Q. So when you signed this, did they give you something
2 at the jail?

3 A. Yeah, a check.

4 Q. I would like to hand you what has been marked as
5 State's Exhibit 11-C and ask if you can identify that?

6 A. Yeah. Yes.

7 Q. What is that, sir?

8 A. It's a check. It's the check that they gave me
9 before I walked out the door.

10 Q. For \$50?

11 A. Yes.

12 Q. And who caused that check to be issued to you?

13 A. Danny Smith.

14 Q. And why?

15 A. It's to go up to see his Lawyer.

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

18 THE COURT: Mr. Duff or
19 Mr. Wightman.

20 CROSS-EXAMINATION OF KARL HARTMAN

21 BY MR. DUFF:

22 Q. Mr. Hartman, you've given some statements in this
23 case; is that correct?

24 A. Yes.

25 Q. I think you gave a statement -- how many statements

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 772

1 did you give to Detective Leiby that were recorded?

2 A. I gave him two, two in '95.

3 Q. All right. One in December and one in January; is
4 that right?

5 A. Yes.

6 Q. Did you write anything out or sign anything?

7 A. Did I write anything out?

8 Q. Yeah.

9 A. No.

10 Q. Did you ever sign a statement?

11 A. No.

12 Q. You had a listening device on you and you went out to
13 the county jail; is that right?

14 A. No, there was nothing on me.

15 Q. How was that done?

16 A. Through the phone.

17 Q. At the county jail?

18 A. Yeah.

19 Q. How is that accomplished?

20 A. Detectives did it.

21 Q. You mean you talked to Danny through a phone out
22 there?

23 A. Yes, right through the glass.

24 Q. All right. And then that's recorded somehow?

25 A. Yeah.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 773

1 Q. All right. That was done one time?

2 A. Yes.

3 Q. All right. Then you made, you said, about eight
4 other times you talked to him on the phone?

5 A. Yeah.

6 Q. Where were you speaking from?

7 A. My mother and father's house.

8 Q. And you had that recorded?

9 A. Yeah.

10 Q. Who had set that up; Detective Leiby?

11 A. Yes.

12 MR. DUFF: Your Honor, we'd
13 like to look at the statement that is January '95 and
14 December.

15 THE COURT: Ladies and gentlemen,
16 here we go again. Mr. Rosenbaum and Mr. Duff, could you
17 please come forward?

18 (Conference at the bench between the Court
19 and counsel, as follows:)

20 THE COURT: How long are those
21 two statements I'm looking for?

22 MR. ROSENBAUM: Request they should
23 go to lunch. Al says yes.

24 THE COURT: Yes.

25 MR. DUFF: How long?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

1 THE COURT: Rather than keep team
2 coupé up, they have a nice long lunch at this point, okay.

3 (Thereupon, the following took place
4 within the hearing of the jury.)

5 THE COURT: Ladies and gentlemen,
6 obviously, it's early at this point, but rather than keep
7 you sitting in the room doing nothing, I might as well send
8 you to lunch, or this way you could probably go to the
9 homes and have lunch, or whatever the case may be, and get
10 back here in time for us to resume our testimony in this
11 matter.

12 So we will, as far as you folks are concerned, we
13 will adjourn for lunch today. The admonitions I've given
14 you about discussing this matter amongst yourselves,
15 letting anyone discuss it with you, reading about it,
16 letting anyone read to you, what have you, please do not
17 do. So be back here at one o'clock, okay, so that we can
18 resume this matter.

19 And again, I'm doing this primarily rather than
20 keeping you sitting in that room. I think it's much, much
21 better for you to walk around, even if it is raining at
22 this point. Thank you. With that, we will take our --
23 you'll take your noon recess.

24 (The jury was excused for the noon
25 recess.)

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 775

1 (The following took place without the
2 presence and hearing of the jury.)

3 THE COURT: I'm ready to turn
4 over one of the tapes. I've already heard this tape. So
5 far the only in, and I'm saying so far -- and could be that
6 it isn't an inconsistency. I haven't played the other
7 tapes yet -- there is no mention about breaking of knees or
8 anything else of this nature in this tape that was
9 testified here, okay. And the other part is there's
10 additional information on this tape regarding the purchase
11 of a Mercedes. That's about the only thing I can find, but
12 that the Mercedes is not inconsistent.

13 MR. ROSENBAUM: Your Honor, I elected
14 no to go into all of that.

15 THE COURT: It's additional.
16 That's all I want to report, because I'm going to play the
17 other one at this point.

18 (A recess was had and the following
19 took place without the presence and
20 hearing of the jury.)

21 THE COURT: I've played this
22 tape. There is some inconsistencies here, and in this tape
23 he indicates that he never, they never mentioned Ron's
24 name. This tape also said that he was never approached for
25 any killing. In this tape it does come out about the

CATHLENE M. ACIERTO, RPR - (216) 965-4498

1 knees, the legs, the broken leg and what have you, does
2 come out in here. Basically, that's what I've got.

3 MR. DUFF: How long is it, Judge?

4 THE COURT: It's going to be a
5 while.

6 MR. DUFF: How long is this one?

7 THE COURT: That one's a good 20
8 minutes.

9 THE COURT: However, I can say to
10 you, Mike, that the last 10 minutes is nothing. It's
11 absolutely nothing.

12 (A recess was had.)

13 MR. WIGHTMAN: Judge, we do have a
14 request. Now, with this individual's testimony about
15 recording or about receiving statements from Dan Smith at
16 the county jail about telephone conversation.

17 THE COURT: Yeah.

18 MR. WIGHTMAN: And he testified as
19 to the context, as to the substance of those statements.
20 We have to make request, we do make a request on Rule 106
21 that the State at this time play the entire tapes of those
22 conversations, to place the portions of those conversations
23 testified to, into proper context.

24 THE COURT: I haven't heard the
25 tapes yet, gentlemen.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 777

1 MR. WIGHTMAN: These are not, these
2 are statements of the defendant we are talking about.

3 THE COURT: I understand.

4 MR. WIGHTMAN: And there's been
5 testimony as to a portion of the statement.

6 THE COURT: Have you heard them?

7 MR. WIGHTMAN: Yes. Yes, we have
8 heard them, and unfortunately, they're quite long. But
9 under 106, Your Honor, at this point in time, in order to
10 get the context of what was testified to out of the
11 entirety of the entirety of the statements, which were
12 firmly established by this witness' testimony, they have to
13 be played.

14 MR. DUFF: This is as to the
15 bribery only, Judge.

16 THE COURT: Let me think about
17 it.

18 MR. ROSENBAUM: Wait a minute. This
19 is my case.

20 THE COURT: Yeah, it is.

21 MR. ROSENBAUM: And I'm going to
22 tender those through Leiby when I see fit. But Evidence
23 Rule 106 has nothing to do. You know, they're reading it
24 backward. Even if this was, I can offer a summary.

25 THE COURT: Certainly can.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 778

1 MR. ROSENBAUM: But I haven't done
2 that. I just asked what the thing -- 106 has nothing to do
3 with this.

4 THE COURT: I haven't even seen
5 it at this point. This is the first time it's --

6 MR. WIGHTMAN: Just to bring it to
7 your attention.

8 THE COURT: Let me take it under
9 consideration.

10 MR. WIGHTMAN: Let me try to
11 clarify. Hartman has testified in substance what Danny
12 Smith told him from the jail. He testified these
13 conversations were recorded; therefore, the State has
14 complete records of these conversations.

15 MR. DUFF: We got them, too.

16 MR. WIGHTMAN: We have heard them.
17 Under Rule 106 in order to place the substance of the
18 conversation in the proper context, I think the rule
19 clearly provides they should be played at this point in
20 time.

21 MR. ROSENBAUM: It says nothing about
22 playing it in court.

23 MR. DUFF: Yes, It does.

24 MR. ROSENBAUM: No, it doesn't.

25 THE COURT: Well, gentlemen,

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 779

1 wait a minute. It's now five minutes to 12:00. This young
2 lady has a commitment that she's got to go to. I'll listen
3 to the argument later on. Okay, Cathy, you've, two days
4 now you've bugged me about leaving here.

5 MR. ROSENBAUM: Can I go to lunch,
6 too.

7 THE COURT: Yes, you may.
8 Everybody else go to lunch. As far as we're still on
9 these tapes here. I'm not interested in anything else. I
10 have some tapes to listen to. I have one more tape to
11 listen to at this point. As far as your client is
12 concerned, fine, but we are going to start again at one
13 o'clock.

14 And you know, I don't know how he's going to get back
15 here at this point. I got a jury. I'm not going to keep
16 the jury talking for three hours. It's up to you at this
17 point as far as you want to play your tapes and have your
18 client listen.

19 MR. DUFF: No. Dan and I will
20 take the tape to the lunch and listen over lunch.

21 MR. WIGHTMAN: We will wait for you
22 to be done.

23 THE COURT: You go ahead and go.
24 As soon as I hear this tape, I'm going to lunch at this
25 point. The jury's already at lunch, guys. Go to lunch,

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 780

1 let the defendant go to lunch so he can be back here at one
2 o'clock, as close to it as possible, and then we can take
3 up whatever other stuff you have.

4 (A recess was had.)

5 (The following took place without the
6 presence and hearing of the jury.)

7 MR. DUFF: Judge, we found a --

8 THE COURT: Okay. Now, what did
9 you find? I mean, I gave you --

10 MR. DUFF: A lot of
11 inconsistencies. I don't want to discuss them in front of
12 him.

13 MR. ROSENBAUM: Oh, I brought him. I
14 thought we were ready to go. Sorry.

15 THE COURT: Sir, could you
16 just -- don't go too far, though. What did you find,
17 Mr. Duff?

18 MR. DUFF: Well --

19 THE COURT: Which tape were you
20 talking about, all three of them?

21 MR. DUFF: All three of them.

22 THE COURT: Let's do all three.

23 MR. ROSENBAUM: Let's be a little
24 more specific.

25 THE COURT: Yeah. The first one

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 781

1 I gave you, okay.

2 MR. DUFF: The first tape you
3 gave me is the second one made, it was dated 12-7.

4 THE COURT: Okay.

5 MR. DUFF: All right. He admits
6 in there that he denied it totally his first statement to
7 Detective Leiby, we don't know the date of that first
8 statement, the second time he saw him he did add he never
9 said he never talked to Dan directly, that's the second
10 one. We have that tape.

11 THE COURT: Okay. And I
12 mentioned that.

13 MR. DUFF: Yeah.

14 THE COURT: Okay.

15 MR. DUFF: And then this tape of
16 12-7-95, Detective Leiby, you changed your stories. Can
17 you explain the three stories, how the changes came about.

18 THE COURT: Okay. But somehow
19 that is inconsistent to what he said here on the stand?

20 MR. DUFF: It's just
21 inconsistent.

22 THE COURT: No, no. The
23 inconsistency as to how he's testified is what we got to
24 concern ourselves with.

25 MR. DUFF: All right. On the

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 782

1 tape of 1-5-95, it was no one asked him to skill anybody,
2 just beat somebody up.

3 THE COURT: Okay. That I think I
4 pointed out also. I think we may be in somewhat agreement
5 as to the first two tapes that you got. The third tape is
6 the one that I, I said was a lot of conversation and that's
7 about it.

8 MR. DUFF: All I got out of the
9 third tape, Judge, was their talk of the car, which --

10 THE COURT: Yeah.

11 MR. DUFF: -- on the one tape he
12 says --

13 THE COURT: One's a BMW and the
14 other a Mercedes.

15 MR. DUFF: Yeah.No, no. On
16 the tape of 1-5-95 --

17 THE COURT: Okay.

18 MR. DUFF: -- he says, Detective
19 Leiby asked him about the car. He said there was never a
20 car discussed. That's on there. No, there was no car
21 discussed to him.

22 THE COURT: Okay.

23 MR. DUFF: That's inconsistent
24 with the third. Those are the kinds of things. Dan never
25 approached me. He was in the car the whole time. Terry

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 783

1 did the talking. Terry asked him about beating him up for
2 two days in a row, came right on to him about it.

3 THE COURT: Okay.

4 MR. DUFF: Those kinds of
5 things.

6 THE COURT: Fine. Mr. Rosenbaum,
7 any vehement, violent disagreement?

8 MR. ROSENBAUM: No.

9 THE COURT: Okay.

10 MR. DUFF: You might want to use
11 it if he denies it.

12 THE COURT: No. You mean as far
13 as he's concerned?

14 MR. DUFF: Yeah, if he denies
15 it, you might want to try to find it.

16 THE COURT: I don't know how to
17 find them.

18 MR. DUFF: That's Dan Wightman's
19 job. He's got transcripts. He can find them.

20 THE COURT: Bring them in. You
21 want to talk about this now?

22 MR. DUFF: And the amounts, too,
23 Judge. The amount of money involved 300 to 5,000 to 35
24 hundred. It moves all over.

25 THE COURT: Okay. You want to

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files
Box 4 of 5

Page 784

1 talk about this now, 106?

2 MR. DUFF: Mr. Wightman, Your
3 Honor.

4 MR. WIGHTMAN: Yes, Your Honor.
5 Again, Your Honor, Hartman testified about conversation he
6 had with Dan Smith.

7 THE COURT: Absolutely.

8 MR. WIGHTMAN: They were taped
9 conversations, he admitted that.

10 THE COURT: He said they were
11 taped.

12 MR. WIGHTMAN: He talked about the
13 substance of those conversations. He said that Dan Smith
14 wanted him to go to his attorney and state that what he
15 said before was a lie and what he said about Terry was a
16 lie, we are saying the entire conversation that was taped
17 between Hartman and Danny Smith should be played at this
18 time.

19 THE COURT: Why played?

20 MR. WIGHTMAN: Why played?

21 THE COURT: Why played?

22 MR. WIGHTMAN: Why played? In order
23 to put in context those summaries that he made of those
24 taped statements so that the jury actually understands how
25 they were said and what context they were said. That tape

CATHLENE M. ACIERTO, RPR - (216) 965-4498

1 should be played, and that's Rule 106 we think comes in at
2 this stage.

3 THE COURT: I don't think 106
4 says that, frankly.

5 MR. WIGHTMAN: Certainly, Your
6 Honor, the intent of 106 did not allow a small portion of a
7 statement to come in when the entire statement should be
8 played to understand the whole thing.

9 THE COURT: First of all, first
10 of all, 106 talks about the introduction, okay. When a
11 written or recorded statement or part thereof is introduced
12 by a party, an adverse party may require him at that time
13 to introduce any other part or any other writing or
14 recorded statement which is otherwise admissible and which
15 ought, in fairness, to be considered contemporaneously with
16 it. Okay, I see no introduction. There's no question,
17 there's mention to it.

18 MR. WIGHTMAN: Your Honor, our
19 position would be by him testifying as to the content. The
20 content.

21 THE COURT: That introduces it.
22 There's nothing in evidence yet.

23 MR. WIGHTMAN: His testimony, Your
24 Honor.

25 THE COURT: You may cross-examine

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 786

1 him on it.

2 MR. WIGHTMAN: I believe this rule
3 allows us to hear this entire tape to get the entire
4 conversation and place what he said was said into context,
5 not to challenge it. Judge, I'm sure other courts are well
6 aware of the commentary as well the staff note.

7 THE COURT: No, I don't have the
8 same book you have. I have the plain rule book.

9 MR. DUFF: Give him the book.

10 THE COURT: I don't need it. I
11 don't need it.

12 MR. WIGHTMAN: Judge, it says the
13 rule is rule of timing, which nees --

14 THE COURT: I know it's a --

15 MR. WIGHTMAN: -- a place. The
16 writing or recording introduced, proper perspective is
17 through cross-examination. And it codifies a common law
18 tradition of requiring an entire statement to come out if
19 requested by the other party. That's really what we are
20 asking to, to get the entire statement out, the whole
21 thing.

22 THE COURT: Mr. Rosenbaum.

23 MR. ROSENBAUM: Your Honor, as we've
24 said before, we intend to introduce these tapes. They will
25 be there for the jury. I'm not playing, like, eight hours

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 787

1 worth of tapes in my case in chief. I don't think they
2 have a right do that. He commented on what the tapes were
3 about. I don't see it as a summary's rule thousand and six.

4 THE COURT: Okay, I don't see it
5 either.

6 MR. ROSENBAUM: That rule does not
7 say what they say it does.

8 MR. WIGHTMAN: It just, Your Honor,
9 what, you know, they're avoiding the rule by not playing a
10 portion of the tape.

11 MR. ROSENBAUM: I haven't played any
12 of the tape.

13 MR. WIGHTMAN: By coming up here and
14 saying this is it what the statement was and introducing
15 the entire tape the jury should be able to hear the tape of
16 the proceeding, the entire tape to put that statement into
17 context.

18 THE COURT: I'm not going to
19 order them in at this point, okay. You may have your
20 exceptions. Period. I'm not going to sit here and listen
21 to eight hours --

22 MR. DUFF: It's not eight hours.

23 THE COURT: What is it? How long
24 is it?

25 MR. WIGHTMAN: I've listened to

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 788

1 them. Two hours.

2 THE COURT: Okay. I'm not going
3 put two hours of tape in here.

4 MR. ROSENBAUM: It's a lot more than
5 two hours, Your Honor.

6 THE COURT: I'm not going to put
7 two hours of tape in here when they can listen to that in
8 their jury room. I'm not going to put two hours of tape
9 into the record here.

10 MR. WIGHTMAN: Your Honor, I would
11 also like to make, as part of our objection to the Court's
12 ruling, that we think especially was a summary then of what
13 those tapes are and then therefore under one thousands and
14 six we are entitled. We request it.

15 THE COURT: One thousands and six?

16 MR. WIGHTMAN: The other rule, Your
17 Honor, the summary rule, to have the entire tape played.

18 THE COURT: Well, Court's denying
19 it at this point. And certainly, you have your exceptions.
20 I'm not going to sit here and put two hours worth of tape
21 on this thing. No way. If it is two hours. Probably more
22 than that.

23 MR. WIGHTMAN: Well, Your Honor, we
24 think that in order for the jury to really understand what
25 was the context of the conversation, they have to hear the

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 789

1 entire two hours or whatever it is.

2 THE COURT: And fine. Fine. And
3 if they are introduced, they, you can introduce them. You
4 got copies of them.

5 MR. DUFF: Yeah, we have them.

6 THE COURT: I'm not going to
7 permit them to be played at this point. You do the same
8 thing with depositions, gentlemen, in civil cases. The
9 jury will play them. Period.

10 Anything further? You have your exceptions.

11 Bring them in, Barbara.

12 (The following took place within the
13 presence and hearing of the jury.)

14 THE COURT: Good afternoon,
15 ladies and gentlemen. Hope you all had a very nice long
16 lunch. And I can't guarantee that will not happen again,
17 okay.

18 Ladies and gentlemen, we were in the midst of the
19 cross-examination of this witness. And Mr. Duff and
20 Mr. Wightman, you may continue your cross-examination.

21 MR. DUFF: Thank you, Your
22 Honor.

23 BY MR. DUFF:

24 Q. Mr. Hartman, I'd like to ask you a few questions if I
25 could.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 790

- 1 A. Okay.
- 2 Q. Can you see this from over there, sir?
- 3 A. Yes.
- 4 Q. Now, as I understand it, you've met with Detective
- 5 Leiby several times; is that right?
- 6 A. Couple times.
- 7 Q. Yeah. You gave a taped statement back in January 5th
- 8 of '95; is that right?
- 9 A. Yes.
- 10 Q. Do you recall that?
- 11 A. Yes.
- 12 Q. Where did you give that at?
- 13 A. I gave it at the police station, city jail police
- 14 station.
- 15 Q. All right. Now, at that time did you have a warrant
- 16 out for your arrest for a probation violation?
- 17 A. No.
- 18 Q. You did not?
- 19 A. No. I was working for the county then.
- 20 Q. You were working for the county at the county garage?
- 21 A. Yes.
- 22 Q. Is that right?
- 23 A. Yes.
- 24 Q. But you had, you gave another statement, I think, in
- 25 December of that year; is that right?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 791

- 1 A. Yes.
- 2 Q. December 7th?
- 3 A. Yes, somewhere around there.
- 4 Q. Where was that one done at?
- 5 A. Same place.
- 6 Q. Police station?
- 7 A. Yes.
- 8 Q. Now, the day before that you had a warrant out for
- 9 your arrest, right?
- 10 A. Yes.
- 11 Q. December 6th?
- 12 A. I think. Something like that.
- 13 Q. For violating your probation?
- 14 A. Yes.
- 15 Q. So December 6th that warrant is lifted; is that
- 16 right?
- 17 A. Yes.
- 18 Q. And Detective Leiby played a role in that, right?
- 19 A. He got me bond so I wouldn't have to go to jail.
- 20 Q. He got you what is known as a personal bond where you
- 21 sign your name, right?
- 22 A. Yes.
- 23 Q. That happened December 6th, 1995; is that right?
- 24 A. Yes.
- 25 Q. And before you met with him on 1-5-95 and you gave a

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 792

1 statement, you met with him previous to that, some other
2 date, is that right, and you denied totally knowing
3 anything about this case?

4 A. Yes, on the first one.

5 Q. All right. Now, the first one that we've listened to
6 is a 1-5-95 statement, all right?

7 A. Yes.

8 Q. Now, in there the two of you make reference to a
9 previous time that the two of you met and you denied total
10 knowledge of this incident?

11 A. Yes.

12 Q. Do you understand what I'm saying?

13 A. Yes.

14 Q. Can you tell me approximately when, now referencing
15 from 1-5 of '95, January 5th of '95, and you guys talk
16 about an earlier meeting where you totally denied any
17 knowledge?

18 A. Yes.

19 Q. What month and year would that meeting have been,
20 just approximate?

21 A. When I first gave my statement?

22 Q. The first time you met with Detective Leiby and you
23 denied any knowledge of this case at all.

24 A. That was the first of '95. January 5th, '95.

25 Q. Well, no. Let me tell you this, Mr. Hartman, in that

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 793

1 1-5-95 taped statement, you and Detective Leiby talk about,
2 well, he says to you that you met with him previous to
3 that, to 1-5-95. Do you understand? I don't want to lose
4 you.

5 A. All right.

6 Q. If I speak too fast, slow me down and I'll try to
7 repeat it. You meet with him January 5th, '95, he said you
8 met before and you totally denied knowledge of this
9 incident. I'm just asking you when that would have been.
10 Do you understand what I'm saying? Now, it had to be
11 before 1-5-95.

12 A. He called me and then on the first of -- January 5th
13 of '95, that was the first time I ever met with him.

14 Q. You had talked to him before on the phone?

15 A. He called me at the garage.

16 Q. And you told him you knew nothing about this case?

17 A. Yes.

18 Q. All right. That's my question then. When would that
19 have been, month and year, approximately?

20 A. It was '94.

21 Q. All right. Month? Fall? Winter?

22 A. When I met with Detective Leiby?

23 Q. No, no, no. When he called you. You say he called
24 you at the county garage and you denied total knowledge of
25 this case. I'm trying to get the month and year that that

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 794

1 occurred, approximately.

2 A. Probably November or December.

3 Q. November, December '94?

4 A. Yes.

5 Q. You say you had no knowledge of this case, right?

6 A. That's what I said.

7 Q. And that's a phone call. You didn't meet with him
8 face-to-face?

9 A. No, not at the time.

10 Q. All right. So that's the first statement you gave to
11 him over the phone, right?

12 A. Yes.

13 Q. All right. And then, as I understand it, you had,
14 you've been doing a lot of running from your probation
15 officer, right?

16 A. Yes.

17 Q. You told Detective Leiby that, that "I've been
18 running from my probation officer," right?

19 A. He knew I was running.

20 Q. Yeah. And as I understand it, you did not have a
21 warrant for your arrest on January 5th of '95, when you met
22 with him?

23 A. No, because I was working then and I couldn't have.

24 Q. Do you recall Detective Leiby telling you during that
25 taped statement of '95, 1-5-95 that if you weren't being,

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 795

1 "If you weren't cooperating with me, I'd put you back over
2 in your probation officer's office;" do you recall him
3 telling you that?

4 A. No.

5 Q. He didn't take care of anything with your probation
6 officer on that date?

7 A. No.

8 Q. Are you sure of that?

9 A. Yeah. Well, if that's the day I went to court.

10 Q. No, that's not the date. This is January of '95.

11 A. No, he didn't.

12 Q. And if the court records indicate that there is a
13 warrant for your arrest during that time, those court
14 records would be wrong?

15 A. No, they wouldn't be. I would probably be wrong. I
16 couldn't remember dates.

17 Q. All right. So you might have had a warrant for your
18 arrest during that time?

19 A. I might have.

20 Q. All right. Now, at that time, you give him a
21 statement; is that right?

22 A. The '95, January?

23 Q. Yeah, January 5th, '95.

24 A. Yes.

25 Q. First taped statement. Now, in that statement, you

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 796

1 say that Terry Hopkins did all the talking for Danny,
2 right?

3 A. Yeah, I did say that.

4 Q. That you never talked to Danny directly, that Danny
5 stayed out in the car, correct?

6 A. Yes.

7 Q. Talked to Terry, Terry Hopkins. Why don't you tell
8 the jury how Terry Hopkins is related to you?

9 A. He's just a good friend. He had been living with us
10 since he was about 15.

11 Q. He got out of a group home?

12 A. Yes.

13 Q. And he moved in with you in your home, right?

14 A. Yes.

15 Q. He's more than a good friend, he's more like family,
16 right?

17 A. Yes.

18 Q. He's got another relation to you, right?

19 A. His sister --

20 Q. Your brother got his sister pregnant, right?

21 A. Yes.

22 Q. Sharon Hopkins, right?

23 A. Yes.

24 Q. He's very, he's family to you?

25 A. Yes.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 797

1 Q. Now, on your 1-5-95 statement, your statement at that
2 time was you spoke only to Terry, right?

3 A. Yeah.

4 Q. Not to Danny?

5 A. Yes.

6 Q. And this is while you're working at the county garage
7 and you're doing well, right?

8 A. Uh-huh.

9 Q. And that Detective Leiby -- and there was no mention
10 you said to Detective Leiby in the statement that there was
11 not mention of killing anyone; Terry Hopkins just wanted
12 you to beat somebody up, right?

13 A. For Danny, yes.

14 Q. Just answer my question. That Terry just wanted you
15 to beat somebody up?

16 A. Yeah.

17 Q. No mention of killing. And that the price for this
18 was \$500, right?

19 A. Yes.

20 Q. And you say you were never, you told them in that
21 statement that you were never approached about killing
22 anyone, just to beat someone up, right?

23 A. Yes.

24 Q. All right. And that no names were given to you about
25 who the alleged person you were going to beat up was,

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 798

1 right?

2 A. Right.

3 Q. No name?

4 A. Right.

5 Q. You had no idea who it was?

6 A. Right. Yes.

7 Q. And as I said, and you've agreed already that you
8 never personally talked to Danny at this point; is what you
9 told him?

10 A. Right.

11 Q. All right. And then it came up, did it not, that,
12 well, Detective Leiby told you he had to talked to Terry
13 Hopkins, right, not your brother-in-law, your close family
14 member, your very close friend let's call him?

15 A. I don't remember him telling me he had talked to
16 Terry.

17 Q. Do you remember telling him, Detective Leiby, that
18 Terry Hopkins just happened to be awaiting sentence to a
19 felony charge at the county; do you remember him telling
20 you that?

21 A. Yeah.

22 Q. That he was awaiting PSI?

23 A. Right.

24 Q. Why don't you tell the jury what awaiting PSI means?

25 A. That's pre-sentence investigation.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 799

1 Q. You've been through that, haven't you?

2 A. Yes.

3 Q. Tell us what that means.

4 A. You sit and wait to see if you're getting probation
5 or not.

6 Q. You don't know what's going to happen to you?

7 A. Yes.

8 Q. You're either going to prison or you're going to get
9 probation?

10 A. Yes.

11 Q. You told them that Terry, he was in the time frame
12 right then, right?

13 A. Yeah, he was in jail.

14 Q. On 1-5 of '95?

15 A. He could have been.

16 Q. Yeah. Did Detective Leiby tell you at that time on
17 that tape that he had the ability to make it uncomfortable
18 for Mr. Terry Hopkins because he's awaiting PSI, he could
19 talk to people at the courthouse and make it uncomfortable
20 for Mr. Hopkins? Did he tell you that?

21 A. That's that statement.

22 Q. Did he tell you that?

23 A. I wrote on the statement.

24 Q. I didn't get to read the statement. I listened to
25 the tape. Did you get a chance to read a copy of that?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 800

1 A. I just seen a, it was a statement that I had.

2 Q. Do you remember him telling you that?

3 A. Something like that.

4 Q. All right. And he told you he was going to talk to
5 Terry Hopkins, and if necessary, make it uncomfortable for
6 him, right?

7 A. It was something like that.

8 Q. Because he was in the crucial period of awaiting PSI,
9 right?

10 Now, you further told him that this incident with
11 Terry Hopkins, where he asked you to beat somebody up, that
12 he bugged you for about two days, two straight days, came
13 to you talking about beating him up, and that was last you
14 heard about it until you overheard Terry on the phone; is
15 that correct?

16 A. Yeah, I could have said that.

17 Q. All right, two straight days. And then you said
18 later on that tape that Terry, you overheard Terry Hopkins
19 talking to Danny on the phone; is that right?

20 A. Yes.

21 Q. Because Terry was living with you?

22 A. Yes.

23 Q. All right. And at this time you said that that's how
24 you found out someone else took care of this other than
25 you, that you heard it through Terry, right?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 801

1 A. I heard it was taken care of on the phone when he
2 was talking.

3 Q. When Terry and Danny were talking, right, you
4 overheard it?

5 A. Uh-huh.

6 Q. And that you never told Detective Leiby in that
7 statement that Danny told you face-to-face that he had this
8 taken care of by someone else, you never told him that?

9 A. I have told him that later on down the line.

10 Q. No, the 1-5-95 statement, you never told him?

11 A. No, not that in that.

12 Q. You told him some other story. You told him you
13 overheard Terry and Danny talking on the phone business,
14 right?

15 A. Yes.

16 Q. Is that right?

17 A. Yes.

18 Q. Okay. And Detective Leiby told you after you gave
19 this statement that after the statement I've just outlined
20 there, 1-5-95, you had a lot of things going for you,
21 right, you had a job at the county garage; is that right?

22 A. Yes.

23 MR. ROSENBAUM: Could we approach the
24 bench?

25 THE COURT: Sure.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 802

1 (Conference at the bench between the Court
2 and counsel, as follows:)

3 MR. ROSENBAUM: Again, I believe --

4 THE COURT: You're using the --

5 MR. ROSENBAUM: The entire statement
6 against him that's not the purpose.

7 MR. DUFF: I'm not using it to
8 impeach. We talked about it before lunch.

9 MR. ROSENBAUM: It was gone over
10 twice.

11 MR. DUFF: No, I haven't.
12 Judge, I'm allowed to ask him about anything that's really
13 haven't, no matter how I come about laws I -- can I finish?

14 MR. ROSENBAUM: That's not true.

15 MR. DUFF: Can I continue? I'm
16 not allowed to do this. I'm stuck with his answers because
17 I've got the information from the tape, Judge. If he
18 denies, I can impeach him with the tapes. That's, the
19 ruling says I'm stuck with the answer.

20 MR. ROSENBAUM: That's not what the
21 rule says.

22 MR. DUFF: You can't foreclose
23 me from having the relevant information, Judge. It's
24 highly relevant. I got it from the other transcript.

25 MR. ROSENBAUM: What other transcript?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 803

1 MR. DUFF: From the previous
2 trials.

3 MR. ROSENBAUM: This stuff wasn't
4 asked in the other trials. That's their fault. Now, if
5 wasn't in the other trials --

6 MR. DUFF: Some of it, I did
7 some of the tapes.

8 THE COURT: All right. All
9 right.

10 MR. DUFF: It's highly relevant,
11 Your Honor. I'll get through it.

12 MR. ROSENBAUM: That's the test of
13 the truth.

14 MR. DUFF: I'm --

15 MR. ROSENBAUM: Would you like to
16 just make your speech to them now?

17 MR. DUFF: No, no, you are.

18 MR. ROSENBAUM: Why don't you just
19 shout it.

20 MR. ROSENBAUM: We know what the
21 purpose of the tape is and he's exceeded it.

22 THE COURT: Not the tape.

23 MR. DUFF: I am erasing it from
24 my mind.

25 THE COURT: For purpose of

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 804

1 impeachment and only --

2 MR. DUFF: Judge, I'm impeaching
3 him. I'm stuck with the answers. I'm going to different
4 details.

5 MR. ROSENBAUM: Prior inconsistencies
6 on direct and only direct.

7 MR. DUFF: And the inconsistent
8 statement he's given to the different tapes. I'm allowed
9 to do it. The only way to do it. How else can I do that?

10 THE COURT: He's not inconsistent
11 on the tapes.

12 MR. ROSENBAUM: That's not the test.
13 That's not the test.

14 THE COURT: That's not the point.

15 MR. DUFF: Yes, it is.

16 THE COURT: Ladies and gentlemen,
17 you stay right there. There is a dispute. Bring the
18 defendant into chambers, please. Everybody please stay in
19 place.

20 (The following took place in chambers.)

21 THE COURT: We happen to come
22 from a jurisdiction that permits defense counsel to hear
23 the tape. There are many jurisdictions in this State of
24 Ohio that allows only the judge to hear it and state what
25 the inconsistencies are, okay.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 805

1 The rule is for inconsistent statements made while on
2 the stand as opposed to what was made on tape. That's what
3 the rule is, okay. The Ninth District says, fine, let
4 defense counsel listen to the entire tape. And I think
5 it's primarily to check on what the judge says is or is not
6 inconsistent.

7 Now, it does not mean that, and I grant you that
8 there are inconsistent statements on one tape as opposed to
9 on another tape, I grant you that there are, but it's not
10 inconsistent, and one of those tapes has to inconsistent
11 statements that you can question them on. But you cannot
12 pick up additional information to testify.

13 MR. DUFF: Yes, you can, Judge.

14 THE COURT: How about those
15 jurisdictions, Mike, that don't allow you to see the tape?
16 How can you --

17 MR. DUFF: Then their counsel
18 are going to be straight-jacketed. I'm sorry, but we don't
19 live in the district.

20 THE COURT: The purpose of the
21 rule is --

22 MR. DUFF: Judge, 611(B) is
23 cross-examination shall be permitted mandantory shall all
24 relevant matters and matters affecting the credibility.
25 The fact that he's told different stories at different

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 806

1 times affect his credibility and that's a relevant matter.
2 I don't know how to get around that, Judge. 611(B).

3 THE COURT: Let me see that.

4 MR. DUFF: Uses the word
5 "shall."

6 THE COURT: Cross-examination
7 shall be permitted in all relevant matters and matters
8 affecting credibility. That's the basic, that's the basic
9 permissibility for cross.

10 MR. DUFF: My point is, Judge,
11 if he told A, B and C stories and they're all different
12 from the one he said on the stand, that's relevant and it
13 affects his credibility whether you're going to believe
14 him, if you've told different stories. That's all I'm
15 doing, outlining the different stories he told.

16 MR. ROSENBAUM: That rule has to be
17 read in light of 16(B)(1)(g).

18 THE COURT: 16(B)(1)(g).

19 MR. ROSENBAUM: It's the discovery
20 rule which says that they get these things to determine if
21 it's consistent between the direct and no other.

22 THE COURT: Pull me that, either
23 the green or red.

24 MR. ROSENBAUM: The inconsistency is
25 through something he particularly no longer has knowledge

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 807

1 of. And the answer to his question in court is he is
2 required to forget it exists.

3 MR. DUFF: No, I'm stuck with
4 the answer.

5 MR. ROSENBAUM: No, the question
6 isn't even to be put. I can ask any question, Judge, that
7 is relevant and has a good faith basis, just pull things
8 out of the area.

9 THE COURT: Like?

10 MR. ROSENBAUM: You are not, didn't
11 you say on certain time and certain place on a tape which
12 you are --

13 THE COURT: But you see --

14 MR. ROSENBAUM: Which you should not
15 be --

16 THE COURT: You can ask that
17 question so properly by not referring to the tape.

18 MR. ROSENBAUM: But it does -- he
19 wouldn't know.

20 MR. DUFF: I won't refer to the
21 tape. I don't refer to the tape.

22 MR. ROSENBAUM: That's great. Your
23 Honor, you're permitting him to in corrections what I --

24 THE COURT: The subject to
25 disclosure.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 808

1 MR. DUFF: Mr. Rosenbaum, he's
2 told a lot of different stories and none of them match, and
3 they are inconsistent.

4 MR. ROSENBAUM: No.

5 MR. DUFF: Okay, so --

6 THE COURT: Upon completion of a
7 witness' direct examination at trial, the Court, by motion
8 of the defendant, shall conduct an in-camera inspection of
9 the witness' written or recorded statement with the defense
10 attorney and prosecuting attorney present and
11 participating, to determine the existence of inconsistency,
12 if any, between the testimony of such witness and the prior
13 statement, and the prior statement.

14 MR. DUFF: Statements. There
15 are three of them, Judge, in this case, statements.

16 THE COURT: If the Court
17 determines that inconsistencies exist, the statement shall
18 be given to the different attorneys for use in
19 cross-examination of the witness as to inconsistencies.

20 MR. DUFF: Right.

21 THE COURT: If the Court
22 determines that inconsistencies do not exist, the
23 statements shall not be given to the defense attorney and
24 shall not be permitted to cross-examine or comment thereon.
25 Whenever the defense attorney is not given the entire

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 809

1 statement, shall preserve from the record of the Court to
2 be made available to the appellate court in the event of
3 appeal.

4 MR. DUFF: Judge, you determine
5 if the statements in and of themselves are inconsistent.

6 THE COURT: If the Court
7 determines inconsistencies exist, the statements shall be
8 given to the defense attorney for use in cross-examination
9 of the witness as to the inconsistencies.

10 MR. ROSENBAUM: And he's not doing
11 that.

12 THE COURT: As to --

13 MR. ROSENBAUM: He's not.

14 THE COURT: The next thing says,
15 "If the Court determines that inconsistencies do not exist,
16 the statements shall not be given to the defense attorney
17 and he shall not be permitted to cross-examine or comment
18 thereon. "

19 MR. DUFF: Well, how could you
20 if you don't know about them?

21 MR. ROSENBAUM: I would like to point
22 out he's not doing what he claims to do. He is not
23 confronting this witness with inconsistencies between
24 direct or even among the tapes. What he's arguing is
25 didn't Detective Leiby tell you this on the certain time.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 810

1 Didn't Detective Leiby do that on a certain time. He's not
2 even remotely attempting to establish that this witness has
3 inconsistent statements, regardless of where he is trying
4 to continue his assault on Detective Leiby through tapes
5 improperly --

6 THE COURT: As liberally as I can
7 put, possibly put, construe this rule on the defense, I
8 can't disagree with what Mr. Rosenbaum is saying on that.

9 MR. DUFF: Well, Judge, you
10 yourself have said on this record these statements are
11 inconsistent amongst themselves.

12 THE COURT: Amongst themselves,
13 correct. And you can certainly, on any one of those three
14 tapes, you can certainly cross-examine on any
15 inconsistencies that appear.

16 MR. ROSENBAUM: Well, perhaps
17 attorney Duff would like to state for the record how the
18 statements are inconsistent amongst themselves regarding
19 what Detective Leiby said.

20 THE COURT: Oh, all I've said, I
21 didn't say anything about Detective Leiby.

22 MR. ROSENBAUM: No, that's what I'm
23 saying. He's doing the same thing here he tried to do --

24 MR. DUFF: Judge, I'm putting
25 him on trial.

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Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 811

1 THE COURT: Of course you are.

2 MR. DUFF: That's my job.

3 THE COURT: The answer to my
4 question is, how is his statement -- because Carl Hartman's
5 statement's inconsistent, so what does that have to do with
6 what Detective Leiby has ever done with them?

7 MR. ROSENBAUM: And they're not.

8 MR. DUFF: Judge, I read the
9 prior transcripts of Mr. Cleary and Mr. Grunda.

10 THE COURT: What was out butt

11 MR. DUFF: He put on the
12 probation officer and he said he was going to handle that.

13 MR. ROSENBAUM: How is that --

14 THE COURT: How --

15 MR. DUFF: It's a relevant
16 matter. I'm not permitted by 611(B).

17 MR. ROSENBAUM: It's not relevant.

18 MR. DUFF: It's relevant.

19 MR. ROSENBAUM: You're trying --

20 MR. DUFF: Judge, if he goes to
21 Mr. Risner, his probation officer, does that meet 611(B)?
22 To hell with 16.

23 MR. ROSENBAUM: You can ask Hartman
24 what consideration Detective Leiby --

25 THE COURT: Ask him if he got any

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Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 812

1 consideration.

2 MR. ROSENBAUM: He's cross-examined
3 him with, if the Court will recall, on what Detective Leiby
4 promised Terry Hopkins.

5 MR. DUFF: You can straighten it
6 out on direct.

7 MR. ROSENBAUM: I don't have to
8 straighten out anything on redirect that you improperly
9 did.

10 MR. DUFF: It's relevant and
11 affects credibility.

12 THE COURT: The rule says
13 inconsistencies and that's where we are going to stay with
14 the rule. That's what it says. Don't you think I
15 understand what we are trying here? I know what we are
16 trying.

17 MR. DUFF: I know what we're
18 trying.

19 THE COURT: I know what we are
20 trying here. The rules, the rule, guys, I didn't write it.
21 I enforce, or at least try to. Let's go back.

22 (The following took place within the
23 presence and hearing of the jury.)

24 THE COURT: Ladies and gentlemen,
25 Court and counsel have had a conference and we have

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Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 813

1 obviously disagreed with each other, and you know, which is
2 not an unusual situation in cases of this nature. The
3 Court has made its ruling and we are now ready to proceed.

4 MR. DUFF: Thank you, Your
5 Honor.

6 BY MR. DUFF:

7 Q. So we were, I think when we left off, we were going
8 through your details of your statement of 1-5-95; is that
9 correct?

10 A. Yes.

11 Q. Now, was there discussion, do you recall Detective
12 Leiby asking you about a red BMW?

13 A. Yes.

14 MR. ROSENBAUM: Objection.

15 Q. Did you tell --

16 THE COURT: Okay.

17 Q. Did you tell Detective Leiby --

18 THE COURT: Sustained. But go
19 ahead. Now, sustained again, you know.

20 MR. DUFF: I'll do my best.

21 THE COURT: I understand,
22 Mr. Duff and I understand it's difficult.

23 Q. Did you mention anything to him about a red BMW?

24 MR. ROSENBAUM: Objection.

25 THE COURT: Again, it's not

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 814

1 consistent.

2 MR. DUFF: Yes, with the other
3 statements, Your Honor.

4 THE COURT: Which one?

5 MR. DUFF: Last one. The last
6 statement, 2-8-96.

7 THE COURT: Come here.

8 (Conference at the bench between the Court
9 and counsel, as follows:)

10 MR. DUFF: Because he said
11 that he told him about a car, the 2-8-96 he says he was
12 promised a car, and the first one he said there's no
13 mention of a car.

14 MR. ROSENBAUM: It was the
15 inconsistent with what he said in court?

16 MR. DUFF: In consistent between
17 the statement. It doesn't have to be in court.

18 MR. ROSENBAUM: That's the whole
19 point.

20 THE COURT: It's from his
21 testimony.

22 MR. DUFF: It's inconsistent.
23 He didn't mention a car.

24 THE COURT: If he doesn't mention
25 it, it's not inconsistent.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 815

1 MR. DUFF: He can leave it out
2 and I can't get into that?

3 THE COURT: It's not
4 inconsistent.

5 MR. DUFF: It's a relevant
6 matter.

7 THE COURT: Go ahead.

8 MR. DUFF: It's in the
9 transcript, Your Honor, the previous trial.

10 (Thereupon, the following took place
11 within the hearing of the jury.)

12 BY MR. DUFF:

13 Q. Now, you have made no mention, you have made no
14 mention in this trial, in your direct examination about any
15 car being offered to you, have you?

16 A. No.

17 Q. All right. But in fact, you've testified in previous
18 cases in this matter, right?

19 A. Yes.

20 Q. Page 63. Is that right?

21 A. Yes.

22 Q. 53. You testified in the case involving Stanley
23 Jaloweic; is that right?

24 A. Yes.

25 Q. In that case you said that he offered to buy you a

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 816

1 BMW and give you 5,000 in cash; is that right?

2 A. Yes, that's what I said.

3 Q. That was your testimony in that case, right?

4 A. Yes.

5 Q. When was that trial held?

6 A. About two months ago, a month-and-a-half ago.

7 Q. Would you agree about March 14th?

8 THE COURT: For the record,
9 that's close enough, I think, Mr. Duff, at this point. I
10 don't know whether this man would remember what date that
11 was.

12 A. I do not.

13 Q. Red BMW and 5,000 in cash, right?

14 A. Yes.

15 Q. All right. The first time you told Detective Leiby
16 about the red BMW was when you gave a statement, and you
17 gave another statement February 8th of '96; is that right?

18 A. Wasn't it December?

19 MR. ROSENBAUM: Objection.

20 THE COURT: Did you, did you ever
21 make mention --

22 MR. ROSENBAUM: I object for other
23 reasons.

24 THE COURT: Sustained. Sustained

25 Q. In February, on February 8th, '96, did you give a

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Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 817

1 taped statement to Detective Leiby?

2 MR. ROSENBAUM: Objection.

3 THE COURT: Did you get a taped
4 statement?

5 MR. DUFF: February 8th, '96,
6 did you give --

7 THE COURT: I'll overrule. He
8 may answer that one if he remembers.

9 Q. Did you give a taped statement?

10 A. I gave two taped statements, but I don't know which
11 months. You know, I don't remember.

12 Q. We are going to go through them. Let's try to do
13 them in order so they could be understood.

14 We are talking about January 5th, the next time you
15 spoke to him on tape was 12-7-95; is that right?

16 A. Yes.

17 Q. Now, did you, that's the date that the day before
18 that you testified Detective Leiby went to the probation
19 department and got you a personal bond, right?

20 A. Yes.

21 Q. Because you were going to go to jail for a probation
22 violation?

23 A. Yes.

24 Q. And you had time hanging over your head, did you not,
25 sir?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 818

1 A. Yes.

2 Q. How much?

3 A. About 18 months.

4 Q. Eighteen months. And you didn't want to go back to
5 prison, right?

6 A. No, I didn't.

7 Q. Now, on this statement of 12-7-95, all right, you
8 said Dan did the talking to you, right?

9 A. Yeah.

10 Q. And that he asked you to, at this point you said that
11 he wanted you to take care of Ron. You knew the person's
12 name, right?

13 A. He said his name, yes.

14 Q. According to this version, right?

15 MR. ROSENBAUM: Objection.

16 THE COURT: According to that
17 tape.

18 MR. ROSENBAUM: We are doing the same
19 thing again, Your Honor.

20 MR. DUFF: No, we are not,
21 Judge.

22 THE COURT: No, please approach
23 at this point.

24 (Conference at the bench between the Court
25 and counsel, as follows:)

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 819

1 THE COURT: In one of those
2 tapes, there is an indication that he didn't know what it
3 was he testified.

4 MR. ROSENBAUM: Is that inconsistent
5 with anything that happened at trial?

6 THE COURT: But he said, yeah, he
7 originally mentioned Ron's name. He did mention Ron's name
8 in another tape. He said he didn't know who the guy was.
9 Period.

10 MR. ROSENBAUM: All right.

11 THE COURT: Proceed.

12 (Thereupon, the following took place
13 within the hearing of the jury.)

14 BY MR. DUFF:

15 Q. So in the this statement you say Dan mentioned his
16 name to you, right?

17 A. Yes.

18 Q. All right. And you also mentioned that, didn't you,
19 from the 1-5-95 statement, you mention that now the subject
20 of poison comes up, right?

21 A. Yes.

22 Q. All right. And now, the price for this, according to
23 your statement 12-7-95, your price was 500 plus a car; is
24 that right?

25 A. To do what?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 820

1 Q. To take care of this thing allegedly that you're
2 saying that Danny wanted you to do?

3 A. You're talking about to get rid of him was \$5,000 and
4 a car.

5 Q. Five thousands and a car?

6 A. Yes.

7 Q. That's not what you said on 12-7-95, is it, sir? Do
8 you remember telling him, Detective Leiby, that the price
9 was five hundred and a car, or about 43 hundred total?

10 A. Yeah.

11 Q. All right. And the car was a Mercedes Benz; is that
12 right?

13 A. That's what I thought it was.

14 Q. You thought it was a Mercedes Benz?

15 A. Yes.

16 Q. Not a red BMW, right?

17 A. Right, at the time.

18 Q. Yeah. Now, in the statement you told Detective
19 Leiby, I think you testified on direct that it was in
20 Sheffield, somewhere in Sheffield you ran into Danny.

21 A. He came to my sister's house in Sheffield.

22 Q. In Sheffield Village?

23 A. Sheffield Lake.

24 Q. Sheffield Lake?

25 A. On Colorado Avenue.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 821

1 Q. All right. And at that time, according to your
2 testimony on direct examination, he told you this was
3 already taken care of?

4 A. Yes.

5 Q. All right. So you found out about it in Sheffield,
6 right? Is that right?

7 A. That's what he said.

8 Q. Yeah. But not, not like you had said earlier on the
9 1-5-95 statement, wherein you said you found out it was
10 taken care of by overhearing Terry on the phone, right?

11 A. Well, yeah. Yes.

12 Q. So as I understand it, you first talked to Detective
13 Leiby on the phone sometime November-December '94, you say
14 you had no knowledge of this case, right?

15 A. Yes.

16 Q. And then it went on from there; is that right?

17 A. Yes.

18 Q. And the stories change as laid out there on my notes;
19 is that right?

20 A. Yes.

21 Q. So you'd agree you've told several different stories
22 in this case to Detective Leiby, have you not, sir?

23 A. At least two.

24 Q. You've told more than that. You told one on 12-7 and
25 1-5, right, that's two. You told another one

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 822

1 November-December '94, right?

2 A. I could have. I remember two.

3 Q. Do you remember telling him you had nothing to do
4 with it?

5 A. Yeah.

6 Q. You knew nothing about it?

7 A. Yes.

8 Q. That's another story, right?

9 A. Yes.

10 Q. That's three. Now, were you told by Detective Leiby
11 that he was going to talk to your probation officer for
12 you?

13 A. He told me he would get me a bond.

14 Q. And he'd talk to your probation officer if you
15 cooperated?

16 A. Just told me he would get a personal bond.

17 Q. There was no further discussion about him talking to
18 Mr. Risner?

19 A. No.

20 Q. Who's Mr. Risner?

21 A. My probation officer.

22 Q. You testified in the case involving Stan, right?

23 A. Yes.

24 Q. And you testified in there that you thought, did you
25 testify in that case that you thought Danny, whatever he

CATHLENE M. ACIERTO, RPR - (216) 965-4498

1 was talking to you, was just blowing smoke, was just
2 kidding?

3 A. Yeah.

4 Q. And that was in March of this year, right? You just
5 thought it was all just a joke, right?

6 A. I didn't think he was serious.

7 Q. Right. Now, you got all these people, according to
8 your latest version here, you got this person asking you to
9 kill someone. Did you ever go to the police about that?

10 A. No.

11 Q. You never thought of doing anything like that?

12 A. No.

13 Q. And you never really disclosed this until it became
14 advantageous to you, sir, right, until you could get
15 something out of it, right?

16 A. Not really, but yeah, you could say that.

17 Q. Well, would you agree that you got something out of
18 this story?

19 A. Yeah, I got a bond. I didn't go to jail.

20 Q. And you haven't been violated on your probation,
21 right?

22 A. Right.

23 Q. You're still on probation, right?

24 A. Yes.

25 Q. That's still pending, right, that whole matter?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 824

1 A. Yes.

2 Q. Handing what has been previously marked and the
3 previous case as Defendant's Exhibit A, do you recognize
4 that document, sir?

5 A. Yes.

6 Q. What is it?

7 A. It's my file.

8 Q. It's your file. It's the case you have pending over
9 you for aggravated assault?

10 A. Yes.

11 Q. All right. It that statement of -- so it would be a
12 fair statement that the first time you mention anything
13 about a killing to Detective Leiby, a killing of anyone,
14 was after Mr. Detective Leiby went and got your bond
15 personal and took care of you with the probation
16 department, right, that's the first time you mention to him
17 about a killing; is that right?

18 A. Yeah.

19 Q. So 12-7-95. Just a minute, Your Honor.

20 Did the -- you quoted another price to Detective
21 Leiby, did you not, for this alleged deal?

22 A. What was it?

23 MR. ROSENBAUM: Objection.

24 Q. February 8th.

25 THE COURT: Wait a minute.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 825

1 MR. ROSENBAUM: Objection to the
2 question.

3 MR. DUFF: Did you ever give --

4 MR. ROSENBAUM: Objection.

5 THE COURT: I'm thinking on this
6 one.

7 MR. DUFF: I'm going through
8 this other one, Judge. It's just amount quoted.

9 THE COURT: No, I think, I think
10 at this point this is what he testified to.

11 BY MR. DUFF:

12 Q. Well, you testified on direct examination the price
13 was what?

14 A. A car and \$5,000.

15 Q. A car and \$5,000?

16 A. Yes.

17 Q. So that makes a total value, what, about 10 grand?

18 A. You could say, yeah. Eight, somewhere around there.
19 Six to eight.

20 Q. So now it's 4-22-96 and the price goes to 10,000; is
21 that right?

22 THE COURT: Goes a car and 5,000.

23 Q. Car plus 5,000. Approximately 10,000, right? Is
24 that right?

25 A. I don't know.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 826

1 Q. Well, is that what you're testifying on direct
2 examination?

3 A. I don't know how much the car costs exactly. 28
4 hundred.

5 Q. Your understanding was it was about 5,000, right?

6 A. The car?

7 Q. Yeah.

8 A. No.

9 Q. Did you ever tell Detective Leiby that the going rate
10 for something like this was 10,000, and you were going to
11 get a car and 5,000 cash?

12 A. I told him the going rate was that.

13 Q. You told him that's what you're going to do it for, a
14 car plus five?

15 A. I didn't tell him that's what I was going to do it
16 for. I told him that's what was offered to me.

17 Q. That's all I'm asking, offered to you. And that was
18 February 8th, '96, right?

19 A. Yeah. I don't remember the date.

20 Q. You won't argue with that date, will you?

21 A. No.

22 Q. Going rate 10,000, right?

23 A. Yeah.

24 MR. ROSENBAUM: Your Honor, object.
25 That's not what he said.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 827

1 MR. DUFF: Yes, it is.

2 THE COURT: No. He said -- go
3 ahead, what did you say?

4 THE WITNESS: That's what he
5 offered me.

6 THE COURT: He offered you that?

7 THE WITNESS: Yes.

8 THE COURT: You said, did you say
9 anything to him about the going rate?

10 THE WITNESS: I told him what the
11 going rate was.

12 BY MR. DUFF:

13 Q. \$10,000, right?

14 A. Yes.

15 Q. That's what he said the going rate was. And you were
16 going to achieve that by 5,000 plus a car, right?

17 A. That don't equal 10,000, the car.

18 Q. That's close, isn't it?

19 A. About 25 hundred off.

20 Q. The price, you would agree in your stories, the price
21 has gone all over the board, has it not? It started from
22 \$500 and it went all the way up to 10,000; isn't that
23 right?

24 A. Yes.

25 MR. DUFF: If I could have just

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 828

1 a minute, Your Honor. All right, that's it, Judge.

2 THE COURT: Mr. Rosenbaum.

3 REDIRECT EXAMINATION OF KARL HARTMAN

4 BY MR. ROSENBAUM:

5 Q. Is it fair to say what Mr. Duff has written here is
6 three different versions?

7 MR. DUFF: Judge, I don't want
8 him writing.

9 Q. A car plus 5,000 is approximately 10.

10 MR. DUFF: Go ahead. I don't
11 mind.

12 Q. With the BMW, 5,000 and 5,000 plus the car and 10 is
13 going pretty much the same.

14 MR. DUFF: Object. He's
15 leading.

16 Q. Is that three different versions?

17 MR. DUFF: Leading.

18 A. Yes, it is.

19 Q. The same thing?

20 A. Basically the same.

21 THE COURT: Are they basically
22 the same?

23 THE WITNESS: Basically the same
24 thing.

25 Q. If he were to try create the impression by writing

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 829

1 the same things different times, different days, that might
2 not be accurate?

3 MR. DUFF: Object. He's not
4 leading?

5 A. No.

6 Q. Let me ask you this.

7 THE COURT: He's not leading.

8 Q. Why didn't you go to Detective Leiby and tell him the
9 truth the first time?

10 A. Because I just got out of prison; I didn't want to
11 get involved. I had a good job and I was just tired of
12 everything.

13 Q. Why didn't you tell him the whole truth when you
14 first did finally speak to him?

15 A. I was scared. I didn't want to get involved.

16 Q. So is it fair to say that you gave maybe three
17 different versions, like I don't know anything, only part
18 of the truth, and then the whole truth?

19 A. Yes, it is.

20 Q. Even though you thought Danny Smith was blowing smoke
21 when he came to you, did you later learn that he was not?

22 MR. DUFF: Object. Leading,
23 Your Honor.

24 THE COURT: That is leading.

25 A. Yes, I did.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 830

1 THE COURT: Sustained.

2 Q. Well, why were you afraid of him then if you thought
3 he was blowing smoke?

4 A. Can you rephrase that?

5 Q. You said you were afraid, right? If Danny Smith was
6 just blowing smoke, why would you be afraid of him?

7 MR. DUFF: Object.

8 A. I don't know

9 THE COURT: Overruled.

10 A. I don't understand what you're saying.

11 THE COURT: If you thought that
12 Danny, as you said, that Danny Smith was blowing smoke, why
13 would you be afraid of Danny Smith?

14 THE WITNESS: You have pull like
15 that.

16 MR. DUFF: Object. I'm sorry.

17 THE WITNESS: He had pull like
18 that.

19 BY MR. ROSENBAUM:

20 Q. Did you learn what Danny did?

21 MR. DUFF: Object.

22 A. Through Terry Hopkins.

23 MR. DUFF: Object.

24 THE COURT: Wait a minute. Wait
25 a minute.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 831

1 MR. DUFF: He has no personal
2 knowledge of anything in that case like that, Judge.

3 THE COURT: Did he learn what he
4 did? Okay, that's, that was the question. It's not do you
5 have any personal knowledge of it. Did you learn.

6 A. Yes.

7 Q. Did that change your opinion about whether he was
8 just blowing smoke?

9 MR. DUFF: Object.

10 A. Yes, it did.

11 THE COURT: Overruled.

12 Q. Did Danny Smith eventually tell you he didn't need
13 your services and that someone else would take care of it?

14 MR. DUFF: Object.

15 A. Yes.

16 THE COURT: Overruled.

17 Q. And who did he say would take care of it?

18 A. Stan and his dad.

19 Q. Now, you are still facing your probation violation?

20 A. Yes.

21 Q. Is it possible that you may get that 18 months?

22 A. Yes.

23 Q. Has Detective Leiby promised you that you will not?

24 A. No, he has not.

25 Q. Did he say anything to you about it?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 832

1 A. No, just about the Bond.

2 Q. Why was it important to you, if it was, that you
3 would receive a personal bond when you finally turned
4 yourself in?

5 A. Because I didn't want to be in the jail with the
6 people I was testifying against, then it could have been my
7 life or something.

8 Q. Keep talking about the tapes that you made in
9 conjunction with Detective Leiby. I'd like to place before
10 you State's Exhibit 11-D, 11-E and 11-F and ask you to look
11 at them, please.

12 MR. DUFF: Object. Beyond the
13 scope.

14 THE COURT: No, you talked about
15 the tapes.

16 MR. DUFF: Not these tapes,
17 Judge.

18 MR. ROSENBAUM: Those are these
19 tapes.

20 MR. DUFF: Not these tapes,
21 Judge. Never touched them. These are not the tapes,
22 Judge. They are different tapes.

23 MR. ROSENBAUM: Your Honor, for him
24 to say he did not mention the bribery tapes on cross is a
25 little ridiculous.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 833

1 MR. DUFF: I don't think I did.
2 MR. ROSENBAUM: I know you did.
3 THE COURT: They're all the three
4 tapes.
5 MR. DUFF: No, no. Those are
6 the tapes he had in camera.
7 THE COURT: What was -- come
8 forward.
9 MR. DUFF: Those are the in
10 camera tapes.
11 (Conference at the bench between the Court
12 and counsel, as follows:)
13 THE COURT: Come forward. What
14 was the third tape?
15 MR. DUFF: The 2-8-96 in camera
16 interview he listened to.
17 THE COURT: What was it about?
18 MR. DUFF: It was about a
19 conversation he had with Detective Leiby.
20 MR. WIGHTMAN: It is not the same
21 tapes. The tapes he taped of Danny Smith.
22 THE COURT: Right, Danny Smith
23 conversation.
24 MR. ROSENBAUM: Right. And he asked
25 about those phone conversations over at the jail, remember

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 834

1 that? How did it happen?

2 THE COURT: How did it happen,
3 yes, you did.

4 (Thereupon, the following took place
5 within the hearing of the jury.)

6 THE COURT: Overruled.

7 BY MR. ROSENBAUM:

8 Q. Do you recognize State's Exhibits D, E and F?

9 A. Yes.

10 Q. Do they contain your initials?

11 A. Yes, they do.

12 Q. Have you had a chance to review them at the Elyria
13 Police Department?

14 A. Yes.

15 Q. And after you reviewed them, did you, were you asked
16 to put your initials on them so you could recognize them
17 later?

18 A. Yes.

19 Q. What are those tapes of, sir?

20 A. Of conversations of me and Danny Smith.

21 Q. Regarding?

22 A. The case. Terry Hopkins messing, Terry Hopkins
23 statement about giving me money to go make a statement to
24 Mr. Duff on his behalf.

25 Q. So are those what we've been referring to as the

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Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 835

1 bribery tapes, or attempted bribery tapes?

2 A. Yes.

3 Q. Those are the court recordings you made in
4 conjunction with Detective Leiby from the conversations and
5 calls you had with Detective Leiby and the defendant in
6 this case?

7 A. Yes.

8 Q. That led up to the \$50 payment?

9 A. Yes.

10 Q. To the best of your knowledge, do they truly and
11 accurately depict the conversations you had with the
12 defendant?

13 A. Yes, they're accurate.

14 MR. ROSENBAUM: I have no other
15 questions, Your Honor.

16 THE COURT: Mr. Duff.

17 RE-CROSS-EXAMINATION OF KARL HARTMAN

18 BY MR. DUFF:

19 Q. You listened to those tapes to refresh your memory
20 about this case?

21 A. No. I just listened to them about five seconds to
22 recognize my voice and his voice and then I signed them.

23 MR. DUFF: And we'd like to play
24 the tapes for the jury, Judge.

25 MR. ROSENBAUM: Your Honor.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 836

1 MR. DUFF: He says he used
2 them --

3 MR. ROSENBAUM: We used them for what?

4 MR. DUFF: To --

5 MR. ROSENBAUM: For five seconds.

6 THE COURT: To listen to his,
7 Whether or not they were his voice.

8 MR. ROSENBAUM: As previously, to
9 send them to the jury so they can hear them at their
10 convenience.

11 THE COURT: The Court's made a
12 ruling on that, Mr. Duff.

13 MR. DUFF: All right.

14 BY MR. DUFF:

15 Q. So you would agree you got a good job now, right?

16 A. It's minimum wage.

17 Q. You just said it was a good job.

18 A. When I worked for the county it was.

19 Q. What's your job now?

20 A. I work for Plastic Components.

21 Q. You don't want to go to prison, right?

22 A. Right.

23 Q. You have a good reason to lie on this case, right?

24 A. No, not really.

25 Q. You don't consider to stay out of prison to be a

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 837

1 good reason to lie? Can you think of a better one?

2 MR. ROSENBAUM: Your Honor, for some
3 reason Mr. Duff thinks you have to lie to stay out of
4 prison, and I object to that.

5 MR. DUFF: No, I'm asking a fair
6 question.

7 THE COURT: Ask him if he's lying
8 or --

9 BY MR. DUFF:

10 Q. Can you think of a better reason to lie than to stay
11 out of prison?

12 A. No, I don't think --

13 MR. ROSENBAUM: Your Honor, I ask
14 that be stricken.

15 THE COURT: No, I'm not going to
16 do it. It's a fact.

17 MR. ROSENBAUM: Well, Duff's
18 thinking --

19 THE COURT: No, no.

20 MR. ROSENBAUM: I'm talking about
21 Mr. Duff's extraneous comments to the jury.

22 MR. DUFF: I'll withdraw.

23 THE COURT: That part, yes. Yes.

24 MR. DUFF: I'm sorry.

25 BY MR. DUFF:

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 838

1 Q. Now, you are a tough guy, big as you are. You're
2 afraid of Danny Smith when he's locked up there and you're
3 the guy being solicited to go out and beat people up, are
4 you going to tell the jury you're afraid of him?

5 A. I'm afraid of what he can do.

6 Q. You're not afraid of Danny Smith, are you? You could
7 beat him up, couldn't you?

8 A. Yeah, I could.

9 Q. Yeah, right. Well, the prosecutor marked the three
10 different versions you gave, is that right, with green? Do
11 you see that?

12 A. Yes.

13 Q. Yes or no?

14 A. Yes.

15 MR. ROSENBAUM: Objection. I thought
16 he said they were the same.

17 THE COURT: The three different
18 marks.

19 Q. He made three different marks indicating three
20 different versions; is that right?

21 A. Around the same thing.

22 Q. Oh. Do you think beating someone up is the same as
23 killing someone? You're not saying, that are you?

24 MR. ROSENBAUM: Your Honor, I object.
25 It's beyond the scope. That's not what I asked.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 839

1 THE COURT: He's going to the
2 price. The question dealt with the price.

3 Q. All right. You would agree there's a big difference
4 between 500 and 10,000, right?

5 A. Yes.

6 Q. And a big difference between 500 and 5,000 and a car?

7 A. Yes.

8 Q. Is that right?

9 A. Yes.

10 MR. DUFF: That's it.

11 THE COURT: Mr. Rosenbaum.

12 REDIRECT EXAMINATION OF KARL HARTMAN

13 BY MR. ROSENBAUM:

14 Q. Sir, are you afraid of fighting two men with a gun
15 and a knife?

16 A. Yes, I am.

17 MR. DUFF: Object. Object.
18 That's beyond the scope, and ridiculous.

19 THE COURT: No, you're asking him
20 whether he was afraid of -- okay, at this point I think it
21 still has to do with fear. You may answer that question,
22 sir.

23 A. Yes.

24 MR. ROSENBAUM: I have no other
25 questions.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 840

1 THE COURT: You may now --

2 RE-CROSS-EXAMINATION OF KARL HARTMAN

3 BY MR. DUFF:

4 Q. You never saw Danny Smith with a gun and a knife,
5 did you?

6 A. No.

7 MR. DUFF: Nothing.

8 THE COURT: Mr. Rosenbaum.

9 MR. ROSENBAUM: No other questions.

10 THE COURT: Thank you, sir, you
11 may step down. Sir, you could just hand those things on
12 the shelf down to the court reporter, would you, please?

13 THE WITNESS: Sure

14 THE COURT: Thank you, sir.

15 (Witness excused.)

16 THE COURT: Next witness, please.

17 TERRY HOPKINS

18 a Witness herein, called on behalf of the State of Ohio,
19 after being first duly sworn by the Court, testified and
20 said as follows:

21 THE COURT: Sir, speak directly
22 into that microphone.

23 DIRECT EXAMINATION OF TERRY HOPKINS

24 BY MR. ROSENBAUM:

25 Q. Will you state your name, please, sir?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 841

- 1 A. Terry Hopkins.
- 2 Q. Will you spell your first and last name for reporter,
3 please?
- 4 A. T-E-R-R-Y H-O-P-K-I-N-S.
- 5 Q. How old are you, sir?
- 6 A. Twenty-six.
- 7 Q. Do you know the defendant who's seated immediately
8 under my right hand?
- 9 A. Yes.
- 10 Q. What's his name?
- 11 A. Danny Smith.
- 12 Q. How long have you known him for, sir?
- 13 A. Since high school.
- 14 Q. Do you know a person by the name of Raymond Smith?
- 15 A. Yes.
- 16 Q. Who is that?
- 17 A. Danny's father.
- 18 Q. How long have you known Raymond for?
- 19 A. Not long.
- 20 Q. How did you meet Raymond?
- 21 A. Through Danny.
- 22 Q. Do you know a person by the name of Stanley Jaloweic?
- 23 A. Yes.
- 24 Q. How long have you known him for?
- 25 A. Not long either.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 842

1 Q. How did you meet Stanley Jaloweic?

2 A. Through Danny.

3 Q. Would you describe your relationship with the
4 defendant?

5 A. He's my friend.

6 Q. Do you have any business dealings with him?

7 A. No.

8 Q. Did you ever obtain drugs from him?

9 A. No.

10 Q. Do you have a record, sir?

11 A. Yes.

12 Q. Will you tell the Court and jury what it is, please?

13 A. Attempted aggravated burglary and attempted felonious
14 assault.

15 Q. Did you serve time for that?

16 A. Yes.

17 Q. Now, did Danny Smith ever come to you and seek your
18 aid, or discuss with you your help in obtaining someone to
19 injure someone or do anything illegal for him?

20 A. Yes.

21 Q. Can you tell the Court and jury when that was?

22 A. I don't remember when.

23 Q. Well, was it before Ron Lally was killed?

24 A. Yes.

25 Q. How much before?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 843

- 1 A. Not much.
- 2 Q. Did you know Ron Lally?
- 3 A. No.
- 4 Q. Where did this take place at?
- 5 A. When I was approached?
- 6 Q. Yes.
- 7 A. Razzle's.
- 8 Q. Razzle's is what?
- 9 A. A bar.
- 10 Q. In what city?
- 11 A. Elyria. Right here.
- 12 Q. Can you tell the Court and jury what you remember
- 13 about that conversation?
- 14 A. I just come to him and told him if he ever needed to
- 15 collect money or something from somebody that I would help
- 16 him.
- 17 Q. So you went to him first?
- 18 A. Yeah.
- 19 Q. And why did you go do that?
- 20 A. We were just talking and he said he was having
- 21 trouble collecting money. I told him if he needed help
- 22 collecting money, I would help him.
- 23 Q. What kind of money?
- 24 A. I didn't ask.
- 25 Q. Do you know?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

- 1 A. Well, I assumed it was drug money.
- 2 Q. And you volunteered to do that?
- 3 A. Yes.
- 4 Q. And what would do you to collect this money for him?
- 5 A. Beat somebody up.
- 6 Q. And you would do that willingly?
- 7 A. Yeah, at that time I would have.
- 8 Q. And did he ever take you up on your offer?
- 9 A. Sort of.
- 10 Q. Would you tell the Court and jury how?
- 11 A. He asked me to kill somebody.
- 12 Q. And did he tell you why he needed this person killed?
- 13 A. Yes.
- 14 Q. And why was that, sir?
- 15 A. Because he wore a wire on him on a drug sale.
- 16 Q. What was your response to this request?
- 17 A. I didn't want no part of it.
- 18 Q. What was his response to your refusal to kill someone
- 19 for him?
- 20 A. It was his, he wanted, he left it alone at first and
- 21 then he asked me if I might know somebody else.
- 22 Q. That would do it?
- 23 A. Yes.
- 24 Q. And what did you say?
- 25 A. I told him I might.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 845

- 1 Q. And did you tell him who you thought would do it?
- 2 A. Yes.
- 3 Q. Who?
- 4 A. Carl Hartman.
- 5 Q. And what did you do, if anything, about that?
- 6 A. What do you mean? What --
- 7 Q. What happened next? Did you follow up on that for
- 8 him? Did you do anything?
- 9 A. I introduced him.
- 10 Q. Do you remember when that was?
- 11 A. Not exactly.
- 12 Q. Do you remember where that was?
- 13 A. Ridge Motel.
- 14 Q. Were you present when that happened?
- 15 A. Outside.
- 16 Q. So what happened?
- 17 A. He was inside.
- 18 Q. Yeah, do you know what happened?
- 19 A. I don't know, I was outside.
- 20 Q. So you took Danny Smith to the Ridge Motel so he
- 21 could discuss with Carl Hartman hiring Carl to kill the
- 22 person that wore the wire?
- 23 A. Yes.
- 24 Q. Do you know if Danny was willing to pay for this
- 25 service?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 846

- 1 A. Yes.
- 2 Q. Did he tell you what he was willing to pay?
- 3 A. Yes.
- 4 Q. What was that, sir?
- 5 A. Carl was wanting to buy a BMW and he told me he would
- 6 buy it for him.
- 7 Q. Who told you he would buy the red BMW?
- 8 A. Danny.
- 9 Q. Now, do you remember being downtown Elyria in January
- 10 of 1994 with the defendant, Danny Smith?
- 11 A. Yes.
- 12 Q. Do you have any idea what day that was in January?
- 13 A. No.
- 14 Q. When did it occur compared to Carl Hartman's death?
- 15 A. Excuse me?
- 16 Q. Do you know -- I'm sorry. He's not dead, is he. Ron
- 17 Lally, do you know when Ron Lally died?
- 18 A. Not exactly.
- 19 Q. Was this, when was this conversation or when was this
- 20 meeting at the bar in relation to that?
- 21 A. It was the same night.
- 22 Q. So can you describe what happened to the Court and
- 23 jury that night?
- 24 A. We all went out and it was having some drinks and
- 25 stuff.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

1 Q. Could you tell everybody who "we" is?

2 A. Yeah. Me, Danny, my sister Sharon, Danny's
3 girlfriend Tammy, and my girlfriend Misty.

4 Q. Where were you drinking at, sir?

5 A. Downtown. Mostly up here in Elyria. Razzle's and
6 out at the bars up here.

7 Q. What time did you meet up with this group?

8 A. We all left together about 8:30, nine o'clock.

9 Q. Where did you live at that time?

10 A. With Danny.

11 Q. And where was that?

12 A. I think Pine Grove Apartments.

13 Q. In Elyria?

14 A. Yes.

15 Q. And where did your sister live in relationship to
16 that?

17 A. In apartments across the street.

18 Q. So it was right across the street?

19 A. Yes.

20 Q. So there's four of you?

21 A. Yes, five of us counting my sister.

22 Q. And you went to Razzle's. How long did you drink
23 there?

24 A. We closed the bar.

25 Q. What time did you say you got there?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

- 1 A. About 8:30, nine o'clock.
- 2 Q. And you would leave the bar at what time then?
- 3 A. The bar closed about 2:30.
- 4 Q. And who went where?
- 5 A. We went to Mom's Open Kitchen.
- 6 Q. All of you?
- 7 A. Yes.
- 8 Q. What happened there?
- 9 A. We ate.
- 10 Q. And then what?
- 11 A. We ate breakfast. I seen what else -- that's what
- 12 we, we ate.
- 13 Q. Did you see Raymond Smith there, if you know?
- 14 A. No, I didn't see him.
- 15 Q. So how long did it take to eat breakfast?
- 16 A. I don't know.
- 17 Q. And --
- 18 A. Not long. Not long.
- 19 Q. What happened after that?
- 20 A. I left with my girlfriend. I went to my sister's
- 21 apartment and waited for Danny to get home because he
- 22 wasn't home yet.
- 23 Q. So you were across the way waiting for Danny to come
- 24 back?
- 25 A. Yes, at my sister's apartment.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 849

1 Q. What time did Danny eventually show up?

2 A. I don't know exactly. I assume about 3:30 or 4:00.

3 Q. What did you do then?

4 A. I knew -- well, see, I didn't even know if he was
5 home yet, and my sister showed up because she was with
6 Danny and them, showed up at the apartment, so I knew Danny
7 was home. As a matter of fact, I believe I jumped in his
8 car and we drove across the street to his apartment. And
9 then --

10 Q. Did you have a chance to observe him then?

11 A. Yeah.

12 Q. Could you describe how he was acting?

13 A. Just, he was nervous, sick, looked like he was sick.

14 Q. Did he say that?

15 A. Yeah.

16 Q. Did he say anything else to you?

17 A. Yes.

18 Q. What did he say?

19 A. As we was walking up the steps he said that they had
20 done it.

21 Q. Did you know what he meant by that?

22 A. Yes.

23 Q. And what was that?

24 A. That they had killed that guy.

25 Q. And did he later confirm that?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 850

- 1 A. Yes.
- 2 Q. When was that?
- 3 A. Well, he didn't, and he didn't, it was the next day
- 4 when I went to his house to get my stuff, because after he
- 5 told me, I left.
- 6 Q. Let me back up a bit. Danny said they had done it?
- 7 A. Yes.
- 8 Q. And you took that to mean --
- 9 A. Oh, yeah.
- 10 Q. -- they killed that guy, right?
- 11 A. Yes.
- 12 Q. What happened then?
- 13 A. I left.
- 14 Q. Where'd you go?
- 15 A. I went back to my sister's apartment.
- 16 Q. And did you return then?
- 17 A. Not that night.
- 18 Q. When did you return to Danny?
- 19 A. The next day.
- 20 Q. Who was there?
- 21 A. Tammy, Danny, Mike, Stan and Ray.
- 22 Q. Okay. Tammy is who?
- 23 A. Danny's girlfriend.
- 24 Q. Do you know her last name?
- 25 A. I think Cruise.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 851

1 Q. And Danny is the defendant?

2 A. Yes.

3 Q. You say who else was there?

4 A. Stan Jaloweic, Raymond Smith.

5 Q. Who?

6 A. Raymond Smith and Mike Smith.

7 Q. Raymond Smith and Mike Smith?

8 A. Yes.

9 Q. Does Raymond go by another name?

10 A. Pops. That's what I name him by.

11 Q. And Mike is related to Danny?

12 A. Yes.

13 Q. How?

14 A. His brother.

15 Q. Is Mike related to Raymond Smith?

16 A. Yes.

17 Q. How?

18 A. That's his dad.

19 Q. And they were talking?

20 A. Yes.

21 Q. What did you hear them say?

22 A. What they had done to this guy.

23 MR. DUFF: Object. Who?

24 THE COURT: Where and when,

25 Mr. Rosenbaum. Who are we talking about, who was present.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 852

1 Q. Again, tell us.

2 A. At Danny's apartment, Stan, Mike, Raymond, and Tammy
3 and Danny.

4 Q. Was Danny there at the time?

5 THE COURT: Danny was present?

6 THE WITNESS: Yes.

7 THE COURT: Overruled.

8 Q. What was the conversation about?

9 A. What they had done to this guy.

10 Q. Can you recall anybody specifically talking?

11 A. Yes.

12 Q. Can you tell who that was and what that person said?

13 MR. DUFF: Object.

14 THE COURT: Overruled.

15 A. Raymond said he had shot him and cut him, I believe,
16 and Stan said he had kicked him and stomped on him and run
17 him over with the car.

18 Q. Can you describe the tone or how they were acting
19 when they were discussing this?

20 MR. DUFF: Object.

21 THE COURT: Can you, yes or no?

22 THE WITNESS: Yes.

23 Q. Okay. And how, sir?

24 A. Like they were bragging about it.

25 Q. Did Danny Smith, the defendant in this case, ever

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 853

1 tell you why he wanted to get this person killed?

2 A. Yes.

3 Q. Why is that, sir?

4 A. Because he wore a wire on him.

5 Q. Do you know a person by the name of Queen Bee?

6 A. Yes.

7 Q. Do you know her real name?

8 A. No.

9 Q. Does she have a car?

10 A. Yes.

11 Q. What kind is it, sir?

12 A. A blue soft top Lebaron.

13 Q. Have you ever seen anyone driving that car other than
14 her?

15 A. Seen several people drive that car.

16 Q. Who would that be, sir?

17 A. Danny's driven it before. A lot of people have
18 driven that car.

19 Q. Did you see that car the night before that you heard
20 these admissions made and that Danny said they did it?

21 A. Yeah, I seen it earlier in the evening.

22 Q. Who was in possession of that car?

23 A. I'm not really sure.

24 Q. You can't say who was driving it?

25 A. No.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 854

1 MR. ROSENBAUM: I have no other
2 questions, Your Honor.

3 THE COURT: Mr. Wightman or
4 Mr. Duff.

5 CROSS-EXAMINATION OF TERRY HOPKINS

6 BY MR. DUFF:

7 Q. Sir, did you give some statements to Detective Leiby?

8 A. Yes, I did.

9 Q. Did he tape record those?

10 A. Yes, he did.

11 Q. How many did you give?

12 A. I believe I gave him one.

13 Q. Tape recording?

14 A. On record.

15 Q. But you spoke to him off the record?

16 A. I assume I did.

17 Q. Did you ever write one out and sign it?

18 A. I don't remember.

19 Q. You might have?

20 A. I might have. I don't remember for sure.

21 MR. DUFF: We move for that,
22 Your Honor.

23 THE COURT: Ladies and gentlemen,
24 we are going to do double barrel this time, okay. This is
25 about 2:35. It's time for our afternoon break at this

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 855

1 point. While you're breaking, I'll be listening to
2 different things.

3 The admonitions I've given to you regarding the
4 discussing this matter with anyone, letting anyone discuss
5 with you, reading anything about it, letting anyone read to
6 you still hold more so than ever now. We are getting
7 deeper and deeper into the evidence. With that, we will
8 take our afternoon recess.

9 (A recess was had.)

10 (The following took place without the
11 presence and hearing of the jury:)

12 THE COURT: Gentlemen, what say
13 you?

14 MR. DUFF: Well, judge, of
15 course, the consist inconsistency about the hotel.

16 THE COURT: Yeah.

17 MR. DUFF: The one about the
18 difference between killing and beating up as compared to
19 his testimony in this case and on other cases. The
20 inconsistencies as in this case and other cases as to who
21 was in the car, who was driving, what he knows about that.

22 THE COURT: Well, I don't know
23 that he knows anything about it.

24 MR. DUFF: Well, he's testified
25 before on it.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 856

1 THE COURT: He says his sister
2 went and saw it.

3 MR. DUFF: He testified as to
4 who was in the car and he --

5 THE COURT: I think he's
6 consistent on that by saying his sister told him.

7 MR. DUFF: Well, he said in one
8 of the statements that Sharon pulled the car up and rode
9 home with them. He says that in one of the statements.

10 THE COURT: You're talking about
11 a different car. Okay. Okay. Okay. Okay.

12 MR. DUFF: He says Misty and
13 Terry, himself, and Sharon rode home with him.

14 THE COURT: Yeah.

15 MR. DUFF: And then, of course,
16 changes that.

17 THE COURT: Okay. He also
18 corrects the situation about the hotel in the later
19 telephone conversation.

20 MR. DUFF: I know. I know.

21 THE COURT: Okay.

22 MR. DUFF: I'm bringing all that
23 out.

24 THE COURT: All right. But he
25 corrects it.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 857

1 MR. DUFF: He changes it. I
2 don't know if it's a correction. I prefer change.

3 THE COURT: He says, "I was wrong
4 about the hotel." He corrects it. If you're wrong, you
5 correct it. Okay.

6 MR. DUFF: I wasn't there,
7 Judge. I don't know what happened.

8 THE COURT: Neither was I.
9 Neither was I.

10 MR. DUFF: So the story changes.

11 THE COURT: Go ahead. It's
12 different. But he brings out the differences himself.

13 MR. DUFF: Yeah.

14 THE COURT: Okay.

15 MR. DUFF: Well, I'd like to go
16 over those with him. And the red BMW, again, in the
17 previous testimony he said offered and that was part of it.
18 In this statement he says he knew nothing about it on
19 1-4-95.

20 THE COURT: All right.

21 MR. DUFF: That's about it.

22 THE COURT: Bring them in.

23 Barbara, I think you probably have to make arrangements for
24 the shuttle, because looks like the weather's getting bad.

25 (The following took place within the

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 858

1 presence and hearing of the jury.)

2 THE COURT: Good afternoon,
3 ladies and gentlemen. You can say what's good about it,
4 okay.

5 Ladies and gentlemen, as you recall, we had stopped
6 in cross-examination of this witness and we're ready now to
7 proceed with this cross-examination. Mr. Duff.

8 MR. DUFF: Thank you, Your
9 Honor.

10 BY MR. DUFF:

11 Q. Can I call you Terry, sir?

12 A. Yes.

13 Q. All right. Terry, you've spoken to Detective Leiby
14 quite a few times on this case, have you not?

15 A. Yes.

16 Q. Do you know how many times, any idea?

17 A. No, I don't.

18 Q. A lot of times, right, you'd agree?

19 A. Yeah, several.

20 Q. Sometimes they were taped and sometimes they weren't?

21 A. I don't know.

22 Q. Don't know. Did he ever tell you when he was taping?

23 A. Yeah.

24 Q. All right. 1-4-95 you gave a taped statement; is
25 that right?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 859

1 A. I assume. I don't remember the days too good.

2 Q. All right. You wouldn't disagree with that date?

3 A. No.

4 Q. All right. And you had talked to him. Where was
5 that statement given at?

6 A. I think at the police station.

7 Q. All right, at the police station. and you had spoken
8 to him before that, right?

9 A. I don't remember.

10 Q. Well, you had spoken to him and told him prior to
11 1-4-95 that you had no knowledge of this case; isn't that
12 right?

13 A. Yes, prior to that. Yes, I did.

14 Q. So that's what I'd like you to answer. Approximately
15 when did you tell him that you had no knowledge of this
16 case?

17 A. About a year.

18 Q. Well, if Mr. Lally died on January 19th, or 18th, of
19 '94, okay, that's when he died. Can you assume that?

20 A. Yes.

21 Q. Can you tell us how long after that you would have
22 spoken to Detective Leiby and told him you had no
23 knowledge?

24 A. I don't remember the day.

25 Q. Six months? A year? What?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 860

- 1 A. I have no idea.
- 2 Q. So at some time in '94?
- 3 A. I'm not sure.
- 4 Q. Let's go about it this way. Mr. Lally died in
- 5 January of '94, okay. Do you follow me?
- 6 A. Yes.
- 7 Q. You had conversations with Detective Leiby sometime
- 8 after he died and before you spoke to him on 1-4-95; is
- 9 that correct?
- 10 A. Yes.
- 11 Q. And in those occasions, how many occasions were
- 12 there, approximately?
- 13 A. I don't know.
- 14 Q. Well, there were one? Two? Three?
- 15 A. I don't know.
- 16 Q. Can you give us an approximation?
- 17 A. I just said I don't know.
- 18 Q. All right. You can't even approximate?
- 19 A. I don't know how many times. I don't know know days.
- 20 Q. You don't know anything about this case?
- 21 A. Yes, I do.
- 22 Q. All right. I want to ask you how many times,
- 23 approximately, after Mr. Lally died did you talk to
- 24 Detective Leiby before January 4th, '95, approximately?
- 25 A. I don't know, maybe once, twice. I don't know.

CATHLENE M. ACIERTO, RPR. - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 861

1 Q. All right. And on both of those occasions, once or
2 twice, you denied having any knowledge of this case?

3 A. Right.

4 Q. Where were those conversations at?

5 A. I don't know.

6 Q. You don't know where you spoke to him?

7 A. I spoke to him on the phone. I spoke to him at the
8 police station.

9 Q. Well, before January 4th, '95, where you gave the
10 taped statement at the police station, how many times had
11 you been at the Elyria Police Station and told them you
12 knew nothing with this case?

13 A. Once.

14 Q. Do you know the month of that?

15 A. No.

16 Q. This deny knowledge; is that correct?

17 A. Yes.

18 Q. Did you also ever talk to him on the phone and deny
19 knowledge in '94?

20 A. I don't remember.

21 Q. You might have?

22 A. I may have, yes.

23 Q. So we will put "maybe on phone." Any other times in
24 '94 before the January 4th, '95 conversation?

25 A. Probably not.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 862

1 Q. All right. So then you picked up some trouble
2 yourself, did you not, sir?

3 A. I did.

4 Q. You were indicted and charged with aggravated
5 burglary and attempted felonious assault and domestic
6 violence; is that right?

7 A. Yes.

8 Q. At some time you came --

9 MR. ROSENBAUM: Your Honor, I object.
10 He knows he's limited to convictions within 10 years.
11 That's all you can impeach him.

12 Q. No. You entered a plea of guilty, did you not, sir?

13 A. Yes.

14 MR. ROSENBAUM: Objection on the last
15 question and the answer.

16 THE COURT: Well, reframe your
17 question.

18 Q. All right. And you had that case pending during '94;
19 is that correct?

20 A. Yes.

21 Q. All right. In fact, you were indicted in September
22 of '94, right?

23 A. Yes.

24 Q. All right. In September of '94 you're indicted for
25 these charges, right?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 863

1 A. Yes.

2 Q. And then you entered a plea of guilty in October; is
3 that right?

4 A. Yeah, I believe so.

5 Q. October 24th. And you were referred for a
6 pre-sentence report, right?

7 A. Yes.

8 Q. And tell the jury what that means.

9 A. Pre-sentence investigation.

10 Q. And what happens then? What was your understanding
11 was going on?

12 A. See if I was eligible for probation maybe.

13 Q. You're in a state like a your awaiting to see if
14 you're going to prison or get probation, right?

15 A. Yes.

16 Q. All right. So this was a troublesome time in your
17 life, right. a worrisome time, you would agree?

18 A. Yes.

19 Q. You were highly concerned about your problem there?

20 A. Yes.

21 Q. All right. Okay. So at this time then you're
22 worried about going to prison, right?

23 A. Yes.

24 Q. And you, during this time, make contact with
25 Detective Leiby; is that right?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 864

1 A. No.

2 Q. He made contact with you. I'm talking after October
3 of '94. Right, you go and you talk to him at the police
4 station?

5 A. I contacted him since I'd been out in October. I had
6 contact with him.

7 Q. Well, you told me in '94, during the year, that you
8 denied any knowledge of this incident, right? You've
9 testified to that already.

10 A. Uh-huh.

11 Q. All right. So then after October '94, after you
12 plead guilty, you then, and I'm looking -- can you see
13 this, sir?

14 THE COURT: Mr. Duff, would you
15 please close that window because I can't see what you're
16 writing up there.

17 MR. DUFF: All right. Can you
18 now, Judge?

19 THE COURT: Yes.

20 Q. So you plead guilty after that in October of '94.
21 Then the next time, the first time you make a statement
22 implicating Danny is January 4th of '95, right, you give a
23 statement?

24 A. It would be safe to assume.

25 Q. I don't want to assume anything. This is very

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 865

1 important.

2 A. I'm not good on dates. Yes.

3 Q. Assuming that date is correct?

4 A. Okay, yes.

5 Q. All right. And in that statement, 1-4-95 statement,
6 you say basically that you're downtown bar-hopping, right?

7 A. Yes.

8 Q. Let's tell the jury. You were pretty drunk that
9 night, weren't you?

10 A. Yes, I was.

11 Q. In fact, you had about 12 beers, right?

12 A. Approximately.

13 Q. You had two shots of 151, right?

14 A. Yeah.

15 Q. And you were just down there having a good old time,
16 right?

17 A. Yes.

18 Q. Okay. And you say you go to Mom's Open Kitchen that
19 evening, right?

20 A. Yes.

21 Q. And who all went to Mom's? Can you go slow here now,
22 sir?

23 A. Yes. Myself, Danny, Tammy.

24 Q. All right, slow down. Danny, Tammy. Who's Tammy?

25 A. Danny's girlfriend.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 866

- 1 Q. All right. Who else? Yourself?
- 2 A. Sharon.
- 3 Q. No. Yourself, sir?
- 4 A. Yes.
- 5 Q. You went, all right. Sharon?
- 6 A. Yes.
- 7 Q. That's your sister?
- 8 A. Yes.
- 9 Q. All right.
- 10 A. And Mist.
- 11 Q. Who's Misty.
- 12 A. A girlfriend.
- 13 Q. What's her last name?
- 14 A. Wazleski.
- 15 Q. And you all went to Mom's; is that right?
- 16 A. Yes.
- 17 Q. And then at some time during this time you had
- 18 breakfast at Mom's, right?
- 19 A. Yes.
- 20 Q. Now, you didn't see Raymond there, did you, at
- 21 breakfast?
- 22 A. No, I didn't.
- 23 Q. All right. You would have saw him if he was there,
- 24 right?
- 25 A. Yes.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 867

1 Q. I mean, Ray's a big guy. There's no missing him, is
2 there?

3 A. I didn't see him.

4 Q. All right. And you didn't see Michael Smith there,
5 did you?

6 A. No.

7 Q. All right. You have breakfast there, right?

8 A. Yes.

9 Q. Who all was seated together?

10 A. Alll of us were together at the same table.

11 Q. And Sharon, your sister, sat at your table, too,
12 right?

13 A. I assume. Yes, we were all --

14 Q. She sat with you?

15 A. Yes.

16 Q. All sat together; is that fair to say?

17 A. Yes.

18 Q. All right. And you had breakfast; is that right?

19 A. Yes.

20 Q. And then you left and that's when you saw, you gave a
21 statement on 1-4-95 that you saw Danny talking to a
22 Lebaron; is that right?

23 A. I don't remember saying that.

24 Q. You don't remember saying that?

25 A. No.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 868

1 Q. You don't remember telling Detective Leiby that you
2 saw Danny talking to some people in a Lebaron?

3 A. Right.

4 Q. All right. Who was in that Lebaron?

5 A. No, I said I don't remember saying that.

6 Q. You don't remember that?

7 A. No.

8 Q. Do you remember seeing Danny talking to that Lebaron
9 when you came outside Mom's?

10 A. My sister told me they were, but I didn't see them
11 personally.

12 Q. You didn't see that?

13 A. No.

14 Q. So if you told Detective Leiby that, that would have
15 been false?

16 A. Yeah, because right now I don't remember doing it.

17 Q. Okay. So let me ask you. You're like most people.
18 Your memory gets worse over time; is that right? That the
19 longer you remove from an event, the less, the more
20 difficult it is to remember, right?

21 A. I suppose.

22 Q. So your memory would have been better black 1-4-95
23 than it is now, right?

24 A. Yes.

25 Q. Did you read your transcripts in this case?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 869

- 1 A. Yes.
- 2 Q. Detective Leiby give them to you to read?
- 3 A. No.
- 4 Q. Who did?
- 5 A. Detective Whitely.
- 6 Q. Detective Whitely. Why don't you read over what you
- 7 testified to previously?
- 8 A. He didn't say anything. Nothing.
- 9 Q. But he told you to read over what you testified to
- 10 previously?
- 11 A. He didn't tell me nothing.
- 12 Q. He just handed it to you?
- 13 A. Yes.
- 14 Q. Did he tell you to read it?
- 15 A. Told me to do nothing.
- 16 Q. He just handed you a transcript?
- 17 A. You're asking what he said. He didn't say nothing.
- 18 Q. Yes, I am. Detective Whitely hands you the
- 19 transcript like, right, he didn't tell you to do anything,
- 20 right?
- 21 A. Right.
- 22 Q. And you just knew that he wanted you to pick that up
- 23 and read your testimony?
- 24 A. Common sense.
- 25 Q. He didn't tell you that?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 870

- 1 A. He didn't tell me "Pick it up and read it."
- 2 Q. Are you going to tell the ladies and gentlemen of the
- 3 jury he didn't tell you to read it?
- 4 A. He didn't tell me.
- 5 Q. But you read it?
- 6 A. Yeah.
- 7 Q. So you know what you testified to earlier?
- 8 A. Pretty much, yes.
- 9 Q. Did you read Ray's testimony, too?
- 10 A. No.
- 11 Q. You just read your testimony from Stan's case?
- 12 A. Yes.
- 13 Q. Did you read Ray's?
- 14 A. No, I didn't. Yeah, before Ray's.
- 15 Q. So you read them both?
- 16 A. I thought you meant did I read Ray's. I know what
- 17 you mean.
- 18 Q. I have a tendency to speak too fast. You read
- 19 Stanley, your testimony in Stanley's case, right?
- 20 A. Yes.
- 21 Q. You also read your testimony in Ray's case?
- 22 A. Yes.
- 23 Q. And again, are you telling this jury that no one told
- 24 you to do that, they just handed you this to you, right?
- 25 A. Yes.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 871

1 Q. Are you telling the truth?

2 A. Yes.

3 Q. All right. Now, we are at Mom's. And then you told
4 Detective Leiby that after you walked out of Mom's, in
5 this statement of January 4th, '95, you then went to
6 Danny's house, right?

7 A. Uh-huh, yes.

8 Q. Right. And then you and your girlfriend --

9 A. Misty.

10 Q. -- Misty went out to the Knight's Inn; is that
11 correct?

12 A. Yes.

13 Q. Just answer my question, sir. And then you went to
14 the Knight's Inn; is that right?

15 A. Yeah, that's what I said in my statement.

16 Q. Who went to the Knight's Inn?

17 A. Nobody.

18 Q. No. Who did you tell him you went to the Knight's
19 Inn with?

20 A. Me and Misty.

21 Q. You didn't tell him that Dan went to the Knight's Inn
22 with you, did you?

23 A. No.

24 Q. All right. And do you remember testifying previously
25 about Carl Hartman? You know Carl Hartman, right?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 872

1 A. Yes.

2 Q. He's like a brother to you, isn't he?

3 A. Yes.

4 Q. You guys are tight, right?

5 A. Yes.

6 Q. All right. And you testified previously that you,
7 that Danny offered Carl a red BMW?

8 A. Yes.

9 Q. All right. Do you remember telling Detective Leiby
10 on 1-4-95 that you didn't know anything about this red BMW?

11 A. Yes.

12 Q. So you had no knowledge of a red BMW in your
13 statement on 1-4-95, right?

14 A. Right.

15 Q. Put down "no knowledge of any car." Right?

16 A. Yes.

17 Q. Did you tell -- you had some telephone conversations
18 with Detective Leiby on 1-6-95; is that right? Is that
19 right, sir?

20 A. I don't -- yeah.

21 Q. A couple of them; is that right?

22 A. Yes.

23 Q. You gave a statement on 1-6-95, right? Is that
24 right?

25 A. Yes.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 873

1 Q. And you told Detective Leiby in that statement that
2 Sharon pulled her car up, . what kind of car would she have?
3 What kind ever car was she driving?

4 A. She didn't even have a car.

5 Q. All right. But you told Detective Leiby that Sharon
6 pulled the car up and rode home with you and Danny and
7 Misty, is that right, did you tell him that?

8 A. I don't remember saying that.

9 Q. You might have said that?

10 A. No, I don't remember saying it.

11 Q. Would hearing the tape refresh -- if I tell you it's
12 on the tape, you wouldn't disagree with that, would you?

13 MR. ROSENBAUM: Objection.

14 MR. DUFF: It's inconsistent,
15 Your Honor.

16 THE COURT: Overruled.

17 Q. If I'm telling you it's on the tape that you told
18 Detective Leiby 1-6-95 --

19 A. If it's on the tape, then I said it. I just don't
20 remember saying it.

21 Q. All right. I just want to be able --

22 MR. ROSENBAUM: Hold it. Is he
23 writing down now what he said?

24 MR. DUFF: What he admitted.

25 MR. ROSENBAUM: He didn't admit to

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 874

1 anything.

2 THE COURT: He said if it's on
3 the tape, he said it.

4 MR. ROSENBAUM: That's my objection.

5 Q. Do you want me to play the tape or do you concede?

6 A. Play the tape.

7 MR. ROSENBAUM: Can we approach the
8 bench now, because he's exceeded the use of the tape.

9 THE COURT: Yes.

10 (Conference at the bench between the Court
11 and counsel, as follows:)

12 MR. DUFF: No, I haven't, Judge.
13 It's an inconsistency.

14 MR. ROSENBAUM: With direct testimony
15 it's not.

16 MR. DUFF: With the previous
17 testimony it is.

18 THE COURT: Not when he testified ;
19 from the stand.

20 MR. DUFF: Yes. It is from the
21 other case, Judge.

22 MR. ROSENBAUM: That doesn't count in
23 this case.

24 MR. DUFF: Yes, it does.

25 MR. ROSENBAUM: It's his direct,

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 875

1 Your Honor.

2 MR. DUFF: It's not a big point,
3 Judge. I'll move on.

4 THE COURT: Please do so.
5 (Thereupon, the following took place
6 within the hearing of the jury.)

7 BY MR. DUFF:

8 Q. So if it's on the tape, you said it?

9 MR. ROSENBAUM: Objection.

10 THE COURT: He stated that if you
11 say it's on the tape you said it, he said it.

12 Q. All right.

13 THE COURT: That's what he said.

14 Q. Now, Terry, did you ever see Stan at Razzle's?

15 A. No.

16 Q. All right. If Sharon were to have testified in a
17 previous case on this trial, all right, that she saw Ray at
18 Mom's, that would be inconsistent with what you recall,
19 right?

20 A. I don't remember saying that, right, seeing him,
21 right.

22 Q. Right. Okay. Now, you initially told the police
23 that this was only, about Danny only talked to you about
24 beating this guy up, right, initially?

25 A. Initially, yes.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 876

- 1 Q. That's what you told the police?
- 2 A. Yes.
- 3 Q. And then eventually you changed it to killing, right?
- 4 A. I didn't change it to nothing.
- 5 Q. You changed your story of what Danny allegedly ---
- 6 A. No, there were two separate conversations.
- 7 Q. Oh. Now then comes that you get sent to prison,
- 8 right?
- 9 A. Yes.
- 10 Q. What date was that, 1-26-95?
- 11 A. I know it was a Monday, that's all I know.
- 12 Q. It was a Monday?
- 13 A. January.
- 14 Q. All right. You wouldn't disagree with 1-26-95?
- 15 A. No.
- 16 Q. All right. And you gave the phone conversation on
- 17 1-6, right?
- 18 A. Yes.
- 19 Q. And you wanted Detective Leiby's help to get out of
- 20 prison, right?
- 21 A. Yes.
- 22 Q. You don't deny that, do you, sir?
- 23 A. No.
- 24 Q. So you're sent to prison?
- 25 A. Yes.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 877

1 Q. And you knew you might be looking at prison, right?

2 A. Yes.

3 Q. And your lawyer filed a motion for shock probation;
4 is that right?

5 A. Yes.

6 Q. After you did a certain amount of time, you were
7 eligible to get released?

8 A. Yes.

9 Q. Detective Leiby was going to help you in that regard,
10 was he not?

11 A. He was going to put a word in.

12 Q. Put a word in with who?

13 A. With the judge.

14 Q. Do you know if he did that, if he helped you?

15 MR. ROSENBAUM: Objection.

16 MR. DUFF: If he knows.

17 MR. ROSENBAUM: He can't know, and
18 we've been over this before and we've had a out of the
19 hearing of the jury ruling on this.

20 THE COURT: Correct.

21 Q. Did you previously testify that you agreed to give a
22 statement -- let me get it exactly, sir. "I agreed to
23 testify, all right, to get out of prison"; is that correct?
24 Did you previously testify to that?

25 A. I don't remember if I did or didn't.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 878

1 Q. Where was that page at Dan?

2 Do you remember being asked in the trial of Stanley
3 Jaloweic, page 119, sir, do you know what you were told,
4 sir, "Do you know, were you told what actions would be
5 taken on your behalf for giving that statement?"

6 "Answer: He would see what could be done about
7 getting me probation.

8 "Question: Whether anybody would be spoken to?

9 "Answer: Yes.

10 "Okay, sir, true to his word. Did Detective Leiby do
11 what he said he would do?

12 "I suppose. I don't know what he did."

13 A. Right.

14 Q. All right. So he helped you get out of prison?

15 MR. ROSENBAUM: Objection. His
16 answer is, "I don't know what he did."

17 THE COURT: "I suppose. I don't
18 know what he did."

19 Q. You understood he was going to get you --

20 MR. ROSENBAUM: Objection.

21 Q. Is that you what you understood?

22 A. I just said he could, he would see what he could do.

23 Q. All right. Now, did you have a parole eligibility
24 date? What was your parole date; do you know?

25 A. July of '98.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 879

1 Q. July 1998. That's how long you'd be in if you didn't
2 get out on shock; is that right?

3 A. Yes, sir.

4 Q. You'd agree that in 1995, January, you totally denied
5 to Detective Leiby any knowledge of any car, right, being
6 offered to anybody?

7 A. Yes.

8 Q. All right. You met with Detective Whitely in this
9 case, right?

10 A. Man, I don't remember.

11 Q. Do you know Detective Whitely?

12 A. Yeah.

13 Q. The guy who gave you the transcript?

14 A. Yes.

15 Q. And you denied to him any knowledge of, you denied to
16 Detective Whitely on a separate occasion any knowledge of
17 this case, right?

18 A. Yes.

19 Q. When would that have been?

20 A. I don't know.

21 Q. Sometime after Mr. Lally died?

22 A. Yeah.

23 Q. All right. So you'd agree that you lied to Detective
24 Whitely?

25 THE COURT: Mr. Duff, wouldn't it

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 880

1 be better if you transfer that down below and right over
2 here?

3 MR. DUFF: Yeah.

4 THE COURT: Why don't you do
5 that.

6 MR. DUFF: I'll do that, Judge?

7 THE COURT: You pin it on the
8 other side.

9 MR. DUFF: I was going to bring
10 it over here.

11 THE COURT: Okay, whatever.

12 BY MR. DUFF:

13 Q. So in 1994, after Mr. Lally died, you also lied to
14 Detective Whitely?

15 A. Yes.

16 Q. So you would agree, sir, that after you made this
17 statement to Detective Leiby and you agreed to testify that
18 you got out of prison, right?

19 A. Can you repeat that, please?

20 Q. Basically what happened is, you made the statement to
21 Detective Leiby and you agreed to testify against Danny,
22 right?

23 A. Yes.

24 Q. And you got out of prison, right?

25 A. I guess.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 881

1 Q. Is that what happened?

2 A. I'm here.

3 Q. You're not in prison, right?

4 A. No.

5 Q. So you had a good reason to lie, is that right, to
6 stay out of prison? Do you consider that a good reason to
7 lie?

8 A. I wouldn't put it like that.

9 Q. I'm just asking you.

10 A. No.

11 Q. Can you think of a better reason to lie than to stay
12 out of prison?

13 A. I don't know what you mean. What are you trying to
14 say?

15 Q. I'm just asking if you can think of a better reason
16 to lie than to stay out of prison.

17 A. Well, I could have lied about the car, not knowing
18 about a car.

19 Q. You told Detective Leiby you knew nothing about, all
20 through '94, you didn't know anything about the case?

21 A. I knew --

22 Q. You lied in the office?

23 A. Yes.

24 Q. You've told different stories, haven't you?

25 A. I suppose I have.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 882

1 Q. You're saying that Mike, Michael Smith was bragging
2 about doing this incident?

3 A. Mike didn't say nothing.

4 Q. You never testified that Mike was bragging there,
5 too?

6 A. No. He said, "I didn't want nothing to do with it."

7 Q. You never testified previously Mike, Raymond and Stan
8 were bragging about the statement?

9 A. I said, testified "they."

10 Q. "They" include Mike, was it not?

11 A.. Mike was just there.

12 Q. But you didn't testify previously that they were all
13 bragging about it?

14 MR. ROSENBAUM: He's already answered
15 that question.

16 MR. DUFF: I'm asking --

17 THE COURT: Wait. He's answered
18 it, but one more time.

19 Q. Yes or no?

20 A. Yes.

21 Q. So your testimony was, on previous occasion, that
22 Mike was bragging about being involved in this, right?

23 A. They. I said "they."

24 Q. "They" included Mike?

25 A. I didn't specify.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 883

1 Q. All that night you never heard any discussion of Ron
2 Lally, did you?

3 A. Which night?

4 Q. The night you were at Mom's and the night when you
5 claim you saw Danny by --

6 A. Later that night.

7 Q. You did hear a discussion of Ron?

8 A. Yeah.

9 Q. But there was no discussion earlier in the evening
10 about Ron when you were, when you saw Danny?

11 A. Not that I'm aware of.

12 Q. All right. And Danny got home about, right after you
13 had left breakfast at Mom's, he got there shortly
14 thereafter?

15 A. About 3:30, 4:00.

16 Q. About 3:30, 4:00.

17 Q. And he came home with Tammy, right?

18 A. Yeah, I think so.

19 Q. You're the guy that you refered, you claim that you
20 referred Danny to see your brother-like friend Carl
21 Hartman; is that right?

22 A. Yes.

23 Q. What was -- did you know Carl was in the business of
24 beating people up?

25 A. No, I did not know he was in the business of it. I

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 884

1 just knew he could beat people up.

2 Q. So you sent him over to see Hartman, right?

3 A. Yes.

4 Q. Now, if there was -- did you do all the talking
5 between Carl and Danny, did you did do all the negotiating?

6 A. Like, the first time I talked to him.

7 Q. All right. And Danny didn't do all the talking?

8 A. Not all of the talking.

9 Q. All right. Danny stayed in the car, did he not?

10 A. I don't remember.

11 Q. You don't remember?

12 A. Not for sure.

13 Q. Well, did, I want to know, did Danny talk directly to
14 Carl the first time you introduced them, yes or no?

15 A. I said I don't remember.

16 Q. You don't remember?

17 A. Not for sure.

18 Q. Your memory's not so good, is it, sir?

19 A. No, it's not.

20 Q. You don't know if Danny talked to Carl or not?

21 A. I know he has talked to Carl.

22 Q. I'm asking when you first introduced them?

23 A. I don't know for sure, no.

24 Q. All right.

25 MR. DUFF: If I could just have

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 885

1 a minute, Your Honor.

2 All right. So I got this straight. You would agree
3 that Danny liked to talk big and brag, right?

4 A. Yeah.

5 Q. And that he was kind of like a clown, right?

6 A. Yes.

7 Q. And you know, just like a big bragger and talked a
8 lot of crazy things, right?

9 A. Right.

10 Q. And he wouldn't follow through on them, right?

11 A. Yeah.

12 Q. That's how you knew Danny, right?

13 A. Yeah.

14 Q. So he could talk about things and you wouldn't take
15 him seriously, right?

16 A. No.

17 Q. And you told the police, did you not, that Danny was
18 not personally involved in this case; isn't that right?

19 A. I know he didn't do it.

20 Q. You know he wasn't there, right?

21 A. Right.

22 Q. So if Michael Smith would testify that he was at
23 Mom's Open Kitchen that day, you didn't see him there,
24 right, there that night?

25 A. No.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 886

1 Q. And if your sister Sharon were to testify that she
2 sat by herself, separate and apart from everybody else,
3 that's not what you saw, is it?

4 A. I'm not really sure about that night. That's a -- I
5 don't really remember.

6 Q. Because you were drunk, right?

7 A. Yes, I was.

8 Q. Doing shots and beers, right?

9 A. Yes.

10 MR. DUFF: Can I have a minute,
11 Your Honor, just to look at my notes?

12 THE COURT: Sure.

13 Q. And you claim you saw Ray out in the alley, in the
14 alley by Mom's; is that right?

15 A. Yeah, I had.

16 Q. You told somebody that?

17 A. I had claimed that, but I didn't. My sister told me
18 she had seen him.

19 Q. No, I'm asking you, sir.

20 A. I didn't see him.

21 Q. Did you ever tell anybody that you saw Ray in the
22 alley?

23 A. I told them my sister saw him. Personally, I didn't
24 see nobody.

25 Q. You didn't. You personally didn't see anybody out in

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 887

1 that car?

2 A. No.

3 Q. You're saying you personally didn't see nobody out in
4 that car outside of Mom's in the alley?

5 A. No.

6 Q. All right. Page 192 Raymond's testimony. Do you
7 remember being asked by the attorney for Raymond Smith.

8 A. Yes.

9 Q. "So at 2:30 you walked over to Mom's, you are there
10 about 20 to 3:00, so far you have not seen Ray Smith,"
11 correct?

12 A. Yes.

13 Q. "I had seen Ray Smith earlier in the car with Stan
14 and Mike." Question by the attorney was: "You saw Ray
15 Smith earlier parked in the car with Stan and Mike?"

16 A. Right.

17 Q. All right. "Was there a fourth person in the car?

18 "I didn't see a fourth person in the car.

19 "Where was that car?

20 "In the alley between Mom's, I think it's a music
21 store or something over there."

22 Did you say that in your previous case?

23 A. Yes.

24 Q. So you did see these people in the car -- well, you
25 testified you did see these people in an alley in a car by

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 888

1 Mom's. When was this trial that you testified in, Ray's
2 trial?

3 MR. ROSENBAUM: I object, Your Honor,
4 and ask that he say, "When did he say it."

5 Q. All right. November of 1995 you testified against
6 Raymond Smith, did you not, sir?

7 A. Yes.

8 Q. All right. And you just testified a few moments ago
9 that you never saw Ray or anybody in this car, right?

10 A. Yes.

11 Q. And your testimony in the Raymond Smith trial is a
12 little bit different, isn't it?

13 A. Yes.

14 Q. 11, '95 you testify, "See Ray and Stan and Mike in an
15 alley by Mom's," right?

16 MR. ROSENBAUM: Wait a minute, Your
17 Honor. We have the same objection.

18 THE COURT: Yeah. When are you
19 talking about?

20 Q. That evening, right?

21 A. Yeah.

22 Q. You just testified earlier, "I didn't see them."

23 MR. ROSENBAUM: Read the answer to
24 that question. You're leaving out a very important word.

25 MR. DUFF: That's your job.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 889

1 MR. ROSENBAUM: He's misleading the
2 jury. The answer is he saw him earlier, not at the time
3 you're talking about.

4 Q. All right. I asked you earlier if you saw those
5 people in a car in the alley. Did I ask you that?

6 A. No.

7 Q. I didn't ask you that?

8 A. You asked me if I seen them that night.

9 Q. Yeah, in the car in the alley, and you said no.

10 A. I didn't say that.

11 Q. You didn't say that?

12 A. I don't remember you saying that.

13 Q. Okay. So you would agree you did see them in the car
14 in the alley, or would you, or did you?

15 A. My sister told me they were in the car.

16 Q. So there is a lie. You lied under oath in the
17 Raymond Smith trial; is that right?

18 THE COURT: Well --

19 MR. DUFF: Let me ask, Judge.

20 THE COURT: Before -- let's make
21 sure we are asking the right, the question that everybody
22 knows and answering the question that's being asked.

23 Q. You never saw Raymond Smith and Stan and Mike in a
24 car outside an alley my Mom's, did you, sir?

25 A. No.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 890

1 Q. And you testified that you had in November of '95,
2 didn't you?

3 A. After I thought about it, I did not see them in the
4 car.

5 Q. All right. So the testimony you gave under oath in
6 the previous trial was a lie, right?

7 A. If that's what you want to say.

8 Q. So now your version is you never saw anybody that
9 evening in a car in an alley by Mom's, right?

10 A. Not in the alley.

11 Q. All right. Where are you saying, if you didn't see
12 them in the alley, are you claiming to this jury -- I
13 thought you said earlier -- they can use their own
14 recollection. I thought you said earlier you never saw
15 those people in the car that night. Did you say that?

16 A. Yes.

17 Q. Now you want to change that now, Mr. Hopkins, before
18 I pin you down?

19 A. Go ahead, pin me.

20 Q. No, I want to know. Did you see, at any time that
21 evening, Ray, Stan?

22 A. I told you no.

23 MR. DUFF: All right. If I
24 could have a moment, Your Honor.

25 THE COURT: Uh-huh.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 891

1 Q. You never went to the police after you claimed you
2 had knowledge of this stuff, did you?

3 A. No.

4 Q. You never went to the police until after you were
5 looking at going to prison, right?

6 A. I never went to the police. They come to me.

7 Q. You went to the police station when you were looking
8 at going to prison in January of '95, right?

9 A. They asked me to come and give a statement.

10 Q. And you went down there, right?

11 A. Yes, I did.

12 MR. DUFF: Just a couple
13 minutes, Your Honor, I'll be done. Anything, Danny?

14 BY MR. DUFF:

15 Q. I think we've hit this point again, just to wrap this
16 up. I think you previously testified, and you would agree,
17 Danny can be described as a big wind bag, right?

18 A. Yes.

19 Q. Big joker?

20 A. Yes.

21 MR. DUFF: Nothing else.

22 THE COURT: Mr. Rosenbaum.

23 REDIRECT EXAMINATION OF TERRY HOPKINS

24 BY MR. ROSENBAUM:

25 Q. Sir, when you saw Danny that night, was he in a

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 892

1 joking mood?

2 A. No.

3 Q. How was he acting?

4 A. Nervous.

5 Q. And what did he say to you when he was nervous?

6 A. That they had done it.

7 Q. How long have you known Danny for?

8 A. Since high school.

9 Q. Do you know when he's joking and when he's not?

10 A. Pretty much, yes.

11 Q. Was he joking that night?

12 A. No.

13 Q. Why did you tell Detective Leiby you had no knowledge
14 of this case at first?

15 A. Because I didn't want nothing to do with it.

16 Q. Why?

17 A. I didn't want to be involved.

18 Q. Why?

19 MR. DUFF: Object.

20 Q. Was --

21 MR. DUFF: He answered it.

22 THE COURT: Didn't want to be
23 involved. And why didn't you want to be involved is what
24 he's asking now.

25 A. I didn't want a part of it. I just -- that's why

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 893

1 pretty much.

2 Q. Was Danny your friend at that time?

3 A. Yes, he was.

4 Q. Were you afraid of him or not?

5 A. No.

6 Q. So when you were denying knowledge, were you covering
7 for your friend?

8 MR. DUFF: Object. Leading.

9 THE COURT: Leading. Sustained.

10 Q. Why did you deny knowledge for your friend?

11 A. I just didn't want to be involved. I didn't want to
12 get involved. I guess I didn't want to get anybody in
13 trouble.

14 Q. You didn't want go get your friend in trouble?

15 A. Right.

16 MR. DUFF: Object. Who's
17 testifying, him or the prosecutor?

18 THE COURT: He's repeating.
19 Repeating.

20 Q. Did Detective Leiby make you any promise regarding
21 sentencing in order to get your --

22 A. No.

23 Q. If Mr. Duff were trying to create that impression
24 with the timing of these events, was that true?

25 A. No. Nothing was guaranteed to me.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 894

1 Q. Did you give the statement before you were sentenced?

2 A. Yes, I did.

3 Q. Even though you gave the statements, you went to
4 prison anyway?

5 A. Yes.

6 Q. Now, Detective Leiby did come to you, and when did he
7 come to you and what did he say?

8 A. After, after I had been sentenced, he said I'm
9 eligible for shock and have my lawyer put it in and see if
10 he could put a word in for the judge.

11 Q. So he would go see the judge?

12 A. Yes.

13 Q. Who granted shock probation, Detective Leiby or the
14 judge?

15 A. The judge.

16 MR. DUFF: Object.

17 THE COURT: He may answer if he
18 knows.

19 A. The judge.

20 Q. Do you know what judge?

21 A. Judge --

22 MR. DUFF: Object. That's not
23 relevant what judge. Object. Can we approach?

24 THE COURT: I don't know whether
25 it is really relevant. I have no problem with him

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 895

1 answering that.

2 MR. DUFF: I do, Judge. Can I
3 approach?

4 THE COURT: Fine. Didn't you get
5 shock; is that correct?

6 THE WITNESS: Yes.

7 MR. ROSENBAUM: I'm asking the
8 question. Is it going to be answered or not?

9 MR. DUFF: Object. Can we
10 approach, Judge?

11 THE COURT: Yes.

12 (Conference at the bench between the Court
13 and counsel, as follows:)

14 MR. DUFF: Judge, it was you.

15 THE COURT: I know.

16 MR. DUFF: But, you know, it's
17 like you're the judge in this case and you have that or
18 always doing the right and proper things. He's trying to
19 create that ora by saying --

20 MR. ROSENBAUM: No, I'm not. What
21 I'm trying to do is refute the ora this is not the right
22 and proper thing that you created and that's part of the --

23 MR. DUFF: Can you talk to the
24 jury, John?

25 MR. ROSENBAUM: You already have.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 896

1 THE COURT: Okay.Okay. He may
2 answer if he knows.

3 (Thereupon, the following took place
4 within the hearing of the jury.)

5 BY MR. ROSENBAUM:

6 Q. Do you know what judge granted the shock probation?

7 A. I assume the judge that sentenced me.

8 Q. And who was that?

9 A. Judge Glavas.

10 Q. And this was after you gave your statements to
11 Detective Leiby?

12 A. Yes.

13 Q. Now, you testified once that you didn't remember
14 seeing Sharon or Raymond. Is that the same thing as they
15 weren't there?

16 A. No.

17 Q. Do you know if they were there or not?

18 A. Where?

19 Q. At Mom's that night.

20 A. No, I'm not sure.

21 Q. So you can't say when --

22 MR. DUFF: Object. He's
23 leading.

24 Q. -- one way or the other?

25 A. No.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 897

1 Q. Are you attempting to testify today to the best of
2 your ability and recollection?

3 A. Yes, I am.

4 Q. And if you lied to the police, who was to benefit?

5 MR. DUFF: Object.

6 THE COURT: Overruled.

7 A. My friend.

8 Q. And that would be?

9 A. Danny.

10 Q. Danny?

11 A. Carl.

12 MR. ROSENBAUM: I have no other
13 questions.

14 RECROSS-EXAMINATION OF TERRY HOPKINS

15 BY MR. DUFF:

16 Q. Carl. It was to benefit Carl, huh?

17 A. Uh-huh.

18 Q. You wanted to help him out?

19 A. Yeah.

20 Q. Because he's like a brother to you?

21 A. Uh-huh.

22 Q. And you guys want to get your stories straight, right?

23 MR. ROSENBAUM: Objection.

24 A. No.

25 THE COURT: He may answer.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 898

1 A. No.

2 THE COURT: He's answered.

3 Q. But if you lied to this a jury, who was that to
4 benefit?

5 A. It's not.

6 Q. Yourself?

7 A. I didn't lie to a jury.

8 Q. You never lied to a jury. I thought we agreed you
9 had?

10 A. Not intentionally.

11 Q. Oh, you just lied by accident, right? Let me ask you
12 this, sir. The truth of the matter is, you had no
13 knowledge of this case until January of '95, when it
14 started to benefit you and you had a vital interest in your
15 freedom, right?

16 A. No.

17 Q. Well, that's what you told the police. At least you
18 had no knowledge until then, right, yes or no?

19 A. Yes.

20 Q. And all of a sudden you're fountain of knowledge,
21 right? In January of '95 you're Mr. know-it-all?

22 A. I wouldn't say that.

23 Q. All right. But you knew a lot then, didn't you, in
24 January of '95?

25 A. I know what happened.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 899

1 Q. Well, yeah, when it behouved you to know a lot, you
2 knew a lot, right?

3 A. I just said I know what happened.

4 Q. When it was your best interest to know a lot, you
5 knew a lot, right, sir, yes or no?

6 A. Yes.

7 Q. You never testified -- you've always claimed, have
8 you not, sir, that Sharon was at Mom's with you, haven't
9 you, you've always said that?

10 A. Yeah.

11 Q. It was Ray and Mike you said weren't there, right?

12 A. Right.

13 Q. So if the prosecutor said you previously testified to
14 that, he would be incorrect, right?

15 A. I just don't remember him being there.

16 Q. If the prosecutor previously asked you on redirect
17 that you had previously said that Sharon was not there, he
18 would be incorrect, would he not? You never said that.

19 A. Yes.

20 Q. Pardon?

21 A. Yes.

22 Q. You never testified to that, did you, sir?

23 A. Not that I remember.

24 Q. You've always put your sister there, right?

25 A. Yes.

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 900

1 MR. DUFF: Nothing else.

2 THE COURT: Mr. Rosenbaum.

3 REDIRECT EXAMINATION OF TERRY HOPKINS

4 BY MR. ROSENBAUM:

5 Q. Do you remember where Sharon sat, are you positive of
6 that?

7 A. No,. I assume we sat all together.

8 Q. If I said Sharon instead of Michael, do you know if
9 Michael was there?

10 A. I don't know I didn't see Michael there.

11 Q. You're positive he wasn't there?

12 MR. DUFF: Object. Asked and
13 answered.

14 A. I don't know. I was drunk.

15 Q. Pardon me?

16 THE COURT: He said he was drunk.

17 A. I don't remember him being there.

18 Q. Does that mean he was not there, positively?

19 MR. DUFF: Object. Asked and
20 answered.

21 THE COURT: No, you opened it up
22 again, Mr. Duff.

23 A. I didn't see him.

24 Q. My question is, the fact you don't recall seeing him
25 does that mean he couldn't have possibly been there?

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 901

1 A. No.

2 MR. DUFF: Object. Leading.
3 Leading.

4 MR. ROSENBAUM: I have nothing else.

5 MR. DUFF: I have nothing.

6 THE COURT: Nothing. You may
7 step down.

8 THE WITNESS: Thank you.

9 (Witness excused.)

10 THE COURT: Ladies and gentlemen,
11 it's 10 minutes to 5:00. It's been a long day. It's been
12 a trying day. Let's take our evening adjournment right
13 now. Do not read anything in the paper, do not discuss
14 anything in the paper, do not let anybody discuss with you,
15 do not let anybody read to you.

16 Let's adjourn for now, and as soon as our bailiff
17 gets here, and meet tomorrow morning at 8:15 so that we can
18 get started at 8:30.

19 Ladies and gentlemen, believe it or not, there is
20 light at the end of this tunnel. There is light at the end
21 of this tunnel. And I'm just starting to see a little
22 glimmer at this point. So you're not going to spend the
23 rest of your lives sitting in that jury box at this point.

24 So as soon as -- Cathy, could you take these people
25 to their jury room then. And at this point I don't know,

CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

Box 4 of 5
Page 902

1 she may be arranging for a shuttle for you, or what have
2 you. I don't know at this point. So see if you can find
3 where she is. We will take our evening recess.

4 (The Court adjourned for the day.)

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CATHLENE M. ACIERTO, RPR - (216) 965-4498

Jalowiec Records Discovery
Lorain County Prosecutor's Files

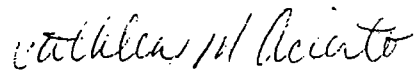
CERTIFICATE

I, Cathlene M. Acierto, Registered Professional Reporter and Notary Public, in and for the State of Ohio, do hereby certify:

That said proceedings was taken before me at the time and place set forth and was taken down by me in shorthand and thereafter reduced to computerized transcription under my direction and supervision, and I hereby certify the foregoing deposition is a full, true and correct transcript of my shorthand notes so taken.

I further certify that I am neither counsel for nor related to any party to said action nor in anywise interested in the outcome thereof.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 9th day of October, 1996.



Cathlene M. Acierto, RPR
Notary Public, State of Ohio
My commission expires 8/3/00

CATHLENE M. ACIERTO, RPR - (216) 965-4498

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Box 4 of 5
Page 904