

COURT OF APPEALS

FILED
LORAIN COUNTY

OCT 9 3 24 PM '96

372

STATE OF OHIO,)
COUNTY OF LORAIN.)

IN THE COMMON PLEAS COURT

STATE OF OHIO,)
Plaintiff,)

CLERK OF COMMON PLEAS
DONALD J. HIGGINS
9th APPELLATE DISTRICT

VS.)

CASE NO. 95-CR-046839

DANIEL D. SMITH,)

APPEALS NO. 96-CA-006463

Defendant.)

* * *

ENTERED

Volume 3. 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,
Tuesday, April 23, 1996, beginning at 8:45 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.

* * *

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(Whereupon, argument was had.)

* * *

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

THE COURT: Good morning, ladies
and gentlemen.

JURORS: Good morning.

THE COURT: Ladies and gentlemen,
as you recall, last night we ended, we had finished the
cross. the direct and cross-examination of a witness.

Please stay standing.

The direct and cross-examination of a witness. And
we are now ready to proceed with the examination of this
witness. Madam Bailiff, could you please swear in the
witness?

SHARON HOPKINS

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

THE COURT: Ma'am, adjust that
microphone so that you can speak directly into it, so that
everybody can hear you.

Mr. Rosenbaum, you may examine.

DIRECT EXAMINATION OF SHARON HOPKINS

BY MR. ROSENBAUM:

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- 1 Q. Will you state your name, please?
- 2 A. Sharon Hopkins.
- 3 Q. How old are you, Sharon?
- 4 A. Twenty-four.
- 5 Q. Do you have children?
- 6 A. Yes.
- 7 Q. How many?
- 8 A. Two.
- 9 Q. Do you know the defendant who's seated immediately
- 10 under my right hand?
- 11 A. I do.
- 12 Q. What's his name?
- 13 A. Danny Smith.
- 14 Q. How long have you known him for?
- 15 A. I've known him in high school. I just can't say
- 16 exactly how many years I've known him.
- 17 Q. So you've been out of high school for six years?
- 18 A. I've been out of high school for seven years.
- 19 Q. You've known him for over seven years?
- 20 A. Yeah.
- 21 Q. And you knew him from going to school?
- 22 A. Yeah.
- 23 Q. Did you have any other type of relationship with him?
- 24 A. I am friends with his girlfriend.
- 25 Q. And what's her name?

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1 A. Tammy.

2 Q. Tammy what?

3 A. I don't know Tammy's last name.

4 Q. Do you know his father?

5 A. Yes, I do.

6 Q. What's his father's name?

7 A. Raymond Smith.

8 Q. Do you know him by another name?

9 A. Pops.

10 Q. How long have you known Raymond Smith for?

11 A. I knew him for about, two years ago met him.

12 Q. And how did you meet him?

13 A. Through Danny and Tammy.

14 THE COURT: Mr. Rosenbaum,
15 excuse me. I just want to make this -- two years ago you
16 met him. This is '96. You met him -- it's March of '96.

17 THE WITNESS: Well, two-and-a-half
18 years ago.

19 THE COURT: Okay.

20 Q. Do you know a man by the name of Stanley Jaloweic?

21 A. Yes.

22 Q. What's his name?

23 A. Stanley Jaloweic.

24 Q. I'm sorry. How do you know him?

25 A. I met him through uptown going to the bars.

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1 Q. Through any different people or he was just there and
2 you met him on your own?

3 A. I met, basically met him on my own.

4 Q. Did you at any time live near the defendant?

5 A. Yeah. I lived in the apartments across from his.

6 Q. And when was that?

7 A. About two-and-a-half years ago.

8 Q. Do you recall the address of that apartment?

9 A. Of mine?

10 Q. Yes.

11 A. 142 David Drive.

12 Q. And what city?

13 A. Elyria.

14 Q. And that's what county?

15 A. Lorain.

16 Q. And what state?

17 A. Ohio.

18 Q. And did you know Danny's address?

19 A. No, I didn't.

20 Q. Did you often go downtown with some or all of these
21 people?

22 A. I would go out with Tammy mainly and then sometimes
23 Danny would come along.

24 Q. Do you remember a very cold day in January of 1994
25 that you guys went out?

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1 A. Yeah.

2 Q. Could you tell the Court and jury who went out?

3 A. It was, left my apartment, when we left the
4 apartment, it was me, Danny and Tammy.

5 Q. And who was driving?

6 A. Danny.

7 Q. What car?

8 A. It was a four door Mercury. I don't know what kind
9 of car exactly.

10 Q. Do you know whose car?

11 A. Danny's.

12 Q. So it was you, the defendant, and his girlfriend
13 Tammy?

14 A. Yeah.

15 Q. What time would this be?

16 A. Approximately 10:00 or 11:00.

17 Q. Did you meet anyone anywhere?

18 A. We had met up with quite a few people uptown. It was
19 my brother, his girlfriend Misty, Stan, Pops, and Michael,
20 I think it was also.

21 Q. And what bar was this at that you all met together?

22 A. Razzle's.

23 Q. Can you tell us what time this would be then?

24 A. 10:00 or 11:00.

25 Q. And Razzle's is what kind of establishment?

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- 1 A. A bar.
- 2 Q. And that's in Elyria also?
- 3 A. Yes.
- 4 Q. And what did you guys do there?
- 5 A. We were drinking there.
- 6 Q. And how long did you stay at Razzle's?
- 7 A. Until it closed.
- 8 Q. Which would be about what time?
- 9 A. 2:15, 2:30.
- 10 Q. And what happened then?
- 11 A. We had gone over to Mom's Open Kitchen.
- 12 Q. Who specifically can you recall going to Mom's Open
- 13 Kitchen in the group?
- 14 A. Danny, Stan -- not Stan. Danny, Pops, Michael, me
- 15 and Tammy.
- 16 Q. So Pops would then be Raymond Smith?
- 17 A. Yeah.
- 18 Q. Where was your brother?
- 19 A. At that time he had gone home.
- 20 Q. And who went with him?
- 21 A. His girlfriend Misty.
- 22 Q. So what happened at Mom's Open Kitchen?
- 23 A. Danny, Michael and Pops ate, and we sat there and
- 24 talked at another table. We just sat. I just sat there
- 25 and waited for my ride home.

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- 1 Q. Did Tammy eat, if you remember?
- 2 A. Not that I remember.
- 3 Q. How long did it take for everybody to eat, or those
- 4 that ate to eat?
- 5 A. Well, about a half hour.
- 6 Q. And what happened next?
- 7 A. We had left.
- 8 Q. And this would be about what time then?
- 9 A. 2:45, three o'clock.
- 10 Q. In the morning?
- 11 A. Yeah.
- 12 Q. And describe what happened from the time everybody
- 13 left Mom's Open Kitchen.
- 14 A. We had gone out to, I thought we were going home, but
- 15 we ended up driving to somewhere on Middle Avenue.
- 16 Q. You so you got back into this car?
- 17 A. Yeah.
- 18 Q. It was the same car that you arrived in that Danny
- 19 was driving?
- 20 A. Yeah.
- 21 Q. Who was driving at this time?
- 22 A. Danny.
- 23 Q. And who's with you?
- 24 A. Tammy, Danny, Michael, Raymond and me.
- 25 Q. And where did you go?

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1 A. We went to somewhere out on Middle Avenue. We went
2 past the tracks.

3 Q. Was that outside of the city limits?

4 A. I don't know where the city limits end, so I couldn't
5 say.

6 Q. What's out there?

7 A. Well, where we stopped at there was a house on one
8 side and a barn on the other.

9 Q. And then what happened?

10 A. Michael and Raymond got out of the car.

11 Q. So this is about 3:00 in the morning, 3:15?

12 A. Yeah.

13 Q. What's the weather like?

14 A. It was extremely cold.

15 Q. Talking below zero?

16 A. Yeah.

17 Q. Way below?

18 A. Yeah.

19 Q. So out past the tracks, out Middle Avenue, the
20 defendant stops the car, his father and his brother get
21 out?

22 A. Yeah.

23 Q. Where do they go?

24 A. They go over to the side where the barn is.

25 Q. What happened then?

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1 A. We had drove back over the tracks and pulled into a
2 parking lot and stopped there, turned around and stopped
3 there and watched the road.

4 Q. Did you see anything?

5 A. It took a few minutes, but a car drove by and he
6 said, "There it is."

7 Q. Had you seen this car before?

8 A. I saw it a couple times.

9 Q. Do you know whose it is?

10 A. No, I don't.

11 Q. Who had it when you saw it?

12 A. I don't know who had it until we had pulled someone
13 over.

14 Q. No, I don't mean that night. When you saw it the
15 couple times before, who was in possession of it?

16 A. Stan.

17 Q. Was it a hard top or a soft top?

18 A. It was a convertible.

19 Q. And who said, "There it goes" or "There it is"?

20 A. Danny.

21 Q. Then what happened?

22 A. The car went over the tracks, and a minute later it
23 came back by, went back the way it came.

24 Q. Towards town?

25 A. Yeah.

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- 1 Q. And then what happened?
- 2 A. We sat there for a minute and then the car came back.
- 3 Q. Going southbound towards the tracks again?
- 4 A. Yeah.
- 5 Q. Okay. Then what happened?
- 6 A. The car came back the way, the direction it came from
- 7 again, and at that time we followed the car.
- 8 Q. So it went back across the tracks and came back
- 9 again?
- 10 A. Yeah.
- 11 Q. And then you followed it?
- 12 A. Yeah.
- 13 Q. Then what happened?
- 14 A. We followed the car and somehow they signalled it to
- 15 pull over, and the car pulled over on the side street, at
- 16 the corner of a side street. And at that time Danny had
- 17 asked me to ask them if they picked up his brother, so I
- 18 stepped one foot out of the car and asked if they picked up
- 19 his brother.
- 20 Q. Who did you ask?
- 21 A. Stan Jaloweic.
- 22 Q. And how do you know it was Stan?
- 23 A. I could see him.
- 24 Q. Did he get out of the car partially or completely?
- 25 A. He got out of the car completely. He stood up.

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- 1 Q. At this point who was driving the car you're in?
2 A. Tammy.
3 Q. And what is Danny doing?
4 A. He's crunched, bent down in the seat.
5 Q. Did he say why he was bent down?
6 A. No.
7 Q. And he requested of you to find out what?
8 A. If they had picked up his brother.
9 Q. Okay. And Stanley replied what?
10 A. I don't remember what Stanley said.
11 Q. How many other people were in this car, the one that
12 Stan was in?
13 A. It looked like there were four.
14 Q. Do you know who the other three were?
15 A. No. I could not see.
16 Q. Then what happened?
17 A. I stepped back in the car and gave the answer, which
18 I don't remember, and we had drove home at that point.
19 Q. How did you feel about what had happened?
20 MR. DUFF: Object.
21 THE COURT: Overruled.
22 A. I was upset because I thought it was one of Danny's
23 drug deals.
24 Q. Now, did all of these events that you described take
25 place in Lorain, County, Ohio?

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1 A. Yes.

2 Q. While you were at Mom's, do you know if anybody left
3 the group to make a phone call?

4 A. No, not that I know of. I don't remember.

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

7 CROSS-EXAMINATION OF SHARON HOPKINS

8 BY MR. DUFF:

9 Q. Sharon, did you give any statement to the police in
10 regard to this case?

11 A. Yeah.

12 Q. Were they tape recorded or did you write them down?

13 A. It was recorded.

14 Q. Did you write one down, too?

15 A. Not that I remember.

16 MR. DUFF: We'd move for that.

17 THE COURT: Ladies and gentlemen,
18 I see you putting your books away and getting ready to
19 retire to your room. We have reached that point again.
20 This one I am to speak very short. The admonitions I've
21 given you about discussing this, letting anyone discuss it,
22 letting anyone read it, reading about it still hold at this
23 point. With that, we will take a short recess.

24 (A recess was had.)

25 (At this time the Court stated its

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1 findings on the in-camera inspection of
2 the witness' taped statement outside the
3 presence of the jury.)

4 THE COURT: Now, gentlemen, I
5 have anticipated this. I have inspected that statement
6 already this morning, and I can say this to you, that from
7 her statement, there are some inconsistencies.

8 Let's see. She indicated in her statement here that
9 Danny said, "There it is." I do not remember having heard
10 that on the tape, number one. Okay.

11 The other inconsistency that I can see in this
12 instance is that when she was asked, when she was asked to
13 go out and see whether Michael, or they picked up Danny's
14 brother, she came back and she answered, "Yes, they had"
15 on the tape, or words to that effect.

16 Yeah, she made the statement that Danny asked her to
17 see whether or not they picked up his brother. She put one
18 foot out, saw Stanley, and then the answer on the tape is
19 "Yeah." Okay. Or "Yes, they had." She stated on the
20 stand that she couldn't remember what the answer was.
21 That's the only thing I can find. Give it to them,
22 Mr. Leiby.

23 MR. DUFF: Are these all
24 statements, all the tapes?

25 THE COURT: That's all I heard.

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1 That's all that was given to me.

2 DETECTIVE LEIBY: That's it.

3 (A recess was had, after which the
4 following took place without the presence
5 and hearing of the jury.)

6 THE COURT: Mr. Duff, what say
7 you?

8 MR. DUFF: Judge, I found
9 additional inconsistencies. She indicates on this tape
10 that after they stopped in the parking lot they then went
11 back off to the drop-off point to check and see if those
12 people were gone yet.

13 THE COURT: Yeah, okay. She
14 didn't testify to that.

15 MR. DUFF: No, she didn't.

16 THE COURT: All right. You may
17 cross-examine on that point. No problem. Now, may I say
18 for everybodys edification at this point, the case that you
19 presented to the Court this morning at the time that you
20 presented it was not a proper time because that recess was
21 not taken for that purpose.

22 MR. DUFF: I apologize, Judge.

23 THE COURT: No apology requested,
24 or required. I'm just explaining the policy, okay. That
25 was taken for an in-camera inspection, which has just been

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1 completed. I will permit argument on this thing at a next
2 regular, not an in-camera recess, but a next regular recess
3 before we resume at that time. I am permitting it. That
4 would be the proper place to do it.

5 MR. DUFF: I'll do that, Your
6 Honor.

7 THE COURT: Very well. Bring
8 them in, Barbara. I may say again for everybody's sake
9 that is going to be testifying in this case here cannot
10 remain in the courtroom while the trial is going on. So if
11 you are a witness, you better leave, because you will not
12 be permitted to testify. Very well.

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

15 THE COURT: Ladies and gentlemen,
16 as you recall, we took a recess for the usual, usual
17 in-camera matters, and we are now ready to proceed with the
18 cross-examination of this witness. Please bring in the
19 witness.

20 (The witness took the stand.)

21 THE COURT: Ma'am, you are
22 reminded that you're still under oath. And please, speak
23 directly into the microphone so that everybody can hear
24 you. Thank you. Mr. Duff.

25 MR. DUFF: Thank you, Your

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1 Honor.

2 BY MR. DUFF:

3 Q. Sharon, how old are you?

4 A. Twenty-four.

5 Q. All right. And as I understand it, you're Terry
6 Hopkins' sister; is that correct?

7 A. Yes.

8 Q. How old is Terry? I mean, what's the age difference
9 between the two of you?

10 A. Two years.

11 Q. Two years. He's your older brother or younger?

12 A. Older.

13 Q. Okay. Now, you know Carl Hartman, too, right?

14 A. Yes.

15 Q. In fact, you have a child by Carl?

16 A. Yes. No, not Carl; his brother.

17 Q. Pardon?

18 A. His brother Eddie.

19 Q. You have a child by Carl Hartman's brother?

20 A. Yes.

21 Q. What's his name?

22 A. Eddie.

23 Q. Eddie Hartman?

24 A. Uh-huh.

25 Q. How old is that child?

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1 A. He's four.

2 Q. Four. Okay. So you do know Carl?

3 A. Yes.

4 Q. And if there was previous testimony in this case that
5 Carl and Terry are like brothers, you would agree that
6 your brother Terry and Carl are like brothers?

7 A. The way they act.

8 Q. Well, to describe their relationship, would you agree
9 that --

10 A. Yeah.

11 Q. All right. You've testified a couple times already
12 in regard to Raymond Smith and Stanley Jaloweic, have you
13 not?

14 A. Uh-huh.

15 Q. Did you have a chance to go over your transcripts of
16 the testimony you gave previously?

17 A. Yes.

18 Q. How did that occur? Tell us how that happened.

19 A. They gave me the transcripts and I read them.

20 Q. Who did that; Detective Whitely?

21 A. Yeah.

22 Q. Where did he give it to you at, the witness lounge?

23 A. Yeah.

24 Q. He told you to read it over?

25 A. Yes.

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1 Q. And you did so?

2 A. Yes.

3 Q. So that you could remember what you testified to
4 previously and keep your story straight, correct?

5 A. Correct.

6 Q. All right. How many times did you read it?

7 A. Once.

8 Q. You read your testimony from Stanley's case and you
9 read your testimony from Raymond's case; is that correct?

10 A. Correct.

11 Q. And while you were doing this, other witnesses were
12 congregating in that witness lounge?

13 A. Yes.

14 Q. There were other people in there, like your brother?

15 A. Yes.

16 Q. Did he read his, too?

17 A. He just looked over it, as far as I saw.

18 Q. Did you hear Detective Whitely tell him to read it?

19 A. He asked him if he would like to.

20 Q. Who asked your brother that?

21 A. Whitely.

22 Q. And what did you brother say?

23 MR. ROSENBAUM: Objection.

24 THE COURT: Sustained.

25 MR. DUFF: It's not offered for

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1 the truth of the matter, Your Honor.

2 MR. ROSENBAUM: It's irrelevant.

3 THE COURT: What is the relevancy
4 as what he said about that.

5 Q. You heard Detective Whitely tell your brother --

6 MR. ROSENBAUM: Objection. That's
7 not what she said.

8 Q. I'm asking.

9 MR. ROSENBAUM: You've asked and
10 answered it.

11 A. Last question, please?

12 Q. Did you hear Detective Whitely tell your brother to
13 read the transcript?

14 A. He asked him.

15 Q. He asked him?

16 A. He asked him if he would want to.

17 Q. Now, as I understand it, you gave a statement to the
18 detectives March 1st of '95; is that right?

19 A. I don't know what the date was.

20 Q. Well, you wouldn't disagree that date a taped
21 statement on March 1st, '95?

22 MR. ROSENBAUM: Objection. She said
23 she doesn't know.

24 Q. Would you disagree with that date?

25 THE COURT: She doesn't know.

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1 MR. ROSENBAUM: Objection. Calls for
2 speculation.

3 MR. DUFF: No, it doesn't.

4 MR. ROSENBAUM: Yes, it does. "Would
5 you disagree with March 1st, 1996," Your Honor.

6 MR. DUFF: Can I ask it?

7 MR. ROSENBAUM: I've objected twice.

8 MR. DUFF: That's the date, Your
9 Honor.

10 THE COURT: All right. All
11 right. At this point do you remember the date? No?

12 THE WITNESS: No, I don't remember.

13 Q. All right. February of '95, is that when you first
14 met with Detective Leiby?

15 A. I don't know the date.

16 Q. All right. You wouldn't disagree with that date?

17 MR. ROSENBAUM: Objection.

18 THE COURT: Again, sustained.

19 Q. All right.

20 THE COURT: She doesn't know the
21 date, unfortunately.

22 Q. Taped statement. All right. Do you know what year
23 you gave that statement?

24 A. In '95.

25 Q. '95. What month?

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1 A. I don't know.

2 Q. All right. Your brother was in prison when you gave
3 that statement, was he not?

4 A. Yeah, he was.

5 Q. When you gave that statement, your brother was in
6 prison. Now, had you spoken to Detective Leiby prior to
7 that? Ever?

8 A. I had spoken to him once before that. He had come to
9 my apartment to find my brother.

10 Q. All right. And you told him previous to that
11 occasion that you knew nothing about this case; isn't that
12 correct?

13 A. Correct.

14 Q. How many times had you told him before giving that
15 statement that you knew nothing about this case, on how
16 many different occasions?

17 A. Once.

18 Q. Once. Do you know when that was, approximately, the
19 year?

20 A. It was '94, I think.

21 Q. '94. What month would that have been?

22 A. I don't know. It was just starting to warm up, so I
23 don't know.

24 Q. Starting to warm up. So you mean like April, May or
25 June, something like that?

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1 A. Probably be June maybe. I don't know.

2 Q. June of '94?

3 A. I couldn't really say for sure.

4 Q. Where did you give that statement at?

5 A. I didn't give a statement.

6 Q. Well, I know. Where did you talk to Detective Leiby
7 at and told him you knew nothing about this case?

8 A. My apartment.

9 Q. And your brother wasn't in prison then, was he?

10 A. No.

11 Q. Now, did your brother, at times before you gave the
12 statement in '95 to Detective Leiby, did your brother Terry
13 tell to you to talk to Detective Leiby, did he tell you to
14 go ahead and talk to him? Did he encourage you to do so?

15 A. No, he didn't. Detective Leiby came to me again, he
16 said --

17 Q. Just answer my question.

18 A. No.

19 Q. Your brother never told you to talk to Detective
20 Leiby before he went to prison?

21 A. Not that I remember.

22 Q. You don't remember that, all right. Now, in this
23 statement you gave, you say you went to Mom's Open Kitchen,
24 right?

25 A. Uh-huh.

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1 Q. And I think you've testified the following people
2 were there: you, right?

3 A. Yes.

4 Q. Mike?

5 A. Yes.

6 Q. Danny, right?

7 A. Yes.

8 Q. And Tammy; is that right?

9 A. And Raymond.

10 Q. And Raymond?

11 A. Yes.

12 Q. All right. Now, if your brother previously testified
13 that Raymond and Mike were not there, he would be incorrect
14 in that regard?

15 A. Yes.

16 Q. Because you specifically recall seeing them there,
17 right?

18 A. Yes.

19 Q. And Ray's a big guy, you'd agree, right?

20 A. He's tall.

21 Q. Yeah. And Mike's a big guy, right?

22 A. About Danny's size, if I remember right.

23 Q. And the guys, you couldn't miss them if they were
24 there; is that right?

25 A. Yeah.

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1 Q. You couldn't miss them if they were present?

2 A. Oh, I remember them there.

3 Q. Right. And anybody at Mom's besides you guys? It
4 was late at night, wasn't it?

5 A. Yes.

6 Q. It was just you guys, right?

7 A. There was some other people.

8 Q. There was some other people. As I understand it, you
9 sat at a table by yourself, right?

10 A. Yes.

11 Q. You didn't sit with the other group?

12 A. I sat at the table across from them.

13 Q. By yourself?

14 A. Yes.

15 Q. Now, your brother testified that you sat with them at
16 their table; that would be incorrect, right?

17 A. Correct.

18 Q. Now, you claim you rode in the car, you went out to
19 this area to drop Raymond and Michael off; is that correct?

20 A. Correct.

21 Q. You never heard any discussion about Ron Lally on
22 this trip, did you?

23 A. No.

24 Q. And Danny never said anything about Ron Lally, did
25 he?

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- 1 A. No.
- 2 Q. And Raymond never said anything about Ron Lally?
- 3 A. No.
- 4 Q. And you never heard any discussion about Ron Lally at
- 5 Mom's, did you?
- 6 A. No.
- 7 Q. And you agree that you were pretty drunk, weren't
- 8 you, that night?
- 9 A. Yeah.
- 10 Q. Well, how drunk were you? You were extremely drunk,
- 11 weren't you?
- 12 A. I was drunk.
- 13 Q. Well, you used the term to the police when you
- 14 described how you were, did you not?
- 15 A. Yeah.
- 16 Q. What'd you tell them?
- 17 A. I said I was fucked up.
- 18 Q. And what's that mean?
- 19 A. I was drunk.
- 20 Q. All right. That's a fair and accurate description of
- 21 your state of alcohol?
- 22 A. Yeah.
- 23 Q. Now, in the car, you claim who was present in the
- 24 car, ma'am?
- 25 A. Me, Danny, Tammy, Mike, and Raymond.

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- 1 Q. All right. Sharon, Mike, Ray, Tammy -- Sharon, Mike,
2 Ray, Tammy and Danny; is that correct?
3 A. Correct.
4 Q. That's in Danny's car, right?
5 A. Yes.
6 Q. Now, who drove out there?
7 A. Danny.
8 Q. Danny.
9 Q. Where were you seated?
10 A. I was seated in the middle in the back.
11 Q. All right. And who was in the front passenger seat?
12 A. Tammy.
13 Q. All right. Now, at some point you claim that you
14 made a drop-off out there, right?
15 A. Yeah.
16 Q. Now, doesn't, were you aware that Ray's aunt, or
17 Danny's, aunt lives out in that area?
18 A. No.
19 Q. You weren't aware of that?
20 A. No.
21 Q. Okay. Now, the car, you stopped and parked at one
22 point; is that correct?
23 A. Yeah.
24 Q. And the drivers were switched at that point; is that
25 correct?

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- 1 A. Correct.
- 2 Q. And in a parking lot?
- 3 A. Yeah.
- 4 Q. So then Tammy starts driving?
- 5 A. Yeah.
- 6 Q. Switched drivers and Tammy drives, right?
- 7 A. Uh-huh.
- 8 Q. Your testimony is when you guys pulled behind this
- 9 other car, this Chrysler Lebaron, Tammy was driving?
- 10 A. Yes.
- 11 Q. You're sure of that?
- 12 A. Yes.
- 13 Q. All right. So I'm going to put switched drivers,
- 14 Tammy was driving when pulled behind Lebaron, right?
- 15 A. Correct.
- 16 Q. On the side of the street, right?
- 17 A. Yes.
- 18 Q. Now, do you remember testifying, on page 158, do you
- 19 remember testifying in the case of Stanley Jaloweic?
- 20 A. Yes.
- 21 Q. I'm sorry. 112, Mr. Smith's trial. Do you remember
- 22 testify in a case of Raymond Smith?
- 23 A. Yes.
- 24 Q. All right. And that was back in November of '95; is
- 25 that correct?

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1 A. I testified in his --

2 Q. Yeah.

3 A. I don't know what date it was.

4 Q. You wouldn't disagree with November of '95?

5 MR. ROSENBAUM: Objection.

6 THE COURT: She still doesn't
7 know the date.

8 Q. All right. We will put down trial of Raymond. Okay,
9 how about that, will you agree you testified in the trial
10 of Raymond? Trial of Raymond Smith. Do you remember
11 testifying in that case?

12 A. Yes.

13 Q. And you were asked the following questions.

14 Question, page 112, "Then the car comes by southbound,
15 the Lebaron." Question put to you. Your answer was, "saw
16 it go by again, they sat there, waited for it to go towards
17 downtown and then at that point we drove to follow it." Is
18 that correct?

19 A. Yeah.

20 Q. That's true, right?

21 A. (Witness nods head.)

22 Q. Next question was, "And at this time Danny is
23 driving?" Do you remember what you answered that question
24 with?

25 A. No.

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1 Q. Do you remember telling them, yes, that Danny was
2 driving at that point?

3 A. Danny wasn't driving at that point.

4 Q. Would you like to see the question and the answer?
5 The question put to you, "And at this time Danny is
6 driving?" What was your response?

7 A. Yes.

8 Q. All right. So you testified in that case --

9 MR. ROSENBAUM: Your Honor, I object
10 and I ask him to show her the page before that on the same
11 issue where it --

12 MR. DUFF: It goes on, Your
13 Honor. Let me finish.

14 MR. ROSENBAUM: No, go back to the
15 page before it. She is entitled to see it.

16 THE COURT: Mr. Rosenbaum, you
17 can have your opportunity.

18 MR. ROSENBAUM: She's entitled to see
19 the whole statement.

20 THE COURT: I'm sure she will at
21 your redirect at this point.

22 BY MR. DUFF:

23 Q. The next question was, "Who was seated where?" "Who
24 was seated where?" Do you remember your response?

25 "Tammy in the passenger seat, and I sat behind Danny.

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1 "Did you follow the Lebaron?

2 "Yes."

3 A. I might have screwed that up because I was
4 seated --

5 Q. I'm just asking the questions, ma'am. The trial of
6 Ray you said Danny was driving, right? Is that right?

7 A. That's what it says.

8 Q. And if Danny was in the passenger seat --

9 MR. ROSENBAUM: Your Honor, I object.
10 She is entitled to read the whole statement.

11 THE COURT: You know, you can't
12 pull things out of context.

13 MR. DUFF: It's not out context,
14 Your Honor.

15 MR. ROSENBAUM: Yes, it is.

16 MR. DUFF: It is not.

17 THE COURT: Let me see it. I
18 think that's the way to settle this matter. Let me see it.

19 MR. DUFF: It's not out of
20 context.

21 MR. ROSENBAUM: Start on page 111,
22 Your Honor.

23 MR. DUFF: I'll go through it
24 all, Your Honor.

25 MR. ROSENBAUM: That car comes out,

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1 goes back, comes out, and goes back.

2 THE COURT: The interest of
3 fairness, Mr. Duff, I think you should give her the whole
4 thing.

5 MR. DUFF: Judge, I'll go
6 through the whole thing with her.

7 THE COURT: Okay.

8 MR. DUFF: The interest of
9 fairness. I want to be fair.

10 THE COURT: Yes.

11 BY MR. DUFF:

12 Q. All right: Now, you've definitely testified that
13 when you pulled behind that Lebaron --

14 MR. ROSENBAUM: Objection. Your
15 Honor, let her see the statement.

16 MR. DUFF: I'm setting the
17 stage. Can I do my own cross?

18 THE COURT: Overruled. I'll
19 permit it, but I'm ready to strike it if it doesn't do what
20 you say.

21 Q. You have definitely testified that when you pulled up
22 behind that Lebaron, okay, in court today that at that time
23 Tammy was driving, right?

24 A. Tammy was driving.

25 Q. And they had switched positions earlier, but when

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1 you pulled up behind the Lebaron, Tammy was driving, right?

2 A. Yes.

3 Q. All right. Now, you testified, page 111, "And the
4 whole time you were sitting there with the lights off?" Do
5 you recall that the answer was "Yes"?

6 THE COURT: Just read it. Read
7 it.

8 MR. DUFF: Read the whole page?

9 THE COURT: Read what you read.
10 Don't recall, read what it says.

11 Q. "After it came back the first time, did the car you
12 were in remain there?

13 "Yeah. At that point Danny had Tammy come over to
14 the driver's seat and he went into the passenger's.

15 "All right. When did they switch? After you saw the
16 car for the second time? After it came back? After it
17 picked them up? Did it move at any time after it was
18 parked there --

19 "No.

20 " -- the one you are in?

21 "No. Then the car comes back southbound, the
22 Lebaron, I saw it go by again. They sat there and waited
23 forward it to go towards downtown. At that point we drove
24 to follow it.

25 "Question: And at this time Danny is driving?

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1 "Answer: Yes.

2 "Who was seated where?

3 "Tammy in the passenger seat and I sat behind Danny.

4 "Did you follow the Lebaron?

5 "Yes."

6 Is that what you testified to in the proper context?

7 A. Yes, I guess so.

8 Q. All right. So you did testify that when you were
9 behind the Lebaron that Danny was driving, right?

10 A. I guess I testified that. I might have got it
11 confused because I was very nervous.

12 Q. Are you nervous now?

13 A. Yes, I'm nervous.

14 Q. You testified three times in this case?

15 A. So, you still get nervous sitting up here.

16 Q. All right. Now, at Mom's you never saw Terry there,
17 did you?

18 A. Not that I remember.

19 Q. No Terry at Mom's. So if he said he was there, he
20 was wrong, right?

21 MR. ROSENBAUM: Answer the question.
22 as best you can.

23 MR. DUFF: Object to him, the
24 prosecutor telling her how to answer questions.

25 THE COURT: And I sustain that

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1 objection. Ma'am, just --

2 MR. ROSENBAUM: Wait he objected to
3 me telling her --

4 THE COURT: Excuse me.

5 MR. DUFF: Yes, I object.

6 MR. ROSENBAUM: Your Honor.

7 THE COURT: Excuse me. I am
8 running this show and I'm going to run this show. I don't
9 want any exchanges from counsel. If you want to talk to
10 me, approach me in the proper manner to talk to me at this
11 point.

12 Now, she had already testified to that question,
13 Mr. Duff, and this is a repeat of that question.

14 MR. DUFF: No, it's not.

15 THE COURT: Yes, it is. Yes, it
16 is.

17 MR. DUFF: I'm sorry then,
18 Judge. I just want to clear it up.

19 THE COURT: Proceed.

20 BY MR. DUFF:

21 Q. Did you see Terry at Mom's?

22 A. I didn't remember it before.

23 Q. According to you Terry was not there, right?

24 A. Yeah.

25 Q. And if he said he was there, that would be different

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1 than what you know, right?

2 A. Yes.

3 Q. Now, you testified on direct examination that after
4 you were in that parking lot, the car went by one time, is
5 that right, the Lebaron?

6 A. Went by four times.

7 Q. Four times. Well, it goes by once down to the
8 drop-off point and goes back downtown; is that right?

9 A. Which car are talking about?

10 Q. The Lebaron.

11 A. The Lebaron goes back, goes this way back. I see it
12 four times.

13 Q. All right. It goes by two times?

14 A. Four.

15 Q. Four times.

16 THE COURT: She sees it four
17 times.

18 Q. Sees it four times. It goes back and forth two
19 different times, right?

20 A. Yes.

21 Q. So at no time -- you also, in your statement to
22 Detective Leiby that we don't know the date of, you told
23 him, did you not, that after you were stopped in a parking
24 lot in Danny's car that you then drove back to the drop-off
25 point to see who was there; is that correct?

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1 A. I don't remember.

2 Q. You don't recall saying that? You don't recall
3 telling him, "Back to drop-off point"?

4 A. I don't remember.

5 Q. You might have said that?

6 A. I don't recall.

7 Q. You don't recall now going back to the drop-off
8 point?

9 A. I don't remember.

10 Q. No, I'm asking you. Do you recall driving back to
11 the drop-off point a second time, yes or no?

12 A. No, I don't remember.

13 Q. All right. Now, when you went back to your
14 apartment, who dropped you off there; Danny?

15 A. Yes.

16 Q. And who was there when you got there?

17 A. My two brothers and his girlfriend.

18 Q. What two brothers?

19 A. My little brother, my older brother and his
20 girlfriend.

21 Q. That would include Terry?

22 A. Yes.

23 Q. And Danny and Tammy went right to their apartment?

24 A. They dropped me off. I assume.

25 Q. Did they come in your apartment?

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1 A. No.

2 Q. They went right to theirs as far as you know?

3 A. As far as I know.

4 MR. DUFF: If I could have a
5 minute, Your Honor.

6 You didn't, when you sat at this place, how long did
7 you sit there in the car?

8 A. I don't remember.

9 Q. Ten or fifteen minutes?

10 MR. ROSENBAUM: Your Honor, she said
11 she doesn't remember.

12 Q. Do you recall testifying previously --

13 THE COURT: Mr. Duff.

14 MR. DUFF: I'll rephrase.

15 THE COURT: She says she doesn't
16 remember, then you start suggesting times. You know, it
17 doesn't help.

18 MR. DUFF: All right. Well, I
19 can suggest it with good faith, Your Honor.

20 Did you testify previously --

21 THE COURT: I'm sure everything
22 you do is in good faith.

23 MR. DUFF: Thank you, Your
24 Honor.

25 Did you testify previously in this case, in the

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1 Stanley Jaloweic case?

2 A. Yes.

3 Q. All right. Question was put to you, "What happened?"

4 "We sat there --" page 156.

5 "We sat there for about three or four minutes, five
6 or ten minutes, and we had, a convertible had gone by and
7 they said, 'That is it.'"

8 Do you remember telling me, testifying that you sat
9 there five to ten minutes?

10 A. No, I don't remember.

11 Q. All right. Does it refresh your memory as to your
12 testimony if you want to read it?

13 A. I still don't remember how long we sat there.

14 Q. All right. So during this time that you sat there,
15 you never bothered to ask anybody what was up, what you
16 guys were doing?

17 A. No.

18 Q. And you never heard any discussion of Ron Lally; is
19 that right?

20 A. No.

21 Q. It appeared to you to be a drug deal going down,
22 right?

23 A. I assumed it.

24 Q. You didn't hear any discussion about planning a
25 murder, did you?

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1 A. No.

2 Q. Everybody was just having a good time at Mom's Open
3 Kitchen, right?

4 A. I would assume.

5 Q. And you say that you were told to check with the
6 driver of that Lebaron to see if Michael Smith was in that
7 car, right?

8 A. He said, "My brother."

9 Q. And his brother is Michael, right, did you know that?

10 A. Yeah, I knew Michael was his brother.

11 Q. He had no other Brother, right, that was there that
12 night?

13 A. He had no other brother there that night.

14 Q. And no one asked you to go see if Ron Lally was in
15 that car, did they?

16 A. No.

17 MR. DUFF: If I could just have
18 a minute, Your Honor. That's it, Judge.

19 THE COURT: Mr. Rosenbaum.

20 REDIRECT EXAMINATION OF SHARON HOPKINS

21 BY MR. ROSENBAUM:

22 Q. Ma'am, do you know where Wilkes Villa is?

23 A. Yeah.

24 Q. Were you anywhere near Wilkes Villa when you went
25 past the tracks on Middle Avenue?

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1 A. We were past that.

2 Q. Way past it?

3 A. I could not say how far. I just know we were past
4 it.

5 Q. Wilkes Villa is in the city, right?

6 A. Yes.

7 Q. Did go by Wilkes Villa to get to Middle Avenue?

8 A. We went past the street.

9 Q. You went straight out Middle, straight on Middle past
10 Fuller, which Wilkes is on, right?

11 A. Yes.

12 Q. And you went past the tracks?

13 A. Yes.

14 Q. Past the trailer park? Do you know the trailer park
15 there?

16 A. I don't recall it.

17 Q. Do you know where the airport is?

18 A. We went just maybe, like, 50 feet from the tracks.

19 Q. The tracks. Now, why did you tell Detective Leiby at
20 first that you didn't know anything about this?

21 A. I didn't want to be involved in anything like this.

22 Q. Why?

23 A. I have, at the time I had one child. I didn't want
24 to be involved in anything like this.

25 Q. Are you afraid --

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1 MR. DUFF: Object.

2 Q. -- to testify?

3 THE COURT: Sustained.

4 Q. Have you lied today in court?

5 A. No.

6 Q. Did you lie to Detective Leiby?

7 A. When I told him I didn't know anything about it.

8 Q. What about when you told him what you knew?

9 MR. DUFF: Object.

10 THE COURT: Overruled.

11 A. When I told him what I knew, no, I didn't lie to him.

12 Q. Are you saying these -- did you say those things to
13 Detective Leiby to get your brother out of prison?

14 A. No. My brother went to prison. He could have stayed
15 there at the time as far as I cared.

16 Q. Now, you've been asked several times about Terry
17 going with you to Mom's. Did Terry go with your group to
18 Mom's Open Kitchen?

19 A. He didn't go with our group, no.

20 Q. Was Terry there when you got there?

21 A. Yeah, he was there for about maybe five minutes.

22 Q. And who was he there with?

23 A. His girlfriend.

24 Q. And then what happened?

25 A. They left.

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1 Q. Before you and the group did?

2 A. Yes.

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

5 THE COURT: Duff.

6 RE-CROSS-EXAMINATION OF SHARON HOPKINS

7 BY MR. DUFF:

8 Q. So if Terry says that he sat there and ate breakfast
9 with you guys, that's not what you recall, right?

10 A. No, he didn't.

11 Q. So you're saying he was there and he left, that he
12 didn't eat breakfast with you, right?

13 A. He didn't eat with us, no.)

14 Q. Now, the truth of the matter is that you knew nothing
15 about this case all through 1994, right? As far as the
16 police were concerned, you told them you knew nothing about
17 this case, right?

18 A. Correct.

19 Q. And you didn't have a change of heart about this case
20 until your brother got locked up in prison; isn't that
21 correct?

22 A. I didn't get a change of heart because of my brother,
23 no.

24 Q. Just answer my question. You never told anybody that
25 Danny Smith, that you were there until your brother went to

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1 prison, right?

2 A. Do what?

3 Q. You never told Detective Leiby that you had any
4 knowledge of this case until your brother was in prison;
5 isn't that correct?

6 A. My brother was in prison when I told him.

7 Q. Right.

8 MR. DUFF: Nothing else.

9 THE COURT: Mr. Rosenbaum.

10 REDIRECT EXAMINATION OF SHARON HOPKINS

11 BY MR. ROSENBAUM:

12 Q. Are you sure your brother was in prison when you
13 first talked to Leiby?

14 MR. DUFF: Object, asked and
15 answered.

16 A. I'm not sure.

17 THE COURT: I think it's a
18 subject, it's a subject of, proper subject of the redirect
19 at this point because you brought it up.

20 Q. What was the answer to the question?

21 A. I'm not really sure.

22 Q. Can you say what exact date he went?

23 A. It was the end of January, I think.

24 Q. Are you for certain on that?

25 MR. DUFF: Object, asked ask

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1 answered.

2 THE COURT: It's been asked and
3 answered. Well, she said the end of January.

4 Q. Do you know for sure?

5 A. No, I don't know for sure.

6 Q. Do you know for sure what date you told Detective
7 Leiby when you finally disclosed what you knew?

8 MR. DUFF: Object.

9 A. No.

10 Q. Can you say for should certain today that your
11 brother was in prison when you talked to Detective Leiby?

12 MR. DUFF: Object, asked and
13 answered.

14 THE COURT: Can you say that for
15 certain?

16 THE WITNESS: No.

17 MR. ROSENBAUM: Thank you.

18 THE COURT: Okay.Mr. Duff.

19 RECROSS-EXAMINATION OF SHARON HOPKINS

20 BY MR. DUFF:

21 Q. You testified when I asked you some questions
22 earlier, that when you talked to Detective Leiby you
23 believed your brother was in prison; isn't that correct?

24 A. I'm guessing.

25 Q. He got sentenced when, as far as you know? He

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1 brought it up. As far as you know, end of January, right?

2 A. Correct.

3 MR. DUFF: Thank you.

4 THE COURT: Mr. Rosenbaum.

5 MR. ROSENBAUM: I have no other
6 questions.

7 THE COURT: Thank you. You may
8 step down. Next witness, please.

9 (Witness excused.)

10 JOANN CORRINE FIKE

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: Ma'am, adjust the
15 mike so you can speak directly into it, if you would,
16 please, so that everybody can hear you. Thank you.

17 DIRECT EXAMINATION OF JOANN CORRINE FIKE

18 BY MR. ROSENBAUM:

19 Q. State your name, please.

20 A. Joann Corrine Fike.

21 Q. Will you spell your first, middle and last name?

22 A. J-O-A-N-N C-O-R-R-I-N-E F-I-K-E.

23 Q. How old are you, ma'am?

24 A. Thirty-six.

25 Q. Do you work anywhere?

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- 1 A. No.
- 2 Q. How do you get by?
- 3 A. I receive Social Security. I'm a widow.
- 4 Q. Do you know the defendant in this case who's seated
- 5 immediately under my right hand?
- 6 A. I do.
- 7 Q. What's his name?
- 8 A. Danny Smith.
- 9 Q. How do you know him?
- 10 A. I would purchase drugs through him.
- 11 Q. What kind ever drugs?
- 12 A. Crack.
- 13 Q. When did you start purchasing drugs from Danny Smith?
- 14 A. About two years ago.
- 15 Q. When did you stop?
- 16 A. It's been a while. I don't know the exact date.
- 17 Q. Do you know Raymond Smith?
- 18 A. I do.
- 19 Q. Who is Raymond Smith?
- 20 A. His father.
- 21 Q. How is it that you know Raymond?
- 22 A. Through drugs.
- 23 Q. What does that mean?
- 24 A. We did drugs together.
- 25 Q. You and Raymond did drugs?

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- 1 A. Yes.
- 2 Q. Did you buy drugs from Raymond?
- 3 A. No.
- 4 Q. Who was the source of the drugs?
- 5 A. Danny.
- 6 Q. Now, do you know Stanley Jaloweic?
- 7 A. I do.
- 8 Q. How do you know him?
- 9 A. Through the drug dealings.
- 10 Q. Did you buy from Stanley?
- 11 A. I did.
- 12 Q. Did you also do drugs with Stanley?
- 13 A. Yes, I did.
- 14 Q. Now, how did you pay for these drugs?
- 15 A. I would pay with money or sometimes they would use my
- 16 car.
- 17 Q. Okay. "They" would be who?
- 18 A. Danny..
- 19 Q. Anybody else drive your car?
- 20 A. Yes, there's other people drove it.
- 21 Q. I mean in this group?
- 22 A. No.
- 23 Q. Has Stanley ever driven your car?
- 24 A. Not with my permission, no.
- 25 Q. When say drugs, what kind of drugs did you do?

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- 1 A. Crack.
- 2 Q. Cocaine?
- 3 A. Yes.
- 4 Q. What kind of car is this that you lent them, lent
- 5 Danny?
- 6 A. It was a '92 Lebaron.
- 7 Q. Color?
- 8 A. Blue.
- 9 Q. Hard or soft top?
- 10 A. Soft.
- 11 Q. I'd like to hand you four pictures which have been
- 12 marked as State's Exhibits 3-A through D and ask you to
- 13 take a look at them, please. Do you recognize those
- 14 photographs?
- 15 A. I do.
- 16 Q. What are they photographs of?
- 17 A. My car.
- 18 Q. Is that the car that you would lend to Danny Smith?
- 19 A. Yes.
- 20 Q. Did the police impound it?
- 21 A. Yes, they did.
- 22 Q. How many times did it get impounded?
- 23 A. Twice.
- 24 Q. What was the first time for?
- 25 A. Someone was arrested in it.

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1 Q. What do you mean by extremely cold?

2 A. Like 30 below zero. Very, very cold.

3 Q. What time did you come home?

4 A. About 2:30, after the bars closed.

5 Q. Was your car there then?

6 A. No.

7 Q. What time did your car come back?

8 A. I believe it was, like, 5:00 or 6:00 the next
9 morning.

10 Q. Would you describe the condition of your car, please?

11 A. It was a solid sheet of ice.

12 Q. Who was in possession of your car when it came back
13 to you?

14 A. Stanley Jaloweic and Raymond Smith.

15 Q. Did you inquire as to how your car got to be a sheet
16 of ice?

17 A. Yes.

18 Q. Did you learn why or how?

19 A. Well, they told me --

20 MR. DUFF: Object.

21 THE COURT: Sustained.

22 Sustained.

23 Q. Did you learn that your car was washed?

24 A. Yes.

25 Q. Did you see anything unusual about your car other

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- 1 Q. Who was that?
- 2 A. Stanley.
- 3 Q. And do you know what he was arrested for?
- 4 A. I believe drugs.
- 5 Q. And the police held it for a long time?
- 6 A. Yes.
- 7 Q. Did you finally get it back from that?
- 8 A. Yes, I did.
- 9 Q. And then was it subsequently impounded again?
- 10 A. Yes, it was.
- 11 Q. And why?
- 12 A. I believe it was involved with this.
- 13 Q. For this case?
- 14 A. Yes, sir.
- 15 Q. It was taken the second time?
- 16 A. Yes.
- 17 Q. Now, do you remember a very cold day in January,
- 18 1994, when someone took your car?
- 19 A. I do, yes.
- 20 Q. Did you give that person permission to have your car?
- 21 A. No.
- 22 Q. Were you home when the car was taken?
- 23 A. No.
- 24 Q. What was the weather like that night?
- 25 A. It was extremely cold.

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1 than ice covering the entire car?

2 A. There was blood on my car.

3 Q. Were you given an explanation as to why your car was
4 washed and there was blood on your car?

5 A. I was told that they were involved in a fight
6 downtown Elyria.

7 Q. Okay. Did you see any evidence that would lead you
8 to believe that someone was involved in a fight that was
9 there?

10 A. There was blood on my car, yes.

11 Q. Did you get to examine anybody's body or person?

12 A. I noticed Stan's knuckles were --

13 Q. What about Stan's knuckles?

14 A. They were scratched up.

15 Q. Now, were any parts replaced on your car before the
16 police impounded it the second time?

17 A. Yes.

18 Q. When was that, or I mean, not when, what was
19 replaced?

20 A. The front tires.

21 Q. Who replaced them?

22 A. Danny Smith.

23 Q. Can you say when that happened?

24 A. I believe some part of April, because it was starting
25 to get nice, the weather.

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1 Q. Now, what happened after your car was brought back
2 frozen that morning?

3 A. I gave Raymond Smith a ride to Danny's.

4 Q. You gave -- to the defendant's house?

5 A. Yes.

6 Q. Why did you do that?

7 A. I believe to get drugs. I stayed in the car;
8 Mr. Smith went upstairs.

9 Q. Did he come back?

10 A. Yes.

11 Q. Did you go somewhere with him?

12 A. To my house.

13 Q. And what happened there?

14 A. We smoked crack.

15 Q. Who smoke crack?

16 A. Myself and Stan and Raymond.

17 Q. So Stan stayed behind while you and Ray went to see
18 Danny?

19 A. Yes.

20 Q. And after he came out, you returned to your home?

21 A. Yes.

22 Q. And smoked crack?

23 A. Yes.

24 Q. And how long did you do that for?

25 A. I don't recall. A couple hours.

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1 Q. I'd like to hand you what has been marked as State's
2 Exhibit 12. Do you recognize the dog depicted in that
3 photograph?

4 A. I do.

5 Q. Whose dog is that?

6 A. It's my dog.

7 Q. What's your dog's name?

8 A. Cleo.

9 Q. Does your dog ever ride in your car?

10 A. Absolutely.

11 Q. Did there ever come a time when Detective Leiby paid
12 you a visit about your dog Cleo?

13 A. Yes.

14 Q. What was the purpose of that?

15 A. He took the picture and took some hairs from her.

16 MR. ROSENBAUM: I have no other
17 questions, Your Honor.

18 THE COURT: Mr. Wightman.

19 MR. WIGHTMAN: Thank you, Your
20 Honor.

21 CROSS-EXAMINATION OF JOANN CORRINE FIKE

22 BY MR. WIGHTMAN:

23 Q. Is it Mrs. Fike?

24 A. Ms. Fike.

25 Q. Ms. Fike. Ma'am, did you have an opportunity to

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1 speak with the police about this case?

2 A. As to what, sir?

3 Q. Did they question you about what happened that night?

4 A. Yes.

5 Q. All right. Did you give a statement to them?

6 A. I did.

7 Q. Who did you give the statement to?

8 A. Mr. Leiby.

9 Q. How many statements did you give?

10 A. Two.

11 Q. Do you know if they were recorded or not?

12 A. Yes.

13 Q. They both were recorded?

14 A. Yes.

15 Q. Did you give any written statement, ma'am?

16 A. No.

17 Q. And can you tell us when those statements were made,
18 please?

19 A. I don't remember the dates.

20 MR. WIGHTMAN: All right. Your
21 Honor, we would ask --

22 THE COURT: Yes, yes, yes, to
23 review those. Surprise. Ladies and gentlemen, it's 10
24 o'clock. We will take this break along with our regular
25 break at this time. And the admonitions I've given you

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1 about discussing this, reading, again, letting anybody
2 read, letting anyone discuss with you, still hold at this
3 point. So with those admonitions, let's take our morning
4 recess along with this other recess at this point.

5 (A recess was had.)

6 (The following took place outside the
7 presence and hearing of the jury.)

8 THE COURT: Mr. Duff, we're now
9 here to listen to 16(B)(1)(f) or (g) argument. Proceed,
10 sir.

11 MR. DUFF: Your Honor. As I
12 said earlier, the Court's position is thus, as I understand
13 it, that if we hear something during the in camera, 16(B)
14 hearing while we listen to the tapes and it's relevant
15 under Rule 611, you're not permitting us to get into those
16 items.

17 I think, Your Honor, under the Brady case and under
18 Brady versus Maryland, this case I've cited to you had the
19 Sawyer case, the proper route would be to allow us to do it
20 if you find it can be material either to guilt or to
21 punishment after you make a finding. We've made specific
22 requests --

23 THE COURT: Where?

24 MR. DUFF: Judge.

25 THE COURT: What have you

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1 specifically requested?

2 MR. DUFF: I have specifically
3 requested to go into certain areas, and it's on the record.

4 THE COURT: You have specifically
5 requested those of me?

6 MR. DUFF: And Mr. Rosenbaum.

7 THE COURT: You're stating that
8 they're exculpatory?

9 MR. DUFF: They are material.

10 THE COURT: Okay.

11 MR. DUFF: Material.

12 THE COURT: All right, proceed.

13 MR. DUFF: And Rosenbaum,
14 Mr. Rosenbaum objected to it, and you sustained the
15 objection and prohibited the inquiry into those areas. And
16 I think, Your Honor, you're telling us, well, we heard it
17 and known about it, but now we can't inquire about it on
18 behalf of our client. I don't know what kind of mental
19 gymnastic we have to do to arrive at that, the conclusion
20 we know about something. It's material and we can't
21 re-inquire into it.

22 THE COURT: Read your own case,
23 Mr. Duff.

24 MR. DUFF: I've read it, Your
25 Honor.

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1 THE COURT: Read your own case,
2 Mr. Duff. That's the mental gymnastics that you have to go
3 over. I've read your case and I've read it carefully and
4 I've highlighted myself at this point.

5 MR. DUFF: Judge, I don't think
6 you can tell us that after we hear something and we know it
7 exists and it's material to guilt, and Judge, what I'd
8 point you to is not the single instance of something I've
9 tried to go into, but the cumulative affect of these things
10 comes like a landslide of material evidence, Judge. It's
11 just the cumulative affect all these things I wanted to go
12 into that Mr. Rosenbaum wanted to go into and you
13 prohibited it. I think, Judge the significance of --

14 THE COURT: If I made a mistake
15 about that, you have no concern. The court of appeals will
16 say I made a mistake. Give it back at this point.

17 MR. DUFF: I know they might do
18 that, Your Honor.

19 THE COURT: I don't think they
20 might. I think they would.

21 MR. DUFF: To that end, I would
22 want the tapes marked and put into evidence for review and
23 that's what --

24 THE COURT: Okay. Finish. Are
25 you finished?

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1 MR. DUFF: That's what we would
2 like to do. We could do that through Detective Leiby at a
3 recess. We could do it --

4 THE COURT: Have you finished
5 there?

6 MR. DUFF: Yes.

7 THE COURT: Mr. Rosenbaum, do you
8 have response to that?

9 MR. ROSENBAUM: Briefly, Your Honor.
10 I think the defense, the record should be clear, the
11 defendant hasn't made a 16(B)(1)(f) argument or Brady
12 argument until this morning, first of all. There can be no
13 doubt about it.

14 Secondly, I think the Court has said the case they
15 have cited, Ohio versus Sawyer, 1995 case out of Franklin
16 County, directly refutes his claim. And their review of
17 the tape clearly says that it does not contain any
18 16(B)(1)(f) material, and therefore, isn't
19 exculpatory.

20 Mr. Duff, I think, confuses the standard of what is
21 Brady material. For the sake of argument, he has attempted
22 to, I would say, nitpick prior statements, and he has been
23 permitted to elicit that first they gave a different
24 statement to Detective Leiby and he says, "You lied to
25 Detective Leiby." But what he fails to point out was that

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1 lie was on behalf of their friend and is not exculpatory in
2 material in any way, shape or form. And in fact, it
3 inculcates his conduct.

4 But I am, myself, am confident the Court has not made
5 an error on this issue and that as the case they cite says,
6 it does not hope it all up just because they have inspected
7 it for cross-examination if the statement is not
8 inconsistent with direct testimony. Otherwise, there would
9 be no limits to 16(B)(1)(g) and they would be entitled to
10 ask about anything to create that inconsistency.

11 THE COURT: Anything further?

12 MR. DUFF: I would agree with
13 the prosecutor; I have been nitpicking. It's my job to
14 nitpick, and I'm going to continue to nitpick, and I think
15 the cumulative affect of this nitpicking is material to
16 guilt.

17 THE COURT: Well, and the Court
18 certainly has taken all of that into consideration. The
19 Court has read your case, has read it thoroughly on two
20 different occasions at this point, and will continue to
21 read it. And at this point, sir, this Court feels that if
22 they were citing anything for its position, it would cite
23 your case for its authority at this point.

24 Quite frankly, I believe that the Court's -- I feel,
25 not I believe. I feel very strongly and believe that the

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1 Court's ruling originally on this thing was correct, and I
2 see no reason to change that at this point. Period.
3 Exceptions granted to you, sir.

4 MR. DUFF: Your Honor, at some
5 point can we have these, Detective Leiby maybe at recess --

6 THE COURT: I'm not at all
7 sure --

8 MR. DUFF: Mark these for the
9 procedure.

10 THE COURT: I want argument on
11 that. I have no personal, no personal feelings on that one
12 way or the other. But that's their work product at this
13 point.

14 MR. DUFF: But, Judge, there's
15 no --

16 THE COURT: I've ruled at this
17 point. Let's talk about it at another time.

18 MR. DUFF: No affect of the
19 appellate reviewing it without them being into the record.

20 THE COURT: Let's bring the jury
21 in. They have been sitting in there for an hour. Bring
22 them in, please.

23 MR. ROSENBAUM: Judge, were we going
24 to talk about inconsistencies?

25 THE COURT: Oh, yeah. What say

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1 you about inconsistencies?

2 MR. WIGHTMAN: Of course, there's
3 substantial inconsistencies, Your Honor, about the
4 testimony and statement of 12-27-94.

5 THE COURT: That's fine, and I
6 grant you that because the last statement was given to
7 correct the first statement.

8 MR. WIGHTMAN: Correct.

9 THE COURT: Okay.

10 MR. WIGHTMAN: Well, of course, we
11 are going to inquire about the first statement as well,
12 Your Honor, as to those inconsistencies.

13 THE COURT: Well, she's corrected
14 them.

15 MR. WIGHTMAN: That's fine. She
16 still made the statement. We are entitled to question her
17 about that.

18 THE COURT: Why she did that,
19 okay.

20 MR. WIGHTMAN: That's substantial --
21 I think her testimony is substantially the same as her
22 second statement, Your Honor.

23 THE COURT: Okay.

24 MR. WIGHTMAN: But we do, again, we
25 are going to ask her questions.

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1 THE COURT: Fine, as along as you
2 don't exceed the limits at this point.

3 MR. WIGHTMAN: We will do our best.

4 MR. DUFF: He's doing it, Your
5 Honor, not me. Let the record reflect that.

6 MR. WIGHTMAN: I'm sure it will.

7 THE COURT: Bring them in.

8 (The following took place without the
9 presence and hearing of the jury.)

10 THE COURT: Good morning again,
11 ladies and gentlemen. I just thought of something, and
12 maybe make it a little more easy. Just think, every time
13 you go in and out like this, it's one less time we are
14 going to have to do it.

15 Mr. Wightman, you may -- as you recall, ladies and
16 gentlemen -- let's bring the, let's bring in the witness
17 too, please. And as you recall, ladies and gentlemen, when
18 we took our adjournment, or our recess, we were in the
19 midst of the cross-examination of this witness.

20 And ma'am, again, please, as close to the mike as you
21 comfortably can, and speak directly into it. Thank you.

22 BY MR. WIGHTMAN:

23 Q. Ms. Fike, I asked you about statements you gave the
24 police; do you recall those questions?

25 A. Yes.

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1 Q. You indicated you gave two taped statements from your
2 recollection?

3 A. Yes.

4 Q. Okay. And do you recall the statement that you gave
5 at your attorney's office?

6 A. Yes.

7 Q. And who's your attorney, ma'am?

8 A. Dennis O'Toole.

9 Q. Okay. And who else was there when you gave that
10 statement?

11 A. Mr. Leiby.

12 Q. Anybody else besides yourself?

13 A. And my attorney.

14 Q. So O'Toole, Detective Leiby and yourself, correct?

15 A. Yes.

16 Q. And who arranged that?

17 A. I believe my attorney and I.

18 Q. All right. So you talked to your attorney about
19 setting up the meeting; is that correct?

20 A. Yes.

21 Q. Now, prior to that, had Detective Leiby gotten ahold
22 of you?

23 A. No.

24 Q. You had no indication he wanted to speak to you?

25 A. Yes, but he had not contacted me directly.

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- 1 Q. Okay. He talked to somebody else?
- 2 A. Yes.
- 3 Q. And they gave a message to you?
- 4 A. Right.
- 5 Q. So when you went to the meeting, were you aware, or
- 6 did you have any prior knowledge that your car might have
- 7 been involved in this homicide?
- 8 A. Yes.
- 9 Q. All right. So you knew that was the issue that was
- 10 going to be discussed, correct?
- 11 A. Yes.
- 12 Q. And you went to the trouble of setting it up through
- 13 your attorney, right?
- 14 A. Yes.
- 15 Q. You wanted it to be done, right?
- 16 A. Correct.
- 17 Q. Okay. Now, again, you recall that date being
- 18 December 27th, 1994?
- 19 A. I don't recall the dates exactly.
- 20 Q. But that was the first taped statement we are
- 21 speaking of, correct?
- 22 A. Yes.
- 23 Q. It would have been just after Christmas of 1994?
- 24 A. Yes, if you're referring to Mr. O'Toole's office, it
- 25 is.

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1 Q. That's correct?

2 A. Yes.

3 Q. Where is attorney O'Toole's office, ma'am?

4 A. Pardon me?

5 Q. Where is attorney O'Toole's office, ma'am?

6 A. Broadway in Lorain.

7 Q. Now, do you recall in that statement that you stated
8 that you loaned the car that prior evening to Tammy Castro
9 and Danny Smith?

10 A. Yes, that's what I initially said.

11 Q. And do you recall telling the Detective and places it
12 on the tape that you gave the car to them about 6:00 or
13 7:00 p.m. that evening?

14 A. Yes.

15 Q. Okay. So that is what you told the Detective the
16 first time, correct, ma'am?

17 A. Yes, I believe so.

18 Q. All right. And you stated that you believe that
19 Tammy needed the car to go to court, correct?

20 A. Yes.

21 Q. All right. Further, and again, I'm pointing out some
22 inconsistencies between your testimony. That you stated
23 that when the car was returned that you were going to take
24 Raymond Smith to the store?

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

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1 Q. Do you recall that statement?

2 A. Yes, I do.

3 Q. That's what you told the police, correct?

4 A. Yes, I did.

5 Q. And that's when you noticed that the car was covered
6 with ice?

7 A. Yes.

8 Q. Is that right?

9 A. Yes, sir.

10 Q. Now, let's stop there for a minute. You did not loan
11 the car to Tammy and Danny; is that correct?

12 A. That is true, yes.

13 Q. The original statement you gave Officer Leiby was not
14 correct?

15 A. That's right.

16 Q. You were mistaken about that?

17 A. Yes.

18 Q. And they did not, Danny Smith did not have the car
19 the evening before this homicide?

20 A. No, sir.

21 Q. All right. And how about the next morning, were you
22 mistaken that you took Ray to the store?

23 A. I was scared.

24 THE COURT: No, the question is
25 were you mistaken that you took Raymond to the store?

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1 A. Yes, I was.

2 Q. That's not a true statement either?

3 A. That's right.

4 Q. Now, you started to say you were scared. Were you
5 scared when you gave Detective Leiby the statement?

6 A. Somewhat, yes, I was.

7 Q. So you were intentionally lying?

8 A. No. After I had thought about what I said to
9 Detective Leiby and went home and started thinking about
10 what had happened, I realized I had the wrong dates because
11 they used my car on other occasions. That's what happened.

12 Q. You were just mistaken?

13 A. That's --

14 Q. You weren't afraid? You weren't trying to cover up
15 anything?

16 A. Oh, no, absolutely not.

17 Q. All right. Anyway, you stated also now in your
18 direct testimony you stated that Stan, you don't loan your
19 car to Stan; is that correct?

20 A. No, I do not.

21 Q. Okay. And if Brian -- who is Brian Howington?

22 A. My nephew.

23 Q. Your nephew, was he living with you at this time?

24 A. Yes.

25 Q. If he testified that you did loan the car to Stan,

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- 1 that would have been incorrect then?
- 2 A. I guess it would be.
- 3 Q. You're sure you didn't loan it to Stan?
- 4 A. No, I didn't.
- 5 Q. Let's jump ahead then. The car was impounded in
- 6 April?
- 7 A. I don't recall the dates, sir.
- 8 Q. It was impounded two times?
- 9 A. Yes.
- 10 Q. And the first time it was impounded, Stan was driving
- 11 the car?
- 12 A. Yes, he was.
- 13 Q. That was after the incident we are speaking of, the
- 14 homicide, correct, ma'am?
- 15 A. No, I believe it was before.
- 16 Q. Before the homicide incident?
- 17 A. I don't recall the dates correct, sir.
- 18 Q. Well, you should be able to remember the sequence of
- 19 events, correct?
- 20 A. It was before.
- 21 Q. Before the homicide?
- 22 A. (Witness nods head.)
- 23 Q. Stan was picked up driving your car?
- 24 A. Yes.
- 25 Q. And what was he charged with?

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1 A. Drug abuse. I'm not sure.

2 Q. Okay. So you're saying before this homicide, January
3 of '94, Stan was picked up driving your car and charged
4 with drug abuse?

5 A. I believe so.

6 Q. Okay. So your car was impounded, correct?

7 A. Yes.

8 Q. How long was it impounded?

9 A. About a year. Quite a while. Nine months.

10 Q. When did you get the car out?

11 A. I don't remember the exact date, sir.

12 Q. So it's your testimony today that Stan did not have
13 permission to drive your car, but he was picked up at least
14 nine months before the homicide driving your car --

15 A. Yeah.

16 Q. -- is that right? So he did have your permission to
17 take it?

18 A. No, he didn't.

19 Q. The car was impounded for nine months, correct?

20 A. Yes.

21 Q. And even though all of that happened, your nephew
22 Brian Howington allowed Stan to take your car again?

23 A. After that, sir, I wasn't home.

24 Q. Who impounded the car the first time that we just
25 spoke up?

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- 1 A. Elyria Police.
- 2 Q. Do you know why it was impounded?
- 3 A. I believe from Stan getting charged with drug abuse,
4 and he doesn't have a driver's license.
- 5 Q. But you eventually, obviously, got it out, correct?
- 6 A. Yes.
- 7 Q. Did you have to pay storage for that?
- 8 A. Absolutely.
- 9 Q. Was it expensive?
- 10 A. Yes, it was.
- 11 Q. And again, was that about the same time that Danny
12 Smith purchased tires for your car?
- 13 A. No, he purchased tires for my car in April.
- 14 Q. Of what year, ma'am?
- 15 A. '94.
- 16 Q. So it was before the homicide or after the homicide?
- 17 A. After the homicide, yes.
- 18 Q. About four months afterwards?
- 19 A. Yes.
- 20 Q. Now, the car was used by Danny frequently; is that a
21 correct statement?
- 22 A. Yes.
- 23 Q. But not by Stan frequently?
- 24 A. I did not give it to him, no.
- 25 Q. Okay. Well, did other people let Stan drive the car?

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- 1 A. When he got arrested, yes, that's how it occurred.
- 2 Q. And also the night of the homicide, correct?
- 3 A. Yes.
- 4 Q. Any other times that you're aware of that Stan drove
- 5 it?
- 6 A. No.
- 7 Q. So if other people he said drove it frequently, they
- 8 would be mistaken then?
- 9 A. It would not be common knowledge to me.
- 10 Q. Just the two times that there happened to be criminal
- 11 action involved, correct?
- 12 A. Yes.
- 13 Q. Stan had the car on those two occasions?
- 14 A. Yes.
- 15 Q. In the time -- okay. Talking about the tires. You
- 16 say Danny replaced the tires on the car, right?
- 17 A. Yeah.
- 18 Q. The front tires only?
- 19 A. Yes.
- 20 Q. They were worn out, weren't they?
- 21 A. Yes.
- 22 Q. And Danny had been driving the car?
- 23 A. Yes.
- 24 Q. So he did it to replace worn out tires; is that
- 25 correct?

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1 A. Yes.

2 Q. The rears were not replaced?

3 A. No.

4 Q. They were in better condition, weren't they?

5 A. Yes.

6 Q. Did you tell the police that?

7 A. Yes.

8 Q. And that would have been at least several, three,
9 four months after the homicide?

10 A. Yes.

11 Q. All right. Now, the car was impounded then a second
12 time, correct, in relation to this case?

13 A. Yes, sir.

14 Q. Is that a correct statement? Do you recall when that
15 was?

16 A. Possibly November.

17 Q. Of what year, ma'am?

18 A. I believe it was '95.

19 Q. Okay. How long was the car impounded?

20 A. Couple months.

21 Q. Was it impounded when you gave your statements to the
22 police?

23 A. Yes.

24 Q. Okay. And is it a correct statement that you were
25 trying to cooperate with the police in some hope of getting

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1 your car back?

2 A. No, I just wanted to do the right thing.

3 Q. You had no interest in getting your car back?

4 A. Absolutely.

5 Q. Did you feel that cooperation like you gave would
6 help you get the car back?

7 A. Yes.

8 Q. Okay. That's all I'm asking.

9 A. Okay.

10 Q. Now, you gave a second statement to the police on
11 January 11th of '95?

12 A. Yes.

13 Q. About roughly two weeks after your first statement?

14 A. Yes.

15 Q. Does that sound correct? Roughly one year after the
16 homicide event?

17 A. Yes.

18 Q. Okay. And in that second statement, you corrected
19 the issue about who took your car, right?

20 A. Yes, sir.

21 Q. You had found out through other people that Brian
22 gave your car to Stan; is that right?

23 A. Yes.

24 Q. So the fact you then knew you didn't loan the car to
25 Danny that night, correct?

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1 A. Yes, that's correct.

2 Q. You told the police that. Now, it's a fact, ma'am,
3 that after -- well, do you know when the car returned the
4 night of the homicide, January 19th?

5 A. It was early in the morning, like five or six o'clock
6 in the morning.

7 Q. Okay. You were awake or asleep?

8 A. I was awake.

9 Q. You got home about 3:30, I think you stated?

10 A. 2:30, yeah, something like that, sir.

11 Q. You been up all that time?

12 A. Uh-huh.

13 Q. You doing drugs at that time?

14 A. Uh-huh.

15 Q. Who were you doing the drugs with?

16 A. Myself and Brian.

17 Q. Okay. Was it crack cocaine?

18 A. Yes, sir.

19 Q. Fair statement that you basically smoke crack all
20 night that night?

21 A. Yes, sir.

22 Q. And then when they came home, Ray went to get more
23 drugs, correct?

24 A. Yes.

25 Q. You drove him?

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- 1 A. Yes, I did.
- 2 Q. So that's the reason you went to Danny's apartment,
- 3 correct?
- 4 A. Yes.
- 5 Q. All right. You didn't go in?
- 6 A. No, sir.
- 7 Q. Ray went in and came out, right?
- 8 A. Yes.
- 9 Q. You drove home again?
- 10 A. Yes.
- 11 Q. Correct?
- 12 A. Yes, sir.
- 13 Q. You smoked more crack then?
- 14 A. Yes, I did.
- 15 Q. And Stan was smoking crack with you, too?
- 16 A. Yes, he did.
- 17 Q. Does Brian continue to party with you guys?
- 18 A. I don't remember, sir.
- 19 Q. When did all of that end?
- 20 A. I guess when the drugs were gone.
- 21 Q. Well, do you know when, though?
- 22 A. No, I don't recall.
- 23 Q. So it was, it was a party, right?
- 24 A. Yeah.
- 25 Q. Okay. And again, it's Stan and yourself and Brian

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1 and Ray Smith, right?

2 A. Yes.

3 Q. And isn't it a fact, ma'am, that during that whole
4 time that they never mentioned anything about the homicide?

5 A. Correct.

6 Q. Didn't talk about it at all?

7 A. No.

8 Q. Now, you didn't actually, you've testified that you
9 gave, you allowed people to use your car other than Danny,
10 right?

11 A. Yes.

12 Q. And these were informal arrangements? You didn't
13 charge them rent, did you?

14 A. Occasionally, yes.

15 Q. Okay. Did you charge Danny rent?

16 A. Yeah.

17 Q. Isn't it a fact, ma'am, that what would really happen
18 is you would basically get high and you wouldn't care if he
19 borrowed your car or not?

20 A. Absolutely.

21 Q. So when you say you rented it for drugs, the fact is
22 you just let him use the car, right?

23 A. Yeah.

24 MR. WIGHTMAN: Excuse me one
25 moment, Your Honor.

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1 (Discussion between defense counsel held
2 off the record.)

3 BY MR. WIGHTMAN:

4 Q. Now, Ms. Fike, correct statement that you're somewhat
5 confused about the times and the dates of the various
6 events in this case?

7 A. Yes, sir.

8 Q. Correct?

9 A. Yes.

10 Q. If I told that you the car was impounded the first
11 time after the homicide, would that be correct; do you
12 think?

13 A. I don't recall.

14 Q. You really don't recall that?

15 A. No, I don't, sir.

16 Q. You don't recall if the car was impounded the first
17 time after the homicide, but before the tires were changed
18 do you?

19 A. I'm sorry, could you repeat that?

20 Q. Sure. You can't recall, can you, if the car was
21 impounded the first time, and again, that's when Stanley
22 got picked up for the drug offense, after the homicide, but
23 before the tires were changed?

24 A. I believe the first time it was impounded was before
25 the homicide.

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1 Q. But you're not sure?

2 A. No, I'm not.

3 Q. You already indicated that previous testimony you
4 weren't sure about the dates, correct?

5 A. Correct.

6 Q. That's a correct statement?

7 A. Yes.

8 Q. Well, you're also then not sure about when the tires
9 were changed, are you?

10 A. I believe it was sometime in April, because I
11 remember the weather was warming.

12 Q. But you don't know what year, do you?

13 A. No.

14 Q. So you don't have a receipt or anything --

15 A. No.

16 Q. -- to indicate when the tires were changed?

17 A. No. No, sir, I don't.

18 Q. So you don't know whether it was '94 or '95 that the
19 tires were changed, right?

20 A. I believe it was '94.

21 Q. '94. Now, you were asked some questions, when you
22 testified in the Stanley Jalowiec case, concerning this
23 matter. Do you recall any of those basic questions?

24 A. Yes.

25 Q. And page 240 of the transcript. I'll start on 239.

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1 Do you remember the question, "Okay, you indicated the
2 front tires were changed by Danny on the front of your car,
3 not all four, right?" And your answer was, answer was,
4 "Yes." Do you recall that?

5 A. Yes.

6 Q. Next question, "Was that in April?" You said, and
7 your answer was, "Yes." The next question, "Do you recall,
8 do you recall from that time that that was before or after
9 the police impounded it the first time?" Do you recall
10 that your answer was, "I don't recall"?

11 A. Yes.

12 Q. Next question, "You don't know if they had impounded
13 it first and then you got it back, the tire change was done
14 and then they impound it again, you don't know if that's
15 the way it occurred?" And your answer was, "I don't
16 recall." Would you like to read it yourself?

17 A. No, what's the question was, sir.

18 Q. Was that your testimony?

19 A. Yes.

20 Q. So you don't recall if it was impounded first and
21 then you got it back and then the tires were changed?

22 A. I don't recall the dates.

23 Q. No, no. That's not the question that was asked you,
24 ma'am. Listen very carefully. Do you recall if they
25 impounded it first you got it back then the tires were

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1 changed and then they impound it again; do you recall that?

2 A. No.

3 Q. So you don't know?

4 A. No.

5 Q. Thank you, ma'am.

6 THE COURT: Anything further,

7 Mr. Wightman?

8 Q. Do you know where the tires were changed at, ma'am?

9 A. No, sir.

10 Q. You have no record of when it was done, though?

11 A. No.

12 MR. WIGHTMAN: Thank you, nothing
13 further.

14 THE COURT: Mr. Rosenbaum.

15 REDIRECT EXAMINATION OF JOANN CORRINE FIKE

16 BY MR. ROSENBAUM:

17 Q. Did you have to pay the defendant for drugs?

18 A. Not always, no.

19 Q. And when you didn't pay him, what happened?

20 A. He would use my car.

21 MR. ROSENBAUM: I have no other
22 questions.

23 THE COURT: Wightman.

24 RE CROSS-EXAMINATION OF JOANN CORRINE FIKE

25 BY MR. WIGHTMAN:

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1 Q. Did he use your car when you did pay him for drugs?

2 A. No.

3 Q. So it was only when you didn't pay him?

4 A. Yes.

5 Q. I thought you testified you'd basically get high and
6 you didn't care if he used your car or not?

7 A. I always got something for it.

8 Q. You always got something for it?

9 A. Yes.

10 MR. WIGHTMAN: I have nothing
11 further.

12 MR. ROSENBAUM: I have no other
13 questions.

14 THE COURT: Thank you, ma'am, you
15 may step down. Next witness, please.

16 (Witness excused.)

17 MICHAEL SMITH

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, make yourself
22 comfortable. Adjust that mike so you speak directly into
23 is it. Okay, thank you.

24 DIRECT EXAMINATION OF MICHAEL SMITH

25 BY MR. ROSENBAUM:

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- 1 Q. State your name, please, sir.
- 2 A. Michael Smith.
- 3 Q. How old are you, Michael?
- 4 A. Thirty.
- 5 Q. Do you know the defendant in this case?
- 6 A. Yes, I do.
- 7 Q. How do you know him, sir?
- 8 A. He's my brother.
- 9 Q. Do you have any other brothers?
- 10 A. Yes, I do.
- 11 Q. How many?
- 12 A. One.
- 13 Q. How many sisters do you have?
- 14 A. Two.
- 15 Q. Do you know a person by the name of Raymond Smith?
- 16 A. Yes, I do.
- 17 Q. Who is Raymond Smith, sir?
- 18 A. My father.
- 19 Q. Do you know Stanley Jaloweic?
- 20 A. Yes, I do.
- 21 Q. How do you know Stanley?
- 22 A. He was a friend of my brothers.
- 23 Q. Do you know for how long you knew Stanley?
- 24 A. Probably about three years.
- 25 Q. Where are you living right now, sir?

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- 1 A. Right now I'm in the city jail.
- 2 Q. Why?
- 3 A. Probation violation.
- 4 Q. When did you first violate your probation?
- 5 A. Back in early part of August.
- 6 Q. And where did you go when that happened?
- 7 A. I left and went to Arizona.
- 8 Q. Was there a warrant for your arrest?
- 9 A. Yes, there was.
- 10 Q. Were the police looking for you?
- 11 A. Yes, they were.
- 12 Q. Did you finally turn yourself in?
- 13 A. Yes, I did.
- 14 Q. When was that?
- 15 A. March the 12th.
- 16 Q. Was that before or after your father's trial?
- 17 A. After my father's trial.
- 18 Q. Was it the day of Stanley's trial or during Stanley's
- 19 trial?
- 20 A. During.
- 21 Q. When did you turn, to whom did you turn yourself in?
- 22 A. Sergeant Marvin Crossin of the Rope Unit, Cleveland
- 23 Rope Unit.
- 24 Q. He's with the Cleveland Police Department?
- 25 A. Yes.

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1 Q. Did you know a person by the name of Ron Lally?

2 A. Yes.

3 Q. How is it that you knew him?

4 A. I had met him the night of his death.

5 Q. Did you know him before that?

6 A. No, I didn't.

7 Q. Were you present during the events that led to his
8 death?

9 A. Yes, I was.

10 Q. Did you tell anyone right away about what you saw or
11 heard that night?

12 A. No, I didn't.

13 Q. Why?

14 A. I just, I was scared.

15 Q. Scared of what?

16 A. Just scared of what could happen.

17 Q. Why is it that you decided finally to tell?

18 A. It just, it was, I mean, I was holding this in for
19 over a year-and-a-half and it really just bothered me
20 really bad. I couldn't deal with it anymore.

21 Q. When you say it bothered you really bad, what
22 happened?

23 A. I was having nightmares, flashbacks, I was using
24 drugs. My drug usage got real expensive during this. It
25 got real bad.

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1 Q. Were you having mental health problems?

2 A. Yes, I was.

3 Q. Did you go to a hospital?

4 A. Several times.

5 Q. Did you try to take your own life?

6 A. Yes, I did.

7 Q. Had you had mental health prior to this happening?

8 A. Once prior.

9 Q. As a result of all of this, what did you decide to
10 do?

11 A. As far as?

12 Q. The homicide?

13 A. I mean, as far as what I tried to myself or?

14 Q. No. Did you make a decision to come forward then?

15 A. I called Detective Leiby and I gave a statement to
16 him.

17 Q. Why?

18 A. Because I just couldn't deal with it no more.

19 Q. Did you want to testify against your father?.

20 A. No, I didn't.

21 Q. Do you want to testify against your brother?

22 A. No, I don't.

23 Q. Can you tell the Court and jury the events of the
24 evening that led up to the death of Ron Lally?

25 A. The night of the Ron Lally's death, I was downtown, I

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1 was going from bar to bar for a while. It was about
2 2:00-2:30, and I went over to Mom's Open Kitchen. There, I
3 had met my father Raymond and my brother Danny and his
4 girlfriend Tammy. We all sat there and we ate.

5 My father had gotten up to use the phone and he had
6 came back, like, three or four minutes later. He had asked
7 my brother, you know, to give him a ride, and he asked me
8 me if I wanted to go and I told him, "Sure."

9 Q. When you say your brother, you mean the defendant?

10 A. Danny.

11 Q. The defendant, Danny?

12 A. Yeah. So when we all left, me, my father, my brother
13 Danny left, and at that point my father had told Danny, you
14 know, where we were going, and he dropped us off at Middle
15 Avenue.

16 Q. Did you know where you were going prior to this?

17 A. No, I didn't.

18 Q. Where did you think you were going?

19 A: I didn't -- you know, he didn't say where we were
20 going. I thought maybe we were just going over a friend's
21 house or something.

22 Q. So Danny drove?

23 A. Yeah.

24 Q. Whose car was it; do you know?

25 A. It was his car.

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- 1 Q. And where did you go?
- 2 A. We went on Middle Avenue.
- 3 Q. Where on Middle; do you know?
- 4 A. It was South Middle, past Wood Street, past the
- 5 tracks, and it was out by a house.
- 6 Q. Did you know who lived in that house?
- 7 A. No, I didn't.
- 8 Q. Do you have an aunt that lives near there?
- 9 A. No, not near where we were, no.
- 10 Q. Do you have an aunt that lives in Wilke's Villa?
- 11 A. No.
- 12 Q. Where does your aunt live that's anywhere near that?
- 13 A. She stays in my great-grandmother's house that's on
- 14 Middle.
- 15 Q. Where on Middle?
- 16 A. Right by Middle and Fuller Road.
- 17 Q. Did you go past that?
- 18 A. Yes, we did.
- 19 Q. What was the weather like on this night?
- 20 A. It was cold, snowing.
- 21 Q. Was it just normal winter weather?
- 22 A. It was, it was pretty cold out that night.
- 23 Q. So you went out past the tracks on Middle Avenue?
- 24 A. Yes.
- 25 Q. Did Danny stop the car somewhere?

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1 A. Yes. My father had him stop the car and we got out,
2 and then Danny left. About 15 minutes later another car
3 pulled up, a blue Lebaron which I knew to be Queen Bee's
4 car. And I got in. I got in on the passenger side in the
5 back, Stan Jaloweic was driving, and there was another guy
6 in the car and my father made him get in the back of the
7 car.

8 Q. Now, prior to this Queen Bee's car showing up, did
9 you ask your dad what you were doing there?

10 A. I was asking and he said we were waiting on somebody
11 to pick us up, and so I was, like, okay, you know. And so
12 dad made the guy get out of the car and get in the back.
13 He got in the car. So I'm in the back seat behind Stan
14 Jaloweic, driver, and the other guy was sitting behind my
15 father on the passenger side.

16 Q. Ron Lally?

17 A. Yeah, Ron Lally.

18 Q. He's next to you in the back seat?

19 A. Right.

20 Q. Stanley's driving?

21 A. Yes.

22 Q. And your dad is seated where?

23 A. He's in the passenger seat.

24 Q. In the front?

25 A. In the front.

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1 Q. What happens next?

2 A. So then we are driving and dad pulled out a gun and
3 told Ron, "Don't make no stupid moves," and looked me and
4 said, "Do you know who this was?" I said, "No." He told
5 me who it was. "This is Ron Lally. This the one that set
6 your brother up."

7 And at that point I just, you know, really was
8 nothing much I could say. So dad had said to Ron that, you
9 know, "Well, we are going to take you to Cleveland and put
10 you on a bus and get you out of town, you know, before the
11 trial, and we don't want you coming back. We are going to
12 give you some money, give you some drugs, and you're going
13 do leave town." And Ron said he didn't have a problem with
14 that.

15 Q. Prior to that, did he accuse Ron, other than that
16 statement you made, of being the person that set your
17 brother up?

18 MR. WIGHTMAN: Object to the
19 leading, Your Honor.

20 THE COURT: Sustained. Ask it
21 another way.

22 Q. Prior to that, was there any other conversation about
23 Lally being an informant?

24 A. Dad had asked Ron, you know, "Why did you set my son
25 up?" And Ron said, "I didn't do it. You know, it wasn't

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1 me." And Dad wasn't accepting that answer. And so they
2 went back and forth with it for a couple minutes, and Ron
3 finally broke down and told Dad, "Yeah, I was the one that
4 did it." And you know, he told Dad, "I'm sorry. I didn't
5 mean to. I was angry," or something he was saying.

6 And so that's when Dad told him, "We are going to
7 take you Cleveland, put you on a bus, and get you out
8 before the trial. We don't want you coming back." And
9 Ron, he said didn't have a problem with that. And Dad
10 asked Ron, "Was there any place in particular you wanted to
11 go?" And you know, Ron had said, had gave him some place.
12 I can't remember where it was.

13 And so we went back through town and we went down
14 West River, and we stopped over on David Drive and Dad
15 pulled up, I'm sorry, Stan pulled up in front of a car that
16 was already parked there. And they had their headlights
17 on, so I really couldn't see because I was in the back
18 seat. And Dad said he was going to get more dope.
19 And he got out of the car and walked over to this bar and
20 he was over there for, I don't know, a couple minutes, and
21 then he came back to the car, then we proceeded down West
22 River.

23 Q. Who lives on David Drive?

24 A. My brother did at the time.

25 Q. Danny?

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1 A. Danny did.

2 Q. So then what happened?

3 A. So then we got back on West River and we went towards
4 235 4 or North Ridge Road, you know.

5 Q. Did your dad have more drugs?

6 A. Yes.

7 Q. And did you guys do these drugs?

8 A. Not at that point.

9 Q. Okay, go ahead. Then?

10 A. So we stopped at Speedway and Dad had went in the
11 store and had got some cigarettes and some beer, and I paid
12 for some gas, put some gas in the car, and we got on the
13 highway. And at that point we were, you know, drinking and
14 smoking dope, you know, all the way to Cleveland.

15 Q. Was everybody pretty comfortable at that point?

16 A. Yeah. At that point everything seemed to be okay,
17 because everybody pretty much knew what was supposed to
18 have happened.

19 And we went, we got into Cleveland and Dad said that
20 he wanted to go up in East Cleveland and get some more
21 drugs. So we go up towards East Cleveland, Ohio and we got
22 to Euclid and Superior. No, it was a little farther than
23 that. No, it was about Euclid and Superior. And we seen,
24 I seen it was either fire trucks or police cars, because
25 there was a bunch of flashing lights. So then, you know,

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1 Stan turned the car around and then I told him to head back
2 towards town.

3 So at this point, you know, I'm figuring, you know,
4 we are on our way to the bus station. We get down to,
5 like, 53rd and 55th, and I think it was 55th and Superior,
6 and Dad told Stan to turn, make a turn and go back up
7 toward Woodland. So Stan goes back up toward Woodland.
8 And we got to the cemetery about 69th and Woodland and Dad
9 told Stan to turn into the cemetery. Stan did what Dad
10 told him to do and pulled up in there.

11 Stan stopped the car, Dad got out of the car, pulled
12 the pistol out, put it in Ron's face and told Ron to get
13 out of the car. And at that point I just, I knew right
14 then and there Ron wasn't getting back in that car. And
15 you know, I heard Ron saying, you know, "I ain't going to
16 testify. I won't say nothing. I won't say nothing.
17 Please don't kill me. Please don't kill me.

18 All I heard, the last thing I heard was Dad told him,
19 "You're going to tell nobody else." And that's when the
20 gunshot went off. And then I heard Ron say, "You shot me
21 in my head. You shot me in my head." And Dad had told
22 this gay guy to help. I couldn't move.

23 And Stan got out, and I could hear what was going on.
24 I could hear them beating this guy, and you know, Dad had
25 asked Stan if he had a knife. Stan told him, "No." He

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1 said there was some on the key chain. Stan came back to
2 the car and got the keys.

3 And a couple minutes later I heard him pop the trunk,
4 and you could feel them trying to put something in the
5 trunk. And one of them said that it, "He won't fit." So
6 they dropped the body and Stan and Dad got back in the car,
7 and Stan ran into Ron's body about three times before we
8 pulled out of that cemetery.

9 Q. Well, did he run into it or back into it?

10 A. Well, he put it in drive, pulled up, and then put it
11 in reverse and backed to it.

12 Q. At what rate of speed?

13 A. It wasn't, it wasn't real fast because he didn't have
14 that much room, but it was, it was enough as to where the
15 car had hit and shook. And he did that three times. And
16 then we pulled out and we were getting ready to get back on
17 the highway, me and Dad got into an argument.

18 Q. What about?

19 A. Because he asked me why didn't I get out, and I
20 just --

21 Q. Why did he think you should have gotten out?

22 MR. WIGHTMAN: Objection, Your
23 Honor, to that.

24 THE COURT: If you know. I don't
25 know that it's within his possibility to know what he

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1 thought.

2 Q. Did he express to you why you should have helped?

3 A. He just said something about, you know, "This was for
4 your brother," and you know, I just, that wasn't a good
5 enough reason for me, you know.

6 Q. So he expressed his anger that you didn't get out to
7 help?

8 A. Yes.

9 Q. Then what happened?

10 A. So as we were going down the highway, Dad took the
11 gun and took it apart, and he was throwing pieces out of
12 the car, like, every couple miles. We get back to Elyria
13 and Dad drops me off at my brother's, and you know, I go
14 upstairs and knocked on the door, and my brother let me in.
15 And I just laid down and my brother went back to bed and
16 nothing was said.

17 Q. Which brother?

18 A. Danny.

19 Q. You went to Danny's house?

20 A. Yeah, because that's where I was staying at the time.

21 Q. Then what happened?

22 A. Next morning, it was like the latter part of the
23 morning, my father, I can't remember whether my father
24 called or paged my brother, but my brother told me that Dad
25 wanted to see him. And you know, he got up and we went

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1 over Queen Bee's house and Queen Bee was standing outside,
2 I was standing out there with her and my dad. My brother
3 said, "I'm going to get Dad," and Queen Bee was asking me,
4 you know, because she was looking at her car, and she said,
5 "Where did this blood come up from?" And I said, "You
6 don't want to know. Don't ask." And I left it at that.

7 And Dad and Stan and Danny came out, and we all got
8 in the car and went back over to his house. I can't
9 remember exactly, you know, what all happened, but I know
10 that my mother and my wife came over and they were telling
11 me that --

12 MR. WIGHTMAN: Objection. Hearsay,
13 Your Honor.

14 THE COURT: Sustaine.

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

17 THE COURT: Mr. Wightman.

18 MR. WIGHTMAN: Thank you.

19 CROSS-EXAMINATION OF MICHAEL SMITH

20 BY MR. WIGHTMAN:

21 Q. Good morning, Michael.

22 A. Good morning.

23 Q. How are you today?

24 A. I'm all right.

25 Q. Now, Michael, you testified that you were kind of

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1 gone for a while, right?

2 A. Yes.

3 Q. Until August to March, August of '95 to March of this
4 year you were out of state?

5 A. No, I was out of state from August until February.

6 Q. Okay, February. But prior to that, you did speak
7 with Detective Leiby about what happened, right?

8 A. Yes.

9 Q. Okay. Did you give a statement to Detective Leiby?

10 A. Yes, I did.

11 Q. And other police officers as well?

12 A. Yes.

13 Q. And how many statements did you give, Michael?

14 A. I can't -- one, two. I think two at the, two or
15 three at the most.

16 Q. All right. Were they taped statements?

17 A. Yes, they were.

18 Q. Do you know if you made any written statements?

19 A. Did I write any statements?

20 Q. Uh-huh, correct.

21 A. I don't remember.

22 Q. Where you have to sign anything, any statements?

23 A. I can't remember.

24 Q. But you gave two statements, correct?

25 A. As far as I know.

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1 Q. And they were taped?

2 A. Yes.

3 MR. WIGHTMAN: All right. Your
4 Honor, we would ask to have those inspected, please.

5 THE COURT: Ladies and gentlemen,
6 we've come to that point again, but I think at this stage,
7 rather than keep you in your room, I'm going to send you to
8 lunch at this point. I anticipate that there's some work
9 to be done, going to take a while to get these at this
10 point.

11 Let's take our lunch hour at this point and return at
12 1:30, okay. That should give me a nice long lunch hour,
13 give you an opportunity to go home if you want at this
14 point.

15 Ladies and gentlemen, again, the admonitions that
16 I've talked to you, that I said to you and mentioned to
17 you, please do not talk to anybody, do not let anybody talk
18 to you, do not talk to yourselves, amongst yourselves at
19 this point, do not read anything, do not let anybody read
20 anything to you about this. And with those admonitions, we
21 will take our noon recess and reconvene again at 1:30.

22 (The jury was excused for the noon recess.
23 Whereupon, argument was had.)

24 * * *

25 (The following took place within the

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1 presence and hearing of the
2 jury.)

3 THE COURT: Good afternoon,
4 ladies and gentlemen. Ladies and gentlemen, when we broke
5 for lunch, I indicated that I wanted you back at 1:30 and
6 it was, you folks just left too fast, okay. Just got out
7 of here too quick, because by the time we were able to do a
8 little bit of discussing in here, you were gone.

9 Ladies and gentlemen, the indication is that these
10 tapes that were to be played before this individual
11 continues his testimony is going to take in the vicinity of
12 three plus hours, and if we look at the clock right now and
13 we add three hours to that, we are way beyond our time at
14 this point. So I am going to send you home today, and
15 rather than let you sit around in that jury room of yours
16 and what have you and get bored to death and what have you,
17 I think about the best thing for me is to send you home and
18 bring you back tomorrow after this housework has been
19 completed.

20 Ladies and gentlemen, the admonitions I've given you
21 about discussing this amongst yourselves, letting anybody
22 discuss it. I know there's something in the newspaper
23 every day, something in the newspaper every day. Please do
24 not read anything about it at this point. Do not let
25 anybody read with you, do not discuss this matter with your

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1 family, do not call each other up, talk to each other on
2 the phone, not that you would, about this or anything like
3 that. And please return tomorrow morning at 8:15.

4 I think at this time I think we are -- I said to you
5 yesterday I see some light at the end of the tunnel. I see
6 a little bit more light at the end of this tunnel with this
7 one long recess that we got here. And the best thing for
8 us to do is to keep sending you about your business at home
9 and then bring you back tomorrow, rather than just keep you
10 here.

11 Barbara, do we have a shuttle?

12 BAILIFF: It's out there.

13 THE COURT: We have a shuttle to
14 take you to your car. It's inclimate. With the
15 admonitions I've given to you, have a very nice day and we
16 will see you tomorrow morning.

17 (Whereupon, a discussion was had
18 concerning the presence of the defendant
19 during the playing of the tapes. The
20 defendant gave his consent for his
21 attorneys to listen to the tapes without
22 his presence, and the Court adjourned for
23 the day.)

24 * * *

25 (Wednesday, April 24, 1996 at 9:20 a.m.)

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1 (Whereupon, discussion was had concerning
2 the consistency or inconsistency of the
3 taped statements of Michael Smith.)

4 * * *

5 THE COURT: Good morning, ladies
6 and gentlemen. Ladies and gentlemen, there are a couple of
7 things that I'd like to address the jury on this morning.
8 I am getting somewhat of a concern that you folks may be
9 getting a wrong impression as to the delays that we have
10 encountered throughout this matter.

11 There have been a lot of what we call, and what the
12 profession calls, in-camera inspections. These inspections
13 are a built-in part of the system. It's something that
14 needs to be done, and needs to be done in the manner in
15 which it is done. Nobody, but nobody, myself, State,
16 defense, likes delays. They would much prefer to get in
17 and get it done and get out.

18 Unfortunately, the system does not lend itself for
19 that. We can't do anything about that, the system, and we
20 have to follow the rules, or attempt to follow the rules,
21 as closely as we possibly can.

22 Please, ladies and gentlemen, do not infer anything
23 as to why these delays have occurred. Do not keep a clock
24 on us, saying that we were in session eight hours and only
25 had three hours of testimony. If that be the case, that is

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1 the case. I don't doubt that. I don't doubt that. But
2 nobody is to be the blame, is to be blamed for this,
3 because that is the way, that's the way the system's been
4 designed to work. Sometimes more cumbersome. In this case
5 probably more, more so than any other case I've been
6 involved in. That's the way it has to work, it has to
7 work.

8 So please, ladies and gentlemen, do not infer
9 anything about this. Do not punish, if that's the correct
10 word, and I don't know that it is, anybody, myself
11 included, myself included, for these delays. Nobody likes
12 them. Nobody wants them. But we have to live with them.
13 And that's all I need to say to you about that at this
14 point.

15 Now, one other thing, and this goes to the, this goes
16 to the audience. It's been reported to me yesterday that
17 there have been some facial expressions made, there have
18 been moving of heads, and there have been some
19 conversation. Now, those of you who sat in on the last
20 trial know how tough I can get about that and how tough I
21 do get about it. I'm giving you one warning. That warning
22 is that none of that is to occur, and if it is reported to
23 me that it does occur, I'll clear the courtroom. I will
24 clear it. Guilty or not guilty, I will clear it. And that
25 is not a threat; that is a promise. Do we understand each

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1 other? Very well.

2 Barbara, please bring in the jury. The jury's here.
3 The defendant, please.

4 BAILIFF: It's the witness.

5 (The witness took the stand.)

6 THE COURT: Good morning,

7 Mr. Smith.

8 THE WITNESS: Good

9 morning.

10 THE COURT: Mr. Smith, I will
11 remind you, sir, that you are still under oath in this
12 matter.

13 THE WITNESS: Yes, sir.

14 THE COURT: I will remind the
15 jury that when we did adjourn yesterday, we were in the
16 midst of the cross-examination of Michael Smith.

17 And Mr. Wightman, you may proceed with your
18 cross-examination, sir.

19 MR. WIGHTMAN: Thank you, Your
20 Honor.

21 CONTINUED CROSS-EXAMINATION OF MICHAEL SMITH

22 BY MR. WIGHTMAN:

23 Q. Michael, it's okay if I call you Michael, isn't it?

24 A. Yes.

25 Q. You indicated yesterday that you gave several

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1 statements -- well, strike that.

2 You indicated yesterday you gave a taped statement to
3 Detective Leiby, correct?

4 A. Yes.

5 Q. And you gave a deposition in this case, Michael?

6 A. Correct.

7 Q. And do you recall that deposition, sir?

8 A. Yes.

9 Q. And you were placed under oath at that time?

10 A. Yes, I was.

11 Q. Okay. And was that statement you gave at that time
12 taken down by a court reporter?

13 A. Yes, it was.

14 Q. Okay. And were you questioned by Prosecutor
15 Rosenbaum?

16 A. Yes, I was.

17 Q. And you were also subject to questioning by Mr. Duff
18 and some other lawyers, correct?

19 A. Yes.

20 Q. In other words, that was very similar to a trial
21 situation, right?

22 A. Yeah.

23 Q. You were questioned, you were under oath; is that
24 correct?

25 A. Right. Yes.

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1 Q. And you took an oath at this time to tell the truth,
2 sir?

3 A. Yes.

4 Q. Just as you did today?

5 A. Yes.

6 Q. And finally, Mike, you also testified under oath at
7 the trial of Stanley Jaloweic, correct?

8 A. Correct.

9 Q. Again, you were questioned by Prosecutor Rosenbaum
10 and by the defense attorney at that time, right?

11 A. Correct.

12 Q. Were you also aware, sir, that phone conversations
13 between yourself and the police were being tape recorded?

14 A. At the time, no.

15 Q. Do you know that now?

16 A. Yes.

17 Q. Let me ask you, Mr. Smith, have you had a chance to
18 review the first statement you gave the police prior to
19 today?

20 A. Have I -- yes, I have.

21 Q. And when did you last review that, sir?

22 A. Before Stan Jaloweic's trial.

23 Q. You haven't seen it since then?

24 A. No.

25 Q. Are you familiar with what you told the police at

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1 that time?

2 A. Yes.

3 Q. All right. And there were several police officers
4 that took that statement, correct, Mike?

5 A. Correct.

6 Q. Have you had a chance to review your deposition that
7 you gave?

8 A. Yes.

9 Q. When did you last read that?

10 A. Before Stan Jaloweic's trial.

11 Q. All right. And have you had a chance to review the
12 testimony you gave in Stan Jaloweic's trial?

13 A. No. I had the opportunity, but I didn't.

14 Q. You chose not to do that?

15 A. Yes.

16 Q. Okay. Have you heard the tape-recordings of the
17 phone calls you placed to Detective Leiby?

18 A. No, I haven't.

19 Q. Let me go over a few things you testified to
20 yesterday, Michael. You met up with Danny Smith, Ray Smith
21 at Mom's Open Kitchen the night of this incident, correct?

22 A. Correct.

23 Q. And we're speaking actually of the early morning
24 hours, right?

25 A. Yes.

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- 1 Q. It was after the bar closed, you think about 2:30 in
2 the morning?
- 3 A. Correct.
- 4 Q. I want to go over with you again who was there. You
5 were sitting with Ray Smith and your brother Danny,
6 correct?
- 7 A. Yes.
- 8 Q. Did not see Terry Hopkins there?
- 9 A. I couldn't remember. All I know is I was sitting
10 with my father and my brother.
- 11 Q. Well, you did not see Terry Hopkins there; isn't that
12 a correct statement?
- 13 A. Correct.
- 14 Q. You did not see Sharon Hopkins there, sir?
- 15 A. No.
- 16 Q. And there was one other person, Tammy, your brother's
17 girlfriend, was she there?
- 18 A. Yeah, she was there.
- 19 Q. So again, to make it clear, it was yourself, Raymond
20 Smith, Danny Smith, and Tammy his girlfriend?
- 21 A. Right.
- 22 Q. You were all sitting at the same table?
- 23 A. As far as I can remember.
- 24 Q. Now, I should say, I should ask you, you had been
25 drinking that night, correct?

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1 A. Correct.

2 Q. And were you intoxicated?

3 A. Yeah.

4 Q. Okay. But at this stage had you been doing any
5 drugs, sir?

6 A. No.

7 Q. So you'd been just consuming alcohol?

8 A. Yes.

9 Q. You're sitting at the table, you ate breakfast,
10 correct?

11 A. Correct.

12 Q. And at some point in time your father got up to use
13 the telephone?

14 A. Correct.

15 Q. And was that phone inside the restaurant?

16 A. Yes.

17 Q. Did any of you have cellular phones that you know of?

18 A. No.

19 Q. Were you present when your dad made the call?

20 A. I wasn't standing -- I wasn't with him when he made
21 it.

22 Q. You didn't overhear his conversation?

23 A. No.

24 Q. But when he came back to the table, you remember him
25 saying to you, "I've got to go"?

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- 1 A. Yes.
- 2 Q. Something to that effect?
- 3 A. Yes.
- 4 Q. Do you remember his exact words?
- 5 A. He said, "We have to get ready to go," and asked me
- 6 did I want to go with him.
- 7 Q. And isn't it a fact at that point he asked your
- 8 brother Danny for a ride?
- 9 A. Correct.
- 10 Q. And there that night at Mom's Open Kitchen, who had a
- 11 car?
- 12 A. My brother did.
- 13 Q. Did you have a car with you?
- 14 A. No.
- 15 Q. Did your dad, Ray?
- 16 A. Not that I know of, no.
- 17 Q. How about Tammy, did she have a car, if you know?
- 18 A. No, not that I know of.
- 19 Q. So the only automobile there was driven by Danny?
- 20 A. Correct.
- 21 Q. You went eventually down Middle Avenue, correct,
- 22 south on Middle Avenue?
- 23 A. Correct.
- 24 Q. And who directed Danny to drive down that way?
- 25 A. My father did.

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1 Q. And the car came to the stop after crossing the
2 railroad tracks; is that correct?

3 A. Correct.

4 Q. Shortly after crossing the railroad tracks?

5 A. Correct.

6 Q. And did your dad, Ray, tell Danny to stop the car?

7 A. Yes.

8 Q. And your brother did what your dad asked him to do?

9 A. Yes.

10 Q. Is that what happened, sir?

11 A. Yes.

12 Q. All right. Now, while you're in the car, was there
13 any conversation about why you were going down that way?

14 A. No.

15 Q. While you were at Mom's that, that night, was there
16 any conversation about what was going to happen that
17 evening?

18 A. No.

19 Q. So your father had Danny stop the car, correct?

20 A. Correct.

21 Q. And then you got out of the car; is that right?

22 A. Yes.

23 Q. All right. And that, again, was at your father's
24 request?

25 A. Yes.

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1 Q. All right. And at that point Danny drove off?

2 A. Yes.

3 Q. Now, you did ask your father why you were there,
4 correct?

5 A. He said that we were getting a car. I asked him,
6 "How much longer we got to stand here?" and he said,
7 "Somebody be picking us up in a minute," or something like
8 that.

9 Q. And then shortly after that the blue Lebaron pulled
10 up with Stan Jaloweic?

11 A. Correct.

12 Q. And you recognized Stan, of course, correct?

13 A. Once he stepped out of the car.

14 Q. You know who he is?

15 A. Correct.

16 Q. And that was who your dad was waiting for?

17 A. It's my assumption that's who it would be.

18 Q. I don't want you to assume. Did it appear that's who
19 your dad was waiting for?

20 MR. ROSENBAUM: That's the same
21 question, Your Honor.

22 A. Yes.

23 THE COURT: He's answered it.
24 Proceed.

25 Q. Now, you described to us what happened when you got

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1 into the car?

2 A. Yes.

3 Q. And your dad had a pistol, correct?

4 A. Yes.

5 Q. Up to that point, prior to him pulling that gun out,
6 did you know he had that gun?

7 A. No.

8 Q. Was it visible to you?

9 A. No.

10 Q. Did he talk about it at all?

11 A. No.

12 Q. How big of a weapon was this, approximately?

13 A. Just a small handgun.

14 Q. A small handgun?

15 A. Yes.

16 Q. Do you know where he had it?

17 A. No.

18 Q. Was it inside his clothing?

19 A. I couldn't really say.

20 Q. But it wasn't visible to you, right?

21 A. No.

22 Q. It surprised you when he pulled it out; isn't that a
23 fact?

24 A. Yes.

25 Q. At some point in time then while you were in the car,

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1 your dad discusses putting Ron Lally on a bus?

2 A. Correct.

3 Q. All right. And your recollection is, from your
4 direct testimony, that what they were going to do, you were
5 going to take Ron to the bus station, correct?

6 A. Yes.

7 Q. And that was the bus station in Cleveland?

8 A. Yes.

9 Q. All right. At the Greyhound station; do you know?

10 A. I guess that's where it would be.

11 Q. All right. And he was going to take a bus ride out
12 of town?

13 A. Yes.

14 Q. In fact, I think you said that there was some
15 conversation about where he wanted to go?

16 A. Yes.

17 Q. All right. And to sweeten the deal, he was going to
18 get some crack cocaine?

19 A. Yes.

20 Q. That was supposed to help him decide to go?

21 A. Yes.

22 Q. All right. And some money, right?

23 A. Correct.

24 Q. Your dad said this in front of you?

25 A. Yes.

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- 1 Q. You heard this?
- 2 A. Yes.
- 3 Q. Said it in front of Stan, right?
- 4 A. Yes.
- 5 Q. Did Stan talk about the deal, about the plan?
- 6 A. No.
- 7 Q. Did he say anything about it at all?
- 8 A. No.
- 9 Q. So he didn't act surprised when your dad said that?
- 10 A. No, not --
- 11 Q. I'm sorry?
- 12 A. No, he didn't seem surprised at all.
- 13 Q. All right. You eventually drove down Route 2 into
- 14 Cleveland, correct?
- 15 A. Yes.
- 16 Q. Did you go right through downtown Cleveland?
- 17 A. Yes, we did.
- 18 Q. Do you know what road you took to get to the East
- 19 Side?
- 20 A. I really couldn't remember.
- 21 Q. Did you travel past the bus station?
- 22 A. Yes.
- 23 Q. Isn't it a fact, Michael, that you went past the bus
- 24 station to go buy more crack?
- 25 A. Yes.

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1 Q. Because at that point all the crack he had was gone,
2 right?

3 A. Yes.

4 Q. In other words, isn't it a fact that you, Ron Lally,
5 Stan and your dad, Ray, smoked all the crack that you were
6 supposed to give to Ron to take on the bus?

7 A. Yes.

8 Q. All right. So you headed out to East Cleveland,
9 correct?

10 A. Yes.

11 Q. But when you got out there, as you went out there,
12 there was a fire or some disturbance?

13 A. Yes.

14 Q. And that spooked everybody a bit?

15 A. Yeah.

16 Q. There was police cars around?

17 A. Yes.

18 Q. And then your dad again said to Stan, I mean --
19 strike that.

20 Your dad told Stan to go back towards Downtown?

21 A. Correct.

22 Q. Is that correct?

23 A. Correct.

24 Q. Would you have been on Euclid? Do you know what
25 street you were on?

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- 1 A. We were on Euclid and Superior at that point.
- 2 Q. All right.
- 3 A. In East Cleveland.
- 4 Q. So you couldn't buy crack in East Cleveland, correct?
- 5 A. Correct.
- 6 Q. And you headed back towards Downtown Cleveland?
- 7 A. Yes.
- 8 Q. And it was after that, shortly after that that your
- 9 dad directed Stan to the cemetery, right?
- 10 A. Yes.
- 11 Q. Was that far from where you turned around?
- 12 A. Yes. It was quite a ways.
- 13 Q. So you drove back towards the cemetery?
- 14 A. Yes.
- 15 Q. And the crack cocaine had run out by that point,
- 16 right?
- 17 A. Yes.
- 18 Q. You still drinking beer?
- 19 A. Yes.
- 20 Q. And your dad directed Stan into the cemetery,
- 21 correct?
- 22 A. Yes.
- 23 Q. And your dad directed Stan to stop the car?
- 24 A. Yes.
- 25 Q. Your dad told Ron to get out?

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1 A. Yes.

2 Q. At gun point?

3 A. Yes.

4 Q. You mentioned a couple of times that your dad said
5 Ron Lally, you know, he's the snitch on your brother?

6 A. Yes.

7 Q. On Danny. Did you know that he was also the snitch
8 on your dad, Ray?

9 A. Yes.

10 Q. You would admit, wouldn't you, that Ray had a motive
11 for wanting to get rid of Ron as well?

12 A. Yes.

13 Q. Do you have a problem admitting that?

14 A. No.

15 Q. I mean, it's a fact, isn't it, that Ron was going to
16 testify against Ray as well as Danny, correct?

17 A. Right.

18 Q. And you knew that. But on the way back there's an
19 argument --

20 THE COURT: Did you answer that,
21 sir?

22 A. Yes.

23 THE COURT: And you answered it
24 yes?

25 A. Yes.

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1 THE COURT: I'm sorry.

2 Q. On the way back to Elyria, after the kill, your dad's
3 mad at you because you didn't participate, right?

4 A. Right.

5 Q. And you were, to put it mildly, very upset?

6 A. Yes.

7 Q. You were shocked by this killing, sir?

8 A. I was -- yeah, I was stunned. Shocked.

9 Q. Even after you got in the car and you saw your dad
10 with the gun, you were still shocked by the fact that Ron
11 Lally was killed that evening, correct?

12 A. Yes.

13 Q. That's not what you expected at all?

14 A. No.

15 Q. Now, leaving the cemetery, again, you got back on
16 Route 2 somewhere?

17 A. Yes.

18 Q. Came back to Elyria?

19 A. Yes.

20 Q. Did, after you left the cemetery, did the car stop
21 anywhere?

22 A. No.

23 Q. Did anybody get out of the car?

24 A. No.

25 Q. Did anybody make a phone call?

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1 A. No.

2 Q. When you got to Elyria, did you go right to Danny's
3 apartment?

4 A. Yes, I did.

5 Q. Did they, did they stop the car before taking you to
6 Danny's?

7 A. No.

8 Q. Were there any phone calls before taking you to
9 Danny's?

10 A. No.

11 Q. So you were the first one dropped off in Elyria,
12 right?

13 A. Right.

14 Q. You got to Danny's apartment, and did you have a
15 key?

16 A. No.

17 Q. Was the door locked?

18 A. Yes.

19 Q. So you had to knock on the door?

20 A. Yes.

21 Q. And who answered the door?

22 A. My brother did, Danny did.

23 Q. So you saw Danny that morning, right?

24 A. Yes.

25 Q. What time would that have been?

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1 A. 5:30-6:00.

2 Q. And I think it was your direct testimony that you had
3 no conversation with him about what happened?

4 A. Yes.

5 Q. You went to bed?

6 A. Correct.

7 Q. Isn't it a fact, Michael, that Danny didn't ask you
8 about anything that happened?

9 A. Correct.

10 Q. Michael, after the murder of Ron Lally, you became
11 depressed?

12 A. Yes.

13 Q. Is that a correct statement?

14 A. Yes.

15 Q. And in fact, after the murder, you had been treated
16 by a psychiatrist?

17 A. Yes.

18 Q. Okay. And diagnosed you as having this condition?

19 A. Yes.

20 Q. You've also been suicidal?

21 A. Yes.

22 Q. Made several attempts to kill yourself?

23 A. Yes.

24 Q. And I believe that after the murder you felt that
25 your crack or cocaine addiction became worse, right?

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1 A. Right.

2 Q. You turned to drugs more?

3 A. Correct.

4 Q. And did you seek counseling from anybody?

5 A. Yes.

6 Q. Okay. And isn't it a fact, sir, that your motivation
7 and your reason for going to the police was to get this off
8 your chest?

9 A. Correct.

10 Q. Were you trying to help yourself by doing that other
11 than clearing your head and your conscious?

12 A. Yes.

13 Q. You weren't seeking any legal help, were you?

14 A. No.

15 Q. Did you go to the police to hurt your dad?

16 A. No.

17 Q. Did you want to put him in the situation he ended up
18 in?

19 A. No.

20 Q. Was that a hard thing for you to do?

21 A. Yes, it was.

22 Q. Isn't it a fact that it, that was the cause of one of
23 your problems, is that you really didn't want to do this to
24 your father?

25 A. Yes.

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1 Q. Matter of fact, you didn't show up for your father's
2 trial, did you?

3 A. No, I didn't.

4 Q. Mike, based on what you heard and what you saw the
5 night of Ron Lally's murder, wasn't there a plan between
6 Stan and Ray to take Ron Lally to Cleveland to put him on a
7 bus and get him out of town?

8 A. Yes.

9 Q. Isn't it a fact that at some point prior to the
10 murder Danny indicated he wanted no part of that plan; is
11 that true or not?

12 A. I never discussed it. I didn't know nothing about it
13 until after the fact.

14 Q. So you don't recall that at this time?

15 A. No.

16 Q. But isn't it a fact --

17 THE COURT: Mr. Wightman, I don't
18 know that that's correct. He says didn't know anything
19 about that until after the fact. It's not a question of
20 recalling. He just did not know about it until after the
21 fact. Is that what you're saying?

22 THE WITNESS: Correct.

23 Q. Michael, didn't your dad, didn't your dad, Raymond,
24 change the plan by directing Stan to go to the cemetery and
25 shooting Ron Lally in the head?

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1 MR. ROSENBAUM: Objection. If he
2 doesn't know about the plan, he can't say there's a change
3 in it.

4 MR. WIGHTMAN: He testified he knew
5 the plan, Your Honor.

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

8 THE COURT: I don't know that
9 that is within his knowledge as to whether the plan had
10 been changed, period, at this point. If he does know, he
11 certainly can testify.

12 Q. Do you know?

13 A. No, I didn't know nothing about it until after we got
14 in the car.

15 Q. Right. The plan was discussed in the car. The plan
16 discussed in the car was changed, correct?

17 A. At that point, yeah. It seemed like it was.

18 Q. And at your dad's direction, correct?

19 A. Yes.

20 Q. Isn't that after you guys, all of you, including your
21 dad, had smoked up all the crack cocaine in the car?

22 A. Yes.

23 Q. And after you drove past the bus station, right?

24 A. We didn't even get back to the bus station.

25 Q. The first time you went by it, kept heading east?

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1 A. Right.

2 Q. Because you're looking for more crack, right?

3 A. Right.

4 Q. It was after that that the murder happened, right?

5 A. Yes.

6 Q. There was never any mention of killing this man
7 before that, was there?

8 A. No.

9 Q. Never any gesture towards killing him before that,
10 was there?

11 A. No.

12 Q. You didn't think that was going to happen, right?

13 A. Right.

14 Q. Okay. And again, the actual killing was a shock to
15 you, right?

16 A. Yes.

17 Q. Unexpected?

18 A. Unexpected.

19 Q. Isn't it a fact, Michael, that after the killing and
20 based on what you saw and what you heard, that you were
21 sure your brother Danny had nothing to do with Ron Lally's
22 killing?

23 A. At that point, yes.

24 Q. Based on what you saw and what you heard?

25 A. Yes.

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1 MR. WIGHTMAN: One moment, Your
2 Honor, please.

3 (Discussion between defense counsel held off the record.)

4 BY MR. WIGHTMAN:

5 Q. Michael, you're close to your brother, correct?

6 A. Yes.

7 Q. All right. You're much older than him, right?

8 A. Correct.

9 Q. You've had a drug problem for a number of years,
10 right?

11 A. Yes.

12 Q. Are you in recovery now?

13 A. Yes, I am.

14 Q. You're still straight?

15 A. Yes.

16 Q. It's been a difficult struggle for you?

17 A. Yes, it has.

18 Q. Isn't it a fact that your dad got you involved in
19 drugs?

20 A. Yeah.

21 Q. And he got your brother involved in drugs?

22 A. I really can't answer that.

23 Q. But he got you on drugs, right?

24 A. Yes.

25 Q. And that led to your addiction?

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1 A. Yes.

2 Q. At what age did that happen?

3 A. Twenty, twenty-one.

4 Q. Your brother Danny was much younger at that time,
5 wasn't he?

6 A. Yes.

7 MR. WIGHTMAN: One moment again,
8 Your Honor.

9 (Discussion between defense counsel held off the record.)

10 MR. WIGHTMAN: Nothing further, Your
11 Honor.

12 THE COURT: Mr. Rosenbaum.

13 REDIRECT EXAMINATION OF MICHAEL SMITH

14 BY MR. ROSENBAUM:

15 Q. Mike, what did your dad, Raymond Smith, tell Danny,
16 the defendant, to do after you and Raymond got out of the
17 car?

18 A. What did --

19 Q. What, if anything, did your dad tell Danny to do
20 after the both of you got out of the car? Nothing, right?

21 A. Nothing.

22 Q. So whatever Danny chose to do, he did on his own?

23 MR. WIGHTMAN: Objection, leading.

24 Q. Is that correct?

25 THE COURT: Sustained.

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1 Q. Well, was your father there to instruct Danny after
2 they got out of the car?

3 A. No.

4 Q. Now, your father at one time was the source of drugs
5 to your family and others, correct?

6 A. Correct.

7 Q. And did there come a time, as a result of his
8 addiction, that he was no longer the source?

9 A. Yes.

10 Q. And who was the source then after your father kind of
11 fell apart?

12 MR. WIGHTMAN: Objection, Your
13 Honor. Beyond the scope.

14 THE COURT: No, it's not. I
15 think you inquired as to who set who up, who got him
16 started on drugs and what have you. I think he's entitled
17 to examine at this point. Overruled.

18 Q. Who became the source?

19 A. My brother Danny.

20 Q. Danny took over?

21 A. Yes.

22 Q. And in fact, you testified you had to go over to his
23 street at least and saw a car to get more drugs that very
24 same night before you went?

25 MR. WIGHTMAN: Object. That's

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1 beyond the scope.

2 THE COURT: That may be.

3 MR. ROSENBAUM: It goes right to the
4 same issue.

5 THE COURT: But for that evening.

6 MR. ROSENBAUM: Who's supplying the
7 drugs.

8 THE COURT: For that evening,
9 okay.

10 BY MR. ROSENBAUM:

11 Q. So it's fair to say he took over the leadership of
12 the drug operation; is that correct?

13 MR. WIGHTMAN: Your Honor, I object.
14 Leading and it's been asked and answered.

15 THE COURT: Well, but with all
16 the objections that's going on, I think he's entitled to
17 explanation. Can you answer that?

18 THE WITNESS: Yes.

19 THE COURT: Yes, you can. And
20 the answer is yes?

21 THE WITNESS: The answer's yes.

22 THE COURT: Thank you.

23 Q. Now, you said that there was some money that was to
24 be given to Ron Lally to get him out of town, right?

25 A. Yes.

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1 Q. How much money?

2 A. I can't quite remember how much dad said it was. It
3 must have been a large sum.

4 Q. Did he have it?

5 A. I never seen it.

6 Q. You never saw it?

7 A. No.

8 Q. Now, do you know what the plan was?

9 A. After we got in the car, I found out about it.
10 Beforehand, no.

11 Q. Well, even when you got in the car, did you know
12 what, if anything, was discussed between your brother,
13 Raymond, Stanley, or anybody else?

14 A. No.

15 Q. Did you know anything about any efforts your brother
16 may have made to end Ron Lally's life?

17 A. No.

18 MR. WIGHTMAN: Objection, Your
19 Honor.

20 THE COURT: Overruled.

21 Q. Can you really say the plan was to get him in the car
22 and put him on the bus?

23 MR. WIGHTMAN: Objection, Your
24 Honor. Leading question.

25 THE COURT: Rephrase it,

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1 Mr. Rosenbaum.

2 Q. Let me ask you this. Do you know that the plan did
3 not include lying to Ron Lally about the bus and then just
4 to keep him quiet?

5 A. No, I couldn't say.

6 Q. Now, but you have testified on cross that after you
7 guys got in the car there was no communication to Danny?

8 A. Correct.

9 Q. And you didn't communicate anything to him when you
10 got dropped off after this murder?

11 A. No.

12 Q. So if Danny was able to express to someone that you
13 guys had taken care of Ron Lally prior to your return from
14 Cleveland, he had to know about the plan, didn't he?

15 MR. WIGHTMAN: Objection, Your
16 Honor. That's a leading question.

17 THE COURT: At this point I don't
18 know that this witness is in a position to answer that at
19 this point.

20 MR. ROSENBAUM: But you know --

21 THE COURT: Sustained.

22 Q. You were with all of the people in the car, right?

23 A. Correct.

24 Q. And all the people that killed Ron Lally?

25 A. Correct.

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1 Q. And they didn't stop to communicate anything to your
2 brother, did they?

3 A. No.

4 Q. So if he knew that Ron Lally was dead prior to your
5 return, he had to know it, didn't he?

6 MR. WIGHTMAN: Objection, Your
7 Honor. That's a leading question.

8 MR. ROSENBAUM: He can make that
9 deduction.

10 THE COURT: If he can make that
11 deduction, he can answer that question.

12 A. It would be safe to say, yeah.

13 MR. ROSENBAUM: I have no other
14 questions, Your Honor.

15 THE COURT: Mr. Wightman.

16 MR. WIGHTMAN: One second, Your
17 Honor.

18 RE CROSS-EXAMINATION OF MICHAEL SMITH

19 BY MR. WIGHTMAN:

20 Q. Michael.

21 A. Yes.

22 Q. You testified that when you got home, you saw Danny,
23 correct?

24 A. Correct.

25 Q. And you went to bed, correct?

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1 A. Correct.

2 Q. You didn't discuss this killing with him, did you?

3 A. No.

4 Q. He didn't ask you about it, did he?

5 A. No.

6 Q. There's no communication with him whatsoever?

7 A. No.

8 Q. It's a fair statement, Michael, isn't it, that you
9 have no evidence to give the Court that would indicate
10 Danny Smith, your brother, was involved in this killing?

11 A. No.

12 MR. WIGHTMAN: Nothing further.

13 MR. ROSENBAUM: I have nothing
14 further.

15 THE COURT: Thank you, Michael,
16 you may step down.

17 (Witness excused.)

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

20 MR. ROSENBAUM: All right. It will be
21 Detective Leiby, Your Honor, as soon as he comes back.

22 (Discussion held off the record.)

23 DETECTIVE ALAN LEIBY

24 a Witness herein, called on behalf of the State of Ohio,
25 after being first duly sworn by the Court, testified and

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1 said as follows:

2 THE COURT: Detective Leiby, you
3 know the routine on this, sir.

4 THE WITNESS: Yes, sir.

5 THE COURT: Thank you.

6 DIRECT EXAMINATION OF DETECTIVE ALAN LEIBY

7 BY MR. ROSENBAUM:

8 Q. State your name, please, sir.

9 A. My name's Alan Leiby, A-L-A-N L-E-I-B-Y.

10 Q. Are you employed, sir?

11 A. I'm a police officer for the City of Elyria,
12 currently assigned on the Detective Bureau major cases
13 unit.

14 Q. Will you tell the Court and jury how long you have
15 served with the City of Elyria in that capacity?

16 A. As a police officer, in excess of 18 years; as a
17 detective, including narcotics time, probably eight or nine
18 years.

19 Q. Are you the officer or detective that has been
20 assigned for the Elyria Police Department to be in charge
21 of the investigation that is the subject of the trial
22 before this court and jury?

23 A. That's correct. My partner, Detective Whitey
24 assisted me.

25 Q. Can you identify for the record -- you got a lot of

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1 help from Cleveland PD, too, right?

2 A. Yes, sir.

3 Q. Detective Leiby, can you identify State's 2, please?

4 A. Ron Lally.

5 Q. How do you know Mr. Lally?

6 A. He was an informant for me.

7 Q. Can you tell the Court and jury when that came about,
8 sir?

9 A. On the morning of 6-7-93, I received a call from the
10 police department, approximately 6:30, seven o'clock in the
11 morning, they had an individual on station that wanted to
12 talk to a narcotics officer; I was called in from home to
13 speak with him. Detective Ashley, my partner, was also
14 called in, my partner at the time I was assigned to
15 narcotics.

16 I spoke to Ron Lally. He indicated that he had a
17 severe crack problem, that he had just traded his
18 girlfriend's microwave oven for some crack cocaine. He now
19 regretted to doing that.

20 MR. DUFF: Object.

21 A. He admitted he was the --

22 MR. DUFF: Object to what this
23 person's thinking. Other than that --

24 THE COURT: Hold on. Hold on.
25 Just what occurred, please, Mr. Leiby.

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1 THE WITNESS: Okay.

2 THE COURT: Not the conversation
3 or what may have been in someone's mind.

4 Q. In any event, he came to you to be an informant; is
5 that right?

6 A. That's correct.

7 Q. Did you allow him to be an informant?

8 A. Yes, sir.

9 Q. Can you identify what's been marked as State's
10 Exhibit 9, please?

11 A. Yes. This is the confidential informant's agreement.
12 It was signed by Ron Lally with myself and my partner Scott
13 Ashley as witnesses. It was signed at seven o'clock in the
14 morning 6-7 of '93. At 125 Court Street. What this is,
15 is a list of rules that we expect the confidential
16 informant to work within.

17 Q. Now, who suggested or brought up the names of who
18 Mr. Lally could buy drugs from?

19 A. It was our practice at the time to have the informant
20 or the person providing the information to first tell us
21 who they could do and who their main dealer was. Once we
22 got all the information they could provide us, we would
23 then ask them about people. Ron Lally indicated to me that
24 he would --

25 MR. DUFF: Object.

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1 THE COURT: Not what he indicated.
2 Sustained.

3 Q. Did Ron Lally give you the names of the defendant
4 and his father as targets that he could buy drugs from?

5 A. Yes, sir.

6 MR. DUFF: Object. He's leading.
7 Hearsay, too.

8 THE COURT: It's leading, but I
9 think it's preliminary at this point. It's been testified
10 to. Overruled.

11 Q. And did he also indicate some other names that he
12 could buy drugs from?

13 A. He did.

14 Q. And whose names are on that agreement?

15 A. On the second page of the Exhibit 9 is a confidential
16 log informant, or confidential informant log. He indicated
17 he could do Poor Mike, which would be Mike Shelton.

18 MR. DUFF: Object.

19 A. He indicated he could do a fellow by the name of
20 Shawn, Just Some Girl, he indicated Mario, and Bo, and
21 Emon.

22 Q. Why aren't the defendant's and his father's name
23 listed there?

24 A. Because --

25 MR. DUFF: Object.

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1 A. -- he wanted to do them that morning.

2 THE COURT: Overruled. Go ahead.

3 Q. And is that what took place?

4 A. That's correct.

5 Q. Can you tell the Court and jury what you did then as
6 a result of his desire to buy from them that morning?

7 A. Mr. Lally was wired with an electronic listening
8 device. Excuse me. He was provided with a hundred dollars
9 of marked money. The way we mark the money, we xerox the
10 serial numbers or xerox the billings. He was provided with
11 a hundred dollars of marked money. He was searched.

12 Detective Eichenlaub was called in. Detective Eichenlaub
13 actually deferred him to the area on West River, where he
14 was going to the buy. Myself and Ashley recorded the
15 conversation on the wire.

16 Q. Can you tell the Court and jury what quantity of
17 cocaine Mr. Lally purchased from the defendant and his
18 father?

19 A. It would be six rocks. A \$20 rock is about the size
20 of half a peanut. He bought six of those. The lab weighed
21 it out at .557 grams, or half a gram of crack cocaine.

22 Q. Do you recall the purchase price for the six rocks?

23 A. One hundred dollars.

24 Q. I would like to place before you what has been marked
25 as State's Exhibit 10 and ask you to look at it, please.

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1 Do you recognize that, sir?

2 A. Yes, sir. This tape is marked 9314317. That would
3 be the Elyria Police Department Number or Incident
4 Department. It's dated 6-7 of '93. It says, "Lally,
5 Smith, Smith buy tape. Copy. " And I made this copy and
6 marked it from the original.

7 Q. Is that a true and accurate copy of the conversation
8 that occurred between Ronald Lally, the victim in this
9 case, and Danny and Raymond Smith --

10 A. Yes, sir.

11 Q. -- during that drug buy?

12 As a result of the buy, were the defendant and his
13 father subsequently arrested?

14 A. They were.

15 Q. I would like to hand you what has been marked as
16 State's Exhibits 6 and 7 and ask you to look at them,
17 please. Do you recognize those documents, sir?

18 A. Yes, sir.

19 Q. Could you tell the Court and jury what they are?

20 A. These are standard Elyria Police Department arrest
21 forms.

22 THE COURT: Which one's which?

23 A. Both of them are standard arrest forms. State's
24 Exhibit 6 is an arrest report for Raymond A. Smith; the
25 arrest occurred on 8-19 of 1993 at about 5:45 in the

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1 evening. That would be Complaint Number 9322357. Myself
2 and Detective Ashley were the primary arresting officers,
3 with other officers backing us up on that arrest. The
4 charge on that was aggravated drug trafficking for the
5 residence at 1446 West River, Apartment L.

6 Exhibit 7 is also an Elyria Police arrest report.
7 It's for Danny Smith. It's dated 8-12 of '93. It has a
8 Complaint Number of 9321550, and it occurred at his
9 residence at 1446 West River, Apartment L.

10 Q. Did you give the dates of both those arrests?

11 A. Yes, sir.

12 Q. And what were they?

13 A. Danny was arrested on 8-12 of 1993; Raymond was
14 arrested on 8-19 of '93.

15 Q. I'd like to hand you two common pleas court files
16 that have been marked State's Exhibits 4 and 5 and ask you
17 to look at them, please. Do you recognize those documents,
18 sir?

19 A. Yes, sir.

20 Q. Can you tell the Court and jury what each of those
21 exhibits are?

22 A. Yes, sir. State's Exhibit 4 is this court's record
23 of the drug case against Raymond Augusta Smith, and the
24 Case Number 93-CR-044157. It's the file on that case and
25 it's marked on the front "Dismissed."

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1 Q. And State's Exhibit 5 would be what, sir?

2 A. It would be the similar record of Danny Smith, Case
3 Number 93-CR-044167, and it's also marked "Dismissed."

4 Q. Are those the court files that pertain to the charges
5 that arose from the drug buy that Ron Lally made against
6 the defendant and his father on June 7th of 1993?

7 A. Yes, sir.

8 Q. And were you present when the decision, and did you
9 participate in the decision to dismiss those case?

10 A. No.

11 MR. DUFF: Object.Object.

12 THE COURT: He may answer that if
13 he did, if he didn't.

14 Q. Let me put it to you this way. Do you know why those
15 cases were dismissed?

16 A. We were unable to provide the witness.

17 Q. Who would that witness be?

18 A. Ronald Lally.

19 Q. Can the State maintain, in your experience, it's
20 burden of proof, in a drug buy that was not witnessed by a
21 police officer, without the informant?

22 MR. DUFF: Object.

23 THE COURT: Overruled.

24 A. Not without a confession.

25 Q. Do we have confessions in these cases?

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1 MR. DUFF: Object.

2 A. No, sir.

3 THE COURT: Overruled.

4 Q. Now, I would like to hand you a copy of a report that
5 has been marked as State's Exhibit 8-A. Do you recognize
6 that document?

7 A. Yes, sir.

8 Q. What is that?

9 A. This is a memorandum typed up by Patrolman Homoki, at
10 my request, concerning the incident at Mr. Hero on Middle
11 Avenue that was previously testified to. This incident, I
12 received it on 12-28-9 -- I'm sorry, 12-28-95. I mismarked
13 it as '94.

14 Q. Patrolman Homoki was asked if that report exists in a
15 file at the Elyria Police Department. Do you have
16 knowledge as to whether that is so or not?

17 A. Yes, it is. It exists in the Detective Bureau file,
18 in the Detective Bureau as part of the permanent record.

19 Q. What file or record would that be?

20 A. The case file on this investigation.

21 Q. Well, sir, I would like to hand you four photographs
22 that have been marked as State's Exhibits 3-A through 3-D
23 and ask you to look at them, please. Do you recognize that
24 document, sir, or those photographs?

25 A. Yes, sir.

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1 Q. Do they truly and accurately depict the scenes which
2 they represent?

3 A. Yes, sir.

4 Q. Will you tell the Court and jury what scenes they do
5 depict?

6 A. This is a picture of Corrine Fike's car. She is also
7 known as Queen Bee or Joann Fike. These photographs were
8 taken at Elyria Sewage Treatment Plant. There's a garage
9 and lift there. We were able to process the vehicle
10 involved in the incident.

11 THE COURT: They are pretty much
12 the same three that 3-A, 3-B are. Is there a description
13 for each?

14 THE WITNESS: I was going to give
15 you a description for each, Judge.

16 THE COURT: Okay.

17 A. Photograph 3-A shows the car from the left-front
18 corner. It shows the front of the car and the left side
19 sitting on the lift. 3-B shows the car from the left-rear
20 corner. Again, showing the left side of the car and the
21 rear of the car. 3-D is a photograph of the --

22 THE COURT: I'm sorry, three what?

23 A. Let me go in order then. 3-C.

24 THE COURT: Okay.

25 A. 3-C is the photograph of the vehicle, and 3-D is a

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1 photograph of the back seat.

2 Q. Now, did you impound that vehicle for processing?

3 A. Yes, sir.

4 Q. Can you tell the Court and jury when?

5 A. Yes, sir. I impounded the vehicle with a search
6 warrant on 12-4 of '94.

7 Q. I would like to hand you a photograph that has been
8 marked as State's Exhibit 12 and ask you if you can
9 identify it.

10 A. That's Cleo.

11 Q. And who is Cleo?

12 A. Corrine Fike's Boxer.

13 Q. What is the significance of that photograph?

14 A. I was advised by the Cleveland Crime Lab that dog
15 hair had been found on the victim's coat. They also
16 recovered dog hair from the back of Miss Fike's
17 convertible. And they asked if I could contact Miss Fike,
18 obtain samples from her dog.

19 And according to the sticker I put on the back, this
20 photograph was taken on 1-6 of 1995 by Detective Leiby. It
21 depicts Cleopatra, a registered female Brindle Boxer, age
22 approximately four years old. The property of Corrine
23 Fike, 112 Greenway, and she has owned the dog since it was
24 a pup.

25 Q. I would like to also place before you an object that

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1 has been marked as State's Exhibit 3, and I ask if you
2 recognize that.

3 A. Yes. This is the liner that came out of the trunk of
4 the vehicle, this would be the spare tire cover, and this
5 is the fender liner:

6 Q. Now, will you tell the Court and jury what, if
7 anything, happened to the trunk liner and the hairs that
8 you took from Cleo?

9 A. I took the hairs from Cleo up to the Crime Lab
10 myself. I believe the Crime Lab removed this from the
11 vehicle.

12 MR. DUFF: Object as to what.--

13 A. Okay, the Crime Lab did remove this from the vehicle.

14 MR. DUFF: Object. How does he
15 know that?

16 Q. And you were present?

17 A. I was present.

18 THE COURT: Okay.

19 Q. And then what was done with them?

20 A. They were processed by Cleveland, or Cuyahoga County
21 Coroner's Office.

22 Q. And the results of that analysis have been previously
23 given in this trial?

24 A. Yes, sir.

25 Q. Also before you is the clothing taken from the scene

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1 and other items that have been previously identified in
2 this trial as taken from the scene where Ron Lally's body
3 was recovered.

4 A. Yes, sir.

5 Q. Have you had an opportunity, throughout the course of
6 the trials, to view these documents, or these objects?

7 A. Yes, sir.

8 Q. And have they -- can you tell the Court and jury if
9 they are in substantially the same condition as when you
10 first saw them and when they came to be into evidence in
11 this courthouse?

12 A. They are.

13 Q. And can you tell the Court and jury how they came to
14 be in the evidence in this courthouse?

15 A. They were released to me by Detective Beaman from the
16 Cleveland Police Department.

17 THE COURT: Mr. Rosenbaum, do
18 those clothes have an exhibit number?

19 MR. ROSENBAUM: Yes, they do, Your
20 Honor.

21 THE COURT: Could we have that,
22 please, at this point?

23 MR. ROSENBAUM: I was going to, and I
24 can do it one by one if you desire.

25 THE COURT: I think --

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1 MR. ROSENBAUM: I'll refer to all the
2 other exhibits as well in one fell swoop, to establish the
3 chain. The clothings are 3-H, Your Honor.

4 THE COURT: 3-H.Thank you.

5 Q. But also, Detective, I was referring to blood
6 samples, hair samples, cigarette lighters, the knife, all
7 the things that Detective Beaman identified, the Coroner's
8 office identified, as coming from Cleveland to this county?

9 A. That's correct. Detective Beaman released them to me
10 and I released them to this court.

11 Q. Are they in substantially the same condition as when
12 you received them --

13 A. Yes.

14 Q. -- as far as you know, when they were impounded?

15 A. Yes, sir.

16 Q. Except for the analyses performed by the experts at
17 the Cuyahoga County Coroner's Office?

18 A. That's correct.

19 Q. Did you take any steps to ascertain whether there was
20 a fight reported behind Mom's Open Kitchen on January 18th
21 or January 19th of 1994?

22 A. Yes, sir. I submitted a request in writing to John
23 Main; he's a civilian in charge of records.I request he
24 have someone review all the daily's from six o'clock on, at
25 six o'clock to the following morning, to see if we received

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1 even a report of a fight. It was reviewed by two different
2 clerks. They were unable to locate any information
3 indicating a fight had been reported.

4 Q. Now, did you make any promises or representations to
5 Michael Smith to obtain his cooperation or testimony?

6 A. No, sir.

7 Q. Did, in fact, he come to the first trial as he
8 desired?

9 A. No, he did not.

10 Q. Did you make any promises or representations to Carl
11 Hartman to obtain his testimony?

12 A. No, sir.

13 Q. Did you assist Carl Hartman in any way in his, say,
14 per indictments with the law or the courthouse here?

15 A. I arranged for Carl Hartman, I made several phone
16 calls to people that knew Carl or I thought knew Carl and
17 asked them to have him phone me, to call me on the phone.
18 I was eventually able to get him to call me through that.
19 I was able to talk him into turning himself in. He turned
20 himself in, into myself and Detective Whitey. We brought
21 him into court because we did not want him locked up in the
22 county jail with the defendants. We arranged for him to
23 get a personal bond.

24 Q. Was there bond continued upon his cooperation or the
25 giving of his statements?

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1 A. No.

2 Q. When did he give his statements in relationship to
3 the bond being obtained?

4 A. I believe it was the following day. I'm not certain.

5 Q. Did you make any promises or representations to Terry
6 Hopkins to obtain his statements and/or cooperation?

7 A. No, sir.

8 Q. Did you do anything on behalf of Terry Hopkins?

9 A. I spoke to Judge Glavas concerning his shock
10 probation.

11 Q. What, if anything, did you say to Judge Glavas?

12 A. I advised the judge that Mr. Hopkins was a witness in
13 a case, I did not give a specific case, and advised he was
14 a good prospect for shock, that I would appreciate
15 consideration.

16 Q. And when did that happen in relationship to Terry
17 giving you statements?

18 A. That was after Terry had given me his statements.

19 Q. Did you make any promises or representations to
20 Sharon Hopkins to obtain her cooperation either for her
21 benefit or on behalf of her brother?

22 A. No, absolutely not.

23 Q. Did you make any promises or representations to
24 Corrine Fike to obtain her cooperation?

25 A. No, sir.

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1 Q. How about, did you make any promises or
2 representations to Richard Altpater to obtain a statement
3 from him?

4 A. No.

5 Q. How about to his sister or either for her or --

6 A. You mean his wife?

7 Q. I'm sorry. His wife.

8 A. Yeah, Lynne is his wife. And no, I made no promises
9 to her either.

10 Q. Now, did there come a time, when did you learn of
11 Michael Smiths, or when did you first speak to Michael
12 Smith in relationship to the time frame that led up to this
13 trial.

14 A. I spoke to Michael Smith after all three defendants
15 were indicted.

16 Q. And were they already arrested then?

17 A. Yes, sir. All three were in jail when I spoke to
18 Michael Smith.

19 Q. Now, subsequent to the arrests of the people accused
20 of taking Ron Lally's life, did Carl Hartman call you about
21 contact with one of the defendants?

22 A. Yes.

23 Q. And can you tell the Court and jury the nature of his
24 contact?

25 A. He indicated to me --

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1 MR. DUFF: Object.Object.
2 THE COURT: Not what he said.

3 Just describe it.

4 Q. Let me put it to you this way. As a result of that,
5 did you initiate another investigation that pertained to
6 this matter that is before this court and jury?

7 A. I did.

8 Q. And what, if anything, did you do to gather evidence
9 in that investigation?

10 A. I provided a tape recorder and an attachment for a
11 telephone to Mr. Hartman so that he could attach it to his
12 father's telephone at his father's residence and could
13 record telephone calls from Danny Smith.

14 Q. I would like to place before you three tapes that
15 have been marked as State's Exhibits 11-D, 11-E, and 11-F
16 and ask if you can identify them, sir.

17 A. Yes, sir. All three of these tapes are tapes that
18 Carl Hartman provided to me, tape recordings of
19 conversations between he and Danny Smith made outside my
20 presence.

21 Q. Are those in substantially the same condition today
22 as when you first impounded them?

23 A. Yes, sir.

24 Q. Did you make an effort to transcribe the
25 conversations that are depicted on that tape?

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1 A. Yes, sir.

2 Q. I would like to hand you a ring binder which has been
3 marked as State's Exhibit 11-G, and ask if you can identify
4 that.

5 MR. DUFF: Object. We haven't
6 seen it.

7 THE COURT: Please show it to
8 Mr. Duff. You may see it.

9 MR. ROSENBAUM: Can he see it after
10 the witness identifies it?

11 THE COURT: No. I think, let's do
12 it before.

13 (Counsel hands exhibit to opposing counsel.)

14 BY MR. ROSENBAUM:

15 Q. Can you identify what has been marked as State's
16 Exhibit 11-G?

17 A. It's a blue three-ring binder that I put together.
18 It contains transcripts of the conversation I recorded at
19 the jail between Danny Smith and Carl Hartman, and the
20 eight telephone conversations that we were successfully
21 able to record between Danny Smith and Carl Hartman that
22 led up to the visit at the county jail.

23 Q. To the best of your knowledge, does that transcript
24 truly and accurately depict the conversations that are on
25 the tapes that are in evidence?

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1 A. Yes, sir.

2 Q. I would like to hand you two tapes that have been
3 marked as State's Exhibit 12-A and 12-B and ask if you can
4 identify them.

5 A. Yes, sir. This is a tape-recording of the
6 conversation at the jail. We obtained this, Danny sat on
7 one side of the glass, Carl Hartman sat on the other side
8 of the glass in the Visitor's Room. There is a telephone
9 line between the two sides that also goes into a closet
10 where all the telephone hookups are. Carl Hartman gave us
11 permission to tape-record the conversation, and we put a
12 device on a telephone in that room in order to record the
13 entire conversation between Carl and Danny.

14 And this Exhibit 12-A is side one, it's the original
15 first tape that we made when this one ran out. 12-B is
16 what I refer to as side two; it's the second half of the
17 conversation that I recorded.

18 Q. So those are the tapes of the conversation between
19 Carl Hartman and the defendant at the jail?

20 A. Yes, sir.

21 Q. And are they also transcribed in the binder that has
22 been marked as 11-G?

23 A. That's correct.

24 Q. As a result of these conversations between the
25 defendant and Carl Hartman, did the defendant attempt to

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1 pay Carl Hartman some money to obtain his cooperation or
2 testimony?

3 MR. DUFF: Object. He's leading.

4 THE COURT: Rephrase that.

5 Sustained.

6 MR. ROSENBAUM: Well --

7 THE COURT: Was there any. Was
8 any.

9 Q. Did he try to pay him?

10 A. Yes.

11 Q. I would like to place before you -- have you seen all
12 these?

13 I'd like to place before you three more exhibits that
14 have been marked as 11-A, 11-B, and 11-C and ask you to
15 look at them, please.

16 A. 11-A is a request from Danny Smith to Lieutenant
17 Newman at Lorain County Jail that Carl Hartman, age 23,
18 with a false address of 140 Broad Street, be added to his
19 visitor's list at the county jail, and I read from the
20 note, "Would like him --"

21 MR. DUFF: Object.

22 THE COURT: Don't. It hasn't
23 been -- don't read from it. Just describe what that is.

24 A. This is a request by Danny Smith to have Carl Hartman
25 put on the visitor's list.

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1 Q. Is that the original request?

2 A. Yes, sir.

3 Q. Did you take that from the Lorain County jail file
4 yourself?

5 A. Yes, sir.

6 Q. Can you identify State's Exhibit 11-B, please?

7 A. 11-B is a money property release from Lorain County
8 Correctional Facility. The name that it's to be released
9 to is Carl Hartman; the amount is \$50; and it contains
10 Hartman's signature and Dan Smith's signature; it's dated
11 2-8 of 1996.

12 Q. What is the purpose of that document, if you know?

13 A. That is to document the release of cash from the
14 compensatory fund of the inmate.

15 Q. From who to whom?

16 A. From inside the facility to someone outside the
17 facility.

18 Q. Who was inside?

19 A. Danny Smith released from his requested money, he
20 released from compensatory account to Carl Hartman.

21 Q. Did you obtain that original document from the Lorain
22 County Sheriff's Department yourself?

23 A. Yes, sir.

24 Q. Was the money released?

25 A. Yes, sir.

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1 Q. At the defendant's request?

2 A. Yes, it was.

3 Q. In what form was it released and what amount?

4 A. Form 11-C is the EST Bank, check 16756 from Lorain
5 County Correctional Facility, resident's fund, pay to the
6 order of Carl Hartman \$50. This was released by Carl
7 Hartman to my detective partner, Detective Whitey, who
8 released it to me.

9 Q. Now, sir, did you have occasion to speak to the
10 defendant in this case --

11 A. Yes.

12 Q. -- pursuant to the investigation?

13 A. Of the homicide?

14 Q. The homicide, yes.

15 A. Yes, sir.

16 Q. And did that occur prior to his arrest?

17 A. Yes, sir.

18 Q. Will you tell the Court and jury how it is that you
19 came in contact with the defendant in this case?

20 A. He had accumulated more drug charges and had got it
21 into his head that he could negotiate some kind of deal to
22 get out of the drug charges.

23 MR. DUFF: Object as to his
24 opinion as getting it into his head and stuff like that.

25 THE COURT: Eliminate that.

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1 A. My apologies.

2 Q. Did he indicate his desire in a conversation with
3 you?

4 A. Yes, sir.

5 Q. And was he seeking to work his way out of those drug
6 charges?

7 A. Yes, sir.

8 Q. So he wanted consideration or promises from you?

9 A. That's correct.

10 Q. And did he contact you to obtain those?

11 A. Several times.

12 Q. Can you tell the Court when that occurred, Court and
13 jury; do you know off the top of your head?

14 A. Off the top of my head, no. And I don't have that
15 information in front of me. It was shortly before Raymond
16 came in and gave me a statement.

17 Q. Will you tell us the circumstances of what took place?

18 MR. DUFF: Object. Can we get a
19 date if it's available to him at the trial table?

20 THE COURT: Can you get the date?

21 THE WITNESS: Yes, sir.

22 THE COURT: Would you please do
23 that.

24 (The witness left the stand to get the
25 date and returned.)

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1 THE COURT: Officer Leiby, do you
2 have that date?

3 THE WITNESS: Yes, sir.

4 THE COURT: Could you please state
5 it?

6 A. The first contact Dan made with me in reference to
7 exchanging drug charges for the homicide charge, or for the
8 homicide investigation, was 6 of '94.

9 Q. That's June of '94?

10 A. Yes, sir.

11 Q. Do you have a date?

12 A. A specific date, no, sir.

13 Q. Okay. And then what happened?

14 A. Shortly thereafter, he again made contact with me and
15 indicated to me that his father would provide information
16 on the homicide.

17 MR. DUFF: Object. Can we get a
18 date on this second time?

19 THE COURT: Shortly thereafter.

20 A. June of 1994.

21 MR. DUFF: Is there a different
22 one? I thought --

23 THE COURT: Well, I think he can
24 inquire as to whether it's a different one.

25 MR. DUFF: We need some

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1 foundation, Judge.

2 THE COURT: I understand that. I
3 think he said shortly thereafter there is another contact.
4 Correct, Officer Leiby?

5 THE WITNESS: Yes, sir.

6 THE COURT: Okay. Another
7 contact.

8 BY MR. ROSENBAUM:

9 Q. So what happened then?

10 A. He indicated to me that his father would provide info
11 to me in reference to the homicide in exchange for a deal
12 on his drug charges.

13 Q. And then what happened?

14 A. I advised him that I would speak to his father; I
15 wouldn't make any promises at all.

16 Q. Did you speak to Raymond Smith, or what happened
17 next, let's put it that way?

18 A. Raymond Smith came in and gave myself, Detective
19 Hanson and Detective Beaman from Cleveland a taped
20 statement.

21 Q. Okay. And then what happened?

22 A. Either the same day or the following day, which was
23 July 5th, Dan contacted me and wanted to know how his
24 father had done on his statement.

25 Q. And you informed him?

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1 A. That he had done miserably. That his father had
2 reversed, that I felt his father had reversed the role of
3 Ron Lally.

4 MR. DUFF: Object.

5 THE COURT: Overruled.

6 Q. Then what happened in this chain of events?

7 A. On 7-8 Dan called me again, said Ray, his father,
8 would come in and give a truthful statement but wanted an
9 attorney present.

10 Q. Okay.

11 A. Specifically requested attorney Kenny Lieux. And I
12 made arrangements for Raymond Smith to get Kenny Lieux
13 appointed as his attorney.

14 Q. And once he had a lawyer, did Raymond give another
15 statement?

16 A. He met with you and I once. He did not give another
17 statement.

18 Q. Then what happened?

19 A. On 9-5 of '94, myself and Detective Whitey met with
20 Danny Smith on Albrecht Road at his request. He contacted
21 me and asked me to meet him out there. He again wanted to
22 know what he could do to exchange information for the
23 homicide in exchange for his drug charges.

24 The next contact was 12-4 of '94, when he was in
25 jail. He called me to tell me he would room with Stan

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1 Jalowiec in an attempt to obtain info on the homicide, if I
2 would arrange for him and Stan to be roommates.

3 Q. Then what happened?

4 A. I arranged for the two of them to be roommates. I
5 called the jail and asked that they be put together. And
6 on 12-5 of '94, Dan contacted me, advised me that Stan
7 wouldn't talk to him about it. On 1-7 of 1995, he
8 contacted me by telephone and indicated he wanted to talk
9 to me again, and I had him brought over from the county
10 jail.

11 Q. Did you take a taped statement from him at that time?

12 A. Yes, sir, I did.

13 Q. I would like to -- what happened after that?

14 A. On 1-10, he called me again, wanted me to talk to his
15 dad. I told him to have his dad call me. His father
16 called me, made several demands, and I hung up on him.

17 On 1-11 of '95, Dan called to say his father would be
18 calling me very shortly and he would be serious this time.
19 Same date, shortly thereafter, Raymond Smith called me and
20 said -- and would only say it was Stan.

21 Q. Did you -- what provoked him to give up Stan's name?

22 MR. DUFF: Object.Object.

23 THE COURT: He may answer that.

24 MR. DUFF: That's a --

25 THE COURT: He may answer that

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1 question if he knows it.

2 A. I advised Danny I wouldn't speak to him anymore at
3 all on the subject until someone gave the name of someone
4 involved in the homicide.

5 Q. As a result of that conversation with Danny Smith
6 demanding to know, what else happened?

7 A. Raymond Smith called and told me it was Stan.

8 Q. I would like to place -- wait a minute.

9 MR. DUFF: Mr. Prosecutor.

10 (Counsel handed exhibit to opposing counsel.)

11 Q. I'd like to place before you three exhibits that have
12 been marked as 13-A, 13-B, and 13-C, and ask you to look at
13 them, please.

14 A. 13-A is a three-ring binder. Once again, I put this
15 together. This is printed off my computer at my desk, and
16 it is a transcript of the statement that was given to me by
17 Dan Smith on January 7th, 1995 at 8:17 p.m., and it was
18 transcribed and typed by my secretary, Linda Borthwick,
19 secretary in the Detective Bureau.

20 13-B is a standard Miranda warning rights card used
21 by the City of Elyria Police Department. It merely
22 explained he was advised of his rights, and Dan Smith has
23 signed this, as have I, on 1-7 of '95 at 2020 hours, which
24 would be 8:20 hours civilian time.

25 Q. And 13-C which is before you?

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1 A. Is the taped statement that coincides with the
2 transcript that I just described.

3 Q. Is that tape a true and accurate representation or
4 copy of a conversation that you had with Danny Smith on
5 January 7th of 1995, I think it is?

6 A. January 7th of 1994 I have the tape marked. However,
7 the transcript is '95, so it's a --

8 Q. The tape was made --

9 A. It's a mistake on my part. I wrote '94 instead of
10 '95.

11 Q. The tape was made on what day?

12 A. 1-7 of '95.

13 Q. Does the tape accurately depict the conversation
14 between you and the defendant on January 7th, 1995?

15 A. Yes.

16 Q. To the best of your knowledge, is the transcript,
17 13-A, a true and accurate transcription of the tape as
18 marked by State's Exhibit C?

19 A. That's correct.

20 Q. State's Exhibit 13-B, the signed Miranda rights, that
21 waiver occurred between yourself and the defendant prior to
22 your taking that taped statement?

23 A. Yes, sir.

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

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1 THE COURT: Ladies and Gentlemen,
2 it's five minutes to 10:00. I suspect the
3 cross-examination is going to --

4 MR. DUFF: Can we approach, Your
5 Honor?

6 THE COURT: Yes.
7 (Conference at the bench without the
8 hearing of the jury, as follows:)

9 MR. DUFF: There's going to be an
10 in camera request. Can we do it before? It's of his
11 stuff. I'll show you. Can I do it, Judge.

12 THE COURT: Yeah.Okay, go ahead.
13 (Thereupon, the following proceedings
14 continued within the hearing of the
15 jury.)

16 THE COURT: Belay that, ladies and
17 gentlemen. I don't think you'll need to take any notes on
18 this. Go ahead, Mr. Duff.

19 CROSS-EXAMINATION OF DETECTIVE ALAN LEIBY

20 BY MR. DUFF:

21 Q. Officer, did you prepare reports in this case?

22 A. Yes, sir.

23 Q. And did you write down your observations when you had
24 observations in this case?

25 A. I made reports, yes, sir.

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1 Q. In regard to your observations?

2 A. Yes, I did complete a report.

3 Q. And you wrote down in that report your recollection
4 of events?

5 A. Yes, sir.

6 MR. DUFF: Okay. We would move
7 for an in camera.

8 MR. ROSENBAUM: Well, there's going to
9 be a lengthy argument on this.

10 MR. DUFF: We have argument on
11 this, Judge.

12 THE COURT: Very well. Back to
13 where we were. Ladies and gentlemen, it's five minutes
14 after 10:00. At this point, please, we will take a recess.
15 Hopefully, it will not be an extremely lengthy one.

16 And at this point the admonitions I've given you
17 about discussing, letting anyone discuss it, reading
18 anything about this case, letting anyone read it to you.
19 More so now. We are getting deeper and deeper at this
20 point with the evidence. With the admonitions, we will
21 take our morning recess.

22 (Jury left the courtroom.)

23 (An in camera request of the inspection
24 of Detective Leiby's report was made, and
25 after argument was made, it was denied by

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1 the Court.)

2 (The following took place within the
3 presence and hearing of the jury.)

4 THE COURT: Ladies and gentlemen,
5 as you recall when we took our recess, we were in the
6 cross-examination of Officer Leiby. And Mr. Duff, you may
7 continue with your cross-examination.

8 BY MR. DUFF:

9 Q. Detective, I'd like to ask you a few questions, if I
10 may.

11 A. Sure.

12 Q. Detective, if you need to get your reports, and I
13 know I'm not allowed to look at them, but if you need them
14 for any purpose, would that help you without me looking at
15 them?

16 A. I think I have sufficient handwritten notes here.

17 Q. There was testimony early on in this case as to when
18 Ron Lally's body was identified?

19 A. That's correct.

20 Q. Do you know the exact date that you got advised that
21 a person from Elyria, or a crime involving Elyria, might be
22 involved?

23 A. Exact date, no, sir.

24 Q. I know. Would your report contain that information,
25 without me looking at it, with you looking at it?

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1 A. Yes, sir.

2 Q. Could you go do that, please?

3 I'm not saying I have any right to look at it, Judge.

4 (The witness left the stand to get the report
5 and returned.)

6 THE COURT: No, I know you're not.

7 Q. I just want to get the information. Take it to the
8 stand, Officer. I'm not arguing or anything like that.
9 I'm only going to be asking questions about it, so it
10 might help you.

11 THE COURT: Are you all set?

12 THE WITNESS: Yes, sir.

13 THE COURT: Proceed, Mr. Duff.

14 Q. All right. Detective, I think the question was, when
15 did you first find out this person was from Elyria and
16 such?

17 A. I was first contacted by Cleveland Police Department
18 February 10th, 1994.

19 Q. All right. Is that when your investigation, when you
20 started investigating this case?

21 A. Yes, sir.

22 Q. Would you agree with that?

23 A. Yes.

24 Q. February 10th, '94. And do you know when the body
25 was identified, because the other officers didn't?

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1 A. That's what I'm saying, February 10th is when the
2 body was identified.

3 Q. And they notified you the same day; is that right,
4 Officer?

5 A. One minute. Yes, sir, same day.

6 Q. All right. So the date the body was identified and
7 the date you started working on this case are the same day?

8 A. That's correct.

9 Q. All right. Then did you still have other cases to
10 handle that you were working on?

11 A. Yes, sir.

12 Q. All right. Did there come a time when you worked
13 exclusively on this case?

14 A. There were short periods of time, maybe two or three
15 days in a row, where I wouldn't work on anything but this.
16 I did maintain a regular case load for the most part.

17 Q. And you would agree that you heard testimony in this
18 courtroom from Detective Homoki that Mr. Lally told him
19 that he had drug charges he was working off, you heard that
20 testimony?

21 A. That's correct. Mr. Homoki was incorrect.

22 Q. Just if you could just answer my questions, please.

23 A. I just did.

24 MR. DUFF: Judge.

25 THE COURT: Just what is asked,

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1 please.

2 Q. Detective, you would agree that Detective Homoki
3 testified --

4 MR. ROSENBAUM: Objection. It's asked
5 and answered.

6 MR. DUFF: No, it wasn't, Judge.

7 MR. ROSENBAUM: Yes, it was. He
8 testified Homoki made a mistake. You can't undo that.

9 THE COURT: That was not the
10 question. That was not the question.

11 Q. Did you hear Detective Homoki testify that Ron Lally
12 told him that he was working off drug charges?

13 A. Yes, I did.

14 Q. All right. Now, as I understand it, you identified
15 in your direct examination --

16 MR. ROSENBAUM: Your Honor, then I'll
17 ask that be stricken for relevance. The significance of
18 Detective Leiby hearing that misstatement is irrelevant.

19 THE COURT: He just, he said he
20 heard it. That's all. I'm going to let it stand. Next
21 question.

22 MR. DUFF: Thank you, Judge.

23 There was a memo. Is that the memo Detective Homoki
24 testified to, 8-A?

25 A. Yes, sir.

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1 Q. He did that at your request; is that right?

2 A. Yes, sir.

3 Q. That was done a year after the alleged incident
4 occurred; is that right?

5 A. That would be fairly correct, yes, sir.

6 Q. And you would agree State's Exhibit 8, the daily
7 incident report, makes no mention of any Danny Smith or any
8 Stan Jaloweic, right?

9 A. No. Merely, it says Ron Lally, not Dan Smith or Stan
10 Jaloweic.

11 Q. So my question is, it makes no mention of them, yes
12 or no, sir?

13 A. No, sir.

14 Q. All right. Now, Ray was arrested for this drug sale
15 to Ron Lally, too, correct?

16 A. Yes, sir.

17 Q. And he, do you know how old Ray Smith is?

18 A. I can give you his date of birth if you let me refer
19 to the arrest sheet.

20 Q. I'll let you refer to anything.

21 A. Raymond Smith was born 12-23 of 1939. At the time of
22 his arrest in 1993, he was 53 years old.

23 Q. Fifty-three years old?

24 A. Yes, sir.

25 Q. All right. And Danny was how old at his time of

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1 arrest?

2 A. On 8-12 of '93, he was 21 years old.

3 Q. Twenty-one years old. Okay. And you said on direct
4 examination that the first time you heard from my client
5 was in June of '94; is that correct, did you testify to
6 that?

7 A. The first time concerning any deal on his drug
8 dealings, yes.

9 Q. No. All right. That's the first time you heard --
10 how about the first time you heard from him in regard to
11 this murder investigation?

12 A. The first time I spoke to him was 4-28 of '94.

13 Q. Where was that conversation?

14 A. It would have been at the Elyria Police Department.

15 Q. And you recorded that conversation?

16 A. Yes, sir.

17 Q. I've been provided a copy of that tape?

18 A. Yes, sir.

19 Q. Could we have it marked.

20 MR. ROSENBAUM: Object to having it
21 marked.

22 THE COURT: You may have it
23 marked.

24 (Defendant's Exhibit B marked for identification.)

25 BY MR. DUFF:

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1 Q. Handing you what has been marked for identification
2 purposes as Defendant's Exhibit B, can you take a look at
3 it and go through it.

4 MR. ROSENBAUM: I object, Your Honor.

5 THE COURT: Ask him if he can
6 identify it.

7 Q. He has to look at it first. After you look at it and
8 go through it, can you identify it? What does it appear to
9 be, sir?

10 MR. ROSENBAUM: Object as to what it
11 appears to be.

12 THE COURT: Ask him if he can
13 identify what that is and that's --

14 MR. ROSENBAUM: If he knows what it
15 is.

16 THE COURT: The objection's
17 overruled at this point.

18 A. What is the question, sir?

19 Q. Does that appear to be a transcript of your meeting
20 with Danny Smith that you tape-recorded on April 28th,
21 1994?

22 A. I can authenticate at the top it says, "Complete
23 transcript of the audio tape of interview between Dan
24 Smith, Lieutenant Michael Metter --" who is my supervisor
25 "-- and Detective Al Leiby."

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1 Q. He was present?

2 A. Detective Metter?

3 Q. Yes.

4 A. Yes. He conducted the interview.

5 Q. And in that interview you asked Danny Smith various
6 questions, did you not?

7 A. I'm sure I did.

8 Q. You would agree that Danny was not in custody, right,
9 on April 28th?

10 A. That's correct.

11 Q. And he came to you voluntarily on April 28th, right?

12 A. That's correct.

13 Q. Where was that interview conducted?

14 A. I would imagine at the Elyria Police Department. I
15 didn't see it on the transcript.

16 Q. All right. And you would agree that that was very
17 early on in the investigation you had, you hadn't had much
18 work on the case at that point?

19 A. That's correct.

20 Q. In fact, you told Danny that, didn't you, that "I
21 just started working on this case"?

22 A. I don't recall specifically what I told him,
23 Mr. Duff.

24 Q. Well, do you recall telling him -- page 15,
25 Mr. Rosenbaum.

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1 MR. ROSENBAUM: I object, Your Honor.

2 THE COURT: This again.

3 MR. DUFF: No. Does Detective

4 Leiby --

5 THE COURT: Mr. Duff, we've had
6 this discussion.

7 MR. DUFF: Judge, let me finish
8 my question, please.

9 THE COURT: No. I know what
10 you're going to ask. I know what you're going to ask, and
11 we've had this discussion.

12 MR. DUFF: What am I going to
13 ask?

14 THE COURT: Well, Mr. Duff, I will
15 ask the questions between counsel and the Court. You will
16 not ask me any questions; do you understand that, sir?

17 MR. DUFF: Yes, sir, Your Honor.

18 THE COURT: All right. Now, let
19 me finish my statement, if you would, sir, because my
20 patience is drawing very, very short. Now, sir, what you
21 have and what you have introduced as an exhibit is not an
22 official document. The official document is the audio,
23 and that he said that it was an audio at this point. Now,
24 do you have to go anything further from there?

25 BY MR. DUFF:

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1 Q. Did you ask Danny Smith, did you, or did you tell him
2 on April 28th, 1994, did you tell him, Detective, on that
3 date, April 28th, 1994, that this case hasn't been worked
4 for a long time, since it only happened Friday?

5 A. I couldn't tell you if I told him that or not,
6 Mr. Duff. I don't remember.

7 Q. All right. That's your statement now. You don't --

8 A. I don't specifically recall that conversation from
9 two years ago, no, Mr. Duff

10 MR. ROSENBAUM: Objection, Your Honor.

11 THE COURT: Don't --

12 MR. DUFF: Judge, you said I
13 could do this on --

14 THE COURT: No, I did not.

15 MR. DUFF: As to his prior
16 statements.

17 THE COURT: But not from that.

18 MR. DUFF: Okay, then we will
19 have to play the tape.

20 THE COURT: That's what you have
21 to do. Find it.

22 BY MR. DUFF:

23 Q. Did you tape this conversation on April 28th, '94?

24 A. Yes, sir.

25 Q. All right. And do you have that tape with you?

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1 A. I would imagine we have it, yes, sir.

2 THE COURT: I thought you
3 indicated you had a copy of it, Mr. Duff.

4 MR. DUFF: I did, Your Honor.

5 THE COURT: You were provided a
6 copy, I think you said.

7 MR. DUFF: Yeah.

8 Is this a copy of the tape that was provided to me,
9 sir? Does it appear to be a copy?

10 A. It doesn't have any writing on it and I don't
11 remember if -- but it does have an indication across the
12 top "Dan Smith, 4-28-94." It appears to be my writing on
13 the stick-um note.

14 Q. Are you telling me, sir -- so perhaps we could save
15 everybody some time here -- are you telling me if we go
16 through that tape you did not make the statement that this
17 case hasn't been worked for a long time, since it only
18 happened Friday?

19 A. My statement was I didn't recall that, Mr. Duff.

20 Q. Okay. So -- Judge, can we approach?

21 THE COURT: Come forward.

22 (Conference at the bench without the
23 hearing of the jury, as follows:)

24 MR. ROSENBAUM: Where are you reading
25 from?

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1 MR. DUFF: Page 15.

2 THE COURT: I know what you're
3 trying to do. I know what you're trying to do.

4 MR. DUFF: And it's going to be,
5 we'll be here all day if we use a tape.

6 THE COURT: I'm concerned about
7 all days.

8 MR. ROSENBAUM: Where is it?

9 MR. DUFF: Page 15.

10 MR. ROSENBAUM: He doesn't say that.

11 MR. DUFF: Question.

12 MR. ROSENBAUM: He doesn't say that.

13 MR. DUFF: Yes, he does.

14 MR. ROSENBAUM: No, he doesn't. You
15 are so nuts.

16 MR. DUFF: What's he saying, John?

17 MR. ROSENBAUM: Well, he never says
18 that. Anything in your transcript, as I understand it,
19 that has a Q is by Lieutenant Medder; anything by Leiby,
20 which is very, very little in this tape, your man has put
21 "Detective Leiby." There is Metter.

22 MR. DUFF: Let me clear it up.
23 Does he know that?

24 MR. ROSENBAUM: I assume he knows who
25 did the interview.

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1 (Thereupon, the following proceedings
2 continued within the hearing of the
3 jury.)

4 BY MR. DUFF:

5 Q. Handing you, again, what's been marked for
6 identification purposes as Defendant's Exhibit B, okay,
7 you've identified that document as a transcript of that
8 conversation you had with Danny Smith; is that right?

9 A. I've indicated that that's what it says on the front
10 of it, yes, sir.

11 Q. And who did the bulk of the discussion on that case?

12 A. Lieutenant Metter.

13 Q. All right. So that statement may have, may be
14 Detective Metter's statement, not yours?

15 A. That's correct.

16 Q. Would that be true, though, Detective, that at that
17 the point the case hadn't been worked for very long?

18 A. Three months. I'm sorry. When was it found? Two
19 months. You're right, about two months.

20 Q. Well, it hadn't been worked very long, right, you had
21 other cases going?

22 A. Correct.

23 Q. So you'd agree with that, right?

24 A. That we hadn't been working it very long, yes.

25 Q. All right, thank you. And now, he sat down and the

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1 two of you police officers went over a lot of things with
2 him, right?

3 A. I'm sure we did.

4 Q. And he was -- you interviewed him before you
5 interviewed Jaloweic or Smith; is that correct?

6 A. I believe it to be correct. I can't say for certain.

7 Q. Could your report verify that? Could you look at
8 that. These are important things, Detective.

9 A. Yeah. Yeah.

10 Q. So before anybody else, before Jaloweic or Raymond
11 Smith talked to you, Danny comes in and gives you a
12 statement; is that right?

13 A. That's correct.

14 Q. And he didn't ask for any legal help at that time
15 from you, did he?

16 A. No, sir. He had no cases pending at that time.

17 Q. No cases pending. He comes in willing to talk to
18 you. Then, as I understand it, he picked up a case; is
19 that right?

20 A. He picked up six cases, I believe.

21 Q. And these were what, what kind of cases were they?

22 A. They were drug related. I believe they were
23 aggravated drug trafficking. I don't specifically
24 remember.

25 Q. Do you recall what the possible punishment for each

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1 offense was?

2 A. No, sir.

3 Q. Would you disagree two years as being each six count,
4 each one carrying two years?

5 MR. ROSENBAUM: Your Honor, if he
6 doesn't know, he doesn't know.

7 THE COURT: He doesn't know.

8 Q. Well, that case came to court, did it not,
9 eventually?

10 A. Yes, sir.

11 Q. And that was in November of '94?

12 A. Yes, sir.

13 Q. And as I understand it, you took an interest in that
14 case; is that right?

15 A. That's correct.

16 Q. All right. In fact, you took such an interest, when
17 he came to court for sentencing, Danny pled guilty and
18 admitted to his involvement in that case; is that right?

19 A. That's correct.

20 Q. And you took such an interest in that case that when
21 this came to sentencing, you came to court that day?

22 A. That's correct.

23 Q. And you went in to see the judge, Judge McGough; is
24 that correct?

25 A. I did speak to Judge McGough; that is correct.

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1 Q. And this is before Danny was charged with anything
2 relating to this case; is that correct?

3 A. That's correct.

4 Q. And you went and told Judge McGough that Danny was
5 involved, possibly involved, in a homicide, right?

6 A. I made her aware of my investigation, yes, sir.

7 Q. And you advised her you wanted her to consider that
8 in giving her sentence, right?

9 A. I advised her I wanted to make her aware of that,
10 yes, sir.

11 Q. And Danny's lawyer wasn't there, was he?

12 A. No, sir.

13 Q. And the prosecutor wasn't there, was he?

14 A. No, sir.

15 Q. Just you and Judge McGough?

16 A. Yes, sir.

17 Q. And as a result that, of your conversation, the
18 sentencing he received was what; do you know?

19 A. As a result of my conversation --

20 Q. No. No.

21 A. -- I don't think the sentence was received.

22 Q. The question was, what was the sentence he received?

23 A. The sentence that he received, I believe, was two
24 years on each count.

25 Q. Run how?

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1 A. Back to back.

2 Q. Twelve years flat?

3 A. Yes, sir.

4 Q. Twelve years. And do you feel your conversation with
5 Judge McGough contributed to that sentence being so severe?

6 A. You'd have to ask Judge McGough.

7 Q. No, I'm asking you if you feel that way.

8 A. I made her aware of the facts.

9 Q. What was the purpose of making her aware of the
10 facts?

11 A. Because all my witnesses were scared to death that
12 Danny --

13 Q. No.

14 A. You asked me a question. Do you want me to answer
15 it?

16 Q. Yeah.

17 A. My witnesses were scared to death of Danny, and
18 everybody was pointing out to me that he was involved in
19 killing the last witness that was going to testify against
20 him. I felt if I could get him locked up, people would be
21 more apt to cooperate with me.

22 Q. He pled guilty in that case, right?

23 A. Yes, sir.

24 Q. And he received the maximum sentence in that case,
25 did he not?

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1 A. I'm not sure it's the maximum. I believe it is. I'm
2 not sure, Mr. Duff.

3 Q. You believe it's the maximum?

4 A. Yes, sir.

5 Q. Now, did you ever talk to a Becky Lescher?

6 A. She is the daughter of a police officer on the
7 department.

8 Q. Did you ever talk to her in regard to this case as
9 being a witness?

10 A. No, sir.

11 Q. Did you have information that Danny Smith had spoken
12 to her on the night of this incident, did you have that
13 information, yes or no, sir?

14 A. I don't think so.

15 Q. You didn't have that information?

16 A. No, I don't specifically remember that.

17 Q. Now, you seized Corrine Fike's vehicle on 12-4-94; is
18 that right?

19 A. I believe it is, if you let me confirm that.

20 Q. All right.

21 A. Yes, sir, it was 12-4 of 1994.

22 Q. But before that her car had been impounded by Elyria
23 Police, I believe, April to October; is that right?

24 A. Yes, sir.

25 Q. And because Stan Jaloweic was driving it; is that

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1 correct?

2 A. Yes, sir.

3 Q. Now, you would agree that Terry Hopkins, Carl Hartman
4 and Sharon Hopkins all told you different stories, when
5 they first spoke to you from what they testified in court;
6 is that correct?

7 A. That's correct, they all denied involvement.

8 Q. Just answer my questions, all right. And did you,
9 did you ever tell Terry Hopkins that you went to
10 Judge McGough and got Danny Smith's sentences stacked; did
11 you ever tell him that?

12 A. I may well have told him that, Mr. Duff.

13 Q. You might have said that?

14 A. Yes, sir.

15 Q. And that the -- did you ever testify previously in
16 this case that you spoke to Judge McGough and had his
17 sentence stacked on him, did you ever testify to that?

18 A. Did I testify to that?

19 Q. Yeah, previously.

20 A. Not that I can remember. I may have. If you can
21 refresh my memory with the transcript.

22 Q. I'll do that. Stan's transcript, page 339. Do you
23 recall being asked, "Did you go to Judge McGough?"

24 "Yes.

25 "Did you speak to Judge McGough outside the presence

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1 of Smith's attorney, Mr. Smith's attorney in those other
2 cases?

3 "Yes.

4 "And did you later claim that you had the sentencings
5 stacked?

6 "Answer: Did I claim that?

7 "Question: Yes.

8 "No, sir, not that I remember."

9 "Do you recall in a statement given with Terry
10 Hopkins, one of the witnesses in this case, that you had
11 Danny Smith's sentences stacked again on January 4th of
12 '95?

13 "If you have that in a statement, then I am sure I
14 said it."

15 Is that correct, sir?

16 A. That's exactly what I just said, yes, sir.

17 Q. All right. Now, you would agree that you went and
18 intervened on behalf of Terry Hopkins to get him shock
19 probation, did you not?

20 A. I spoke to Judge Glavas, that's correct.

21 Q. No, answer the question, sir. Yes or no. Did you
22 intervene on behalf of Terry Hopkins to get him shock
23 probation, yes or no?

24 A. Yes.

25 Q. All right. And that was, that was after he gave you

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1 his statement, right, implicating Danny?

2 A. Let me check for a minute, here. I believe it was.

3 Q. Okay. Now, the amount of cocaine or crack that was
4 purchased was about a half a gram; is that right?

5 A. Yes, sir, .557 grams.

6 Q. Tell the ladies and gentlemen, that's a very small
7 amount, isn't it?

8 A. As I explained, if you split a peanut in half and
9 then take that half and quarter it again, that's about a 20
10 dollar piece. When it comes to crack cocaine, you get six
11 twenty dollar pieces for a hundred dollars in the drug
12 world.

13 Q. I'm a little confused. You got a peanut --

14 A. You quarter a peanut.

15 Q. You have a peanut and you have a peanut at each end
16 of it, right, in the shell?

17 A. No.

18 Q. Let's do it this way. We got a peanut in a shell and
19 we take one of the peanuts out, because you usually find
20 two peanuts in a shell, right.

21 A. Yeah.

22 Q. How big is this compared to that one peanut?

23 A. If you were to quarter an average peanut, it would be
24 one corner of the average nut itself, you would take it out
25 of the shell. Not very large.

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1 Q. A corner of it?

2 A. About the size of my little finger tip.

3 Q. The sale of that amount does not carry any mandatory
4 time, does it, sir?

5 A. No, sir.

6 Q. And it's a probationable offense; is that right, sir?

7 A. I would imagine.

8 Q. All right. And there's been testimony in this case
9 about your influence around the courthouse. You would
10 agree that you have influence around the courthouse, do you
11 not, sir?

12 A. Certainly no more than you do, Mr. Duff.

13 MR. DUFF: Judge.

14 THE COURT: If you can answer the
15 question, Officer, please do so.

16 MR. ROSENBAUM: Your Honor, some
17 influence tells us nothing.

18 THE COURT: I understand.

19 MR. ROSENBAUM: I object to the
20 vagueness of the question.

21 Q. Sir, do you agree, yes or no, that you have some
22 influence around the courthouse?

23 A. Some influence?

24 Q. Yes.

25 A. Yes.

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1 Q. Right?

2 A. I said yes.

3 Q. Did you testify previously in this case that you are
4 a man of influence around the courthouse?

5 A. Yes, I did.

6 Q. All right.

7 A. Although, I was asked that question and I responded
8 to it yes.

9 Q. And you agreed you were a man of influence around the
10 courthouse --

11 A. Yes.

12 Q. -- in the previous defendant cases?

13 A. That's right.

14 Q. And you would often at times go to judges and ask for
15 consideration for informants you were working for, right?

16 A. I would go to the prosecutor.

17 Q. Oftentimes --

18 A. The prosecutor.

19 Q. You don't go to judges?

20 A. I generally go to the prosecutor.

21 Q. Did you testify previously that you go to judges?

22 A. If you have that in there. If you'll show it to me.

23 Q. I'm asking if you recall saying that?

24 A. I don't remember saying that, Mr. Duff.

25 Q. And you have been, you have gone into various judges,

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1 page 332, "You have gone into various judges and requested
2 that certain things be done on behalf of an informant.

3 "Answer: I have".

4 Do you recall saying that?

5 A. Can I see it? Yes, sir.

6 Q. All right. So you'd agree you do that?

7 A. Yes, sir, I have done that.

8 Q. All right. And if you feel someone else is not being
9 truthful to you, you'll go to the judge and tell the judge
10 that, right?

11 A. That's correct.

12 Q. All right. And, in fact, you did that in this case
13 in regard to Judge McGough and Danny, did you not?

14 A. No, sir.

15 Q. Now, you agree that you acted on behalf of Carl
16 Hartman to get him from going to jail, did you not?

17 A. I arranged for his personal bond, yes.

18 Q. You stopped him from going to jail, did you not, sir,
19 yes or no?

20 A. Yes, sir.

21 Q. And you'd agree that Carl Hartman's a violent
22 offender?

23 A. He was charged with a violent felony originally.

24 Q. And is Terry Hopkins a violent offender?

25 A. Yes, sir.

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1 Q. And for both those individuals -- well, your word
2 alone, your word got Carl Hartman a personal bond from
3 Judge Glavas; is that right?

4 MR. ROSENBAUM: Objection. He can't
5 answer that, Your Honor.

6 THE COURT: He may answer if he
7 can.

8 MR. ROSENBAUM: He can't answer.

9 A. I don't think so.

10 THE COURT: He said, "I don't
11 think so."

12 BY MR. DUFF:

13 Q. Did you previously testify -- so your answer is you
14 don't think your word did it, right?

15 A. I don't think my word alone did it, no, sir.

16 Q. Did you previously testify that your word got Carl
17 Hartman a personal bond?

18 A. I may have.

19 Q. Page 333. Page 333. Do you remember being asked
20 this question: "Nonetheless, you went in and put in a good
21 word on his behalf, and he was issued, as a result of that
22 good word, a personal bond, correct?"

23 Your answer was: "That is correct."

24 Did you testify to that?

25 A. May I see the statement, sir?

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1 Q. Did I read that right?

2 A. That is correct, what you just read.

3 Q. So your word got him a personal bond, right?

4 MR. ROSENBAUM: Objection.

5 A. No, sir.

6 Q. No, okay.

7 It is what it is, Judge.

8 THE COURT: No.

9 Q. I'll reask. I'll rephrase it. That's what you
10 testified to that as a result of your good word, he got a
11 personal bond, right?

12 A. I was asked that question.

13 Q. And that was your answer, that was correct?

14 A. My answer was, would you read it again?

15 Q. That is it, correct, was that your answer?

16 A. That is correct.

17 Q. You would agree that your investigation revealed that
18 Michael Smith was in the car when this homicide occurred,
19 right?

20 A. Yes, sir.

21 Q. And he was, he participated in going to Cleveland
22 with these people who perpetrated this homicide; is that
23 correct?

24 A. He rode to Cleveland with them, yes, sir.

25 Q. He rode to Cleveland with them, the people that

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1 perpetrated the homicide; is that right?

2 A. Yes, sir.

3 Q. Did you ever say to Dan, Danny Smith, that you heard
4 he was present when this murder occurred?

5 A. That Danny was?

6 Q. Yeah.

7 A. I don't remember saying that. I may have, sir.

8 Q. All right. You would agree, sir, that you have such
9 influence and power that if you feel someone's not being
10 truthful and they have a pending case in this courthouse,
11 you have the power to hurt that person, right?

12 A. I don't think so.

13 Q. You don't think so?

14 A. No, sir.

15 Q. All right, fine enough. Well, not just Terry Hopkins
16 and Carl Hartman, but just about every witness in this case
17 denied any knowledge of this; is that right?

18 A. That's a fair statement, yes, sir.

19 Q. All right. And Carl Hartman, he had, he had had a
20 lot of problems with the law, had he not?

21 A. I don't believe so. He was arrested once.

22 Q. But he had four prior warrants for his arrest for
23 probation violation; is that right?

24 A. That was mentioned at the last trial. I had no
25 specific knowledge of those four warrants for probation

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1 violation.

2 Q. You agree he had those?

3 A. I don't know that he did or didn't.

4 Q. You didn't testify that he did?

5 A. I don't believe I did. I believe I was asked if I
6 was aware of them, but I don't think I was.

7 Q. But now you know that he had four warrants for his
8 arrest?

9 A. Yes, from previous testimony.

10 Q. From the previous cases. And then, as I understand
11 it, your next contact with Danny was in June; is that
12 right?

13 A. Yes, sir. June -- late June, early July, I believe.

14 Q. Of '94?

15 A. Yes, sir.

16 Q. All right. At this point he wanted information. He
17 wanted, as you testified, if he helped you with this
18 investigation, you were going to -- he wanted
19 consideration for his drug case; is that right?

20 A. That's correct, yes.

21 Q. And that continued on, and you eventually had
22 conversation with his father, did you not?

23 A. Yes, sir.

24 Q. Well, in July of '94, his father came to see you,
25 right?

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1 A. Yes, sir.

2 Q. About July '94 his father comes to see you, right?

3 A. Yes, sir.

4 Q. And he gives you a story, basically, that -- and you
5 got the transcript there; is that right? It's been marked.

6 A. Raymond's transcript, has that been marked? No, sir.
7 I have it in front of me. No, this is the bribery case
8 here, sir.

9 Q. But Raymond Smith gives you a story that he got in a
10 fight with this Ron Lally guy and the gun accidentally
11 went off?

12 MR. ROSENBAUM: Objection.

13 THE COURT: He may answer if he
14 knows that.

15 A. I don't believe that's exactly how the story went.

16 Q. Well, tell us exactly, not exactly --

17 MR. ROSENBAUM: Objection.

18 THE COURT: Ask your question.

19 Q. Tell us then what Ray told you as to how this
20 incident occurred --

21 MR. ROSENBAUM: I object.

22 Q. -- in that story of July 1994.

23 MR. ROSENBAUM: I object.

24 THE COURT: Hearsay.

25 MR. DUFF: It's not offered for

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1 the truth of the matter, Judge. It's offered --

2 MR. ROSENBAUM: It's irrelevant. We
3 stipulated he said it.

4 MR. DUFF: We don't know what it
5 is. The jury doesn't know.

6 MR. ROSENBAUM: And the truth is
7 irrelevant to you.

8 MR. DUFF: Judge, ask that be
9 stricken. Did you hear what he just said?

10 THE COURT: I heard what he said.
11 Gentlemen, I -- again, please -- again, please --

12 MR. DUFF: He said it, Judge, not
13 me.

14 THE COURT: Mr. Duff, could I
15 please finish my statement. I've been trying to let you
16 finish yours at this point. Again, please, you'll address
17 these matters to the Court, the Court will make rulings.
18 The objection is sustained. Hearsay, period, for whatever
19 reason that it's being offered.

20 BY MR. DUFF:

21 Q. Did you receive information on that date that Ray and
22 Ron Lally were in a fight --

23 A. Yes.

24 Q. -- in Cleveland?

25 A. Yes.

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1 Q. All right. Now, you told Danny back in April that
2 you wanted -- you told Danny back in April that you wanted
3 him to get for you the third person involved in this case,
4 right?

5 A. In April?

6 Q. Yes.

7 A. I don't believe it was in April. Let me check.
8 No, sir, it was January of '95.

9 Q. All right. January '95 you want Danny to find out
10 for you who the third person is, right?

11 A. Yes, sir.

12 Q. January what of '95?

13 A. I show it as January the 10th I spoke to Danny and
14 January the 11th his father.

15 Q. What date do you show Danny? You have a transcript?

16 A. The 10th. No.

17 Q. You have a transcript?

18 A. No, I don't.

19 Q. You have a transcript here of that conversation.
20 Shows January 7th, does it not?

21 A. This is a transcript of his taped statement. We are
22 referring to a telephone call.

23 Q. All right. Well, in that taped statement, you also
24 want him to find out what his dad knows in this case,
25 right?

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1 A. Sure.

2 Q. All right. You want Danny to wear a wire in January
3 7th of '95, when Danny's in jail, right?

4 A. Yes.

5 Q. And you want him to wear a wire and have his dad come
6 visit him and him to get information from his dad as to how
7 this happened, right?

8 A. He volunteered to me that, Mr. Duff.

9 Q. Detective, could you answer my questions.

10 A. The answer is no.

11 Q. Did you discuss that with Danny Smith, him wearing a
12 wire --

13 MR. ROSENBAUM: Object, Your Honor.

14 MR. DUFF: Can I finish, Judge?

15 THE COURT: Finish your question.

16 Q. Did you discuss with Danny Smith, Danny Smith to wear
17 a wire in the county jail on January 7th, 1995, and to get
18 information about his father as to how this case happened,
19 did you discuss that, yes or no?

20 A. Yes, I did.

21 Q. You wanted, you discussed him, you discussed him
22 tape-recording a conversation with his own father, correct?

23 A. That's correct.

24 Q. At the county jail?

25 A. I believe it was at the county jail.

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1 Q. While his father would come and visit him, right?

2 A. Yes, sir.

3 Q. He never did that, did he?

4 A. No, sir.

5 Q. January 7th of '95, you got that transcript there; is
6 that correct?

7 A. Yes, sir.

8 Q. All right. Does it -- now, you previously said that
9 you can't recall Becky Lescher being involved in this case,
10 right?

11 A. I didn't say that. I didn't remember her being
12 involved. I don't believe I spoke to her or knew that she
13 was involved the night --

14 Q. That she played no role in this case, she might have
15 any information in regard to this case?

16 A. I still don't believe she played a role in that case.

17 Q. I asked do you believe she might have any information
18 in regard to this case --

19 A. No.

20 Q. -- as to where Danny's whereabouts might be or where
21 he was going?

22 A. No sir.

23 Q. Do you have information she spoke to Danny that
24 night?

25 A. If I became aware of that, it was during these

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1 trials.

2 Q. Page 7 or -- can I have that transcript, sir?

3 A. Sure.

4 Q. You don't remember being told about Becky on January
5 7th, 1995?

6 A. Specifically, no, sir.

7 Q. All right. You might have been told that?

8 A. It's possible.

9 Q. It's possible, sir?

10 A. Yes, sir.

11 Q. And you agree you never talked to Becky?

12 A. No, sir, I did not.

13 Q. And you asked Danny if he had ever been told by his
14 father if his father killed Ron Lally, right?

15 A. I'm sure I did.

16 Q. On January 7th, '95?

17 A. I'm sure I did.

18 Q. All right. And you asked Danny about what his
19 understanding was as far as what he was going to get on
20 this pending case he had in front of Judge McGough. No,
21 strike that.

22 You asked Danny the cases that were -- where was
23 Danny's case that was dismissed? That's Danny's case?

24 A. Yes, sir.

25 Q. 93-CR-044167?

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1 A. Yes, that's what it says, yes, sir.

2 Q. You asked Danny what he thought he was going to get
3 on that case, right, did you ask him that?

4 A. I believe I did. I don't specifically remember
5 asking it, but I believe I did.

6 Q. He told you what he thought he was going to get?

7 A. If that's in the transcript, yes, sir.

8 Q. And he told you this is what his attorney told him,
9 right?

10 A. I don't think he could remember what his attorney
11 told him, as I remember it.

12 Q. Did you check with his lawyer?

13 A. I spoke with Mr. Ross and Mr. Ross couldn't remember
14 either.

15 Q. Mr. Ross could not remember whether or not he
16 promised Danny probation on that case; is that right?

17 MR. ROSENBAUM: Objection. If he
18 doesn't remember, he can't remember what he did or did not
19 promise.

20 THE COURT: Doesn't remember.

21 Q. No, no.

22 THE COURT: Ask your question
23 again.

24 Q. All right. Thank you, Your Honor.

25 Did Michael Ross tell you that he did not promise

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1 Danny probation on this case?

2 MR. ROSENBAUM: Objection.

3 THE COURT: I'll let him answer if
4 he knows.

5 A. I don't think Mr. Ross could remember any of the
6 specifics of the case when I spoke to him on the telephone.

7 Q. He didn't tell you that he never did promise Danny
8 any promises on probation?

9 MR. ROSENBAUM: Objection.

10 THE COURT: It's a different
11 question posed the same way. He answered he doesn't
12 recall. Period.

13 Q. Did Mr. Ross tell you, did he rule out to you that he
14 never discuss --

15 MR. ROSENBAUM: Objection.

16 MR. DUFF: Can I finish?

17 THE COURT: Let him finish the
18 question.

19 Q. Did Mr. Ross rule out to you that he never discussed
20 probation with Danny Smith?

21 MR. ROSENBAUM: Objection.

22 Q. Yes or no?

23 THE COURT: Answer it.

24 A. No, we didn't discuss whether he had ruled it out or
25 not.

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1 Q. All right. But you knew that's what Danny felt he
2 was going to get, probation, right?

3 MR. ROSENBAUM: Objection.

4 THE COURT: Sustained.

5 Q. Did you ask Danny if he spoke to Sandy Williams?

6 A. Yes, sir.

7 Q. All right. And that information was confirmed; is
8 that right?

9 A. He admitted that he did.

10 Q. Okay. Did you ask Danny if he took his dad out to
11 Wilkes Villa, did you ask him that?

12 A. I asked him South Middle Avenue.

13 Q. And that was confirmed; is that correct?

14 A. He said he dropped his dad off at his aunt's house.
15 I don't think he said Wilkes Villa. I think he said his
16 aunt's house.

17 Q. All right.

18 (Discussion off the record between defense attorneys.)

19 BY MR. DUFF:

20 Q. Dan, at page 6 of ours. And did I ask him if his dad
21 Raymond came over on the night in question, after he was
22 dropped off, to get drugs at his house?

23 A. On the night that he was dropped off or the following
24 morning?

25 Q. The following morning, Detective.

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1 A. The following morning, yes, I think I did ask him
2 that.

3 Q. And that information was confirmed that his father
4 had come over his house for drugs?

5 A. Yes.

6 Q. That was confirmed by Michael Smith; is that right?

7 A. Yes.

8 Q. Did you ask Danny if it was his understanding, or
9 not, whether or not he could get convicted if the snitch
10 was present or not, did you ask Danny about that? Did you
11 have conversation with him about that?

12 A. Probably.

13 Q. All right. And as a result of that conversation --
14 well, Detective, you admit that on certain cases you can
15 get conviction without snitches?

16 A. Previously.

17 Q. Yes or no, can you get convictions without snitches?

18 A. Yes.

19 Q. And you confirmed that Danny believed that, right?
20 From your discussion with Danny, you confirmed that he
21 believed that he could be convicted without a snitch, right?

22 MR. ROSENBAUM: Objection.

23 A. No.

24 THE COURT: He's answered no.

25 Q. No. You didn't talk to him on the tape about that?

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1 A. I don't believe he was clear on that topic.

2 Q. So he was unsure?

3 A. Yes.

4 Q. All right. Did you ask Mr. Ross if they had a
5 discussion with him about that?

6 A. Mr. Ross whether --

7 Q. No, just answer my question. Did you talk to
8 Mr. Ross about, that whether he could be convicted alone
9 without a snitch?

10 A. No.

11 Q. And you asked him several times whether or not his
12 dad discussed this case with him, right?

13 A. Probably, yes, sir.

14 Q. And you asked him if he drove, drove Corrine Fike's
15 car, right?

16 A. Yes, sir.

17 Q. And you confirmed that he did drive the car, right?

18 A. Yes, sir.

19 Q. Did you tell him that you didn't think you're being
20 truthful with me, that you know who did it and who was
21 present, and he wasn't telling you this on January 7th,
22 1995?

23 A. That's probably true also.

24 Q. You made that statement to him that "I don't believe
25 you're being truthful because you know who did it and who

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1 was present, and you're not telling me," right?

2 A. I'm sure I probably did.

3 Q. And you were upset with him, right?

4 A. I'm just trying to get the facts.

5 Q. Were you upset with him at that point?

6 A. No, not specifically.

7 Q. Look. In fact, you told him that he was not
8 truthful, because your information was that he had some
9 contact with these people when they came back from
10 Cleveland, right?

11 A. That's probably true.

12 Q. No. Is that what you told him?

13 A. I don't specifically remember. It's probably -- I
14 mean, based on the facts that I'm aware of, yes.

15 Q. That he, that you told him he had contact with these
16 people when they came back from Cleveland, and therefore,
17 he wasn't being truthful because he wasn't owning up to
18 that, right?

19 A. That's very possible, yes.

20 Q. Did you tell him his dad was looking at a long time
21 in prison because of his age, did you tell Danny that?

22 A. Because of his age?

23 Q. Because he has a long record and his age?

24 A. Maybe the criminal history. I don't think I would
25 have said because of his age.

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1 Q. You told him his dad was looking at a long time
2 because of his criminal history, right?

3 A. On which?

4 Q. On the drug case, on the pending drug case.

5 A. On the initial drug case, on this one?

6 Q. Yeah.

7 A. I don't remember telling him that.

8 Q. You don't remember telling --

9 A. No.

10 Q. -- Danny that?

11 A. I don't remember that, no.

12 Q. Well, if that's on the tape, that would be accurate;
13 is that right?

14 A. Yes, sir.

15 Q. All right. And you wanted Danny -- well, not --
16 rephrase that.

17 Sir, the information on the wire, the information you
18 wanted was to find out how it occurred, correct?

19 A. You've got me a little confused here. You said the
20 information on the wire and then you moved --

21 Q. The information regarding Danny wearing the wire,
22 okay, that you discussed with him, right, on January 7th --

23 A. Yes.

24 Q. -- was you wanted, the information you wanted was how
25 it occurred, right, how the murder occurred?

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- 1 A. That would be true to the investigation, yes.
- 2 Q. And how the injuries occurred, right?
- 3 A. Yes.
- 4 Q. And who did what, right?
- 5 A. That would be a fair question, yes, sir.
- 6 Q. Okay. And that's what you said to him, right?
- 7 A. I believe so.
- 8 Q. And you asked him if his dad, if he got this
- 9 information on his dad, if he thought that his father would
- 10 give Stan up; is that right?
- 11 A. That's a good possibility also.
- 12 Q. Did you say that?
- 13 A. I believe I probably did.
- 14 Q. All right. And you also asked him if he thought
- 15 anybody else might be involved in this case on January 7th,
- 16 1995; is that right?
- 17 A. I'm sure I did.
- 18 Q. You told him that you were sure that his dad had told
- 19 him what had happened, right?
- 20 A. Yes.
- 21 Q. You also told him that he was going to need witnesses
- 22 to verify this alibi of his, right?
- 23 A. Yes.
- 24 Q. Did you tell him that?
- 25 A. I'm sure I did.

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1 Q. You would agree he was not there when this offense
2 occurred, right?

3 A. Yes, I would agree to that.

4 Q. And you told him that I hoped you'd be more, this
5 conversation with you would be more fruitful, right?

6 A. Yes, sir.

7 Q. And now you used the word, and you said, "I'm going
8 to conclude this interview now"; is that correct?

9 A. Yes. That's the standard wording for my tapes.

10 Q. Did Danny have a problem understanding the word
11 "conclude"?

12 A. I don't recall.

13 Q. He may have?

14 A. He may have.

15 Q. Danny's not the brightest guy, is he?

16 A. I don't think that's up to me to judge that.

17 Q. I'm asking you, from your impression, do you think
18 he's an intelligent man?

19 A. Yes.

20 Q. You think he's intelligent. Do you think he's
21 learning disabled?

22 A. I have no knowledge of that.

23 Q. You have no knowledge?

24 A. Not until you mentioned it earlier in this trial,
25 Mr. Duff.

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1 Q. All right. And you would agree, from your
2 investigation, his father Ray got him involved in drug
3 activity, right?

4 A. At first.

5 Q. Yes, initially.

6 A. Yes.

7 Q. Do you know what age that was?

8 A. No, sir.

9 Q. And that you've told people that his father Ray is an
10 evil man who involved his own children in drugs; is that
11 right?

12 A. That's correct.

13 Q. You told people that?

14 A. Yes.

15 Q. Did you find that Dan -- I asked you earlier if
16 Danny, if you were given the information, if you asked
17 Danny if he took Ray out to Wilkes Villa; is that right?

18 A. Yes.

19 Q. And what was your answer?

20 A. I believe he said he took him on South Middle Avenue
21 to drop them off at his aunt's house.

22 Q. At Wilkes Villa?

23 A. No, I said by Wilkes Villa. I don't recall him
24 saying at Wilkes Villa.

25 Q. By Wilkes Villa; is that right?

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1 A. That's a possibility, yes.

2 Q. You told him on January 7th, 1995 that now was a good
3 chance for him to finally tell you the truth, right?

4 A. I'm sure I probably would have told him that.

5 Q. All right.

6 MR. DUFF: If I could have a
7 couple minutes, Your Honor.

8 THE COURT: Sure.

9 BY MR. DUFF:

10 Q. Did you give Danny Smith a tape recorder to record
11 Stan at the county jail?

12 A. I believe I did.

13 Q. All right. He didn't do that?

14 A. No.

15 Q. All right. That made you angry?

16 A. No, it didn't make me angry at all.

17 Q. It upset you?

18 A. No. I didn't expect to get a recording back.

19 Q. So when was that wire to be wore, he to wear the wire
20 on Stan, the date?

21 A. Give me one minute.

22 Q. After he got sentenced by Judge McGough; is that
23 correct?

24 A. If you'll give me one minute, sir.

25 Q. I will.

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1 A. I believe that would have been approximately, and I
2 say approximately, 12-4 of '94. That's what I have
3 indicated in my notes.

4 Q. 12-4 of '94?

5 A. Yes, sir.

6 Q. You request him after he's been sentenced by Judge
7 McGough; is that right?

8 A. I don't believe I requested him. We did discuss it,
9 as I indicated.

10 Q. You don't have a tape recording of that conversation?

11 A. No.

12 Q. All right. We don't have a record of it, do we?

13 A. No.

14 Q. All right. You discuss him wearing a wire on Ray and
15 you put him in the same cell with Stan?

16 A. With Stan. He asked if he could.

17 Q. Let me ask the question, Officer.

18 A. I was trying to answer, Mr. Duff.

19 Q. You discussed with him wearing a wire on Stan and
20 being put in the same cell with Stan; is that right?

21 A. Yes, sir.

22 Q. Let me ask you, Officer, after he was sentenced on
23 November 24, 1994 by Judge McGough to 12 years flat, did
24 you have occasion to go visit him down in the holding cell
25 downstairs?

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1 A. In the basement here?

2 Q. Yeah.

3 A. Not that I remember.

4 Q. Did you go visit him at jail?

5 A. To serve the murder indictment.

6 Q. Downstairs, remember going down to see Danny
7 downstairs in the holding tank?

8 A. No, sir.

9 Q. That may have happened?

10 A. It may have. I don't remember it.

11 Q. Did you tell him without his lawyer, "You see what I
12 did to you? I can undo this." Did you tell him that?

13 A. No.

14 Q. You wouldn't do that?

15 A. No.

16 Q. All right.

17 A. That's false.

18 Q. All right. You didn't go down there and tell him,
19 "See what I did to you with Judge McGough? I got you 12
20 years." Did you tell him that?

21 A. First, I don't remember going down there. I would
22 not have told him that.

23 Q. Did you make a statement to him that, to the effect,
24 "See what I did? I got 12 years on this case"?

25 A. No.

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1 Q. But you don't deny going down talking to him right
2 after Judge McGough sentenced him?

3 A. I said I do not remember doing that.

4 Q. You might have done that?

5 A. It's a possibility.

6 Q. Would you have notes to indicate whether you did that
7 or not?

8 A. No, sir.

9 Q. You would just do that on your own, go down there and
10 talk to him and talk to him about what happened to him
11 upstairs; is that right?

12 A. I don't know if I did or not, Mr. Duff.

13 Q. But if you did, you wouldn't make a record of it?

14 A. Not necessarily, no.

15 Q. All right. Isn't it true, Detective, that you
16 continuously, continuously tried to get Danny to implicate
17 his father in this case, yes or no?

18 A. No. No.

19 Q. And that -- well, you discussed him wearing a wire on
20 his father, right?

21 A. At his request, yes.

22 Q. And it's true that he was talking to you more than
23 Michael was, wasn't he?

24 A. I don't think I had contact with Michael through most
25 of this. It was later on that Michael came.

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1 Q. You had no contact with Michael until 4-12 of '95; is
2 that right?

3 A. That's correct.

4 Q. And he told you at that time, Michael, that he was
5 reluctant, and you heard him testify his reluctance was he
6 didn't want to snitch on his own father, right?

7 A. That's right.

8 Q. Do you think Danny was reluctant in that regard?

9 A. Not at all.

10 Q. Yes or no?

11 A. Not at all.

12 Q. But you would agree Michael had a lot more
13 information about how this murder went down in Cleveland
14 than Danny did, right?

15 A. Michael gave me a lot more information than Danny.

16 Q. Answer my question.

17 A. I don't know if I can.

18 Q. Let me ask it again. If you don't understand, please
19 tell me. You would agree that Michael Smith had a lot more
20 information about how this murder transpired in Cleveland,
21 Ohio than Danny did, right, yes or --

22 A. No. He had more, or provided me with more.

23 Q. I'll ask it again, Detective. You would agree that
24 Michael Smith had a lot more information in his head about
25 how this murder occurred in Cleveland, Ohio than Danny

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1 Smith did, right?

2 A. No.

3 Q. You would not agree with that?

4 A. No, sir.

5 Q. You would agree that Michael was there, right?

6 A. Michael was present; that's correct.

7 Q. And would you agree that Danny was not there,
8 correct?

9 A. I will agree with that.

10 Q. Wouldn't you agree that someone else who's present
11 when a murder occurs knows more about the details than
12 someone --

13 A. Not if he's involved.

14 Q. Just let me ask. Would you agree that somebody who
15 witnesses a murder, has more personal knowledge about that
16 murder, how that murder occurs, than someone who's not
17 present, yes or no?

18 A. Not necessarily, no.

19 Q. And Michael never talked to you until that April of
20 '95 date, right?

21 A. That's correct.

22 Q. And Danny has been talking to you off and on, right?

23 A. That's correct.

24 Q. And you weren't upset with Danny for not cooperating
25 with you, not at all?

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1 A. No, sir.

2 Q. And, in fact, that you weren't upset --

3 MR. DUFF: Let me talk a minute,
4 Your Honor. I need a minute, Your Honor.

5 (Discussion between defense counsel off the record.)

6 BY MR. DUFF:

7 Q. Do you have any knowledge of Dan, of Raymond Smith
8 and Stanley Jalowiec renting motels rooms together?

9 MR. ROSENBAUM: Objection.

10 THE COURT: Overruled. Do you
11 have any knowledge?

12 A. Firsthand knowledge, no, sir.

13 THE COURT: Use the mike, please.

14 A. I'm sorry. Firsthand knowledge, no, sir.

15 Q. Has your investigation revealed that that occurred,
16 that Stan and Ray would rent rooms together, hotel rooms?

17 MR. ROSENBAUM: Objection.

18 THE COURT: Overruled. You can
19 answer.

20 A. I would say that would be hearsay. Do I have
21 knowledge? Did people tell me they did?

22 Q. Yes.

23 A. Yes, people did tell me they rented rooms.

24 Q. All right. And did people tell you, from your
25 investigation, that they were homosexuals?

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1 MR. ROSENBAUM: Objection.

2 THE COURT: Sustained at this
3 point. Sustained.

4 Q. Did you get information that Stan --

5 MR. ROSENBAUM: Objection.

6 MR. DUFF: Could I finish?

7 THE COURT: Let him finish.

8 MR. ROSENBAUM: I ask to approach the
9 bench.

10 THE COURT: Let him finish.

11 Come on. Come on. Come on.

12 MR. ROSENBAUM: I'd like to approach,
13 please.

14 THE COURT: Come on. Come on.
15 Come on.

16 (Conference at the bench without the
17 hearing of the jury, as follows:)

18 MR. ROSENBAUM: He's going to persist
19 in this homosexual thing. There is no reliable information
20 to support that.

21 MR. DUFF: Yes, there is.

22 MR. ROSENBAUM: Why don't you put the
23 reliable information on the stand and stop with the
24 charade.

25 THE COURT: He doesn't know. His

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1 client's the one that told him about it. He heard --

2 MR. ROSENBAUM: It's total rumor.

3 It's not true. We don't know if it's true or not.

4 THE COURT: What who heard?

5 MR. ROSENBAUM: He heard from your
6 client.

7 MR. DUFF: Can I ask him that?

8 THE COURT: Okay.

9 (Thereupon, the following proceedings
10 continued within the hearing of the
11 jury.)

12 BY MR. DUFF:

13 Q. Did you receive information --

14 MR. ROSENBAUM: Your Honor, if this is
15 the same vain, I'm going to object and ask that he not
16 mention that subject again.

17 MR. DUFF: I think I'm allowed to
18 ask it, aren't I, Judge?

19 THE COURT: I think I've already
20 ruled. I thought I already ruled on that.

21 BY MR. DUFF:

22 Q. All right. You previously answered that you did
23 receive information --

24 MR. ROSENBAUM: Objection.

25 MR. DUFF: Can I phrase it? It's

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1 not the same question.

2 You previously answered that you received information
3 that Stan and Ray would get hotel rooms together, correct?

4 MR. ROSENBAUM: Objection.

5 THE COURT: I think he's answered
6 that already.

7 MR. DUFF: Thank you.

8 THE COURT: He's answered that
9 already.

10 Q. You told Danny that you didn't, you needed the name
11 of the second person involved in this murder before you had
12 talked to Ray again, right?

13 A. To anyone again; that's correct.

14 Q. Before you would talk to Ray again?

15 A. Before I would talk to anyone further about the
16 investigation, I wanted someone to call me and tell me who
17 the third person involved was.

18 Q. Did you previously testify, page 246, that "When I
19 was advised of this, I told Dan Smith that before I would
20 speak any further with his father --" that's Ray, right?

21 A. That's correct.

22 Q. "-- I needed something from him, the naming of the
23 second person involved." Did you testify to that?

24 A. I probably did, yes, sir.

25 Q. All right. And then shortly thereafter you would,

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1 you would have Dan, told Danny that on January 7th, right,
2 during that interview?

3 A. No, that would have been January 10th, when Danny
4 gave me a phone call --

5 Q. All right.

6 A. -- and wanted me to talk to his father again.

7 Q. And you told him that you wouldn't do that until you
8 got the name of the second person, right?

9 A. That's correct.

10 Q. And then after that you got, after you told Danny
11 that, you got a phone call from his dad, right?

12 A. On the 11th, yes, sir.

13 Q. January 11th, right?

14 A. Yes, sir.

15 Q. And on January 11th, his father told you the second
16 person involved, right?

17 A. Yes, sir.

18 Q. And that was 1-11-95, Ray calls you and tells you
19 it's Stan?

20 A. Yes, sir.

21 Q. Right? And Danny admitted to you that he told, that
22 he admitted to you that he took his dad and Stan down
23 Middle Avenue, right?

24 A. That's correct.

25 Q. Did you ask Danny -- well, no.

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1 Did you ever testify that Danny thought that he was
2 going to get probation on this drug case?

3 A. I don't remember testifying to that, Mr. Duff.

4 Q. You don't remember testifying to that?

5 A. No, sir.

6 Q. Page 256. "Question: And in that statement, I
7 believe he told you that with regard to that drug case --"
8 and this is the drug case we are talking about, right?

9 A. Yes, sir.

10 Q. The one that had to be dismissed, right, involving
11 Mr. Lally as the informant, right?

12 A. Yes, sir.

13 Q. "-- that in regard to this case he thought he was
14 going to get probation, didn't he?"

15 A. Yes.

16 Q. Your answer was "Yes, I believe you are right." Did
17 you testify to that previously?

18 A. May I see that, please?

19 Q. Is that what it says, sir?

20 A. One moment, please. I'm making sure what I'm --

21 Q. Just answer my question. Is that what it says, yes
22 or no?

23 MR. ROSENBAUM: Your Honor, he's
24 entitled to check.

25 THE COURT: He's entitled to

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1 check. He can check it at this point.

2 Q. Go ahead and check it.

3 A. Yes, sir.

4 Q. That's what it says, right?

5 A. Yes, sir.

6 Q. So you knew in Danny's mind that he thought he was
7 going to get probation on a drug case involving Ron Lally,
8 according to this, right?

9 A. According to that transcript, yes.

10 Q. You testified to that, right?

11 A. Yes.

12 Q. People get probation every day in this courthouse,
13 right?

14 A. I couldn't tell you that.

15 Q. That occurs often, right?

16 A. It occurs often, yes, it does.

17 Q. And it occurs in drug cases frequently, does it not?

18 A. It does.

19 Q. All right. Well, I asked you -- I'm almost done
20 here, Judge.

21 Previously, I asked you previously if you spoke with
22 Michael Ross, Danny's lawyer, about the drug case that you
23 have in front of you, about Danny getting probation.

24 A. Yes, sir.

25 Q. What was your answer; that you couldn't recall doing

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1 that?

2 A. I advised that I believe I recall speaking with
3 Mr. Ross. I think we had telephone conversation, but I
4 don't think he was able to remember anything specific about
5 it.

6 Q. All right.

7 A. I don't think Mr. Ross was.

8 Q. But you asked him if Danny thought he was going to
9 get probation on that case?

10 A. I don't believe that was specifically what I asked
11 him. I remember that he could not answer my questions that
12 I asked of him.

13 Q. Do you remember being asked, page 256, "So his
14 attorney didn't remember whether or not he told him he
15 might get probation?" And your answer was, "He could not
16 be specific." Right?

17 A. Right.

18 Q. All right. So you asked his attorney that?

19 A. Yeah, that's what I said.

20 Q. Because that's what Danny led you to believe he was
21 going to get in that case was probation, right?

22 MR. ROSENBAUM: Objection.

23 THE COURT: Why he asked it I
24 don't think is -- you can make any inference. He did ask
25 it.

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1 Q. You asked that, right?

2 A. I believe I did. Mr. Ross wasn't able to respond.

3 Q. He couldn't be specific?

4 A. He couldn't remember.

5 Q. Well, your answer in court previously was, he
6 couldn't be specific, right?

7 A. Same difference.

8 THE COURT: You did answer that
9 yes?

10 THE WITNESS: Yes.

11 Q. And it's true that throughout this case, from day
12 one, in April, early on before this case was worked very
13 hard, in April '94 Danny denied any involvement in this
14 case and he denied being present, right?

15 A. To the present?

16 MR. ROSENBAUM: Objection.

17 Q. Denied being present.

18 THE COURT: Denied being present.

19 Q. Denied being present.

20 A. I didn't understand.

21 THE COURT: Asked and answered.

22 Q. Yes?

23 THE COURT: He's already answered
24 that.

25 MR. DUFF: Nothing else, Judge.

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1 THE COURT: Mr. Rosenbaum.

2 REDIRECT EXAMINATION OF DETECTIVE ALAN LEIBY

3 BY MR. ROSENBAUM:

4 Q. Detective, regarding this entry of January 7th of
5 '95 on Mr. Duff's chart, where he writes down "Discuss
6 wire, tape-recorded his own father," if anyone was trying
7 to create the impression that you solicited Danny to do
8 that, would that be accurate?

9 A. No, sir.

10 Q. Would you tell the Court and jury how that discussion
11 that he has written up there came about?

12 A. Danny offered to do that. Danny wanted to wear the
13 wire. I did not institute that conversation.

14 Q. Did he do that same thing with Stanley?

15 A. Yes.

16 Q. And you gave him a tape recorder?

17 A. I did.

18 Q. You also said you weren't surprised that you got
19 nothing back?

20 A. That's correct.

21 Q. Why?

22 MR. DUFF: Object.

23 THE COURT: He may answer.

24 A. I didn't expect to get anything back.

25 Q. Because why?

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1 A. Because I felt they were involved together.

2 MR. DUFF: Object to what he
3 felt. His opinion doesn't matter in this case, Judge.

4 MR. ROSENBAUM: Your Honor, he raised
5 this.

6 MR. DUFF: The jury makes the
7 decision, not him.

8 THE COURT: The jury makes that
9 decision. Not on that case, sir. That case, those cases
10 have been determined at this point, okay. I'm talking
11 about how he felt Danny was involved. That's the opinion,
12 that's the ultimate decision the jury has to make, yes, at
13 this point.

14 MR. DUFF: And he shouldn't be
15 giving it, Judge.

16 THE COURT: And strike that at
17 this point.

18 THE WITNESS: I apologize.

19 THE COURT: No apologies.

20 BY MR. ROSENBAUM:

21 Q. You met with Danny Smith because you suspected him,
22 right?

23 A. That's correct.

24 Q. And you entertained these calls from him?

25 A. That's correct.

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1 Q. And did you expect any more cooperation than he gave
2 you?

3 A. No.

4 Q. Did you expect him to come forward like he did?

5 A. Yes.

6 Q. And why was that?

7 A. Because I expected him to try to negotiate a deal of
8 some sort to save himself.

9 Q. Is that what he was attempting to do?

10 A. Yes, sir.

11 MR. DUFF: Object. It's his
12 opinion again, Judge.

13 THE COURT: Again, again,
14 sustained. Sustained.

15 Q. Now, did he tell you that --

16 THE COURT: Disregard that.

17 Q. -- that was what he was attempting to do?

18 THE COURT: I'm sorry,
19 Mr. Rosenbaum, I was talking. I don't think he heard your
20 question.

21 A. No.

22 Q. Did Danny Smith tell you what he expected in regard
23 to, for this so called cooperation that he was giving?

24 MR. DUFF: Object.

25 A. Yes.

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1 Q. What was that?

2 THE COURT: Overruled.

3 A. He wanted consideration on his drug charges. He
4 wanted them dismissed. He wanted out of jail.

5 Q. Now, Mr. Duff asked you if you were angry because
6 Danny Smith did not cooperate, as he said. Did these
7 conversations with Danny Smith benefit you in your
8 investigation?

9 A. Yes.

10 Q. Were you able to manipulate Danny Smith and gain more
11 information to these conversations?

12 A. Yes.

13 Q. Did that please you or displease you?

14 A. That pleased me.

15 Q. And may be rather obvious, but people go to jail
16 every day in this courthouse, or commonly in this
17 courthouse, for drugs and as well, get probation, do they
18 not?

19 A. That's correct.

20 MR. ROSENBAUM: I have no other
21 questions.

22 THE COURT: Mr. Duff.

23 RE CROSS-EXAMINATION OF DETECTIVE ALAN LEIBY

24 BY MR. DUFF:

25 Q. You said you saw to it that he wouldn't get

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1 probation, didn't you, on that drug case with Judge McGough?

2 MR. ROSENBAUM: I object. It's
3 beyond the scope, Your Honor.

4 MR. DUFF: He brought it up,
5 Judge.

6 MR. ROSENBAUM: I did not bring up
7 this specific case.

8 THE COURT: Not the specific case.

9 MR. DUFF: Not the specific case,
10 but the general idea.

11 THE COURT: Well, no, he brought
12 the general idea about people getting probation every day,
13 which was answered to your question, and then --

14 MR. DUFF: I'll withdraw it,
15 Judge.

16 THE COURT: Okay.

17 MR. DUFF: I don't want to argue.

18 THE COURT: And I might add that
19 every day people do not get probation in this courthouse.
20 There may be certain days, but not every day.

21 MR. DUFF: Judge, I don't want to
22 get into that.

23 THE COURT: Well, I just want to
24 set the record straight, too.

25 BY MR. DUFF:

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1 Q. On drug cases people get probation, right?

2 A. Yes.

3 Q. On drug cases involving small amounts of drugs,
4 right?

5 A. Yes.

6 Q. And this case involved a small amount of drugs,
7 right?

8 A. Yes.

9 Q. All right. Now, testimony is Danny wants to wear a
10 wire on Stan and on Ray, right?

11 A. Yes, sir.

12 Q. Danny wants to do that?

13 A. Yes, sir.

14 Q. All right. And do you think it had anything to do
15 with you having hammered him on a 12-year case with Judge
16 McGough? He wanted out of jail, right?

17 A. He did want out of jail, yes, sir.

18 Q. So you put the hammer on him, now he was willing to
19 cooperate and be truthful, right?

20 A. Wrong.

21 Q. You put the hammer on him and now he was willing to
22 wear a wire on his father, his own father, and Stan, right?

23 A. I did not put the hammer on him, no.

24 Q. All right. All right. He was in jail?

25 A. He was in jail.

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1 Q. And you played a role of him getting in jail, yes or
2 no?

3 A. I played a role in that, yes.

4 Q. You played a role of him getting in jail, now he
5 wants to wear a wire on his father and buddie Stan, right?

6 A. Yes, sir.

7 Q. And you were looking forward to that, were you not,
8 Detective, him wearing a wire on these guys?

9 A. No, sir, I didn't expect him to.

10 Q. No, I'm asking you did you look forward to this?

11 A. No, I didn't want it to happen.

12 Q. If it would happen, it would have been good for the
13 investigation?

14 A. If it would have happened?

15 Q. It would be excellent evidence to give a jury, right?

16 A. Yes, sir.

17 Q. You weren't upset with him because he didn't do this,
18 cooperate and get you this excellent evidence, that didn't
19 bother you at all?

20 A. No, sir.

21 Q. All right. Danny felt that he had been unfairly
22 treated by you and Judge McGough when he got 12 years on
23 the drug case?

24 MR. ROSENBAUM: Objection. It's
25 beyond the scope, and he can't answer.

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1 THE COURT: It's beyond the scope.

2 MR. DUFF: It's not.

3 THE COURT: Well, it's beyond the
4 scope, and with Danny --

5 MR. DUFF: I'll withdraw it.

6 THE COURT: What Danny felt, I
7 don't know how this, this witness could testify as to how
8 Danny felt.

9 BY MR. DUFF:

10 Q. Danny expressed that to you, didn't he?

11 MR. ROSENBAUM: Objection.

12 THE COURT: Beyond the scope.

13 MR. DUFF: Nothing else.

14 MR. ROSENBAUM: I have no other
15 questions.

16 THE COURT: You may step down,
17 Mr. Leiby?

18 THE WITNESS: Thank you, Judge.

19 THE COURT: Thank you.

20 (Witness excused.)
21
22
23
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25

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1 THE COURT: Ladies and gentlemen,
2 it is now 20 minutes, well, good 22 minutes after 12:00.
3 Let's take our noon recess at this point. The admonitions
4 I've given you about discussing this matter hold more so
5 than ever at this point. Do not discuss, do not let anyone
6 discuss it with you, do not read, do not let anyone read to
7 you, don't listen to anything, and what have you.

8 Ladies and gentlemen, with those admonitions, we will
9 take our noon recess and return. We have some housework
10 that needs to be done and no sense in you people hanging
11 around here. Return at a quarter to 2:00.

12 (The jury was excused for the noon recess.)

13 (Whereupon, the State of Ohio tendered its
14 exhibits and they were all admitted.)

15 * * *

16 (Whereupon, the testimony of Orie Camillo
17 was given outside the presence and hearing
18 of the jury to indicate that his office
19 transcribed certain tapes and those
20 transcripts were marked as Defendant's
21 Exhibits B-G.)

22 * * *

23 (The following took place within the
24 presence and hearing of the jury.)

25 THE COURT: Good afternoon,

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1 ladies and gentlemen. How are you? Not talking, okay.

2 For the record, Mr. Rosenbaum, do you have any
3 witnesses to --

4 MR. ROSENBAUM: Your Honor, the State
5 of Ohio will rest its case.

6 THE COURT: State of Ohio rests
7 its case. And Mr. Wightman, now we shift to yours. And
8 your first witness is?

9 MR. WIGHTMAN: Raymond Smith, Your
10 Honor.

11 THE COURT: Raymond Smith, very
12 well.

13 BAILIFF: Raise your right
14 hand, please.

15 THE COURT: As best you can, can
16 you raise your right hand?

17 RAYMOND SMITH: What do you mean,
18 raise my right hand for?

19 THE COURT: Because your
20 testimony's under oath.

21 MR. DUFF: Maybe he would like
22 to affirm, Your Honor. Could you advise him of that, Your
23 Honor?

24 THE COURT: You don't want to
25 take an oath, you want to take an affirmation? There's a

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1 difference.

2 MR. DUFF: Could you explain
3 that, Judge?

4 RAYMOND SMITH: I don't understand
5 what you all talking about.

6 THE COURT: Okay.

7 RAYMOND SMITH: I'm not getting put
8 in a trick bag like I got put in the trick bag with
9 Detective Leiby once before.

10 THE COURT: All right, sir. Let
11 me just say this to you, sir, that before you can testify
12 from that stand for this case, you either have to be
13 affirmed or sworn, okay. If you're sworn, you take an oath
14 to God. If affirmed you are affirmed against the laws of
15 perjury.

16 MR. DUFF: Your Honor, perhaps
17 you could read the oaths to him and let him make a choice.

18 THE COURT: I don't give the
19 oaths at this point. Do you understand that, sir? Do you
20 understand that, Mr. Smith?

21 RAYMOND SMITH: No, I don't.

22 MR. ROSENBAUM: Could we approach the
23 bench?

24 THE COURT: Yes.

25 MR. ROSENBAUM: My guess is that he

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1 contemplates another unsworn statement, and I think we need
2 to send the jury out to inquire the same.

3 MR. WIGHTMAN: Yes, Your Honor, I
4 require that also.

5 THE COURT: Barbara, would you,
6 please -- ladies and gentlemen, I have to return you back
7 to your jury room because certain things have to be done at
8 this point. The admonitions about you discussing this,
9 letting anyone discuss it with you, reading anything,
10 letting anyone read to you, still hold.

11 With those admonitions, please retire to the jury
12 room. We will try to bring you back as quickly as we can.

13 (The jury was excused and the following
14 took place without their presence.)

15 THE COURT: Mr. Smith, may I say
16 to you, sir, that you have, you are here this afternoon
17 pursuant to a subpoena that has been issued by the counsel
18 that are representing Mr. Daniel Smith, okay? Do you
19 understand that so far?

20 RAYMOND SMITH: Right.

21 THE COURT: Okay, sir. And you
22 are here on the subpoena to testify on behalf of the
23 defense; do you understand that part?

24 RAYMOND SMITH: (Nodding head.)

25 THE COURT: Do you understand

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1 that part?

2 RAYMOND SMITH: Yes.

3 THE COURT: Okay, sir. In order
4 for you to testify, you either have to take an oath or an
5 affirmation; do you understand that, sir?The last time
6 that you were here and testified from that stand, you were
7 permitted, by law, to give an unsworn statement. You were
8 permitted to do so, okay, by law.

9 But in this instance, if you're testifying in this
10 trial on behalf of any one of the parties, any one of the
11 parties, you must be under oath, either a sworn statement
12 or an affirmed statement.

13 RAYMOND SMITH: What is affirm
14 statement?

15 THE COURT: You affirm. You're
16 not taking an oath to God, you're taking, you're affirming
17 that whatever you're saying is true, as you should suffer
18 the penalties of perjury. Perjury is if you lie under
19 oath. Whatever penalties can or would be imposed for lying
20 under oath.

21 There's people who will not take an oath to God.
22 There's other people who want to be affirmed and not swear
23 to God, okay. That's the difference between them. All
24 intent and purposes, they amount to the same thing. Only
25 it's two different ways of doing it. You cannot, sir, give

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1 an unsworn statement at this hearing.

2 MR. WIGHTMAN: Well, Your Honor, can
3 I ask then if he'll take the oath or be affirmed?

4 THE COURT: Please do.

5 MR. WIGHTMAN: Mr. Smith, do you
6 understand what we are asking you to do?

7 RAYMOND SMITH: Then I leave myself
8 open for the prosecutor, right?

9 THE COURT: Yes, sir. If you
10 make a statement, you're subject to cross-examination.

11 RAYMOND SMITH: I have to take the
12 Fifth.

13 THE COURT: Okay, sir.

14 MR. WIGHTMAN: Thank you.

15 THE COURT: Deputy. Thank you,
16 Mr. Smith. Next witness.

17 (Witness excused.)

18 MR. WIGHTMAN: Stanley Jaloweic.
19 Maybe we should have Stan come in before the jury.

20 THE COURT: We will hold the jury
21 right where they are at this point.

22 (Stanley Jaloweic entered the courtroom.)

23 THE COURT: Mr. Jaloweic, take a
24 seat right now. And this is, we are on the record at this
25 point. Mr. Jaloweic, you're here pursuant to a subpoena

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1 that was issued by the defense, to testify on behalf of the
2 defendant; do you understand that so far, sir?

3 STANLEY JALOWEIC: Yeah.

4 THE COURT: Okay. Now, further,
5 I have to say to you that before, I mean, the last time
6 that you were on that stand in that seat you made an
7 unsworn statement, you were permitted to to make an unsworn
8 statement in your own defense; do you recall that, sir?

9 STANLEY JALOWEIC: Yes, I do.

10 THE COURT: Okay, sir. Today you
11 have to be sworn or affirmed before you make a statement,
12 and also, it's my duty to instruct you that if you make a
13 statement then you're subject to cross-examination by the
14 prosecutor.

15 STANLEY JALOWEIC: I know that.

16 THE COURT: As long as you
17 understand that.

18 STANLEY JALOWEIC: Yeah.

19 THE COURT: Okay. Now, let me
20 say one other thing further at this point. Your attorney,
21 Mr. Grunda, was here, and Mr. Grunda indicated that he had
22 advised you not to testify?

23 STANLEY JALOWEIC: Right.

24 THE COURT: Okay. And you
25 choose, as far as I understand, to testify?

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1 STANLEY JALOWEIC: Yeah.

2 THE COURT: Okay. And it's my
3 duty, also, to advise you that you do not have to testify,
4 especially since you are now up on appeal --

5 STANLEY JALOWEIC: Right.

6 THE COURT: -- in your case; do
7 you understand that?

8 STANLEY JALOWEIC: Yes, I understand
9 that.

10 THE COURT: Okay. And you do
11 choose to testify?

12 STANLEY JALOWEIC: Yes, I do.

13 THE COURT: Okay. Would you
14 please stand then, sir, and take the oath.

15 MR. DUFF: We'd ask he take it
16 in front of the jury, like most witnesses.

17 THE COURT: Fine. Bring in the
18 jury at this point. Remain standing. They will be coming
19 in shortly.

20 MR. ROSENBAUM: He understands that
21 everything he says could be used against him, right?

22 THE COURT: That's the other
23 part.

24 STANLEY JALOWEIC: Of course I do.

25 THE COURT: Everything and

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1 anything that you may say can and could be, and probably
2 would be used against you?

3 STANLEY JALOWEIC: That's fine.

4 THE COURT: Okay.

5 (The following took place within the
6 presence and hearing of the jury.)

7 THE COURT: Mr. Jaloweic, if you
8 remain standing and take the oath.

9 STANLEY JALOWEIC
10 a Witness herein, called on behalf of the Defendant, after
11 being first duly sworn by the Court, testified and said as
12 follows:

13 THE COURT: Might I say to you,
14 ladies and gentlemen, that when you left here, Mr. Raymond
15 Smith was on the stand. At that time he had advised the
16 Court that he would be taking the Fifth Amendment and
17 exercising his right to the Fifth Amendment and chose not
18 to testify at this point.

19 Now we are in the examination of Mr. Stanley
20 Jaloweic. Proceed, Mr. Wightman

21 MR. WIGHTMAN: Thank you, Your
22 Honor.

23 DIRECT EXAMINATION OF STANLEY JALOWEIC

24 BY MR. WIGHTMAN:

25 Q. State your name, please.

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1 A. Stanley Jaloweic.

2 Q. Stan, you are, you were a government, in a companion
3 case to Danny Smith?

4 A. Yes, I am.

5 Q. Do you know Danny Smith?

6 A. Yes, I do.

7 Q. Is that him seated at the counsel table?

8 A. Yes.

9 Q. Did you and Danny Smith plan to kill Ron Lally?

10 A. I don't know anything about killing Ron Lally, no, I
11 didn't.

12 Q. Did Danny Smith help you, assist you to kill Ron
13 Lally?

14 A. I didn't kill Ron Lally. I don't know anything about
15 it. No, I never talked to Danny.

16 Q. Did Danny ever talk to you about killing anybody?

17 A. No, he didn't.

18 Q. Did he talk to you about killing Ron Lally?

19 A. No, he didn't.

20 Q. Did he help you commit a murder?

21 A. I didn't commit a murder, and no, he didn't help me
22 do anything.

23 Q. Did you conspire or agree with Dan Smith to kill Ron
24 Lally?

25 A. I don't know anything about the murder of Ron Lally.

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1 No, I did not conspire anything or talk to anyone about
2 killing Ron Lally.

3 Q. Did Dan Smith ever discuss killing Ron Lally with
4 you?

5 A. No, he didn't.

6 MR. WIGHTMAN: That's all, Your
7 Honor.

8 THE COURT: Mr. Rosenbaum.

9 CROSS-EXAMINATION OF STANLEY JALOWEIC

10 BY MR. ROSENBAUM:

11 Q. Sir, Danny Smith's a good friend of yours, right?

12 A. I know him from the streets, yes.

13 Q. Well, you testified in your trial that he was a good
14 friend of yours and he in fact moved in with you, didn't
15 you?

16 A. He stayed a little bit.

17 Q. Well, he stayed for a period of months, you
18 testified, and as a result of that, and him being here so
19 often, he got you kicked out of your trailer, right?

20 A. It was a combination of things.

21 Q. Well, he was there for a period of months, was he
22 not?

23 A. I mean, I don't know exactly how long it was. Two
24 years ago, three years ago.

25 Q. You had no trouble remembering a month ago in your

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1 statement in this courtroom about it, did you?

2 A. I mean, it was three years ago. I mean, he might
3 have stayed two months.

4 Q. Did you answer my question?

5 A. Could you repeat it.

6 Q. You just testified he had lived with you for a period
7 of months.

8 A. It wasn't a period of months. I said probably a
9 month or so.

10 Q. So he lived with you?

11 A. Yeah, off and on a little bit.

12 Q. He was close enough, when he had no place to go, you
13 would take him in?

14 A. I would take anybody in if they needed a place to
15 stay.

16 Q. Now, you sold drugs for Danny Smith, right?

17 A. No.

18 Q. You bought drugs from Danny Smith?

19 A. I bought drugs from a lot of people.

20 Q. And Danny Smith was one of them, right?

21 A. Could have been.

22 Q. Now, as you sit there, you are convicted of the
23 aggravated murder of Ronald Lally, are you not?

24 A. I was set up, yes.

25 Q. So the answer to my question, you were convicted of

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1 that?

2 A. I was set up, yes.

3 Q. And you told the jury in an unsworn statement at your
4 penalty phase, did you not, that you had no knowledge of
5 the same, the same things, right?

6 A. I don't know anything about it.

7 Q. Didn't you tell the jury that it was Smith family
8 business?

9 A. No, no, no, I didn't say, I didn't say it was Smith
10 family business. I said if anybody had caught any drug
11 cases, it wasn't me. So if anybody had any business doing
12 it, it wasn't me that had the business.

13 Q. Didn't you say in your unsworn statement --

14 MR. DUFF: Page?

15 Q. Danny Smith caught six more drug cases?

16 MR. DUFF: Page?

17 A. I don't know if he caught six drug cases.

18 Q. Pardon? Do you understand me, sir?

19 A. No, I don't understand.

20 Q. You did not testify from that same stand that you
21 knew Danny Smith caught six more drug cases?

22 MR. DUFF: Object. He didn't
23 testify. He gave an unsworn statement.

24 Q. In your unsworn statement, did you not speak from
25 that stand and say that Danny caught six more drug cases?

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1 A. I don't remember. I might have.

2 Q. And did you not say that that was Smith family
3 business and this homicide was Smith family business and
4 you aren't a member of the Smith family?

5 A. I said I had nothing to do with it, and if anybody
6 would have done something like that, it would have been the
7 Smith family, not me.

8 Q. Did you not say --

9 MR. DUFF: Page?Page?

10 Q. Page 26, first incomplete paragraph."I really
11 didn't have nothing to do with this, that it was a family
12 thing and I am not a, not part of the Smith family. I am a
13 Jaloweic. I am part of the Jaloweic family."

14 A. I might have said that.

15 Q. And Danny Smith is part of the Smith family, isn't
16 he?

17 A. Of course he's a Smith, isn't he?

18 Q. Now, you were saying you have no knowledge whatsoever
19 of how Ronald Lally died?

20 A. I have no knowledge of how Ron Lally died.

21 Q. So you can't say whether the defendant was involved
22 in that or not?

23 A. No, he never talked to me about nothing like that.

24 Q. Do you understand my question? If you had nothing to
25 do with it, you can't exclude him from being involved, can

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1 you?

2 A. No, because I don't know anything about it.

3 Q. So you can't exclude Danny Smith from being involved?

4 A. All I can say is what I know, what I don't know.

5 Q. And you don't know if Danny Smith was involved, since
6 you claim you had nothing to do with it?

7 A. I don't know anything about the murder of Ron Lally.

8 Q. So you can't say whether he was involved?

9 A. Right.

10 Q. But in any event, you were convicted of that
11 aggravated murder?

12 A. Yeah. Detective Leiby did a good job.

13 MR. ROSENBAUM: I have no other
14 questions.

15 THE COURT: Wightman.

16 MR. WIGHTMAN: Just a couple, Your
17 Honor.

18 REDIRECT EXAMINATION OF STANLEY JALOWEIC

19 BY MR. WIGHTMAN:

20 Q. I you said you don't know if Danny was involved,
21 correct?

22 A. Correct.

23 Q. He wasn't involved with you, was he, in the killing
24 of Ron Lally?

25 A. No, because I wasn't there. I had nothing to do with

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1 it. How could he be involved with me?

2 Q. He didn't ask you to do it, did he?

3 A. No, I never talked to him about killing nobody.

4 MR. WIGHTMAN: That's all.

5 MR. ROSENBAUM: I have no other
6 questions.

7 THE COURT: Thank you.

8 (Witness excused.)

9 THE COURT: Next witness,
10 please, Mr. Wightman.

11 MR. WIGHTMAN: Mike Provenza, Your
12 Honor.

13 THE COURT: Thank you. Mr.
14 Provenza, you are an Officer of the Court. Do you have any
15 objections to being administered the oath?

16 MR. PROVENZA: No, I don't, Your
17 Honor.

18 THE COURT: Very well.

19 MICHAEL PROVENZA
20 a Witness herein, called on behalf of the Defendant, after
21 being first duly sworn by the Court, testified and said as
22 follows:

23 THE COURT: Thank you,
24 Mr. Provenza. Proceed.

25 DIRECT EXAMINATION OF MICHAEL PROVENZA

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1 BY MR. WIGHTMAN:

2 Q. State your name, please.

3 A. Michael Provenza.

4 Q. What's your occupation?

5 A. I'm an attorney.

6 Q. You do criminal defense work, Michael?

7 A. Yes, I do.

8 Q. How long have you been an attorney?

9 A. Approximately three-and-a-half years.

10 Q. Where's your office located at?

11 A. It's located in Lorain.

12 Q. Do you accept court appointments?

13 A. Yes, I do.

14 Q. Do you know the defendant in this case, Daniel Smith?

15 A. Yes, I do.

16 Q. In fact, have you represented him in a criminal case?

17 A. Yes.

18 Q. How many cases have you represented him on?

19 A. Just one.

20 Q. Just one. Did you bring your file with you today in
21 reference to that case?

22 A. Yes, I have it.

23 Q. Do you know the case number of the case, sir?

24 A. Case Number 95-CR-045429.

25 Q. And would you tell the jury, please, what Mr. Smith

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1 was charged with in that indictment?

2 A. He was indicted with six counts of aggravated
3 trafficking.

4 Q. Okay. And specifically, what was it alleged that he
5 did?

6 A. Sold Schedule II substance, that is crack cocaine, to
7 a confidential informant.

8 Q. And the amount of the sales?

9 A. It was under the bulk amount.

10 Q. All right. And do you know what level of an offense
11 that is?

12 A. That's a felony of the third degree.

13 Q. And would you tell us the possible punishments he
14 could have gotten from that offense?

15 A. The possible punishment for each one of the offenses
16 with a felony in the third degree, either one,
17 one-and-a-half, or two years.

18 Q. Okay. Is there mandatory incarceration associated
19 with that?

20 A. No, there wasn't.

21 Q. Was Mr. Smith eligible for probation?

22 A. Yes, he was.

23 Q. Now, how was the case resolved?

24 A. Mr. Smith ended up entering a plea of guilty to the
25 charges.

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1 Q. And was that a plea to the indictment?

2 A. Yes, it was.

3 Q. All the charges?

4 A. Yes, each of the six counts.

5 Q. Does your file indicate or do you recall what date
6 that plea was entered?

7 A. My notes indicate it was October 6th of 1994.

8 Q. What happened after that, Mr. Provenza?

9 A. After that we requested presentence investigation and
10 a sentencing was set.

11 Q. Okay. Now, was there any discussion at the time of
12 the plea of guilty of sentence?

13 A. With the Court?

14 Q. With the defendant?

15 A. With the defendant. Yes, of course we discussed what
16 his possible sentence may be.

17 Q. And did you advise him as to what you anticipated the
18 sentence to be?

19 A. Yes. Normally in a situation such as that --

20 MR. ROSENBAUM: Objection.

21 Q. Let me ask you, Mr. Provenza.

22 THE COURT: Yes.

23 Q. Did you advise Danny Smith in this case what you
24 expected the sentence to be?

25 A. Yes, I did.

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- 1 Q. Could you tell us what you advised him, please?
- 2 A. One to two years.
- 3 Q. Now, that's what you told him you could expect,
- 4 correct?
- 5 A. Yes.
- 6 Q. Did you return with him for sentencing?
- 7 A. Yes, I did.
- 8 Q. When was that?
- 9 A. My notes indicate it was November 17th of 1994.
- 10 Q. And do you know what sentence he received?
- 11 A. Yes. He received, on each one of the counts, two
- 12 years, to run consecutively.
- 13 Q. Now, what, could you explain to the jury what that
- 14 means?
- 15 A. Consecutively means for each one of the six counts
- 16 they would run one right after the other, as opposed to
- 17 concurrently, where they would be running at the same time.
- 18 So he received a total of 12 years.
- 19 Q. And were you surprised by that sentence?
- 20 A. Yes, I was.
- 21 Q. That was a much, much bigger sentence than you
- 22 expected, correct?
- 23 A. Yes.
- 24 Q. Did anything unusual happen at sentencing?
- 25 A. At the sentencing members of the Elyria Police

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1 Department were present, entered before the Court, made
2 statements before the Court requesting a heavier sentence
3 for Danny.

4 Q. Is that unusual?

5 A. Yes, it was.

6 (Discussion between defense counsel off the record.)

7 BY MR. WIGHTMAN:

8 Q. Was that -- did Officer Al Leiby of the Elyria Police
9 Department appear?

10 A. I believe he was there, yes.

11 Q. Do you know if he was the police officer involved in
12 this drug case?

13 A. I don't recall.

14 Q. Do you know --

15 A. I believe he was.

16 Q. Mr. Provenza, do you know if he talked to the judge
17 alone prior to sentencing in this case?

18 A. I wasn't privied to that beforehand.

19 Q. You were not made aware of that?

20 A. No.

21 Q. Have you later become aware of that, sir?

22 A. I've been informed of that.

23 Q. All right. You don't have personal knowledge of
24 that?

25 A. No.

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1 Q. You were not present when Al Leiby talked to the
2 judge --

3 A. No, I wasn't.

4 Q. -- about this case?

5 A. No.

6 MR. WIGHTMAN: That's all I have,
7 Thank you.

8 THE COURT: Mr. Rosenbaum.

9 CROSS-EXAMINATION OF MICHAEL PROVENZA

10 BY MR. ROSENBAUM:

11 Q. Sir, what did the police say when they were standing
12 in your presence before the Court and in the presence of
13 the defendant about your client?

14 A. To my recollection, they addressed the Court
15 concerning the investigation involved with this case.

16 Q. So it was all brought out on the record?

17 A. Yes.

18 Q. And you were there?

19 A. Yes.

20 Q. And you had a chance to refute it?

21 A. Yes, I did.

22 MR. DUFF: Object. The man
23 wasn't even charged with it.

24 Q. Was anything --

25 THE COURT: Wait. Did he have a

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1 chance to refute it?

2 MR. DUFF: From an uncharged
3 crime, refute that, Judge.

4 THE COURT: And he answered.

5 MR. DUFF: How can Mr. Provenza
6 refute that?

7 THE COURT: Don't ask me how, but
8 he had the opportunity to say something about it.

9 BY MR. ROSENBAUM:

10 Q. So Mr. Leiby's desire's to lock up the defendant
11 because of his involvement, or alleged involvement, in this
12 murder case was known to you as his attorney and brought
13 out in open court?

14 A. At the time of the sentencing, yes.

15 Q. So there was nothing, nothing hidden about that, was
16 there?

17 A. Not at the time of the sentencing.

18 Q. Now, did Mr. Smith receive an illegal sentence from
19 Judge McGough?

20 A. No.

21 Q. When you spoke to your client about the possible
22 sentence, did you consider his prior record?

23 A. Yes.

24 Q. And what was his prior record?

25 A. I believe there was one count of, it was a sexual --

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1 Q. Corruption of a minor?

2 A. Yes.

3 Q. So he was on probation for that count at the time of
4 his sentence?

5 A. I don't recall him being on probation at that time.

6 Q. Wasn't he whisked immediately from that sentencing
7 upstairs to Judge Janas for his probation violation?

8 A. Yes, now that you remind me, yes, he was.

9 Q. Would you expect a person that is on probation for
10 corruption of a minor, who gets arrested for six counts of
11 trafficking drugs, to get a small sentence?

12 A. Depends on what your definition of a small sentence
13 is.

14 Q. Well, what is yours?

15 A. Well, I wouldn't expect him to get the maximum
16 sentence, no.

17 Q. Well, you would expect him to get a lot more than the
18 one to two, though; that would be the minimum, the one to
19 two, wouldn't it?

20 A. Not necessarily.

21 Q. So it's your testimony then that a guy that was on
22 probation for one crime to another judge in the same
23 courthouse who gets caught betraying that judge's trust who
24 placed him on probation, selling crack cocaine on six
25 counts, should receive the minimum sentence?

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1 MR. WIGHTMAN: Objection.

2 A. No, I never said that.

3 MR. DUFF: He never said that.

4 THE COURT: Overruled.

5 Q. So it's not shocking to you that he got more than the
6 one to two, is it?

7 A. Shocking that he got more than the one to two?

8 Q. Right.

9 A. No.

10 Q. And it certainly is not shocking to you, in light of
11 his record, the fact that he was on probation, that he is
12 selling drugs in our community, and what the police said in
13 open court, that Judge McGough might, as Mr. Duff uses the
14 term, hammer him?

15 A. Under the circumstances -- I'm sorry, could you
16 repeat that question?

17 Q. Well, in light of what happened here, you were well
18 aware, and the police made the allegations in public in
19 front of your client that he was a suspect in this murder
20 case, you were well aware that he was on probation and you
21 were well aware that he was caught selling cocaine six
22 times. So a large sentence is not beyond the realm of
23 possibility?

24 A. No. As you put it, especially under the
25 circumstances with the Court involved, as you put it, it

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1 would not be beyond the realm of possibility.

2 Q. So whatever Detective Leiby said to Judge McGough
3 regarding this case was certainly brought out in open court
4 properly for all to consider, and you and your client to
5 have a chance to address?

6 A. We did have the chance to address it.

7 MR. ROSENBAUM: Thank you. I have no
8 other questions.

9 THE COURT: Mr. Wightman.

10 MR. WIGHTMAN: Thank you.

11 REDIRECT EXAMINATION OF MICHAEL PROVENZA

12 BY MR. WIGHTMAN:

13 Q. Mr. Provenza, were you aware, prior to the sentence
14 date, about the allegation of him being involved in a
15 homicide?

16 A. No.

17 Q. Did anybody make you aware that was going to be an
18 issue at sentencing?

19 A. Not at all.

20 Q. Did the prosecutor or Mr. Leiby ask you if you wanted
21 to go back and talk to the judge about these matters prior
22 to sentencing?

23 A. No.

24 Q. Given the fact that he was on probation for
25 corruption of a minor and he had this conviction that he

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1 was here on sentencing, were you surprised by the 12-year
2 sentence?

3 A. Yes.

4 Q. You were shocked by it?

5 A. Yes.

6 MR. WIGHTMAN: Thank you.

7 THE COURT: Mr. Rosenbaum.

8 MR. ROSENBAUM: I have no other
9 questions.

10 MR. WIGHTMAN: Nothing further.
11 Thank you.

12 THE COURT: Thank you,
13 Mr. Provenza.

14 (Witness excused.)

15 THE COURT: Next witness,
16 please.

17 MR. DUFF: Can we approach, Your
18 Honor?

19 (Conference at the bench between the Court
20 and counsel, as follows:)

21 MR. DUFF: Our defendant would
22 be next, Judge.

23 THE COURT: How long?

24 MR. DUFF: I don't know.

25 MR. ROSENBAUM: Let's go.

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1 MR. DUFF: He wanted to take
2 another break.

3 MR. ROSENBAUM: Take a break, okay.

4 MR. DUFF: To gather his
5 thoughts.

6 THE COURT: Well, it's 3:30. How
7 long do you intend to be?

8 MR. DUFF: In my direct,
9 probably half hour.

10 THE COURT: Half hour, okay. We
11 will get a half hour.

12 MR. DUFF: Okay.

13 THE COURT: Have the
14 cross-examination in the morning.

15 MR. DUFF: He wanted a break,
16 the defendant.

17 THE COURT: All right. All
18 right.

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

21 THE COURT: Ladies and gentlemen,
22 this is our legitimate timeout, okay. At this point we
23 will take our afternoon recess. It won't be as long as the
24 normal, but we will just refresh ourselves and go into this
25 next testimony. And the admonitions I've given you about

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1 discussing this, anybody discussing, reading, having
2 anybody read still hold at this point. With those, we will
3 take our afternoon recess.

4 (A brief recess was had.)

5 THE COURT: Ladies and gentlemen,
6 we were in the case in chief of the defense and we are
7 ready to continue on in that matter.

8 Mr. Duff, Mr. Wightman, please call your next
9 witness.

10 MR. DUFF: We'd call Danny
11 Smith, Your Honor.

12 THE COURT: Daniel Smith, very
13 well.

14 DANIEL D. SMITH
15 the Defendant herein, after being first duly sworn by the
16 Court, testified and said as follows:

17 THE COURT: Mr. Smith, make
18 yourself as comfortable as you can. Adjust that microphone
19 so that you can speak directly into so that everybody can
20 hear you. Thank you, sir.

21 MR. DUFF: Proceed, Your Honor?

22 THE COURT: Please.

23 DIRECT EXAMINATION OF DANIEL D. SMITH

24 BY MR. DUFF:

25 Q. Your name is Daniel Dean Smith?

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1 A. Yes, sir.

2 Q. Can you tell us, you know, you're currently at the
3 county jail. Where did you reside before you resided at
4 the county jail?

5 A. 129 David Drive.

6 Q. Where is that located, sir?

7 A. Elyria, Ohio.

8 Q. Who did you reside there with?

9 A. Tammy Green.

10 Q. Okay. Now, directing your attention back to 1994,
11 can we go back to that time in your mind?

12 A. Yes, sir.

13 Q. There's been some evidence in this case that you met
14 with Detective Leiby -- well, let's go back farther. Were
15 you working before 1994?

16 A. Yes, I was.

17 Q. What did you do?

18 A. I worked construction in Cleveland and at Erie Temps.

19 Q. Erie Temps?

20 A. Yeah, in Cleveland.

21 Q. And what did do you for them?

22 A. I worked factory.

23 Q. All right. And did you, do you know who Raymond
24 Smith is?

25 A. Yes, I do, that's my father.

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1 Q. All right. Now, did you sell drugs before?

2 A. Yes, I did, sir.

3 Q. All right. What kind of drugs did you sell?

4 A. Crack cocaine.

5 Q. Who got you involved in selling drugs?

6 A. Well, seeing it throughout my growing up, my father
7 selling it, and friends, too, and got involved.

8 Q. All right. So you did that for extra money; is that
9 right?

10 A. Yes, sir.

11 Q. Did your brother, Michael, also sell drugs?

12 A. On and off.

13 Q. How old were you when your parents divorced?

14 A. About 12, 13.

15 Q. 12, 13 years old?

16 A. Yes, sir.

17 Q. And who did you go to live with?

18 A. My mother.

19 Q. Did you have, continue to have contact with your
20 father?

21 A. Yes. He lived down the street.

22 Q. All right. And how old would you say you were when
23 your father got you involved in this drug activity?

24 A. About 14.

25 Q. All right.

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- 1 A. Thirteen.
- 2 Q. And did he show you how to do it?
- 3 A. No, not really.
- 4 Q. What did he do? What did he show you?
- 5 A. I just like seen it laying around the house, people
- 6 come over, stuff like that.
- 7 Q. And saw this going on at your house?
- 8 A. Well, it was his house.
- 9 Q. That's how you learned it?
- 10 A. Yes.
- 11 Q. All right. Now, do you know Stanley Jaloweic?
- 12 A. Yes, I do.
- 13 Q. How is it you know Stanley?
- 14 A. I met him through a friend of mine named Kevin
- 15 Lawrence.
- 16 Q. All right. How long have you known him?
- 17 A. I met him about when I was, like, 16, but I didn't
- 18 really start hanging around with him until two years ago.
- 19 Q. How old are you now, sir?
- 20 A. Twenty-four.
- 21 Q. Now, did you know a Ron Lally?
- 22 A. Yes, I did.
- 23 Q. How did you know Ron Lally?
- 24 A. I first met him through selling cocaine.
- 25 Q. You sold cocaine to him?

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1 A. Yes, sir.

2 Q. How many different occasions did you sell cocaine to
3 him?

4 A. A few times.

5 Q. How many is a few, tell the jury?

6 A. About, I'd say around, around eight or nine times.

7 Q. All right. And do you remember when you found out
8 that he was an informant on a case of yours?

9 A. Excuse me?

10 Q. Do you remember finding out he was an informant on a
11 case of yours?

12 A. Yes.

13 Q. Okay. Take you back to the summer of '93, okay. Did
14 you have occasion to sell him crack cocaine during that
15 summer?

16 A. Yes, sir.

17 Q. All right. And did you get arrested for selling
18 crack cocaine that summer?

19 A. Yes.

20 Q. In about August of '93?

21 A. Yes, around that time.

22 Q. All right. Did you come to find out that Ron Lally
23 was the informant?

24 A. Not at that time.

25 Q. Well, tell the jury, did you eventually find out?

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- 1 A. Yes, I did.
- 2 Q. How did you find that out?
- 3 A. Through my lawyer.
- 4 Q. Who was your lawyer?
- 5 A. Michael Ross.
- 6 Q. Okay. And did you have occasion -- when did you
- 7 actually find out that he was the informant, approximately?
- 8 A. Approximately about four or five months later.
- 9 Q. Well, let's go back. Did you ever go over and
- 10 confront Sandra Williams in regard to --
- 11 A. Yes, I did.
- 12 Q. All right. And do you know when that confrontation
- 13 occurred?
- 14 A. About, I'd say, about a month after I got picked up
- 15 on the arrest.
- 16 Q. All right. A month after August of '93?
- 17 A. Yes, sir.
- 18 Q. Okay. So at that time did you know he was the
- 19 informant?
- 20 A. No, I did not.
- 21 Q. Then why did you go talk to Sandra Williams; did you
- 22 know her?
- 23 A. No.
- 24 Q. At that time did you know her?
- 25 A. No, I didn't know her.

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1 Q. Why did you go talk to her?

2 A. A friend that knew her lived across the street, named
3 Mike. He took me over there because I was trying to see
4 who busted me. When I went over there, I asked her where
5 Ron was at.

6 Q. Why did you suspect Ron?

7 A. I really didn't. I was just asking around.

8 Q. All right. So go ahead. What happened while you
9 were over there?

10 A. And I asked her had she seen Ron. She said no, and
11 then I asked her that when she sees him, could she let him
12 know that I wanted to talk to him.

13 Q. All right. And you had a conversation with her then
14 on that date?

15 A. Yes, that's it.

16 Q. Did you know Ron's parents?

17 A. No, I did not. I didn't even know he had parents.

18 Q. Did you know anything about a trailer?

19 A. No, I did not, sir.

20 Q. But you had a conversation with her in September of
21 '93?

22 A. Yes, sir.

23 Q. All right. Now, if I could have a minute, Your
24 Honor.

25 Now, on September of '93, did you also have an

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1 incident involving Officer Homoki at Mr. Hero's?

2 A. Yes, I did.

3 Q. Tell the jury about that. What happened?

4 A. Well, me and a couple friends of mine were walking
5 into Mr. Hero's and apparently Ron was standing across the
6 street. When I was walking out, the officer had pulled up
7 and then Ron Lally had came running outside and he figured
8 that I was looking for him as a threat. And Officer Homoki
9 asked me about it, then I told him that I didn't even know
10 why he even called him because I wasn't looking for him. I
11 came out with food. I said, "We were just getting
12 something to eat."

13 Q. Were you carrying food when you spoke to Officer
14 Homoki?

15 A. Yes, sir.

16 Q. Did you make any statements to Ron Lally as you and
17 Officer Homoki and Ron Lally stood there?

18 A. I just said, I asked him if he was the snitch or
19 something, because he has a guilty conscious.

20 Q. You said that in front of the officer?

21 A. Yes, sir.

22 Q. All right. Now, I take it -- now, let's move to the
23 date in question, January 18th, 1994, okay. Do you recall
24 that day?

25 A. Yes, I do.

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1 Q. All right. Can you tell the ladies and gentlemen
2 where you were on that date, that night?

3 A. I was downtown in a bar called Power Slam.

4 Q. And you've heard the testimony in this court so far;
5 is that right?

6 A. Yes, sir.

7 Q. Now, did there come a time when you went to Mom's
8 Open Kitchen?

9 A. Yes, I was..

10 Q. Tell us what happened there.

11 A. We was all sitting there having dinner, or breakfast,
12 and my father got up and made a phone call. When he came
13 back to the table, he asked me if I could drop them off on
14 Middle Avenue by my aunt's house.

15 Q. All right. Who all went out there on Middle Avenue?

16 A. Me, my girlfriend Tammy, my dad, my brother Michael
17 Smith, and Sharon Hopkins.

18 Q. All right. Who drove out there?

19 A. I did.

20 Q. What car were you driving?

21 A. Ford Taurus.

22 Q. Now, at any time during this evening did you plan or
23 conspire to kill Ron Lally that night?

24 A. No, I did not.

25 Q. All right. Now, why did you think you were driving

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1 Mike and Ray out to that address?

2 A. To my aunt's house?

3 Q. Yeah.

4 A. Well, because they told me to drop him off over
5 there. I figured he was going over somewhere by there.

6 Q. And where'd you drop him off at?

7 A. Right over the tracks, right down the street from my
8 aunt's house.

9 Q. You dropped them off down the street from your aunt's
10 house?

11 A. Yes.

12 Q. All right. And did you become suspicious of what
13 they might be up to?

14 A. Kind of.

15 Q. Well, tell the jury what you mean.

16 A. Couple weeks ago prior to that, my father and Stan
17 had talked about putting him on a bus, getting him out of
18 town. I told him that I didn't want no part of it, because
19 I was getting probation, so I didn't want nothing to mess
20 it up.

21 Q. Wait a minute. You were getting probation on what?

22 A. My drug charge.

23 Q. Involving Ron Lally?

24 A. Yes, sir.

25 Q. That's what you believed?

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1 A. Right.

2 Q. Okay. Now, go ahead.

3 A. So when I dropped him off, it was cold outside, so I
4 went down the street and I parked to make sure they had got
5 picked up for wherever they was going.

6 Q. At this time did you start thinking what might be
7 involved?

8 A. Not until I seen Stan go past.

9 Q. Then what did you think?

10 A. Then when I seen Stan go past, he went back past me
11 again and I stopped him and seen if he had picked up my
12 brother Mike, I mean, my father and Mike. When he said,
13 "Yeah," then that's when I kind of suspected something.

14 Q. What'd you suspect?

15 A. That they was going to get Ron or had him in the car.

16 Q. Yeah. And do what with him?

17 A. Putting him on a bus, Greyhound in Cleveland.

18 Q. Okay. Did you give them any money to do that?

19 A. No, sir.

20 Q. Did you ask them to do that?

21 A. No, sir.

22 Q. Did you at any time discuss killing Ron Lally with
23 your father or Stanley Jaloweic?

24 A. No, I did not.

25 Q. Now, after that what did you do? Let me ask you

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1 this. You stopped and pulled behind the Lebaron?

2 A. Correct.

3 Q. Why did you do that?

4 A. To make sure my father and my brother had got picked
5 up.

6 Q. Okay. Why is that?

7 A. Because I didn't want to leave them standing out
8 there.

9 Q. What was the weather like that night?

10 A. It was cold.

11 Q. How cold?

12 A. It was very cold.

13 Q. All right. Now, what did you do after that?

14 A. After that I went home.

15 Q. Where is home?

16 A. 129 David Drive, Elyria.

17 Q. And did you, after you got home, did you see Terry
18 Hopkins?

19 A. No, I did not.

20 Q. Was Terry Hopkins in that car?

21 A. No, he wasn't.

22 Q. Did you ever make a statement to Terry Hopkins that
23 you knew they did it that morning?

24 A. No, I did not.

25 Q. When was your first time you became aware that they

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1 did it?

2 A. A couple days later, when I went over to Corrine's
3 house.

4 Q. Corrine who?

5 A. Fike.

6 Q. All right. Did you know for sure they did it, or
7 just kind of figured it out?

8 A. I kind of figureed it out.

9 Q. How'd you figure it out? Tell us what happened.

10 A. Well, when I went over to Corrine's house, she asked
11 me if I had had the car a couple nights before. I told
12 her, "No, I had seen Stan in it." And she said, she told
13 me there was blood on the car, and then that's when I put
14 it together.

15 Q. All right. When she told you there was blood on her
16 car; is that correct?

17 A. Correct.

18 Q. All right. And that was a couple days after it
19 happened?

20 A. Correct.

21 Q. Now, you heard Michael testify, right?

22 A. Yes, sir.

23 Q. You never discussed killing anybody with him, did
24 you?

25 A. No.

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1 Q. And you love your brother, do you not?

2 A. Yes, I do.

3 Q. All right. Now, did Michael come home that night
4 like he testified?

5 A. Yeah, like, towards the morning.

6 Q. All right. And did he tell you anything about
7 killing anybody?

8 A. No, he did not.

9 Q. All right. Now, you had no cases -- well, that case
10 was eventually dismissed; is that right?

11 A. Correct.

12 Q. And had you, you had discussed with your lawyer what
13 you believed you were going to get in that case; is that
14 right?

15 A. Yes, sir.

16 Q. What did you believe you were going to get?

17 A. Probation.

18 Q. That case was dismissed; is that right?

19 A. Correct.

20 Q. Now, after that case was dismissed, did you have any
21 pending cases then?

22 A. No, sir.

23 Q. You had no cases hanging over your head in April of
24 '94; is that right?

25 A. Not that I can recall.

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1 Q. All right. And you, where did you go on April 28th,
2 1994?

3 A. To the police station.

4 Q. For what purpose and why did you go?

5 A. Because I heard that I was a suspect in a murder, so
6 I wanted to go down there and clear it up.

7 Q. Did you take a lawyer?

8 A. No, I did not.

9 Q. Did you have a pending legal problem that you wanted
10 Detective Leiby to give you consideration for?

11 A. No, not at the time.

12 Q. All right. And you went down and spoke to Detective
13 Leiby; is that right?

14 A. Correct.

15 Q. Handing you what's been marked for identification
16 purposes as Defendant's Exhibit D, take a look at that
17 document, sir, and tell me if you recognize it.

18 A. Yes, I do.

19 Q. What is it, sir?

20 MR. ROSENBAUM: I object, Your Honor.
21 Ask that we approach.

22 THE COURT: Yes.

23 (Conference at the bench between the Court
24 and counsel, as follows:)

25 MR. ROSENBAUM: I believe this is

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1 about the third time I've made this objection. But they
2 can't offer his statement.

3 THE COURT: Let me see it. Let
4 me see it.

5 MR. DUFF: I can play the tape
6 as to what he said.

7 MR. ROSENBAUM: You can't offer the
8 tape either.

9 MR. DUFF: I can ask him what he
10 said to Detective Leiby.

11 THE COURT: Ask him.

12 MR. DUFF: All right.

13 THE COURT: Nothing to do with
14 it.

15 MR. DUFF: Makes it a lot
16 easier, Judge.

17 MR. ROSENBAUM: Your Honor, he
18 can't --

19 THE COURT: Nothing to do with
20 it.

21 MR. ROSENBAUM: Okay.

22 (Thereupon, the following took place
23 within the hearing of the jury.)

24 BY MR. DUFF:

25 Q. Did you have a conversation with Detective Leiby at

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1 that time?

2 A. Yes, I did.

3 Q. And you waived your right to a lawyer, you went there
4 on your own free will?

5 A. Correct.

6 Q. Did he ask you about talking to Sandra Williams on
7 that date, Detective Leiby?

8 A. Yes.

9 Q. What did you tell him, as best you can recall?

10 A. I told him I talked to her.

11 Q. All right. You did not deny talking to Sandra
12 Williams?

13 A. No, I did not.

14 Q. Okay. And that's on April 28th, 1994?

15 A. Correct.

16 Q. Did he ask if you you were mad about Ron Lally
17 busting you?

18 A. Yes, he did.

19 Q. What did you tell him?

20 A. I said, "Yeah."

21 Q. You admitted that you were mad?

22 A. Correct.

23 Q. Did he tell you that he was just starting to work on
24 this case at that time?

25 A. Yes, he did.

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1 Q. Did he ask you how you --

2 MR. ROSENBAUM: Objection.

3 Q. Did he ask you how you felt?

4 MR. ROSENBAUM: Objection.

5 THE COURT: Wait a minute. Let
6 me hear the question, please.

7 MR. DUFF: He answered already
8 Your Honor. His objection was late.

9 THE COURT: I don't know. I
10 think --

11 MR. ROSENBAUM: I sincerely doubt it.

12 THE COURT: I don't think it was.

13 What's your question?

14 Q. Question was, did Detective Leiby tell you this case
15 hasn't been worked on very long yet, did he tell you that?

16 A. Correct.

17 Q. All right. Now, did he ask you if --

18 MR. ROSENBAUM: Now I'm objecting.

19 THE COURT: Okay, and let me hear
20 that question.

21 MR. DUFF: I think I said it
22 twice, Your Honor.

23 THE COURT: No, no. Did he ask
24 you, then you stopped there. I don't know what did he ask
25 you.

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1 Q. Did he ask you, did he tell you this case hasn't been
2 worked on very long yet?

3 A. Correct.

4 THE COURT: Okay. Go ahead.

5 Q. Thank you, Your Honor. Did he ask you if you felt
6 sad in regard --

7 MR. ROSENBAUM: Objection.

8 MR. DUFF: Detective Leiby, in
9 the context of his response to Detective Leiby. I'm not
10 using the transcript.

11 THE COURT: I know.

12 MR. ROSENBAUM: Your Honor, he --

13 MR. DUFF: I'm going over what
14 he told --

15 THE COURT: Please come forward.
16 Please come forward.

17 (Conference at the bench between the Court
18 and counsel, as follows:)

19 MR. WIGHTMAN: With the Court's
20 permission, I'll argue this.

21 MR. DUFF: Please let him argue
22 it.

23 THE COURT: Go ahead.

24 MR. WIGHTMAN: Well, Your Honor, the
25 defense intends to ask this defendant what the questions

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1 were asked him by Detective Leiby, what his answers were.
2 The State has already elicited information from Leiby as to
3 basic summaries of all of these questions and answers, all
4 of these various statements. And the fact is that it's, it
5 is definitely relevant to this case as to what Leiby was
6 asking him in April of that year as to what he knew, what
7 has involvement was.

8 MR. ROSENBAUM: Hearsay. He can't
9 testify to what Leiby said and he can't testify to what
10 the responses are.

11 MR. WIGHTMAN: He's subject to
12 cross.

13 THE COURT: That doesn't rule out
14 hearsay.

15 MR. DUFF: It's not offered for
16 the truth. It's offered for the context.

17 THE COURT: How many times have
18 we gone over this?

19 MR. DUFF: Judge, you said save
20 it for the defendant. That's what you told me to do.

21 THE COURT: Don't ask him. Now,
22 just ask him to tell you what happened and quit asking him
23 the questions.

24 MR. ROSENBAUM: What Detective Leiby
25 did at his interview is irrelevant.

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1 MR. DUFF: What he told --
2 MR. ROSENBAUM: He cannot say what he
3 told Detective Leiby. That's what he wants.
4 MR. DUFF: Yes, he can say what
5 he told --
6 MR. ROSENBAUM: That's hearsay.
7 THE COURT: Why can he?
8 MR. DUFF: Because he stands
9 subject to cross as to what he told Detective Leiby. He
10 opened the can by having Detective Leiby talk about --
11 THE COURT: Talk about what?
12 MR. DUFF: What he told
13 Detective Leiby.
14 THE COURT: At this meeting?
15 MR. DUFF: Yes.
16 MR. ROSENBAUM: Okay. Look, the
17 rules of evidence have totally gone kafooeey in this trial.
18 THE COURT: I'm going to research
19 this thing and have it done. We are going to adjourn right
20 now and have an answer for you tomorrow morning, and I
21 don't want it heard again at this point.
22 (Thereupon, the following took place
23 within the hearing of the jury.)
24 THE COURT: Ladies and gentlemen,
25 we've reached a snag and I'm going to send you home at this

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1 point. Please do not discuss this matter amongst
2 yourselves, don't let anybody --

3 MR. ROSENBAUM: Can we approach once
4 more again?

5 THE COURT: Yes.Yes. Yes.
6 (Conference at the bench between the Court
7 and counsel, as follows:)

8 MR. ROSENBAUM: I forgot a very
9 important thing. This is not Leiby's statement; it's
10 Medder's statement.

11 THE COURT: That's right.

12 MR. ROSENBAUM: They're right back
13 in --

14 MR. DUFF: Leiby was present.

15 MR. ROSENBAUM: Did he adopt this,
16 too?

17 MR. DUFF: No, not adopted. He
18 told the police, the Elyria Police.

19 MR. ROSENBAUM: That has nothing to
20 do with it.

21 MR. DUFF: It has a lot to do
22 with everything, Judge.

23 (Thereupon, the following took place
24 within the hearing of the jury.)

25 THE COURT: Ladies and

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1 gentlemen, as I started to say, please do not discuss this
2 matter amongst yourselves, don't think about it tonight.
3 Have a good night's rest. I think we're probably coming
4 very close to the point of completing this case anymore and
5 probably have it to you in your hands.

6 Now, ladies and gentlemen, tomorrow morning when you
7 come, please, please, bring a little overnight bag. Alert
8 your families that you may very well have to stay
9 overnight, because I do anticipate having reached the
10 conclusion of this case sometime tomorrow. When you do
11 come in the morning, bring an overnight bag with you,
12 toiletries, and what have you, that you may need. You
13 ladies' spray nets and that type of thing, and possibly
14 plan for an overnight stay at this point.

15 With that, we will adjourn for this evening and
16 reconvene tomorrow morning at 8:15.

17 (The Court adjourned for the day.)

18 * * *

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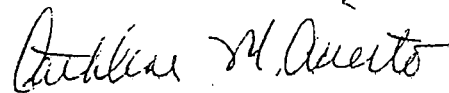
CERTIFICATE

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

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COURT OF APPEALS

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IN THE COMMON PLEAS COURT

CLERK OF COMMON PLEAS
DONALD J. HENGERY

9th APPELLATE DISTRICT

1 STATE OF OHIO,)
2 COUNTY OF LORAIN.)

3
4 STATE OF OHIO,)
5 Plaintiff,)

6 VS.)

7 DANIEL D. SMITH,)
8 Defendant.)

CASE NO. 95-CR-046839

APPEALS NO. 96-CA-006463

9 * * *

10 Volume 4. From the following proceedings held before
11 the Honorable Kosma J. Glavas, taken before me, Cathlene M.
12 Acierto, Registered Professional Reporter and Notary
13 Public, in and for the State of Ohio, at the Lorain County
14 Court of Common Pleas, 308 Second Street, Elyria, Ohio,
15 Thursday, April 25, 1996, beginning at 8:35 a.m.

16 * * *

17 APPEARANCES:

18 ON BEHALF OF THE STATE OF OHIO:

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

21 ON BEHALF OF THE DEFENDANT:

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

24 * * *

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

1 (Whereupon, argument was had.)

2 * * *

3 (The following took place within the
4 presence and hearing of the jury.)

5 THE COURT: Good morning, ladies
6 and gentlemen. Ladies and gentlemen, as you recall, when
7 we recessed last night it was to determined we were at a
8 point of law. A determination has been made on that point
9 of law and we are now ready to proceed with the direct
10 examination of the defendant at this case.

11 Mr. Smith, would you please resume the stand if you
12 would, please. You are reminded, sir, that you're still
13 under oath at this point, okay?

14 THE WITNESS: Okay, sir.

15 THE COURT: And again, adjust
16 that mike so you can speak directly into it. Thank you,
17 sir. Mr. Duff.

18 MR. DUFF: Yes, Your Honor,
19 thank you.

20 CONTINUED DIRECT EXAMINATION OF DANIEL SMITH

21 BY MR. DUFF:

22 Q. I think when we left off, Danny, we were talking
23 about your April 28th statement to Detective
24 Leiby.

25 A. Yes, sir.

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1 Q. Without getting into the contents of that statement,
2 you met with him at the Elyria Police Station; is that
3 right?

4 A. Yes, sir.

5 Q. And you went down there on your own?

6 A. Yes, sir.

7 Q. Did you have a lawyer?

8 A. No, sir.

9 Q. Okay. Did you talk with Detective Leiby at any point
10 about about anything in regard to this case at that
11 meeting?

12 A. As far as?

13 Q. You don't understand my question?

14 A. No.

15 Q. Did you have a discussion with Detective Leiby in
16 regard to doing anything in regard to this case to help
17 Detective Leiby?

18 A. Yes.

19 Q. All right. And then what were, what were you
20 agreeing to do?

21 A. I told him that I would find out if Stanley Jaloweic
22 had anything to do with it.

23 Q. All right. How would you do that?

24 A. Ask him, ask around and see what I could find out.

25 Q. Out on the streets?

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1 A. Yes, sir.

2 Q. Okay. Now, we are at April 1994. Then there's been
3 testimony that you had conversations that summer with
4 Detective Leiby; is that correct?

5 A. Yes, sir.

6 Q. And at this point you had your new drug case, the six
7 counts; is that correct?

8 A. Yes, sir.

9 Q. The one you got 12 years on?

10 A. Uh-huh.

11 Q. And did you go to Detective Leiby or talk to him?
12 You heard testimony as to various encounters you had with
13 him that summer of '94?

14 A. Yes, sir.

15 Q. Tell us about those.

16 A. Called me down to the police station and --

17 Q. How many times did you run into Detective Leiby that
18 summer, approximately, the best you can recall? Or not run
19 into him, talk to him on the phone or see him and discuss
20 this case with him?

21 A. About seven.

22 Q. Seven times?

23 A. Yeah.

24 Q. Give us some of the different places or how you would
25 have talked to him. Can you go through them, like, to make

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1 to easy for the jury, can you do it like the first one
2 there's been testimony you talked to him in June of '94.
3 Do you recall that testimony by Detective Leiby?

4 A. That I talked to him?

5 Q. That you talked to him in June of '94. Now, we are
6 past your April statement, okay. Do you understand where
7 we are at?

8 A. Yeah.

9 Q. All right. Do you recall under what circumstances
10 you spoke to him in June of '94? Can you remember where
11 that conversation took place?

12 A. I think over the phone.

13 Q. Okay. And you talked to him about this case; is that
14 right?

15 A. Correct.

16 Q. And you talked to him again about this case. When
17 was that, approximately?

18 A. Probably a couple weeks later.

19 Q. All right. And you did this throughout that summer
20 and fall?

21 A. Yes, sir.

22 Q. All right. Did you ever meet him out on a road?
23 There's been testimony you met him on some road.

24 A. Yes.

25 Q. What was the name of that road?

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- 1 A. I'm not sure of the name.
- 2 Q. All right. Where was the road at?
- 3 A. Down the street from where I was staying at.
- 4 Q. Was it Albrecht Road?
- 5 A. I'm not positive.
- 6 Q. Okay. And how did that meeting come about that you
- 7 met him out on the road?
- 8 A. He had called, or I called, and he said, I told him
- 9 I'd like to speak to him, and he told me he would meet me
- 10 down the street from where I lived.
- 11 Q. What time of day did you meet him?
- 12 A. It was in the afternoon.
- 13 Q. All right. And so throughout that summer and fall of
- 14 '94, you met, what, six or seven times?
- 15 A. Yes, sir.
- 16 Q. Did you ever take a lawyer any of those times?
- 17 A. No, sir.
- 18 Q. And were you asking for help on your drug case?
- 19 A. I told him have consideration on it.
- 20 Q. What do you mean by consideration?
- 21 A. Like, if he could just throw in a word for me for
- 22 helping him with the case.
- 23 Q. Throw in a word with who?
- 24 A. The judge or prosecutor.
- 25 Q. For helping him with the murder case; is that right?

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1 A. Yes, sir.

2 Q. All right. Now, there came a time when you went to
3 court for that drug case, right?

4 A. Uh-huh.

5 Q. And you pled guilty; is that right?

6 A. Yes, sir.

7 Q. To all six counts?

8 A. Correct.

9 Q. Did you have a jury like this?

10 A. No, sir.

11 Q. You pled guilty and admitted you were wrong?

12 A. Right.

13 Q. All right. Now, stopping for a moment. You have a
14 prior criminal record that goes back before that, do you
15 not?

16 A. Yes, sir.

17 Q. And that's corruption of a minor?

18 A. Yes, sir.

19 Q. Did you plead guilty in that case?

20 A. Yes, sir.

21 Q. You didn't have a jury trial in that case?

22 A. No, sir.

23 Q. Do you have any other cases other than the cases
24 before the Court?

25 A. No, sir.

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1 Q. That's your record; is that right?

2 A. Correct.

3 Q. All right. So you pled guilty before Judge McGough
4 in October and then your case came on for sentencing; is
5 that correct?

6 A. Yes, sir.

7 Q. All right. And what was your belief from your
8 discussion with your lawyer that was going to occur to you
9 in that case? What did you think you'd get on your
10 sentence?

11 A. Well, he came down to talk to me when I was in the
12 holding cell.

13 Q. Who?

14 A. My lawyer.

15 Q. Who was your lawyer?

16 A. Mike Provenza.

17 Q. Go ahead.

18 A. He told me if I plead guilty she will have
19 consideration, that I admitted it and the most I could get
20 is two years ran together.

21 Q. You were willing to do that two years at that point?

22 A. Correct.

23 Q. So then you, they took you upstairs, did they not?

24 A. Yes, sir.

25 Q. And what happened then?

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1 A. I was upstairs and I seen Detective Leiby and another
2 officer up there, and right before my sentencing, both of
3 them had a chance to speak.

4 Q. In court; is that correct?

5 A. Correct.

6 Q. All right.

7 A. And when I went up for sentencing, she gave me 12
8 years.

9 Q. All right, 12 years. Now, were you taken downstairs
10 by the deputy, such as Deputy Fortner here, after you were
11 sentenced?

12 A. I'm not sure if it was him. This was a deputy.

13 Q. They take you downstairs to a holding area?

14 A. Correct.

15 Q. There's a room down there, they secure you down
16 there, that's where the deputies take prisoners to?

17 A. Yes.

18 Q. And you were taken down there?

19 A. Yes, sir.

20 Q. And this is November of '94?

21 A. Correct.

22 Q. Did you have occasion at that time to see Detective
23 Leiby after you got 12 years sentence?

24 A. Yeah, he walked down with me.

25 Q. Tell the jury what happened then between and you

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1 Detective Leiby.

2 A. When I went downstairs, he asked me who my lawyer
3 was, and I told him Mike Provenza. He told me, how did I
4 like the 12 years. Then I did not respond to him. He said
5 he's the one that got me the 12 years. Told me if I
6 cooperated with him he'll talk to the judge and give me my
7 two years back.

8 Q. All right. What did you tell him?

9 A. I told him I didn't have nothing to give him.

10 Q. Okay. Then now we are in November of 1994; is that
11 correct?

12 A. Correct.

13 Q. Now, shortly after that, did you have a discussion --
14 there's been testimony that you had a discussion while --
15 now, you're housed at the county jail; is that right?

16 A. Right.

17 Q. I mean in December of '94.

18 A. December, yeah.

19 Q. You're locked up out there; is that correct?

20 A. Correct.

21 Q. And did Detective Leiby come out and see you to talk
22 about this case?

23 A. No, he called me down there.

24 Q. He called you down where?

25 A. To the police station.

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1 Q. How can you go to the police station if you're locked
2 up at the county jail?

3 A. He had somebody transport me over there.

4 Q. Who did that? I mean, you don't -- a sheriff deputy
5 or Elyria police officer?

6 A. Elyria police officer.

7 Q. So Elyria police officers came and got you at jail
8 and took you to Detective Leiby's office at the Elyria
9 police station?

10 A. Correct.

11 Q. And this was December 4th, 1994?

12 A. Yeah, it was about.

13 Q. About right?

14 A. Yeah.

15 Q. You don't know the exact date?

16 A. No, it's about that time.

17 Q. Okay. And there was a discussion between you and
18 Detective Leiby on that date about what?

19 A. The murder case.

20 Q. And what did -- there was a discussion about a wire
21 and being put in the same cell as Stan?

22 A. Yes, there was.

23 Q. Tell us about that discussion.

24 A. He told me that he had arrested Stan and he was
25 coming down to the county. So I told him if he gives me a

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1 tape recorder or something that, and puts Stan in my cell,
2 I'd ask him questions about it and see if there is anything
3 I could get for him.

4 Q. Get for him information about this case?

5 A. Correct.

6 Q. Let me ask you. Do you recall -- moving ahead. Come
7 back for a minute. When were you officially charged with
8 this case?

9 A. March 7th.

10 Q. March 7th of what year?

11 A. 90 --

12 Q. Five?

13 A. '95.

14 Q. 1995; is that correct?

15 A. Correct.

16 Q. Is that the same time Stan and Ray were also charged?

17 A. Correct.

18 Q. So no one was charged until March of 1995; is that
19 correct?

20 A. Correct.

21 Q. So all this time you're discussing working for
22 Detective Leiby you're not charged with this and neither is
23 any of the other two?

24 A. Correct.

25 Q. All right. Now, let's go back to that discussion you

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1 had. We are going back to December, now, of '94, okay. Do
2 you know where we are at?

3 A. Yeah.

4 Q. All right. December of '94, you have this discussion
5 about wearing a wire on Stan. You were provided a tape
6 recorder at that time by Detective Leiby at the jail?

7 A. Yeah, sergeant gave it to me.

8 Q. What sergeant?

9 A. Canfield.

10 Q. What kind of tape recorder?

11 A. One like on your desk.

12 Q. A small one that you could hide in your clothes?

13 A. Yeah.

14 Q. Like so (indicating)?

15 A. Yeah.

16 Q. All right. And were you put in the same cell as Stan
17 Jaloweic?

18 A. Yes, sir.

19 Q. And how long were you and Stan Jaloweic cell mates?

20 A. Just one day.

21 Q. Well, was that the plan, one day to be a cell mates?

22 A. No, he bonded out.

23 Q. He bonded out?

24 A. Yes, sir.

25 Q. So at that time Stan's not charged with no aggravated

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1 murder, was he?

2 A. Correct.

3 Q. He had another case unrelated to aggravated murder?

4 A. Correct.

5 Q. All right. So he bonded out after one day of
6 rooming with him?

7 A. Uh-huh.

8 Q. And you had this tape recorder in the cell?

9 A. Yes, sir.

10 Q. And a tape?

11 A. Yes, sir.

12 Q. Did you give that back to anyone?

13 A. Yes. I gave it back to one of the officers in there.

14 Q. Okay. Now, did you meet with Detective Leiby about
15 your unsuccessful attempt to wear a wire on Stan, did you
16 talk to him about that?

17 A. Yes, sir.

18 Q. Tell us where and when.

19 A. They --

20 Q. I know the dates are difficult, but we are now in
21 December.

22 A. I think it was, like, the next day or two days later
23 he called and I called him back, and I said that Stan --

24 Q. Let me ask you a question. How can you call someone
25 from the county jail? Don't those calls have to be

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1 collect?

2 A. Yes, they're collect.

3 Q. Who were you calling collect?

4 A. Detective Leiby.

5 Q. From the county jail?

6 A. Correct.

7 Q. And where were you calling him at?

8 A. From the jail.

9 Q. Yeah. Where were you trying to find him at, calling
10 him at?

11 A. Elyria Police Department.

12 Q. You called him collect?

13 A. Correct.

14 Q. And he accepted your calls?

15 A. Correct.

16 Q. Tell us about that.

17 A. So then I was talking to him and I told him Stan
18 would not signal at all because he thought the cell was
19 wired because I started asking him questions, so I left it
20 at that, told him I couldn't get nothing.

21 Q. And who did that upset; Detective Leiby?

22 MR. ROSENBAUM: Objection.

23 Q. Did he appear upset?

24 MR. ROSENBAUM: Did he appear upset
25 over the phone?

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1 Q. His tone of voice.

2 THE COURT: Wait a minute. Wait
3 a minute. There's an objection at this point.

4 MR. DUFF: I'll rephrase.

5 THE COURT: Okay, please do.

6 Q. All right. And was there further discussion then at
7 that point to do further investigation work for Detective
8 Leiby between you and Detective Leiby?

9 A. Well, he said he kind of figured Stan would say
10 nothing, because he thought it would be obvious that he got
11 put in the same cell as me.

12 Q. Who thought it would be obvious?

13 A. Stan Jaloweic.

14 Q. That Detective Leiby said this?

15 A. Yes.

16 Q. All right.

17 A. And then, so after that, he contacted me like a few
18 weeks later.

19 Q. Who contacted you?

20 A. Detective Leiby.

21 Q. Where at, county jail?

22 A. Yes, sir.

23 Q. Tell us about that.

24 A. Then he had me took back over to the police station.

25 Q. Did he come and get you personally or have someone go

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1 and fetch you?

2 A. He had somebody come get me.

3 Q. An Elyria police officer?

4 A. Yes, sir.

5 Q. And were you taken to the officer at the Elyria
6 police station?

7 A. Yes, sir.

8 Q. Would this have been the 1-7-95 discussion with
9 Detective Leiby?

10 A. I think so. I'm not for sure, no.

11 Q. After Christmas and New Years? Now, trying to set
12 your time frame, Dan, because it's important. We had a
13 12-4 meeting, then you had discussions with him after that.
14 I'm talking about the next time you met with him
15 personally.

16 A. I think I was already charged after I met him.

17 Q. No.

18 A. No. It was 1-7. I wasn't charged.

19 Q. You weren't charged with anything, right?

20 A. Right.

21 Q. Tell us about -- there's been evidence set forth by
22 the prosecutor with a transcript. Can you take a look at
23 State's Exhibit 13-A, please. Take a look at that, sir,
24 for a minute.

25 MR. DUFF: It's been admitted

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1 into evidence, Your Honor. Can we approach, Your Honor, on
2 this so there's no --

3 THE COURT: Sure, you can.

4 (Conference at the bench between the Court
5 and counsel, as follows:)

6 MR. DUFF: So it's clear what I
7 intend to do, that has been admitted.

8 THE COURT: It's in evidence.

9 MR. DUFF: Yes, in evidence,
10 admitted. I'd like to go into the statements in there to
11 Detective Leiby.

12 THE COURT: You have a right to
13 do it.

14 MR. ROSENBAUM: Doesn't speak for
15 itself.

16 MR. DUFF: No. I'd like to
17 emphasize some of it.

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

20 BY MR. DUFF:

21 Q. Do you recognize that -- so I'm not running foul,
22 do you recognize that document?

23 A. Yes, sir.

24 THE COURT: And the document
25 again, Mr. Duff?

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1 Q. 13-A, State's Exhibit.

2 THE COURT: State's Exhibit.

3 Thank you, sir.

4 Q. Is that a transcript of the conversation on
5 January 7th?

6 MR. ROSENBAUM: Your Honor, I haven't
7 objected before, but this is leading. I don't know what
8 the whole thing --

9 MR. DUFF: I'm trying to move
10 along.

11 MR. ROSENBAUM: But you've supplied
12 every statement every time for every question. I think
13 it's time to stop.

14 THE COURT: Yeah. I think at
15 this point have him identify it.

16 Q. What is that, Danny?

17 A. It's a statement I gave Detective Leiby.

18 Q. On January 7th?

19 A. Yes, sir.

20 THE COURT: Okay.

21 Q. Did you discuss, in that statement, taking Ray, your
22 father Ray to Wilkes Villa?

23 A. By Wilkes Villa.

24 Q. Yeah. Did you admit to Detective Leiby about that?

25 A. Yes, sir.

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1 Q. All right. Did you discuss with him anything about
2 your father coming over late that morning for drugs?

3 A. Yes, sir.

4 Q. And what'd you tell him in that regard?

5 A. I told him he had came over and got some drugs early
6 that morning.

7 Q. And you heard your brother Michael testify to that;
8 is that correct?

9 A. Correct.

10 Q. Did that really happen? Is that true?

11 A. Yes, sir.

12 Q. Did your father tell you at that point who those
13 drugs were for when they came over late that morning?

14 A. No, sir.

15 Q. Did you give him the drugs?

16 A. Yes, sir.

17 Q. Did you tell Detective Leiby in that statement that
18 you had tried to talk to your dad about this case?

19 A. Yes, sir.

20 Q. All right. And were there arrangements made at that
21 point for you to talk to your dad? Now, at this time
22 you're incarcerated at the county jail; is that right?

23 A. Yes, sir.

24 Q. Is your dad locked up at this point, January of '95?
25 No charges have been filed yet?

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1 A. I think he was. I'm not for sure.

2 Q. Well, would it refresh your memory if you looked at
3 parts of that transcript?

4 A. Yes, sir.

5 THE COURT: Well, maybe I can
6 intervene at this point and save some time. When did you
7 say that, did you not say that you got arrested sometime in
8 March of '95, all three of you?

9 THE WITNESS: Yes, sir.

10 THE COURT: Okay. Now we are
11 talking about January of '95.

12 THE WITNESS: Yeah.

13 THE COURT: Was your father in
14 jail at that time?

15 THE WITNESS: I remember him coming
16 in. I don't remember how long he stayed.

17 MR. DUFF: I could clear it up.

18 THE COURT: Please, go ahead.

19 BY MR. DUFF:

20 Q. If you could read page 29. Read it to yourself.
21 Without reading it to the jury, read page 29, this first
22 full paragraph right here, and tell me if that refreshes
23 your memory about whether your dad was locked up on that
24 date or not.

25 A. (Reading.)

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- 1 Q. I guess I could read it to him, too?
- 2 A. No, he was not locked up.
- 3 Q. There was discussion between you and Detective Leiby
- 4 about your father, right?
- 5 A. Yes, sir.
- 6 Q. Tell us about that discussion.
- 7 A. I had told Detective Leiby I would wear a wire and
- 8 ask my father some questions about the case, to see if he
- 9 had anything to do with it.
- 10 Q. And you were going to wear a wire while you were
- 11 incarcerated?
- 12 A. Correct.
- 13 Q. How would you contact your father then? How would
- 14 you see him to wear a wire on him?
- 15 A. Through visitation.
- 16 Q. All right. You were going to wear a wire when your
- 17 father came and visited you and get information on this
- 18 case?
- 19 A. Correct.
- 20 Q. You agreed to do that?
- 21 A. Yes, sir.
- 22 Q. Did you do it?
- 23 A. No, I never went through.
- 24 Q. Why not? Why didn't you do it?
- 25 A. He never contacted me when he got back with me

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1 about --

2 Q. Did you want to do that?

3 A. Yes, sir.

4 Q. Were you willing to snitch on your father at that
5 point?

6 A. Yes.

7 Q. Were you concerned about that?

8 A. Yes.

9 Q. How did it make you feel, snitching on your father?

10 A. Made --

11 MR. ROSENBAUM: Can we approach the
12 bench, please?

13 THE COURT: Yes.

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

16 MR. ROSENBAUM: I would like to know
17 if he's now discussing offered pleas.

18 MR. DUFF: No.

19 MR. ROSENBAUM: Where does that leave
20 us with his refusal to cooperate in his father's trial?

21 MR. DUFF: There was no offered
22 plea.

23 MR. ROSENBAUM: Is that right? What
24 did they say in the paper prior to that? What did you say
25 in the paper prior to that?

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1 MR. DUFF: I didn't say
2 anything.
3 MR. ROSENBAUM: It was --
4 MR. DUFF: This is not about
5 that, Judge.
6 MR. ROSENBAUM: It's the same thing.
7 He wouldn't do his dad at trial.
8 THE COURT: Rosenbaum, I'm going
9 to let it go at this point.
10 MR. ROSENBAUM: Yeah. My point is
11 that it's opened the door for me to inquire into that,
12 proposed plea negotiations.
13 MR. DUFF: I don't think so,
14 Judge. We'll handle that later.
15 MR. ROSENBAUM: We can't handle that
16 later.
17 MR. DUFF: How can he offer the
18 plea, Judge, when he's not charged yet?
19 THE COURT: At this stage --
20 MR. DUFF: Yeah, he's not
21 charged.
22 MR. ROSENBAUM: You are --
23 MR. DUFF: He's not charged.
24 MR. ROSENBAUM: You are trying to
25 create the impression that your client was well and willing

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1 and able to cooperate when it came time to do that he said.
2 No.

3 MR. DUFF: That was a plea
4 negotiations. That's separate. After he's charged. It's
5 totally different.

6 THE COURT: I'll permit some
7 cross-examination in this.

8 MR. ROSENBAUM: See, watch where
9 you're going.

10 MR. DUFF: On the plea?

11 THE COURT: No, not talking about
12 the plea.

13 (Thereupon, the following took place
14 within the hearing of the jury.)

15 BY MR. DUFF:

16 Q. Did you talk to Detective Leiby on that date, January
17 7th, about conversations you may have had with Sandra
18 Williams?

19 A. Yes, sir.

20 Q. Ron Lally's fiancée, did you admit to talking to her?

21 A. Yes, I did.

22 Q. And did you tell him that you talked to her about Ron
23 busting you?

24 A. No. I said someone busted me, but I never --

25 Q. It was discussion you wanted to know what at that

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1 time from --

2 A. Who busted me.

3 Q. Did you want to know if Ron did it?

4 A. Correct.

5 Q. All right. Did you have conversations with Detective
6 Leiby on January 7th, 1995, about your conversations with
7 your lawyer in regard to whether a snitch must show up at
8 trial?

9 A. Yes.

10 Q. All right. What was your understanding from talking
11 to your lawyer about if they could make a case against you
12 if a snitch shows up or not; what was your understanding?
13 Tell the jury.

14 A. My lawyer told me even though the informant did not
15 show up for court that the police monitored so they could
16 show up just as well to verify there was a drug sale.

17 Q. You mean monitor, that the police watched the whole
18 thing go down?

19 A. Correct.

20 Q. So you still believed you could get convicted of that
21 case?

22 A. Correct.

23 Q. Did you talk to Detective Leiby about what your dad
24 told you about this case on January 7th, '95?

25 A. Can you say that again?

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1 Q. Did you have a conversation with Detective Leiby
2 about what your father told you in regard to this case?

3 A. Not that I can remember.

4 Q. We will move on while Mr. Wightman tries to find
5 that.

6 Did you talk to Detective Leiby about whether or not
7 you would fight Ron Lally when he was alive if you saw him?

8 A. Yes, I did.

9 Q. What did you tell him? Did you admit that you'd
10 fight him --

11 A. Yes.

12 Q. -- if you saw him?

13 A. Yes, sir.

14 Q. And you told him that?

15 A. Yes, sir.

16 Q. Did you talk to Detective Leiby about driving Corrine
17 Fike's car on that night -- not that night, but using
18 Corrine Fike's car on prior occasions?

19 A. Correct.

20 Q. Did you admit that you did that?

21 A. Correct.

22 Q. Did Detective Leiby talk to you about your need for
23 an alibi witness on January 7th?

24 A. Correct.

25 Q. And what did he tell you?

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1 A. Told me he wanted to get in contact with the people I
2 was supposed to be with that night so we could confirm it.

3 Q. All right. You said you don't recall, talking to
4 Detective Leiby, what you told him about, page 7, if you
5 have it, Mr. Prosecutor. Page 7, would you read that
6 paragraph there to yourself to refresh your memory, where
7 it says "D.S."?

8 A. (Reading.)

9 Q. Do you see that?

10 A. Yes, sir.

11 Q. And what did you tell Detective Leiby your father had
12 told you on January 7th?

13 A. Whenever I questioned my father about anything about
14 the case, he told me it's best I know nothing about it, so
15 that way I could never get caught up in nothing.

16 Q. That's what you told Detective Leiby?

17 A. Correct.

18 Q. Can you find that other one, Dan?

19 Did you have discussion -- we've talked about your
20 agreement to wear a wire. Do you remember the purpose of
21 you wearing a wire? Did you tell Detective Leiby on
22 January 7th why you wanted to wear a wire?

23 A. Yes.

24 Q. For what reason? To prove what?

25 A. That I had nothing to do with this.

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- 1 Q. What?
- 2 A. I had nothing to do with this case.
- 3 Q. That's what you told him on January 7th?
- 4 A. Correct.
- 5 Q. That you'd wear a wire to show that?
- 6 A. Correct.
- 7 Q. Did Detective Leiby have any discussion, discussion
- 8 with you on January 7th about what your dad would do if you
- 9 busted him while you were wearing a wire, if he would turn
- 10 on anybody?
- 11 A. If my father would?
- 12 A. Do you know what I mean by testify against or turn,
- 13 do you know what I mean by that term?
- 14 A. Yeah.
- 15 Q. Did you have any discussion with Detective Leiby on
- 16 that date about what your dad would do after you got a wire
- 17 on him?
- 18 A. Yes.
- 19 Q. What did you discuss with him?
- 20 A. I told him that if I get him on the wire that he'll
- 21 probably, that way he'll tell what happened to save
- 22 himself, too.
- 23 Q. All right. And he would give up, he would turn on
- 24 who?
- 25 A. Stan, if it was.

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1 Q. Yeah. Well, you knew at that point Stan was
2 involved, didn't you?

3 A. Correct.

4 Q. All right. And you told him you thought your father
5 would testify against Stan?

6 A. Correct.

7 Q. Now, there's been testimony in this case about you
8 and Carl Hartman and phone conversations. You've heard
9 those?

10 A. Yes, sir.

11 Q. Did you have those conversations with Carl?

12 A. Yes, sir.

13 Q. Did you try to bribe Carl Hartman?

14 A. In a way, yeah.

15 Q. Do you admit to that?

16 A. Yes, sir.

17 Q. Why'd you do that?

18 A. Because after I heard what he testified to at Stan's
19 trial.

20 Q. How did you hear what he testified to at Stan's
21 trial?

22 A. Stan and his testimonies.

23 Q. How did you learn that? Did you read something?

24 A. Yeah.

25 Q. What'd you read? Tell the jury.

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1 A. I read testimony that Carl Hartman gave at the
2 previous trial.

3 Q. Who'd you get that from?

4 A. Stan Jaloweic.

5 Q. All right. He gave you a transcript, a document like
6 we've been tossing around the courtroom, something like
7 this --

8 A. Correct.

9 Q. -- from his trial, and you read what Carl testified
10 to?

11 A. Yes, sir.

12 Q. What did you learn that Carl said about you at Stan's
13 trial?

14 A. He said that first he wanted, I approached him to
15 beat somebody up, then later on he changed it to killing
16 somebody.

17 Q. Now, did you approach him to beat people up?

18 A. No, sir.

19 Q. Did you ever approach him about killing anybody?

20 A. No, sir.

21 Q. All right. Why'd you pay him 50 bucks then?

22 A. Because he said that he was going to talk to you to
23 straighten out what was said in court.

24 Q. But why the money?

25 A. Because he said that he was on the run at the time

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1 and he wanted to get away from his parents' house because
2 the detective kept coming over there.

3 Q. Why'd you pay him the 50, Danny? I don't understand.
4 Were you upset with anybody, including me?

5 A. Yeah, because I hadn't heard from you.

6 Q. Tell the jury about it.

7 A. I hadn't heard from him.

8 Q. Who hadn't you heard from?

9 A. My attorney.

10 Q. How long had it been since you hadn't heard from him?

11 A. It's been a while.

12 Q. What's a while?

13 A. Like, about a month-and-a-half or so, two months.

14 Q. Were you worried I wasn't working on your case?

15 A. Yes, sir.

16 Q. So you tried working on your own case yourself?

17 A. Correct.

18 Q. All right. And this is what you were trying to do
19 with Carl Hartman?

20 A. Yes, sir.

21 Q. Act as your own investigator?

22 A. Correct.

23 Q. And the 50 bucks was paid why?

24 A. So that he'll go to my attorney and give him a
25 statement of what was really said at the time.

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1 Q. Okay. Why would you have to pay someone to do that?

2 A. Well, he told me he was on the run and he wanted the
3 money to stay away from his mom's house so that the
4 detectives couldn't get to him.

5 Q. Were you scared at this point? Were you worried
6 about this case?

7 A. Yes, sir.

8 Q. You thought your lawyer wasn't doing everything he
9 should be doing, right?

10 A. Correct.

11 Q. All right. I think you previously testified
12 yesterday that you were first positive these guys killed
13 this man when?

14 A. Couple days later.

15 Q. How did you learn that? How did you figure that out?

16 A. When Corrine Fike had asked me about the blood on her
17 car.

18 Q. So you knew at that point they had done it?

19 A. Correct.

20 Q. Did you ever make a statement to Terry Hopkins that
21 on that night that they did it?

22 A. No, sir.

23 Q. Did you ever, were you ever red in the face, as Terry
24 Hopkins described you as being?

25 A. No, sir.

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1 Q. Do you get red in the face?

2 A. No, sir. No.

3 Q. Did you tell him that you were sick to your stomach
4 and nauseous?

5 A. No, sir. I didn't even, I didn't even see him.

6 Q. Were you ever alone with Terry Hopkins that night to
7 have a conversation with him?

8 A. No, sir.

9 Q. There's been testimony in this case by Lynne Altpater
10 that you went out, she previously told the police that you
11 asked for some poison for cats?

12 A. Yeah.

13 Q. You want to tell the jury about that, what you recall
14 about that?

15 A. Yeah. I asked her previous for something to keep
16 cats away from my car because I live in an apartment
17 building. But that was, like, a year before I was even
18 charged with the drug case.

19 Q. A long time ago?

20 A. Yes, sir.

21 Q. You did have a discussion with her about your cats?

22 A. Yes.

23 Q. So that part of her statement is true?

24 A. Yes, correct.

25 Q. You never discussed killing people with her?

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1 A. No.

2 MR. DUFF: Could I have a
3 minute, Your Honor?

4 THE COURT: Sure.

5 (Discussion with defense counsel held off
6 the record.)

7 BY MR. DUFF:

8 Q. Let's go back for a moment, to what you testified to
9 yesterday, that you dropped your father and Michael off; is
10 that right?

11 A. Correct.

12 Q. And you said that was near your aunt's house, or
13 where did your aunt live?

14 A. My aunt lives on Middle Avenue.

15 Q. Okay. But you didn't drop them off at your aunt's
16 house, did you?

17 A. Correct.

18 Q. All right. And when did you, when did you figure out
19 that they were going to take Ron Lally somewhere?

20 A. After I seen Stan go past.

21 Q. All right. And then you pulled the car over to see
22 what?

23 A. To make sure somebody was picking them up.

24 Q. You wanted to make sure your dad and Michael got
25 picked up, not out there freezing all night?

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1 A. Correct.

2 Q. That's why you pulled them over?

3 A. Correct.

4 Q. Who was driving at that point? There's been
5 confusion on that issue.

6 A. My girlfriend was driving at that time.

7 Q. Tammy?

8 A. Yes, sir.

9 Q. You didn't, did you ask if Ron was in the car?

10 A. No.

11 Q. You asked if Michael and your dad were in the car?

12 A. If my brother was in the car.

13 Q. Just your brother?

14 A. Yes, sir.

15 Q. You heard your brother testify that as far as he knew
16 you had nothing do with this, as far as he knew at that
17 time?

18 A. Correct.

19 Q. Is that true?

20 A. Yes, sir.

21 Q. When you saw Stan's car go by that night -- well, it
22 wasn't Stan's car, was it?

23 A. No, sir.

24 Q. When you saw the car go by that night and you figured
25 out they were going to, they were going to do this, what

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1 did you think they were going to do with Ron Lally?

2 A. I had the impression they was going to the bus
3 station.

4 Q. And get him out of town?

5 A. Correct.

6 Q. That's what you thought was going to happen?

7 A. Correct.

8 Q. Were you ever -- I want you to look at this jury.
9 Look them in the eyes. Were you ever part of a plan to
10 kill this man?

11 A. No, sir.

12 Q. Did you ever accomplice with anybody to kill this
13 man?

14 A. No, sir.

15 Q. You are sworn under oath, and as you sit before this
16 jury, do you swear to them you had no part of this plan to
17 kill Ron Lally?

18 A. Correct, a hundred percent sure.

19 Q. Did you want Ron Lally dead?

20 A. No, sir.

21 Q. Was two years, in your mind, worth killing somebody
22 for?

23 A. No, sir.

24 Q. Let me ask you. Was it your understanding that your
25 dad was looking at a lot more time than you?

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1 A. Correct.

2 Q. Why?

3 A. Because he has prior records.

4 Q. All right. He had a worse record than you?

5 A. Yeah.

6 Q. And he's older, and it's harder to do time when
7 you're older?

8 A. Correct.

9 MR. ROSENBAUM: Objection.

10 Q. I'll withdraw it.

11 Now, when you talked to attorney Michael Ross, what
12 was your understanding of you being convicted whether
13 Mr. Lally showed up or not, what was your understanding?

14 A. I thought I was still going to get some time out of
15 it.

16 MR. DUFF: If I could just have
17 a minute to confer with my co-counsel, Your Honor.

18 (Discussion between defense counsel held
19 off the record.)

20 BY MR. DUFF:

21 Q. Did Detective Leiby tell you on numerous occasions
22 that he knew your dad had talked to you about this case?

23 A. Correct.

24 Q. And that therefore, you had some knowledge ever this
25 case?

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1 A. Correct.

2 MR. DUFF: That's it, Judge.

3 THE COURT: Thank you, Mr. Duff.

4 Mr. Rosenbaum, you may cross.

5 CROSS-EXAMINATION OF DANIEL D. SMITH

6 BY MR. ROSENBAUM:

7 Q. Sir, are you saying that you were aware of a plan to
8 put Ron Lally on a bus and get him out of town so he
9 couldn't testify or not?

10 A. Yes, sir.

11 Q. So if I understood you to not have any knowledge of
12 what was going on beforehand that night, that would be a
13 mistake on my part, right?

14 A. Correct.

15 Q. You are saying you actively participated in a plan to
16 pay a witness to get out of town not to testify against
17 you?

18 MR. DUFF: Object. He didn't
19 say he actively participated.

20 A. No.

21 Q. Well, you're not saying that then?

22 A. No. What it was, when they asked me about it a few
23 weeks ago before, I told them I didn't want no part of it.

24 Q. But you drove him out to the meeting point and let
25 them out in the middle of nowhere anyways?

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1 A. Correct. I didn't know.

2 Q. Did you know or didn't know?

3 MR. DUFF: Object. He doesn't
4 let him answer.

5 THE COURT: Settle down at this
6 point. Again, did you or did you not know whether you were
7 going over to the meeting place?

8 THE WITNESS: Not until I saw Stan.

9 THE COURT: Not until you saw
10 Stan.

11 Q. What did you think your father was going to do out in
12 the woods when it's, like, minus 40 out?

13 A. Well, it wasn't exactly in the woods he was at. He's
14 by a house.

15 Q. Was he in a house?

16 A. No, he wasn't.

17 Q. You knew he wasn't in a house, right?

18 A. Correct.

19 Q. So what was he doing standing out there?

20 A. I had no knowledge of it.

21 Q. How often do you drop your father off at 3:30 in the
22 morning when it's minus 40 out, south of town, so he could
23 stand by houses?

24 A. That was the first time.

25 Q. And you're telling everyone here that you had no

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1 knowledge that they were going to put him on a bus, so you
2 can't be guilty of that?

3 A. Correct.

4 MR. DUFF: Object. He said he
5 knew there was a plan to put him on a bus.

6 THE COURT: Not until he knew
7 about it, but he didn't know it was happening that evening
8 until he saw Stanley.

9 MR. DUFF: Right.

10 Q. So you aren't guilty of that?

11 MR. DUFF: Object.

12 THE COURT: Well, he may answer
13 that.

14 MR. DUFF: He's never been
15 charged with that.

16 THE COURT: It's all right.
17 Fine. Next question, please, Mr. Rosenbaum.

18 MR. ROSENBAUM: Do I get an answer?

19 THE COURT: No, that's all right.
20 Sustained. Go ahead.

21 Q. Now, is it fair to say that you admit to every little
22 detail of this plan that Detective Leiby or the State has
23 evidence on to put you at all these places, rock hard, but
24 you won't admit to anything else?

25 MR. DUFF: Object. That's a

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1 vague question.

2 THE COURT: He may answer if he
3 knows. I mean, if he can at this point. I think the
4 question is there. He may attempt to --

5 A. I don't understand.

6 Q. Well, you admit -- just take this bribery thing for
7 example. You say you knew they were going to put him on a
8 bus, right?

9 A. Correct.

10 Q. And you drove him out to the place where he was going
11 to get on the bus, right?

12 A. Drove, yeah, but I didn't know.

13 Q. But you didn't know?

14 A. Correct.

15 Q. So every little thing that somebody can place you,
16 you admit to going there, but you deny any criminal
17 responsibility, right?

18 A. Correct.

19 Q. And therefore, all these little things that Mr. Duff
20 went through that you admitted on that tape because
21 Mr. Leiby had a witness to put you there is just an extreme
22 set of unfortunate coincidences that has happened to you?

23 A. I don't understand what you're saying.

24 Q. You were at the wrong place at the wrong time because
25 you didn't know there was going to be a bribery to put Ron

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1 Lally on the bus, right?

2 A. Correct.

3 Q. And you were at the wrong place at wrong time when
4 you asked about the cat poison?

5 A. Yeah, that was before.

6 Q. And you were at the wrong place at the wrong time
7 when you showed up at Sandra Williams' house?

8 A. Correct.

9 Q. And you were at the wrong place at the wrong time
10 when you just happened to be there and Homoki came up and
11 says that you threatened the snitch?

12 A. Correct.

13 Q. And I could go on and on for the entire evening,
14 correct?

15 A. Correct.

16 Q. These are all just unfortunate coincidences that
17 happened to you?

18 A. Yes, sir.

19 Q. And your dropping your father off in the woods, you
20 have no idea why, but you stay there until Stan comes by
21 with the car, right?

22 A. Correct.

23 Q. And then unfortunately for you, you just happen to go
24 ask, "Is Michael in the car?"

25 A. Correct.

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1 Q. Because you thought Michael was going to freeze to
2 death if he was still out there?

3 A. Yes.

4 Q. What about your dad?

5 A. I figured if Mike got picked up, my father was there.

6 Q. And why is that?

7 A. They both got dropped off together; I figured they
8 both got picked up together.

9 Q. You saw no need to ask if they were both in the car?

10 A. Correct.

11 Q. And I suppose it's an unfortunate coincidence that
12 Michael wasn't in on the plan and you just asked about him
13 because you thought he might not participate, which in fact
14 he did not do at the end, right?

15 MR. DUFF: Object. He doesn't
16 know, he wasn't there.

17 A. I don't understand.

18 THE COURT: He says he doesn't
19 understand the question.

20 Q. Now, let's back up to some other things.

21 MR. DUFF: Ask that it be
22 stricken, that last thing.

23 THE COURT: The question?

24 MR. DUFF: Yeah.

25 THE COURT: He said he didn't

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1 understand. No, I won't ask it be stricthen.

2 MR. DUFF: Thank you, Judge.

3 Q. You are saying that you expected the probation from
4 the drug charge as a result of Ron Lally's buy or not?

5 A. Correct.

6 Q. So you were expecting probation?

7 A. Yes, sir.

8 Q. Now, you know darn well that if you got convicted of
9 that drug charge you weren't going to get probation no
10 matter what, were you?

11 A. What do you mean, convicted on my drug charge?

12 Q. If you got convicted of that drug charge, you were
13 going to prison, right?

14 A. Yes.

15 Q. So you couldn't --

16 MR. DUFF: Object. Which drug
17 charge?

18 THE COURT: Can you explain which
19 drug charge?

20 Q. The one that arose from Ron Lally.

21 A. Yes, sir.

22 Q. Yes.

23 A. I was expecting probation.

24 Q. Yeah. But what does that -- you were on probation,
25 right?

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1 A. Correct.

2 Q. For corruption of a minor?

3 A. Correct.

4 Q. What happens to a probationary who gets caught
5 trafficking drugs?

6 A. Well, my lawyer had stated to me he could get it
7 extended.

8 Q. You're saying it was not an automatic violation?

9 A. Correct.

10 Q. And you're a special case?

11 A. Correct.

12 Q. So you are the probationer that is permitted to sell
13 drugs while on probation and no others?

14 MR. DUFF: Object, Judge.
15 There are others and he knows it.

16 THE COURT: Well --

17 MR. ROSENBAUM: He does name them.

18 MR. DUFF: You know it.

19 Q. You're telling us --

20 THE COURT: He can answer that.

21 Q. -- that you have no fear that your corruption -- how
22 much were you looking at for corruption of a minor?

23 A. A year.

24 Q. Eighteen months, wasn't it?

25 A. Yeah.

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1 Q. Well, that's a little different, isn't it?

2 A. Eighteen months in the penitentiary is 12 months.

3 Q. So you're aware of all those things?

4 A. Correct.

5 Q. How is it that you're aware of those things?

6 MR. DUFF: Object.

7 THE COURT: He may answer as to
8 how he's aware of that.

9 A. Through my lawyer.

10 THE COURT: Thank you.

11 Q. So your lawyer told you that you could be violated
12 for this, right?

13 A. Correct.

14 Q. So you knew you were looking at 18 months, plus
15 whatever you got for the drug charge?

16 A. My lawyer told me most I can get off the drug charge
17 was two years.

18 Q. Plus 18 months?

19 MR. DUFF: Object. He
20 doesn't --

21 A. No, I had served time on that.

22 Q. How much time did you serve?

23 A. Four months.

24 Q. You got shock probation, right?

25 A. Correct.

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1 Q. That means you served between --

2 A. Four months off the twelve.

3 Q. So you're looking at the other time, right?

4 A. Correct.

5 Q. You weren't eligible for probation, were you?

6 A. Yeah, I was eligible.

7 Q. And what happened to you on that probation when you
8 finally got convicted of the other drug charges?

9 A. They reinstated my probation.

10 Q. You had to serve that time automatically, right?

11 A. Correct.

12 Q. And when you were describing that scenario about
13 being sentenced in McGough's court and going right to the
14 holding cell and Detective Leiby coming down there, you
15 forgot to tell these people you were taken upstairs first
16 and got your the additional whatever was left on that
17 year-and-a-half and then taken down there, right?

18 A. Correct.

19 Q. Just like your lawyer said yesterday?

20 A. Correct.

21 Q. You just forgot that fact?

22 A. Yeah.

23 MR. DUFF: Object. What did I
24 say yesterday?

25 THE COURT: No, no, Mr. Provenza

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1 I think he's talking about.

2 MR. DUFF: Oh, okay.

3 Q. Now, your father was not on probation for anything
4 else, was he, at the time of his drug charges that arose
5 for Ron Lally?

6 A. No, sir.

7 Q. So you maybe made another little mistake when you
8 said your father was looking at a lot more time than you,
9 didn't you?

10 A. No, he was.

11 Q. He was. He didn't have that automatic probation
12 violation hanging over his head, did he?

13 A. No, I think he had specs though.

14 Q. He had a prior drug sale enhancement, right?

15 A. Right.

16 Q. For the same charge. You, though, had two separate
17 sentences you were looking at?

18 A. Correct.

19 Q. One thing made an automatic revocation of your
20 probation, which did that?

21 A. Right.

22 Q. Your father didn't look at that, did he?

23 A. No.

24 Q. He didn't have that. Did you want your father to go
25 to prison for what Ron Lally did in that drug buy?

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1 A. No, I mean --

2 Q. So you were concerned about him?

3 MR. DUFF: Object. He doesn't
4 let him answer, Judge. He didn't give me --

5 THE COURT: He said, "No, I
6 mean."

7 MR. DUFF: And cuts him off all
8 the time.

9 Q. Did you want your father to go to prison?

10 A. I didn't, but he did.

11 Q. So you were concerned about that?

12 A. No.

13 Q. He didn't go for Ron Lally's charge, did he?

14 A. No.

15 Q. Neither did you, did you?

16 A. No, sir.

17 Q. Now, you said that your lawyer told you that you
18 could still be prosecuted without the snitch if the police
19 saw the buy, right?

20 A. Correct.

21 Q. Where did the buy take place?

22 A. From my apartment.

23 Q. Inside your apartment?

24 A. Correct.

25 Q. How many police officers were under the bed in your

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1 apartment at that time?

2 A. None.

3 Q. How many police officers saw this buy?

4 A. I don't know.

5 Q. None, right?

6 A. Not that I know of.

7 Q. Right. So your answer regarding that was also
8 slightly misleading, wasn't it?

9 A. No. I'm just going by what my lawyer told me.

10 Q. Your lawyer told you police officers were in the
11 house?

12 A. No. He said I could still be convicted.

13 Q. If a police officer saw the buy?

14 A. He said --

15 MR. DUFF: Object. That's not
16 what he testified.

17 MR. ROSENBAUM: If he --

18 THE COURT: He may not have
19 testified to that. He's asking the question if the police
20 officers saw the buy.

21 MR. DUFF: He just answered no,
22 he said, when they monitor.

23 Q. Excuse me. Excuse me. How many police officers
24 monitored your buy?

25 A. I don't know.

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1 Q. And you didn't, so you're saying you don't know if
2 any police officers monitored your buy, but you're also
3 saying that you could have been prosecuted, so you don't
4 know?

5 A. Correct.

6 Q. You certainly are aware that State had a far better
7 case with Ron Lally than without, right?

8 A. Correct.

9 Q. Now, you said you worked?

10 A. Yes, sir.

11 Q. Where?

12 A. I worked for construction company in Cleveland in
13 Erie Temps.

14 Q. When?

15 A. Back in '94.

16 Q. Which one did you work for in '94, the construction
17 company?

18 A. Erie Temps.

19 Q. And how long did you work for Erie Temps?

20 A. Worked for a couple months.

21 Q. Now, temps is a temporary, it's not a real job,
22 right?

23 A. Correct.

24 MR. DUFF: Object. It's a real
25 job. What's that?

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1 THE COURT: It's not --
2 MR. DUFF: John --
3 THE COURT: It's, well, it's a
4 temporary job, correct?

5 THE WITNESS: Correct.

6 THE COURT: All right, fine.

7 Q. Did you have work every day?

8 A. Yes. I was working at a factory.

9 Q. What stopped you from working?

10 A. I had moved out to the Renaissance and was taking
11 classes there.

12 Q. You moved where?

13 A. Out to the Renaissance. I was taking classes.

14 Q. For what?

15 A. Nursing home.

16 Q. And how do you support yourself during all this time?

17 A. My girlfriend.

18 Q. Your girlfriend, who did what for a living?

19 MR. DUFF: Object as to what
20 she does for living. That's got nothing to do with this
21 case.

22 THE COURT: He said he's being
23 supported by his girlfriend.

24 MR. DUFF: What she does has
25 nothing to do with the case.

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1 THE COURT: All right, fine.

2 Q. What does she do for a living?

3 MR. DUFF: Object.

4 THE COURT: Relevance.

5 Sustained.

6 MR. DUFF: What wherewithal for.

7 THE COURT: Does she have the
8 wherewithal to support you?

9 MR. ROSENBAUM: Can't I ask where she
10 works?

11 THE COURT: Next question,
12 please, Mr. Rosenbaum.

13 Q. Now, I take it it's fair to say then that you don't
14 want the jury to know what the girlfriend does for a
15 living?

16 MR. DUFF: Withdraw my
17 objection. Let him tell him.

18 Q. Thank you very much.

19 A. She's a bartender.

20 Q. Let's --

21 A. She's a bartender.

22 Q. She supported you while you took school and you
23 didn't need to work?

24 A. Correct.

25 Q. So you had a job for three months there for a while?

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1 A. Uh-huh.

2 Q. Where did you work before that in 1994, where did you
3 work before that?

4 A. I was working at a construction company. Before Erie
5 Temps?

6 Q. Yeah.

7 A. I was working at a construction company.

8 Q. Which one?

9 A. I can't remember the name of it.

10 Q. For how long?

11 A. For about a little over a month.

12 Q. And what happened to that job?

13 A. It was off and on because I was new there, so they
14 didn't have work all the time there for me to go on.

15 Q. And what was the time period between the one month
16 construction job and Erie Temps?

17 A. About two months.

18 Q. And where did you work before the construction job?

19 A. I can't remember.

20 Q. It's fair to say you supplemented, if not relied,
21 upon drug pushing as the source of your income, correct?

22 A. Correct.

23 Q. Well, when Mr. Duff asked you where you worked, why
24 didn't you say, "I'm a drug pusher by trade"?

25 MR. DUFF: Object.

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1 THE COURT: Sustained.

2 Q. Well, that would be the more truthful answer,
3 wouldn't it?

4 MR. DUFF: Object.

5 THE COURT: Sustained.

6 Q. Are you a drug pusher by trade?

7 MR. DUFF: Object. He admitted
8 that.

9 THE COURT: He may answer that.
10 Do you sell drugs?

11 A. Yes, sir.

12 Q. Are you a drug pusher by trade?

13 MR. DUFF: Object to the
14 connotation.

15 THE COURT: Sustained. He sells
16 drugs.

17 MR. DUFF: You can't call him
18 names, Judge.

19 THE COURT: Let the jury make
20 their own determination as to what that is.

21 Q. Now, Ron Lally ended, at least temporarily, your drug
22 pushing trade, didn't he?

23 MR. DUFF: Object.

24 THE COURT: He may answer that.

25 A. Yes.

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1 Q. You can't be a successful drug pusher if your client
2 turns you into the police, correct?

3 A. Correct.

4 Q. Now, you testified you went to live with your mother
5 when you were 12 or 13?

6 A. Correct.

7 Q. She provided a good home for you, didn't she?

8 A. Yes, she did.

9 Q. She provided a good innocence for you, didn't she?

10 A. Correct.

11 Q. She supported you?

12 A. Correct.

13 Q. And despite this contribution by her in your life,
14 you chose to adopt your father's lifestyle?

15 A. Correct.

16 Q. You becoming a drug pusher then is not your father's
17 fault, is it?

18 A. In a way.

19 Q. And how is that?

20 A. I seen the things he had, stuff he was doing.

21 Q. And what did your mother say about those things?

22 A. Said, told me -- she really didn't talk to me about
23 it too much.

24 Q. She didn't talk to you. She was raising her child.
25 She divorced your father, right?

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1 A. Correct.

2 Q. Got him out of the house so he couldn't influence
3 your life. And you're telling these jurors that your
4 mother that cared and nurtured you did not tell you that
5 drugs were bad?

6 A. Yeah, she told me they was bad.

7 Q. So you had one parent telling you, setting the good
8 example and one parent setting the bad example you chose,
9 correct?

10 A. Correct.

11 Q. Now, it's a fair statement, also, that you became the
12 leader of that drug ring after a period of time, correct?

13 A. No, I wasn't no leader.

14 Q. You were the source of drugs. Your father became an
15 addict and a slave to his addiction, did he not?

16 A. Correct.

17 Q. Now, yesterday you said that you learned about who
18 the snitch was in your case from your lawyer four or five
19 months later, correct?

20 A. Correct.

21 Q. That's not true, is it?

22 A. Yeah.

23 MR. ROSENBAUM: Do you have that
24 transcript?

25 MR. DUFF: Which one?

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1 Q. Well, you told Detective Leiby, didn't you, that you
2 figured it out on your own long before you were arrested,
3 right?

4 A. You mean before I heard the tape?

5 Q. Yeah. Long before you were arrested. Well, after
6 you were arrested, but long before the four, five months
7 discussion tape with your lawyer?

8 A. No. I told him I was aware of, I suspected who could
9 have gotten me.

10 Q. You told Detective Leiby --

11 MR. DUFF: Page?

12 Q. Six. I'm sorry, it's page 11. That you figured it
13 out on your own from the way Ron was acting, right?

14 A. Correct.

15 Q. Well, then why did you say -- and that was long
16 before you heard the tape from your lawyer, right?

17 A. I'm not sure of how long.

18 Q. Well, you were over Sandy Williams to threaten her on
19 September 10th.

20 A. I never threatened her.

21 Q. Well, so she is lying about that?

22 A. Correct.

23 Q. But you admit going over to talk to her?

24 A. Yes.

25 Q. And in that same tape, you told Detective Leiby that

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1 you could tell by the way he was acting and ran off that
2 you knew it was him, right?

3 A. I had a suspicion.

4 Q. And you said that you knew it was him before I knew,
5 before I even heard the tape because he gave himself away,
6 right?

7 A. Correct.

8 Q. And that was the same time that, unfortunately for
9 you, you went over to Sandy Williams house, correct, that's
10 another one of those unfortunate coincidences, isn't it?

11 A. I'm not sure of that.

12 Q. She says you were over there. You admit to being
13 over there, right?

14 A. Correct.

15 Q. So again, with Detective Leiby, or the State can
16 establish you admit to being there, but of course, he's
17 lying, which comes with any criminal conduct, right?

18 A. Correct.

19 Q. Just like you knew somebody else might take care of
20 your woes and get Ron Lally out of town, but you're not
21 responsible when you took all those people to meet him?

22 A. I didn't know who they was meeting.

23 Q. And I suppose the same thing happened with Patrolman
24 Homoki when he says you threatened Ron Lally in his
25 presence?

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1 A. Correct.

2 Q. He's lying also?

3 A. I never threatened him.

4 Q. Well, did you say "That snitch is going to get his"?

5 A. I don't recall saying that.

6 Q. So Patrolman Homoki is lying?

7 A. He's made a mistake.

8 Q. And just like Sandy Williams made a mistake when she
9 said you threatened to burn Ron Lally's parents' trailer to
10 the ground, or blow it up, right?

11 A. Correct. I didn't even know he had parents.

12 Q. Didn't even know he had parents. So these two people
13 are absolutely lying about what you did when you say you
14 were at the places they say they were at?

15 MR. DUFF: Object. He didn't
16 say that. He said they're mistaken.

17 THE COURT: Mistaken.

18 Q. If they say you threatened to blow up the trailer of
19 his parents' and you say you didn't even know his parents,
20 they're lying, right?

21 A. Correct.

22 Q. And if Patrolman Homoki says you swore at and said
23 "That snitch will get his," and you say you did not, he is
24 lying?

25 MR. DUFF: Object.

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1 A. I think you overexaggerate it.

2 THE COURT: Overruled.

3 Q. He's overexaggerating. Where did you guys park your
4 car when you went to Mr. Hero that day?

5 A. It was down the street.

6 Q. Down the street. When you normally buy food at a
7 fast foot place, do you park down the street?

8 A. No, I don't.

9 Q. But this time, even though you weren't doing what
10 these people say you were doing, you parked somewhere so
11 the police couldn't find your car?

12 A. No. We was over somebody's house.

13 Q. Whose? Who would that somebody be?

14 A. Tonya.

15 Q. Tonya who?

16 A. I don't know her last name.

17 Q. And what is Tonya's address?

18 A. I'm not sure of the address.

19 Q. What street does she live on?

20 A. Right across the street from Elyria High.

21 Q. Right across the street from Elyria High on what
22 street?

23 A. On the one way. I don't know what the street is.

24 Q. So that's just another unfortunate coincidence?

25 A. Correct.

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1 Q. Now, then when Lynne Altpater says that you wanted
2 chloroform or the poison for the guy that testified against
3 you and not cats, she is lying?

4 A. Overexaggerated.

5 Q. She exaggerated. You attempted to hire Richard
6 Altpater as well to kill this guy, right?

7 A. No, sir.

8 Q. I see. So if he said that, he would be exaggerating?

9 MR. DUFF: Object.

10 A. He would be lying.

11 Q. He would be lying.

12 MR. DUFF: It's not in
13 evidence.

14 THE COURT: It's not in evidence,
15 ladies and gentlemen.

16 MR. ROSENBAUM: That's not the test,
17 Your Honor.

18 THE COURT: At this point, ladies
19 and gentlemen, disregard. Go ahead, Mr. Rosenbaum.

20 Q. Now, Carl Hartman is lying, obviously, isn't he?

21 A. About some things.

22 Q. What is he lying about?

23 A. About killing.

24 Q. But how about the \$5,000 and the car?

25 A. Lied about that, too.

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1 Q. And, and Larry Hopkins is lying when he said you
2 tried get him to try --

3 MR. DUFF: Object. There is
4 no --

5 MR. ROSENBAUM: Terry Hopkins, Your
6 Honor. I'll --

7 THE COURT: Just object,
8 Mr. Duff. We will handle it.

9 MR. DUFF: Object. There's no
10 Larry Hopkins. That's what I objected to.

11 THE COURT: Just object at this
12 point. And there is no Larry Hopkins. It's Terry Hopkins.
13 continue.

14 MR. ROSENBAUM: I would like to be
15 able to conduct my cross-examination without Mr. Duff's
16 interference.

17 THE COURT: You're entitled to
18 that, Mr. Rosenbaum, but Mr. Duff is also entitled to
19 voice his objections. Proceed.

20 BY MR. ROSENBAUM:

21 Q. Now, Terry Hopkins is lying then about you trying to
22 hire him and being the go-between to get Carl Hartman?

23 A. No, he wasn't.

24 Q. So you did try to hire Terry Hopkins?

25 A. No, he approached me with it.

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- 1 Q. Who approached you with it?
- 2 A. Terry Hopkins.
- 3 Q. But he said you approached him?
- 4 A. No, I never approached him.
- 5 Q. So he's lying?
- 6 A. Correct.
- 7 Q. And he's lying about you saying they took care of it
- 8 long before the murder people got back from Cleveland,
- 9 right?
- 10 A. Correct.
- 11 Q. And you had nothing to be nervous about that night,
- 12 right?
- 13 A. Correct.
- 14 Q. Even though you thought they might be bribing a
- 15 witness, that might make you nervous?
- 16 A. I wasn't sure what they did.
- 17 Q. But bribing a witness is par for your course?
- 18 A. Excuse me?
- 19 Q. You bribe witnesses all the time, right?
- 20 A. No, I don't.
- 21 Q. Well, you tried to bribe Ron Lally, or you knew of a
- 22 plan to do it?
- 23 A. I told him I didn't want nothing to do with it.
- 24 Q. Who did you tell you didn't want anything to do with
- 25 bribing Carl Hartman?

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1 A. My father.

2 Q. But you bribed Carl Hartman anyways?

3 A. Excuse me?

4 Q. What did your father have to do with bribing Carl
5 Hartman?

6 MR. DUFF: Object. The witness
7 is confused.

8 A. Yeah. I thought --

9 Q. We are talking about Carl Hartman now.

10 A. Okay.

11 Q. Did you bribe him?

12 A. Yes.

13 Q. You confess to bribing him?

14 A. Correct.

15 Q. Now, what is a bribe to you?

16 A. Paying somebody off.

17 Q. But you say you're paying him off to tell the truth,
18 right?

19 A. Correct.

20 Q. Well, then isn't that bribery?

21 A. If that's the way you guys want to look at it. I'm
22 trying to get the truth out.

23 Q. Now, then I suppose there's no tape in evidence where
24 you say, "Okay, let them know. Tell my lawyer that the
25 police told you, you understand, be like, you know, the

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1 police told me they was going to try to frame me"?

2 MR. DUFF: Can we see that, Your
3 Honor? We haven't seen that.

4 MR. ROSENBAUM: It's in evidence.

5 MR. DUFF: That transcript
6 isn't.

7 Q. Did you say that?

8 THE COURT: Wait a minute. I
9 think Mr. Duff's entitled to see where that is.

10 MR. ROSENBAUM: You do have that.

11 MR. DUFF: I don't have
12 that.

13 MR. ROSENBAUM: You have those tapes.

14 MR. DUFF: I don't have the
15 transcript, Your Honor.

16 MR. ROSENBAUM: Well, there it is.

17 You wanted Hartman to say that Leiby framed you?

18 A. Can you read that again?

19 Q. Would you like to see it or do you want me to read it
20 to you?

21 A. Let me see it. (Reading.)

22 MR. DUFF: Your Honor, object.

23 Your Honor, there's been no testimony that this is an
24 accurate transcript. I was confronted with the --

25 MR. ROSENBAUM: That's not true.

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1 THE COURT: And whether or not,
2 at this points, that has nothing to do with it. He is
3 being asked as to whether a statement of that nature was
4 being made.

5 MR. DUFF: I know. You have to
6 confront him with the tape. No transcript is in evidence.

7 THE COURT: And he may answer
8 that. Obviously, the best severed is the tape, without any
9 question.

10 BY MR. ROSENBAUM:

11 Q. Are you through reading it, sir?

12 A. Yes, sir.

13 Q. You asked Hartman to say that Leiby framed you,
14 right?

15 A. I don't recall saying that.

16 Q. I see. So let me ask you this then, if you asked
17 Hartman to say Leiby framed you, you are guilty of bribery?

18 A. Correct.

19 Q. And if you said, "I got other people coming to court
20 to say the same," then you masterminded a plan to get
21 several people to come in and mislead the jury, right?

22 MR. DUFF: Object.

23 THE COURT: Overruled. He may
24 answer that.

25 A. No, sir.

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1 Q. Well, did you have other people coming in to say the
2 same thing?

3 MR. DUFF: What's the same, what
4 is he talking about?

5 MR. ROSENBAUM: I'm talking about the
6 next line where he says, "Because I got other people coming
7 in together so there's enough people to the be like, you
8 know, you got to say the same."

9 MR. DUFF: Object.

10 THE COURT: Overruled at this
11 point.

12 Q. "You know, the jury's going to be like, shit."

13 MR. DUFF: Judge, we object.
14 He's reading from the transcript. The tape is evidence.

15 THE COURT: The tape is the
16 evidence, but do you recall making any kind of statement of
17 that nature, sir?

18 A. No, sir.

19 Q. And you did do that, you obviously tried to
20 manipulate this jury?

21 A. No, sir.

22 Q. Well, how would it be when they're going to be, like,
23 shit?

24 MR. DUFF: Object.

25 THE COURT: Mr. Rosenbaum, he's

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1 denied having made that at this point.

2 Q. Then that tape doesn't exist in evidence, right?

3 A. I haven't heard it.

4 Q. Well, now, would that be my fault or your lawyers'?

5 MR. DUFF: Oh, this is great,
6 Judge. This is good, Judge.

7 THE COURT: Answer the question.

8 MR. DUFF: Now he's attacking me.

9 THE COURT: Ask your questions
10 now, regardless of whose fault it may be.

11 Q. Did you or did you not attempt to get Carl Hartman as
12 one of many people to come in and create the impression
13 that Leiby framed you to mislead the jury in your case?

14 A. No, sir.

15 Q. And so those tapes do not exist in evidence between
16 the calls that Carl Hartman made with you and the
17 conversation you had at the jail?

18 A. I think there's more than on the tapes than what --

19 Q. There's a lot more the tapes share. They're all
20 similar. Now, does this tape exist or doesn't it?

21 A. As far as I know of.

22 Q. As far as you know what?

23 A. That the tape's in evidence.

24 Q. So you did say this?

25 MR. DUFF: Object. He answered

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1 and denied.

2 Q. He's going to change his mind now, aren't you?

3 A. I could have, I don't know.

4 Q. I could have now. So if you did say that, what you
5 told these people on direct examination about it just
6 trying to get him to tell the truth is false, isn't it?

7 A. No, sir.

8 Q. I see. So you wanted him to tell the truth even
9 though you're going to have a whole bunch of people say
10 what you're paying Carl to say?

11 State's Exhibit 11-A is what, sir?

12 A. My handwriting asking Carl be put on my list.

13 Q. So you did write that and you did request if?

14 A. Yes, sir.

15 Q. State's Exhibit 11-B is what?

16 A. It's a check.

17 Q. Well, it's not the check, is it? That's your signed
18 request to issue the check, isn't it?

19 A. Correct.

20 Q. And 11-C is the check that you caused to be issued
21 for Carl Hartman to falsely claim that Leiby framed you,
22 right?

23 A. Yeah, that is the check.

24 Q. How far from the tracks is your aunt's house?

25 A. I'm not sure.

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1 Q. About 1.1 miles, isn't it?

2 A. I don't know.

3 Q. You have no idea?

4 A. Not offhand, how far, how many miles or nothing like
5 that.

6 Q. You certainly wouldn't want to walk that distance
7 when it's minus 40 out, would you?

8 A. No, I wouldn't.

9 Q. If you did not drop your brother and your dad off at
10 your aunt's house and you did not drop them off anywhere
11 near your aunt's house, why are you telling this Court and
12 jury where your aunt lives?

13 A. Excuse me?

14 Q. Well, did you not say that your aunt lives on Middle
15 Avenue?

16 A. She does live on Middle.

17 Q. What does that have to do with this case?

18 A. Because that's where I assumed my dad was probably
19 going to go, but I wasn't sure.

20 Q. You assumed your dad was going to go to your aunt's
21 house so you drove him right by your aunt's house and
22 dropped him off a mile down the road by other houses?

23 A. Yeah. He told me to.

24 Q. Even though he told you to do that, you assumed he
25 would go to your aunt's?

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1 A. I wasn't sure.

2 Q. And you thought he was going to your aunt's, his
3 aunt's, there was no reason for you to wait or stop and see
4 if Michael got in the car, was there?

5 A. I was making sure.

6 Q. Well, so what does your aunt's have to do with this?

7 A. I wasn't sure if he was going to sit out there and
8 try to walk or what, because I was seeing what they were up
9 to.

10 Q. Why don't you take them to right your aunt's?

11 A. My father told me he wanted to pass it up.

12 Q. And you admit only asking if Michael was in the car?

13 A. Correct.

14 Q. And that, I take it, that again has nothing to do
15 with the fact that Michael wasn't in on the plan?

16 A. Plan?

17 Q. Plan to kill Ron Lally?

18 A. No.

19 Q. Now, tell us how it is you figured out that Ron Lally
20 was dead within the next few days.

21 A. When I went over Corrine's house and she had told me
22 about the blood on her car.

23 Q. You immediately concluded it was Ron Lally's blood?

24 A. I figured -- I went back from the time my dad had
25 asked me something about getting him out ever town, then I

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1 went back to that night and then I kind of tried to put two
2 and two together.

3 Q. If you thought they were going to get him out of
4 town, why didn't they get him out of town?

5 MR. DUFF: Object. He wasn't
6 there.

7 THE COURT: Well, I don't know
8 that he --

9 Q. Why did you conclude --

10 THE COURT: -- he would be able
11 to testify.

12 Q. You're able to conclude that that's what I'm asking?

13 A. I don't believe.

14 Q. You said you thought they were going to get him out
15 of town?

16 A. Correct.

17 Q. Stanley's been in a lot of fights downtown, hasn't
18 he?

19 A. Yes.

20 Q. In fact, so has your dad, right?

21 A. He --

22 MR. DUFF: Object. That's not
23 relevant to the case.

24 THE COURT: It is relevant.
25 Overruled.

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1 A. He's been in one that I know of.

2 Q. So blood on Corrine's car would not be a big surprise
3 to you, with their habits, would it?

4 A. I'm not for sure. I mean --

5 Q. Right. They get in fights all the time?

6 A. Yeah.

7 Q. So blood on the car doesn't lead one to lodgically
8 conclude Ron Lally must be dead and didn't get to the bus,
9 does it?

10 A. No.

11 Q. Well, tell the jury the rest of the factors that led
12 you to that conclusion.

13 A. Just when my dad had said something about getting him
14 out of town then when Corrine told me about the blood,
15 that's when I thought something had went down.

16 Q. You admit he really thought he was going out of town,
17 right?

18 A. That night?

19 Q. Yeah.

20 A. Yeah.

21 Q. And you admit there could be blood on the car for a
22 zillion reasons?

23 A. No, she told me it was a lot of blood.

24 Q. A lot of blood. But the car was washed though?

25 A. She told me it was.

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1 Q. But a lot of blood would be nothing for Stanley or
2 your dad either, would it?

3 A. No.

4 Q. So again, tell these people what other factors you
5 had that told you, independently of being part of a plan,
6 that Ron Lally was dead.

7 A. I don't understand what you're saying.

8 MR. DUFF: Object. That assumes
9 there was a plan. His questions, he's trying to get him to
10 agree there's a plan.

11 THE COURT: He's not attempting
12 to do that. He's asking him as to how he drew that
13 conclusion, period. I think that's the question.

14 Q. Tell the jury what other information you had to draw
15 the conclusion that Ron Lally must be dead.

16 A. I had no other information.

17 Q. I see. So you admit the information you had did not
18 support that conclusion and you also admit that you knew
19 Ron Lally was dead, but you deny the plan?

20 A. No, I wasn't for sure if he was dead.

21 MR. DUFF: Object. It's a
22 compound question. It's got several --

23 THE COURT: Ask him one at a
24 time, Mr. Rosenbaum.

25 Q. Do you admit you have no other information that leads

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1 you to support the conclusion he was dead?

2 A. Correct.

3 Q. Do you admit that you said you figured it out that he
4 was dead?

5 A. I figured it out, but I wasn't for sure.

6 Q. Now you weren't for sure. And I suppose that that
7 could not be another unfortunate coincidence that you said
8 that all the time you're denying being the instigator
9 behind this plan?

10 MR. DUFF: Object.

11 THE COURT: Overruled.

12 A. Correct.

13 Q. And I suppose, also, it's another unfortunate
14 coincidence that Ron Lally came to meet his faith on the
15 morning of your jury trial?

16 A. I didn't even know I was going to jury trial.

17 Q. You had no idea after all this discussion with the
18 Court and everything, or with your lawyer, and everything
19 about the penalties, what day your trial was?

20 A. I knew of my lawyer said he was going to get it
21 postponed.

22 Q. He didn't call you and tell you it was postponed, did
23 he?

24 A. He said the was getting it postponed.

25 Q. Did he call and tell you it was postponed?

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1 A. No, I called him.

2 Q. Did he tell you it was postponed?

3 A. No. He said he was trying to get it postponed.

4 Q. So it wasn't postponed, was it?

5 A. Not that I know of.

6 Q. And you didn't go to court anyways, did you?

7 A. No. He said he was going to call me.

8 Q. You didn't go to court, did you?

9 A. Correct.

10 Q. So I suppose that was another unfortunate coincidence
11 for you that even though you didn't know Ron Lally was dead
12 at that time and no one told you, that you didn't show up
13 for court?

14 A. It wasn't the first time.

15 Q. I see. You make it a habit of that. And I
16 suppose --

17 MR. DUFF: Object to these
18 comments. Ask it be stricken.

19 Q. Do you make a habit of not going to court?

20 A. He calls, my lawyer.

21 Q. Do you make it a habit of not going to court?

22 MR. DUFF: Object. He answered.
23 He said his lawyer called him.

24 THE COURT: No. The question is,
25 do you make it a habit about not going to court. I think

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1 you can answer that.

2 A. No.

3 Q. I see. So you were acting out of character when you
4 didn't show up for your jury trial?

5 A. I wouldn't say that. I mean, I was waiting on him to
6 call me.

7 Q. Look, did you sign this entry saying your trial was
8 set for 1-19-94 at 8:30 a.m.?

9 A. Yes, sir.

10 Q. And you're telling us it's your practice to sit
11 around at home in the morning and wait to see if your
12 lawyer calls you as to whether or not you should be in
13 court for a jury trial?

14 A. No, I called him to double check. When I signed
15 that, he said he doubts it's even going to go to trial that
16 day.

17 Q. So on the date of January 19th, 1994, was your trial
18 postponed?

19 A. When?

20 Q. January 19th, 1994, the date of your trial, was it
21 postponed?

22 A. I guess. My lawyer never called me and told me to
23 come to court.

24 Q. It wasn't postponed, was it?

25 A. I don't know.

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1 Q. So even though you signed an entry saying to be
2 there on that date, you didn't think you had to be there?

3 A. Correct.

4 Q. And it's another unfortunate coincidence that on the
5 day that this guy that was a key witness against you died
6 and the case was set for trial you didn't show up for your
7 trial?

8 A. My lawyer told me it wasn't going to trial.

9 Q. Your lawyer told you?

10 A. It wasn't going to trial that day.

11 Q. And who was that?

12 A. Michael Ross.

13 Q. So Michael Ross called and told you you didn't need
14 to come to court on the day your case was set for trial?

15 A. No. When I signed this he had told me.

16 Q. That it might not go?

17 A. Correct.

18 Q. But he never called you back and said it was off, did
19 he?

20 A. No.

21 Q. So as far as you knew it was on, just like the paper
22 you signed?

23 A. Correct.

24 Q. And you didn't go to court anyways?

25 A. I called him to double check.

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1 Q. And what did he tell you?

2 A. He told me he don't think, he said he'd get it
3 postponed, that he would let me know later.

4 Q. So it wasn't important enough for you to go to court
5 on the day of the trial because your lawyers going to get
6 it postponed?

7 A. I live right down the street.

8 Q. It's another unfortunate coincidence you didn't show
9 up the day your case was set for trial?

10 A. Yeah.

11 MR. DUFF: Object.

12 THE COURT: Overruled.

13 Q. Now, is it wrong for someone to want to get
14 consideration from Detective Leiby for helping solve the
15 case?

16 MR. DUFF: Object. That's his
17 opinion. He can't give that. That's not relevant what he
18 thinks of that.

19 THE COURT: What he thinks about
20 it makes no difference, that's correct.

21 Q. You certainly wanted to do that, right?

22 A. For what?

23 Q. You wanted to get consideration from Leiby?

24 A. Correct.

25 Q. And in preparing for your case today, you read

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1 transcripts of prior testimony, right?

2 A. Correct.

3 Q. You read transcripts of your prior statements?

4 A. Correct.

5 Q. There's nothing wrong with that, is there?

6 A. No.

7 MR. DUFF: Object as to his
8 opinion, what's right or wrong.

9 THE COURT: Well, and he's
10 already answered that he doesn't think there was anything
11 wrong with his reading anything at this point. Next
12 question, please.

13 Q. And why did you do that?

14 A. Read them?

15 Q. Yeah.

16 A. Just went over them.

17 Q. Wanted to be prepared, right?

18 A. I guess.

19 Q. Now, are you saying today that your father and
20 Stanley Jaloweic killed Ronald Lally as far as you know?

21 A. As far as I know.

22 Q. So Detective Leiby didn't frame Stanley and your
23 father, did he?

24 MR. DUFF: Object. That's never
25 been argued that that has occurred in this case that

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1 Detective Leiby framed those two. That's never been
2 argued.

3 THE COURT: That was Jaloweic's.

4 MR. ROSENBAUM: If it please the
5 Court, they elicited that.

6 THE COURT: That's Jaloweic's
7 testimony. That was Jaloweic's testimony.

8 Q. So Stanley lied under oath, didn't he?

9 A. I don't know if he lied.

10 Q. Well --

11 MR. DUFF: He wasn't there, Your
12 Honor. He doesn't know what happened.

13 Q. He was here.

14 THE COURT: And he's answered.

15 MR. DUFF: He wasn't when the
16 murder occurred.

17 THE COURT: And he's answered
18 that.

19 Q. Look, you have said as far as you know Raymond and
20 Stanley killed Ron Lally, correct?

21 A. Correct.

22 Q. And you heard Stanley yesterday deny he did that,
23 right?

24 A. Right.

25 Q. And you heard him falsely claim that Leiby framed him?

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1 MR. DUFF: Object.

2 Q. Didn't you?

3 THE COURT: Did you hear that?

4 A. I heard that.

5 MR. DUFF: Judge.

6 Q. And he was false, right?

7 MR. DUFF: Judge.

8 Q. As far as you know?

9 THE COURT: Okay.

10 MR. DUFF: Judge, that man was
11 convicted of that at a separate trial. That case is
12 subject to appeal. He wasn't there when this occurred.

13 THE COURT: And there's no
14 question about that, and I don't think he's being asked as
15 to whether he heard that.

16 Q. And you know from what you know this, and your own
17 conclusions, that Stanley lied, right?

18 A. From what I know and heard, yeah.

19 Q. But it is another unfortunate coincidence then that
20 either you or your lawyer is making the same claim about
21 Detective Leiby that Stanley did, right?

22 MR. DUFF: Object to that
23 inference, Judge. This is a separate case and totally
24 separate facts and proof.

25 THE COURT: I'll sustain that.

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1 I'll sustain that.

2 Q. Now, you knew from -- let me ask you this.
3 Altpater, Richard and Lynne, they're your friends and
4 acquaintances, right?

5 A. Correct.

6 Q. And Hopkins, Sharon and Terry, are your friends and
7 acquaintances?

8 A. Correct.

9 Q. Carl Hartman is your friend, your acquaintance?

10 A. Correct.

11 Q. Now, you knew from all these people that Detective
12 Leiby was coming out there and asking them, right?

13 A. Correct.

14 Q. And you also knew as a result of that that he
15 suspected you?

16 A. Correct.

17 Q. And that is why you went to Detective Leiby, correct?

18 A. Correct.

19 Q. Now, Patrolman Homoki did tell the truth when he said
20 Stanley ran across the street as soon as he showed up,
21 right?

22 A. No, Stan was already across the street when he showed
23 up.

24 Q. How come Stan was across the street and you weren't?

25 A. I was just walking out of Mr. Hero's.

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1 Q. Did Stanley go in there, too?

2 A. He came in for a minute and walked right back out.

3 Q. Now, you are denying today any planning or any
4 participation in any conspiracy to kill Ronald Lally,
5 right?

6 A. Correct.

7 Q. And you don't mean to say there's anything wrong for
8 Detective Leiby to try to solve this homicide, is it?

9 A. No, sir.

10 MR. DUFF: Object. He's asking
11 his opinion. That's not what he's here for.

12 THE COURT: He can answer if he
13 can.

14 Q. There were several occasions you offered to help him,
15 correct?

16 A. Correct.

17 Q. You never did, for whatever reason, deliver anything,
18 concrete evidence, against Stanley or your dad, did you?

19 A. Right.

20 Q. How long was it after you dropped your dad and Mike
21 off that you saw Stan come by?

22 A. About five or ten minutes. Probably not even that.

23 Q. And where were you sitting during that five or ten
24 minutes?

25 A. Right down the street.

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1 Q. And why did you choose to weight?

2 A. To make sure that somebody was picking them up.

3 Q. And you waited until when to come forward with this
4 information or any information about this?

5 MR. DUFF: Object. It's in
6 evidence.

7 THE COURT: Well, he's still
8 entitled to ask.

9 A. You mean my first?

10 Q. Yeah, when did you first call Detective Leiby?

11 A. You mean going to see him?

12 Q. When did you first call him, even contact him to say
13 that you had all this valuable information?

14 A. I think it was 4-28-94.

15 Q. Why didn't you stay there and wait with your dad
16 until their ride showed up and let them stay in the warming
17 and comfort of the car?

18 A. My dad kept telling me to leave. I wanted to wait,
19 and he kept telling me to leave. That's when I went down
20 the street to wait.

21 Q. That would be another unfortunate coincidence for
22 you, wouldn't it?

23 A. I mean, I wasn't going to let them stand out there.

24 Q. If Ron Lally saw you, and everybody else, he might
25 jump out of Stan's car before your dad got in and held him

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1 at gun point, right?

2 A. I don't know. I didn't know.

3 Q. So, so it's just an unfortunate coincidence that you
4 weren't visible by him?

5 A. Correct.

6 Q. And you didn't stand by there in the cold weather
7 and let them wait your car, because he would have
8 recognized you?

9 A. I don't even know if he was in the car.

10 Q. And I suppose it's also another unfortunate
11 coincidence this same thought that Sharon Hopkins said,
12 that is, you were scrunched down in the car and never
13 driving?

14 A. I was never scrunched down in the car.

15 Q. She is lying?

16 A. Overexaggerating.

17 Q. Well, your father wasn't doing anything wrong and
18 it's minus 40 out, you could stand by there and let him
19 wait in your car, correct?

20 MR. DUFF: Object. Asked and
21 answered. He said his dad told him to get lost.

22 THE COURT: Sustained at this
23 point.

24 Q. And you do everything your dad says, right?

25 A. Basically.

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1 Q. I thought you were the leader of the drug ring, he
2 was the crack addict?

3 A. Not a leader.

4 Q. You just had the drugs, you just distributed the
5 drugs and he was a slave to his addiction, right?

6 A. I don't know.

7 Q. You already said that. Are you taking it back now?

8 A. He, yeah, he pretty basically, yeah.

9 Q. Stanley's stupid, right?

10 MR. DUFF: Object. He's
11 characterizing people like this.

12 THE COURT: Sustained.

13 Q. Is Stanley stupid or not?

14 MR. DUFF: Object again. He
15 can't call people names, Your Honor.

16 THE COURT: Whether he thinks
17 Stanley is stupid or not has nothing to do. Next question.

18 Q. Is Stanley as smart as you?

19 THE COURT: You may answer that
20 if you think --

21 A. I would think so.

22 Q. Well, Stanley didn't succeed your father in this drug
23 business, did he?

24 MR. DUFF: Object. That's got
25 nothing to do with anything.

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1 THE COURT: Overruled.
2 THE WITNESS: Excuse me?
3 THE COURT: Overruled.
4 THE WITNESS: Oh.
5 THE COURT: You may answer?

6 A. I didn't hear him.

7 Q. Stanley didn't succeed your farther, did he, in the
8 drug business, right?

9 A. I don't understand.

10 Q. Stanley sold for you, right?

11 A. Correct.

12 Q. You didn't sell for Stanley?

13 A. No.

14 Q. And no one is accusing Stanley or Raymond of trying
15 to hire them to kill people or provide poison, are they?

16 A. Excuse me?

17 Q. All these people that are saying that someone tried
18 to hire them to kill Ron Lally say it's you, right?

19 A. Correct.

20 Q. Not Stanley, not Raymond?

21 A. Correct.

22 Q. All the people that say that there were threats put
23 out, you're there, right?

24 A. Correct.

25 Q. So when you dropped your dad and Michael off out

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1 there in the cold, it was all their planning and not yours?

2 A. Correct.

3 Q. Even though they accomplished what the other people
4 said you tried to hire them to do?

5 A. Right.

6 Q. And I suppose Carl Hartman is lying when he wouldn't
7 take your offer, when he says you said Stan and dad will
8 take care of it?

9 A. Yeah, he was lying.

10 Q. That's not exaggeration?

11 A. No, he's lying.

12 Q. So you admit to being in all the places that the
13 State says you were, but you had absolutely no criminal
14 intent whatsoever?

15 MR. DUFF: Object.

16 A. Correct.

17 Q. And you are --

18 THE COURT: Overruled.

19 Q. -- willfully, or for whatever reason, just happened
20 to be blissfully ignorant the fact that was a heinous
21 conspiracy to end the informant's live that bought from you?

22 MR. DUFF: Object to heinous
23 conspiracy stuff.

24 THE COURT: Clear it up, Mr.
25 Rosenbaum. Just a conspiracy.

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1 Q. You have to admit, looking back on this, there was a
2 conspiracy to end Ron Lally's life, right?

3 MR. DUFF: Object. That's not
4 what the evidence has showed.

5 THE COURT: He's asked the
6 question.

7 Q. Let me ask you this. Did Ron Lally -- I'm sorry.
8 Did Raymond Smith and Stanley Jaloweic take Ron Lally into
9 Cleveland with your brother and kill him?

10 A. From what I heard.

11 Q. So there was a conspiracy to kill him, wasn't there?

12 MR. DUFF: Object. That's not
13 the same thing.

14 THE COURT: He may answer if he
15 knows it.

16 A. I don't know.

17 Q. You don't know. Well, there's three people, at least
18 or two people, at least that banded together and took
19 Michael in there thinking he would help to kill Ron Lally,
20 right?

21 A. From what I heard.

22 Q. And you are actively involved in all the events that
23 lead up to that, correct?

24 A. No.

25 Q. You're not there driving the car?

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1 A. Yeah.

2 Q. You're not there doing all the stuff. So you're
3 there doing everything, it's just you had no idea what was
4 going on, right?

5 A. Correct.

6 Q. You're not part of the plan. There's also these
7 things everyone saying to you is either a coincidence or
8 just a flat out lie, right?

9 A. Correct.

10 Q. Both Hopkins, Altpater, Hartman, Homoki, Williams,
11 and including Leiby, he's lying too, right, or he's wrong.
12 He's exaggerating. He's mistaken.

13 A. Sometimes he exaggerates.

14 MR. DUFF: Object.

15 THE COURT: Overruled.

16 Q. In light of all that, you trying to hire Carl Hartman
17 again to lie, to mislead the jury, is also not your
18 responsibility or your fault, is it?

19 A. Not the lie, just want him to tell the truth.

20 Q. I see. And you didn't want him to come in with all
21 these other people to say that Leiby framed you?

22 A. No, I asked him if that's what was said.

23 Q. No, it's not. You're saying, this is a question
24 here. I read it wrong. "Because I got other people coming
25 in court, so if I get enough people at court, you like, you

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1 know, we got to say the same." That's a question?

2 A. Uh-huh.

3 Q. So even though you are, for some reason, unknowingly
4 involved in the intricate steps in getting Ron Lally out to
5 where he would be so he could be kidnapped at gun point,
6 you know nothing about that?

7 A. Correct.

8 Q. And even though these people say you ducked down in
9 the car, stopped driving, parked somewhere else, they
10 couldn't, Ron Lally couldn't see your car, you know nothing
11 about it?

12 MR. DUFF: Object. No people
13 said that. One. Sharon said that.

14 THE COURT: There's testimony.

15 Q. All these things don't point to you as the
16 continuation of a, the head of this drug ring, so you could
17 continue your business by wiping out this snitch?

18 A. Can you restate that?

19 Q. You have no knowledge of that right?

20 A. Correct.

21 Q. It's just a terrible, terrible set of circumstances?

22 A. Correct.

23 Q. Which you are just intricately caught up in and are
24 not responsible for?

25 A. Correct.

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1 Q. As you are not responsible for your drug pushing
2 deals because your dad got you into that a long time ago,
3 right?

4 MR. DUFF: Object. He's doing
5 12 years for drug pushing.

6 THE COURT: He's responsible for
7 getting into it is what he's testified, that his father is
8 the one that got him into it is the proper question.

9 Q. You're not responsible for that choice either, are
10 you?

11 A. In a way I am.

12 Q. You were the head of this drug ring, right?

13 MR. DUFF: Object. Asked and
14 answered several times.

15 THE COURT: Sustained.

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

18 MR. DUFF: Just a couple, Your
19 Honor.

20 THE COURT: Please.

21 REDIRECT EXAMINATION OF DANIEL D. SMITH

22 BY MR. DUFF:

23 Q. Your girlfriend Tammy does more than tend bar, does
24 she not?

25 A. Correct.

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1 Q. Tell them what she does.

2 A. She bartends and dances.

3 Q. Dances at a strip joint at the west side of
4 Cleveland?

5 A. Correct.

6 Q. Is that what you were afraid to tell them; you're
7 embarrassed about that?

8 A. Yeah.

9 MR. ROSENBAUM: Your Honor, the
10 witness is supposed to answer the questions.

11 THE COURT: Yes..

12 MR. DUFF: He does it all the
13 time on redirect, Your Honor.

14 THE COURT: Well, doesn't make it
15 right by anybody at this point. Proceed, Mr. Duff.

16 Q. You never delivered concrete evidence to Detective
17 Leiby, right?

18 A. Correct.

19 Q. You said your father had a specification on his
20 indictment; is that correct?

21 A. Correct.

22 Q. Let's take a look at that. Can you tell the jury
23 what you understand a specification to mean?

24 A. From my understanding, it's, a specification is
25 however many specifications you have. If I'm not mistaken,

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1 you're supposed to do three years mandatory off each spec.

2 Q. You understand it to mean a guy's got to do more time
3 if he's got specs?

4 A. Correct.

5 Q. Is there a spec in the indictment that he's
6 previously been convicted of aggravated trafficking in
7 drugs? Does that say that in the indictment right there?

8 A. Where at?

9 Q. Does it say he's previously been convicted? Let
10 me point it out to save everybody some time. Does it say
11 he was previously convicted on July 7th, 1989?

12 A. Yeah.

13 Q. And that would give him a lot more time, right?

14 A. Correct.

15 Q. And a lot more reason to kill this guy than you had,
16 right?

17 MR. ROSENBAUM: Objection. He can't
18 answer either of those questions.

19 THE COURT: I don't know that he
20 can. It's possible, but it's not that it would.

21 Q. Well, he was looking at a lot more time than you?

22 MR. ROSENBAUM: Objection.

23 MR. DUFF: He knows that from
24 the spec.

25 MR. ROSENBAUM: There is no spec,

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1 Mr. Duff, you know that.

2 MR. DUFF: There's a spec.

3 MR. ROSENBAUM: There's a penalty --

4 MR. DUFF: There's a penalty
5 enhancement.

6 MR. ROSENBAUM: That raises the one
7 degree.

8 MR. DUFF: That's penalty
9 enhancement.

10 Do you know what a penalty enhancement, the penalty
11 is?

12 A. It give you more time.

13 Q. He was looking at more time than you, right?

14 A. Correct.

15 Q. Now, there's been a lot of testimony whether you knew
16 you had to go to court or not on January 19th, right, the
17 day after this guy got murder, right?

18 A. Correct.

19 MR. ROSENBAUM: The day of.

20 MR. DUFF: I'm sorry. The day
21 of.

22 Handing you your file. There's a short card entry
23 dated 1-14-94. Tell us what that says.

24 A. Jury trial set 1-19-94, 8:30 a.m. is continued upon
25 the defendant's request until 2-10-94.

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1 Q. All right. So on 1-14-94, five days before he was
2 killed, the jury trial set for 1-19 was reset to 2-10-94,
3 right?

4 A. Correct.

5 Q. So Ron Lally, if anybody said Ron Lally was killed
6 the night before your jury trial on this case, that would
7 be wrong, right?

8 A. Correct.

9 Q. Because on 1-14-94 --

10 MR. ROSENBAUM: Your Honor, this guy
11 hasn't done anything but agree with Mr. Duff on important
12 points, and on cross he did not have that knowledge that
13 Mr. Duff has just given him.

14 MR. DUFF: I think he said he
15 knew from the lawyer as being continued.

16 MR. DUFF: No, he didn't.
17 Did you know from talking with your lawyer this
18 trial --

19 MR. ROSENBAUM: Your Honor, he's
20 leading him all around the courtroom on this.

21 THE COURT: Yes, Mr. Duff.

22 MR. DUFF: He does it all the
23 time on direct.

24 MR. ROSENBAUM: Your Honor, I'm so
25 sick of hearing that.

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1 THE COURT: Again, Mr. Duff, he's
2 objecting to it.

3 MR. DUFF: All right. I'll
4 rephrase it.

5 THE COURT: Okay.

6 BY MR. DUFF:

7 Q. What was your understanding as that 1-19-94 jury
8 trial date approached; did you believe it was going or not?

9 A. No. When I talked to my lawyer in his office, he
10 said he highly doubts I'll be going to trial.

11 Q. All right. And in fact, there was no jury trial on
12 1-19-94, was there?

13 A. No.

14 Q. Is that signed by your lawyer Michael Ross, that
15 entry, do you recognize that signature?

16 MR. ROSENBAUM: Objection.

17 Q. Do you recognize that signature?

18 MR. ROSENBAUM: Objection.

19 THE COURT: Sustained.

20 MR. ROSENBAUM: Objection.

21 Q. Do you recognize --

22 MR. ROSENBAUM: Objection

23 MR. DUFF: If he recognizes --

24 MR. ROSENBAUM: Pardon me. I thought
25 there was a ruling.

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1 THE COURT: I sustained whether
2 it was signed by him. I mean, you've read the entry.

3 Q. It's signed by counsel for defendant, is it not?

4 MR. ROSENBAUM: Objection.

5 A. Correct.

6 THE COURT: Continue. I'm
7 sharpening my pencil.

8 MR. DUFF: I know, Judge.

9 Your dad told you to get lost that night; is that
10 right?

11 A. Correct.

12 Q. In fact, you talked about cooperating with Detective
13 Leiby.

14 MR. ROSENBAUM: Your Honor.

15 MR. DUFF: Nothing else.

16 MR. ROSENBAUM: I object.

17 MR. DUFF: Nothing. Done.

18 THE COURT: Nothing else,

19 Mr. Rosenbaum.

20 MR. ROSENBAUM: I have no other
21 questions.

22 THE COURT: Thank you, Mr. Smith,
23 you may step down.

24 Ladies and gentlemen, it is now 10:30. We've been at
25 this pretty, over an hour, which is kind of a record for

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1 us, I think, at this point. We will take our morning
2 recess. The admonitions I've given you in the past about
3 discussing this matter amongst yourselves, letting anyone
4 discuss it with you, reading anything about it, letting
5 anyone read to you, listening to anything, still hold and
6 hold more so than ever at this point. With those
7 admonitions, we will take our morning recess. Thank you.

8 (A recess was had.)

9 (Defendant tendered its exhibits outside
10 the presence of the jury. Defendant's
11 Exhibit A was admitted and Defendant's
12 Exhibits B through G were not admitted.)

13 (Whereupon, a Rule 29 motion was made and
14 denied.)

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

17 THE COURT: Good morning again,
18 ladies and gentlemen.

19 Ladies and gentlemen, as you recall when we, we had
20 taken our morning recess, we were still in the case in
21 chief for the defendant.

22 Mr. Wightman -- oh, and as you notice at this point,
23 Mr. Duff is not present. Not because he's been banished or
24 anything of that nature. Mr. Duff is across the street at
25 the court of appeals arguing another case that he's had

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1 that is in the court of appeals at this point. That's why
2 he's not here. He will be back for the rest of the
3 proceedings at this point. At this point he's absent and
4 that is why he is absent.

5 Mr. Wightman, anything further as far as the defense
6 is concerned?

7 MR. WIGHTMAN: No, Your Honor,
8 subject to the motions made previously, the defense rests.

9 THE COURT: Very well, sir.
10 Thank you. Mr. Rosenbaum, any rebuttal on the part of the
11 State?

12 MR. ROSENBAUM: No, Your Honor.

13 THE COURT: Very well. Ladies
14 and gentlemen, that concludes the evidentiary phase of this
15 case. It is now 11 o'clock. There are certain things that
16 need to be done in preparation to go into the next phase,
17 which is the closing arguments and the instructions of law
18 to you folks. That necessity needs work to be done.

19 I'm going to admonish you for the noon lunch at this
20 points and ask you to please return at 1:30. Which will
21 give you an ample lunch hour at this point, probably ample
22 enough to run home and do whatever it is you need. To take
23 a couple of pills, sir, if you need to at this point.

24 I hope you're feeling better. And that be back at
25 1:30. I do want counsel here at one o'clock at this point.

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1 And with that, the admonitions now, ladies and gentlemen,
2 being more so than ever. In the next couple of hours
3 you'll be getting the entire case in your hands. So do not
4 discuss this amongst anyone, do not let anyone discuss with
5 you, do not read anything about this. The newspapers have
6 been pretty good. They have not been printing a great deal
7 about this case. Although, there have been articles, no
8 question about it.

9 Ladies and gentlemen, don't let anybody read to you.
10 And with those admonitions, we will take, we will take, for
11 you, our noon recess at this point. Thank you.

12 (The jury was excused for the noon recess
13 and out of their presence, the
14 instructions of law were gone over.)

15 THE COURT: Good afternoon,
16 ladies and gentlemen.

17 Ladies and gentlemen, as I indicated to you before we
18 broke for lunch, the phase of the trial, as far as the
19 presentation of evidence is concerned, has been completed.
20 All the evidence has been introduced at this point. We are
21 now at the stage of the trial what we call closing
22 statements or closing arguments.

23 I want to say to you once again that closing
24 arguments are not evidence. They are merely statements of
25 counsel designed, again, to assist you as far as your

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1 determination is concerned, and more than likely not
2 necessarily guaranteed this is it. More than likely
3 arguments to tell you where each side feels their evidence
4 has led you at this point.

5 Mr. Rosenbaum, each counsel has requested, each side
6 has requested one hour as far as their time limit on the
7 closing arguments is concerned. And the State has the
8 right to open its closing statement and also grant part of
9 that hour as rebuttal is concerned because the burden of
10 proof is on the State.

11 I will grant you, Mr. Duff and Mr. Wightman, the
12 opportunity to split whatever your arguments would be
13 within the confines of the one hour at this point.

14 MR. DUFF: That's okay, Judge.

15 THE COURT: Whatever you decide
16 at this point. Mr. Rosenbaum, you may give your closing,
17 please.

18 (Whereupon, closing arguments were heard
19 on behalf of the State of Ohio and the
20 Defendant.)
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THE COURT: Ladies and gentlemen, before I proceed with the instructions on the law in this matter, I want to say to you that as part of the evidence there will be two exhibits, 11-G and 13-A -- whoever may be taking notes can jot this down at this point -- those are transcripts of tapes that were taken, okay. You will have the tape and you will have the transcript.

The transcript is provided for your convenience. However, the official document is the tape. And if there is any dispute as between what is said in the transcript and what is said in the tape, the tape is the official evidence. Thank you.

Members of the Jury: You have heard the evidence, and the arguments of counsel. It is my duty to instruct you on the law which applies in this case.

The Court and the jury have separate functions: you decide the disputed facts, and the Court provides the instructions of law.

It is your sworn duty to accept these instructions and to apply the law as it is given to you. You are not permitted to change the law, nor to apply your own conception of what the law should be.

INDICTMENT.

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1 A criminal case begins with the filing of an
2 indictment. The indictment informs the defendant that the
3 defendant has been charged with a crime. The fact that it
4 was filed may not be considered for any purpose.

5 The plea of not guilty is a denial of the charge or
6 charges, and puts in issue all the essential elements of
7 any crimes charged.

8 BURDEN OF PROOF.

9 The defendant is presumed innocent until guilt is
10 established beyond a reasonable doubt.

11 The defendant must be acquitted unless the State
12 produces evidence which convinces you, beyond a reasonable
13 doubt, of every essential element of the crime which is
14 charged in the indictment.

15 REASONABLE DOUBT.

16 Reasonable doubt is present when, after you have
17 carefully considered and compared all the evidence, you
18 cannot say you are firmly convinced of the truth of the
19 charge.

20 Reasonable doubt is a doubt based on reason and
21 common sense. Reasonable doubt is not mere possible doubt,
22 because everything relating to human affairs, or depending
23 on moral evidence, is open to some possible or imaginary
24 doubt.

25 Proof beyond a reasonable doubt is proof of such

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1 character that an ordinary person would be willing to rely
2 and act upon it in the most important of their own
3 affairs.

4 If after a full and impartial consideration of all
5 the evidence, you are firmly convinced of the truth of the
6 charge, the State has proven its case beyond a reasonable
7 doubt.

8 EVIDENCE AND INFERENCES.

9 Evidence is all the testimony received from the
10 witnesses, the exhibits admitted during the trial, any
11 facts agreed to by counsel, and any facts which the Court
12 requires you to accept as true.

13 Evidence may be direct, or circumstantial, or both.

14 "Direct evidence" is the testimony given by a witness
15 who has seen or heard the facts to which he or she
16 testifies. It includes exhibits admitted into evidence
17 during the trial.

18 "Circumstantial evidence" is proof of facts or
19 circumstances by direct evidence, from which you may
20 reasonably infer other related or connected facts which
21 naturally and logically follow, according to the common
22 experience of mankind.

23 To infer, or to make an inference, is to reach a
24 reasonable conclusion or deduction of fact which you may,
25 but are not required to, make from other facts which you

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1 find have been established by direct evidence. Whether an
2 inference is made rests entirely with you.

3 Direct evidence and circumstantial evidence are of
4 equal weight or probative value.

5 The evidence does not include the indictment, or the
6 opening statements and closing arguments of counsel.

7 The opening statements and closing arguments of
8 counsel are designed to assist you. They are not
9 evidence.

10 Statements or answers that were stricken by the
11 Court, or which you were instructed to disregard, are not
12 evidence, and must be treated as though you never heard
13 them.

14 You must not speculate as to why the Court sustained
15 the objection to any question, or what the answer to such
16 question might have been. You must not draw any inference,
17 or speculate on the truth of any suggestion included in a
18 question that was not answered.

19 CREDIBILITY.

20 You are the sole judges of the facts, the credibility
21 of the witnesses, and the weight of the evidence.

22 To weigh the evidence, you must consider the
23 credibility of the witnesses. You will apply the tests of
24 truthfulness which you apply in your daily lives.

25 These tests include:

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1 The appearance of each witness upon the stand;

2 Their manner of testifying;

3 The reasonableness of their testimony;

4 The opportunity they had to see, hear and know
5 the things concerning which they testified;

6 Their accuracy of memory;

7 Frankness, or lack of it;

8 Intelligence;

9 Interest and bias, if any;

10 Together with all the facts and circumstances
11 surrounding the testimony.

12 Applying these tests, you will assign to the
13 testimony of each witness such weight as you deem proper.

14 You are not required to believe the testimony of any
15 witness, simply because he or she was under oath. you may
16 believe, or disbelieve, all or any part of the testimony of
17 any witness.

18 It is your province to determine what testimony is
19 worthy of belief, and what testimony is not worthy of
20 belief.

21 It is not necessary that a defendant take the witness
22 stand in his or her defense. The defendant has a
23 constitutional right not to testify.

24 The fact that a defendant does not testify must not
25 be considered for any purpose in determining his or her

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1 guilt or innocence.

2 If a defendant chooses to testify, that testimony is
3 to be weighed by the same rules that apply to the testimony
4 of other witnesses.

5 EXPERT WITNESS.

6 Generally, a witness may not express an opinion.
7 However, one who follows a profession or special line of
8 work is permitted to express his or her opinion, because of
9 their education, knowledge, and experience. The purpose of
10 such testimony is to assist you in arriving at a just
11 verdict.

12 As with other witnesses, upon you alone rests the
13 duty of deciding what weight should be given to the
14 testimony of an expert. In determining its weight, you may
15 take into consideration the expert's skill, experience,
16 knowledge, veracity, familiarity with the facts of this
17 case, and the usual rules for testing credibility and for
18 determining the weight to be given to the testimony.

19 TESTIMONY OF LAW ENFORCEMENT OFFICER.

20 you will give no greater or lesser consideration to
21 the testimony of a law enforcement officer, solely because
22 of the fact that the witness is a law enforcement officer.

23 The testimony of a law enforcement officer is to be
24 weighed by the same rules governing credibility that apply
25 to other witnesses.

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1 TESTIMONY OF ACCOMPLICE.

2 The testimony of an accomplice or co-defendant does
3 not become inadmissible because of his or her complicity,
4 moral turpitude, or self-interest.

5 But the admitted or claimed complicity of a witness
6 may affect his or her credibility, and make such testimony
7 subject to grave suspicion, and require that it be weighed
8 with great caution.

9 It is for you, as jurors, in light of all the facts
10 presented to you from the witness stand, to evaluate such
11 testimony, and to determine its quality and worth, or its
12 lack of quality and worth.

13 STATEMENTS MADE TO LAW ENFORCEMENT OFFICER.

14 you should consider with caution evidence of any
15 statement made by the defendant to a law enforcement
16 officer.

17 In weighing such evidence, you should consider:

- 18 1. whether the statement was made by the defendant,
- 19 2. whether the statement is truthful,
- 20 3. whether the statement was accurately recorded,
- 21 4. whether the defendant understood what was said,
- 22 5. the circumstances under which the statement was
23 made,
- 24 6. the emotions of hope or fear that may have
25 existed, and

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1 7. the difficulty of contradicting such statement.

2 However, upon you alone rests the duty to apply the
3 general rules for testing the credibility of witnesses, and
4 to decide what weight should be given to all or any part of
5 such evidence.

6 PRINCIPAL OFFENDER.

7 A "principal" is a person who commits a crime, and in
8 a case where two or more persons are present
9 during the commission of a crime, the principal may be
10 regarded as the chief actor or perpetrator.

11 When two or more persons have a common purpose to
12 commit a crime, and one does one part and a second person
13 performs another, those acting together are equally guilty
14 of the crime, and each may be considered as principal
15 offenders.

16 The mere association with one who perpetrates an
17 unlawful act does not render a person a participant in a
18 crime, so long as the acts of such person are entirely
19 innocent.

20 COMPLICITY.

21 Under Ohio law, a person who aids or abets another
22 person in the commission of a crime, or who conspires with
23 another to commit a crime, can be charged either as a
24 principal offender, or in terms of complicity.

25 In this case, the defendant is charged as a principal

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1 offender.

2 One who is an "accomplice", or in complicity, may be
3 regarded as if he or she is the principal offender, and an
4 accomplice is considered just as guilty as the principal
5 offender, as if he or she personally performed every act
6 constituting the offense.

7 To "aid" means to help, to assist, or to strengthen
8 another.

9 To "abet" means to encourage, to counsel, to incite,
10 or to assist another.

11 A "conspiracy" is the planning, or aiding in the
12 planning with one or more persons, the commission of a
13 crime, with a purpose to commit, or promote, or facilitate
14 the commission of a specific criminal offense.

15 Before one can be found guilty of an offense, on the
16 basis of his or her complicity, it must be proven that the
17 one in complicity was aware of the design or purpose of the
18 principal offender, and shared in the knowledge held by the
19 principal, and that the one in complicity had a purpose to
20 cause the death of another person, Ronald Lally.

21 Later in these instructions I will define for you the
22 term "purpose."

23 When two or more persons have a common purpose to
24 commit a crime, and one person does one part, and a second
25 or other persons do another part, those acting together are

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1 equally guilty of the crime.

2 A person cannot be found guilty of an offense, on the
3 basis of his or her complicity, unless the offense was
4 actually committed.

5 A person cannot be found guilty on the basis of
6 complicity, due to the person's involvement in a
7 conspiracy, unless a substantial overt act, in furtherance
8 of the conspiracy, is proved to have been done by him or
9 her, or by a person with whom he or she conspired, and that
10 such act was performed subsequent to the defendant's
11 entrance into the conspiracy.

12 An "overt act" is one that is open, or observable, or
13 public, and not done in complete secrecy.

14 An overt act is "substantial" when it is of such
15 character as to manifest a purpose on the part of the actor
16 that the object of the conspiracy would be completed.

17 ALIBI.

18 The defendant claims that he was at some other place
19 at the time the killing of Ronald Lally occurred.

20 This is known as an alibi.

21 The word "alibi" means elsewhere, or a different
22 place.

23 If the evidence fails to establish that the defendant
24 was elsewhere, such failure does not create an inference
25 that the defendant was present at the time when, and at the

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1 place where, an offense was committed.

2 If, after a consideration of the evidence of alibi,
3 along with all the evidence, you are not convinced beyond a
4 reasonable doubt that the defendant was present at the time
5 in question, and if you otherwise find that the defendant
6 is not guilty on the basis of complicity, then you must
7 return a verdict of not guilty, as to Aggravated Murder as
8 charged in Count One.

9 VENUE.

10 "Venue" means that the offense charged, or any
11 element or elements of the offense, took place in Lorain
12 County, Ohio.

13 SEPARATE OFFENSES

14 As you now know, this trial consists of two separate
15 case.

16 In the first case, Case Number 95CR046839, the
17 defendant is charged with Aggravated Murder, with
18 specifications.

19 In the second case, Case Number 96CR046598, the
20 defendant is charged with Bribery.

21 These cases have been consolidated by the Court for
22 trial, but they remain separate cases charging separate
23 offenses.

24 I will now instruct you on the essential elements of
25 the offenses charged against this defendant.

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1 In the first case, known as Case Number 95CR046839,
2 there is a single count in the indictment, which I will
3 refer to as Count One.

4 In Count One of the indictment the defendant, Daniel
5 D. Smith, is charged with Aggravated Murder, with
6 specifications.

7 Aggravated murder is purposely causing the death of
8 another person, with prior calculation and design.

9 Before you can find the defendant guilty of the
10 offense of Aggravated Murder, as charged in Count One, you
11 must find, by proof beyond a reasonable doubt, that the
12 State has proved all of the essential elements of Count
13 One, which are:

- 14 1. On or about January 19, 1994,
- 15 2. The defendant, Daniel D. Smith,
- 16 3. Did purposely, and with prior calculation and
17 design,
- 18 4. Cause the death of another person, Ronald Lally,
19 and
- 20 5. Venue: In Lorain County, Ohio

21 A person acts "puposely" when it is his or her
22 specific intention to cause a certain result.

23 "Purpose" is a decision of the mind to do an act,
24 with a conscious objective of producing a specific result,
25 or engaging in specific conduct.

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1 To do an act purposely is to do it intentionally, and
2 not accidentally. Purpose and intent mean the same thing.

3 The purpose with which a person does an act, or
4 brings about a result, is known only to himself or herself,
5 unless the person expresses it to others, or indicates it
6 by their conduct.

7 The purpose with which a person does an act or brings
8 about a result is determined from the manner in which it is
9 done, the means or weapon used, and all the other facts and
10 circumstances in evidence.

11 The proof of an offender's motive is not required.
12 The presence or absence of motive is one of the
13 circumstances bearing upon "purpose."

14 If a wound is inflicted upon a person with a deadly
15 weapon, in a manner calculated to destroy life or inflict
16 great bodily harm, the purpose to cause death may be
17 inferred from the use of the weapon.

18 No person can be found guilty of aggravated murder
19 unless he or she specifically intended to cause the death
20 of another person.

21 "Prior calculation and design" means that the purpose
22 to cause the death was reached by a definite process of
23 reasoning, in advance of the homicide, which process of
24 reasoning must have included a mental plan involving
25 studied consideration of the method and means with which to

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1 cause the death of another person.

2 To constitute "prior calculation," there must have
3 been sufficient time and opportunity for the planning of
4 the act of homicide, and the circumstances surrounding the
5 homicide must show a scheme designed to carry out the
6 calculated decision to cause the death.

7 No definite period of time must elapse, and no
8 particular amount of consideration must be given, but
9 acting on the spur of the moment, or after momentary
10 consideration of the purpose to cause the death, is not
11 sufficient.

12 "Cause" is an essential element of the offense
13 charged in Count One.

14 "Cause" is an act, or failure to act, which in the
15 natural and continuous sequence directly produces the
16 death, and without which it would not have occurred.

17 "Cause" occurs when the death is the natural and
18 foreseeable result of the act, or the failure to act.

19 The defendant's responsibility is not limited to the
20 immediate or most obvious result of the defendant's act, or
21 failure to act.

22 The defendant is also responsible for the natural and
23 foreseeable consequences or results that follow, in the
24 ordinary course of events, from the act or failure to act.

25 There may be more than one cause for an event.

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1 However, if a defendant's act or failure to act was one
2 cause, the existence of other causes is not a defense.

3 FINDINGS AND VERDICT

4 If you find that the State proved, beyond a
5 reasonable doubt, all of the essential elements of
6 Aggravated Murder as charged in Count One, then your
7 verdict must be that the defendant is guilty, according to
8 your findings.

9 If you find that the State failed to prove, beyond a
10 reasonable doubt, any one of the essential elements of
11 Aggravated murder as charged in Count One, then your
12 verdict must be that the defendant is not guilty, according
13 to your findings.

14 SPECIFICATION ONE

15 If you find that the defendant is guilty of
16 Aggravated Murder as charged in Count One, it is your duty
17 to continue your deliberations and decide additional
18 factual questions, which we call specifications.

19 In Specification One to Count One, the defendant is
20 charged with having a firearm on or about his person or
21 under his control, while committing the felony offense of
22 aggravated murder that is charged in County One.

23 Before you can find the defendant guilty of
24 Specification One, you must find, by proof beyond a
25 reasonable doubt, that

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1. On or about January 19, 1994,

2. The defendant, Daniel D. Smith,

3. Had a firearm, other than an automatic firearm
4. or a firearm equipped with a firearm muffler
5. or silencer, to wit: a firearm,

4. On or about his person, or under his control,

5. While committing the felony enumerated in Count
8 One of the indictment, to wit: Aggravated
9 Murder, and

6. Venue: In Lorain County, Ohio

Under Ohio law, in any case where two or more persons
12 have an operable firearm during the commission of a felony
13 offense, a firearm specification is applicable to both the
14 offender who actually carried the firearm and to any other
15 unarmed accomplice.

If you find the defendant is guilty of Count One,
17 then you may find the defendant guilty of Specification
18 One, if you find that this defendant did not carry a
19 firearm, but find that an accomplice did carry a firearm
20 during the commission of the offense charged in Count One.

"Firearm" means any deadly weapon capable of
22 expelling or propelling on or more projectiles, by the
23 action of an explosive or combustible propellant.

"Firearm" includes an unloaded firearm, and any
25 firearm which is inoperable but which can be readily

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1 rendered operable.

2 "Deadly weapon" means any instrument, device, or
3 thing which has two characteristics.

4 The first characteristic is that it is capable of
5 inflicting or causing death.

6 The second characteristic is in the
7 alternative:

- 8 1. Either the instrument, device, or thing was
9 designed, or specially adapted for use as a
10 weapon, such as a gun, knife, or billy club, or
11 2. It was possessed, carried, or used in this case
12 as a weapon.

13 These are questions of fact for you, the jury, to
14 determine

15 "On or about his person" means the firearm was either
16 carried on the defendant's person, or was concealed ready
17 at hand.

18 "Ready at hand" or "under his control" means so near
19 to the defendant's person as to be conveniently accessible,
20 and within the defendant's immediate reach.

21 You are instructed that, as a matter of law, the
22 crime of Aggravated Murder is a felony offense.

23 If your verdict is guilty of Aggravated Murder, you
24 will return a verdict on Specification One, and you will
25 make your finding on the separate verdict form that the

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1 Court will provide to you, and return a verdict of guilty,
2 or not guilty, in accordance with these instructions.

3 If your verdict is not guilty, as to Aggravated
4 Murder, then you will not consider Specification One to
5 Count One, and you will not complete the additional form.

6 If your verdict is that the defendant is guilty of
7 Aggravated Murder as charged in Count One, it is your duty
8 to deliberate further, and determine Specification Two.

9 If your verdict is not guilty as to Aggravated
10 Murder, then you will not consider or decide this separate
11 question.

12 Before you can find the defendant guilty of
13 Specification Two, you must find, by proof beyond a
14 reasonable doubt, that

15 1. Ronald Lally was a witness to a criminal offense,
16 and was purposely killed to prevent his testifying in any
17 criminal proceeding, and the aggravated murder of Ronald
18 Lally was not committed during the commission, the
19 attempted commission, or flight immediately after the
20 commission or attempted commission of the offense to which
21 Ronald Lally was a witness.

22 In Specification Two, you must find that Ronald Lally
23 was purposely killed to prevent his testifying in any
24 criminal proceeding.

25 At the same time, you must find the aggravated murder

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1 of Ronald Lally was not committed during the commission, or
2 attempted commission, or in the flight after the
3 commission, or attempted commission, of the offense to
4 which Lally was a witness.

5 The Court has already defined for you the legal term
6 "purposely."

7 If you find that the State has proven all of the
8 elements of Specification Two, in accordance with these
9 instructions, then you must find that the defendant is
10 guilty.

11 If the State fails to prove that Ronald Lally was
12 killed to prevent his testimony, then your verdict must be
13 that the defendant is not guilty.

14 You will return your verdict as to Specification Two
15 on the separate verdict form that I will provide to you.

16 If your verdict is not guilty, as to Aggravated
17 Murder as charged in Count One, then you will not consider
18 Specification Two, and you will not complete the additional
19 verdict form.

20 In the second case, known as 96CR048598, the
21 defendant is charged with one offense, which I will refer
22 to as Count One also.

23 In Count One of the indictment the defendant, Daniel
24 D. Smith, is charged with Bribery.

25 Before you can find the defendant guilty of the

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1 offense of Bribery, as charged in the indictment, you must
2 find, by proof beyond a reasonable doubt, that the State
3 has proved all of the essential elements of Bribery, which
4 are:

- 5 1. That on or about during the period of time from
6 January 18th, 1996, to February 8th, 1996,
- 7 2. The defendant, Daniel D. Smith,
- 8 3. With purpose to corrupt a witness, or improperly
9 influence a witness with respect to the testimony
10 of the witness in an official proceeding, either
11 before or after the witness was subpoenaed or
12 sworn,
- 13 4. Did promise, offer, or give to the witness, or to
14 another person, any valuable thing or valuable
15 benefit, and
- 16 5. Venue: It happened in Lorain County, Ohio.

17 I have already defined for you the term "purpose,"
18 and you shall refer to the previous instructions with
19 respect to that term.

20 "To corrupt" means it to cause to be dishonest, or to
21 destroy the integrity of.

22 "Official proceeding" means any proceeding before a
23 legislative, judicial, administrative, or governmental
24 agency or official, and includes any proceeding before a
25 judge, or a judge and jury.

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1 You shall give all of the other items listed above,
2 in the essential elements Bribery, their common, ordinary
3 meanings.

4 If you find the State has proved, by proof beyond a
5 reasonable doubt, all of the essential elements of one of
6 the offenses charged, then your verdict must be that the
7 defendant is guilty of such offense, according to your
8 findings.

9 If you find that the State has failed to prove any
10 one of the essential elements of the offense, by proof
11 beyond a reasonable doubt, then your verdict must be that
12 the defendant is not guilty of such offense, according to
13 your findings.

14 The charges against this defendant constitute
15 separate and distinct matters.

16 You must consider each charge separately, and you
17 must state your findings as to each offense, uninfluenced
18 by your verdict as to any other offense.

19 You may find the defendant guilty, or not guilty, of
20 any one or all of the offenses charged.

21 You shall consider the specifications which are
22 charged as separate and distinct matters, and in accordance
23 with your instructions you may find that the, you may find
24 the defendant guilty, or not guilty, or any one or all of
25 the specifications which are charged in this case.

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1 During the trial I have permitted you to, permitted
2 the taking of notes by those jurors who chose to do so.
3 You may take your notes with you to the jury room and use
4 them during your deliberations if you wish.

5 As I told you at the beginning of this trial, your
6 notes are only intended to be an aid to your memory, and
7 should not take precedence over your own independent
8 recollection.

9 Those jurors who have not taken notes should rely on
10 their own memory of the evidence, and should not be
11 influenced by the fact that another, by the fact that
12 another juror has taken notes, since the notes are only for
13 the notetaker's own personal use in assisting his or her
14 memory of the evidence.

15 At the end of your deliberations, please tear out any
16 notes from your notebook, and give them to your foreperson.

17 The bailiff will collect your notebooks and pencils
18 and the foreperson will give the notes to the Court.

19 I will destroy your notes after the trial and no one,
20 including myself, will look at them.

21 The Court will be providing you with verdict forms,
22 which forms are self-explanatory. You will use the forms
23 in this case in accordance with the law as I have given it
24 to you.

25 In your deliberations you may not discuss or consider

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1 the subject of punishment. Your duty is confined to the
2 determination of guilt or innocence. The duty to determine
3 punishment is placed, by law, on the Court.

4 You must not be influenced by any sympathy or
5 prejudice. It is your duty to carefully weigh the
6 evidence, to decide all disputed questions of fact, to
7 apply the instructions of the Court to your findings, and
8 to render your verdict accordingly. In fulfilling your
9 duty, your efforts must be to arrive at a just
10 verdict.

11 Consider all the evidence and make your findings with
12 intelligence and impartiality, and without bias, sympathy,
13 or prejudice, so the State of Ohio and the defendant will
14 feel that their case was fairly and impartially tried.

15 If during the course of the trial the Court said or
16 did anything which you consider an indication of the
17 Court's view on the facts, you are instructed to disregard
18 it, because it is you, the jury, who determines the facts.

19 Your initial conduct upon entering the jury room is a
20 matter of importance. It is not wise to immediately
21 express a determination to insist upon a certain verdict,
22 because if your sense of pride is aroused, you may hesitate
23 to change your position, even if you decide you are wrong.

24 Consult with one another, consider each other's
25 views, and deliberate with the objective of reaching an

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1 agreement, if you can do so without disturbing your
2 individual judgment.

3 Each of you must decide this case for yourself, but
4 you should do so only after a discussion and consideration
5 of the case with your fellow jurors. Do not hesitate to
6 change an opinion if convinced it is wrong.

7 However, you not surrender honest convictions in
8 order to be congenial, or to reach a verdict solely because
9 of the opinion of other jurors.

10 The Court will place in your possession the verdict
11 forms, exhibits, and the written charge. The foreperson
12 will retain possession of these records, including the
13 verdict forms, and return them to the courtroom. Until
14 your verdict is announced in open Court, you are not to
15 disclose to anyone else the status of your deliberations,
16 or the nature of your verdict.

17 After you retire, first select a foreperson, so that
18 your deliberations may be conducted in an orderly manner.
19 The foreperson will see that each juror has the
20 opportunity to discuss the case and cast his or her vote.
21 Otherwise, the authority of the foreperson is the same as
22 any other juror.

23 When all twelve, and I repeat, all twelve jurors
24 agree on a verdict, complete the verdict form in ink or
25 ball point, and all of you shall sign the verdict form for

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1 which has been completed.

2 After you have filled out those verdict forms, which
3 must be completed, and you have all signed said verdict
4 forms, you will notify the Court by using the buzzer in the
5 jury room.

6 On behalf of the public and the parties, the Court
7 expresses appreciation to all of you for your services in
8 performing this important public function.

9 After this case is finally concluded, you will be
10 permitted to discuss this case with anyone, but you are not
11 required to do so.

12 Whether you discuss this case with counsel, or anyone
13 else after you are discharged, is a matter of your own free
14 choice.

15 You shall not discuss this case with anyone until
16 such time as the case is concluded, and the Court advises
17 you that you are free to discuss this case with
18 others.

19 The Bailiff will now take the jurors, the verdict
20 forms and exhibits and instructions of law to the jury
21 room, so that your deliberations may begin.

22 Anything further, Counselor?

23 MR. WIGHTMAN: Yes, Your Honor.
24 Before the jury is discharged, may we approach, please?

25 THE COURT: Sure.

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

3 MR. WIGHTMAN: Your Honor, we would
4 object to the instruction, in that, it excluded the
5 requested instructions on the charge.

6 THE COURT: I'm --

7 MR. WIGHTMAN: We object to the
8 instruction, in that, it excluded the requested instruction
9 we made charging on conspiracy.

10 THE COURT: I'll give you that
11 opportunity.

12 MR. WIGHTMAN: I'd like to do it
13 before the jury is discharged.

14 THE COURT: Anything other than
15 that?

16 MR. WIGHTMAN: No, Your Honor.

17 THE COURT: Madam Bailiff, take
18 charge of the jury.

19 403 5 10

20 THE COURT: Good evening, ladies
21 and gentlemen. Let the record reflect that the defendant
22 is not present for this session and that the defendant was
23 advised prior to his departing that we would be holding
24 this session, and that he, on his own, indicated he waived
25 his right to be here for this particular session.

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1 The Court also advised him that they would only be
2 doing one thing and one purpose alone, and that is to
3 instruct you as far as sequestration is concerned this
4 evening, and there really is no instruction.

5 Ladies and gentlemen, as a result of the fact that
6 you now started your deliberations, the Court is going to
7 sequester you as indicated earlier, and you'll be
8 sequestered at Oblerin. I think Barbara has already told
9 you that at this point.

10 When you're there, you'll be held as a group and
11 you'll probably house in the same floor, and there will be
12 deputies there for your protection and for whatever you may
13 need as far as what a deputy could perform for you.

14 Obviously, you will be fed, and you can select from
15 the menu as long as you don't get a Surf and Turf or
16 something like that. No, you can just about, order
17 anything, anything you want from the menu.

18 At this point --

19 BAILIFF: They don't have that
20 there.

21 THE COURT: Pardon?

22 BAILIFF: They don't have that
23 there.

24 THE COURT: They don't have that
25 there, okay. At any rate, relax this evening, ladies and

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1 gentlemen. We've all had a trying week at this point.
2 Relax at this point. Do not discuss this case at this
3 point. You all have your own individual rooms at this
4 aspect.

5 And tomorrow morning you'll have breakfast, and
6 Barbara will make the arrangements as far as that is
7 concerned, and you'll probably be back here by 9:00 a.m.
8 At which time you'll go directly to your jury room, and
9 everything will be there, the exhibits and what have you,
10 will be back in your jury room by that time. And you will
11 start your deliberations.

12 Do not start your deliberations until all twelve of
13 you are there.

14 Now, sir, how are you feeling?

15 JUROR: Better.

16 THE COURT: Better. Better.

17 Okay. If you need some medication and what have you, feel
18 free to avail yourself of it. Contact Barbara and what
19 have you at this point. If she can't do it, I'm sure she
20 can call me and I'll see what I can do about that. We got
21 to keep you healthy, got to keep you healthy.

22 We've been going here two weeks, you know. We don't
23 want to be fornot at this stage. And all I can say is
24 really have yourself a good relaxing evening, enjoy
25 whatever time you can. The Cavs are on tonight. I'm sure

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1 you ladies are interested in that. I guess TBS has got
2 that. And I guess the Indians are on too. What's this,
3 Thursday? ER's on tonight, okay, so catch that.

4 With that, ladies and gentlemen, we will stand
5 adjourned until tomorrow morning at nine o'clock. Enjoy
6 yourself. Come back relaxed and refreshed tomorrow. Thank
7 you.

8 (The Court adjourned for the day.)

9 * * *

10 (Friday, April 26th, 1996 at 8:45 a.m.)

11 (Thereupon, the jury retired to the jury
12 room to consider their verdict.

13 Thereafter, and on the 26th day of April,
14 1996, the jury returned into the Court at
15 2:15 p.m., and the following proceedings
16 were had:)

17 THE COURT: Good afternoon,
18 ladies and gentlemen. I hope you had a good evening last
19 night, and came back refreshed and ready to go this
20 morning.

21 Ladies and gentlemen, have you reached a verdict?

22 JUROR: Yes, we have, Your
23 Honor.

24 THE COURT: Would you please hand
25 that verdict to the bailiff.

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1 State of Ohio versus Daniel D. Smith, Case Number
2 95-CR-046839. Verdict: Count One, Aggravated Murder.

3 We, the jury, find the defendant, Daniel D. Smith, is
4 not guilty of Aggravated -- deputy is she all right? You
5 want to take her out?

6 Is not guilty of the Aggravated Murder as charged in
7 Count One of the indictment, dated April 26th, 1996, signed
8 by 12 jurors.

9 State of Ohio versus Daniel D. Smith, Case Number
10 96-CR048598. Verdict: Count One, Bribery.

11 We, the jury, find the defendant, Daniel D. Smith, is
12 guilty of Bribery as charged in Count One of the
13 indictment, dated April 26th and signed by 12 jurors.

14 Anything further from counsel?

15 MR. DUFF: Nothing, Your Honor.

16 MR. ROSENBAUM: I have nothing.

17 THE COURT: Very well. Mr. Duff,
18 Mr. Wightman, you want to come forward with your client.

19 THE COURT: Is there anything
20 that anybody wants to say regarding the conviction on
21 Bribery before sentence is passed?

22 MR. DUFF: I have nothing.
23 Maybe Mr. Wightman does.

24 MR. WIGHTMAN: No, I really don't.
25 Danny, you want to say something?

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1 MR. SMITH: No, sir.

2 THE COURT: Very well. Judgment
3 of the law, sentence of the Court: For the conviction of
4 Bribery, felony of the third degree, that you be sentenced
5 to two years in the Ohio State Institution in Grafton and
6 that to be consecutive with any other sentences you're
7 serving at this point.

8 MR. DUFF: Thank you, Judge.

9 MR. WIGHTMAN: Thank you.

10 THE COURT: Anything further from
11 anyone?

12 MR. WIGHTMAN: No, Your Honor.
13 Deputy, you may take charge of the defendant as far as the
14 last count. You are discharged in the murder charge and
15 act accordingly. We stand adjourned.

16 THE COURT: Ladies and gentlemen
17 of the jury, Court would like to say, express to you its
18 appreciation for a very difficult job. As you have seen,
19 jury duty is not the easiest job in the world, and it's
20 very, in fact, sometimes becomes very trying.

21 Court appreciates your services in this matter and at
22 this point you are now discharged. There's no reason to
23 come back for any mitigating phase at this point. Barbara,
24 you may take charge of the jury.

25 (Jury excused.)

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1 THE COURT: Mr. Smith, it's now
2 my duty to advise you, sir, that you have been convicted of
3 a serious crime, and as a result of that conviction, sir,
4 you have the right to appeal that decision.

5 In addition to that, sir, if you are unable to pay
6 the cost of an appeal, you have a right to appeal without
7 costs. If you are unable to obtain counsel for that
8 appeal, counsel will be appointed for you without costs.
9 If you are unable to pay the costs of the documentation in
10 order to appeal that particular case, such documentation
11 will be provided to you without costs. You have the right
12 to have a notice of appeal timely filed.

13 Mr. Smith, is it your intention to appeal the
14 decision of the jury, the crime on the count of Bribery?

15 MR. SMITH: Sir, I'd like to
16 consult with my counsel.

17 THE COURT: Very well. Do you
18 have funds to hire -- if you do appeal, do you have funds
19 in which to hire a counsel for that appeal?

20 MR. SMITH: No, sir.

21 THE COURT: Well, as soon as the
22 Court finds out what your intentions are, at this point we
23 will take the necessary steps to appoint you a counsel.
24 And as I indicated, you have a right to have a notice of
25 appeal timely filed on your behalf.

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1 MR. WIGHTMAN: Your Honor, either
2 myself or Mr. Duff will be happy to file notice of appeal
3 if Mr. Smith wants that.

4 THE COURT: And I will charge you
5 with the obligation at this point.

6 MR. WIGHTMAN: We will let the Court
7 know.

8 (The Court adjourned.)

9 * * *

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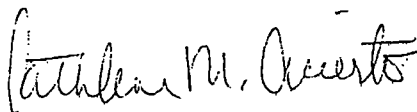
CERTIFICATE

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

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