

CASE NO. 08-3249
Death Penalty Case

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

STANLEY JALOWIEC,
Appellant,

v.

MARGARET BRADSHAW, Warden,
Appellee.

On Appeal From the United State District Court
For the Northern District of Ohio

WARDEN'S APPENDIX
VOLUME 14 of 17, Pages 5812-6324

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

Volume 3 , Voir dire,
No. 95 CRO 46840 trial begins 471

The State of Ohio, Plaintiff,
vs. Stanley E. Jalowiec, Defendant.

Supreme Court of Ohio
Case No. 99-1753
Date Rec'd 10/5/99

98-1074

FILED
JUN 17 1998
MARCIA J. MENGEL, CLERK
SUPREME COURT OF OHIO

AFTERNOON SESSION, WEDNESDAY, MARCH 13, 1996

(Whereupon, the prospective jurors were brought into the courtroom and the following proceedings occurred.)

THE COURT: Good afternoon, ladies and gentlemen. I bet you thought you would never get here.

Ladies and gentlemen, the process for the selection of jurors for this case is now what I call in its final stages, okay?

At this point most of you, and I say most of you, I know not all of you, but most of you have been individually voir dired or questioned and talked to and counsel has made, and the Court has made, their decisions from the original group as to who has survived the first cut at this point so you are still on the roster, may not have made the team as it goes.

Now, ladies and gentlemen, we are now ready to proceed with this particular aspect of the case. Now, ladies and gentlemen, each party is entitled to jurors who approach this case with open minds and agree to keep their minds open until a verdict is reached.

Jurors must be as free as humanly possible

1 from prejudice, sympathy or bias and not be
2 influenced by preconceived ideas, either as to
3 the facts or the law.

4 You are undoubtedly all qualified to serve
5 as jurors. However, there might be something yet
6 that could disqualify you as far as this case is
7 concerned.

8 The Court and counsel are going to be asking
9 you certain questions, ladies and gentlemen. The
10 Court and counsel will ask you additional
11 questions. The questions that we will be asking
12 are not designed to pry into your personal
13 affairs, they are designed to make a final
14 determination as to your qualifications to sit
15 on this particular jury.

16 The questions that will be presented at the
17 present time will be presented to the 28 people,
18 the 13 seated in the box, the five immediately
19 adjacent to the box and the ten of you in the
20 front row. Those are the folks the questions
21 will be directed to.

22 The rest of you listen. Please listen to
23 the questions because if, per chance, you are
24 to take the place of one of these 28, you will
25 be asked whether or not you heard the questions

1 and whether or not your answers would be the same
2 as that of your fellow jurors.

3 As I said to you, ladies and gentlemen,
4 these questions are not designed to pry into your
5 personal affairs, they are designed to attempt to
6 ascertain a jury that is fair and impartial and
7 you have heard me say this before, you will hear
8 me say it again in the future, and I am going to
9 say it now, that is the bottom line, a jury that
10 is fair and impartial to the Defendant and fair
11 and impartial to the State of Ohio.

12 Both sides don't ask for any more, both
13 sides deserve no less than that.

14 Now, were any of you on the Grand Jury that
15 returned the Indictment in this case?

16 Not likely, but certain possible.

17 (No response.)

18 THE COURT: I take it by your
19 silence that you were not.

20 Now, one other thing that I forgot about.
21 I have not introduced to you my entire staff. I
22 introduced you to the people that are at counsel
23 table previously, I think it was across the
24 street.

25 I want to introduce my staff at this point.

1 The gentleman sitting immediately to the front
2 of me is Mr. Tom Masterson. Mr. Masterson is
3 the Court Reporter, is very busily taking down
4 everything that is being said.

5 He has a very important function to perform.
6 Without him we can't perform it. He is taking
7 down, as I said, everything that is being said in
8 this courtroom and in this case and he is making
9 a record.

10 The other person you probably have seen her
11 and maybe getting tired of seeing her at this
12 point and that is Mrs. Ward. She is the Bailiff.
13 Her job is to try to make sure your stay with
14 us is as pleasant as possible under the
15 circumstances.

16 She is here to try to assist you, the go
17 between you and the Court and what have you at
18 this point and that is what her job is, to make
19 phone calls if you need to make them.

20 If, per chance, you are selected as jurors
21 and if you are sequestered, she will be with you
22 taking care of what your needs may be at that
23 point, so probably it would be a good idea to
24 get to know her pretty good.

25 Were any of you subpoenaed to be a witness

1 in this case?

2 Again, not likely, but possible.

3 (No response.)

4 THE COURT: And again, I take
5 it by your silence that you were not.

6 Do any of you have any litigation presently
7 pending?

8 That is, are you either a plaintiff or a
9 defendant in a case?

10 Is somebody suing you or are you suing
11 someone?

12 (No response.)

13 THE COURT: Again, I take it
14 by your silence that you are not involved this
15 way.

16 Have any of you been involved in any kind
17 of litigation?

18 Has anybody ever sued you or have you ever
19 sued anybody?

20 THE JUROR: Yes.

21 THE COURT: You are Ronald
22 Schmitt?

23 THE JUROR: Just went to
24 litigation on my aunt's estate.

25 THE COURT: Through probate?

1 THE JUROR: Yes.
2 THE COURT: That is an
3 altogether different division.
4 MR. HOWELL: I was involved in
5 an automobile accident.
6 THE COURT: How long ago, did
7 it ever go to court?
8 THE JUROR: Yes, we did.
9 THE COURT: And did it go to
10 decision?
11 THE JUROR: Yes, it did.
12 THE COURT: Okay. Are you
13 satisfied with the way the legal process
14 handled that matter?
15 THE JUROR: Yes, I am, your
16 Honor.
17 THE COURT: I am not asking
18 you whether you won or lost. That is your
19 business at this point, but you were satisfied
20 with the way the legal process handled it?
21 THE JUROR: Correct.
22 THE COURT: Thank you. The
23 fact that you have been involved in some kind
24 of litigation affect you as being a fair and
25 impartial juror here today?

1 THE JUROR: No, your Honor.
2 THE COURT: You could still be
3 so?
4 THE JUROR: Correct.
5 THE COURT: Anybody else?
6 MS. MAHL: I pressed charges against
7 somebody for assault.
8 THE COURT: How long ago?
9 THE JUROR: Eighty-eight.
10 THE COURT: Where was that?
11 THE JUROR: Elyria.
12 THE COURT: Did it go to court?
13 THE JUROR: Yeah, I guess you
14 could say it did, nothing major. It was in and
15 out.
16 THE COURT: Assault is pretty
17 major.
18 Were you satisfied with the way law
19 enforcement handled that?
20 THE JUROR: Yes, I was.
21 THE COURT: The fact that you
22 were involved in that kind of a situation, would
23 it affect you as being a fair and impartial juror
24 here today?
25 THE JUROR: No, it would not.

1 THE COURT: Thank you very much.
2 Anybody else?
3 MR. HUSK: It was involving a
4 ditch in a residential area and it was finally
5 settled.
6 THE COURT: How long ago was
7 that, sir?
8 THE JUROR: Probably 15 years
9 ago.
10 THE COURT: Satisfied with the
11 way it was handled?
12 THE JUROR: Yes.
13 THE COURT: Affect you as being
14 fair and impartial here today?
15 THE JUROR: No.
16 THE COURT: You could be fair
17 and impartial?
18 THE JUROR: Yes.
19 THE COURT: Did it ever go to
20 court, sir?
21 THE JUROR: Yeah, it went to
22 court.
23 THE COURT: And you were
24 satisfied with the outcome?
25 THE JUROR: Yes.

1 THE COURT: And you had not
2 had any problems since, I hope?
3 THE JUROR: No.
4 MR. DONALDSON: I was in a car
5 accident.
6 THE COURT: How long ago?
7 THE JUROR: Two and a half
8 years ago.
9 THE COURT: Did it go to
10 court?
11 THE JUROR: I am not sure.
12 It was all through the insurance company.
13 THE COURT: Over with now?
14 THE JUROR: Yes.
15 THE COURT: Then it didn't go
16 to court, more than likely.
17 Are you satisfied with the way it was
18 handled?
19 THE JUROR: Yes.
20 THE COURT: The fact that you
21 were involved in that kind of a situation affect
22 you here?
23 THE JUROR: No.
24 THE COURT: You could still be
25 fair and impartial?

1 THE JUROR: Yes.
2 THE COURT: Anybody else?
3 MISS SMITH: This is with regard
4 to your previous question involved with an
5 insurance company right now.
6 THE COURT: Litigation?
7 THE JUROR: I don't know if it
8 is going to court or anything.
9 THE COURT: What are the facts?
10 THE JUROR: I was in a car
11 accident.
12 THE COURT: Nothing has been
13 filed as yet?
14 THE JUROR: No.
15 THE COURT: The fact that you
16 anticipate this, would it affect you as being
17 fair and impartial?
18 THE JUROR: No.
19 THE COURT: Could you be fair
20 and impartial?
21 THE JUROR: Yes.
22 MRS. KULCSAR: Small claims court.
23 THE COURT: You had small claims
24 court?
25 THE JUROR: Yes.

1 THE COURT: Did you bring it?
2 THE JUROR: Yes.
3 THE COURT: Satisfied with the
4 way it worked?
5 THE JUROR: Yes.
6 THE COURT: Affect you as being
7 a fair and impartial juror here today?
8 THE JUROR: No.
9 THE COURT: Could you still be
10 fair and impartial even though you were involved
11 in something like a small claims?
12 THE JUROR: Yes.
13 THE COURT: Where the degree of
14 satisfaction is not very high at this point.
15 THE JUROR: Right.
16 THE COURT: Anybody else?
17 MISS HOOVER: I was involved in
18 a car accident but nothing was filed.
19 THE COURT: Satisfied with the
20 way it was handled?
21 THE JUROR: Yes.
22 THE COURT: Affect you as being
23 fair and impartial?
24 THE JUROR: No.
25 THE COURT: You could still be?

1 THE JUROR: Yes.
2 THE COURT: Anybody else?
3 Sir, we will get to you if you happen to join
4 one of the 28.
5 Do any of you know Mr. Rosenbaum or Detective
6 Leiby?
7 MISS AGLER: I had been in a
8 court case where Mr. Rosenbaum served.
9 THE COURT: And did you indicate
10 that earlier to us?
11 Does the fact that you had been in a case
12 which he was involved in --
13 THE JUROR: Yes --
14 THE COURT: (Continuing) --
15 affect you as being fair and impartial?
16 THE JUROR: No.
17 THE COURT: You could still be
18 fair and impartial?
19 THE JUROR: Yes.
20 THE COURT: Wouldn't affect you
21 at all?
22 THE JUROR: No.
23 THE COURT: Anybody else?
24 (No response.)
25 THE COURT: Anybody here know

1 Mr. Grunda, Mr. Cleary or their client, Mr.
2 Jalowiec?

3 (No response.)

4 THE COURT: Very well.

5 Have any of you seated in the jury box served
6 as jurors before?

7 MR. HUSK: I have.

8 THE COURT: What kind of a case?

9 THE JUROR: Civil.

10 THE COURT: How long ago?

11 THE JUROR: Fifteen or 20 years
12 ago.

13 THE COURT: Did you participate
14 in the decision making process?

15 THE JUROR: Yes.

16 THE COURT: Were you the
17 foreman?

18 THE JUROR: No.

19 THE COURT: Can you be fair and
20 impartial even though you participated in a
21 function of that nature?

22 THE JUROR: Yes.

23 THE COURT: Now, let me say to
24 you, sir, that what you were involved in was a
25 civil matter. This is a criminal matter, okay.

1 and the degrees of proof for both types of cases
2 are different.

3 The degree of proof in a criminal matter is
4 beyond a reasonable doubt and the degree of proof
5 in a civil matter is by the preponderance of the
6 evidence, so there is a difference.

7 The degree is greater in a criminal matter.
8 Do you understand that?

9 THE JUROR: Right.

10 THE COURT: Could you still be
11 fair and impartial?

12 THE JUROR: Yes.

13 MRS. JACKSON: I don't know. I
14 think it was civil, I guess, I don't know.

15 THE COURT: Could somebody have
16 gone to jail?

17 THE JUROR: They could have,
18 yes.

19 THE COURT: Then it was a
20 criminal matter.

21 Did you actually sit as a juror?

22 THE JUROR: Yes, I did.

23 THE COURT: Did you participate
24 in a decision making process?

25 THE JUROR: Yes.

1 THE COURT: Were you the
2 forelady?
3 THE JUROR: No.
4 THE COURT: The fact that you
5 sat in on a case and made a decision, rendered a
6 decision affect you as being fair and impartial
7 as far as this case is concerned?
8 THE JUROR: No.
9 THE COURT: You could still be
10 fair and impartial?
11 THE JUROR: Yes.
12 THE COURT: I think you
13 indicated, sir, that you were involved in another
14 murder case earlier, correct?
15 THE JUROR: Right.
16 THE COURT: Were you the
17 foreman?
18 THE JUROR: I believe I was,
19 yes.
20 THE COURT: The fact that you
21 were the foreman and it went for a decision, did
22 it not?
23 THE JUROR: Yes.
24 THE COURT: And it was a
25 criminal matter?

1 THE JUROR: Correct.

2 THE COURT: I think as I recall

3 it was a murder also, but not a capital case?

4 THE JUROR: That is correct.

5 THE COURT: Affect you as being

6 fair and impartial?

7 THE JUROR: No, sir.

8 THE COURT: You could still be

9 fair and impartial?

10 THE JUROR: Yes, sir.

11 THE COURT: That would not

12 affect you here?

13 THE JUROR: No.

14 MR. KOB: Assault with a

15 deadly weapon seven years ago.

16 THE COURT: Where was that, sir?

17 THE JUROR: Right here in this

18 courtroom.

19 THE COURT: Judge Harris?

20 THE JUROR: Yes.

21 THE COURT: Did you participate

22 in the decision making process?

23 THE JUROR: Yes.

24 THE COURT: Were you the

25 foreman?

1 THE JUROR: Yes.
2 THE COURT: Could you still
3 be fair and impartial in this case, having
4 participated in something such as this?
5 THE JUROR: Yes.
6 THE COURT: And that was a
7 criminal case and this is, too, and the degrees
8 of proof are the same at this point and you can
9 still be fair and impartial?
10 THE JUROR: Yes.
11 THE COURT: Thank you, sir.
12 Anybody else?
13 (No response.)
14 THE COURT: Have any of you
15 ever been the victim of a crime and I know some
16 of you have been asked this question and I will
17 ask it again.
18 Anybody here been a victim of a crime?
19 MR. SCHMITT: Just what I
20 previously told you about.
21 THE COURT: Could you still
22 be fair and impartial?
23 THE JUROR: Yes.
24 MS. DIEDERICK: I filed assault
25 charges against a student.

1 THE COURT: How long ago was
2 that?
3 THE JUROR: Maybe three years
4 ago.
5 THE COURT: Did it go to court?
6 THE JUROR: No.
7 THE COURT: What happened?
8 Do you know what happened?
9 THE JUROR: I believe he went
10 into the detention home or something.
11 THE COURT: You didn't have to
12 go to court?
13 THE JUROR: No.
14 THE COURT: The juvenile
15 officials took care of that?
16 THE JUROR: Right.
17 THE COURT: Were you satisfied
18 with the way it was handled?
19 THE JUROR: Yes.
20 THE COURT: The fact that you
21 were involved, would it affect you as being fair
22 and impartial in this case here?
23 THE JUROR: No.
24 THE COURT: Could you still be
25 fair and impartial?

1 THE JUROR: Yes, I could.
2 MR. HOWELL: A man shot me in
3 the hand. I explained earlier. Never found the
4 person.
5 THE COURT: Satisfied with the
6 way the law enforcement handled that matter?
7 THE JUROR: I guess so.
8 THE COURT: Some cases, ladies
9 and gentlemen, defy solution unless you catch them
10 red-handed at this point unfortunately.
11 You could still be fair and impartial in this
12 case?
13 THE JUROR: Yes, your Honor.
14 THE COURT: Okay.
15 Anybody else?
16 MR. PANTLEY: Drive-by shooting
17 and burglarized and involved with arson.
18 THE COURT: You have had quite
19 a year.
20 THE JUROR: Yes. Guilty on
21 all counts.
22 THE COURT: The fact that you
23 have been involved in this -- and I don't mean
24 that you participated -- been involved in these
25 matters affect you in this case?

1 THE JUROR: No.
2 THE COURT: You could still be
3 fair and impartial?
4 THE JUROR: Yes.
5 THE COURT: Have any of you or
6 members of your family ever been a member of the
7 police department, military police, air patrol
8 or shore patrol?
9 MR. SCHMITT: My brother-in-law
10 was a patrolman. He is retired now.
11 THE COURT: How long ago was he
12 an active patrolman?
13 THE JUROR: He has been retired
14 five years.
15 THE COURT: Where was he a
16 patrolman?
17 THE JUROR: In Cleveland.
18 THE COURT: The fact that you
19 have a member of your family that was a member
20 of law enforcement, would it affect you as being
21 fair and impartial?
22 THE JUROR: No, sir.
23 THE COURT: How often do you
24 see your brother-in-law?
25 THE JUROR: Once a year.

1 THE COURT: Could you still be
2 fair and impartial?
3 THE JUROR: Yes.
4 MR. DONALDSON: I had an aunt that
5 was a dispatcher for Norwalk. She doesn't do
6 that anymore and an uncle who is not really my
7 uncle either, some form of family member, that
8 is a retired police officer. That was three
9 years ago. I don't see him very often and my
10 brother is an auxiliary police officer.
11 THE COURT: Where?
12 THE JUROR: Wellington.
13 THE COURT: How often do you
14 see him?
15 THE JUROR: Every couple hours
16 at home.
17 THE COURT: You live together?
18 THE JUROR: Yes.
19 THE COURT: Discuss his cases?
20 THE JUROR: No, sir. He just
21 started last weekend, I think.
22 THE COURT: Affect you as being
23 fair and impartial in this case?
24 THE JUROR: No.
25 THE COURT: If, per chance, you

1 were to vote against his belief, you could still
2 look him in the eye and say, "This is the way I
3 thought"?

4 THE JUROR: Yes, sir.

5 THE COURT: No problem with
6 that?

7 THE JUROR: No problem.

8 MR. MEYERS: My son was a
9 corrections officer for Sheriff Mahoney.

10 THE COURT: Does that affect
11 you as being fair and impartial?

12 THE JUROR: No, no longer
13 there.

14 THE COURT: Do you know any
15 of the deputies or corrections officers?

16 THE JUROR: Yes, I do.

17 THE COURT: The fact that
18 you know them affect you as being fair and
19 impartial?

20 THE JUROR: No, it does not.

21 MS. AGLER: I have an uncle
22 retired from Cleveland.

23 THE COURT: How long is he
24 retired?

25 THE JUROR: Fifteen years.

1 THE COURT: The fact that
2 you did have an uncle in law enforcement and a
3 member of the department like Cleveland affect
4 you as being fair and impartial?
5 THE JUROR: No.
6 THE COURT: You could still
7 be fair and impartial?
8 THE JUROR: Yes.
9 MS. LOVELL: My niece was a
10 guard in a prison.
11 THE COURT: How long has she
12 been involved that way?
13 THE JUROR: She doesn't work
14 there now.
15 THE COURT: How long was she
16 employed there?
17 THE JUROR: Probably two years.
18 THE COURT: The fact that you
19 have a member of the family, relative, that was
20 with law enforcement affect you as being fair
21 and impartial here today?
22 THE JUROR: No, sir.
23 THE COURT: You could still be
24 fair and impartial?
25 THE JUROR: Yes.

1 THE COURT: Without any problem?
2 THE JUROR: Yes.
3 MRS. SMITH: My husband was in
4 the military police.
5 THE COURT: I think you
6 indicated that he was an MP before you got
7 married?
8 THE JUROR: Yes.
9 THE COURT: And you know
10 nothing about that career?
11 THE JUROR: No.
12 THE COURT: The fact that he
13 was at one time a member of the police affect
14 you as being fair and impartial?
15 THE JUROR: No.
16 MRS. JOSEPH: My mother was a
17 nurse in a prison in Minnesota about eight
18 years ago.
19 THE COURT: Would that affect
20 you?
21 THE JUROR: No.
22 THE COURT: You could still be
23 fair and impartial?
24 THE JUROR: Yes.
25 MR. HOWELL: My cousin and my

1 uncle were in the Cleveland Police Department.

2 THE COURT: Were?

3 THE JUROR: Passed away now,
4 both of them.

5 THE COURT: How long ago,
6 approximately?

7 THE JUROR: My cousin since
8 '70; uncle 30 years ago.

9 THE COURT: Would that affect
10 you, that you had family members in the police
11 department?

12 THE JUROR: No.

13 THE COURT: The fact that
14 there may be some Cleveland police officers
15 testifying in this case, that wouldn't affect
16 you at all?

17 THE JUROR: No, your Honor.

18 MRS. PUGH: My husband's
19 cousin is a police officer in Akron.

20 THE COURT: How often do you
21 see him?

22 THE JUROR: Here, about once
23 a month.

24 THE COURT: Discuss the cases?

25 THE JUROR: No.

1 THE COURT: Affect you as being
2 fair and impartial in this case, that you have a
3 member of the family, relative, so to speak, in
4 law enforcement?

5 THE JUROR: No.

6 THE COURT: You could still be
7 fair and impartial?

8 THE JUROR: Yes.

9 MRS. SMARR: My husband is a
10 corrections officer with the City of Lorain and
11 I have an uncle who is a police officer in the
12 City of Lorain.

13 THE COURT: Your husband's name?

14 THE JUROR: Shane Smarr.

15 THE COURT: And your uncle's
16 name on the police department?

17 THE JUROR: McCormick.

18 THE COURT: The fact that you
19 have people, close people at this point --

20 THE JUROR: Well, I don't see
21 the uncle.

22 THE COURT: I hope you see your
23 husband.

24 THE JUROR: Yes.

25 THE COURT: Would that affect

1 you as being fair and impartial in this case?

2 THE JUROR: No.

3 THE COURT: If you were to vote
4 against what your husband may want you to, could
5 you still look him in the eye?

6 THE JUROR: Yes.

7 THE COURT: You could be fair
8 and impartial?

9 THE JUROR: Yes.

10 MR. PANTLEY: I have a
11 brother-in-law who is a county sheriff in
12 Sacramento, see him every couple years.

13 THE COURT: The fact that you
14 have somebody like that affect you as being fair
15 and impartial?

16 THE JUROR: No.

17 MS. FRANTZ: My husband was in
18 the military police.

19 THE COURT: So you know what
20 his duties were like?

21 THE JUROR: Yes.

22 THE COURT: Would that affect
23 you?

24 THE JUROR: No problem.

25 THE COURT: Thank you.

1 Anybody else?

2 (No response.)

3 THE COURT: Is there anyone here
4 whose native language is not English?

5 (No response.)

6 THE COURT: Is there anyone here
7 who has to take medication at specific periods of
8 the day?

9 MR. HOWELL: Insulin dependent,
10 but I need to have snacks.

11 THE COURT: But you would be
12 medicated before you get here in the morning?

13 THE JUROR: Right, right.

14 THE COURT: And frankly, I
15 think we will be able to meet your schedule
16 because we will probably -- the way the schedule
17 of the Court works, we will have a break around
18 ten in this matter for whatever you may need.

19 We will break at noon or right around noon
20 and then we will break again 2:30, quarter to
21 three and then go till four or 4:30.

22 Would that fit within your schedule?

23 THE JUROR: Yes, it would.

24 THE COURT: We may deviate
25 from that and if you feel something coming on,

1 please let us know.

2 THE JUROR: Okay.

3 MS. JOSEPH: I take heart and

4 blood pressure medication.

5 THE COURT: How often?

6 THE JUROR: Every eight hours.

7 THE COURT: When do you take

8 it in the morning?

9 THE JUROR: I take it usually

10 around seven in the morning.

11 THE COURT: When in the

12 afternoon?

13 THE JUROR: Around two.

14 THE COURT: If we miss you,

15 let us know and Mrs. Ward will make sure that

16 you have a glass of water. We will help you

17 take our medication.

18 THE JUROR: Yes.

19 THE COURT: Raise your hand

20 if we are missing it and you feel you have to

21 do it.

22 THE JUROR: Okay.

23 THE COURT: Is there anyone

24 here who has young children at home who may

25 require your attendance?

1 MRS. DIEDERICK: I have a
2 14-month-old daughter.
3 THE COURT: What arrangements
4 have you made for her now?
5 THE JUROR: Right now she is
6 with a regular babysitter.
7 THE COURT: Okay.
8 THE JUROR: The only case where
9 it would matter would be sequestering.
10 THE COURT: Overnight?
11 THE JUROR: Yeah.
12 THE COURT: And that is entirely
13 possible.
14 THE JUROR: Right.
15 THE COURT: Do you think you
16 could make some kind of arrangements for that?
17 THE JUROR: I probably could
18 with notice.
19 THE COURT: You will have
20 notice, yes. I wouldn't come in one day and
21 announce you are going to a hotel.
22 Anybody else?
23 (No response.)
24 THE COURT: Does anybody have
25 any problem hearing me?

1 (No response.)

2 THE COURT: Now, I don't want
3 everybody raising their hands on this question,
4 but do any of you know of any reason why you
5 cannot sit in as a juror in this case?

6 MRS. LOVELL: My mother is 83
7 years old and she has a number of physical
8 problems and I have to take care of her. I
9 am her only caretaker.

10 THE COURT: What arrangements
11 have you made to date, Ma'am?

12 THE JUROR: Well, she is by
13 herself today.

14 THE COURT: She is?

15 THE JUROR: Yes.

16 THE COURT: Does she need to
17 have constant care?

18 THE JUROR: When she sits down
19 and gets up she is weak and she has to be helped
20 and I also babysit my two grandchildren while my
21 daughter works.

22 THE COURT: The grandchildren,
23 I don't know that I can do a great deal about,
24 but your mother, if you are the only person
25 that does this, that could create someone of a

1 problem. We don't want to be the cause of that.

2 Gentlemen, will you please approach?

3 MR. ROSENBAUM: Excuse her.

4 MR. GRUNDA: Fine with me, your
5 Honor.

6 THE COURT: Thank you.

7 Counsel and the Court have agreed that under
8 the circumstances we can excuse you at this point.
9 Thank you for appearing the better part of two
10 days with us and thank you for coming, have a
11 nice day, hope your mother is fine.

12 THE JUROR: Thank you.

13 I can leave now?

14 THE COURT: Yes, you may.

15 Counsel are hereby instructed that Tanya
16 Bradley is now No. 17.

17 Ms. Bradley, have you heard the questions
18 that the Court asked of your fellow jurors?

19 THE JUROR: Yes, I have.

20 THE COURT: Would any of your
21 answers have been any different from those of
22 your fellow jurors?

23 THE JUROR: Well, no, I don't
24 know anybody in law enforcement, no lawsuits,
25 nothing.

1 THE COURT: You have not been
2 sued or sued anyone?
3 THE JUROR: No.
4 THE COURT: Jury duty before?
5 THE JUROR: I have been on jury
6 duty but I was never picked.
7 THE COURT: You did go?
8 THE JUROR: Yes.
9 THE COURT: See, you almost made
10 it again this time.
11 The fact that you were involved in that case
12 affect you as being fair and impartial?
13 THE JUROR: No.
14 THE COURT: You could still be
15 fair and impartial?
16 THE JUROR: Yes.
17 THE COURT: No problem
18 understanding me, no problem hearing me, no
19 medications?
20 THE JUROR: No.
21 THE COURT: Children at home?
22 THE JUROR: No.
23 THE COURT: Any other problem
24 about not being able to be here, any reason,
25 maybe a trip, going to a doctor or something

1 of that nature?

2 THE JUROR: No.

3 THE COURT: You could sit, and
4 this case could spill into next week.

5 THE JUROR: No problem.

6 THE COURT: I know that you
7 are all down here for the \$12 a day.

8 Okay, Mr. Rosenbaum, you may inquire.

9 MR. ROSENBAUM: Thank you, your
10 Honor.

11 Is there anyone here for any other reason
12 that you can think of that you couldn't pay
13 the kind of attention to me, not feeling good,
14 somebody home sick, pressing times at work,
15 anything that would detract you?

16 (No response.)

17 MR. ROSENBAUM: Do you all
18 understand if you are selected as jurors that
19 you have a responsibility to obey the law that
20 the Court gives to you, right?

21 And if you decided that say Ms. Jordan,
22 you did not agree with the law, can you fix it
23 as a juror?

24 THE JUROR: Can I fix it?

25 MR. ROSENBAUM: Could you do

1 anything about it?

2 Say the Judge gives you the law and you say
3 it is not fair.

4 THE JUROR: I will have to go
5 by his instructions.

6 MR. ROSENBAUM: Is there other
7 remedies that can change the laws?

8 THE JUROR: Voting.

9 MR. ROSENBAUM: I would like you
10 to think about this.

11 The point I would like to make, if -- can
12 you see what may be, Mr. Kobb -- if jurors
13 decided to change the law regarding somebody's
14 rights to vote, what does that do if you are
15 picked and twelve people go back and don't
16 follow the law?

17 THE JUROR: What does it do
18 to the actions of voting?

19 MR. ROSENBAUM: Does it have any
20 impact on it that you might see?

21 THE JUROR: Well, not
22 necessarily on the right to vote. It doesn't
23 follow the law though.

24 MR. ROSENBAUM: What do you think
25 about that, Mr. Donaldson?

1 MR. DONALDSON: If we went back
2 and did what we want --

3 MR. ROSENBAUM: Does that impact
4 on their right to vote?

5 THE JUROR: Not on their right
6 to vote, no.

7 MR. ROSENBAUM: As voters we all
8 send people to Columbus to create our laws,
9 right?

10 And they determine the will of the people
11 and, in fact, laws passed on that right and that
12 is the purpose of our right to vote, right?

13 If jurors don't follow that law, then what
14 does that do, what happens to the whole system?

15 THE JUROR: Well, it would
16 seem to defeat it.

17 MR. ROSENBAUM: Gone, right?

18 There is no point in having laws if people
19 aren't buying them, right?

20 Do you feel that way, Ma'am?

21 THE JUROR: Correct.

22 You need some type of structure, that is
23 what you vote for.

24 MR. ROSENBAUM: So, if you're
25 picked as a juror and you thought the law as the

1 Judge instructed was not right, could you adjust
2 your verdict accordingly?

3 THE JUROR: Absolutely not.

4 MR. ROSENBAUM: If you thought the
5 law was too lenient, could you return a verdict
6 to fix that?

7 THE JUROR: No, sir.

8 MR. ROSENBAUM: Because you would
9 have violated your oath to uphold the law and
10 destroyed everybody's right to vote and our
11 whole system of government bombs.

12 Now, Mrs. Hoover, do you think that it is
13 important that everybody gets treated the same
14 in the eyes of the law?

15 THE JUROR: Yes.

16 MR. ROSENBAUM: Can that happen
17 if jurors do not apply the law the same to
18 everybody?

19 THE JUROR: No.

20 MR. ROSENBAUM: That would be a
21 very bad thing, if people would come to Court
22 on different days and get different results
23 based upon jurors' interpretations of the law,
24 right?

25 That would also destroy the government?

1 THE JUROR: Correct.

2 MR. ROSENBAUM: Some of you stated,
3 well, I can't impose the death penalty unless it
4 is absolutely proven to me with no doubt.

5 If the Judge tells you that the standard is
6 beyond a reasonable doubt, not beyond any doubt,
7 have you elevated the State's burden of proof?

8 If you are one of the jurors and you feel
9 you can't return a death penalty verdict unless
10 there is no doubt that the Defendant did it and
11 the Judge tells you the State doesn't have to
12 prove it beyond any doubt, or no doubt, have
13 you elevated the State's burden?

14 THE JUROR: I don't understand.

15 MR. ROSENBAUM: Have you changed
16 the law if you require me to prove my case more
17 than the Judge says I have to?

18 THE JUROR: Right.

19 MR. ROSENBAUM: Now, if you are
20 picked as a juror and you get back there and you
21 say, "I think Detective Leiby did a good job and
22 Rosenbaum muddled through as best he could, they
23 convinced me that the Defendant is guilty and
24 maybe the death penalty is appropriate here, but
25 he is so young I just can't do it," and you don't

1 vote for the death penalty, even though the law
2 says you should, have you violated your oath of
3 office?

4 THE JUROR: Yes.

5 MR. ROSENBAUM: The situation I have
6 given you is, the State proves its case, the law
7 requires the death penalty, but you take one look
8 at him and say, "I can't do it, no matter what you
9 have said out here, I am not going to follow the
10 law."

11 Have you violated your oath of office?

12 THE JUROR: Yes, definitely.

13 MR. ROSENBAUM: And that seems to be
14 an obvious conclusion, but you will be surprised
15 the number of times that either Detective Leiby,
16 myself or Judge Glavas have heard jurors say,
17 "We think you did a good job, but it didn't
18 seem fair."

19 Those jurors have violated the oath of
20 office, right?

21 THE JUROR: Right.

22 MR. ROSENBAUM: And again, we cannot
23 have fair results, treat everybody the same and
24 all the laws have been weakened.

25 Do you agree there is a principal involved

1 for him that may be far more important in this
2 case?

3 THE JUROR: Yes.

4 MR. ROSENBAUM: Likewise, if the
5 State doesn't meet its burden, you have upheld
6 the law as well, right?

7 That would be your duty to acquit, correct?

8 THE JUROR: Yes.

9 MR. ROSENBAUM: And likewise, if
10 we do make it, you have an absolute duty to
11 follow the law and to do the right thing.

12 THE JUROR: Right.

13 MR. ROSENBAUM: So you are not
14 misled, there will be a set of laws that apply
15 to the guilt phase, another set of laws at the
16 penalty phase.

17 If we get to the penalty phase, you will
18 be given a set of three choices that you can
19 arbitrarily pick one from. The law will tell
20 you which.

21 There is a procedure to follow and which
22 life sentence or death penalty to impose.

23 Is there anyone here that figures even if
24 I get selected and I get to the penalty phase
25 I may not have to give a death sentence.

1 according to the law?

2 Do you see what I am saying?

3 You may find yourself in the position that
4 the law, if you are going to uphold your duty
5 as a juror, actually says you shall impose the
6 death penalty.

7 Do you all understand that?

8 (Whereupon, all of the jurors responded in
9 the negative.)

10 MR. ROSENBAUM: It is not one of
11 these you get a choice of three, there is a
12 procedure that may require you to do that.

13 Now, based upon that, is there anyone here
14 now that cannot look at this young man and say,

15 "I could impose the death sentence on him if
16 my duty requires me to do it"?

17 Is there anyone here that feels they could
18 not?

19 (No response.)

20 MR. ROSENBAUM: Could you impose
21 the death penalty on him if the law and the
22 evidence required it?

23 THE JUROR: Yes, I could.

24 MR. ROSENBAUM: Mr. Meyers?

25 THE JUROR: Yes, I could.

1 MR. ROSENBAUM: Mrs. Alessio?
2 THE JUROR: No problem.
3 MR. ROSENBAUM: Mrs. Frantz, did
4 I ask you that?
5 THE JUROR: No problem.
6 MR. ROSENBAUM: Now, he is young,
7 right, but he is over the age of majority and
8 the law applies to him.
9 Does anybody have a problem with that?
10 Our Legislature determines once you reach
11 the age of 18 that you are an adult under the
12 law, right?
13 THE JUROR: Yes.
14 MR. ROSENBAUM: Is there anyone
15 here who cannot sit in judgment of their fellow
16 man for any religious or moral reasons?
17 (No response.)
18 MR. ROSENBAUM: Mr. Meyers, the
19 son that you spoke about was the one that works
20 for the prison system, right?
21 THE JUROR: He did, sir.
22 MR. ROSENBAUM: He did, but you
23 didn't have a son that was in jail, right?
24 THE JUROR: No, sir.
25 MR. ROSENBAUM: I wanted to make

1 sure.

2 THE JUROR: I never had a son
3 that was in jail.

4 MR. ROSENBAUM: I wanted to make
5 sure I read this answer right.

6 You will be able to carry out a death
7 sentence if the law and the evidence requires
8 it?

9 THE JUROR: Yes, I would.

10 MR. ROSENBAUM: Mrs. Frantz, your
11 sister had a pretty hair raising experience?

12 THE JUROR: Right.

13 MR. ROSENBAUM: How long ago was
14 that, Ma'am?

15 THE JUROR: Three years ago.

16 MR. ROSENBAUM: I take it that
17 she was satisfied with the services the police
18 provided her?

19 THE JUROR: Right.

20 MR. ROSENBAUM: It is fair to say
21 he was apprehended?

22 THE JUROR: Right.

23 MR. ROSENBAUM: Mrs. Alessio, you
24 indicated that you are in favor of the death
25 penalty and also indicated a set of circumstances

1 that might involve a massacre, right?

2 I take it if the law does not require
3 something as horrendous as a massacre, that you
4 could still impose the death penalty?

5 THE JUROR: Yes. I don't have
6 a problem with that.

7 MR. ROSENBAUM: I have no other
8 questions, your Honor. Thank you.

9 THE COURT: Mr. Grunda?

10 MR. GRUNDA: Thank you, your
11 Honor. Good afternoon, ladies and gentlemen.

12 First, I am sorry about the accommodations.
13 I don't mean to sit here with my back to you.
14 Don't hold that against me.

15 Mr. Rosenbaum has asked you a lot of
16 questions, a little bit more than on the penalty
17 phase. Let's go back to the beginning now, okay?

18 Let's start from the beginning. I want to
19 know your views on some basic constitutional
20 rights we all have, okay?

21 What are we all here for, what has the Judge
22 been talking to us about?

23 We want fair and impartial jurors, right.
24 jurors that are going to be fair and impartial.

25 You all agree that it is very important,

1 shouldn't be any other way. You wouldn't want
2 it any other way. We can all agree on that,
3 right?

4 (Whereupon, all of the jurors responded in
5 the affirmative.)

6 MR. GRUNDA: Now, let's talk
7 about the very basic and very important thing
8 that is going on here because I know when we
9 had individual talks with some of you, kind of
10 putting the cart before the horse, okay, let's
11 talk about the presumption of innocence, okay?

12 And Stan, as he is sitting here right today,
13 is presumed innocent. The words sound real nice,
14 but do we honestly believe that, do we honestly
15 do it in our daily lives?

16 Let me give you an example, a scenario.

17 I was going to the track in Pennsylvania,
18 going up the mountain, the car broke down, the
19 fan belt overheated.

20 We pulled up onto the side of the road. I
21 was not even driving, okay?

22 A little while later a State Trooper comes
23 by behind us with the lights on. I get out to
24 tell him my problem. Other people are going by.
25 A couple other people I race with.

1 What do you think they were thinking when I
2 was on the side of the road, what do they think?

3 He has somebody on the side of the road --

4 THE JUROR: A speeding ticket.

5 MR. GRUNDA: Now, let's put
6 that to what is going on here. That is really
7 a presumption of the innocence to that person.
8 The natural thought process is not, wonder what
9 happened to the poor guy, you see, that is the
10 presumption of innocence.

11 Would you agree with that, but we don't do
12 it. On the flip side of it we are wondering
13 how fast they caught him going.

14 With that in mind, what I want to know
15 from all of you, can you, when you are looking
16 at Stan and going through the trial, remember,
17 it is a presumption of innocence.

18 Can you all do that?

19 You all agreed to do that because it is
20 your job, but can you all do it?

21 (No response.)

22 MR. GRUNDA: Now, let's talk
23 about the next important thing here, the burden
24 of proof, because they all kind of fit together
25 here.

1 Now, when you look at this and look how the
2 whole thing goes, the Prosecutor has the burden
3 of proof here. It is his duty and the Judge is
4 going to tell you he has to prove every element
5 beyond a reasonable doubt.

6 Now, if he misses one of the elements, he
7 didn't prove it beyond a reasonable doubt.

8 Could you all agree with that?

9 Two out of three is not good here. Close,
10 like in horseshoes, that is not good enough here.

11 Do you all agree with that?

12 (Whereupon, all of the witnesses responded
13 in the affirmative.)

14 MR. GRUNDA: I look at it as if
15 you had a glass of water -- in this case dealing
16 with three elements -- if you divide the glass
17 in three, we have the first two elements, we
18 don't have the last element beyond a reasonable
19 doubt, then they didn't fill the glass, didn't
20 meet the burden of proof and you would agree
21 with that?

22 THE JUROR: Right.

23 MR. GRUNDA: Would you all
24 agree to do that?

25 THE JURORS: Yes.

1 MR. GRUNDA: Find the guy not
2 guilty because the Prosecutor didn't meet their
3 burden?

4 THE JURORS: Yes.

5 MR. GRUNDA: Because I get
6 worried. We are so involved in talking about
7 penalty that we are forgetting the whole concept
8 of this as he is here, he is not guilty.

9 You didn't hear any evidence. I don't want
10 you tainted, prejudiced in any way.

11 Do you agree with that right that he has?

12 (Whereupon, all of the jurors responded in
13 the affirmative.)

14 MR. GRUNDA: Another thing that
15 kind of fits into that is just mere presence at
16 a place where a crime is is not enough.

17 Anybody have a problem with that?

18 What if you are in the bank and a guy comes
19 in and holds it up. When he did he was standing
20 next to you.

21 Doesn't make you guilty, does it?

22 Your mere presence in the bank wasn't enough.
23 was it, you didn't know what the other guy was
24 doing, you can't help it.

25 You see, that is the kind of thing I am

1 talking about.

2 THE COURT: Mr. Grunda, did
3 you have a question to ask?

4 Would you ask the question at this point?

5 MR. GRUNDA: Anybody have a
6 problem with it or would anybody change the
7 burden of proof?

8 Would anybody find automatic guilt, would
9 anybody do that?

10 You wouldn't do that, would you?

11 THE JURORS: No.

12 MR. GRUNDA: Now, in this
13 burden of proof, in the prosecution and like
14 how this all starts and the reason we talk
15 about so many other things, the person does
16 not have to testify. It has to start
17 someplace as the Judge says, okay?

18 Now, the way the burden of proof and the
19 way it goes with the Indictment and Stan doesn't
20 have to testify, it fits into an example, say I
21 would say somebody comes up and accuses me of
22 owing them \$1,000, that is an accusation.

23 Now, is it fair for me, because somebody
24 says I owed them \$1,000 that I have to prove I
25 don't owe them \$1,000?

1 No, because then he would have been
2 testifying. Why do that?

3 The burden of proof is on the prosecution
4 in this case. They make the accusations, they
5 are saying that I owe them the \$1,000. I don't
6 have to disprove that I owe the money, they
7 have to prove that I do owe the money.

8 Anybody have a problem with that?

9 THE JURORS: No.

10 MR. GRUNDA: Do you understand
11 how it works and it fits together with who has
12 the burden of proof, who has to testify,
13 presumption of innocence?

14 Anybody have a problem with any of that
15 and seeing how it all fits together?

16 (No response.)

17 MR. GRUNDA: Do you all agree
18 that these are very important rights?

19 THE JURORS: Yes.

20 MR. GRUNDA: Now, you kind of
21 get into the flip side of it, too, because in
22 my little scenario, say I was accused of owing
23 the money, I don't have to say I don't owe it,
24 they would have to prove I do owe it, but if I
25 wanted to, even though I don't have to testify

1 I may want to stand and say I never saw this guy,
2 I don't know what they are talking about.

3 Now, the inherent problem, what I worry
4 about just by the fact that the person doesn't
5 testify is that you think that the Prosecutor
6 proved their case.

7 You wouldn't think that even though they
8 don't have to testify, you wouldn't think that,
9 would you?

10 (No response.)

11 MR. GRUNDA: This case involves -
12 - and what he has been involved with -- involves
13 three necessary elements, purposely, with prior
14 calculation and design cause the death of
15 another, okay?

16 Now, as the Prosecutor indicated, his burden
17 is, he has to show to you beyond a reasonable
18 doubt all three of those things.

19 You wouldn't lower the standard for him,
20 right?

21 You wouldn't let him show less than beyond
22 a reasonable doubt and if he only showed two of
23 those necessary three elements, nobody would have
24 a problem of returning a verdict of not guilty?

25 (No response.)

1 MR. GRUNDA: That is the right
2 thing to do. He didn't do his job right.

3 Now, in this case and there is also a
4 specification on this regarding a firearm that
5 is on or about his person or under his control,
6 do any of you have a problem with firearms?

7 You don't like them, you don't want to be
8 near them, you don't want to deal with any kind
9 of case that has anything to do with firearms?

10 (No response.)

11 MR. GRUNDA: Are any of you so
12 afraid of them that there would be some tainting
13 on it?

14 (No response.)

15 MR. GRUNDA: Because there is
16 a firearm involved, do you think automatically
17 guilty?

18 You agree if you do, that wouldn't be fair,
19 right?

20 (No response.)

21 MR. GRUNDA: How do you feel
22 about drugs if something comes out about drugs
23 in this case?

24 Does that come into your feelings to a point
25 where you couldn't be fair to Stan?

1 Your feelings are so tainted because there
2 is a big war on drugs, this will be your chance
3 to get even?

4 That wouldn't be fair, would it?

5 THE JURORS: No.

6 MR. GRUNDA: Even if you don't
7 like drugs, can you put aside that feeling
8 because we are dealing with three things, you
9 know, not guns, not drugs, nothing else, nothing
10 to do with this, and I worry by bringing in other
11 matters that in some way it would affect you to
12 the point that instead of having them meet the
13 burden of proof beyond a reasonable doubt on all
14 three, it gets less and you don't like the drugs,
15 so we will find him guilty.

16 You wouldn't do that, would you?

17 THE JURORS: No.

18 MR. GRUNDA: Have any of you
19 read about this case, heard about it in the paper
20 or anything like that?

21 MR. ABAHAZI: I have.

22 MR. GRUNDA: What have you read
23 or what have you heard?

24 THE JUROR: Just what was in
25 the Chronicle one time last night.

1 MR. GRUNDA: Unfortunately I
2 didn't read that.
3 THE JUROR: I am sorry.
4 MR. GRUNDA: Now, Mr. Abahazi,
5 would that preclude you from sitting here?
6 THE JUROR: No.
7 MR. GRUNDA: Because you read
8 about that?
9 THE JUROR: No, because the
10 paper has to print something and they have to
11 sensationalize everything.
12 MR. GRUNDA: That is what I
13 worry about, too. People read the Inquirer
14 and they believe some of it.
15 Do you understand the problem?
16 THE JUROR: Yes.
17 MR. GRUNDA: Because he is
18 sitting there, he is supposed to get a fair
19 and impartial jury as he sits there. You read
20 the papers and that is not the evidence.
21 Do you agree with that?
22 THE JUROR: That is true.
23 MR. GRUNDA: You don't agree
24 that everything that is in the paper is correct?
25 THE JUROR: Very true.

1 MR. GRUNDA: I am not sure --
2 can you summarize basically what was in there?

3 THE COURT: All it said was
4 jury selection was going on and it gave a brief
5 -- pretty much what the Indictment was.

6 MR. GRUNDA: You would agree,
7 because you didn't hear any of the facts, that
8 the paper may be wrong?

9 THE JUROR: I didn't hear
10 nothing.

11 MR. GRUNDA: Could you set
12 aside the fact that you read something and
13 make a decision only on the evidence?

14 THE JUROR: Yes.

15 MS. JOSEPH: Lorain Journal
16 this morning. That was the same thing. It
17 was about the jury selection and a little
18 about what happened, but I don't know if that
19 is true and I have not heard the evidence.

20 MR. GRUNDA: You wouldn't let
21 it bother you?

22 THE JUROR: No.

23 MRS. DIEDERICK: Same thing.

24 MR. GRUNDA: Journal?

25 THE JUROR: Yes. I feel the

1 same way. It wouldn't affect me.

2 MRS. HOOVER: Same situation,
3 today's paper, and last week once in the
4 Chronicle, the part I remember that the case
5 was coming this week, going to be tried this
6 week.

7 MR. GRUNDA: Is that going
8 to affect you in any way?

9 THE JUROR: No.

10 MR. GRUNDA: Can you set it
11 aside?

12 THE JUROR: Yes.

13 MR. KOBB: Same thing. I
14 read it in the morning paper. I don't know
15 the evidence.

16 MRS. ALESSIO: I read earlier
17 reports of the other trial.

18 MR. GRUNDA: Is that going to
19 affect you in any way?

20 THE JUROR: No.

21 MR. GRUNDA: Do you understand,
22 we are talking about two different situations?

23 THE JUROR: Right, right.

24 MR. GRUNDA: You could put that
25 out of your mind?

1 THE JUROR: Yes, sir.
2 MR. GRUNDA: Do you think you
3 could be a fair juror here?
4 THE JUROR: Yes.
5 MR. GRUNDA: If things were
6 reversed, do you think you could be fair?
7 THE JUROR: Yes.
8 MR. SMITH: There is crime
9 all over the place.
10 MR. GRUNDA: Is that going
11 to bother you?
12 THE JUROR: No, sir.
13 MR. GRUNDA: You are not going
14 to take this as your chance to try to stamp some
15 of it out?
16 THE JUROR: That is not my job.
17 MR. GRUNDA: Let me ask
18 everybody, did it bother anybody, was it only
19 in today's paper or yesterday's?
20 THE JUROR: I thought I heard
21 the story when it happened, but I am not sure.
22 I thought it took place in the city so I am not
23 sure.
24 MR. GRUNDA: The fact that you
25 are hearing something that may not even be

1 involved, can you put it out of your mind?

2 THE JUROR: Yes, sir.

3 MR. GRUNDA: Do all of you
4 think you could be fair even though some of
5 you have read about it?

6 THE JURORS: Yes.

7 MR. GRUNDA: Thank you.

8 You know the Judge asked you about police
9 officers and I am not going to ask if you are
10 related to them, but there is going to be
11 testimony from police officers in this case.

12 Now, do you all acknowledge that police
13 officers are human beings like the rest of us,
14 right, and they are all subject to mistakes?

15 You would agree with that?

16 THE JURORS: Yes.

17 MR. GRUNDA: Now, would any
18 of you feel just because a police officer is
19 testifying that you automatically have to
20 believe him because he is a police officer?

21 THE JURORS: No, sir.

22 MR. GRUNDA: You can listen
23 to the Judge when he gives you the standard
24 that you are supposed to use on credibility
25 and you would apply that?

1 THE JURORS: Yes.

2 MR. GRUNDA: I know some of
3 you have indicated you have had prior jury duty
4 and I know some was civil, some criminal.

5 Is any of that going to affect you in this
6 case?

7 Can you set that all aside?

8 In the civil case the standard is less and
9 that is not the standard here and it would be
10 unfair to use that.

11 You would agree, right?

12 THE JURORS: Yes.

13 MR. GRUNDA: Can you all put
14 that out of your mind?

15 THE JURORS: Yes.

16 MR. GRUNDA: Now, there may be
17 some tangential things like what I said -- or
18 maybe you don't like the tie.

19 Would you all agree that those things
20 shouldn't come into play?

21 If you don't like my tie or because I am
22 sitting here, you should hold that against me
23 and not Stan.

24 Now, what, if after you hear all the
25 evidence in this case you are all involved,

1 say you are one of the twelve up here to make
2 the decision, you hear all the evidence, you
3 go back and deliberate, you feel that the
4 Prosecutor has not proven one of the
5 elements, okay.

6 Do you all agree that it is your duty
7 to return a verdict of not guilty, right?

8 Anybody have a problem with that?

9 If you are the only one, eleven others
10 think guilty, you think not guilty, Mr. Kobb,
11 do you think because you would be the only
12 one and it is 5:30 and you have been there
13 for three days thinking about this, do you
14 think you are strong enough to hold to your
15 own beliefs and observations or are you
16 going to say, "I am tired and hungry, we
17 have been here three days, I will go along
18 with it," or do you think you would stick to
19 your own convictions?

20 THE JUROR: I am bullheaded.
21 I would stick to my own convictions.

22 MR. GRUNDA: How do the rest
23 of you feel about that?

24 You wouldn't give in for convenience or
25 tiredness or you wanted to get it over with?

1 That wouldn't be fair, would it?

2 THE JURORS: No.

3 MR. GRUNDA: Would any of you
4 have a problem in listening to the instructions
5 as the Judge gives them to you?

6 I know most of you we talked to, maybe you
7 had a little different idea of what it was
8 before you came in, but the Judge is going to
9 tell you the law and it is a little different
10 than what you think.

11 Can you put aside your own personal beliefs
12 and go with what the Judge says, what he tells
13 you these are the elements, these are what they
14 mean, this is the standard beyond a reasonable
15 doubt?

16 That is what you have to do.

17 Can you accept that even though your opinion
18 might be different?

19 THE JURORS: Yes.

20 MR. GRUNDA: Maybe your standard
21 is higher and/or lower.

22 Can you listen to the Judge, you can all do
23 that?

24 THE JURORS: Yes.

25 MR. GRUNDA: Now, we come to the

1 inherent problem that we talked about before.
2 All of this, of course, talking about this goes
3 to whether or not Stan is guilty or not guilty,
4 okay?

5 But since this is the only time I get to
6 talk to you, then we have to talk about the
7 possibility of getting into the next phase and
8 you wouldn't be tainted by the fact that we
9 talk about penalties, right?

10 In other words, just because we talked
11 about penalty you don't presuppose he is
12 guilty, you can all do that, right?

13 THE JURORS: Yes.

14 MR. GRUNDA: Now, the Judge
15 is going to give you, even if we get to that,
16 that is a big if, what they call mitigating
17 factors.

18 It kind of goes along with the other
19 question I asked, if you can listen to what
20 he tells you, you have to consider, but if
21 we get to that, you have to consider
22 mitigating factors and what you are going
23 to determine on the three possible choices.

24 Would any of you have any problem dealing
25 with mitigating factors if the Judge tells you

1 that you have to consider the circumstances of
2 the offense, the history, the character, the
3 background of Stan?

4 Anybody have a problem considering those
5 things?

6 Would you automatically close them out
7 and say, "I don't want to hear about that, I
8 made up my mind from the other part of the
9 trial"?

10 (No response.)

11 MR. GRUNDA: Would you have
12 a problem of considering other factors, whether
13 or not the victim induced or facilitated or
14 whether it was under duress, coercion, strong
15 provocation, any of you have a problem with
16 that?

17 (No response.)

18 MR. GRUNDA: How about lack
19 of significant prior committal convictions or
20 things?

21 See, would any of you just forget about
22 that, not want to accept it if the Judge tells
23 you to consider that?

24 (No response.)

25 MR. GRUNDA: Not the principal

1 offender, would any of you just forget about
2 that?

3 (No response.)

4 MR. GRUNDA: Would you all
5 consider that if the Judge tells you had to
6 consider that?

7 Then you have a catchall of any other
8 relevant factors. The point is, if we get
9 there, will you all accept those or will you
10 just preclude them because there was a finding
11 of guilt?

12 Do you see the problem and what I am
13 worried about as far as, "I don't want to talk
14 about it because he is presumed innocent, but
15 I have to," and I need to know that you
16 wouldn't foreclose on the things the Judge
17 requires you to look at.

18 Would you all agree that you wouldn't do
19 that?

20 (No response.)

21 MR. GRUNDA: Ms. Bradley, do
22 you have any problems with anything that we
23 have brought up?

24 THE JUROR: No.

25 MR. GRUNDA: The mere fact

1 that this is a death penalty case, does that
2 influence you in such a way that you would
3 only vote for the death penalty?

4 THE JUROR: No.

5 MR. GRUNDA: You could consider
6 all three options?

7 THE JUROR: Yes.

8 MR. GRUNDA: You don't have a
9 problem with that?

10 THE JUROR: No.

11 MR. GRUNDA: Mrs. Frantz, the
12 same thing that I asked Ms. Bradley.

13 Since I didn't get to talk to you
14 individually, the mere fact that it is entitled
15 this way, would you have an automatic preset
16 disposition towards death?

17 THE JUROR: No.

18 MR. GRUNDA: You would fairly
19 listen and consider all the three choices, the
20 factors, mitigating factors the Judge tells
21 you you are required to listen to?

22 THE JUROR: Yes.

23 MR. GRUNDA: Do you think you
24 will be fair and impartial?

25 THE JUROR: Yes.

1 MR. GRUNDA: Mrs. Alessio?
2 THE JUROR: Yes.
3 MR. GRUNDA: You do appreciate
4 that there are three choices and not just one,
5 whatever the evidence is presented, that is
6 what I want you to go by?
7 THE JUROR: Yes.
8 MR. GRUNDA: Thank you.
9 Would you all agree that the Judge is going
10 to tell you that you have to make your decision
11 off the evidence that you are going to hear up
12 there, would you all agree to do that?
13 (No response.)
14 MR. GRUNDA: The other thing
15 that is kind of a part of that is, again it is
16 a murder case and there will be some gruesome
17 documents, there will be pictures here, it
18 won't be a pretty sight, okay?
19 What I worry about is just the fact that
20 they are gruesome, you kind of don't follow
21 what the Judge says you have to and you see
22 the pictures and think they are so bad,
23 "Forget it, I am going to find him guilty."
24 What I need to know is you wouldn't be
25 swayed by the gruesomeness, the goriness of

1 it. That wouldn't affect you that you would
2 automatically vote for guilt?

3 THE JUROR: No.

4 MR. GRUNDA: You can put that
5 aside?

6 It is not going to be a pleasant job, but
7 you will not let yourself get swayed by that,
8 make your own decisions on the facts, see if
9 they proved everything, everything beyond a
10 reasonable doubt?

11 You will all agree to do that, won't you?

12 THE JURORS: Yes.

13 MR. GRUNDA: Thank you, your
14 Honor.

15 Pass for cause.

16 THE COURT: Very well. We
17 have now come to that phase where each side has
18 an opportunity to exercise preemptory challenges
19 and excuse jurors at this point.

20 Do not take it as a personal affront. The
21 attorneys have had the opportunity to view the
22 panel to determine how, in their opinion, all
23 the jurors work as a panel since a verdict will
24 be agreed upon by twelve jurors.

25 Each side, the State of Ohio and the

1 Defendant, will have six preemptory challenges
2 for the regular jurors and one preemptory
3 challenge for the two alternates.

4 They will be exercised in rotation and, Mr.
5 Rosenbaum, you may commence with your challenges.

6 (Whereupon, fourteen jurors were sworn as a
7 group.)

8 THE COURT: Ladies and
9 gentlemen, those who participate in a lawsuit
10 must do so in accordance with established rules.
11 That is true of the witnesses', the lawyers' and
12 the Judge's part in the case and it is equally
13 true of your part as jurors.

14 The lawyers present the evidence according
15 to the rules, the Judge enforces the rules and
16 determines the admissibility of the evidence.

17 You are the sole judges of the facts, the
18 credibility of the witnesses and the weight to
19 be given to the testimony.

20 Later the Court will furnish you with the
21 law and you will apply that to the facts and it
22 is your sworn duty to accept the law as given
23 to you by the Court.

24 The procedure for the trial is as follows:

25 First, the State's counsel will give you

1 his opening statement. Next, the Defendant
2 will give you their opening statement.

3 Neither the State's opening statement
4 nor the defense opening statement are to be
5 considered as evidence. They are merely
6 statements of counsel designed to assist
7 you, but they are not evidence.

8 The State of Ohio will then present
9 their evidence. Then the defense will present
10 any evidence they desire and because the State
11 has the burden of proof, the State may present
12 rebuttal evidence.

13 After the rebuttal evidence, if any, the
14 State and the defense will present their closing
15 arguments and again, closing arguments are not
16 evidence, they are merely statements of counsel
17 designed to assist you, but they are not evidence.

18 After the closing arguments, the Court will
19 give you the instructions on the law in writing
20 and you will deliberate until a verdict is
21 reached.

22 You are not to discuss this case amongst
23 yourselves or with anyone until it has been
24 finally submitted to you. You are not to discuss
25 this case with your family members and this will

1 be difficult when you get home.

2 You will receive the opening statements, the
3 evidence, the arguments and the law in that order
4 and it would be unfair to discuss this case
5 amongst yourselves until you receive everything
6 necessary to make a decision.

7 You must explain this rule to your family
8 and to your friends. When the trial is over,
9 you may, but you are not required to, discuss
10 this case with anyone. Until that moment,
11 control your natural desire to discuss this
12 case, both here and at home.

13 The Court instructs you not to discuss
14 this case with the lawyers, the witnesses or
15 the parties to this case. Likewise, the
16 parties in this trial must not discuss this
17 case with you and if anyone should attempt
18 to discuss this case with you, report the
19 matter to the Bailiff or to the Court
20 Reporter and the matter will be brought
21 to the attention of the Court immediately.

22 Certainly they can be civil to you, greet
23 you good morning, good afternoon, good evening,
24 hold the door open for you, whatever the case
25 may be, but that is as far as the relationship

1 shall go.

2 The Court likes to start around 8:30 and
3 will take a break around ten o'clock for about
4 15 minutes. We will then come back and go till
5 around noon, break for lunch for approximately
6 one hour and come back and go till about three,
7 take a short break and go till about four, 4:30
8 and recess until the next day.

9 This procedure will be followed until the
10 conclusion of the case. On every occasion that
11 we take a break the Court will be giving you
12 some admonitions and the admonitions will be
13 as follows:

14 Do not discuss this case amongst yourselves,
15 do not permit anyone to discuss it with you or
16 in your presence. It is your duty not to form
17 or express any opinion until it is finally
18 submitted to you.

19 Remember the admonitions of this Court as
20 you are instructed and this is very important
21 because some of you have read newspaper articles
22 regarding this matter.

23 You are instructed not to read, view or
24 listen to any reports in the radio, television
25 or newspaper on the subject of this trial, do

1 not permit anyone to read or comment upon them
2 to you or in your presence.

3 News reporters are not in the courtroom
4 throughout the trial so their impressions are
5 incomplete and at times inaccurate.

6 You may only consider and decide this case
7 upon the evidence received at the trial. If you
8 should acquire any information from any outside
9 source, you must disregard it.

10 You are again cautioned not to discuss this
11 case amongst yourselves or with anyone else. Do
12 not read, view or listen to any reports in the
13 press, radio or television and do not form or
14 express any opinion on the case until it is
15 submitted to you.

16 With those admonitions, ladies and
17 gentlemen, we will take our evening adjournment
18 at this point. We will meet tomorrow at 8:15
19 and hopefully get started as close to 8:30 as
20 we can with the presentation of the opening
21 statements of counsel and then the evidence.

22 (Whereupon, the trial in the above-entitled
23 matter was adjourned to reconvene on Thursday, the
24 14th day of March, 1996, at 8:30 a.m.)
25

1 MORNING SESSION, THURSDAY, MARCH 14, 1996

2 (Whereupon, the following proceedings
3 occurred out of the hearing of the jury.)

4 MR. GRUNDA: At this time,
5 on behalf of the Defendant, I will note a
6 continuing objection to the fact that Judge
7 Glavas was called as a witness and is not
8 going to be a witness in this case.

9 THE COURT: As a result of
10 a court order by another court.

11 MR. GRUNDA: Which I am not
12 sure I had it, but I don't know how it was
13 marked. I think you marked the Supreme Court
14 decision, but I don't know how it was marked.

15 THE COURT: What do you mean,
16 you had a copy of it?

17 MR. GRUNDA: You said you were
18 putting it in this case.

19 Is it like marked Court's Exhibit 1?

20 THE COURT: It is included as
21 a part of the record here.

22 MR. GRUNDA: All of that because
23 the hearing is a denial of due process, equal
24 protection and fundamental fairness.

25 THE COURT: That objection will

1 be overruled.

2 Now, Mr. Grunda, do you intend to carry that
3 on as a continuing objection throughout the entire
4 trial?

5 MR. GRUNDA: I wanted to make it
6 once.

7 THE COURT: Then it is done.

8 MR. GRUNDA: Right. I wanted it
9 noted.

10 THE COURT: It is done.

11 Bring in the jury.

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

14 THE COURT: Good morning, ladies
15 and gentlemen.

16 THE JURORS: Good morning.

17 THE COURT: I hope you all had
18 a good night's sleep and rest and are ready to go
19 here this morning.

20 Deputy, just a couple of preliminaries at
21 this point.

22 As long as there is some activity going on
23 in the courtroom, opening statements being
24 conducted by an individual attorney, please,
25 no admittance and no exiting during this period

1 of time.

2 They may exit in between the opening, say
3 when Mr. Rosenbaum finishes his comments, they
4 will be permitted at that time to enter and
5 they will also be permitted to leave.

6 THE DEPUTY: Does that
7 include --

8 THE COURT: Members of the
9 press will be excluded because it becomes very
10 distracting when they do come in. This is the
11 only reason.

12 Now, ladies and gentlemen, another little
13 thing at this point.

14 Let me note that when you first took your
15 seats you found a notebook and pencil waiting
16 for you. That is because I permit jurors in
17 this courtroom to take notes during the trial
18 if they want to, and to have their notes with
19 them during deliberations.

20 Now, I want to emphasize that none of you
21 are required to take notes. Indeed, you should
22 not do so if you think that note taking might
23 distract your attention from the evidence or
24 the testimony of the witnesses in the case.

25 On the other hand, if you think that

1 taking notes might better focus your attention
2 on the witnesses and the evidence, or might
3 better help you to recall what went on during
4 the trial, you may feel free to take notes.

5 You should remember that your notes only
6 are intended to be a help to your memory.
7 They should not take precedence over your own
8 independent recollection of the evidence.

9 Moreover, those jurors who do not take
10 notes should rely on their own memory of the
11 evidence and should not be influenced by the
12 fact that another juror has taken notes, since
13 the notes only are for the note taker's personal
14 use in refreshing his or her memory of the
15 evidence.

16 Whenever there is a recess in the trial,
17 please leave your notebooks and pencils on
18 your seats. They will be left there during
19 short recesses when I remain on the bench or
20 the courtroom is locked, and they will be
21 collected during overnight recesses and
22 given to me to keep.

23 At no time during or after the trial will
24 anyone, including myself, look at any of your
25 notes. At the end of the trial, after you have

1 finished your deliberations, I will ask that
2 each of you tear out your notes from your
3 notebook and give them to your foreperson.

4 In turn, I will ask the foreperson to give
5 me your notes and I will destroy them immediately
6 after the return of your verdict. Again, neither
7 I nor anyone else will look at any notes that you
8 have taken.

9 Now, ladies and gentlemen, we are ready to
10 proceed with the first part of this trial which
11 is set out to be opening statements. Opening
12 statements are not evidence, okay, they are
13 designed to assist you to some extent and they
14 are merely statements of counsel and again, not
15 evidence.

16 Mr. Grunda, who is giving your opening
17 statement?

18 MR. GRUNDA: Mr. Cleary.

19 THE COURT: Okay.

20 Mr. Rosenaum, you may give your opening
21 statement at this time.

22 MR. ROSENBAUM: Thank you, your
23 Honor.

1 OPENING STATEMENT TO THE JURY ON BEHALF OF THE STATE OF OHIO

2 BY MR. ROSENBAUM:

3 Good morning, ladies and gentlemen.

4 The evidence in this case will reveal that
5 on June 7th of 1993, an individual by the name of
6 Ronald Lally went to the Elyria Police Department,
7 he met with Detective Leiby and Detective Ashley.

8 Now, Ron Lally was a crack addict. He
9 struggled with addiction for most of his life.
10 At times he wanted to beat it. At times he
11 succumbed to his addiction and could not resist
12 doing things to promote his habit.

13 You will find that he engaged in a lot of
14 self-destructive things, one of which was stealing
15 from his girlfriend, Sandra Williams.

16 What prompted him to finally go to the police
17 was, he found himself in a position where he was
18 again stealing Sandra Williams' property and
19 selling it for crack cocaine.

20 He went to the Detective Bureau in a fit of
21 disgust, told them what he had done, told them
22 that he would cooperate to try to clean up his
23 life.

24 Now, I am not representing to you at this
25 point in Ron Lally's life he became drug free.

1 He struggled with his crack addiction for a very
2 long time and he never really beat it, but in any
3 event, he told Detective Leiby that his source of
4 crack cocaine were two people by the name of Danny
5 Smith and Raymond Smith who you will come to learn
6 are very close acquaintances of the Defendant,
7 Stanley Jalowiec, in this case.

8 In any event, on that same day, June 7th of
9 '93, Detective Leiby and Ashley wired up Ron
10 Lally, sent him out to purchase cocaine from his
11 source, Danny Smith and Raymond Smith, and that
12 was successfully done and they were able, through
13 Lally, to purchase six rocks of crack cocaine from
14 Danny, his dad, Raymond Smith, for \$100 on August
15 12th of 1993.

16 Danny Smith was arrested on August 19th, '93.
17 His father, Raymond Smith, was arrested on
18 September 7th, '93.

19 Danny Smith is aware or has figured out who
20 had set him up, who wore the wire, and he goes
21 to Sandra Williams' house and he tells Sandra
22 Williams that he knows where Ron Lally's parents
23 live.

24 He knows that she is the girlfriend and that
25 he is going to blow up the trailer, hurt her, hurt

1 them, if he persists in cooperating.

2 On September 15th of 1993 the police are
3 called by Ron Lally. They go to his apartment and
4 who was there, Danny Smith and the Defendant in
5 this case. They are there to threaten him.

6 You will hear testimony from Patrolman Homoki
7 who responded. By coincidence Patrolman Homoki
8 knew him from where they both worked before.

9 He knew Danny Smith and he recognized the
10 Defendant from past contact and he learned that
11 they are there to threaten him and Danny Smith is
12 confronted, but the Defendant runs off before
13 Patrolman Homoki can talk to him.

14 Now, in the next month, in October, October
15 20th of 1993, the State has to provide what is
16 known as discovery. In other words, we have to
17 tell any Defendant what evidence we have against
18 them so they can decide if they want a trial or
19 how they are going to handle their case and you
20 will see that that is properly learned through
21 the trial, that happens in all cases.

22 On October 20th of 1993, by law, the State
23 has to provide the evidence it has against Danny
24 Smith and Raymond Smith and one of those things
25 is a copy of the drug buy tape which positively

1 confirms that Ron Lally was a person that
2 cooperated with the government to arrest them.

3 On December 6th of 1993 the case of the
4 State of Ohio versus Danny Smith and the State
5 of Ohio versus father, Raymond Smith, are set
6 for trial. The trial date is January 19th,
7 1994.

8 Now, you are going to notice or hear
9 testimony that during this time an elaborate
10 scheme was undertaken to eliminate Ronald Lally
11 from living on this planet so he cannot testify.

12 You will hear testimony from several people
13 that there were offers made to them to hire them
14 to kill Ron Lally. You will hear testimony, I
15 hope, from people who will say that they attempted
16 to secure chemicals to knock him out so he could
17 be killed, but in any event, you are going to hear
18 testimony that they could not hire anyone to do
19 it.

20 That would be Raymond Smith, Danny Smith and
21 Stanley Jalowiec, so they formulated an elaborate
22 plan to do it themselves and this whole plan came
23 to fruition on the late evening hours of January
24 18th, 1994, and early morning hours of January
25 19th, 1994, which coincidentally just happens to

1 be the date that Ron Lally was to testify against
2 Danny Smith and Raymond Smith.

3 Obviously he never made it to Court.

4 You may also recall that this period of time
5 might have been one of the coldest time periods
6 on record in our history. That is where we had
7 the minus 28 degrees below zero weather, so what
8 happens is, their conspiracy generates a plan in
9 which Ron Lally would be hurried to a place where
10 he could be kidnapped at gunpoint and taken to
11 Cleveland and killed.

12 So, what happens is, Stanley Jalowiec goes
13 over to Brian Howington's house at 112 Greenway
14 Court in the City of Elyria.

15 Now, Brian's aunt is Corinne Fike and Corinne
16 also is a crack addict or was and you will hear
17 testimony that many of the people involved in this
18 were all in the circle that used crack cocaine.

19 Corinne permitted Stanley, the Defendant,
20 and the two Smiths, Danny and Raymond, to use her
21 car so they could do whatever they had to do in
22 exchange for crack cocaine in the past and this
23 night the Defendant went over to Brian Howington's
24 or actually Corinne Fike's apartment and they got
25 her 1992 Chrysler LeBaron convertible and they

1 took it.

2 Now, Corinne was not actually aware that
3 they had taken her car, but they had done it so
4 many times in the past that this did not cause
5 her any great concern, so Stanley and Howington
6 go to Ron Lally's apartment to pick him up and
7 they smoke crack cocaine there and eventually
8 they return about one in the morning to Corinne
9 Fike's apartment at 112 Greenway and play pool
10 for an hour.

11 While this is going on, Raymond Smith,
12 Danny Smith, Michael Smith, some of their
13 girlfriends, a person by the name of Sharon
14 Hopkins and Terry Hopkins are in and out of
15 there, too, are downtown drinking and eating
16 breakfast, ending up at Mom's Open Kitchen.

17 What happens at a point in time, Raymond
18 Smith pages Stanley Jalowiec and Stanley knows
19 then it is time to leave, so he takes Ron Lally
20 with him and starts driving this convertible
21 and he drives them out Middle Avenue.

22 Well, at the same time Danny Smith is driving
23 a car that contains Sharon Hopkins, Danny, Michael
24 Smith and Raymond and they leave downtown Elyria
25 and drive their car out past the railroad tracks

1 on Middle Avenue and let Michael and Raymond
2 Smith out of the car.

3 Michael is also a son of Raymond and a
4 brother of Danny. They get out of the car past
5 the railroad tracks and go wait by a barn in the
6 woods on one of the coldest nights of the year.

7 Danny then takes the car he is driving back
8 north a little bit and parks it and Sharon Hopkins
9 is still in the car and actually sees the LeBaron
10 go by.

11 At that point in time Stanley stops the car
12 and you will hear testimony from Michael that
13 Raymond Smith and Michael get in and that Raymond
14 Smith produces a gun and holds Ron Lally at
15 gunpoint.

16 The car continued around and goes back
17 northbound. Sharon again sees the car go by
18 them and Danny Smith follows behind them.

19 At some point in time shortly thereafter,
20 Danny does not want to be seen, ducks down,
21 tells everyone in the car he doesn't want
22 anyone in the car to see him and asks Sharon
23 Hopkins to check on who is in the car.
24 Sharon will be able to tell you that the
25 Defendant was the driver of that car.

1 You will hear testimony that sometime
2 after the arrest, Michael Smith, who was
3 mentally disturbed somewhat before, became so
4 upset about what he saw the Defendant and his
5 father do to Ron Lally, that he came forward
6 and gave a statement to the police and Michael
7 is here and he will testify in this trial and
8 he is going to tell you that they took Ron
9 Lally at gunpoint and eventually ended up in
10 a cemetery in Cleveland where they got him out
11 of the car.

12 It is like minus 28 degrees, the wind
13 chill is unbelievable and he is out of the car.
14 Raymond gets out of the car with a gun and
15 shoots Ron Lally once through the tooth, lodges
16 in his throat.

17 The coroner will tell you that this wound
18 was real superficial and did not threaten his
19 life.

20 At that point in time a fight ensues and
21 Raymond Smith realizes he is not capable of
22 subduing Ron Lally on his own, who is quite a
23 large human being, and Stanley gets out of the
24 car to help and between the two of them, they
25 beat Ron Lally into a state of unconsciousness

1 and I think you will hear testimony that they
2 bragged about that.

3 He wouldn't stay down, so they stomped him,
4 they beat him, left him laying in the freezing
5 cold, returned to the car.

6 Stanley is still driving, whereupon Stanley
7 backs the car into Ron Lally's body several times
8 with sufficient force that the only thing that
9 stops it is the body being wedged up against the
10 tires and between beating him, stomping him and
11 running him over with the car and leaving him in
12 the minus whatever it is 60-degree wind chill
13 factor, shirtless, Ron Lally dies of the injuries
14 that this Defendant and Raymond Smith brutally
15 inflicted on him while Michael looked on from
16 the car.

17 They returned. They bring the car back
18 about 6:00 a.m. on the 19th of January, 1994,
19 again the date of the trial and Joann Fike is
20 now home and she sees for some strange reason
21 Stanley Jalowiec and Raymond Smith elected to
22 wash her car on the coldest night of the year
23 and it is frozen solid.

24 She also notices there is blood on the car
25 and asks them about it and Stanley and Raymond

1 tell her that they were in a fight behind Mom's
2 Open Kitchen, but you will learn from the police
3 that there was no such fight reported at any
4 time.

5 At ten o'clock on that day Ron Lally's
6 body is discovered by the Cleveland authorities,
7 no one knows who he is. The remnants of part
8 of a gun are found near him, as are the
9 clothing and the knife.

10 I forgot to tell you, somewhere in the
11 melee the attempt to subdue Ron Lally, it wasn't
12 enough that they shot him, stomped him and hit
13 him with a car, at some point in time they
14 attempted to slice the throat as well and put
15 a nasty wound on the throat, but that turned
16 out to be not life threatening.

17 The evidence is gathered. On January 29th
18 of '94, Mr. Lally's father realizes his son is
19 missing and reports him missing. Two and two
20 are put together by the Cleveland Police
21 Department and on February 10th of 1994 Mr.
22 Lally identifies his son's body at the morgue.

23 You will hear testimony that later that
24 morning they bragged about accomplishing their
25 act and statements were made, "My troubles are

1 over now, I don't have to worry, we took care
2 of business."

3 The statement about, "He wouldn't stay
4 down, we stomped him" were made, giving you
5 admissions.

6 Now, an interesting thing happens. The
7 case is obviously dismissed sometime in March
8 because we cannot find our witnesses.

9 Detective Leiby is obviously now assisting
10 the Cleveland Police Department and eventually
11 follows this case through. Aside from his own
12 instincts and suspicions, Danny Smith now finds
13 himself, in July of 1994, in trouble for selling
14 drugs again and in an effort to extricate himself
15 from this, he begins to offer information to
16 solve the homicide of Ron Lally in hopes for
17 consideration.

18 It is obvious to Detective Leiby that Danny
19 Smith does not have real firsthand knowledge as
20 to what went on in Cleveland, says he has to deal
21 with the people involved.

22 On July 5th of 1994, Raymond Smith comes in
23 and makes a statement. Now, Raymond Smith is in
24 a precarious position. He wants to help his son
25 who is the leader of this little drug world.

1 Raymond Smith is a crack addict himself. His life
2 has fallen apart and he cannot exist without Danny
3 or having crack cocaine.

4 However, he wants to preserve the son's
5 freedom, but he doesn't want to take away his own,
6 so he tells Detective Leiby a story which reverses
7 the role of Ron Lally and himself as to who had
8 the gun, puts them all there together and finally
9 gives up the name of Stan Jalowiec as the person
10 that was there with him.

11 You will hear testimony from the Cuyahoga
12 County Coroner that an extensive autopsy was done,
13 blood work was done and analysis of hairs that
14 were found in Joann's car much later by Detective
15 Leiby were compared to the clothing of the victim
16 at the scene and you will find Ron Lally was in
17 the car.

18 They attempted to place him in the trunk
19 after they killed him. He was too large that his
20 body is in the trunk of that car and that his body
21 contains hairs from Joann Fike's dog who had also
22 been in the car at one time or another.

23 You will see or gather from the evidence that
24 this was a conscientious premeditated, carefully
25 orchestrated plan to get even, where they needed

1 to be at the precise time and moment so he could
2 be kidnapped on the early morning hours on the
3 date he was to testify and they took him to
4 Cleveland and brutally and horribly ended his
5 life so that he would not have to face a jail
6 sentence and that Stanley Jalowiec drove the car,
7 drove the car into the body, participated in the
8 kidnapping and was a principal.

9 The only thing he did not do was the gunshot
10 and perhaps he didn't cut his throat, but those
11 two things did not kill Ron Lally. He contributed
12 to the beating and the stomping and he rammed his
13 body repeatedly with the car that he was driving,
14 then he engaged in the coverup.

15 He bragged about what he did later. He is
16 as guilty as the others. He participated in the
17 plan and in this plan that took the life of a
18 government witness so that he could help
19 maintain his friend's drug business.

20 It is a calculated, cold blooded and heinous
21 killing of a human being.

22 Thank you.

23 THE COURT: Thank you, Mr.

24 Rosenbaum.

25 Mr. Cleary?

1 OPENING STATEMENT TO THE JURY ON BEHALF OF THE DEFENDANT

2 BY MR. CLEARY:

3 Thank you, your Honor. Good morning, folks.

4 This is a very serious matter we are here
5 for. I will ask your indulgence. I doubt I will
6 be as long as Mr. Rosenbaum here.

7 Quite frankly, as we represent the Defendant,
8 Stanley Jalowiec, and we don't have to prove a
9 thing here, we have no burden of proof in this
10 case, this case has to be proven by the
11 Prosecutor, by the State of Ohio, and they have
12 to prove each and every element of this crime
13 beyond a reasonable doubt.

14 Now, you heard a lot here just now in a
15 very intricate and contrived manner. I believe
16 a scheme he called it.

17 And you were told a lot about some other
18 people here, some other role players and we
19 believe the evidence will show that the State's
20 case depends on the State being able to do one
21 thing and that is, turning the acts of these
22 other people by using the word "they" all the
23 time to include Stanley Jalowiec.

24 The whole case depends on you associating
25 Mr. Jalowiec with these other people's activities.

1 He promised you a lot here. He took you through
2 somebody else's drug case, somebody else's witness
3 disappearance, whole bunch of phone calls in the
4 middle of the night and an intricate scheme.

5 Now, I ask you to hold him to that promise,
6 that he will be able to show you that each of
7 these things happened, but not in the sense of
8 "they," but that everything happened, that he
9 can show beyond a reasonable doubt that Mr.
10 Jalowiec took part in this.

11 Now, initially the prosecution will read
12 an Indictment and the Judge did read it to you
13 the other day, but I am going to do something
14 a little different. I am going to read to you
15 the Indictment here as to exactly what it is
16 that he is accused of, because what you have
17 just heard is a lot.

18 There are a lot of things here that he
19 simply is not accused of. It is other people,
20 but we have to throw Stan in to make the case.

21 These are the issues that you are dealing
22 with, whether or not that you find that the
23 above-named Defendant, Stanley Jalowiec, not
24 "they," not Danny Smith, not Raymond Smith, did
25 purposely and with prior calculation and design

1 cause the death of Ronald Lally in violation
2 of the Ohio Revised Code and there are
3 specifications with that, one of which is
4 whether Stanley Jalowiec had a firearm on or
5 about his person, an automatic firearm, as
6 defined in the Ohio Revised Code, on or
7 about his person or under his control while
8 committing that felony enumerated in Count
9 One, which is the murder.

10 Your question is not whether "they" did
11 this. The question, and we believe the evidence
12 will show, that he did not do this. He did not
13 do this. Do not get sidetracked.

14 Now, there is a certain order to the way
15 things are presented here. You have been
16 through the jury selection and how you get to
17 get into sitting in on this and what we do
18 after this is that the State will then begin
19 to present witnesses and evidence and because
20 they have the burden of proof, they go first
21 and what I am asking you to do is not form
22 any opinions until all of the evidence is in.

23 You are going to get a lot of different
24 things. Some may be repetitive, some may be
25 gruesome. Please keep in mind that this

1 murder did happen. We are not denying it.
2 We are denying Stanley was involved in it,
3 all right?

4 What we have here or what you need to
5 understand is that you are going to be looking
6 at some scientific evidence, though it may be
7 gruesome, you have to determine whether or not
8 it applies or whether it shows involvement on
9 the part of Stanley.

10 Now, after the State is done cross-examining
11 any particular witness -- or direct examination,
12 I am sorry -- then we get to cross-examine them.

13 I will ask you to pay attention to the
14 cross-examination just as completely as you will
15 the direct examination. They are usually done a
16 little differently.

17 The direct examination, the Prosecutor
18 will ask the person to tell a story. On
19 cross-examination the defense, Mr. Grunda or
20 myself, will get up and ask more specific
21 questions.

22 Listen to the person's whole testimony,
23 all right?

24 There will be various kinds of witnesses
25 up there. There will be expert testimony. You

1 will hear from the Coroner's Office in Cuyahoga
2 County. You will have that scientific evidence.

3 You will have to determine whether that
4 scientific evidence would apply to show Mr.
5 Jalowiec's involvement as applied to Mr.
6 Rosenbaum's theory of the case.

7 Then there are also other fact witnesses,
8 people who are allegedly on the scene, people
9 who were involved. These people you must pay
10 attention to.

11 It is up to you to determine their
12 credibility. Use your own life experiences to
13 determine whether these people are going to
14 gain something from their testimony, whether
15 they are lying or telling the truth, whether
16 they are believable.

17 Now, our position in this case is, aside
18 from the scientific evidence, the fact witnesses
19 here and I am calling them fact witnesses, but
20 to us they will be, in our view, more fiction
21 witnesses.

22 The fact witnesses, most of their testimony
23 -- for the most part their testimony is bought
24 and paid for. Somehow they are getting a break
25 from the police.

1 We have someone involved in the murder who
2 is walking around free because of it, because of
3 his giving testimony and we have people who are
4 hearing conversations and that is the testimony
5 against Stan, the most damaging, damaging that
6 is bought and paid for.

7 Everybody has a jail sentence -- not
8 everybody, but these people have jail sentences
9 hanging over their heads or have gotten special
10 favors from the police department and I ask you
11 to weigh that. What do they have to gain and
12 how long did it take them to come forward?

13 We believe the facts will show that their
14 testimony will be patently unbelievable, that
15 they are self-serving and motivated to keep
16 their own butts out of jail. These factors
17 you must weigh, you must consider whether they
18 are enough to convict Stan, not "they."

19 That is not the issue -- Stanley Jalowiec
20 individually of murder, and whether he had this
21 gun.

22 Again, you have been given a very complex
23 plot and we don't believe the evidence will
24 fulfill the elaborate scheme that Mr. Rosenbaum
25 talked about, but you must hold him to that.

1 you must hold him to those promises that he
2 made you.

3 This whole scheme has to be proven and if
4 anything is missing here, you must return a
5 verdict in favor of our client of not guilty.

6 Now, once again I ask you to withhold
7 forming any opinions. A lot of stats show a
8 jury forms an opinion during opening and I
9 hope none of you made up your mind by now
10 because there is a lot of information, a
11 lot to sort out, and I ask that you wait
12 until cross-examination is finished before
13 you determine the credibility of any
14 witnesses and then you must take and decide
15 if there is conflicting testimony, who to
16 believe over another.

17 You wait until the entire case is
18 complete. This is a case of guilt by
19 association. That is what is going to be
20 presented. More evidence of other people
21 or other things going on.

22 You will see here the weaker the State's
23 case is. Please keep that in mind. Your job
24 is not to find somebody guilty based on life
25 style, based on who they know or where they

1 were.

2 Your job is to make a determination as
3 to what that person did, that person only, and
4 please keep that in mind and we feel that after
5 the evidence is in, you will find that Stanley
6 Jalowiec is not guilty of murder.

7 Thank you very much.

8 THE COURT: Mr. Rosenbaum, your
9 first witness, please.

10 Again, Deputy, if someone wants to come in
11 now, they may.

STATE'S CASE

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

DIRECT EXAMINATION OF SCOTT ASHLEY

BY MR. ROSENBAUM:

Q Would you state your name, please, sir?

A Scott Ashley.

Q Spell the first and last name for the Reporter, please?

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

Q Are you employed, sir?

A Yes, I work for the City of Elyria Police Department.

Q And how long have you served the City of Elyria as a Police Officer?

A Six years.

Q Are you currently assigned to a particular unit --

A Yes --

Q (Continuing) -- of the police department?

Will you tell the Court and jury what that unit or division is, please?

A I work for Narcotics Division.

Q And how long have you worked in Narcotics?

A About four years.

1 Q Are you familiar with an individual by the name of
2 Ron Lally?

3 A Yes, I am.

4 Q And how is it that you know him, sir?

5 A He was a CI for Detective Leiby and myself.

6 Q Can you tell the Court and jury what exactly a CI,
7 confidential informant, is, sir?

8 A It is a person that went to work for the police
9 department and do things like I cannot do, buy drugs
10 from people that we cannot directly buy from.

11 Q I would like to hand you a photograph which has been
12 marked for identification as State's Exhibit 2-B and ask
13 you to look at that, please.

14 A That is a picture of Ron Lally.

15 Q I would like to again hand you what has been marked
16 for identification as State's Exhibit 2-B, ask you to look
17 at it, please.

18 Can you identify the person who is depicted in that
19 photograph, sir?

20 A Yes.

21 Q And who is that?

22 A Ron Lally.

23 Q I would like to hand you a document that has been
24 marked for identification as State's Exhibit 9 and ask
25 if you can recognize that, sir?

- 1 A Yes, I can.
- 2 Q Can you tell the Court and jury what it is?
- 3 A It is an Elyria Police Department Confidential
- 4 Informant Agreement.
- 5 Q And who is the confidential informant that entered
- 6 into that agreement?
- 7 A Ronald Lally.
- 8 Q Does that document contain any markings which identify
- 9 you as participating in that agreement?
- 10 A Yes, it has my name and my initials next to it.
- 11 Q And can you tell the Court and jury what day that
- 12 document was executed?
- 13 A June 7th, 1993.
- 14 Q Will you tell the Court and jury what Ron Lally did, if
- 15 anything, after he agreed to become a confidential informant
- 16 for your unit?
- 17 A He gave us some different names of people that he could
- 18 purchase drugs from and we set our investigation into
- 19 motion.
- 20 Q And who did you buy drugs from, if anyone, using Ron
- 21 Lally?
- 22 A Danny Smith.
- 23 Q Anybody else?
- 24 A Raymond Smith.
- 25 Q Now, how did this come about?

1 A We met with him --

2 THE COURT: When you say

3 "him" --

4 THE WITNESS: We met with Ron
5 Lally in the morning of June 7th of 1993. We
6 had wired him, searched him, gave him police
7 buy money and sent him to the area of West River
8 by the Mall and we had control of him the entire
9 way.

10 Dropped him off and sent him into the
11 apartment to purchase crack cocaine from Danny
12 Smith.

13 Q So, whose apartment was this that Ron Lally went to?

14 A As far as we knew it was Danny Smith's apartment.

15 Q Was Danny Smith the only one there when he got there?

16 A No, he wasn't.

17 Q Who else was there?

18 A Raymond Smith.

19 Q And how do you know this?

20 A We fit them with listening devices that transmits and
21 we can hear what is going on.

22 Q While you were hearing it, do you do anything else to
23 preserve it?

24 A We make a tape recording of it.

25 Q I would like to hand you what has been marked for

1 identification as State's Exhibit 10 and ask if you can
2 identify this, please?

3 A This is the buy tape from that morning. We purchased
4 crack cocaine from Danny Smith.

5 Q And Raymond?

6 A And Raymond Smith, yes.

7 Q Is that a true and accurate copy of the conversation
8 that took place between Ron Lally and the Smiths?

9 A Yes.

10 Q I would like to hand you two other documents that have
11 been marked as State's Exhibits 6 and 7 and ask you to look
12 at them, please.

13 Do you recognize them?

14 A Yes, I do.

15 Q What are they, sir?

16 A They are arrest reports.

17 THE COURT: Identify each one,
18 please.

19 THE WITNESS: Complaint No. 93 --

20 THE COURT: Are they marked with
21 an exhibit number?

22 THE WITNESS: Exhibit 6 would be
23 the arrest report for Raymond Smith.

24 Q What does it say when he was arrested?

25 A Date would be August 19th, '93.

- 1 Q And what is the other document, State's Exhibit 7?
- 2 A That would be the arrest of Danny Smith.
- 3 Q And what date was Danny Smith arrested?
- 4 A On August 12th, '93.
- 5 Q And were those arrest reports for the alleged violation
- 6 of selling drugs to Ron Lally June 7th of '93?
- 7 A That is correct.
- 8 Q Are those two exhibits and the informant agreement true
- 9 and accurate copies or, in fact, the informant agreement,
- 10 the original and official record, kept in the ordinary
- 11 course of business by the Elyria Police Department?
- 12 A That is correct.
- 13 Q Now, I would like to hand you two other documents that
- 14 have been marked for identification as State's Exhibits 4
- 15 and 5, ask if you recognize them, please?
- 16 A Yes.
- 17 Q Which one do you have, sir?
- 18 A State's Exhibit 4.
- 19 Q What is that?
- 20 A It would be the Indictment through Lorain County Common
- 21 Pleas Court for Raymond Smith.
- 22 Q Pertaining to the drug buys that Ron Lally made?
- 23 A That is correct.
- 24 Q What would the other document be, State's Exhibit 5?
- 25 A State's Exhibit 5 would be an Indictment through Lorain

1 County Common Pleas Court for Danny Smith for the same,
2 selling that morning.

3 Q Are those two documents the Court files for this
4 courthouse for Danny Smith and Raymond Smith?

5 A That is correct.

6 Q And eventually were the cases set for trial against
7 the two Smiths?

8 A Yes, they were.

9 Q And what happened to their cases, sir?

10 A They were both dismissed.

11 Q Why is that?

12 A Because we could not produce the informant.

13 MR. ROSENBAUM: I have no other
14 questions, your Honor.

15 THE COURT: Mr. Grunda, you
16 may cross.

17 MR. GRUNDA: Thank you, your
18 Honor.

19

20

21

22 CROSS-EXAMINATION OF SCOTT ASHLEY

23 BY MR. GRUNDA:

24 Q Now, Detective Ashley, what has been marked for
25 identification as 2-B, this picture --

- 1 A Correct --
- 2 Q (Continuing) -- you identified that as Ron Lally,
- 3 correct?
- 4 A Correct.
- 5 Q That is not how he looked when you talked to him in
- 6 June of '93, is it?
- 7 A No, it is not.
- 8 Q This tape that you have marked State's Exhibit 10 --
- 9 A Correct --
- 10 Q (Continuing) -- have you had that in your possession
- 11 and control this entire time up until this date?
- 12 A As far as I know it has been. I did not have it.
- 13 Q You didn't have it?
- 14 A I did not have it.
- 15 Q So, other people had access to this tape?
- 16 A Other people in our unit, yes.
- 17 Q Okay. What has been marked for identification as
- 18 State's Exhibits 4 and 5, which are the red folders, you
- 19 didn't prepare those, did you?
- 20 A No, I did not.
- 21 Q You really didn't know what was in those folders,
- 22 did you?
- 23 A I looked through them.
- 24 Q Before today?
- 25 A This morning I looked through them.

1 Q So you never saw them before this morning?
2 A Correct.
3 Q Now, these two, State's Exhibit 4, which is regarding
4 Raymond Smith, and State's Exhibit 5, regarding Danny Smith,
5 those are the only two cases that came from your dealings
6 with Ron Lally, correct?
7 A The case you are talking about today, yes.
8 Q Stan Jalowiec wasn't part of it, was he?
9 A Not that morning, no.
10 Q The only two people that were there were Raymond Smith
11 and Danny Smith, right?
12 A Correct.
13 Q Stan Jalowiec was not at that residence, right?
14 A That is correct.
15 Q Since he wasn't there, obviously he is not charged with
16 anything?
17 A That is correct.
18 Q Now, this buy agreement that is marked State's Exhibit
19 9 --
20 A Correct --
21 Q (Continuing) -- that is it?
22 A Right.
23 Q Okay. Now, you stated that Ron Lally himself had
24 charges and he wanted to work them off?
25 A I don't recall why he wanted to work, I don't remember.

1 I don't remember if he had charges or not.

2 Q But that is the general thing, a person has a charge?

3 A Sometimes, yes.

4 Q Could be a drug charge, so they don't get charged they

5 turn in their supplier?

6 A That could be.

7 Q That is normally the way it works?

8 A Sometimes, yes.

9 Q And, in fact, that helps you in your unit doing it that

10 way, you keep going up the chain?

11 A Correct.

12 Q So it is a common thing to have people sign these

13 agreements so you can keep them going up the chain, correct?

14 A Correct.

15 Q Okay. And then when you type up, like the first sheet

16 is a standard pre-printed form?

17 A Correct.

18 Q The second sheet then, you have more detailed

19 information regarding that individual person?

20 A Correct.

21 Q And that is when you expect him or what you expect to

22 get out of him for working for you, right?

23 A Correct.

24 Q Okay. And that is on the second page where it says

25 informant associations, right?

- 1 A Correct.
- 2 Q It lists for Mike?
- 3 A Correct.
- 4 Q Shawn?
- 5 A Correct.
- 6 Q Some girl?
- 7 A Correct.
- 8 Q But no name for the girl?
- 9 A Correct.
- 10 Q West Broad Street, Mario?
- 11 A Correct.
- 12 Q A young guy named Bo?
- 13 A Correct.
- 14 Q Another guy named Eaman?
- 15 A Something to that effect, yes.
- 16 Q Now, nowhere in there is Stan Jalowiec's name
- 17 mentioned?
- 18 A No, it is not.
- 19 Q Okay. Nor in there is Raymond Smith or Danny Smith's?
- 20 A Not in that block, you are correct.
- 21 Q Okay. So, when you signed him up -- that is the date
- 22 he was signed up, June 7th of '93, at the time of 7:07 a.m.,
- 23 correct?
- 24 A Correct.
- 25 Q 125 Court Street?

1 A Correct.

2 Q That is where you do that.

3 When he is talking about his associates, Stan is not
4 mentioned anywhere in there?

5 A That is correct.

6 Q Stan Jalowiec's name is not on this, either of these
7 two sheets regarding this CI, right?

8 A That is correct.

9 Q But somehow, after talking to him, even though the
10 two Smiths' names aren't mentioned, you send him over to
11 the Smiths' place, right?

12 A Correct.

13 Q Okay. That must have been somebody you wanted to
14 get, right?

15 Your unit wanted to get them?

16 A If it was a person that we wanted to get, it is a
17 person that he had to have been able to buy from in the
18 past.

19 Q Right, but it is fair to say the way the unit works,
20 if you know these people, you want to get them, that is
21 why you have CIs, you send them in, they get the buys and
22 then you can prosecute them, right?

23 A Correct.

24 Q And that is what was going on with your unit as far
25 as the Smiths, right?

1 A Correct.

2 Q Okay. On or about this June 7th date that you had Ron
3 Lally go out to the Smiths' house where Stan wasn't present
4 and make that controlled buy, that resulted in these two
5 cases, did Ron Lally do any other business for you?

6 A Not that I remember.

7 Q Okay. And if he did, where would that be noted at?

8 A On the bottom of the CI sheet.

9 Q Okay. As indicated on State's Exhibit 9, which is the
10 CI informant sheet, the only notation you have is regarding
11 Danny Smith, right?

12 A Correct.

13 Q So the only thing he did for you was one time, June
14 7th, '93, against the Smiths, right?

15 A As far as I remember, yes.

16 Q Would it be fair to say he slipped back into his normal
17 drug ways and didn't help you guys anymore?

18 A I don't remember.

19 Q You had no more contact with Ron Lally?

20 A I did not.

21 Q You didn't go out and try to find him and see if he
22 could help you anymore?

23 A No, I didn't.

24 Q You kind of let him drift off into nowhere to do
25 whatever?

- 1 A He went about his regular business, I guess.
- 2 Q You had no idea what that was?
- 3 A No, I did not.
- 4 Q You did know that he had a cocaine problem before
- 5 coming to you to be an informant?
- 6 A Myself, no, I did not. I don't know what he did.
- 7 Q But your unit might have known?
- 8 A Someone in the unit might have known.
- 9 Q Mr. Rosenbaum indicated in the opening that he did
- 10 have a cocaine problem and came to you guys.
- 11 When you signed him up, you were not aware of that?
- 12 A I don't remember if there was a problem or not at this
- 13 time. I don't remember.
- 14 Q Even though you were there and signed him up?
- 15 A I was there and I did help Detective Leiby sign him up.
- 16 Q So there might have been other information about his
- 17 problem that he discussed with Detective Leiby?
- 18 A He might have discussed it with Detective Leiby.
- 19 Q Okay. Now, Officer, on the second page of your CI
- 20 sheet, which is State's Exhibit 9, there is five different
- 21 lines there, right?
- 22 A Correct.
- 23 Q And only the one is filled out, right?
- 24 A Correct.
- 25 Q Would it be fair to say that you had the five different

1 lines because that is what you expect for a CI, to make five
2 controlled buys for your unit in order to get out of their
3 charge?

4 A No.

5 Q That is not how your division works?

6 A No. If you look, there is actually probably ten spaces
7 altogether.

8 Q How many do you expect him to do then before he would
9 work off his charge?

10 A That would be up to the Prosecutor's Office, not ours.

11 Q So, it could be as little as one or as many as ten?

12 A Could be, yes.

13 Q What is your normal procedure there?

14 A Normally we would contact the Prosecutor's Office,
15 tell them they could do whatever they could do at that
16 time and we contact the Prosecutor's Office and they
17 would make the deal. We don't make the deals.

18 Q So, in other words, if a person is higher up in the
19 drug community or a bigger dealer, that might have been
20 sufficient whereas three little guys may be sufficient
21 also?

22 A That is correct.

23 Q That is what you are saying?

24 A Correct.

25 Q Now, Officer, handing you State's Exhibit 4, which

1 is the case State of Ohio versus Raymond Smith, okay, I
2 am asking you to look at the Indictment, okay?

3 In the Indictment it indicates that the amount of
4 substance that Ron Lally purchased under your controlled
5 buy here would be an amount less than the minimum bulk
6 amount, is that correct?

7 A Less than bulk amount, correct.

8 Q Read it, exactly what it says.

9 A An amount less than the minimum bulk amount.

10 Q Okay. And in the case, State's Exhibit 5, which is
11 State of Ohio versus Danny Smith, does it also indicate
12 the same amount in that Indictment and an amount less
13 than the minimum bulk amount?

14 A Correct.

15 Q Okay, so it would be fair to say that is a very small
16 amount then because it is less than a minimum bulk defined
17 by the State of Ohio and the Ohio Revised Code?

18 A Depends on the Ohio Revised Code, yes.

19 MR. GRUNDA: No other questions.

20 MR. ROSENBAUM: I don't have any
21 other questions.

22 THE COURT: Thank you, sir,
23 you may step down.

24 (Witness excused.)
25

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

6 DIRECT EXAMINATION OF SANDRA WILLIAMS

7 BY MR. ROSENBAUM:

8 Q Will you state your name, please?

9 A Sandra Williams.

10 Q Are you employed, Ma'am?

11 A Yes, I am.

12 Q What do you do for a living?

13 A I am a lead assembler at Parker-Hannifin.

14 Q How long have you worked there, Ma'am?

15 A Twenty-two years.

16 Q Do you know a man by the name of Ronald Lally?

17 A Yes, I do.

18 Q How do you know him?

19 A I was his fiance.

20 Q I would like to hand you a picture that has been
21 marked as State's Exhibit 2-B and ask if you recognize
22 the person in that photo?

23 A Yes.

24 Q Who is that, Ma'am?

25 A That is Ronald Lally.

1 Q How long did you know Mr. Lally for?
2 A Thirteen years.
3 Q Were you still dating him at the time of his death?
4 A Yes, sir.
5 Q Did you date him steadily for those 13 years?
6 A Most of the time, yes.
7 Q And were there times that you broke up with him?
8 A Yes.
9 Q Will you tell the Court and jury what led to those
10 periods of time?
11 A Drugs.
12 Q What do you mean by that?
13 A The last four years he was on crack and I didn't like
14 that.
15 Q And did he do things that upset you to support his
16 habit?
17 A Yes, sir.
18 Q What?
19 A Stole from me.
20 Q Like what kind of things did he take from you?
21 A Microwave, VCR, jewelry, money.
22 Q Did he admit these things to you?
23 A Yes.
24 Q And why did he say that he stole these things?
25 A To get money.

1 Q To do what?

2 A To buy crack.

3 Q Now, in June of '93, do you recall him taking something
4 from you?

5 A My microwave.

6 Q And do you know -- did he admit to you what he did with
7 that?

8 A No, sir.

9 Q Now, did Mr. Lally reside with you?

10 A Most of the time, yes.

11 Q When would he not reside with you?

12 A When he was in treatment or the last couple months of
13 his life.

14 Q Where would he stay if he wasn't with you?

15 A A lot of times on the street.

16 MR. GRUNDA: Objection.

17 She wasn't with him. How would she know.

18 THE COURT: Do you know where
19 he spent his time or are you surmising?

20 THE WITNESS: Going by what he
21 told me.

22 THE COURT: What he told you?

23 THE WITNESS: Right.

24 THE COURT: Sustained.

25 Q Did he have a place of his own?

- 1 A An apartment, yes.
- 2 Q What was the address there?
- 3 A It was on Middle Avenue across from the high school.
- 4 I don't know the address.
- 5 Q Now, did anything unusual happen to you on September
- 6 7th of '93?
- 7 A Yes, sir.
- 8 Q Will you tell the Court and jury what happened?
- 9 A A man came into my yard and was threatening Ron and
- 10 his family.
- 11 Q Did you know this man at that time?
- 12 A No, sir.
- 13 Q Did you later recognize a picture of a person through
- 14 Detective Leiby?
- 15 A Yes.
- 16 Q Was that a picture of the person that came into your
- 17 yard on September 7th?
- 18 A Yes, sir.
- 19 Q And did you learn his name at that time?
- 20 A I learned his name prior to that, but, yes.
- 21 Q How did you learn his name prior to that?
- 22 A My son-in-law knew him personally.
- 23 Q And what was his name?
- 24 A Danny Smith.
- 25 Q And what did he have to say to you?

1 A He said that he knew where Ron was at.

2 MR. GRUNDA: Objection.

3 THE COURT: Come forward,
4 please.

5 (Whereupon, the following proceedings
6 occurred at the bench out of the hearing of the
7 jurors.)

8 THE COURT: This is one of
9 the exceptions, right?

10 MR. ROSENBAUM: Statements made
11 in furtherance of the conspiracy. We feel we
12 have established a conspiracy through Homoki.

13 MR. GRUNDA: Your Honor,
14 first, he is not charged with conspiracy.

15 THE COURT: He may not be.

16 MR. ROSENBAUM: Doesn't have to be.

17 THE COURT: In the Indictment?

18 MR. GRUNDA: Yes, he does.

19 Conspiracy is a separate charge.

20 MR. ROSENBAUM: It is a separate
21 crime under the Ohio Revised Code, conspiracy, as
22 it exists for the evidentiary rule has nothing to
23 do with that and does not have to be a charge and
24 I can get you case law on that.

25 MR. GRUNDA: Secondly, your

1 Honor, there is no foundation to this. There is
2 none at all.

3 All he talked about so far has nothing to
4 do with the Defendant.

5 THE COURT: Develop the
6 conspiracy a little bit.

7 MR. ROSENBAUM: All I have to do
8 is show a prima facie case.

9 THE COURT: I don't know that
10 you did with Ashley.

11 MR. ROSENBAUM: I have this person
12 buying drugs from Danny Smith.

13 Now, Danny Smith is there. Danny is involved
14 with the conspiracy at this point.

15 MR. GRUNDA: There is nothing to
16 show that Stan was involved. That is what I am
17 trying to say.

18 MR. ROSENBAUM: I don't have to show
19 Stan was involved for this to not be hearsay.

20 THE COURT: Okay. Thank you.

21 I am going to overrule your objection. You
22 can have your exceptions, Mr. Grunda.

23 MR. GRUNDA: Yes, I except to
24 that because for two reasons.

25 One, there was no foundation properly laid.

1 Two, he is not charged with conspiracy and
2 it doesn't even come under the complicity section
3 because he is not charged with that either.

4 THE COURT: Let's proceed.

5 (Whereupon, the following proceedings
6 occurred back in the hearing of the jury.)

7 Q Will you tell the Court and jury what Danny Smith had
8 to say to you?

9 A He said that he knew where Ron's family lived and he
10 knew where Ron was and it would be a shame if anything
11 happened to his family or to myself.

12 Q Did he indicate if he had knowledge of what type of
13 structure Ron's family lived in?

14 MR. GRUNDA: Objection.

15 THE COURT: Overruled.

16 A Yes, he said he knew that they lived in a trailer
17 and it would be a shame if it got blown up.

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

20 THE COURT: Mr. Grunda?

21 MR. GRUNDA: Thank you, your
22 Honor.

CROSS-EXAMINATION OF SANDRA WILLIAMS

BY MR. GRUNDA:

Q Ms. Williams, the picture you were shown of Ron, that is not how you normally saw him, right?

A No, sir.

Q Now, you, being, as you indicated, his fiance, the problems that you had with him were all basically crack cocaine and/or drug related.

Would that be fair to say?

A Yes, sir.

Q In other words, when he would start doing the crack cocaine and so forth, that is when the problems would start between you and he and your relationship?

A Yes, sir.

Q Okay. In fact, I believe you indicated that he, because of that crack cocaine addiction, he would steal things from you to get money to support that crack habit?

A Yes, sir.

Q You indicated that he stole your microwave?

A Yes.

Q Do you know when that was?

A In June. I couldn't tell you the date, but it was in June.

Q Of what year, Ma'am?

A Ninety-three.

1 Q June of '93.
2 Do you recall if it was in the beginning of the month
3 or at the end of the month?
4 A No, I can't.
5 Q How about the VCR?
6 A Christmas eve.
7 Q He took that Christmas eve of what year?
8 A Ninety-three.
9 Q So that would be about six months later then?
10 A (Whereupon, the witness nodded in the affirmative.)
11 Q You have to answer yes, Ma'am, because he has to
12 take it down.
13 A Yes. I am sorry.
14 Q You indicated that he stole jewelry from you.
15 When was that?
16 A Through the four-year period, different things.
17 Q So we are talking about he would have taken some
18 jewelry before '93, as well as after '93?
19 A Yes.
20 Q Okay.
21 A Not much after '93.
22 Q How about the money you indicated he stole for his
23 habit?
24 A At different periods, you know. I can't say, give
25 you dates for sure, but different periods of time.

1 Q How long of a period are we talking about, like one
2 year, four years, ten years?

3 A Four years.

4 Q Where would '93 be in relationship to that four-year
5 period he was taking these items for his crack habit?

6 A The last year of his life.

7 Q So, you are saying this basically started about '89,
8 then would that be fair to say?

9 A Yes.

10 Q So, from '89 all the way up through '93, this was going
11 on?

12 A Yes, sir.

13 Q It would be fair to say even more things maybe?

14 A Not that I am aware of.

15 Q Did you ever charge him or go to the police station
16 and make a report or have him charged for any of these
17 thefts from you?

18 A Yes.

19 Q On how many occasions?

20 A Once.

21 Q When was that?

22 A When he stole the VCR.

23 Q Was there any other things involved in your
24 relationship that caused maybe any violence because of
25 this crack cocaine habit?

- 1 A Not with myself.
- 2 Q Other people in your family?
- 3 A Yes.
- 4 Q Who and when was that?
- 5 A My daughter, she charged him with domestic violence
- 6 because he was smacking her around.
- 7 Q On one occasion or more than one?
- 8 A More than one.
- 9 Q Anybody else?
- 10 A No, sir.
- 11 Q It would be fair to say that he was a pretty big guy,
- 12 right?
- 13 A Yeah.
- 14 Q And if he hit you it probably hurt?
- 15 That would be fair to say?
- 16 A Yes, sir.
- 17 THE COURT: I think, Mr. Grunda,
- 18 whatever size, when you get hit it probably hurts.
- 19 MR. GRUNDA: I would agree with
- 20 that, your Honor.
- 21 Q Now, the Prosecutor asked you about one specific
- 22 incident in September when this guy came.
- 23 Now, at that particular time did you know who that
- 24 person was that came up in the yard?
- 25 A No, sir.

1 Q And then you indicated that you saw pictures of him
2 later, is that correct?

3 A Yes.

4 Q Who brought the pictures?

5 A It was at the police station.

6 Q You went down there?

7 A Yes, sir.

8 Q And at that time do you recall who showed you the
9 pictures?

10 A Detective Leiby.

11 Q Sitting there at the table? (Indicating)

12 A Yes.

13 Q In other words, he showed you a picture of Danny
14 Smith and he said, "Is this the guy?"

15 A There was other questions asked, but he eventually
16 showed me the picture, yes.

17 Q He didn't show you like a whole book of pictures to
18 go through and pick out the guy, did he?

19 A No.

20 Q He just gave you this one picture and said, "This is
21 the guy, right?"

22 A Yes.

23 Q Okay. And then, after he showed you that, did he say
24 it was Danny Smith or before he showed you the picture did
25 he say it was Danny Smith?

1 A Before I even went down there I knew that it was Danny
2 Smith.

3 Q But the only picture Detective Leiby showed you was of
4 Danny Smith, right?

5 A Yes.

6 Q Okay. And when the incident happened it was only Danny
7 Smith doing this yelling or threatening or whatever, right?

8 A Right.

9 Q Nobody else?

10 A Nobody else.

11 Q Correct?

12 A Correct.

13 MR. GRUNDA: Thank you.

14 Q Well, you said nobody else.
15 Stan wasn't there, was he?

16 A No, sir.

17 Q Stanley Jalowiec?

18 A No, sir.

19 MR. GRUNDA: Nothing further.

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

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

24 (Witness excused.)

25 * * *

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

6 DIRECT EXAMINATION OF JOHN HOMOKI

7 BY MR. ROSENBAUM:

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

9 A John Homoki.

10 Q Spell the last name?

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

12 Q Are you employed, sir?

13 A Yes, sir.

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

16 A Employed by the Elyria Police Department. Right now
17 I am assigned to Narcotics.

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

20 A Three years ten months.

21 Q How long have you been in the Narcotics Unit?

22 A Three months.

23 Q Prior to that, what did you do?

24 A Prior to that, for 14 months, I was in the NIU and
25 prior to being in the Impact Unit, I was on road patrol.

1 Q And before becoming a Police Officer, were you
2 employed?

3 A Yes, sir.

4 Q Where at?

5 A I spent 20 years in the U. S. Air Force. I retired
6 in '88 as an E-8, a Senior Master Sergeant, First Sergeant.

7 Immediately upon my retirement I was employed in the
8 building industry. I worked for Steve Sylvester Builders
9 and worked for Avon and Westview Concrete.

10 Q As a result of your employment in the building trades,
11 did you ever come in contact with a person by the name of
12 Ron Lally?

13 A Yes, sir. My first work, working for Avon Concrete,
14 I dispatched out of the Balsam Plant on Butternut Ridge
15 Road and Ron Lally was one of my drivers.

16 Q So you were pretty well acquainted with him, is that
17 correct?

18 A Yes, sir, very well acquainted.

19 Q Did you get to know him?

20 A Yes, sir, I did.

21 Q Would you describe his physical size to the Court and
22 jury, please?

23 A Ron Lally was probably six three or six four, well
24 over 200 pounds. He was one of our bigger drivers,
25 extremely strong and kind of an imposing figure.

1 Q Did you see him as a police officer at any time then?

2 A Yes, sir, I have seen him. I saw him two or three
3 times as an officer.

4 Q And did you see him on September 15th of '93?

5 A Yes, sir, I did.

6 Q Will you describe the circumstances of that encounter
7 to the Court and jury?

8 MR. CLEARY: Objection.

9 May we approach, your Honor?

10 THE COURT: Certainly may.

11 (Whereupon, the following proceedings
12 occurred at the bench out of the hearing of the jury.)

13 MR. CLEARY: Your Honor, before
14 he even gets into the testimony, though he hasn't
15 asked the question before the jury and before he
16 gets into any kind of police report concerning
17 Detective Homoki on this event, I want to object
18 to anything said by either the victim or Danny
19 Smith in relation to --

20 THE COURT: Let's get it before
21 you make your objection. Don't anticipate what
22 he is going to be doing at this point.

23 Your objection is overruled.

24 MR. CLEARY: Thank you, your
25 Honor.

1 (Whereupon, the following proceedings
2 occurred back in the hearing of the jury.)

3 Q I think my question was, sir, did you have an encounter
4 with Ron Lally on September 15th of '93?

5 A Yes, sir, I did.

6 Q And I think I asked you to describe the circumstances
7 of that encounter?

8 A I was on routine patrol in uniform in a marked unit.
9 I responded to a call at Mr. Hero on Middle Avenue. It
10 was a call of a disturbance.

11 Q Did you find out who the complainant was, who placed
12 that call?

13 A Yes, sir.

14 Q What was the name of the person that was making the
15 complaint?

16 A At that point in time I did not know.

17 Q When you arrived, did you learn who it was?

18 A Yes, sir.

19 Q And who did you find the complainant to be?

20 A Ron Lally.

21 Q And did you see any other people there that you
22 might have recognized?

23 A Yes, sir. As I approached I saw Stanley Jalowiec
24 crossing the street, exiting the area, and Daniel Smith
25 directly in front of the doors of Mr. Hero.

1 Q Is Stanley Jalowiec in the courtroom today?

2 A Yes, he is.

3 Q Will you point him out for the Court and jury?

4 MR. CLEARY: Stipulate it, Judge.

5 THE COURT: Thank you.

6 Q Now, will you describe the condition that Ron Lally was
7 in when you saw him?

8 A I approached from the south going northbound on Middle
9 Avenue, pulled into Sederis Lane and into the entrance to
10 the Mr. Hero lot.

11 As I stopped the car, opened up and cleared my door,
12 Ron Lally hurried across the parking lot towards me. It
13 was very obvious that he was excited, that he was upset.

14 MR. CLEARY: Objection.

15 A He was almost panicking.

16 THE COURT: At this point,
17 Officer, just indicate what you saw without
18 any editorializing.

19 Q Could you see he was upset?

20 A Yes.

21 Q How did you make that conclusion by seeing him?

22 A He almost ran to me as I cleared my door.

23 Q Could you observe his demeanor?

24 A Yes, sir.

25 Q Could you see and hear how he was acting?

1 A He was agitated, excited.

2 Q Was this out of character for the Ron Lally that you
3 knew?

4 A Extremely out of character for Ron.

5 MR. CLEARY: Objection.

6 THE COURT: Overruled.

7 Q What did he say to you?

8 THE COURT: Officer, you are
9 comparing Ron Lally as you seen him on other
10 occasions?

11 THE WITNESS: Yes, sir, as he
12 worked for me.

13 Q What did he say to you?

14 A He immediately approached --

15 MR. CLEARY: Objection.

16 THE COURT: Overruled.

17 MR. CLEARY: May we approach?

18 THE COURT: Certainly.

19 (Whereupon, the following proceedings
20 occurred at the bench out of the hearing of the jury.)

21 MR. CLEARY: He is saying what
22 Ron Lally said.

23 THE COURT: I heard the
24 question.

25 Your objection is what?

1 MR. CLEARY: Your Honor, first
2 of all it is hearsay, doesn't fit any exception.
3 If he is trying to get it in under excited
4 utterance, I do not believe that has been met.

5 Excited utterance is something without
6 thought. The moment he walked initially over to
7 the police car and talked to him, he wasn't --

8 MR. ROSENBAUM: It is an excited
9 utterance.

10 THE COURT: That is the
11 exception.

12 The objection is overruled.

13 MR. CLEARY: Exceptions.

14 THE COURT: You have them.

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

17 Q What did Mr. Lally say to you after he ran over to you?

18 A First thing he said to me when he approached me and
19 recognized me, right away he told me, "John, these guys
20 are going to fuck me up." That is his exact statement.

21 Q Did he say anything else?

22 A He then told me that -- he asked if he could speak
23 in confidence and I said yes.

24 He told me that he had been --

25 MR. CLEARY: Objection at this

1 point, your Honor.

2 THE COURT: How long after
3 this occurred and describe him again at this
4 point.

5 Q Was he still laboring under the excitement that you
6 originally noted?

7 A Yes, he was.

8 Q The entire conversation with him, how long did that
9 last?

10 A Less than a minute.

11 THE COURT: The objection is
12 overruled.

13 Q So the happening that you were about to relate occurred
14 while he was panicking?

15 A Yes.

16 Q What did he say?

17 A He stated -- asked if he could speak in confidence. I
18 told him yes. He stated that he had done some work for the
19 Elyria Narcotics Department and these individuals were
20 threatening him.

21 He then proceeded to tell me that -- he pointed back,
22 he pointed back to Danny and stated these individuals had
23 threatened his life because he was going to testify against
24 them.

25 Q Did you then confront any of the individuals?

1 A I told Ron to stay by the car and I walked over and
2 approached Danny Smith.

3 Q And did Danny speak to you?

4 A Danny was obviously frustrated and excited and I had
5 known him previously. I asked him very specifically --

6 THE COURT: Did he speak to you?

7 THE WITNESS: Yes, sir, he did.

8 Q Did he say anything to you?

9 MR. GRUNDA: Objection, leading.

10 THE COURT: Sustained.

11 Q What did he say to you?

12 MR. CLEARY: Objection.

13 THE COURT: Overruled, same
14 reasons as before. Exceptions.

15 A I asked him what was going on. He stated nothing was
16 going on.

17 MR. GRUNDA: Objection.

18 THE COURT: Now, Mr. Grunda,
19 who is going to be cross-examining out of your
20 group on this matter?

21 MR. CLEARY: I am, your Honor.

22 THE COURT: All right. Mr.
23 Grunda, you know the rules.

24 Proceed.

25 MR. CLEARY: Objection.

1 THE COURT: What is your
2 objection?

3 I already ruled on your objection, sir.

4 MR. CLEARY: Your Honor, this
5 is --

6 THE COURT: Come forward,
7 please.

8 (Whereupon, the following proceedings
9 occurred at the bench out of the hearing of the jury.)

10 MR. CLEARY: Your Honor, at
11 this point this is not the Defendant making a
12 statement.

13 THE COURT: I understand that.
14 I hear just as well as you do, sir.

15 MR. CLEARY: You asked the
16 basis of the objection. It is not part of the
17 conspiracy, in furtherance of any conspiracy or
18 anything else.

19 THE COURT: You have your
20 exceptions. Proceed.

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

23 A (Continuing) -- He stated to me nothing was going on.
24 He stated to me -- and he pointed towards Ron -- I asked
25 him what the problem was.

1 He pointed towards Ron. He said, "That snitch will
2 get his." That was his statement.

3 Q Where was the Defendant, Stanley Jalowiec, at this
4 time?

5 A He had crossed Middle Avenue. At this point he was
6 standing in front of the muffler shop directly across the
7 street.

8 Q Could you tell what way he was walking?

9 A I was paying more attention to the two people I was
10 dealing with than I was with him.

11 MR. ROSENBAUM: No other questions,
12 your Honor.

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

15 MR. CLEARY: Thank you, your
16 Honor.

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20 CROSS-EXAMINATION OF JOHN HOMOKI

21 BY MR. CLEARY:

22 Q Detective?

23 A No, sir, Patrolman.

24 Q My apologies. Now, sir, you described earlier your
25 arrival on the scene and what you said -- when you pulled

1 up you saw Ron Lally heading -- the minute he spotted you,
2 heading toward you, is that correct?

3 A Yes, sir.

4 Q And you also saw Danny Smith over by the doorway of
5 Mr. Hero?

6 A At the doorway.

7 Q And he was pacing around or whatever?

8 A Yes.

9 Q Did he see you at that time to your knowledge?

10 A Yes, he did.

11 Q He didn't go anywhere?

12 A He did not attempt to leave.

13 Q By that time, as you pulled around, I believe it was
14 your testimony that Stanley Jalowiec was already heading
15 across the street leaving before you even arrived.

16 Isn't that correct?

17 A Well, as you approach a disturbance call you slow as
18 you enter the area to see who is in the area and what is
19 going on.

20 As I approached Sederis to turn right, I saw Stanley
21 start to cross the street heading away from the area.

22 Q Away from the area?

23 A Yes, he was heading away.

24 Q And he wasn't part of the conversation involving you
25 or Mr. Lally?

1 A No, he was not.

2 Q Nor was he part of any conversation involving you or

3 Mr. Smith?

4 A No, sir.

5 Q Okay. Now, you didn't feel it necessary at the time

6 to follow up with Mr. Jalowiec or anything, did you?

7 A No, sir.

8 Q In fact, he just went on his way?

9 A At the end of the conversation everybody went on their

10 way.

11 Q Who else was there?

12 Was there anybody else present at the time?

13 A Officer Earl Banks backed me up on the call. He was

14 not within reach of me. In fact, I am sure he was across

15 the street observing the other individual.

16 Q Was there anybody in the immediate area, anybody on

17 the street, even?

18 A Not that I noticed.

19 Q How about in the restaurant?

20 A I couldn't tell you. They have tinted windows in

21 that restaurant.

22 Q That is the Subway or Mr. Hero?

23 A Mr. Hero.

24 Q Now, Mr. Lally came over to you, he was all excited

25 according to your testimony.

1 Did you tell him to calm down or anything?

2 A I asked him what the problem was.

3 Q Somebody comes up to you in a state of agitation,
4 isn't it your first job to calm them down and tell you what
5 happened?

6 A No, my first job, if I don't know what is happening, is
7 to ask what is going on. For all I know somebody could have
8 been shot and I needed to get to that person right away.

9 Q But that wasn't the case at all here?

10 A No, it was not.

11 MR. CLEARY: No further
12 questions. Thank you.

13 THE COURT: Mr. Rosenbaum?

14 MR. ROSENBAUM: I have no other
15 questions.

16 THE COURT: Thank you, Officer,
17 you may step down.

18 (Witness excused.)

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

6 DIRECT EXAMINATION OF LYNNE ALTPATER

7 BY MR. ROSENBAUM:

8 Q Will you state your name, please?

9 A Lynne Altpater.

10 Q Spell the first and last name?

11 A L-Y-N-N-E; A-L-T-P-A-T-E-R.

12 Q Are you employed?

13 A Yes.

14 Q Where do you work?

15 A Bob Evans.

16 Q How long have you been working there?

17 A Two years.

18 Q Where did you work before that?

19 A Dr. Mark Macelli.

20 Q Do you know someone by the name of Danny Smith?

21 A Yes.

22 Q How is it that you know Danny Smith?

23 A Just from the bars and around town.

24 Q Do you know the Defendant in this case?

25 A Yes.

1 Q What is his name?
2 A Stanley.
3 Q How long have you known him for?
4 A A year, year and a half.
5 Q How do you know him?
6 A Just through Danny, just being friends.
7 Q Did you ever become aware that Danny Smith had been
8 arrested for selling drugs?
9 A Yes.
10 Q And did Danny Smith seek your aid to get himself out
11 of that predicament?
12 A Yes.
13 Q Can you tell the Court and jury approximately when
14 that would be?
15 A Probably two years ago.
16 Q What year would that be?
17 A I think it was in '93 or '94. I don't know. I had
18 a bondsman.
19 Q Now, was it before Ron Lally was killed?
20 A I messed up.
21 Q When Danny came to you to seek your aid?
22 A For what, my aid?
23 Q To get himself out of his drug problem with the police?
24 I asked, maybe you misunderstood, did he ever come to
25 speak to you about his problem, being arrested about drugs?

1 A No.

2 Q At any time did he want you to help him or provide him
3 with something that pertained to his problem that he was
4 arrested for drugs?

5 A Okay, all right, I understand I think. No, I don't.

6 Q Did you speak to Danny Smith sometime in December of
7 '93?

8 A Yes.

9 Q Did he want you to do something?

10 A Yes, he wanted me to get him something.

11 Q What did he want you to get?

12 A Some poison.

13 Q Was it poison at first?

14 A First he wanted me to get him something that would
15 maybe knock a person out so they wouldn't be awake. I
16 told him I didn't have access to anything like that.

17 Q Do you know what he was talking about, a chemical
18 name?

19 A Yeah, chloroform.

20 Q Did you discuss that with him?

21 A Yeah, I told him I couldn't get that.

22 Q Did he ask you for something else?

23 A Poison.

24 Q Did he say why he needed these things?

25 MR. GRUNDA: Objection.

1 THE COURT: Overruled.

2 A Yes.

3 Q Why was that?

4 A Because he said he needed it to take care of somebody.

5 Q Meaning --

6 A I guess he didn't want --

7 MR. GRUNDA: Objection.

8 A He wanted to take care of a person.

9 THE COURT: Sustained on that
10 one.

11 Q He wanted to take care of a person?

12 A Yes.

13 Q Did he say why he needed to take care of this person?

14 A Yeah, actually because this person was going to cause
15 him to be in a lot more trouble than what he was.

16 Q Did he say how that person would cause him to be in a
17 lot more trouble than what he was?

18 A Yeah, they were going to testify against him.

19 Q Did he say when that he wanted this person to be taken
20 care of?

21 A Yes, it was sometime in -- after Christmas, before the
22 New Year, or something like that.

23 MR. ROSENBAUM: I have no other
24 questions.

25

CROSS-EXAMINATION OF LYNNE ALTPATER

BY MR. GRUNDA:

Q Ma'am, what do you refer to as after Christmas, before the New Year?

A Yes.

Q When was that?

A He just said after Christmas, but before the New Year, or something like that.

Q Who said this?

A Danny.

Q Would it be fair to say first about this whole incident that one, you don't know who Danny Smith had a problem with, right?

A I didn't know the person, no.

Q Really you had no idea what he meant by taking care of, right?

A Well, I assumed what he meant.

THE COURT: Do you know?

THE WITNESS: No.

Q It would be fair to say a lot of people could assume different things by the same words, right?

A Yes.

Q Okay. Bottom line in all this, there was never any mention whatsoever of Stan Jalowiec, right?

A No.

1 Q And further, not only was there no mention of Stan
2 Jalowiec with these conversations that you had with Danny,
3 Stan Jalowiec was never around, is that right?

4 A When I had conversations with Danny?

5 Q Yes.

6 A No.

7 MR. GRUNDA: Nothing further.

8 MR. ROSENBAUM: No other questions,
9 your Honor.

10 THE COURT: You may step down.

11 (Witness excused.)

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

6 DIRECT EXAMINATION OF CARL EDWARD HARTMAN

7 BY MR. ROSENBAUM:

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

9 A Carl Edward Hartman.

10 Q Spell the first and last name for the Reporter?

11 A C-A-R-L; H-A-R-T-M-A-N.

12 Q How old are you, sir?

13 A Twenty-five.

14 Q Are you employed at this time?

15 A Yes, sir.

16 Q Will you tell the Court and jury what you do?

17 A I work for a company called Plastic Components on
18 Taylor Street in Elyria.

19 Q What do you do?

20 A Sand plastic parts.

21 Q How long did you work there?

22 A A month and a half.

23 Q Did you work before that?

24 A County engineers.

25 Q How long?

- 1 A Five and a half months.
- 2 Q Do you know a person by the name of Danny Smith?
- 3 A Yes, sir.
- 4 Q How do you know Danny?
- 5 A Well, I knew of him just like when I was in the
6 eighth grade, but I know him through Terry Hopkins and
7 that is about it. I never hang around with him or
8 anything like that.
- 9 Q Do you know his father, Raymond Smith?
- 10 A No.
- 11 Q Do you know Stanley Jalowiec, the Defendant in this
12 case?
- 13 A No, sir.
- 14 Q Did Danny Smith ever have a request -- make a request
15 of you to perform an illegal act for him?
- 16 MR. GRUNDA: Objection.
- 17 THE COURT: Overruled.
- 18 A Yes.
- 19 Q Will you tell the Court and jury when this first came
20 about as best you can recall?
- 21 A Okay. I would say probably in November he met me one
22 time at a hotel and he asked me to make sure somebody
23 didn't make it to the stand.
- 24 Q November of what year?
- 25 A Had to be the end of '93.

1 Q Prior to coming to the hotel did he contact you
2 somewhere else?

3 A At my sister's house in Sheffield.

4 Q Which was first, the hotel or your sister's?

5 A Sister's.

6 Q Tell the Court and jury what transpired at your
7 sister's home?

8 A When he came to my sister's house he found out that
9 I was interested in buying a BMW and he offered to buy
10 the car for me and give me \$5,000 cash to make sure that
11 Stanley -- not Stanley -- Ron didn't make it to the stand.

12 Q And what did you tell him, if anything?

13 A I told him no, I couldn't do it. I didn't want to
14 get involved with anything like that.

15 Q Did he later have other conversations with you?

16 A He came to me again and offered me the same thing and
17 when I told him no again he said that he had somebody that
18 could do it for him and he didn't need me.

19 Q Did he tell you who was going to take care of it for
20 him?

21 A Yeah, he said Stanley and his dad.

22 Q Are you sure of that?

23 A Positive.

24 Q Who brought Danny to you?

25 A Terry Hopkins.

1 MR. ROSENBAUM: I have no other
2 questions, your Honor.

3 THE COURT: Mr. -- whoever is
4 going to cross.

5 MR. GRUNDA: I am, your Honor.
6
7

8 CROSS-EXAMINATION OF CARL EDWARD HARTMAN

9 BY MR. GRUNDA:

10 Q Sir, did you make a statement?

11 A What do you mean?

12 Q Did you make a statement to the police or anybody about
13 this?

14 A Yes.

15 Q The Prosecutor?

16 A No, just to the detective.

17 Q When was that?

18 A When I was working for the county, that was probably
19 about -- probably six months ago, something like that maybe.

20 Q Who did you make it to?

21 A Mr. Leiby.

22 Q So he came out there to get a statement from you at the
23 county garage?

24 A No, he called and I went up to the City Police Station
25 in Elyria.

1 Q Called you at the county garage?

2 A Yeah, where I was working at and said it was involving
3 a homicide and asked me would I come up there so he could
4 talk to me.

5 Q Okay.

6 MR. GRUNDA: Your Honor, I would
7 request to see the statement.

8 THE COURT: Mr. Rosenbaum, do
9 you have it?

10 That will be granted.

11 MR. ROSENBAUM: Actually I have
12 two, your Honor.

13 THE COURT: Ladies and
14 gentlemen, the Court has to -- will have to do
15 some housework on this matter. No sense in you
16 sitting there while I go through this at this
17 point.

18 We will take a very short recess and try to
19 get you back here as quickly as we can after we
20 have done this matter. This is something that
21 has to be done according to the rules and the
22 admonitions that I have given you in the past
23 about discussing this matter amongst yourselves,
24 letting anyone discuss it with you, reading
25 anything about it still hold.

1 And with that we will take a hopefully
2 short recess.

3 (Whereupon, the jury was excused for a
4 short recess.)

5 (Whereupon, the following proceedings
6 occurred in the Judge's chambers.)

7 THE COURT: All right to
8 proceed without Mr. Cleary?

9 MR. GRUNDA: I am going to
10 do it anyway. Go ahead.

11 THE COURT: I have gone over
12 the statements and in fact, do find some
13 inconsistencies as to the number of calls
14 that were made to get together.

15 I find very little as to the content, okay,
16 as to what was said.

17 I do find one -- and I think it is minor and
18 it might be a typo error -- when they talk about
19 a Mercedes Benz and I think the testimony was it
20 was a BMW automobile.

21 There is more information in the statement
22 than what was testified to obviously at this
23 point, but I do find some inconsistencies, so
24 there you go.

25 MR. GRUNDA: Thank you, Judge.

1 THE COURT: The second
2 statement, it is a little different as to who
3 was also present at the conversation and also
4 as to who actually did the talking.

5 I think this statement indicates it was
6 Terry that was the go between on the matter.

7 At this point there is a lot more
8 information than what was testified in this,
9 but the inconsistencies seem to be there at
10 that point.

11 MR. GRUNDA: Your Honor, to
12 clear up the record, the first statement was
13 dated December 7th of '95 and this one is
14 January 5th of '95.

15 THE COURT: Okay. That is
16 my point. Review it and we will go back into
17 it. I want you to get going in reading it.

18 MR. GRUNDA: All right. I
19 will read it because I think similar ones might
20 be applicable to both.

21 (Whereupon, Mr. Grunda read the statements
22 of Carl Edward Hartman.)

23 THE COURT: Mr. Grunda, you
24 had an opportunity to go over some of the points
25 that were made. As the Court indicated to you

1 there were some inconsistencies and what have
2 you.

3 At this point what did you pick out, sir?

4 MR. GRUNDA: In those statements
5 he indicated that he had talked to Detective Leiby
6 or the police twice before.

7 THE COURT: The number of times,
8 okay.

9 MR. GRUNDA: Then it was
10 inconsistent as to who was telling him. He was
11 saying that Danny was telling him, yet in the
12 statements --

13 THE COURT: Second statement
14 indicated that it was Terry doing the talking
15 at this point.

16 MR. GRUNDA: Right. What we
17 are talking about, as the second statement is
18 the statement dated January of '95.

19 THE COURT: Yes.

20 MR. GRUNDA: To clear that up,
21 Detective, because it had me confused, the first
22 one I read was December of '95. The second one
23 I read was January of '95.

24 MR. LEIBY: Both '95, one in
25 January of '95 and the other one at the end of

1 the year in '95.

2 THE COURT: A year apart?

3 MR. GRUNDA: Eleven months. We
4 both read the December one, which is the latter
5 in time, first.

6 There is discrepancies with what he said as
7 to who is telling him.

8 THE COURT: No problem.

9 MR. GRUNDA: Then the other thing
10 that is inconsistent is the January statement.
11 They also indicated that he never was approached
12 about killing anyone, yet in the December
13 statement he says there was --

14 THE COURT: In fact I think he
15 says in the one statement it was never mentioned,
16 taken care of is what he used.

17 MR. GRUNDA: Right, and then the
18 January statement they talk about a red BMW. In
19 the December statement it is a Mercedes.

20 THE COURT: Right.

21 MR. GRUNDA: He also says in
22 those statements that he puts Terry in the car
23 and that was never mentioned.

24 THE COURT: Well, if it was
25 mentioned, doesn't mean -- if it wasn't mentioned,

1 does not mean that is inconsistency, just wasn't
2 said.

3 MR. GRUNDA: Well, it becomes
4 inconsistent because in the one he also included
5 an additional person.

6 THE COURT: I agree with you.

7 MR. GRUNDA: He also mentions
8 other people that aren't in the one statement,
9 like Preston and so forth, so he is inconsistent
10 in that.

11 MR. ROSENBAUM: Between the two
12 statements?

13 THE COURT: No, the testimony.

14 MR. GRUNDA: The second one with
15 Preston was inconsistent between the two. He did
16 talk about the other stuff in your direct.

17 MR. ROSENBAUM: My understanding
18 is the purpose is not to try to create
19 inconsistencies between the two statements,
20 it is with the statement.

21 MR. GRUNDA: He did say that
22 there was an offer to buy a BMW.

23 MR. ROSENBAUM: I agree with that.
24 I don't agree with that other stuff.

25 MR. GRUNDA: The ultimate,

1 biggest inconsistency is, he is talking about
2 killing somebody. The statement said he wasn't.

3 Who and what, that is the big thing. Who
4 approached him?

5 He is saying Danny and it was Terry.

6 THE COURT: The others may be
7 kind of insignificant. All right. Bring them
8 in. You can cross on that.

9 MR. GRUNDA: Thank you, your
10 Honor.

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

13 THE COURT: Ladies and
14 gentlemen, I would like to say to you that the
15 housework that needed to be done by the Court
16 and counsel has been done and now we are ready
17 to proceed with the cross-examination of the
18 witness as soon as we get the witness here.

19 Sir, you are reminded that you are still
20 under oath.

21 THE WITNESS: Yes.

22 THE COURT: Be seated, adjust
23 the microphone.

24 Mr. Grunda, you may proceed.

25 MR. GRUNDA: Thank you, your

1 Honor.

2 BY MR. GRUNDA:

3 Q Mr. Hartman, going back here, you were testifying about
4 a conversation?

5 A Uh-huh.

6 Q And from what you testified first, you indicated that
7 Danny Smith was making this conversation or had this
8 conversation with you?

9 A Yes.

10 Q That is correct?

11 A Yes.

12 Q And you also indicated you gave a statement to the
13 police, right, about that?

14 A Yes, sir.

15 Q Do you know when that was, the month and year?

16 A No, sir. The first one was -- I was working for the
17 county. I think that was in November, and when I first
18 got the call from Mr. Leiby.

19 Q What year?

20 A Ninety-three.

21 Q So, November of '93 would be the first one?

22 A Uh-huh, and let's see, probably in November of '94
23 would have been the second one when I talked to Danny.

24 Is that what we are talking about?

25 Q I am asking you when you gave the statements to the

1 police?

2 A The first one I just told you that.

3 The second one, it had to be in November. There was
4 two. In the wintertime -- me and Danny met after that one
5 in November, I think, and maybe another one was October.

6 Q But when you first testified you said you only gave
7 them one statement, is that correct?

8 A When I first talked to Mr. Leiby I didn't want to get
9 involved so I didn't really say anything or talk to him and
10 then I got to thinking about it and I went in and talked to
11 him and I gave a statement.

12 Q Isn't it a fact, sir, that you did give two statements
13 and one was in January of '95 and the other one was December
14 7th of '95?

15 A Yeah.

16 Q So that is not even close to the time you are talking
17 about of November of '93, right?

18 A That is when he first got shold of me, when he first
19 talked to me, Mr. Leiby, when he first called me.

20 Q So you gave another statement in addition to the one
21 you gave in January of '95 and the one you gave in December,
22 '95?

23 A Yes, sir, I did.

24 Q So there is another one then?

25 A There should be.

1 THE COURT: You gave three
2 statements totally?
3 THE WITNESS: The first time --
4 THE COURT: Or you talked to
5 him, whether or not it was a statement or not,
6 is that correct?
7 THE WITNESS: It was over the
8 phone.
9 THE COURT: Okay.
10 BY MR. GRUNDA:
11 Q Now, when these things first happened you never went
12 to the police, right?
13 A Right.
14 Q You never contacted them about any of this?
15 A Right.
16 Q Really didn't mean much to you at this point?
17 A I didn't want to get involved.
18 Q Well, isn't it true that the first time you talked to
19 the police you indicated that it was Terry Hopkins that was
20 talking to you, not Danny Smith?
21 A No, I indicated that Terry Hopkins introduced me to
22 Danny Smith and every time I talked to Danny Smith she
23 brought Danny Smith to me.
24 THE COURT: I think he indicated
25 that it was Terry that made the contact.

1 MR. ROSENBAUM: I don't read these
2 this way. I don't see inconsistencies on there.

3 THE COURT: Other than as to who
4 talked to him. I thought I read that Terry
5 Hopkins was the guy that did the original talking.

6 MR. ROSENBAUM: What does that mean,
7 Terry brought them together. That doesn't mean
8 that Danny Smith spoke to him and Terry spoke
9 for Danny.

10 THE COURT: Develop that a
11 little further.

12 MR. GRUNDA: The problem is, he
13 says on the January, '95, statement that only
14 Terry talked to him.

15 You see, that is the problem. Page 4.

16 THE COURT: Ask him whether or
17 not it was only Terry that talked to him.

18 MR. ROSENBAUM: "But you did hear
19 this Terry Hopkins and -- talking on the phone --

20 THE WITNESS: Terry with Danny?

21 MR. LEIBY: With Danny.

22 THE WITNESS: Yeah. See, he had
23 brought Danny over to my mom's house.

24 Nowhere does it say that he did the talking,
25 okay?

1 It was Danny that he claimed to do it, but
2 Danny was doing the talking for him.

3 MR. GRUNDA: See --

4 MR. ROSENBAUM: That is not
5 inconsistent when you read it with what is up
6 front. Terry was with Danny.

7 MR. GRUNDA: He is saying Danny
8 talked to him and Terry talked to him.

9 THE COURT: Okay. At this point
10 ask him whether at any time he talked to Terry
11 alone, at any time.

12 MR. ROSENBAUM: He might have, but
13 that still doesn't make it inconsistent.

14 THE COURT: I agree with that.

15 BY MR. GRUNDA:

16 Q Isn't it true that you talked to Terry Hopkins about
17 this first?

18 A No, Terry just told me that Danny had to talk to me
19 about something and then Danny took it from there. Danny
20 did his own talking.

21 Q You do agree that what Danny then was supposedly
22 talking about, or your understanding, was to beat somebody
23 up?

24 A To make sure he didn't make it to testify.

25 Q I believe in your statement you indicated that it was

1 to like beat him up, break his legs or something like that?

2 A It was to get rid of him.

3 MR. GRUNDA: Your Honor, that is
4 inconsistent.

5 THE COURT: Did you ever make
6 any statements regarding beating him up, breaking
7 his legs, that type of thing?

8 THE WITNESS: Yeah, yeah.

9 THE COURT: That is what he is
10 asking you about at this point.

11 THE WITNESS: Okay.

12 THE COURT: Proceed.

13 Q Even though he asked about things like that you didn't
14 go to the police then?

15 A No, because I didn't believe him.

16 Q You didn't believe him, okay.

17 How is it that you have this reputation that people
18 would seek you out to beat people up?

19 A I do not know.

20 Q Well, it is true that you are convicted of a crime
21 involving things like that, right?

22 A I am convicted for a felony for fighting in Wellington.

23 Q And that started back in '91, right?

24 A Yes, in '90.

25 Q Okay. That would have been entitled the State of Ohio

1 versus Carl Hartman, 91CRO40397?

2 A Yes, it should be.

3 Q And you are indicating that even though you had this

4 conversation with Danny, you didn't believe him, right?

5 A Yeah, I thought he was blowing smoke.

6 Q Okay. And you really didn't know who he was talking

7 about, right?

8 A No, I sure didn't.

9 Q You didn't know who he wanted beat up or what?

10 A He just said some guy named Ron.

11 Q You didn't know who Ron was?

12 A Never seen him before, never met him.

13 Q And then you were supposed to do this to get a BMW?

14 A That was Danny's offer.

15 Q That was Danny's offer?

16 A Yes.

17 Q To get a BMW?

18 A Yes.

19 Q Not a Mercedes?

20 A It was a BMW. I thought it was a Mercedes.

21 Q Do you recognize that a BMW is different than a

22 Mercedes?

23 A Now I do.

24 Q Okay. Not only did you not meet this guy, if he

25 walked up in front of you, you wouldn't have known who

1 he was?

2 A I sure wouldn't have.

3 Q Okay. And then you talk about -- right at the end
4 of your testimony -- you bring in an additional name
5 because you say you didn't believe him, you said
6 somebody else was going to take care of it?

7 That is what you are saying Danny said?

8 A Yes.

9 Q And then you bring up a name Stan, right?

10 A Yes.

11 Q He never said Stan Jalowiec, did he?

12 A He said Stan.

13 Q There is a lot of Stans?

14 A Right.

15 Q A lot of Carles?

16 A Correct.

17 Q A lot of Joes?

18 A Yes, but he only has one friend named Stan.

19 Q Answer the question, okay?

20 He said Stan, but no last name?

21 A Sure didn't.

22 Q Okay. And when he is saying Stan, Mr. Jalowiec
23 wasn't there, was he?

24 A No, he wasn't.

25 Q Do you know him?

1 A Just seen him today.

2 Q Now, isn't it correct, sir, that the first -- or
3 the statement that you gave to Detective Leiby in January
4 of '95, okay, when you talked to him, there was no mention
5 of -- it was only about beating someone up, right?

6 A Well, let me explain.

7 Q No, just answer the question.

8 A No, it wasn't.

9 Q Well, that is what you said in that statement?

10 A That is what I said.

11 Q Okay.

12 A But it led to something else.

13 Q And then, at that particular time, he indicated to
14 you, Detective Leiby, that what you said was sufficient
15 and that was okay, right?

16 A Who?

17 Q Detective Leiby told you the statement you gave in
18 January, '95, was okay, right?

19 A Yeah.

20 MR. ROSENBAUM: Objection.

21 THE COURT: Overruled.

22 Proceed.

23 Q And then because of this felony assault case you were
24 talking about you had to go back in Court in December of
25 '95, right?

1 A For a probation violation?

2 Q Yes.

3 A Yes.

4 Q Isn't it true that on December 6 of '95 that they
5 continued your probation violation, your probable cause
6 hearing and they didn't give you a capias or warrant for
7 your arrest was withdrawn because Detective Leiby went
8 in there and asked them about that?

9 A I wouldn't know.

10 Q Well, you recall being in Court, don't you?

11 A Yes, I do.

12 * * *

13 WHEREUPON, DEFENDANT'S EXHIBIT A WAS MARKED
14 FOR IDENTIFICATION.

15 * * *

16 Q Sir, I am going to hand you what has been marked for
17 identification as Defendant's Exhibit A.

18 That is what it is, right?

19 A Uh-huh.

20 Q And it indicates red folder, State of Ohio versus
21 Charles Hartman, has the number 91CRO40397, correct?

22 A Uh-huh.

23 Q You would agree that is your case?

24 A Yes.

25 Q Now, I am going to show you -- this is the Court file

1 I am going to show you. I am turning to the entry dated
2 December 6 of '95, okay?

3 A Uh-huh.

4 Q Now, on the lower left-hand side --

5 A Uh-huh --

6 Q (Continuing) -- it says Carl Hartman.

7 That is your signature?

8 A Yes.

9 Q And it also indicates on this that at the request of
10 the Adult Probation and Detective Leiby the capias warrant
11 is withdrawn, right?

12 A Yes.

13 Q And bond is set at \$2,500 personal?

14 A Uh-huh.

15 Q And then they continue it for further hearing?

16 A Yes.

17 Q So, basically Detective Leiby came in to withdraw the
18 warrant for your arrest and then they continued you on
19 personal bond so you could be out of jail, right?

20 A Yes.

21 Q And the very next day, which would have been December
22 7th of '95, then you go in and give Detective Leiby another
23 statement, right?

24 A Yes.

25 Q Right after he just kept you out of jail, right?

1 A No one guaranteed me anything.

2 Q That is not what I am asking you.

3 He kept you out of jail, he got a warrant for your
4 arrest removed, he got you personal bond, the thing was
5 continued?

6 A I think my PO kept me out of jail because he didn't
7 violate me.

8 Q But it said in the journal entry that it was on
9 Detective Leiby's request, right?

10 A I guess that is what it says.

11 Q Okay. Do you recall having four other capiases on
12 your case?

13 A Yeah, when I had Mr. Dowdell for a PO.

14 Q At this time you are still out on probation, right?

15 A Yes.

16 Q It would be fair to say, just as you indicated, you
17 didn't want to be involved in this plan to beat somebody
18 up or do whatever, just as you didn't want to be involved
19 walking away from it, even though you didn't tell the
20 police right away that other people might have that
21 exact same attitude, they don't want to be involved?

22 A Yes, I guess.

23 Q Just like Stan could have done, right?

24 A Sure.

25 MR. GRUNDA:

No other questions.

REDIRECT EXAMINATION OF CARL EDWARD HARTMAN

BY MR. ROSENBAUM:

Q Sir, Danny was talking to you about more than beating this Ron up, wasn't he?

A Yes.

Q How do you know that?

A Because it led to first, beating him up, and then it led to not letting him make the stand and then it led to getting rid of him, then it led to poison.

Q Danny actually discussed poison with you?

A Yes, he did.

MR. ROSENBAUM: I have no other questions.

THE COURT: Mr. Grunda?

RECROSS-EXAMINATION OF CARL EDWARD HARTMAN

BY MR. GRUNDA:

Q On page 3 of your statement in January, it clearly indicates there was only -- you were only there to beat up somebody, not kill somebody?

A Who? What do you mean?

Q Isn't it true the first statement you gave in January of '95, it was only about beating somebody up?

1 A I could have just said that because I didn't want to
2 get involved.

3 Q Okay. And then the second time you talked to him,
4 which is December 7th of '95, the day after Detective Leiby
5 keeps you out of jail, then your statement changed to not
6 only beat somebody up, but now you make it that it included
7 killing, isn't that correct?

8 A Yes.

9 MR. GRUNDA: No other questions.

10 MR. ROSENBAUM: I have no other
11 questions.

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

14 (Witness excused.)

15 * * *

16 THE COURT: Ladies and
17 gentlemen, it is now noon and time for lunch.

18 The admonitions that I have given you about
19 discussing this case amongst yourselves, letting
20 anyone discuss it with you, reading anything
21 about it, letting anyone read anything to you,
22 please don't do this at this point and we will
23 adjourn for lunch and reconvene at 1:15.

24 (Whereupon, a luncheon recess was had.)
25

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DONALD J. ROTHGERRY
9th APPELLATE DISTRICT

Volume 4.

No. 95 CRO 46840

The State of Ohio, Plaintiff,
vs. Stanley E. Jalowiec, Defendant.

98-1074

Supreme Court of Ohio
Case No. 99-1753
Date Rec'd 10/5/99

FILED
JUN 17 1998
MARCIA J. MENGEL, CLERK
SUPREME COURT OF OHIO

AFTERNOON SESSION, THURSDAY, MARCH 14, 1996

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

DIRECT EXAMINATION OF TERRY HOPKINS

BY MR. ROSENBAUM:

Q Will you state your name, please, sir?

A Terry Hopkins.

Q Spell the first and last name for the Reporter?

A T-E-R-R-Y; H-O-P-K-I-N-S.

Q Are you employed at this time?

A No, I am not.

Q When was the last time you worked?

A About a month ago.

Q What did you do?

A I worked at Angelica Health Care.

Q How long did you work there?

A About three months.

Q What did you do before that?

A Laid carpet.

Q How long did you do that for?

A A few months.

Q Do you know a person by the name of Raymond Smith?

- 1 A Yes.
- 2 Q How is it that you know Raymond?
- 3 A Through his son, Danny.
- 4 Q How do you know Danny?
- 5 A Went to school with him.
- 6 Q Did you have -- how long have you been out of school?
- 7 A Awhile, about eight years.
- 8 Q Did you see Danny since you have been out of school?
- 9 A Yes.
- 10 Q How would you see him?
- 11 A Downtown Elyria.
- 12 Q Do you know the Defendant in this case?
- 13 A Yes.
- 14 Q What is his name?
- 15 A Stan Jalowiec.
- 16 Q How do you know him?
- 17 A Through Danny.
- 18 Q How long have you known Stanley?
- 19 A About a couple months, a few months. I have not
- 20 known him long.
- 21 Q Well, when did you meet him?
- 22 A I couldn't give you a specific day, I don't know.
- 23 Q Well, do you remember when Ron Lally was killed,
- 24 allegedly?
- 25 A Yes.

1 Q Did you know Stanley then?
2 A Yes.
3 Q How long had you known him before then?
4 A About a month.
5 Q And you met him through who?
6 A Danny.
7 Q Do you have a criminal record?
8 A Yes.
9 Q Will you tell the Court and jury what it is?
10 A Attempted aggravated burglary, attempted felonious
11 assault.
12 Q And did you serve time for that?
13 A Yes.
14 Q Did Danny Smith ever speak to you about injuring
15 someone or hurting someone?
16 A Yes.
17 Q Can you tell the Court and jury when that was?
18 A That was in a bar, Razzle's. I don't know what
19 day it was.
20 Q Was it before Ron was killed?
21 A Yes.
22 Q How much before?
23 A I don't remember.
24 Q Could you tell the Court and jury as best you recall
25 the conversation, how it went?

1 A Yeah. He was telling me -- he didn't even really
2 approach me about --

3 MR. CLEARY: Objection.

4 THE COURT: Overruled.

5 A He didn't approach me about doing nothing to nobody.
6 He said he was having trouble getting money and I told him
7 if he needed help, I would help him.

8 Q So, you volunteered your services?

9 A Yes.

10 Q What were you willing to do for Danny Smith to collect
11 money?

12 A Beat somebody up.

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

14 A Not at that time, I didn't.

15 Q Now, did Danny ever talk to you about doing more than
16 beating someone up on some occasion?

17 A Yes.

18 Q Can you tell the Court and jury when that was?

19 A It was a few months after he approached me, when I
20 told him about beating somebody up to collect some money.

21 Q What did he say to you?

22 A He wanted somebody killed.

23 Q And did you -- what did you say to that?

24 A Told him no, I don't want no part of something like
25 that.

1 Q What did Danny say to you after you refused to help
2 him with that?

3 A He asked me if I knew anybody.

4 Q What did you say?

5 A I told him yeah, I did.

6 Q And who did you think that you knew that would do
7 that?

8 A Carl Hartman.

9 Q Did you put Carl with Danny?

10 A I introduced them to each other.

11 Q And do you remember when or where this was?

12 A I don't know when, but it was at the Ridge Motel.

13 Q Who was staying at the motel?

14 A Carl was staying at the motel.

15 Q Were you present when they had a conversation about
16 killing someone?

17 A No.

18 Q Do you know if there was anything offered to get Carl
19 to kill someone?

20 A Yeah.

21 Q What was offered by Danny?

22 MR. CLEARY: Objection.

23 THE COURT: Overruled.

24 A Yeah, he knew because I mean, Carl was trying to buy a
25 red BMW and he told me if I talked to Carl, that he would

1 buy that for him.

2 Q Who told you that?

3 A Danny.

4 Q Now, do you remember a night in January of '94 when

5 you were downtown with Danny Smith and some other people

6 drinking at the bars?

7 A Yes.

8 Q Do you have any idea what the date in January was?

9 A I have no idea.

10 Q When did it occur in relation to Ron Lally's death

11 though?

12 A I don't know what you mean by that.

13 Q Do you remember Ron Lally dying or finding out about

14 it?

15 A Yes.

16 Q When is the evening that you had this conversation

17 in relation to that time?

18 A When did I find out about it?

19 I am confused.

20 Q I understand.

21 You learned that Ron Lally may have been killed?

22 A Yes.

23 Q In relation to that, when is the evening I am asking

24 you to describe?

25 A The night before.

- 1 Q Would you describe what happened that night, please?
- 2 A We all went out drinking.
- 3 Q Who is "we all"?
- 4 A Me, Danny, Danny's girlfriend Tammy, my girlfriend
- 5 Misty and my sister Sharon.
- 6 Q Where did you go?
- 7 A Uptown, but mostly right here, up to Razzle's.
- 8 Q And what happened when you were drinking with those
- 9 people?
- 10 A We were drinking. After we got done drinking we went
- 11 across the street to Mom's Open Kitchen.
- 12 Q What time would this be?
- 13 A I would assume about 2:30 since the bars close at 2:30.
- 14 Q Who went to Mom's?
- 15 A Me, Danny, Tammy, my girlfriend and my sister.
- 16 Q And what happened, did you meet anyone else there?
- 17 A No, I didn't meet nobody.
- 18 Q Did you see other people there?
- 19 A Yeah, there was a lot of people there.
- 20 Q Was Raymond Smith there?
- 21 A No.
- 22 Q Did you leave then?
- 23 A Yes.
- 24 Q What did you do?
- 25 A I wanted to go back because I left separate from Danny,

1 Tammy and my sister and my girl went -- I wanted to go back
2 home so I went over to my sister's apartment and waited for
3 them and my sister came home so I knew they were home so I
4 went there.

5 Q No one was at the home?

6 A Yeah, I was staying with Danny at the time.

7 Q So you wanted to go into Danny's apartment?

8 A Yes.

9 Q Do you remember the address of this apartment?

10 A No, I know it was Pine Grove or something Apartments
11 by the library.

12 Q In the City of Elyria?

13 A Yes.

14 Q How did you know that Danny was home?

15 A Because my sister was with him and she showed up at
16 her apartment.

17 Q Did she live near Danny?

18 A Right across the street.

19 Q What time would it have been when Danny showed up
20 there?

21 A I don't know, about 3:30, four.

22 Q In the morning?

23 A Yes.

24 Q This is the date that you discovered Ron Lally was
25 killed?

- 1 A Yes.
- 2 Q Did you observe Danny Smith -- did you have a chance
- 3 to see him?
- 4 A Yes.
- 5 Q Will you describe how he was acting, his demeanor?
- 6 A Just nervous, real nervous and said he was feeling
- 7 sick to his stomach.
- 8 Q Did he say why he was nervous?
- 9 A Yes.
- 10 Q Would you tell the Court and jury what Danny said?
- 11 MR. CLEARY: Objection.
- 12 THE COURT: Overruled.
- 13 A He said they had done it, they did it.
- 14 Q And did you know what he meant?
- 15 A I had a real good idea.
- 16 Q Did you later on learn exactly whether you were right
- 17 or not?
- 18 A Yes.
- 19 Q How did that come about?
- 20 A I went over, because after I found out what happened,
- 21 I didn't stay at Danny's. I went back to my sister's and
- 22 the next day I was going to get my stuff.
- 23 Q Why did you not stay?
- 24 A I didn't want to be around that.
- 25 Q Didn't want to be around what you thought they did?

1 A Yes.

2 Q What time did you go back?

3 A About four, 3:30, four.

4 Q You left at some time, right?

5 A I left that same night right after I talked to him.

6 Q And then you said you returned from your sister's to

7 get your stuff?

8 A Yes, the following day.

9 Q What time would that be the following day?

10 A I don't remember what time that was.

11 Q Who was present when you went back to Danny's

12 apartment the following day?

13 A Danny, Stan.

14 Q Stan being the Defendant?

15 A Yes. Pops and Mike.

16 Q Who was Pops?

17 A Raymond.

18 Q Raymond Smith?

19 A Yes.

20 Q That is Danny's father?

21 A Yes.

22 Q And you said Mike was there?

23 A Yes.

24 Q Who, Mike Smith?

25 A Right.

1 Q Is he related to Danny?
2 A Brother.
3 Q Also Raymond's son?
4 A Yes.
5 Q Were they talking?
6 A Yes.
7 Q What were they talking about?
8 MR. CLEARY: Objection.
9 THE COURT: Overruled.
10 A About what they had done to this guy.
11 Q And what did they say they had done?
12 MR. CLEARY: Objection.
13 THE COURT: Overruled.
14 Q Let me ask you this.
15 Did you hear Stanley state anything specific about
16 what they had done?
17 A Yes.
18 Q What did Stanley say they had done?
19 A They stomped him and ran him over with a car.
20 Q Did they say anything else?
21 A Do you want to know what they said or he said?
22 Q What he said.
23 A He said that he stomped him and run him over with
24 a car.
25 Q He indicated that he ran him over with the car?

1 A Yes.

2 Q And he stomped him?

3 A Yes.

4 Q What did the others say?

5 A That they shot him and cut him.

6 MR. CLEARY: Your Honor,
7 objection to the leading as well.

8 THE COURT: I don't recall
9 having heard a leading question. If there
10 was, refrain from that, Mr. Rosenbaum.

11 Q Now, who were the others?

12 I asked what the others said.

13 A Mike and Raymond and Stan was them three talking
14 about it.

15 Q What tone were they using when they were discussing
16 this?

17 A You mean how they were acting?

18 Q Yes.

19 A Kind of like bragging about it.

20 Q In that conversation did anyone indicate how Mike
21 reacted while they were doing this?

22 A I think Raymond said something that he was like a
23 little nervous.

24 MR. CLEARY: Objection.

25 THE COURT: Sustained.

1 I mean overruled.

2 Q Who was nervous?

3 A Michael was nervous.

4 Q Now, did Danny ever tell you why he wanted to get
5 this person killed?

6 A Yes.

7 Q Will you tell the Court and jury what he said?

8 MR. CLEARY: Objection.

9 THE COURT: Overruled.

10 A That he had wore a wire on him on a drug sale.

11 Q Now, do you know a person by the name of Queen
12 Bee?

13 A Yes.

14 Q Do you know her real name?

15 A That is all I know her by.

16 Q Does she have a car?

17 A Yes.

18 Q What kind of car was it?

19 A A blue LeBaron.

20 Q Does it have a hard or soft top?

21 A Soft top, convertible.

22 Q Do you know if anyone ever used that car?

23 A She let people use the car all the time.

24 Q Who, if anybody, used it, if you know?

25 A I know Danny used it before.

1 Q Did you see that car the night that Danny was upset
2 and the next morning when they made these admissions to
3 you?

4 A Yes, I had seen it that night.

5 Q Who was in possession of that car on that night?

6 A I didn't see who had possession of it, but my sister
7 told me.

8 Q So you didn't see the car?

9 A Right.

10 Q Did you see it or not?

11 A I seen it, but I didn't see who had possession.

12 Q Nobody was in it?

13 A Right.

14 Q Will you point out the person in the courtroom that
15 said he personally stomped Ron Lally and drove the car
16 into him?

17 A Stan, right there. (Indicating)

18 Q Seated under my right hand? (Indicating)

19 A Yes, sir.

20 MR. ROSENBAUM: Your Honor, could
21 the record reflect he identified the Defendant?

22 THE COURT: So be it.

23 MR. ROSENBAUM: I have no other
24 questions, your Honor.

25

CROSS-EXAMINATION OF TERRY HOPKINS

BY MR. CLEARY:

Q Mr. Hopkins, did you make a police report of this matter?

A Of what had happened?

Q Yes.

A No.

Q Did you ever give a statement in regard to this matter to the police?

A Yes.

Q When did you do this, sir?

A Specific date, I don't know. I couldn't tell you.

Q Can you give a month?

A Not a month.

Q A year?

A Let me think. All I can tell you -- I actually gave two statements and the first one I wasn't very cooperative because I didn't want to get involved.

Q When was that statement given?

A About six months before the last one.

Q And when was the last one given?

A I think it was in '94. I would say January of '94, February of '94.

Q Ninety-five?

A Ninety-four.

1 Q This was when the first statement was given?

2 A I believe. I don't know. I have no idea. I didn't
3 mark it on my calendar.

4 MR. CLEARY: Your Honor, I
5 would like to request an in-camera inspection
6 of the statement.

7 THE COURT: Very well.

8 Ladies and gentlemen, it is one of those
9 times that we need to do some housework outside
10 of your hearing at this point and we will have
11 to take a short recess, hopefully short.

12 The admonitions that I have given you about
13 discussing it amongst yourselves, reading anything
14 about it still hold at this point and with that we
15 will take a short recess and get back as quickly
16 as we can.

17 (Whereupon, the jury was excused for a short
18 recess.)

19 (Whereupon, the following proceedings
20 occurred in the Judge's chambers out of the hearing
21 of the jury.)

22 THE COURT: Gentlemen, I have
23 read the statement. I will be the first to tell
24 you that I did not study it. I ran through it,
25 okay?

1 Seems to be fairly consistent as to what the
2 individual testified. There is certainly a heck
3 of a lot more in that statement than what was
4 testified to and what have you.

5 There may be a contradiction or two in there.
6 Specifically I can't tell you where it is. To be
7 frank with you, all you jump all over the place
8 on that interview.

9 MR. LEIBY: He was hard to
10 interview.

11 THE COURT: That is basically
12 what I find in there. I personally have no
13 problem with you reading it to see if you come
14 to the same conclusions.

15 I would say to you the last couple of pages
16 are a synopsis of what occurred and it is
17 accurate, but that is up to you.

18 MR. CLEARY: Thank you, your
19 Honor.

20 (Whereupon, the following proceedings
21 occurred back in the courtroom out of the hearing of
22 the jury.)

23 THE COURT: We are back in
24 session.

25 Mr. Cleary?

1 MR. CLEARY: Yes, your Honor.

2 There is only two inconsistencies that I would
3 call the Court's attention to in the statement
4 of January 5th, '95, made by Terry Hopkins.

5 The first is regard to credibility of Danny
6 Smith. He states on page 1 that -- and I quote
7 here -- "Danny was usually full of shit." Nine
8 times out of ten.

9 MR. ROSENBAUM: What was that
10 inconsistent with?

11 MR. CLEARY: How he believed him
12 all the time.

13 MR. ROSENBAUM: Didn't he say that
14 he thought he was kidding or was that the other
15 guy?

16 I thought he said the same thing.

17 MR. CLEARY: He got up and left
18 in a hurry if he didn't believe him.

19 Secondly, your Honor, on page 3 of the
20 report, page 3 of the statement, in reference to
21 the statement allegedly made, he says that, "He
22 didn't just come out and say to you how he did
23 it, but -- or they did it, but he is in fact
24 denying that someone had made a statement that
25 'they did it.'"

1 THE COURT: I don't know that
2 it says that and I don't know that I would read
3 that inference in it, but you may inquire on that
4 statement at this point. I will let you do that.

5 That is the interpretation of it, but find
6 out.

7 MR. CLEARY: That is it.

8 THE COURT: Bring them back in,
9 Barbara.

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

12 THE COURT: Ladies and
13 gentlemen, the housework that needed to be done
14 is now done and the Court has been advised that
15 that may happen again one or two other times,
16 but not anymore today.

17 Sir, you are reminded that you are still
18 under oath.

19 THE WITNESS: Okay.

20 THE COURT: You may proceed,

21 Mr. Cleary.

22 BY MR. CLEARY:

23 Q Mr. Hopkins, you said you had given two statements,
24 sir, and the first time you weren't particularly
25 cooperative?

1 A Yes.

2 Q Is that correct and, in fact, you had at that time
3 denied any and all involvement whatsoever, is that correct?

4 A Yes.

5 Q And that was given about six months before your second
6 revised statement was given?

7 A Now that I was finding out, I had time to think about
8 it, and it was the second one was done in November, I
9 believe, November or December.

10 Q Actually, sir, we have January 4th, '95, unless there
11 is a third statement.

12 A January should be right then.

13 Q November was the one before that where you denied
14 everything?

15 A That was like a year before that.

16 Q In January of '94?

17 A Ninety-three, I believe. I am not sure. The dates
18 I am not sure.

19 Q You gave a statement in January of '93 regarding an
20 event that did not happen, had not happened yet?

21 A I don't know when it happened. I know it happened
22 like a year before. They asked me about a year before.
23 The second time they asked me another time and it was
24 right when I got home from the county for a PSI.

25 Q January, 1994, does that date mean anything to you?

1 A I told you I don't know the date.

2 Q Okay. You are saying you gave a statement
3 approximately a year before your last statement, the
4 January, '95 statement?

5 A Yes.

6 Q Which would make it January, '94.

7 Was this right about the time when all this happened?

8 A I don't know, I don't know.

9 Q So when all these things that weighed so heavily on
10 your mind --

11 A They asked me two times.

12 Q Allow me to put a question to you, okay?

13 When all these things that weighed so heavily on your
14 mind were going on, you don't remember when that was?

15 Do you remember whether any of this happened?

16 A I don't care to.

17 Q That doesn't answer the question.

18 THE COURT: That is not the
19 question, sir.

20 If you can recall the times, please do so.

21 THE WITNESS: I can't give him
22 a date.

23 THE COURT: I understand, I
24 understand. See if you can narrow it down to
25 New Year's, close to New Year's or what year,

1 that type of thing.

2 We understand that you can't give an exact
3 date.

4 THE WITNESS: I will try.

5 THE COURT: Go ahead, Mr.
6 Cleary.

7 Q Sir, you can remember the difference in time, about
8 a year, correct?

9 A Yes.

10 Q Do you know what a year means?

11 A Yes.

12 Q Now, this event is alleged to have occurred on January
13 19th, '94.

14 A Okay.

15 Q That is two years, two months ago.

16 A Okay.

17 Q All right. You gave a statement in January of '95?

18 A Okay.

19 Q That date is accurate, okay?

20 A Okay.

21 Q Now, you say you gave a statement about a year before
22 that wherein you denied knowing anything, okay?

23 And my question to you, sir, is, about a year before
24 that is right when all this is supposed to have happened,
25 January of '94?

1 A Uh-huh.

2 Q Do you think it would be logical for you to remember

3 when you are being asked about a murder investigation within

4 days or weeks of that murder actually happening?

5 A Do I what?

6 Q Would you know that you are being asked about something

7 that just happened?

8 A Yes, and I said I wasn't very cooperative with them.

9 Q So you were being asked about it as it happened?

10 A Not as it happened. I can't say it was January for

11 sure. I don't know exactly when I was asked the first time.

12 Q Was it pretty close after the incident occurred?

13 A Yes, it was close.

14 Q And who asked you then, who inquired of you?

15 A Detective Whitely and another detective.

16 Q Now, sir, you had been asked before, according to your

17 testimony -- that is, you were asked by Danny Smith to set

18 him up with somebody or actually it was your testimony to

19 do something yourself to the victim in this case?

20 A I was asked to do it.

21 Q That talk horrified you, right?

22 A Yes.

23 Q But it didn't horrify you so much that you couldn't act

24 as a referral source to a friend of yours, is that correct?

25 Do you have an answer to that?

1 A That is a good question.

2 Q You referred that matter --

3 A He asked me and I told him that I knew somebody but

4 I don't want any part of it.

5 Q But you are willing to act as a referral source for

6 this, right?

7 A Yeah, I guess.

8 Q Did you get a commission?

9 A Oh, no.

10 Q Were you offered a commission?

11 A No.

12 Q You didn't ask about your piece of the action or

13 anything?

14 A No.

15 Q So, this was really just as a favor to a friend?

16 A No.

17 Q No?

18 Was it some moral thing that you were doing on his

19 behalf?

20 A I don't know what I was doing.

21 Q You didn't know what you were doing, okay, but you

22 know what you are doing now, right?

23 A Sure I do.

24 Q Okay. And apparently at some point, some decency

25 kicked in, you decided now you don't want anything

1 personally to do with it, but you would refer it out
2 to somebody who might take care of it, correct?

3 A Yeah.

4 Q Now, this person, have you described this person
5 as a very close friend of yours?

6 A Yes.

7 Q What is his name?

8 A Carl Hartman.

9 Q Now, your testimony earlier was that you referred it,
10 you sent Danny to him, is that correct?

11 A Yeah.

12 Q All right. Did you bring him over and introduce him?

13 A No.

14 Q You didn't?

15 A I just told him, I said, "He wanted to talk to you
16 about something."

17 Q You handed him the phone or something?

18 A No, I took him there and he talked to him. I said,
19 "He wants to talk to you about something."

20 Q You introduced him?

21 A He is his own man. If he wants to do it, that was his
22 business.

23 Q But this very close friend of yours who you offer this
24 kind of business to, okay, if I were to tell you that his
25 testimony was that you did the talking, would you consider

1 that to be a truthful statement?

2 A No.

3 Q So, your close friend, Carl Hartman, if he says that
4 you did the talking, he is a liar?

5 A I didn't do the talking.

6 Q So you are stating, based on that, that Carl is a
7 liar?

8 MR. ROSENBAUM: Objection.

9 THE COURT: Sustained.

10 That is not what he is saying.

11 MR. CLEARY: Withdrawn.

12 THE COURT: Okay.

13 Q Now, sir, we have established that you are not very
14 good with times here from your earlier testimony, so what
15 I would like to ask you is some more questions about timing
16 if I may and that is the timing and the events of the 19th
17 or even late in the early morning of the 19th or the evening
18 of January the 18th, '94.

19 You went out that night with some friends?

20 A Yes.

21 Q Okay. And could you please state again -- I didn't get
22 them in the notes -- which friends were with you?

23 A Tammy, Danny, Sharon, my girlfriend Misty and myself.

24 Q And about what time did you go out, do you remember?

25 A Eight-thirty, nine.

- 1 Q And you were at Razzle's, I believe?
- 2 A Yes.
- 3 Q Any other bars?
- 4 A Here and there, but mostly Razzle's.
- 5 Q You went to multiple bars?
- 6 A Right, in downtown, yes.
- 7 Q Which ones?
- 8 A MardiGras, Warehouse and Razzle's.
- 9 Q Were you drinking with the same group that night?
- 10 A Yes.
- 11 Q And how late; did you close the bars that night?
- 12 A Yes.
- 13 Q Sir, were you drinking?
- 14 A Yes.
- 15 Q What were you drinking that night?
- 16 Can you estimate how much you had to drink?
- 17 A Twelve beers and a couple shots.
- 18 Q Twelve beers.
- 19 Do you keep count, sir?
- 20 A No, I am figuring about that much.
- 21 Q You went out at 8:30 and then at what time did you
- 22 finish drinking?
- 23 A I don't know.
- 24 Q You closed down the bars, right?
- 25 A Yes.

1 Q What time do the bars close in Elyria?
2 A Two-thirty.
3 Q And did you try to get in any at last call?
4 A No.
5 Q You were done by then?
6 A Yes.
7 Q Do you know or don't you?
8 A Yes.
9 Q You were done by then?
10 All right. So you had 12 beers.
11 Did you have any shots or anything like that, any
12 liquor?
13 A Yes.
14 Q How many of those did you have?
15 A Two.
16 Q Okay. Now, did you have any narcotic substances?
17 A No.
18 Q Did you have any crack cocaine?
19 A No.
20 Q Do you smoke crack?
21 A No.
22 Q Have you smoked crack?
23 A No.
24 Q You never smoked crack in your life?
25 A No.

1 Q Okay. Now, you are very familiar with all the
2 players in this thing, correct?

3 Do you live with Danny Smith?

4 A Yes.

5 Q You know the prosecution has been bringing forth
6 evidence that Danny Smith had constant access to crack
7 cocaine?

8 A Yes.

9 Q And you lived with this man?

10 A Yes.

11 Q But you never touched the stuff in your life?

12 A No.

13 Q Okay. Now, sir, after consuming approximately 12
14 beers and two -- how many shots?

15 A Two.

16 Q (Continuing) -- two whiskeys -- shots of what?

17 A One fifty-one.

18 Q One fifty-one, okay, did you have anything else to
19 drink?

20 A No.

21 Q Did you have anything to eat?

22 A Yeah.

23 Q Fact is, what you did, you went over to Mom's Open
24 Kitchen?

25 A Yes.

1 Q And while at Mom's Open Kitchen you ordered breakfast?
2 A Yes.
3 Q I am not going to ask you what you had to eat, it would
4 make me hungry.
5 I would like to know however, who was there?
6 A Same people I went out with.
7 Q Same exact people?
8 A Tammy, Danny, me, Misty and Sharon.
9 Q Did you see Ray there?
10 A No.
11 Q Now, were you with Danny all night?
12 A The whole night we were out. After the restaurant, no.
13 Q So, you ate at the restaurant and how long were you
14 there?
15 A Till about three, 3:30, something like that.
16 Q Were you there a half hour?
17 A I really don't know.
18 Q An hour?
19 A I don't know. This was awhile ago.
20 Q Now, sir, after consuming these amounts of alcohol,
21 you were pretty drunk, were you not?
22 A Yes.
23 Q And you had at that time decided to go home?
24 A Yes.
25 Q Now, you were living with --

- 1 A Danny --
- 2 Q But not participating in any kind of elicit behavior?
- 3 A No.
- 4 Q So, you went from there, now you were eating with
- 5 Danny?
- 6 A Uh-huh.
- 7 Q Did the two of you go upstairs?
- 8 A No, I left the restaurant, left them there. They
- 9 left on their own. They went in their car and I went
- 10 with my girlfriend in her car. I went to Danny's
- 11 apartment and Danny wasn't home and I went to my
- 12 sister's and waited.
- 13 Q How long were you there?
- 14 A About an hour.
- 15 Q What were you waiting for?
- 16 A Danny to come back home so I could go back over there.
- 17 Q This would be four o'clock?
- 18 A About 4:30, four, 4:30.
- 19 Q At which point you went back over to Danny's place?
- 20 A My sister showed up, she was with Danny, so I knew
- 21 to go over there.
- 22 Q Now, sir, do you recall giving earlier testimony
- 23 stating you got to Danny's apartment about 3:30?
- 24 A Yeah, I do remember that.
- 25 Q Now, sir, which would be -- are you saying that was

1 incorrect or that you are incorrect?

2 A It could be. I am not very good at what time it was.

3 Like I said, I was drunk.

4 Q It could be, okay. So, anything you say in regards
5 to time is completely inaccurate?

6 A Could be, yes.

7 Q Or dates?

8 A No, not always.

9 Q Well, you have not given us one date so far that we
10 can count on or one time other than the closing of the
11 bars.

12 A What do you want me to say?

13 Q Yes or no.

14 MR. ROSENBAUM: Is there a question?

15 Q Have you given us one date or time which we can count
16 on?

17 A Yeah, I know the bar closed at 2:30.

18 Q Okay. Now, sir, forgive me if I have asked this
19 before.

20 The whole time you were in the diner, did you see Mr.
21 Jalowiec?

22 A No.

23 Q The whole time you were in the diner, did you see
24 Ray?

25 A No.

1 Q But you were there with Danny, you were there with
2 Danny and your girlfriend and his girlfriend, correct?

3 A And my sister, yeah.

4 Q Was Michael there?

5 A I didn't see him.

6 Q Okay, but you were out with these people, with Danny,
7 all night long?

8 A I was out with Danny, Tammy, Sharon and Misty.

9 Q All night long?

10 A Yes.

11 Q Now, sir, you are stating you were intoxicated here
12 and you have no memory for times.

13 Do you remember what the conversation was down at
14 the diner or anything like that?

15 A There wasn't any. We was just talking.

16 Q Do you remember anything else you might have talked
17 about that evening?

18 A No.

19 Q Nothing of importance going on?

20 A No.

21 Q Everybody is out, relaxed, and having a few drinks
22 with friends?

23 A Yes.

24 Q Nothing to arouse your suspicion or anything?

25 A Not till I went back to the apartment.

1 Q We will get to that, but in the meantime you are
2 out, out having a good time with your friend who had
3 earlier, according to your testimony, tried to have
4 somebody killed and then when they couldn't get you
5 to do it, you referred them to somebody else?

6 You were out having a good time with this guy?

7 A Yes.

8 Q So you are still friends with him basically?

9 A Now?

10 Q Then.

11 A I suppose.

12 Q None of this stuff bothered you?

13 A I didn't think he was serious.

14 Q You didn't think he was serious when he asked for
15 a referral to somebody else?

16 You didn't think he was serious?

17 A No, I said no.

18 Q It didn't occur to you until afterwards that any
19 of this might be true, that is what you are saying,
20 that is what you want us to believe?

21 A That any of what is true?

22 Q Any of these prior things, when he approached you,
23 when he solicited you and when you said no and then when
24 you referred him and he solicited your friend?

25 All right, you want us to believe that you didn't

1 think he was serious about any of it?

2 A I really didn't, no. If you knew him, you would
3 understand what I was talking about.

4 Q So, why do you remember it now?

5 A Because it happened.

6 Q You can't seem to remember everything else about
7 what happened.

8 MR. ROSENBAUM: Your Honor, I
9 object to his characterizing what he thinks
10 the testimony is.

11 THE COURT: Well, and Mr.
12 Cleary, I understand what you are saying and
13 at this point I am going to leave that sit.

14 In the future please ask a question.

15 MR. CLEARY: Thank you, your
16 Honor.

17 Q Now, sir, you were intoxicated that night.
18 You go up and you have another conversation with Dan?

19 A Yes.

20 Q And this is what, an hour after you left him?

21 A I don't know, yeah.

22 Q That is the outside edge, it could be 3:30, correct?

23 A Yeah.

24 Q Could be 3:30. Less than an hour after the bars
25 close you are there going up to the apartment with Danny?

1 A Yes.

2 Q And he says something, he says what?

3 A That they had done it.

4 Q And all of a sudden, despite everything that had been

5 said to you in the past that you didn't think was true,

6 all of a sudden you realize that this is all true?

7 A Yes.

8 Q Three-thirty in the morning you are drunk, okay, and

9 he says this to you and that is all he says according to

10 your testimony, right?

11 He didn't get into anything else, is that correct?

12 A What do you mean?

13 He didn't say nothing else.

14 Q Right, he didn't say anything?

15 A Right.

16 Q He said they did it and you knew then and after all

17 the times that you thought he was full of it, now you are

18 going to believe him?

19 A Yes.

20 Q And you get out of there?

21 A Yes, I did.

22 Q And then went home and went to sleep?

23 A Went to my sister's and went to sleep.

24 Q How do you sleep when you find out something like

25 that just happened?

1 A I didn't say I slept sound.
2 Q But you went to sleep, you just tossed and turned
3 a little bit?
4 A The next day I went and got my stuff.
5 Q But you didn't go to the police?
6 A No.
7 Q At some point right after that the police came to
8 you, right?
9 A Yes.
10 Q We will get to that.
11 So you toss and turn, get up in the morning still
12 a little hung over?
13 A Yes.
14 Q Still a little drunk maybe?
15 A Yes.
16 Q All right. And then you go over, you go back to
17 the house of horrors here, you go back to Danny's house?
18 A Yes.
19 Q The place that you had to clear out of?
20 A Yes.
21 Q And you see these guys sitting around talking?
22 A Uh-huh.
23 Q Isn't it true, sir, that you had testified now
24 today you were very definite as to Dan making
25 statements?

1 A Yes.

2 Q But is it not true, sir, that your previous testimony
3 was that you could not say who said what?

4 A But I do remember saying it.

5 Q That they -- I am asking about your previous testimony,
6 all right?

7 Do you recall giving a statement under oath, all right,
8 that you could not remember who specifically said what, do
9 you recall that?

10 A Yes.

11 Q Okay. But now you remember okay, right?

12 A Yes.

13 Q You can't remember a year, but this you remember all
14 of a sudden?

15 A After I thought about it I do remember it.

16 Q After you thought about it, okay. Let's talk about
17 when you came to think about it, sir.

18 You are presently on probation, is that correct?

19 A Yes.

20 Q And, in fact, you were sentenced to prison for
21 felonious assault or attempted felonious assault?

22 A Yes.

23 Q Aggravated assault with a specification for physical
24 harm -- no, no, I withdraw that.

25 Attempted aggravated burglary, correct?

1 A Yes.

2 Q Felonious assault?

3 A Yes.

4 Q Domestic violence?

5 A No, it was attempted felonious assault.

6 Q It was brought down to attempted?

7 A That is what it said on my papers.

8 MR. CLEARY: This says
9 convicted --

10 MR. ROSENBAUM: Ask your
11 question to the witness.

12 MR. CLEARY: Fine.

13 MR. ROSENBAUM: Objection.

14 May we approach?

15 THE COURT: Surely.

16 (Whereupon, the following proceedings
17 occurred at the bench out of the hearing of the jury.)

18 MR. ROSENBAUM: They are going to
19 cross this guy with my discovery.

20 MR. CLEARY: All I was doing
21 was trying not to overstate my case because they
22 have he was convicted of the --

23 THE COURT: He answered the
24 question. Let's continue on.

25 MR. ROSENBAUM: If you want to go

1 up and get the record I have no objection to that.

2 MR. CLEARY: Just keeping it
3 straight.

4 THE COURT: Proceed.

5 (Whereupon, the following proceedings
6 occurred back in the hearing of the jury.)

7 Q Mr. Hopkins, were you convicted of attempted aggravated
8 burglary?

9 A Yes.

10 Q And did you receive a prison sentence for that?

11 A Yes.

12 Q And what was that sentence?

13 A Five to fifteen.

14 Q Five to fifteen years at a state correction facility.
15 What happened there, did you obtain probation?

16 A Super shock probation.

17 Q You were sentenced to prison, you went, correct?

18 A Yes.

19 Q You went to prison?

20 A Yes.

21 Q I will come back to the others in a second.

22 Now, sir, you say that you were arrested for
23 attempted felonious assault?

24 A Yes.

25 Q Okay. Now, did you receive a sentence for that

1 as well?

2 A Yes.

3 Q And what was that sentence?

4 A Three to ten.

5 Q And what happened with that?

6 A It was run concurrent with the aggravated burglary.

7 Q But it was a separate offense?

8 A Happening in the same incident.

9 Q Okay. Domestic violence?

10 A Yes.

11 Q Same event?

12 A Yeah.

13 Q Or different?

14 A All in one night.

15 Q And what sentence did you receive for domestic

16 violence?

17 A I don't know.

18 Q You don't know?

19 A No. It was like six months, I think.

20 Q And last, but not least, we have criminal damaging?

21 MR. ROSENBAUM: Objection, your

22 Honor.

23 He knows that the rule is limited to

24 felonies within ten years and the sentences are

25 irrelevant.

1 MR. CLEARY: These were all
2 under the same case.
3 THE COURT: But talk about
4 the felonies.
5 MR. CLEARY: I will withdraw
6 the misdemeanor question, your Honor.
7 THE COURT: Very well.
8 MR. ROSENBAUM: Your Honor, the
9 question has been asked and answered and he
10 exceeded the scope of the rule.
11 MR. CLEARY: Which rule?
12 THE COURT: Ask this question
13 right now and, please, any questions, you
14 address to me.
15 MR. CLEARY: Certainly.
16 THE COURT: Ask your question.
17 MR. CLEARY: I will ask whether
18 or not, your Honor, he was granted -- or first,
19 that he was sentenced and he answered that.
20 THE COURT: All right.
21 MR. CLEARY: I was going to ask
22 whether he was given super shock --
23 THE COURT: Ask your question.
24 MR. CLEARY: You asked me to
25 address them to you.

1 THE COURT: No, no, rather than
2 Mr. Rosenbaum, me.

3 MR. CLEARY: Okay.

4 Q You were granted super shock probation, is that
5 correct?

6 MR. ROSENBAUM: Objection.

7 Asked and answered and it is irrelevant.

8 THE COURT: I will permit it.

9 Q Do you know how it came about that you were able to
10 obtain super shock probation?

11 A I filed for it.

12 Q You filed for it.

13 Did you have any kind of agreement or anything that
14 someone would put a word in on your behalf to help you
15 obtain super shock probation?

16 A Yeah, but no promises were given.

17 Q No promises or guarantees, is that correct?

18 A Yes.

19 Q That is the wording that is also used?

20 MR. ROSENBAUM: Objection, your
21 Honor.

22 THE COURT: Get on with the
23 questions.

24 How would he know that is the wording?

25 MR. CLEARY: It was used with

1 him, your Honor.

2 THE COURT: Get on with your
3 questions.

4 Q And exactly where did you -- strike that.

5 Those promises, how did those come about?

6 A Who told me this?

7 Q That is correct.

8 A Detective Leiby.

9 Q Seated over here?

10 A Yes.

11 Q And in exchange for what?

12 A It was not in exchange for nothing. I did him
13 a statement and then I got sent. I gave him the
14 statement way before I got sentenced.

15 Q And you were told if you gave the statement --

16 A He would see what could be done.

17 Q Consideration could be given?

18 A Yes.

19 Q Sir, do you know, were you told what actions would
20 be taken on your behalf for giving that statement?

21 A He would see what could be done about me getting
22 probation.

23 Q Whether anybody would be spoken to?

24 A Yes.

25 Q Okay. Sir, true to his word, did Detective Leiby

1 do what he said he would do?

2 A I suppose, I don't know what he did.

3 Q You are now out on shock probation?

4 A Yes.

5 Q And you are still under the jurisdiction of the Court
6 for that probation, correct?

7 A Yes.

8 Q Sir, are you required in any way to testify today for
9 that probation?

10 A No, just subpoenaed.

11 MR. CLEARY: No further
12 questions.

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

15 THE COURT: Thank you, sir,
16 you may step down.

17 (Witness excused.)

18 * * *

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

6 DIRECT EXAMINATION OF MICHAEL BEAMAN

7 BY MR. ROSENBAUM:

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

9 A Detective Michael Beaman.

10 Q Spell your last name?

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

12 Q Are you employed, sir?

13 A Yes.

14 Q How are you employed?

15 A Employed with the City of Cleveland, Homicide Unit.

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

18 A Sixteen and a half years.

19 Q And how long have you been a detective?

20 A Pretty much the last eight, nine years.

21 Q How long have you served with the Homicide Unit?

22 A Three and a half years now.

23 Q As a result of your position on the Homicide Unit,
24 were you called to investigate the death of someone on
25 January 19th, '94?

1 A Yes, I was.

2 Q Can you tell the Court and jury what time you were
3 called to investigate that death?

4 A We were summoned to the scene at approximately 9:55
5 hours.

6 Q And where would that scene be, sir?

7 A The location is called Woodland Cemetery. It is a
8 cemetery in the heart of the east side of Cleveland.

9 Q That would be 9:55 a.m. or p.m.?

10 A a.m.

11 Q And can you tell the Court and jury what you did as
12 a result of being called to that scene?

13 A We responded to the scene and conducted our normal
14 investigation in connection with the body, a male's body
15 being found in the cemetery.

16 Q Did you go alone?

17 A No, we were accompanied by our SIU, Scientific
18 Investigation Unit and other police personnel, my partner
19 and myself.

20 Q Did you ask the Scientific Investigation Unit to do
21 anything, sir?

22 A Yes. Once we arrived at the scene and viewed the
23 body and the crime scene, we directed them to confiscate
24 certain items on the scene as evidence.

25 Q Did you ask them to photograph anything?

1 A All items were photographed in its place before
2 confiscation.

3 Q Do you recall the weather conditions that morning,
4 sir?

5 A It was extremely cold. It was recorded as one of
6 the coldest days in Cleveland history.

7 Q Do you have any recollection as to what the
8 temperature might have been or the wind chill factor?

9 A I believe it was minus 46 degrees wind chill.

10 Q Did the cold affect your ability to make normal
11 movement or do normal things?

12 A Yes, it did. Ink pen wouldn't write, pencils
13 wouldn't write, joints in my hand locked up. Several
14 times we had to get back and forth in the car to warm
15 our hands to have flexibility in our fingers.

16 Q Sir, I would like to place before you some
17 photographs that have been marked for identification as
18 State's Exhibits 1-A through 1-Q and ask you to look at
19 them, please.

20 Do you recognize those photographs, Detective?

21 A Yes, I do.

22 Q What are they photographs of?

23 A These are photographs of the crime scene as it was
24 when we arrived.

25 Q Sir, do those fairly and accurately depict the scenes

1 they represent?

2 A Yes, they do.

3 Q Were they taken at your direction and in your presence?

4 A Yes.

5 MR. ROSENBAUM: Your Honor, at this
6 time I would like to tender the photographs for
7 admission and request permission that the
8 Detective be able to hold them up and explain
9 their significance to the jury.

10 THE COURT: Mr. Grunda, you have
11 looked at them?

12 MR. GRUNDA: Yes. If I could
13 have one second.

14 THE COURT: Surely.

15 (Whereupon, the following proceedings
16 occurred at the bench out of the hearing of the jury.)

17 MR. GRUNDA: Your Honor, I would
18 object to 1-G for the gruesomeness and then there
19 are several of them -- 1-L, 1-M --

20 THE COURT: Repetitious?

21 MR. GRUNDA: Repetitious, right.

22 THE COURT: May I see them all
23 at this point?

24 MR. GRUNDA: 1-I through M -- I
25 don't mind one, but there is a bunch of them.

1 THE COURT: 1-B no problem?
2 MR. GRUNDA: No.
3 THE COURT: 1-C?
4 MR. CLEARY: No.
5 THE COURT: 1-E, any problem?
6 MR. GRUNDA: No.
7 THE COURT: 1-F?
8 MR. GRUNDA: No, other than it
9 is gruesome.
10 THE COURT: I will keep that
11 in mind. 1-H?
12 MR. GRUNDA: No. I through M --
13 THE COURT: It is from a
14 different angle, a different side. This one is
15 this side, that is the other side. The body is
16 in a different direction.
17 That is a little closer, but it could be
18 repetitious.
19 Mr. Rosenbaum, take a choice between those
20 two.
21 MR. ROSENBAUM: The reason I have
22 to choose is why?
23 THE COURT: It is because
24 basically the same, one is closer than the other.
25 MR. ROSENBAUM: One has clothes

1 being not removed.

2 THE COURT: All right. I did
3 not notice that. Let me see that again, please.

4 MR. ROSENBAUM: And it is closer.

5 THE COURT: I am going to admit
6 one of these.

7 MR. ROSENBAUM: That doesn't tell
8 us where it was.

9 THE COURT: All right. Do you
10 want to pick the one with the clothing in it?

11 MR. ROSENBAUM: I don't want to be
12 a pain in the butt, but we had the same argument
13 with the pictures before and these were the ones
14 permitted. They said they were gruesome also.

15 THE COURT: That is another
16 point. I am not worried about that.

17 MR. ROSENBAUM: Also shows many
18 different things. This one you can see the car
19 tracks after. This one you cannot.

20 THE COURT: True, true. Okay.
21 Though it depicts the body, that picture does not
22 show the tracks. This picture shows the cemetery
23 itself. Okay.

24 This is the other side of it.

25 MR. GRUNDA: So you are letting

1 them all in?

2 THE COURT: Well, I don't know
3 at this point. So far I am going to look at them
4 again.

5 This shows a closer view of the cigarette
6 lighter and these are tire tracks.

7 Your objection again, please, for the record,
8 Mr. Grunda?

9 MR. GRUNDA: 1-I through M, I
10 object to because of the repetitiveness and 1-G
11 was gruesome.

12 THE COURT: I will admit them
13 all. Your objection will be noted at this point.

14 * * *

15 THEREUPON, STATE'S EXHIBITS 1-A THROUGH 1-Q,
16 HERETOFORE MARKED FOR EVIDENCE, WERE OFFERED AND
17 ADMITTED INTO EVIDENCE.

18 * * *

19 (Whereupon, the following proceedings
20 occurred back in the hearing of the jury.)

21 BY MR. ROSENBAUM:

22 Q Again, sir, I would like to ask you to take State's
23 Exhibit 1-A, hold it up and describe for the jury what it
24 is.

25 THE COURT: Before you do that.

1 and I know what the answer is going to be, but I
2 think we ought to have it, would you ask him
3 whether they depict the scene properly.

4 Q Again, do they truly and accurately depict the scene
5 they represent?

6 A Yes, they do.

7 Q Were they taken at your direction?

8 A Yes, they were.

9 Q And in your presence?

10 A Yes.

11 Q Would you hold up State's Exhibit 1-A and tell the
12 Court and jury what that depicts?

13 A State's Exhibit 1-A -- this is a view of the body
14 laying in the second driveway of the cemetery, also
15 shows a picture of myself in the area, the body laying
16 in the middle of the roadway and some of the grave
17 markings in the cemetery.

18 Q Do you recall what direction the picture is facing,
19 looking into this picture or the camera?

20 A This would be facing west of the body.

21 Q 1-B, sir?

22 A This is a photograph of some of the clothing belonging
23 to the victim, upper garments that we found lying in the
24 snowbank along the roadside.

25 State's Exhibit 1-C -- this is a photo of a spent shell

1 casing that was found on the scene near the body.

2 1-D -- this is a photo of a small spring we believed
3 at that time to be a firing spring for a gun, possibly a
4 gun. It also has some blood splattered in the snow.

5 Q Was this found close to the victim's body?

6 A Yes, this was found very close to the victim's body.

7 1-E, this is a photo of the mechanism found in the
8 snow as well as one live 32 caliber round that was also
9 found in the snow in the midst of a large blood stain
10 and inside the blood stains were small hair samples
11 which were taken from the stains, blood stains, and
12 again, a small picture of a live 32 caliber round
13 approximately right there. (Indicating)

14 1-F, this is a closeup photo of the victim lying on
15 the ground on his stomach with what appears to be a wound
16 to his left shoulder, large amount of blood, face is
17 facing towards the ground.

18 1-G --

19 THE COURT: Ladies and
20 gentlemen, may I interrupt, this is gruesome
21 so be prepared.

22 A (Continuing) -- There is a tatoo -- as the victim was
23 rolled over, his face covered with blood, snow, and it also
24 shows a large wound to his neck.

25 State's Exhibit 1-H -- this is a photo of the victim's

1 chest and is covered with blood, but we were concentrating
2 on a tatoos that we found on his chest.

3 1-I -- again, this is a distant shot showing a good
4 view of the cemetery and the victim's body, how it was
5 found lying in the roadway.

6 Q Would that be facing what direction now?

7 A I believe this is still facing west if I am not
8 mistaken. Let me look at this. This is facing west.

9 1-J is also a photo of the victim's body, a little
10 closer view. This one would be facing east, victim's
11 body laying in the roadway, shows several of the blood
12 stains in the road.

13 1-K, a little closer view of the victim's body
14 laying in the road, blood stains in the snow, tire marks
15 in the road.

16 State's Exhibit 1-L, again a different angle view
17 of the victim's body laying in the road, tire marks --
18 a little better scene in this photo.

19 Q Detective, did the tire tracks go right through the
20 blood stain?

21 A Yes.

22 1-M, again another angle showing the victim's body.
23 This photo shows his clothes, how they were found on a
24 pile of snow. It also shows a pack of cigarettes that
25 was found in the road, somewhat of a distant shot.

1 State's Exhibit 1-N is a closeup of the cigarettes
2 as well as the tracks in the snow, the tire tracks in
3 the snow.

4 1-Q, again is a view of the tracks, how they ran in
5 the snow.

6 Q Was the clothing that is depicted in those photographs
7 gathered up?

8 A Yes, they were.

9 Q Sir, I would like to put before you some clothing that
10 was contained in a plastic wrapper marked as State's Exhibit
11 3-H.

12 Would you examine the contents, please?

13 Can you recognize that, sir?

14 A These are the clothes that were on the scene. The
15 victim had the pants on and shoes, but the shirt and other
16 garments are shown in the photo as to where they were found.

17 THE COURT: Mr. Rosenbaum and
18 Detective, would you care to wear gloves for this?
19 We have them.

20 THE WITNESS: How much further am
21 I going to go?

22 Q Did you take them or did the Coroner's Office people
23 take them?

24 A Under my direction we confiscated these clothes and
25 they were taken to the Coroner's Office.

1 Q Do they appear to be in the same condition today as
2 when they were impounded?

3 A Yes.

4 Q I would like to place before you a small envelope
5 marked as State's Exhibit 3-F and ask if you can identify
6 the contents of that, sir?

7 A These are the items that is also shown in the photos
8 I have not gotten to. These items, they were also found
9 on the scene, photographed in their place.

10 Again, the Bic lighter, red Bic lighter, small bottle
11 of cough syrup and these were the cigarettes that were
12 photographed on the ground; also, this is the small
13 mechanism believed to be part of a gun that was also
14 shown on the photos.

15 Q And those items were impounded at your direction?

16 A Yes.

17 Q Are they in substantially the same condition today
18 as when they were impounded?

19 A Yes.

20 Q I would like to hand you another envelope that has
21 been marked for identification as State's Exhibit 3-E
22 and ask if you can identify the contents of it, sir?

23 A This is a blood sample, like a swab, that had a blood
24 sample and some hair in it. As you can see by the envelope,
25 trying to write outside, ink pens were not working too well.

1 Q Were those the samples that were taken from the scene
2 as depicted in the photographs?

3 A Yes.

4 Q Are they also, to the best of your knowledge, in the
5 same condition as when they were impounded?

6 A Yes.

7 Q Can you identify State's Exhibit 3-G, please?

8 A This is a steak knife that we found in the fold of
9 the victim's jacket when we confiscated it on the scene.

10 Q Was the jacket near the body?

11 A Somewhat near the body but on top of a mound of snow.
12 The area had been plowed and the snow had begun to mound
13 up and the jacket and the shirt were sitting on top of
14 the snow mound.

15 Q I take it you had that impounded as well?

16 A The knife?

17 Q Yes.

18 A Right.

19 Q Is it in substantially the same condition today as
20 when it was impounded?

21 A Yes.

22 Q Can you tell the Court and jury what you did with
23 the clothing, the items confiscated?

24 A The blood sample, the clothing, knife -- all of
25 those items went to the Coroner's Office with the body

1 to be examined.

2 These other items like the cigarette lighter,
3 firing pin, things of that sort, they were taken to the
4 Scientific Investigation Unit and examined for prints.

5 Q Now, were you aware of whose body you had found?

6 A No.

7 Q When did you learn the identity of the deceased?

8 A That was a couple of weeks later. Approximately
9 two to three weeks later we had learned the identity
10 of the victim.

11 Q Can you tell the Court and jury where those items
12 have been after you impounded them?

13 A Again, they were taken to the various units to be
14 tested for evidence and analyzed and after that, all
15 except for the clothing, went to the Cleveland Police
16 Property Unit where it was held until trial time.

17 Q Where did the clothing go?

18 A The clothing remained at the Coroner's Office.

19 Q And they brought it to the trial?

20 A Yes.

21 Q When it was brought to trial it was delivered to
22 this courthouse in this courtroom?

23 A It was delivered to the courthouse.

24 Q And left?

25 A Yes.

1 THE WITNESS: Do you want me
2 to identify the rest of these?

3 MR. ROSENBAUM: I am sorry, I
4 thought you did.

5 Would you identify them?

6 A State's Exhibit 1-O is just a photo of the red
7 lighter and a quarter found on the scene that I showed
8 you from one of the evidence envelopes that was
9 confiscated and again, fingerprinted.

10 State's Exhibit 1-P is also a photo of the green
11 lighter that was confiscated. In this photo you can
12 see a footprint just to the side of it.

13 MR. ROSENBAUM: Thank you.
14 I have nothing further.

15 THE COURT: Mr. Grunda?

16

17

18

19 CROSS-EXAMINATION OF MICHAEL BEAMAN

20 BY MR. GRUNDA:

21 Q Is it Officer or Detective?

22 A Detective.

23 Q All these items that you were talking about, the
24 clothing, you said you gathered them up at your
25 direction, right?

1 A Yes.

2 Q The clothing was sent to the Coroner's and the
3 other items you kept in your SIU Unit?

4 A They were taken to the SIU Unit where they were
5 fingerprinted.

6 Q You didn't take them?

7 A No, our SIU Unit took them.

8 Q And then all items were brought here and left
9 here at the other trial at another time?

10 A Yes.

11 Q How long, about, was that that the items were
12 out of your possession?

13 A Between the last trial and now?

14 Q Yes.

15 A When was the last trial? November maybe. I
16 cannot exactly remember the month of the last trial.

17 Q And then you got some of the items back and they
18 were at the Cleveland Police Department, okay?

19 You said they were in an evidence property room?

20 A You are talking about after the first trial?

21 Q After you gathered them up at the scene, you had
22 them checked for prints and all.

23 Then you kept them there?

24 A Those items that were kept for prints were taken to
25 the property room.

1 Q Quite a lot of people have access to the property
2 room?

3 A Those officers that are assigned to the property
4 room.

5 Q How many would that be?

6 A I have no idea.

7 Q Like one or 20 or do you have any range?

8 A I have no idea how many policemen are assigned there.

9 Q Okay. Detective, State's Exhibit 1-A, okay, now that
10 you are saying the cameraman is looking west?

11 A Facing to the west, yes.

12 Q That is a road here that you indicate has been plowed?

13 A Yes.

14 Q Is that another road at the end where the police
15 cruiser is at?

16 A Where the cruiser is -- the entrance road to this side
17 would be the north side. No, that would be the south side,
18 but that was an entrance and exit road, in and out of the
19 cemetery.

20 Q Where does this road go to where they are taking the
21 pictures? (Indicating)

22 A Basically you have a road that enters here, to this
23 side also another road that runs north and south. These
24 access drives are running east and west. (Indicating)

25 Q So, the roads north and south go in and out?

1 A This one here does. This one here stops at a fence.
2 (Indicating)

3 Q Is this person taking the picture in the north and
4 south road?

5 A Standing pretty much in the north and south road.

6 Q How much distance from the one road in the picture
7 going north and south to the other road going north and
8 south?

9 A I don't have the exact measurements. If I had to
10 guess, about 50 feet.

11 Q Fifty feet or 50 yards?

12 A Fifty yards, yeah.

13 Q Half a football field?

14 A Not quite that wide, maybe a quarter of a football
15 field.

16 Q So that is how long this road is that you are talking
17 about?

18 A Yes.

19 Q But you didn't measure it?

20 A It was measured but I don't have my notes with me.

21 Q Okay. Now, 1-B, okay, has the shell.

22 You have no idea when or where or how that shell got
23 there, do you?

24 A No.

25 Q 1-D, that is of a spring?

1 A Yes.

2 Q You don't know when or where or how that got there?

3 A No.

4 Q The fact is, you don't even know what the spring is
5 from, do you?

6 A My guess is from a firearm.

7 Q I am asking you if you know what it is from?

8 A No, I don't.

9 Q Items depicted in D, E, okay, do you know when or
10 where or how they got there?

11 A No, I don't.

12 Q Appears to be -- one of the items is a shell, correct?

13 A Yes.

14 Q Was that sent out for testing?

15 A It was confiscated but it wasn't tested, checked for
16 prints.

17 Q It was checked for prints?

18 A Yes.

19 Q Any prints found on it?

20 A No.

21 Q 1-P, that is the green lighter.
22 Do you know when, where or how that got there?

23 A No.

24 Q Was that checked for prints?

25 A Yes.

1 Q Were any prints found on it?
2 A Negative for any substantial prints.
3 Q Okay. 1-0 --
4 A Yes --
5 Q (Continuing) -- the red Bic lighter?
6 A Yes.
7 Q Do you know when or how that got there?
8 A No.
9 Q You don't know whose it was?
10 A No.
11 Q Was that checked for prints also?
12 A Yes.
13 Q Any prints found on it?
14 A Negative.
15 Q 1-N, picture of a cigarette pack, is that right?
16 A Yes.
17 Q Do you know when or how that got there?
18 A No, I don't.
19 Q Do you know who owned it?
20 A No.
21 Q Any prints on that?
22 A No.
23 Q Would it be fair to say, Detective, that on all
24 the items that you checked, no fingerprints of anybody
25 were found?

- 1 A True.
- 2 Q Now, Officer, handing you 1-Q, a picture of some
3 tire tracks?
- 4 A Yes.
- 5 Q Okay. Appears there are several different types
6 of cleat marks left in the snow from different types of
7 tires, would that be fair to say?
- 8 A Different type of cleat marks?
- 9 Q It appears that many different vehicles may have
10 traveled down there and made tire marks?
- 11 A Yes.
- 12 Q And you don't know when, where or what type of
13 vehicle or tires made those marks?
- 14 A No, I don't.
- 15 Q Were any measurements taken to try to find out, in
16 fact, what kind of tires made those marks?
- 17 A No.
- 18 Q Any measurements taken?
- 19 A Not by myself, no.
- 20 Q Were any efforts made to get some certain types
21 of tires and roll them in the snow?
- 22 A Not done by me.
- 23 Q Anybody else under your direction?
- 24 A No.
- 25 Q Your office?

- 1 A No.
- 2 Q Or in the Cleveland Police Department?
- 3 A Not that I know of, no.
- 4 Q Okay. It would be fair to say that in 1-I through
- 5 M, I am only talking about the tire marks, the tire marks
- 6 that you see in the pictures in the snow would be the
- 7 same thing, many different tire marks, many different
- 8 cleat marks?
- 9 A Yes.
- 10 Q But in all these marks you can see -- the fact is
- 11 different areas where cars went through the embankment,
- 12 some down the middle, maybe like two cars were passing
- 13 or whatever?
- 14 A I doubt if they were passing, but yes.
- 15 Q You don't know, right?
- 16 A I don't know.
- 17 Q All we know, there is a bunch of different tire
- 18 marks on the road in the snow?
- 19 A Right.
- 20 Q Okay. Officer, for identification, 1-O and 1-P, now
- 21 one depicts -- 1-O depicts the red lighter and 1-P the
- 22 green lighter, correct?
- 23 A Yes.
- 24 Q Then there is prints in the snow that you said appear
- 25 to be boot marks, right?

- 1 A Yes.
- 2 Q You don't know when or how those marks came to be in
3 the snow?
- 4 A No.
- 5 Q Did you determine what type of boot made that mark?
- 6 A No.
- 7 Q Now, Officer, handing you 1-J, now that is a shot
8 looking down that road going west, would that be correct?
9 Is that looking west?
- 10 A And east maybe.
- 11 Q Well, 1-A you testified before is looking west and it
12 shows the police car and that is what that one is showing
13 too, would that be correct?
- 14 A This would have to be east. That would be my mistake.
15 That looks like it would be east.
- 16 Q Which one is east now?
- 17 A Both of these would be facing east, 1-J and 1-A.
- 18 Q So you are correcting your testimony now?
- 19 A I would have to say that is east.
- 20 Q Now, what you said before that was west is now east,
21 so I would take it that all the other photos that you
22 identified as east would be west?
- 23 A I would have to look at these.
- 24 Q That was 1-A and 1-J is east?
- 25 A Yes, because I remember, his head was to the south.

1 The victim's head was to the south. On 1-M would be
2 facing westbound, that would be facing to the west.

3 So would 1-I, that would be facing westbound. 1-L
4 will be facing westbound. 1-K is east.

5 Q So there is only one -- which way do you have to go
6 to get out?

7 A You could enter an exit from the north. There is
8 an entrance gate that you could drive a car up on the
9 north side of the cemetery.

10 Q I am going to hand you 1-I. That is the road in
11 between. We know two roads either way --

12 A The victim's head is to the south. The entrance
13 would be approximately here, on the north side. This
14 is the cemetery. This would be the north side of the
15 cemetery. (Indicating)

16 Q So, the road closer to where the police car is in
17 the background of the picture is where you get out?

18 A There is a roadway that runs north and south back
19 here. (Indicating)

20 Q Using 1-I, I am lost as to how the driveways go in
21 and which way the road was.

22 How about if we will do it on the board?

23 Can you do that?

24 (Whereupon, the witness stepped from the
25 witness stand to the blackboard in the courtroom.)

1 Q Put an arrow north. Okay. Now, this would be
2 looking -- the entrance where you would drive into the
3 cemetery, this would be like -- (Indicating)

4 A Here is the entranceway from Quincy Avenue. As you
5 travel into the cemetery you are going southbound. You
6 will come to like a roadway.

7 These are graves in here, roadways for like when you
8 have funerals, the cars in the road. This roadway to this
9 drive. You come up and you go into this drive.

10 This is the second drive which is where the victim's
11 body was found. (Indicating)

12 Q Okay. He is facing this way, right? (Indicating)

13 A His head is to the south.

14 Q Pointing this way? (Indicating)

15 A That is the road.

16 Q Pointing in this direction? (Indicating)

17 A Yes.

18 Q Okay. Thank you. You can sit down.

19 (Whereupon, the witness resumed the witness
20 stand.)

21 Q So, in order to get in and out then, you go up here
22 and then go down this road and go out? (Indicating)

23 A Yes, my drawing should have showed -- it is like a
24 large square with roads running between them.

25 Q Okay. Well, in 1-M that is basically the way you

1 have it drawn out there, okay?

2 And showing these tracks that are there that you see
3 and you also indicated blood markings, okay, there is no
4 indication in any of these tracks that the tires went
5 through the body and as it rolled, it made more tracks,
6 bloody marks as it would be rolling out, does it?

7 A Here? (Indicating)

8 Q Here is where the blood is. (Indicating)

9 A Well, there is blood there, too.

10 Q Here is a big thing of blood here? (Indicating)

11 A Yes.

12 Q And then you see tire tracks coming from that in
13 the foreground of the picture?

14 A Yes.

15 Q I am asking you, from here, where you see this,
16 there is no indication where you go to the snow bank
17 that would show the tire would roll, it would make a
18 mark in the body? (Indicating)

19 A Not from the picture, no.

20 Q So then, 1-A, which is the picture is the other
21 way then, right along at the road, the other way?

22 A Right.

23 Q So now, this one is the other way, in other words,
24 the other side of the road? (Indicating)

25 A Right.

1 Q Again, you see the blood mark and then again, these
2 tire tracks. There is nothing there to indicate if the
3 tire went through it. (Indicating)

4 A As it would roll, it would leave a mark?

5 A Not that you could see in these pictures, no.

6 Q So, it could be the tire marks were already there
7 and then the blood colored it?

8 A I don't know.

9 Q You don't know. Okay.

10 Were any scientific tests done to determine to see
11 if tires rolled through it?

12 A No, not directly by me, no.

13 Q When you gathered up all this evidence were you
14 wearing like gloves and all to keep the integrity of
15 the items so there would be no cross-contamination of
16 anything?

17 A The SIU, he was wearing gloves.

18 Q Okay.

19 A We were all wearing gloves.

20 Q But he would pick up one item of evidence and take
21 it, put it in the bag or something?

22 A Yes.

23 Q He would pick up another one and he would keep doing
24 like this?

25 A Yes.

1 Q Did he, in order not to cross-contaminate, did he,
2 every time he picked up a different piece of evidence put
3 on a different set of gloves?

4 A No.

5 Q The knife, Officer, 3-G, that was marked as the knife,
6 right?

7 A Yes.

8 Q That is this knife, right?

9 A Yes.

10 Q Like characterized as a steak knife, would that be fair
11 to say?

12 A Yes.

13 Q Serrated edge?

14 A Yes.

15 Q That was obtained at the scene, right?

16 A Yes.

17 Q Okay. And where was that obtained?

18 A Folded up in the coat.

19 Q This blue coat? (Indicating)

20 A Yes.

21 Q And you are saying that is this person's coat, you
22 didn't know right away, you figured that was his coat?

23 A Since he was naked from the waist up we figured it
24 was his coat.

25 Q It was not tried on or anything like that?

1 A No.

2 Q For size or whatever?

3 A No.

4 Q But that was in his coat or what you assumed to be
5 his coat, that was in the fold of his coat?

6 A Right.

7 Q And being in the fold, that would mean, I would take
8 it, that he had easy access to it, would that be fair to
9 say?

10 A I don't know where it was before this happened. I
11 have no idea.

12 Q Okay. Did you have that knife checked for prints?

13 A Yes.

14 Q Were any prints found on that?

15 A Negative for prints.

16 Q Okay. Were any positive identifications made on any
17 pieces of the evidence that you picked up other than the
18 clothing?

19 A No.

20 MR. GRUNDA: No other questions.

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

23 THE COURT: Thank you, Officer,
24 you may step down.

25 (Witness excused.)

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

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

7 BY MR. ROSENBAUM:

8 Q Will you state your name, please?

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

10 Q Are you employed, Ma'am?

11 A Yes.

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

14 A I am a forensic pathologist, employed by the Cuyahoga
15 County Coroner's Office.

16 Q How long have you served as a Deputy Coroner of
17 Cuyahoga County, Ma'am?

18 A Four and a half years.

19 Q Are you board certified in the field of forensic
20 pathology?

21 A Yes.

22 Q Will you tell the Court and jury briefly what the
23 practice of forensic pathology entails?

24 A Yes. It is the investigation of deaths that are
25 considered coroner's cases for various reasons. These

1 are deaths due to violence, whether in accident, suicide
2 or homicide or deaths that are sudden in people who are
3 not under doctor's care and who are previously healthy.

4 Q Are you licensed to practice in the State of Ohio?

5 A Yes.

6 Q Did you perform the autopsy on the body of Ron Lally?

7 A Yes.

8 Q Can you tell the Court and jury when you did that?

9 A I did that on the 20th of January, '94, at 12:30 p.m.
10 That was actually the starting of it. I completed it the
11 next day.

12 The initial exam only was done on the 20th.

13 Q As part of performing an autopsy at the Cuyahoga
14 County Coroner's Office, do you direct that pictures are
15 taken?

16 A Yes.

17 Q I would like to hand you some that were marked as
18 State's Exhibits 2-A through 2-CC and ask you to look at
19 them, Doctor.

20 THE COURT: And again, Mr.

21 Grunda, you have seen those?

22 MR. GRUNDA: Yes.

23 THE COURT: Proceed, Doctor.

24 THE WITNESS: Let me ask you,

25 do I show these to the jury?

1 THE COURT: Not yet.

2 Q Do you recognize them?

3 A Yes.

4 Q Were those taken under your direction and control in
5 your practice?

6 A Yes, they were.

7 Q Do they truly and accurately depict the scenes they
8 represent?

9 A Yes.

10 MR. ROSENBAUM: At this time,
11 your Honor, I would like to tender them for
12 admission.

13 THE COURT: Have you seen
14 them?

15 MR. GRUNDA: Yes, I do have
16 objections to some of them.

17 THE COURT: Come forward.
18 May I see them, please?

19 (Whereupon, the following proceedings
20 occurred at the bench out of the hearing of the jury.)

21 MR. GRUNDA: I am objecting to
22 gruesomeness and repetitiveness.

23 THE COURT: On all of them?

24 MR. GRUNDA: Yes.

25 Also on the grounds of relevancy because

1 they are showing the body afterwards, not as it
2 was.

3 THE COURT: Showing the body
4 during the autopsy.

5 MR. GRUNDA: Not as they found
6 it.

7 THE COURT: Overruled and
8 exceptions are granted.

9 * * *

10 WHEREUPON, STATE'S EXHIBITS 2-A THROUGH
11 2-CC, HERETOFORE MARKED FOR IDENTIFICATION, WERE
12 OFFERED AND ADMITTED INTO EVIDENCE.

13 * * *

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

16 Q Do those depict a number?

17 A Yes.

18 Q What is the significance of that number, Ma'am?

19 A Each body that is brought to the Cuyahoga County
20 Coroner's Office is given an individual number only to
21 that case and that case number is attached to all
22 photographs and documents that pertain to that case and
23 it is prominent on the case so it is clear that these
24 belong to that particular case.

25 This case number was 218051 and it is on each one

1 of these pictures.

2 Q Would you hold up State's Exhibit 2-A and tell the
3 Court and jury what that depicts, please?

4 A Okay, 2-A is a picture of Ron Lally as he first
5 appeared when he was first brought to the Coroner's Office.
6 It is just a picture of the face and we always take one of
7 every body, no matter whether autopsy is done or not as
8 they first appear.

9 The white sheet at the back is like a body bag and
10 this tells me it is the first pictures before anything was
11 done. This is how he appeared when he came in.

12 2-B, that is another picture of his face after all of
13 that dirt that you saw in the previous picture had been
14 cleaned up and it is a picture of his face, again
15 identified by this number.

16 2-C, there are a number of injuries depicted there.
17 I assume we are going back to it?

18 MR. ROSENBAUM: It is up to you.

19 Do you want to point them out now?

20 A That might be worthwhile.

21 He has a number of abrasions. Those are scrapes on his
22 face, on the forehead, on the left side of the face, on the
23 nose and on the chin.

24 Both eyes were puffy, bruises that he had over his
25 eyes. He had a number of splits on his lips where he

1 received blows that caused his lip to split and you can see
2 some cuts that were made on the neck just above the number.

3 2-C is a closeup view of his left eye and it shows two
4 things, a skin split medically called a laceration out of
5 the corner of his eye and another one at the inner corner
6 and it shows that there is some bleeding into the mucous
7 parts of the inside of the eyelid right here.

8 The eye is held open to show those things and there
9 is -- the surrounding area is all red because there was a
10 scraping of that area.

11 I don't find a 2-D here. I see the next one is 2-E.

12 Q Very good.

13 A 2-E is a photograph, closeup photograph of his mouth
14 that was taken to illustrate an entrance gunshot wound
15 which is located right here and, because this was on his
16 face, I didn't shave off the moustache in that area. In
17 other hair bearing parts of the body I might do so to
18 show it, but I didn't want to do it on his face.

19 It shows some little spots around in here. These are
20 called stipplings. Those relate to the fact that the gun,
21 from where he received the wound, was probably within three
22 feet of the body and these are marks of the partially burned
23 and unburned gun powder that came out of the muzzle with the
24 bullet.

25 Q And landed on his face?

1 A And landed on his face. They only go out about two or
2 three feet. When you see them you know that the gun was
3 within that distance.

4 Also here you see there an abrasion or scrape on his
5 chin. You see up close the splits of his lips where he
6 received blows and another scrape where the skin may have
7 been scraped off his nose.

8 2-F, this is a picture with his lower lip pulled down
9 to look at the inner part of the lip and shows the bruising
10 all the way through to the inside and there are places where
11 the lip was crushed against the teeth and the teeth caused
12 some splits on the inside there and that is the purpose of
13 that photograph.

14 The next one follows for the upper lip. That is 2-G
15 and this shows his upper lip pulled upward. There is a
16 deep split right in the middle of his upper lip and you
17 can see that it goes all the way through to the inside
18 and there is a lot of bleeding in the inside of the upper
19 lip and it shows also this -- incidentally, this split on
20 the lower lip.

21 The next is 2-H. This is taken of the right side.
22 This is the inside of where the entrance wound was and it
23 shows that three teeth were knocked out by the bullet
24 itself. I am tracing the path of the bullet with this
25 photograph.

1 Next picture is a little complicated. That is 2-I.
2 There is a special dissection that is done when there is
3 pathology to be demonstrated in the neck.

4 The top of the head is up here and all of the
5 structures of the neck, the larynx and trachea have been
6 taken out and what you are looking at is the front part
7 of the spinal column at the back of the neck and the
8 tissue from the back of the throat has been pulled
9 upwards to demonstrate a bullet hole.

10 This is where the bullet came through the tissue at
11 the back of the throat and it came to rest in the dark
12 area where there is a lot of bleeding. It got to the
13 spinal column and made a dent and I collected the bullet
14 right from there.

15 The next is 2-J. That is a picture of his tongue.
16 It is part of the same special dissection that I did of
17 the neck and the tongue, which we do when there is
18 something to demonstrate. This big split is where the
19 bullet passed through. That is part of the path.

20 Also visible on this picture are bite marks which
21 probably happened when he received blows to his face and
22 the tongue was against his teeth so it clamped down.

23 The next one is 2-K. This is a picture of his scalp
24 peeled back to show the skull and this is done to
25 demonstrate that the inside of the scalp shows many areas

1 of bleeding and each of these was an area where he received
2 a blow to the head, perhaps more than one, but at least one
3 and separate individual areas that are indicated on
4 different places, different surfaces, can be presumed to
5 be separate blows.

6 This is the scalp. This split around this area is the
7 scalp peeled back to demonstrate these wounds. (Indicating)

8 Q How many separate blows does that photograph at a
9 minimum demonstrate?

10 A Well, it is a little hard to say. I think it is fair
11 to say you have to look at things on different surfaces as
12 different blows. There might be one here, one here. That
13 is two, three and possibly one up here, which is four.

14 That is a minimum, perhaps a separate one a little
15 lower, four or five, but overlapping and you don't know if
16 there was one on top of one before, but a minimum of four
17 or five.

18 This is on the other side. It is a similar picture
19 and again, this is the back of his head and there is a
20 blow that was received there that is reflected in the
21 scalp here and all along the left side there is bleeding
22 where there was at least one blow and this is the skull
23 heart and this is the scalp that is peeled away to show
24 that perhaps another one would be here.

25 When you peel it back up, it might be part of this

1 one. At least three are visible here. (Indicating)

2 Q Would those be different from the last photograph?

3 A No, this is the other side of the head. These are
4 different.

5 Q Three on this side and at least four or five on the
6 other? (Indicating)

7 A Correct.

8 This is somewhat redundant with the other two.

9 2-M is looking down from the top and there are probably
10 at least two there and another one there, but they probably
11 -- probably two out of the three of those at least were
12 counted, and the others I am not sure.

13 You can say they are separate, but at least -- it is
14 hard to say.

15 2-N shows the left side of his face. We are moving
16 along now from the blows to the head.

17 First of all I should point out that he has a big
18 bruise on his ear that represents at least one blow, kind
19 of low down on the inside of his head, and the scrapes that
20 I pointed out to you before on the left, including where
21 the laceration was -- and this picture is taken to show a
22 series of cuts on the side of his neck and they are kind
23 of a series of parallel scrapes that turned out to be very
24 deep.

25 They are impressive, but they didn't hit any of the

1 major arteries or veins.

2 2-O is the other side of his face. One of the cuts
3 has come almost all the way around to the other side of
4 the neck. There is other bruises on that side and you can
5 see some of the scrapes on his face on this one also and
6 you see a small abrasion here on the collar bone area and
7 the start of a larger abrasion that -- that is on his
8 chest -- that is a medical term for a skin scrape.

9 2-P is a full length view of his body and this goes
10 back to the beginning of the autopsy before some of the
11 dirt was washed off, part of the documentation of the
12 autopsy, but the wounds are concentrated in the upper
13 area and this is simply a photograph or documentation.

14 2-Q -- and this is the other side of the body also
15 before it was cleaned up, dry blood on the arm, shows
16 one of the scrapes on the right side of his chest and
17 apparently shows some small injuries in his right leg
18 area there.

19 2-R is a full length photograph of the back of his
20 body not cleaned up at that point, but there is really
21 only one injury on the back that is of significance and
22 we have another photo of that and you will see that
23 better in another photograph.

24 2-S is a picture of his right chest and abdomen
25 after it had been cleaned up. The purpose of this picture

1 is to show a broad area of parallel scrapes on his chest
2 and abdomen and some other scrapes nearby; also shows a
3 tatoo which was helpful in identifying his body.

4 2-T is another view of the right side of the body
5 that shows a little closer up the scrape along the right
6 chest and to the edge of the ribs.

7 2-U is a picture of the back of his left shoulder.
8 I describe this as an incised wound, meaning a cut. It
9 has very clean edges more characteristic of a cut than
10 a skin split, although it has scrapes along the edges,
11 so it is kind of an unusual injury, but the best I could
12 do was, it mostly looked like a cut.

13 2-W shows his right arm largely to see some small
14 scrapes on the upper arm and a scrape around the elbow.
15 You will see a kind of strange set of red lines along
16 the forearm. This arm was frozen when his body was
17 brought in and that caused the blood cells in the
18 vessels in that arm to break up and the hemoglobin is
19 showing up as a red streak.

20 That is the significance of these red lines, but
21 really the important part of this is the injuries that
22 I was documenting.

23 2-X is a closer view of this injury on his right
24 elbow.

25 2-Y shows his left arm, the armpit area and the left

1 elbow and there are more scrapes on the left elbow, skinned
2 areas of skin where the skin on the outside is rubbed off,
3 tends to get darker when they dry and this is drying of a
4 skin scrape area.

5 2-Z is the right knee and it shows a small injury, a
6 small skin scrape there, a small superficial wound.

7 2-AA shows several small scrapes on the fingers of
8 his left hand. On the first finger there are two and on
9 the middle finger there is one near the tip.

10 2-BB shows another view of the top of the left first
11 finger. You can see one of the ones I pointed out before
12 and another one a little farther around the other side and
13 there is also visible a scraped area on the left chest.

14 2-CC shows the right hand. There is an injury on the
15 knuckle of the forefinger where a flap of skin was raised.
16 It was scraped off and the flap was raised and that is
17 right here. (Indicating)

18 Q Now, Doctor, as a result of your autopsy and
19 examination of Mr. Lally, were you able to conclude a
20 figure that would represent the minimum number of times
21 his body was struck?

22 A In the photographs, together, about seven or eight
23 times on the side and the back of the head. You can add
24 the ones on the face, probably both eyes as two more, so
25 we are up to nine and at least two on the mouth, which

1 is ten and 11.

2 It is hard to say exactly how these scrapes on the
3 nose and chin happened, but I would say there is a minimum
4 number of 11 and probably more if you start considering
5 that these were also due to blows, but it is not certain.

6 Any kind of a broad, flat surface, whether he fell
7 on something or was struck by something, can create these.

8 Q Are you able, within your field, to give a time of
9 death?

10 A It is very difficult to do that for several reasons.

11 First of all, I should give you a background. Movies
12 and television tend to make you think that you can be very
13 accurate about time of death.

14 In real life all we can do is give a window of time
15 when it might have happened. Furthermore, that was
16 difficult to evaluate because it was extremely cold and
17 most estimates of death are on the fact that the body is
18 at room temperature and in averaging in this case, it was
19 extremely difficult.

20 So, what I did and what I think is most reliable is
21 to use rectal temperature, which I took at 12:30 and used
22 a rather complicated chart to try to estimate time of death
23 and the best I could do was about seven or eight hours prior
24 to that 12:30 when I measured rectal temperature. That is
25 with a window of plus or minus.

1 I believe it was past midnight. It could have been a
2 rather large area of time after midnight, seven or eight
3 hours, plus or minus three is the best I could do.

4 Q Two-thirty in the morning to 8:30 in the morning,
5 approximately?

6 A Right.

7 Q Will you tell the Court and jury what actually caused
8 Mr. Lally's death?

9 A I am going to read you what I said and then I will
10 explain it.

11 Cause of death I put as gunshot wound of head and
12 multiple blunt impacts to head with skeletal, soft tissue
13 and brain injuries.

14 First of all, that gunshot wound didn't go into his
15 spinal cord. It stopped at the bony part of the spine, so
16 it skipped the neighborhood in the neck which would have
17 been sensitive, but I don't believe it was fatal because
18 it didn't hit, but he had all of the blows to the head,
19 too, and I think there was an effect from the gunshot
20 wound and there was an effect from the blows of the head.

21 I have not described some things that I did afterwards
22 in terms of the brain examination, bruises of the brain and
23 bleeding around the brain, so I felt that the combination
24 of things, the gunshot wound and the blows to the head with
25 brain injuries, together caused his death.

1 Q Did you find any evidence that his body received trauma
2 as well as his head?

3 A Yes. I have described the scrapes on the chest and the
4 whatever it was, a cut or blow to the shoulder that left the
5 skin cut open.

6 Q The injuries that Mr. Lally sustained, are they
7 consistent in your opinion with being stomped and/or struck
8 by a vehicle several times?

9 A Yes.

10 Q Did you prepare an official report documenting your
11 findings?

12 A Yes.

13 Q I would like to hand you what has been marked for
14 identification as State's Exhibit 2 and ask you to examine
15 the document, please.

16 Do you recognize that, Doctor?

17 A Yes, this is a copy of my autopsy protocol which I
18 have made as a usual course of my work, including a
19 description of all of the external injuries, of all of
20 the internal findings and on the last page it has a list
21 of the diagnosis from microscopic slides which I had
22 made from sections of the tissue; also includes a verdict
23 which was made by our office and it is a statement of
24 the circumstances of his death and what was found by
25 investigation.

1 THE COURT: Doctor, what is
2 that called?

3 THE WITNESS: That is called a
4 verdict.

5 THE COURT: The whole document?

6 THE WITNESS: The whole document
7 is called a protocol.

8 Q Is that a true and accurate copy of a report that is
9 prepared and kept in the ordinary course of business by the
10 Cuyahoga County Coroner's Office?

11 A Yes.

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

14 THE COURT: Mr. Grunda or Mr.
15 Cleary?

16

17

18

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

20 BY MR. GRUNDA:

21 Q You said what you thought was the cause of death.

22 You don't know for sure, do you?

23 A I wouldn't want to say one way or the other for sure.

24 I had to make it both.

25 Q And then when you were asked about being stomped or

1 struck by the vehicle, again you really don't know for
2 sure?

3 A I was asked if it was consistent.

4 Q Do you know for sure if there were any items that
5 showed being stomped on?

6 A No, to say that I would have to see a pattern of a
7 shoe or boot which I did not see.

8 Q You didn't see any markings that would indicate like
9 the tread marks from a tire or a boot or anything?

10 A No.

11 Q That would have left some kind of impression or
12 something?

13 A It could have, but you don't always have that. It
14 could leave markings that you can identify, but in this
15 case there were none that reflected a boot identifiable.

16 Q In other words, if you walked in the mud or something,
17 you had a certain pattern on a shoe, that is what you would
18 be looking at or might see on the body, would that be fair?

19 A You can. You don't invariably. I am not surprised to
20 not see one, but it would have been helpful had I seen one.

21 Q You examined the entire body and saw no visible
22 markings of any kind of boot pattern?

23 A That is correct.

24 Q There was no markings, were there, correct?

25 A None that I could trace back to an instrument like a

1 shoe or boot, correct.

2 Q Okay, thank you.

3 Now, also, Doctor, about this being struck with a
4 vehicle, you didn't see any tire markings on the body,
5 did you?

6 A No.

7 Q That again would leave a similar type impression
8 that you would look at or see, like a boot impression?

9 A It may, but again, I guess you could hit somebody
10 with the outside of the car or a bumper and that wouldn't
11 put tire markings either. That is why I say it was
12 consistent, but I saw nothing identifiable.

13 Q How tall was this person?

14 A Seventy-eight inches, six feet six inches. I am
15 not that good at this hour of the day.

16 Q That is a pretty big guy?

17 A Yes, 210 pounds. He was a big guy.

18 Q Okay. Do you have any idea the width or distance
19 between tires on cars?

20 A No, I could only guess at that.

21 Q I don't want you to guess, Doctor.

22 Now, on your examination though, you didn't find
23 any broken bones or anything, did you?

24 A No. His skull was intact. That is the only place
25 that really would have been significant to me since all

1 of the other injuries that were significant in my mind
2 were head injuries.

3 Q I guess what I was asking, because it was in
4 relation to being run over, you didn't see anything like
5 if a tire ran over the legs or would break bones in your
6 legs?

7 A No, I didn't see that.

8 Q Or your arms or anything like that?

9 A No.

10 Q And also, there wasn't like his chest cavity wasn't
11 crushed, his ribs broken or anything like that?

12 A No, the only fracture was identified by a radiologist.
13 This is put in here as skull fractures, clinical.

14 What that means is that I have put that in as a
15 reading. It is not something I saw myself.

16 Q So you talked about something you didn't observe
17 yourself then?

18 A That is a diagnosis made by our consulting radiologist.

19 Q Who was that?

20 A Dr. Hoffman.

21 Q But you, yourself, didn't see that?

22 A No.

23 Q Now, we are talking about some abrasions which are
24 scrapes, but you did indicate that you really don't know
25 how they got there.

1 Would that be fair to say?

2 A That is right. As I said, they are nonspecific, no
3 pattern to them that gives me an indication of the surface
4 that he struck or struck him.

5 Q And I believe you said they might be consistent with
6 the fact that he fell?

7 A Yes, falling on the ground. The ground is another
8 broad, flat surface and some of that could be from falling.
9 too.

10 Q Okay. In your description of the head injuries, you
11 don't know what caused them or how they got there, right?

12 A Not in any specific way, no.

13 Q In other words, you don't know if he got in a fight,
14 if he started it and got the bad end of the deal or how
15 they got there really?

16 A That is true.

17 Q And you can't even tell if he was the aggressor or
18 not?

19 A No.

20 Q Would just the abrasions alone, would that cause by
21 themselves, would that have been the cause of death?

22 A No.

23 Q Doctor, did you check to see if he had any illegal
24 substances in his body?

25 A Yes.

1 Q Where is that and what did you find?

2 A I have my own copy here. I didn't see it in there.
3 but if I may I can testify from my own copy.

4 Q What you are saying is, what is marked State's
5 Exhibit 2 didn't have the complete information?

6 A I don't think it had the toxicology report, but let
7 me check. I went through it real quickly.

8 No, it does not have the toxicology report.

9 Q Is that normally attached or made a part of that?

10 A Yes. We issue all three at the same time.

11 Q Do you know why that is not included?

12 A No, there was one. It is just not here. As I said,
13 I have my own copy of our toxicology report. It is not
14 in this document though.

15 Q That is marked State's Exhibit 2?

16 A Correct.

17 Q So when you were asked before if that was an accurate
18 copy of what is normally kept, in fact it is not because
19 it doesn't include the toxicology report?

20 A That is correct.

21 Q What does your report indicate?

22 A There is only one substance of significance that was
23 discovered in the body and that is, he had cocaine in his
24 system. He had it in the blood, so it was used fairly
25 recently.

1 He also had some of the breakdown products which are
2 metabolized in his urine, so he had cocaine in the system
3 long enough. His body was processing it and detoxifying
4 it, breaking it down.

5 Q Do you know how it got in his body?

6 Did he inject it or smoke it or snort it?

7 A You can't tell. I know from the tests it was there,
8 but you can't tell how it gets there.

9 Q And you figured it was there long enough -- in other
10 words, you found it in the body, but it was breaking down
11 and you found it in the urine?

12 A Right. It doesn't last in the blood very long, so at
13 least some that he took probably was within two hours of his
14 death, either that dose or an earlier one was breaking down.

15 Q So he may have had actually two doses or so?

16 A I don't know, I don't know, because it was in there
17 long enough to be breaking down, but you can't tell how long
18 it was there or whether there was more than one dose.

19 Q And you also found it in the blood, too, which would
20 indicate something more recent?

21 A Correct.

22 Q Do you have an extra copy of that, Doctor, that I can
23 mark?

24 A This one has the official seal so this is an official
25 copy and it is the same.

1 Q Thank you. Now, Doctor, this toxicology report has
2 been added to State's Exhibit 2?

3 A Yes.

4 Q All right.

5 MR. GRUNDA: We didn't mark that
6 separately, we attached it.

7 Q (Continuing) -- Now, what is on the back side of that?

8 A On the back side is a list of the possible tests that
9 we may do, we don't do in every case every one of these
10 tests, but it is an enlargement.

11 Each of the tests listed here has a number and the
12 number -- for example, where it says blood basis and where
13 cocaine is listed as positive, 32, shows you what test was
14 done to determine that and what other drugs on the back
15 could be determined by that test.

16 Q Okay. Can you determine the amount that he had or
17 know the effect it was having on him?

18 A I can give you an amount. The amount was .004
19 milligrams per deciliter. I can enlarge on that if you
20 would like.

21 That is for recreational users of cocaine a rather
22 small amount and the effect, the psychological effect or
23 the euphoria of cocaine wears off before it leaves the
24 system, so I cannot say whether he was or was not under
25 the influence of it at the moment when he died.

1 Q But we do know it had broken down somewhat?

2 A Right.

3 Q So it was passing through and then you found more in
4 the blood of the first one or he might have ingested more?

5 A Right. When they are starting to come down from the
6 high it will still be there a little bit.

7 Q Okay. Did you do any other tests?

8 A You mean for toxicology?

9 Q Any toxicology?

10 A Yes, all these others were tested which included tests
11 for alcohol which were negative.

12 Q Really, the only ones that you found positive were
13 cocaine?

14 A Correct.

15 Q Did you do a test for barium and antimonies?

16 A That is done by trace evidence. I don't do that
17 myself.

18 Q Doctor, the wound you stated on the back of the
19 shoulder --

20 A Yes --

21 Q (Continuing) -- do you know exactly what caused
22 those injuries?

23 A No.

24 Q But you know -- you don't know if it was a knife
25 or some other sharp object, a piece of metal, falling

1 against something?

2 A That is correct, I don't know.

3 Q Actually, Doctor, the bottom line is, you really
4 can't tell exactly what really caused any of these
5 injuries for sure?

6 A Nothing in terms of the instrument. My work really
7 does describe the injuries and the cause of death, but I
8 can't always relate it to the particular object or
9 instrument used.

10 Q Also, you don't know who did those injuries?

11 A That is correct.

12 MR. GRUNDA: No other questions.

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

15 THE COURT: Thank you, Doctor,
16 you may step down.

17 (Witness excused.)

18 * * *

19 THE COURT: Next witness?

20

21

22

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

6 DIRECT EXAMINATION OF LINDA LUKE

7 BY MR. ROSENBAUM:

8 Q Will you state your name, please?

9 A Linda Luke.

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

11 A L-U-K-E.

12 Q Are you employed, Ma'am.

13 Q Yes, I am.

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

16 A I am a forensic serologist at the Cuyahoga County
17 Coroner's Office, Trade Evidence Department.

18 Q How long have you served Cuyahoga County in that
19 capacity?

20 A Since '76.

21 Q Will you tell the Court and jury briefly what you
22 do?

23 A That is one who analyzes and identifies body fluids.

24 Q Will you describe briefly the training you have had
25 that enables you to perform that function?

1 A I have a Bachelor of Science Degree in Biology from
2 the University of Akron. I have specialized training
3 from the Michigan State Department of Health, Serological
4 Research Institute in California.

5 Q I would like to hand you State's Exhibit 3 and ask
6 you to look at it, please.

7 Do you recognize that document, Ma'am?

8 A Yes, I do.

9 Q Will you tell the Court and jury what it is?

10 A Yes, this is a copy of our Trace Evidence Department
11 report.

12 Q Are there other, I guess, departments or divisions
13 of the Trace Evidence Unit besides forensic serology?

14 A Yes, there is actually trace evidence that deals
15 with hairs and fibers.

16 Q Is the report from that department contained in
17 State's Exhibit 3 as well?

18 A Yes.

19 Q Is this a true and accurate copy of a report kept
20 in the ordinary course of business of the Cuyahoga County
21 Coroner's Office?

22 A Yes.

23 Q I would like to hand you three photographs that have
24 been marked for identification as State's Exhibits 3-A, 3-B
25 and 3-C, ask you to look at them, please.

1 A State's Exhibits 3-A, 3-B and 3-C represent a car that
2 I examined, a 1992 two-door blue Chrysler convertible, Ohio
3 License Plate UZM 349, Lorain County.

4 Q I should have handed you another picture, 3-D, as well.

5 A It is the interior of the car that I just described.

6 Q Same vehicle?

7 A That is correct.

8 Q I would like to also ask you to examine this bag marked
9 State's Exhibit 3-I.

10 A State's Exhibit 3-I refers to our Trace Evidence No.
11 38-95E-11.

12 This is the trunk liner pieces of that same automobile.

13 Q Now, were you asked to perform any function or do
14 anything with State's Exhibit 3-I or the automobile that
15 you have identified in the four photographs?

16 A We were asked to examine it for any evidentiary value
17 which would be hairs or fibers or blood.

18 Q And did you find anything of evidentiary value in
19 that car?

20 A We did.

21 Q Will you describe for the Court and jury what was
22 found?

23 A On the trunk liner pieces, on the larger pieces you
24 can see a slight discoloration. This turned out to be blood
25 and an ADO determined it was human blood. The blood group

1 was "A" and a DNA was done on the same liner.

2 Would you like me to go into the results?

3 Q Go ahead.

4 A The DNA that we do at the Coroner's Office is chain
5 reaction PCR and what we determine are six screens, the
6 first one being human leukocyte antigen, DQ alpha, and
7 you have 21 types.

8 The type on this liner is 1.1, 1.1.

9 The other screens that we do are polymarkers, the
10 first one being low density lipoprotein receptor. The
11 type on this liner is AA.

12 Glycophorin is A equals AB. Hemoglobin G, gamoglobin
13 equals AA. D7F8 equals AA and a group specific component
14 CC.

15 Q So that would be the DNA identity or the identity of
16 the DNA contained in the blood, is that correct?

17 A Yes.

18 Q Were you asked to compare that to anything to see if
19 it contained a match?

20 A I received a fluid blood sample from Ron Lally, our
21 Case No. 218051 and he is a human leukocyte antigen DQ
22 Alpha 1.1, 1.1, low density lipoprotein receptor AA,
23 glycophorin A-AB, hemoglobin G, gamoglobin equals AA,
24 D7F8 equals AA and group specific component CC.

25 Q So, to answer my question, does that match or not

1 match the blood that was found in the trunk liner of that
2 car?

3 A It is consistent.

4 Q Were you given any other samples to compare as well
5 or from other people?

6 A Yes.

7 Q And do you recall or can you tell from the record the
8 name of those people?

9 A I received a blood sample from Raymond Smith. His
10 human leukocyte DQ Alpha was 1.14. He was different than
11 the blood on the trunk liner.

12 I received a blood sample of Stan Jalowiec. His human
13 leukocyte antigen DQ Alpha was 2.4, different than the trunk
14 liner.

15 Blood sample of Danny Smith, human leukocyte antigen
16 DQ Alpha 1.1, 1.2, also different than the trunk liner.

17 Q So their blood was inconsistent with what you found on
18 the stain in the trunk liner?

19 A Correct.

20 Q Now, were you able to establish any findings as to how
21 rare Mr. Lally's blood type was or how many other people in
22 a given side of the population would have blood that is
23 similar to his or consistent with that stain?

24 A Yes, I was.

25 Q Can you tell the Court and jury the results of your

1 calculations or findings that pertain to this?

2 A Yes. Ronald Lally turned out to be in the white
3 population approximately four out of 100,000, so,
4 therefore, in the blood in the trunk, in the white
5 population, it would be four out of 100,000.

6 In the black population it would be two out of a
7 million.

8 Q So, is it fair to say that Mr. Lally's blood markers
9 or DNA were relatively rare?

10 A Yes.

11 Q Now, in addition to that, does your report reveal that
12 your Trace Evidence Department examined Mr. Lally's clothes
13 for any type of hair?

14 A Yes.

15 Q Was any hair found that was consistent with any hair
16 that might have been found in the car that you have
17 identified in the four photographs?

18 A Yes, sir.

19 Q And can you tell the results of that analysis?

20 A Yes. The Trace Department, the clothing was taped.
21 There were numerous dog hairs that were recovered from the
22 jacket similar in length and color to those recovered from
23 the automobile -- Evidence No. 2429-94E-812I.

24 Q So, were you provided a sample from a -- the hair you
25 found matched hairs that were found in the car as well?

1 A That is correct.

2 Q Were you also provided an additional sample of hair
3 to compare?

4 A Yes.

5 Q Can you tell the Court and jury where the Trace
6 Evidence Department received that additional sample from,
7 who you received it from?

8 A It was from Detective Leiby and it was from Cleo, a
9 brindle boxer, referring to our Evidence No. 95R/H-12.

10 Q So the hair in the vehicle matched the hair from
11 Cleo that Leiby brought in and it matched the dog hair
12 on the victim's clothing, is that correct?

13 A Yes.

14 Q And does your report also reveal the determination
15 or name of the stomach contents of Mr. Lally for whatever
16 that is worth?

17 A Yes. Do you want the results?

18 Q Please.

19 A Stomach contents contain 500 cc of brown liquid
20 containing pieces of elbow macaroni and whole kernel corn.

21 Q I would like to place before you some clothing marked
22 as State's Exhibit 3-H.

23 If you could, would you please tell us whether or not
24 this was the clothing examined for the hair?

25 A State's Exhibit 3-H refers to our Coroner's Office --

1 the clothing of Ronald Lally -- referring to our Case No.
2 218051.

3 MR. ROSENBAUM: I have no other
4 questions, your Honor.

5 THE COURT: Mr. Grunda or Mr.
6 Cleary?

7
8
9
10 CROSS-EXAMINATION OF LINDA LUKE

11 BY MR. GRUNDA:

12 Q Ms. Luke, this trunk liner here that you examined,
13 that is where you did your analysis, right?

14 A Correct.

15 Q From that -- now you didn't take that out of the
16 vehicle yourself, right?

17 A It was taken out by Mr. Wagner and members of our
18 lab.

19 Q Now, through your process you determined there to
20 be human blood, but you don't know when that got there?

21 A I cannot tell in age, yes.

22 Q You can't tell when it got there or how long it
23 has been there?

24 A That is correct.

25 Q Or who put it there, right?

1 A Correct.

2 Q And you said it was consistent.

3 That doesn't mean it is absolutely, positively?

4 A That is correct.

5 Q So, when you say that after you did your examination
6 it was consistent with Mr. Lally's, you can't say
7 positively it was his though, right?

8 A That is correct.

9 Q Okay. Then you gave a statistical number.
10 That is not a number you determined by yourself, did
11 you?

12 A I multiplied it to determine that number.

13 Q What I am saying is, you get into Cleveland, do you
14 know how many people there are in Cleveland?

15 A No, I do not.

16 Q There is more than 100,000, right?

17 A That is correct.

18 Q It would be fair to say that the geographical area of
19 Cleveland may be different than other parts of the country,
20 right?

21 A Based on the black and white, what we do with our
22 population, everybody provides the statistics to one of
23 the teams and they generate the statistics across the
24 United States as a central study.

25 At the Coroner's Office I also run my own population

1 study to make sure that there are no mistakes. That is
2 one way of checking and I am consistent with what the
3 FBI statistician shows, so my population in Cleveland
4 does not vary from what I have quoted.

5 Q The thing is, you don't actually test everybody to
6 see if they work out this way, right?

7 A Correct.

8 Q When you are looking at that analysis, you are saying
9 a population, you know numbers, this many per that many
10 hundreds or thousands, right?

11 A Yes.

12 Q But the thing is, Cleveland has many highways, right?

13 A Yes.

14 Q So, even if there were a couple million people like
15 this in that vicinity, now then the numbers really aren't
16 reflective because people come and go and you can have
17 access in there, right?

18 A It is an approximate, but it is a pretty reliable
19 approximate. You are not going to find it jumping to
20 ten, so when we determine it to be four out of 100,000,
21 it could be 40 out of a million, but it is going to go
22 up by that percentage.

23 Q But you don't know it precisely because everybody
24 is not tested?

25 A Yes.

1 Q And I guess that is the bottom line, there is a
2 population and you number count and with the sampling
3 itself you can't say positively?

4 A That is correct.

5 Q Okay. Now, the hair -- you were given a sample
6 from Detective Leiby -- you, yourself, didn't obtain
7 that sample, he just said, "This is where it was from,"
8 right?

9 A That is correct.

10 Q Okay. Again, you don't know how it got there,
11 when it got there or how long it had been there?

12 Not the sample from Leiby, the one you found?

13 A The one in the car?

14 Q Right.

15 A That is correct.

16 Q So, if the owner of the car was also the owner of
17 the dog, you might find hair in there, right?

18 A Correct, if the dog was in the car.

19 Q Well, what if you had a whole bunch of -- my dog
20 sheds a lot -- what if I had that and threw my clothes
21 in the trunk, wouldn't it be there?

22 A Part of that would be there. That kind of transfer,
23 if we can go to the actual car, the tapings we did were
24 the back seat and found animal hair.

25 Q Well, the point is, I guess there is many different

1 ways to have it actually transferred, right, would that
2 be fair to say?

3 A Yes.

4 MR. GRUNDA: No other questions,
5 your Honor.

6 MR. ROSENBAUM: I have no other
7 questions, your Honor.

8 THE COURT: Thank you, you may
9 step down.

10 (Witness excused.)

11 * * *

12 (Whereupon, with proper admonitions to the
13 jury, the trial in the above-entitled matter was
14 adjourned to reconvene on Friday, March 15, 1986, at
15 8:30 a.m.)
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MORNING SESSION, FRIDAY, MARCH 15, 1996

(Whereupon, the Court resumed the bench and the following proceedings occurred in the presence of the jury.)

THE COURT: Good morning, ladies and gentlemen.

THE JURORS: Good morning.

THE COURT: You will recall yesterday we ended with a witness for the State of Ohio and we are now ready to continue with the State's case.

Next witness, please, Mr. Rosenbaum.

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

6 DIRECT EXAMINATION OF SHARON HOPKINS

7 BY MR. ROSENBAUM:

8 Q Will you state your name, please?

9 A Sharon Hopkins.

10 Q Spell the first and last name for the Reporter?

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

12 Q Are you employed, Ma'am?

13 A No.

14 Q When was the last time you worked?

15 A Ridge Tool.

16 Q When was that?

17 A A month ago.

18 Q How old are you?

19 A Twenty-four.

20 Q Do you have any children?

21 A Two.

22 Q Do you know the person that is seated immediately
23 below my right hand? (Indicating)

24 A Yes.

25 Q What is his name?

1 A Stan.

2 Q What?

3 A Jalowiec.

4 Q How do you know him?

5 A I know him from uptown, the bars.

6 Q Do you know a person by the name of Ray Smith?

7 A Yes.

8 Q How do you know Ray?

9 A I went to school with his son.

10 Q What is his son's name?

11 A Danny.

12 Q When you say "school," do you mean high school?

13 A Yes.

14 Q What year did you graduate?

15 A Eighty-nine.

16 Q Have you seen him off and on ever since then?

17 A Yes.

18 Q And when and how would you see him?

19 A I didn't see him for awhile and then he moved to

20 the apartment across from my apartment.

21 Q Do you still live there?

22 A Yes, I do.

23 Q Where was that at?

24 A David Drive.

25 Q What city?

1 A Elyria.

2 Q Do you remember a very cold evening when you saw

3 Danny and some of these other people in a convertible?

4 A Yes.

5 Q Was that in January of '94?

6 A Yes.

7 Q Could you describe what happened that evening

8 starting at the beginning of the evening?

9 A A bunch of us went up to the bar, about ten or

10 eleven.

11 Q Could you tell us who a bunch would be, please?

12 A Danny Smith, his girlfriend Tammy and my brother

13 and his girl.

14 Q And what is your brother's name?

15 A Terry.

16 Q And his girlfriend is who?

17 A Misty.

18 Q Who else was there?

19 A Pops, Raymond Smith, and Michael Smith and Stan

20 Jalowiec.

21 Q And when you say you went uptown, where did you go?

22 A We had went to Razzle's.

23 Q What time did you arrive there?

24 A Any time between ten and eleven.

25 Q What kind of a place is Razzle's?

1 A It is a bar.

2 Q And what happened when you got there?

3 A We had drank at the bar.

4 Q How did you get there?

5 A Danny and Tammy had taken me.

6 Q That would be Danny Smith?

7 A Yes.

8 Q And how did you meet up with them that night?

9 A I walked over there to the apartment.

10 Q How long did you stay at Razzle's?

11 A Until it closed.

12 Q What time would that be?

13 A Two-fifteen, 2:30.

14 Q And then what happened?

15 A We went over to Mom's Kitchen.

16 Q And where is that in relation to Razzle's?

17 A Across the street.

18 Q And who went to Mom's?

19 A Danny, Raymond, Michael, me and Tammy.

20 Q Where did your brother go with his girlfriend?

21 A They had gone home.

22 Q So, what happened at Mom's Open Kitchen?

23 A They had ate and then we left.

24 Q Did you eat?

25 A No.

1 Q How long do you think it took for you to get to
2 Mom's and eat?
3 A About a half hour.
4 Q What happened then?
5 A We had left. I thought I was going home but we
6 had gone out to someplace on Middle Avenue.
7 Q So, why did you go with them?
8 A They were my ride home.
9 Q And what time would this be that you left?
10 A Two-forty-five, three o'clock.
11 Q And you went to Middle Avenue?
12 A Yes.
13 Q Whose car were you in?
14 A Danny's car.
15 Q Who was with you?
16 A Tammy, Danny, Michael and Raymond.
17 Q And then what happened?
18 A We had gone to someplace out on Middle Avenue past
19 the tracks.
20 Q Was it outside the City of Elyria?
21 A Right outside the edge, I think a little past the
22 tracks and dropped off Michael and Raymond.
23 Q Where did they get off at?
24 A There was a house on one side. I thought they were
25 going there and there was a wooded side on the other side,

1 but they just went to the wooded side.

2 Q Who got out and went into the woods?

3 A Raymond and Michael.

4 Q Raymond Smith and Michael Smith?

5 A Yes.

6 Q What was it like outside at this time?

7 A Real cold.

8 Q Can you offer a temperature?

9 A Probably about ten degrees, if not more.

10 Q Extremely cold?

11 A Yes.

12 Q Then what happened?

13 A We had drove off.

14 Q Who is "we" now?

15 A Tammy and Danny and me. We drove off and then

16 we pulled into this parking lot on the other side of

17 the tracks.

18 Q What happened?

19 A We sat there for about three or four minutes --

20 five or ten minutes and we had -- a convertible had

21 gone by and they said, "That is it."

22 Q Who said, "That is it"?

23 A Danny.

24 Q So you saw this convertible go by?

25 A Uh-huh.

1 Q Which way was it heading?
2 A Out of town.
3 Q Towards --
4 A Raymond and Michael.
5 Q And do you know if the car was a convertible?
6 A Yes.
7 Q And could you see this car, could you see where
8 it went?
9 A It went over the tracks and after the tracks,
10 you couldn't see exactly.
11 Q Then what happened?
12 A They went back by and we sat there.
13 Q So, it turned around and came back towards town?
14 A Yes.
15 Q And you are still sitting there?
16 A Yes.
17 Q Then what happened?
18 A We sat there another three or four minutes and the
19 car came back by again.
20 Q So, it went out of town again?
21 A Uh-huh, and then it went back towards town and at
22 that time we had followed it.
23 Q How long did it take, how long between the trips
24 back and forth for the convertible?
25 A Probably three or four minutes.

1 Q So, within three or four minutes of you first seeing
2 the convertible it was headed back into town and the car
3 you were in followed it?

4 A Yes, we followed it and we had signaled it to pull
5 over.

6 Q How did you do that?

7 A I guess they flashed the lights at them.

8 Q So what happened then?

9 A We had pulled the car over on a side street. I was
10 told to ask if they picked up his brother by Danny and I
11 stuck one foot out of the car and I asked did they --

12 MR. CLEARY: Objection.

13 THE COURT: Not any
14 conversation, just what happened.

15 MR. ROSENBAUM: She can't say
16 what she said?

17 THE COURT: She can say what
18 she said, not what anybody else said.

19 MR. ROSENBAUM: Could I be heard
20 on that?

21 THE COURT: When we get to it.

22 Q So you said you put -- let's back up a second.
23 Who was driving the car you are in now?

24 A Tammy.

25 Q Where was Danny?

1 A In the passenger's seat, ducked down.
2 Q Where were you seated?
3 A Right behind Danny.
4 Q Did Danny Smith say why he was doing that at the time
5 he ducked down?
6 MR. CLEARY: Objection.
7 A No.
8 THE COURT: Overruled and again,
9 this is under 801(D)(2)(e) of the rules.
10 Q So who asked you to do something?
11 A Danny Smith.
12 Q What did he ask you to do?
13 MR. CLEARY: Objection.
14 THE COURT: Overruled.
15 Same reason.
16 MR. CLEARY: Can we register
17 a continuing objection, your Honor?
18 THE COURT: You may.
19 A I was asked to ask if his brother was picked up.
20 Q His brother would be --
21 A Michael Smith.
22 Q And did you do that?
23 A Yes.
24 Q And would you describe how you did that?
25 A I opened the door, stepped one foot out of the car

1 and asked, "Did you pick his brother up".

2 Q And who did you ask that of?

3 A Stan Jalowiec.

4 Q Where was Stanley?

5 A He stepped out of the car he was driving, the
6 convertible.

7 Q He was the driver?

8 A Yes.

9 Q Could you see who else was in the car?

10 A No, I didn't.

11 Q But Stanley said Michael was there?

12 A No.

13 Q Who said Michael was there?

14 MR. CLEARY: Objection.

15 THE COURT: Overruled.

16 Q Who said that?

17 A Stan did.

18 Q What did he say?

19 MR. CLEARY: Objection.

20 THE COURT: Overruled.

21 You have your continuing objection.

22 A I am not very clear on what he said.

23 Q Who indicated that Michael was present?

24 A As far as I know, I remember, he had said it,
25 Stan said that he was there, like he answered yes.

1 Q Could you see who else was in the car?

2 A No, I couldn't.

3 Q Could you see how many others were in the car?

4 A There was a total of four people in the car.

5 Q So then what happened?

6 A We got the answer. I got back in the car, told
7 Danny, and we drove home.

8 Q Did this all take place here in Lorain County,
9 Ohio?

10 A Yes.

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

13 THE COURT: Mr. Cleary?

14 MR. CLEARY: Thank you,
15 your Honor.

16

17

18

19 CROSS-EXAMINATION OF SHARON HOPKINS

20 BY MR. CLEARY:

21 Q Did you make a statement to the police about this?

22 A Yes.

23 MR. CLEARY: Request to see
24 the statement, your Honor.

25 THE COURT: Ladies and

1 gentlemen, here we are again, okay, and it is
2 again some housework that needs to be done
3 outside of your hearing.

4 Rather than keep you here, we will send
5 you back to your jury room. We will get you
6 back here as quickly as we can.

7 The admonitions that I have given you
8 about discussing this amongst yourselves,
9 letting anyone discuss it with you, letting
10 anyone read or say anything to you about it,
11 still hold at this point and with that, we
12 will take a short recess.

13 (Whereupon, the jury was excused for a short
14 recess.)

15 (Whereupon, the following proceedings
16 occurred in the Judge's chambers out of the hearing of
17 the jury.)

18 THE COURT: Gentlemen, I have
19 read the statement. It is six pages. I find
20 very little, if any, inconsistency.

21 The only one that I may find is where they
22 first stopped the car. In the statement they
23 stopped it in the parking lot and I think she
24 said they stopped on the side of the road then
25 went to the parking lot.

1 MR. GRUNDA: I thought she said
2 on the side street.

3 THE COURT: Later on was the
4 side street. That is it.

5 Let the record show that the defense had
6 the opportunity to read the statement of Sharon
7 Hopkins.

8 Anything you want to add?

9 MR. CLEARY: No, your Honor.

10 MR. ROSENBAUM: Inconsistencies?

11 THE COURT: I think the only
12 one that I found was the location of the car
13 originally.

14 MR. ROSENBAUM: And I don't quite
15 understand that.

16 THE COURT: And I don't know
17 that that is --

18 MR. ROSENBAUM: We have to decide,
19 don't we?

20 THE COURT: Okay. She testified
21 they pulled over to the side of the road and then
22 went to the parking lot and in the statement it
23 says they went to the parking lot.

24 MR. ROSENBAUM: What car and when?

25 THE COURT: The car she was

1 riding in and originally Danny Smith was driving.

2 MR. ROSENBAUM: And you are
3 saying --

4 THE COURT: She testified that
5 they pulled over to the side of the road.

6 MR. ROSENBAUM: And let the two guys
7 out.

8 THE COURT: And then when they
9 saw the other car pull by they went into the
10 parking lot.

11 MR. ROSENBAUM: She said they pulled
12 over to the side of the road, past the tracks, let
13 the two guys out and then returned up the road to
14 the parking lot and then the car goes by.

15 THE COURT: No inconsistency,
16 Mr. Rosenbaum, that is correct at this point.
17 Okay.

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

20 THE COURT: You may proceed, Mr.
21 Cleary.

22 MR. CLEARY: Thank you.

23 THE COURT: Miss Hopkins, I
24 remind you that you are still under oath and,
25 please, make yourself as comfortable as you can.

1 THE WITNESS: Okay.
2 BY MR. CLEARY:
3 Q Miss Hopkins, you said you went to high school with
4 some of these people?
5 A Just Danny.
6 Q Danny is the only person you met in high school?
7 A Not the only person.
8 Q How old are you now?
9 A Twenty-four.
10 Q Have you hung out with him since then?
11 A I was friends with his girlfriend at this time.
12 Q And his girlfriend's name is --
13 A Tammy.
14 Q Okay. Now, you all went out the night -- actually
15 it was the 18th, right, of January?
16 A I guess, I am not sure on the date.
17 Q You were with Danny Smith and his girlfriend, Tammy,
18 and you had said Ray and Mike and Stan and that is it,
19 right -- your brother also?
20 A My brother and his girlfriend.
21 Q Now, I am a little unclear as to who was where, when.
22 Did the whole group stick together?
23 A At Razzle's everybody was together.
24 Q Did you all get there about the same time?
25 A Around about.

- 1 Q And what time?
- 2 A Ten or eleven.
- 3 Q And you stayed until closing?
- 4 A Yeah.
- 5 Q Now, closing, did any of your group split up, wander
6 off?
- 7 A My brother and his girlfriend had gone home. I don't
8 know where Stan went.
- 9 Q But Stan was with you at the bar till closing?
- 10 A I guess. I couldn't say.
- 11 Q Did you see him throughout the evening?
- 12 A Here and there.
- 13 Q So, how late would you approximate was the last time
14 you saw him?
- 15 A I don't know. I couldn't say for sure.
- 16 Q Okay. Because you were at a bar, you were there to
17 partake in alcoholic beverages, correct?
- 18 A Correct.
- 19 Q And you -- did you, indeed, partake in alcoholic
20 beverages?
- 21 A Yes.
- 22 Q And, in fact, you were pretty intoxicated, is that
23 correct?
- 24 A Yeah.
- 25 Q How would you describe yourself?

1 A If you are going by the police statement, I said I
2 was fucked up.

3 Q I wasn't, but that is a pretty accurate description
4 as to your description at the end of the night?

5 A Yeah.

6 Q So we are starting talking about times and
7 everything, so you are still pretty certain in your
8 own mind as to events and who was where and when and
9 things like that?

10 A Yes.

11 Q Okay. Now, did Stan actually go out with you and
12 your group?

13 A No, he was -- not that I remember -- he was up at
14 Razzle's, I remember he was there.

15 Q So, sometime in the evening you saw him there?

16 A Yeah.

17 Q And so he wasn't like hanging with you guys or
18 anything like that?

19 A He was hanging with Danny.

20 Q He was hanging with Danny?

21 A Yes.

22 Q Okay. Then at closing time, by closing time, Stan
23 was gone?

24 A Yes.

25 Q Long gone?

1 A I wouldn't say how long.

2 Q You have no idea?

3 A I wasn't really paying any attention.

4 Q Okay. Stan wasn't there, though?

5 A No.

6 Q And the same group that went out went over to Mom's

7 Open Kitchen?

8 A Dan, Michael, Raymond, me and Tammy.

9 Q With the exception of your brother and your brother's

10 girlfriend?

11 A And Stan.

12 Q Well, did Stan go with you initially?

13 A No.

14 Q Okay, but the same group that you came out with,

15 you left your home with and met up with at the bar,

16 that group went across the street with the exception

17 of your brother and his girlfriend, Misty, right?

18 A Yeah.

19 Q Now, what if I were to tell you that your brother

20 testified that he went over to Mom's Open Kitchen, all

21 right?

22 Is this inaccurate according to your best

23 recollection?

24 A I don't remember him there. If he was there, he

25 was not there very long.

1 Q That is like a one-room place, is it not?
2 A I was not talking to my brother.
3 Q So, you wouldn't know if your brother was in the
4 room?
5 A I did not pay attention to my brother.
6 Q You just went out with him, but you paid attention
7 enough earlier?
8 A I knew he was at Razzle's.
9 Q Knew he was at Razzle's, didn't see him at Mom's?
10 A I knew he went home before I did.
11 Q But you had said -- you didn't say that he might
12 have gone there or he might have gone somewhere, you
13 said he went home?
14 A As far as I know he had went home.
15 Q Okay. Now, he was also pretty intoxicated, was
16 he not?
17 A I don't know.
18 Q Were you -- can you normally tell when someone
19 else is intoxicated?
20 A I can usually tell, yes.
21 Q Were you, yourself, in such a condition that you
22 could not tell the intoxicated state of other
23 individuals?
24 A I did not pay attention.
25 Q Okay. So there is all this stuff going on around

1 you that you are not paying attention to, right?

2 A I was with Michael, Danny, Raymond and Tammy. I was
3 talking to them.

4 Q Well, if I were to tell you that your brother
5 testified that Raymond and Michael were not at Mom's Open
6 Kitchen that night --

7 A That is his testimony --

8 Q (Continuing) -- would you consider that to be
9 incorrect?

10 A I consider it could be incorrect.

11 Q Because you noticed them there?

12 A Yes.

13 Q Okay. Did you have conversation with any of these
14 people?

15 A No, not really.

16 Q So, you weren't talking about Raymond or Michael?

17 A I was talking, just sitting at a table by myself.

18 Q You weren't talking with --

19 A Tammy, I talked to a couple times and then I sat
20 there. They were all talking amongst themselves and I
21 was just sitting there.

22 Q Were you eating anything?

23 A No, I wasn't.

24 Q Just sitting at a table?

25 A Yes.

1 Q Completely unaware as to what was going on at the
2 tables around you?

3 A I was not paying attention.

4 Q Okay. That doesn't answer the question.

5 A I do not know, I was not paying attention to anybody
6 else.

7 Q So you are unaware as to what was going on around
8 you?

9 A You could say that.

10 Q Okay. So, when you say specifically so and so went
11 here, so and so went there, this is not something that
12 you are certain of?

13 A I am certain of certain people.

14 Q Which people are those?

15 A Danny, Raymond, Michael and Tammy.

16 Q Therefore, your brother's testimony would be incorrect?

17 A I don't know. I don't know what he testified to.

18 Q So, there is room for error in what you are saying?
19 He could be right and you could be wrong?

20 A Well, I know what I remember.

21 Q Well, it is either one way or the other, right?

22 A I am not Terry. I don't know what he testified to.

23 Q I am stating to you now that if your brother testified
24 that Michael and Raymond were not there and that he was
25 there, all right, then that would be in conflict with your

1 testimony, correct?

2 A Yeah.

3 Q That is completely opposite to what you were saying
4 about who was where and when?

5 A Yes.

6 Q All right. Out of those two scenarios, his would have
7 to be incorrect according to what you saw that night?

8 A Yes.

9 Q Okay. Now, at this point -- at some point your brother
10 left?

11 A Yeah.

12 Q Can you give a time estimate as to when he might have
13 left?

14 A As far as I knew he left after the bar closed.

15 Q Sometime between 2:30 --

16 A Right around 2:30, somewhere in there.

17 Q And did he go to your place?

18 A Yeah.

19 Q I am presuming you saw him there when you went home
20 or whenever?

21 A He was at my apartment when I went home.

22 Q Who else was at your apartment?

23 A My little brother.

24 Q How old is your little brother?

25 A Now he is 18.

1 Q And a baby, right?

2 A Yeah.

3 Q How old is your baby?

4 A Now he is four.

5 Q Two at the time?

6 A Uh-huh.

7 Q So, your little brother was babysitting your child,

8 right?

9 A Yes.

10 Q Okay. What time did you get home, by the way?

11 A I probably got home about 3:15, 3:30, 3:30.

12 Q So, within an hour of the bar closing you are home,

13 45 minutes, an hour after the bars closed down?

14 A About.

15 Q Between that time, when you got there, you went for

16 a ride, correct?

17 A Yes.

18 Q By the way, did Terry leave when you got home?

19 A He left for a minute.

20 Q For a minute?

21 A He left for a minute when I got home. I don't know

22 where he went.

23 Q But he came right back?

24 A Yeah.

25 Q So, this would be -- this is right, when he got home

1 it is about 3:15, 3:30?

2 A Around 3:30.

3 Q In the meantime, you went for a ride with people that
4 Terry said weren't there at Mom's Open Kitchen, Raymond and
5 Michael?

6 A Correct.

7 Q Was there any conversation involved in this?

8 A I was not paying attention to the conversation.

9 Q Did somebody like -- somehow you got an invitation to
10 go somewhere?

11 A I didn't get an invitation. They were my ride home
12 and I thought I was going home.

13 Q Somebody said, "Come on, we are going"?

14 A Yeah.

15 Q Now, this is about what time?

16 A Probably around 2:45, three o'clock.

17 Q Okay. Now, at that time you went out, you believe
18 it was across the railroad tracks, dropped off --

19 A Pops and Mike.

20 Q Okay. Do you know how they were dressed?

21 A I could not say.

22 Q Did they have winter coats on or don't you know?

23 A Yeah, they had winter coats on.

24 Q Dropped them off and then went somewhere else and
25 parked for awhile?

1 A Yes.

2 Q Okay. And all this time you never said, "What is
3 going on"?

4 A I knew what Danny dealt in and I was very pissed
5 off for being there.

6 Q Did you tell him that?

7 A I was not going to tell him that, I did not know
8 how he would react.

9 Q You have known this guy since high school, correct?

10 A Yes.

11 Q You live across the street from him?

12 A I was friends with his girlfriend, not him.

13 Q You live across the street from him?

14 A Yes.

15 Q Friends with his girlfriend, all right, and you go
16 out with him, out barhopping with him?

17 A I was with his girlfriend, not him.

18 Q Did you travel separately, the two of you?

19 A We were not traveling separately, but I was with
20 his girlfriend, not him.

21 Q So, under the concept here, when you say you are
22 with someone, all right, and there is a group of people --

23 A Danny was present but I was not acknowledging him.

24 Q Okay. So, he was an island unto himself and you
25 just ignored him?

1 A Basically.

2 Q All right. How about Raymond and Michael?

3 Are they islands unto themselves that you ignore?

4 A I never really knew Michael. I knew Raymond somewhat.
5 I didn't know him all that well. He would talk to me here
6 and there at the bars.

7 Q Now, I want to see if I have this right.

8 Do you know what this guy, or you think you know what
9 this guy does for a living?

10 A Yes.

11 Q And you get in a car with him after the bars close at
12 2:30 in the morning, out for a ride to who knows where,
13 and you don't even say anything to the guy?

14 A It was about three o'clock in the morning and no, I
15 am not going to say anything because at this point it was
16 very cold and I was not walking home.

17 Q You didn't say, "It is cold, can you drop me off,
18 maybe," or anything like that?

19 A No.

20 Q It didn't phase you as being the least bit unusual
21 that you are a little mad because you are taken for the
22 ride?

23 A It was a bit unusual that I was taken for the ride
24 and I was very upset about being there.

25 Q Then you must have been relieved when there was no

1 drug deal or anything?

2 A I was very relieved.

3 Q What kind of a car was this, by the way?

4 A Which car, Danny's?

5 Q The car you rode in?

6 A It is a Ford, Ford or Mercury.

7 Q Two door, four door?

8 A Four door.

9 Q You are in the back seat, right?

10 A Uh-huh.

11 Q And you pull up -- actually you are in the back

12 seat and there are cars going by?

13 A Where at?

14 Q This area where they were dropped off?

15 A There was one car that went by.

16 Q Only one car that whole time you were there that

17 went by?

18 A Yes.

19 Q How long were you there?

20 A Probably about five or ten minutes.

21 Q Okay. And you knew what kind of car it was at the

22 time?

23 A Yes.

24 Q How would you describe that car?

25 A It was a convertible LeBaron.

1 Q Just a convertible LeBaron?
2 A Uh-huh.
3 Q What color?
4 A I couldn't say exactly because there was only one
5 street light and you couldn't tell.
6 Q But you could recognize the kind of car?
7 A You could see the shadow of it.
8 Q So, you saw the shadow of the car?
9 A You could tell what kind of a car it was, you could
10 see the outer car.
11 Q You are familiar with LeBarons?
12 A Yes.
13 Q Now, you later pulled -- that car went and picked
14 somebody up.
15 Now, you recall the car went by and then you recall
16 later that the same car came back again?
17 How much time difference?
18 A Enough time to go over the tracks, stop and come
19 back. I couldn't say. Probably a minute.
20 Q Just a minute, came one, came the other?
21 A Yes.
22 Q But it was the same car?
23 A Yes.
24 Q All right.
25 A It appeared to be the same car.

1 Q It may or may not have been, but you don't know for
2 a fact it was, correct?
3 A No, I do not know.
4 Q This car have any color or anything?
5 A I don't know what color it was.
6 Q Pulled up. Testimony is Danny ducked down, correct?
7 A Correct.
8 Q And you just roll the window down, or open the door?
9 A I opened up the door and stepped one foot out.
10 Q Why did you open the car?
11 A Because we were behind the car.
12 Q You pulled in behind the car?
13 A Which car are you talking about?
14 Q When finally you went back and, I believe you said
15 you pulled in behind the car, or the other way?
16 A We pulled in behind the car.
17 Q There was a signal to pull over, right?
18 A Yeah.
19 Q The driver was flashing lights to try to get this
20 car to pull over?
21 A I guess, somehow they signaled them to pull over.
22 Q So then you pulled in behind, right?
23 A Uh-huh.
24 Q Now, you are the farthest person back from this car,
25 right?

1 A Right.

2 Q And the driver of the car couldn't get out?

3 A No.

4 Q You get out?

5 A Yes.

6 Q And you don't roll the window down or lean out or

7 anything, you are behind the car?

8 A I was behind the car and I am in the passenger's

9 back seat and the person they wanted to talk to was in

10 the front driver.

11 Q They wanted you to talk to him?

12 A To ask him something.

13 Q Okay. But not the person in the front seat of the

14 car closest to it or closer to the car that just pulled

15 over?

16 A No.

17 Q Did they say, "Hey, you in the back seat, get out,

18 ask whoever the person was," because you didn't know who

19 it was?

20 A Not until they got out.

21 Q You get out, take one foot out of the car?

22 A Yes. Didn't get all the way out of the car, just

23 one foot.

24 Q Stood up, like across the roof of your car, across

25 the roof of the other car?

1 Could you see Stan's head sticking out?

2 A He would step out of the car, he was out of the car,

3 yes.

4 Q And you could see from where you were there were three

5 other people in the car?

6 A Yes.

7 Q All right. Did you hear anybody talking or anything?

8 A No.

9 Q Could you identify the rest of the people in the car?

10 A No, I really wasn't looking.

11 Q Couldn't tell if they were black, white?

12 A I was not really looking.

13 Q Okay. Now, what was it that you said across?

14 A Did you pick up his brother.

15 Q Did you pick up his brother, okay, that was it?

16 A Yes.

17 Q You got the nod, got back in the car and were taken

18 home?

19 A I don't recall the answer.

20 Q You don't recall the answer?

21 A No.

22 Q So, the answer could have been no?

23 A Could have been, I don't know.

24 Q What did you tell Danny?

25 A I told him the answer and we left.

1 Q What was the answer you told Danny?
2 A I do not recall the answer.
3 Q You said you didn't recall what he said?
4 A I don't recall the answer that he had given me.
5 Q So, you don't recall what you were told and you don't
6 recall whether you told someone else, correct?
7 A I recall what I told him. I asked him, "Did you pick
8 up his brother?"
9 Q And you got an answer which you do not recall,
10 correct?
11 A Correct.
12 Q And you informed Danny whatever the answer was?
13 A Yes.
14 Q Which you do not recall?
15 A No, I do not recall.
16 Q So, you don't know what you said to Danny?
17 A No.
18 Q At that point you went home?
19 A Correct.
20 Q Were you still f'd up?
21 A I was pretty pissed off so I wasn't that bad off.
22 Q Starting to come out of it?
23 A Yes. Well, I was pretty much coming out of it as
24 well as I was pissed off.
25 Q You are mad about this, right?

1 A Because I thought I was involved in a drug deal
2 or something.

3 Q Even though you saw no one exchange anything?

4 A Correct.

5 Q But you are not relieved, you are mad?

6 A I am relieved to be home.

7 Q So, you are home, you come in, you see your brother?

8 A Uh-huh.

9 Q And you don't say anything to him?

10 A I said to my brother, "I think Danny had me involved
11 in one of his damn drug deals."

12 Q Did you tell him the details at that time about it
13 all?

14 A Yeah, I think I did.

15 Q Okay. And he just went on his merry way, he went
16 across the street?

17 A He left for a second and said he would be back.

18 Q He said that he would be back?

19 A Yeah.

20 Q Did he say he would be right back?

21 A I don't know, I could not say.

22 Q Were you awake when he came back?

23 A He came back like five or ten minutes later. I was
24 awake.

25 Q What did he have to say?

1 A He didn't say anything to me. I was in bed, but I
2 was awake.
3 Q But you were expecting him back?
4 A Right.
5 Q Okay. Did he have sleeping gear over your place?
6 A Yeah.
7 Q And he stayed there till morning, right?
8 A Yeah.
9 Q Did he go to bed?
10 Did you see him to go bed?
11 A No. Him and my little brother had talked for a little
12 bit and they went to bed around the same time.
13 Q They or you have anything more to drink?
14 A No, I didn't. I don't know what they had.
15 Q I don't know if I asked you this or not, how far away
16 is Mom's Open Kitchen from Razzle's?
17 A Right across the street.
18 Q Directly across?
19 A Like diagonal.
20 Q That would be a block or straight across?
21 A It is like two doors down, across.
22 Q When the bars close down, do a lot of people go there,
23 to your personal knowledge?
24 A Sometimes, sometimes not.
25 Q Do you go there quite a bit at night?

1 A No.

2 Q Do you go there when you go out and the bars are
3 closed?

4 A No, not normally.

5 Q Do you go out a lot?

6 A No.

7 Q How often do you go out?

8 A Hardly not at all now.

9 Q How about back then?

10 A Probably about twice a week.

11 Q Do you smoke crack cocaine?

12 A No.

13 Q Have you ever?

14 A No.

15 Q Have you ever seen your brother smoke crack cocaine?

16 A No.

17 MR. CLEARY: No further
18 questions. Thank you.

19 MR. ROSENBAUM: I have no other
20 questions.

21 (Witness excused.)

22 * * *

23

24

25

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

6 DIRECT EXAMINATION OF BRIAN DAVID HOWINGTON

7 BY MR. ROSENBAUM:

8 Q Would you state your name, please?

9 A Brian David Howington.

10 Q Spell the first and last name for the record, please?

11 A B-R-I-A-N; H-O-W-I-N-G-T-O-N.

12 Q Are you employed at this time, sir?

13 A Yes.

14 Q Will you tell the Court and jury what you do?

15 A I am a window cleaner.

16 Q For what business?

17 A H & B Window Cleaning.

18 Q How old are you?

19 A Twenty-four.

20 Q Do you know the person that is seated immediately
21 below my right hand? (Indicating)

22 A Yes, sir.

23 Q What is his name?

24 A Stan Jalowiec.

25 Q How do you know him, sir?

- 1 A I met him through my aunt.
- 2 Q And what is your aunt's name?
- 3 A Joann Fike.
- 4 Q How is it that your aunt -- you came to know him
- 5 through your aunt?
- 6 A I used to live with her, he used to come over the
- 7 house.
- 8 Q Would he come over alone?
- 9 A He came with different people, alone at times.
- 10 Q Did you know a person by the name of Raymond Smith?
- 11 A Yes, sir.
- 12 Q How do you know him?
- 13 A Same reason, through my aunt.
- 14 Q And do you know Danny Smith?
- 15 A Yes.
- 16 Q And how was it that you know Danny?
- 17 A He also used to come to my aunt's house.
- 18 Q Do you know why Raymond and Danny might come to your
- 19 aunt's house?
- 20 MR. GRUNDA: Objection.
- 21 THE COURT: He may answer if
- 22 he knows.
- 23 A Yeah, party.
- 24 Q What does that mean?
- 25 A Well, used to come over there, drink, shoot pool.

1 smoke.
2 Q Smoke what?
3 A Crack.
4 Q Did your aunt smoke crack?
5 A Yes.
6 Q Did you smoke crack?
7 A Yes, sir.
8 Q Do you still do that?
9 A No, sir.
10 Q When did you stop?
11 A A year and a half ago, at least, maybe two years.
12 Q Did Danny Smith smoke crack?
13 A Yes, sir.
14 Q How about Raymond?
15 A Yes, sir.
16 Q How about Stanley Jalowiec?
17 MR. GRUNDA: Objection.
18 THE COURT: Overruled.
19 If he knows.
20 A Yes, sir.
21 Q Yes, sir, he did?
22 A He did.
23 Q Did your aunt do anything for Danny or Raymond in
24 exchange for this crack or allow them to do something?
25 A She loaned them her car.

- 1 Q What kind of a car was that?
- 2 A Chrysler LeBaron.
- 3 Q Hard top?
- 4 A No, sir, soft top.
- 5 Q And who would borrow the car?
- 6 A Usually whoever asked, you know.
- 7 Q Did Danny borrow it?
- 8 A At times.
- 9 Q Did Raymond borrow it?
- 10 A Not really.
- 11 Q Did Stanley borrow it?
- 12 A Yes.
- 13 Q Did you ever have occasion to meet a man by the name
- 14 of Ron Lally?
- 15 A Yes.
- 16 Q When was the first time you met him?
- 17 A January, '94.
- 18 Q And under what circumstances did you meet him?
- 19 A I went to his house, picked him up.
- 20 Q Do you remember that evening?
- 21 A Yes.
- 22 Q Will you start at the beginning of this evening and
- 23 tell the Court and jury what happened?
- 24 A I was out at the bars with Stan and --
- 25 Q What bars?

- 1 A Downtown Elyria.
- 2 Q Different ones or just one?
- 3 A I believe we might have stopped at a couple.
- 4 Q What time would this be, as best you can recall?
- 5 A Probably around eight o'clock.
- 6 Q How did you get downtown?
- 7 A In my aunt's car.
- 8 Q So you had the car?
- 9 A Yes.
- 10 Q Did you pick him up?
- 11 A No, he was at my aunt's house, I believe, with me.
- 12 Q So you left your aunt's house and went downtown?
- 13 A Yes.
- 14 Q Then what happened?
- 15 A We had a few beers and he asked me to go over to a
- 16 friend's house and that is where I met Ron.
- 17 Q And what time would that be?
- 18 A Maybe around ten, 10:30.
- 19 Q Where was this friend's house?
- 20 A On Middle Avenue.
- 21 Q Near anything that you can recall?
- 22 A Mr. Hero restaurant.
- 23 Q And what happened when you arrived there with Stanley?
- 24 A We went up into the apartment.
- 25 Q And what happened in this apartment?

- 1 A We partied, smoked crack.
- 2 Q Who exactly smoked crack?
- 3 A Ron, Stan and Ron's roommate and myself.
- 4 Q How long did this last?
- 5 A Maybe an hour or so, maybe two. I am not sure.
- 6 Q What time would it be then?
- 7 A Around 11:30, maybe.
- 8 Q And what happened next?
- 9 A We went to my aunt's house.
- 10 Q How did you get there?
- 11 A My aunt's car.
- 12 Q Who drove it?
- 13 A I did.
- 14 Q So, you arrive at your aunt's house about what time?
- 15 A Maybe midnight.
- 16 Q Who was at your aunt's house with you?
- 17 A Ron, Stan and myself.
- 18 Q And when you say Stan, again you mean the Defendant
- 19 in this case?
- 20 A Yes, sir.
- 21 Q And what did you do at your aunt's house at this time?
- 22 A Shot pool, partied some more.
- 23 Q Partied some more, meaning what?
- 24 A Smoked crack.
- 25 Q Who is smoking this crack cocaine?

1 A Stan had it.
2 Q Did you have any?
3 A I didn't have any that was mine, no.
4 Q How about Ron, did he have some?
5 A No, sir.
6 Q Were you paying Stanley for this?
7 A No, sir.
8 Q Is that unusual?
9 A No, sir.
10 Q So, you said you were doing what besides smoking crack
11 cocaine?
12 A Shooting pool.
13 Q And how long did this go on for?
14 A Maybe an hour, can't be for sure.
15 Q What time would this be?
16 A Maybe around, maybe one.
17 Q And then what happened?
18 Could it have been a little later?
19 A It could have been.
20 Q Could have been a little earlier?
21 A Yes, sir.
22 Q So what happened then or what caused this party to
23 break up?
24 A Stan asked to borrow the car.
25 Q Prior to him asking to borrow the car, did anything

1 happen?

2 A I believe he got a page.

3 Q And he asked to borrow the car?

4 A Yes.

5 Q And you said what?

6 A At first I told him, "No, wait till my aunt gets

7 back," and he kept asking and I told him, "Go ahead

8 and take it."

9 Q And did he take the car?

10 A Yes.

11 Q Did he leave alone?

12 A No, sir, Ron went with him.

13 Q Did you go?

14 A No, sir.

15 Q What time do you think this might have been?

16 A Maybe around one.

17 Q What did you do then?

18 A I just stayed there, you know, waited for my aunt

19 to get home.

20 Q Did you see anybody again that you saw that evening

21 or the early morning hours later?

22 A Yes.

23 Q Who would this be?

24 A Stan and Raymond.

25 Q Stan and Raymond you saw?

- 1 A They brought the car back.
- 2 Q What time would this be?
- 3 A Early a.m., maybe five. I am not for sure.
- 4 Q So you saw Stanley Jalowiec and Raymond who?
- 5 A Smith.
- 6 Q Return the car?
- 7 A Yes, sir.
- 8 Q And you say about 5:00 a.m.?
- 9 A Yes.
- 10 Q Are you sure of the time?
- 11 A I am not positive.
- 12 Q Could have been earlier or later then?
- 13 A Yes, sir.
- 14 Q Did you see the car?
- 15 A Yes, sir.
- 16 Q What condition was the car in?
- 17 A It was frozen, covered with ice.
- 18 Q Do you have any idea why it was covered with ice?
- 19 A It was washed.
- 20 Q Did they say that to you?
- 21 A Yes.
- 22 Q What was the weather like?
- 23 A Freezing cold out.
- 24 Q When you say "freezing cold," do you mean 32?
- 25 A No, like below zero.

1 MR. ROSENBAUM: I have no other
2 questions, your Honor.

3 THE COURT: Thank you.
4 You may cross.

5 MR. GRUNDA: Thank you, your
6 Honor.

7
8
9
10 CROSS-EXAMINATION OF BRIAN DAVID HOWINGTON

11 BY MR. GRUNDA:

12 Q Now, Mr. Howington, did you make a statement?

13 A Yes.

14 Q Regarding this?

15 A Yes.

16 Q Just one or more than one?

17 A Just one.

18 Q When was that made?

19 A I believe it was the summer of '94, maybe. I am not
20 positive.

21 Q You didn't make it right after this event then, right
22 in January of '94?

23 A No, sir.

24 Q You didn't find anything so unusual that you should
25 go right down to the police and give them a statement?

1 A No, sir, I had no reason.

2 Q There was nothing that was peculiar or unusual to you,
3 right?

4 A No, sir.

5 Q Not at that time, so then you make the statement around
6 six months or so after, right?

7 A Yes, sir.

8 MR. GRUNDA: Your Honor, I would
9 request an in-camera inspection.

10 THE COURT: Guess what happens?

11 One of these things again. Therefore, we
12 will have to do this outside of your hearing.
13 You will retire to the jury room at this point
14 with the admonitions that I have given you in
15 the past about not discussing this case with
16 anybody or letting anybody discuss it with you.

17 (Whereupon, the jury was excused for a short
18 recess.)

19 (Whereupon, the following proceedings
20 occurred in the Judge's chambers out of the hearing
21 of the jury.)

22 THE COURT: I read the
23 statement. I find no inconsistencies period,
24 no inconsistencies, okay.

25 MR. GRUNDA: Okay.

1 (Whereupon, the following proceedings
2 occurred back in the courtroom out of the hearing
3 of the jury.)

4 THE COURT: The Court
5 reviewed the statement in question, found no
6 inconsistencies. Defense counsel has had the
7 opportunity to read the statement and what say
8 you, gentlemen?

9 MR. GRUNDA: Your Honor, the
10 only inconsistency I found was in the name of
11 Corinne.

12 THE COURT: And Joann. One
13 and the same.

14 MR. LEIBY: That is correct.

15 THE COURT: That is one and
16 the same. I think you can inquire of that.

17 MR. GRUNDA: I am saying that
18 was the inconsistency.

19 THE COURT: You may inquire
20 as to that.

21 MR. GRUNDA: Okay.

22 THE COURT: Bring them in,
23 Barbara.

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

1 BY MR. GRUNDA:

2 Q Now, Mr. Howington, before we left off I was asking
3 you about a statement that you had given to the police,
4 specifically Detective Leiby, right?

5 A Yes, sir.

6 Q You indicated that you believed that you gave that
7 statement in the summer, is that correct?

8 A Yes, sir.

9 Q Well, the date on that statement was January 14, '95.
10 That is not the summer, right?

11 A Right. I couldn't remember a time. I just guessed,
12 sir.

13 Q You guessed on that?

14 A Sorry.

15 Q That is more like in the winter though?

16 A Yeah.

17 THE COURT: That is really in
18 the winter, Mr. Grunda.

19 Q Now, the way this started you didn't go to the police,
20 did you?

21 A No, sir.

22 Q He contacted you, right?

23 A Yes, sir.

24 Q And then this interview was held at the police station?

25 A Yes, sir.

1 Q Would it be fair to say you didn't really want -- you
2 weren't going to talk, right?

3 A I didn't know that there was anything going on till I
4 heard from him.

5 Q So far as you were concerned, the night and the events
6 of that night and all this happened, nothing was unusual to
7 you, right?

8 A Correct, sir.

9 Q And then when he did talk to you, Detective Leiby,
10 isn't it a fact that you were granted immunity for the
11 information you would give to him?

12 A Yes, sir.

13 Q And after that, then, you started going on about this
14 information, whatever, to Detective Leiby, right?

15 A Yes, sir.

16 Q Now, you were living with your aunt, correct, Joann
17 Fike?

18 A Yes, sir.

19 Q In that statement I didn't see her name being mentioned
20 as Joann. There was a Corinne.

21 A That is also her.

22 Q She uses Corinne and Joann?

23 A More Corinne.

24 Q What is the name on the birth certificate?

25 A Joann.

1 Q Okay. So when you were saying Corinne in here, her
2 given name is Joann?

3 A Yes, sir.

4 Q Let's talk about the events of this supposed evening
5 that really didn't stand out for you at that time until
6 you talked to Detective Leiby, right?

7 A Correct.

8 Q In that day, about five or six o'clock, you met up
9 with Stan?

10 A Yes, sir.

11 Q And the way that came about is, you take your aunt's
12 car and you went to Stan's house?

13 A No, I believe he was there. He came to my aunt's
14 house.

15 Q You don't remember?

16 A I am not positive, but I didn't go pick him up nowhere.

17 Q So, he came over to your aunt's house where you were
18 living at the time?

19 A Yes, sir.

20 Q You got a pool table there?

21 A Yes.

22 Q Not unusual for him to be there?

23 A No, sir.

24 Q He was there a lot?

25 A Yes.

1 Q A lot of people come over there?
2 A Yes, sir.
3 Q A lot of people are there socializing?
4 A Yes, sir.
5 Q Not just Stan?
6 A Right.
7 Q Okay. So there was nothing unusual about him coming
8 over there?
9 A No, sir.
10 Q Okay. Then, while you were there, you are drinking?
11 A I don't believe I started drinking till we got to
12 the bar.
13 Q So you are there for how many hours?
14 A At my aunt's? I live there.
15 Q Before you went to the bar?
16 A Stan was there a couple hours maybe.
17 Q Was there anybody else there at the time?
18 A No, I don't believe so.
19 Q How about your aunt's daughter and her friend?
20 A I don't remember. I don't know if she was home
21 or not.
22 Q How old is she?
23 A Thirteen.
24 Q How old was she then?
25 A Twelve, eleven, I am not sure, maybe twelve.

1 Q All right. What is her name?
2 A Jessica.
3 Q So she may or may not have been home, you don't
4 remember?
5 A Correct.
6 Q Your aunt was not there?
7 A I don't think so.
8 Q But her car was there?
9 A Yes, sir.
10 Q So you take her car and you and Stan go to the
11 bar, right?
12 A Yes, sir.
13 Q Stan didn't ask you to go to the bar, you just
14 kind of decided to go?
15 A We decided to go.
16 Q Like a spur of the moment thing?
17 A Yeah.
18 Q And you went to Power Slams?
19 A Yeah.
20 Q I assume when you were at the Power Slams you were
21 drinking there?
22 A Yes, sir.
23 Q Did you do any drugs at your aunt's house before
24 you went to Power Slams?
25 A No, sir.

1 Q Did you admit in your testimony originally that at
2 that time when this was going on you did not smoke crack
3 at that time?

4 A After we left the bar we did.

5 Q I am saying, it wasn't until sometime after this
6 that you quit smoking crack?

7 A Correct.

8 Q During the period of time you were still using?

9 A I am using, yes.

10 Q I mean crack cocaine?

11 A Yes, sir.

12 Q So, you are at Power Slams.

13 You didn't go there with Terry Hopkins, Sharon
14 Hopkins, Danny Smith and Tammy?

15 A No, sir.

16 Q Do you know those people?

17 A Yes, sir.

18 Q So, if you would have went up there with them, you
19 would have known it?

20 A Yes, sir.

21 Q You didn't go to Mom's Open Kitchen with them, did
22 you?

23 A No, sir.

24 THE COURT: Mr. Grunda, if
25 we have an English teacher in the jury, would

1 have gone, not would have went.

2 Q Since you knew these people, if you would have went
3 and left with them, you would have remembered?

4 A Yes, sir.

5 Q You were at Power Slams for how long?

6 A Maybe an hour, hour and a half, two hours, I am not
7 sure.

8 Q Then where did you go?

9 A We left, I don't know, I believe we stopped at
10 Razzle's.

11 Q You don't remember for sure?

12 A No. Then we went over to Ron's house from there.

13 Q Were you parked in front of Power Slams?

14 A Yes, sir, I believe I was.

15 Q Okay. When you went over to Ron's, did you know
16 this person as Ron then?

17 A No, sir.

18 Q You didn't know who he was?

19 A I never met him before, no.

20 Q So you went over there, you were partying, right?

21 A Yes, sir.

22 Q And by partying, I think you said you were what,
23 smoking crack cocaine?

24 A Yes.

25 Q Did you have any marijuana?

1 A No, sir, I don't believe so.

2 Q And there was four of you there at the time,

3 correct?

4 A Yes, sir.

5 Q You and Stan, because you left together?

6 A And Ron and this other person, yes.

7 Q You didn't know Ron?

8 A I didn't know either one of them.

9 Q And then Ron's roommate?

10 A Yes.

11 Q And no problem there, right?

12 A No, sir.

13 Q Nothing unusual going there, just continued

14 partying?

15 A No, sir.

16 Q That was the plan for the night?

17 A Go out partying, yes.

18 Q Didn't matter if it was there or anyplace else?

19 A Yes, sir.

20 Q No problems or incidences while you were at Ron's

21 house?

22 A No, sir.

23 Q There for awhile, partying, smoking crack and then

24 you go back to your aunt's house?

25 A Yes.

1 Q Ron went with you?
2 A Yes, sir.
3 Q Nobody forced him to go with you?
4 A No, sir.
5 Q Stan didn't make him go?
6 A No.
7 Q Basically you didn't, neither one of you cared
8 if he went or didn't go?
9 A Right.
10 Q So then you ended up back at your aunt's house,
11 that is around eight o'clock then?
12 A Maybe around ten.
13 Q Okay.
14 A Could have been later, I am not sure.
15 Q So we know for sure, the three of you are there?
16 A Yeah.
17 Q We don't know -- would it be your niece, Jessica?
18 A Right.
19 Q You don't know if she was there?
20 A She wasn't around, no. If she was, she was in bed.
21 Q She is allowed to stay home by herself?
22 A She has.
23 Q And when you came back to your house, the same
24 thing, partying, playing pool, smoking crack?
25 A Yes.

1 Q Were you drinking, too?

2 A I don't think we were drinking at the house.

3 Q Just drank at Power Slams?

4 A Right.

5 Q Nothing unusual about that, right?

6 A No.

7 Q No threats?

8 A No, sir.

9 Q No problems?

10 A No, sir.

11 Q Stan is not mentioning anything about hurting anybody

12 or doing anything to anybody?

13 A No, sir.

14 Q Did he even mention anything like that the entire

15 night or evening before that night?

16 A No, sir.

17 Q The fact is, since you didn't know this Ron, do you

18 ever remember him talking about a guy named Ron?

19 A No, sir.

20 Q Now, being with Stan this whole night, you didn't

21 hear any threats?

22 Did you see him have any weapons on him?

23 A No, sir.

24 Q Gun or knife or anything like that?

25 A No, sir.

1 Q I assume since you were with him from like early in
2 the evening throughout the night, you would have probably
3 seen it if he had one, right?

4 A Yes.

5 Q You didn't see any?

6 A No, sir.

7 Q No mention of using anything like that against anybody?

8 A No, sir.

9 Q You indicated it was cold out, right?

10 A Yes.

11 Q So, if somebody would have called him to ask for a ride
12 because it was so cold, that wouldn't have been unusual that
13 night?

14 A No, sir.

15 Q Kind of difficult for people to walk home and walk
16 around?

17 A Yes, sir.

18 Q So, in any event, he wants to use your aunt's car to
19 pick these people up?

20 A I didn't really get a reason. He just wanted to use
21 it.

22 Q Didn't say anything, right?

23 A No, sir.

24 Q Nothing unusual going on at the time he made the
25 request?

1 A No, sir.

2 Q Used your aunt's car before?

3 A Yes.

4 Q In fact, a lot of people used her car?

5 A Yes.

6 Q I believe you gave the inclination what she would

7 get in return was some crack cocaine?

8 A Yes.

9 Q And then he takes the car?

10 A Yes, sir.

11 Q And goes?

12 A Yes.

13 Q Now, when he was going -- really this is the first

14 time you met this Ron guy, right?

15 A Yes.

16 Q You really don't know him?

17 A Right.

18 Q So, it would be fair to say, wouldn't it, that if

19 Stan is going to leave, since you don't know this guy,

20 it is kind of awkward, you really don't want him around?

21 A Right.

22 Q Did you tell Stan, "If you are leaving, you better

23 take your buddy because I don't know him"?

24 A I didn't say that. He just went with him, you know.

25 Q You don't recall saying that?

- 1 A I don't remember.
- 2 Q You don't recall telling Detective Leiby that you
- 3 didn't know this guy and don't leave him here?
- 4 A I don't remember that. I may have said that.
- 5 Q You may have said that back in your statement in
- 6 January, right?
- 7 A Yes.
- 8 Q But whether you remember it or not, that would be
- 9 logical because you didn't know the guy?
- 10 A Right.
- 11 Q So, you didn't find anything unusual about that?
- 12 A No, sir.
- 13 Q Stan was not making him go?
- 14 A No.
- 15 Q Didn't have a gun or knife or anything on him?
- 16 A No, sir.
- 17 Q Kind of freely went?
- 18 A Yes, sir.
- 19 Q That is why the prior time you were saying there
- 20 was nothing unusual about this whole event?
- 21 A Right.
- 22 Q Then they were gone, you don't really know how
- 23 long, but several hours?
- 24 A Right.
- 25 Q Till they came back?

1 A Correct.

2 Q You didn't ask where they were going?

3 A No, sir.

4 Q No mention what was going on?

5 A No, sir.

6 Q When the car came back you said it was washed?

7 A Yes.

8 Q But you don't know if it was washed?

9 A It was covered with ice.

10 Q That is a little different.

11 You don't know if it was washed or got water on it

12 and got ice?

13 A Right.

14 Q You weren't there, you don't know, you don't know

15 how it got there or who did it, right?

16 A The ice? No.

17 Q You don't know that Stan did that?

18 A I don't know for a fact.

19 Q Right. It could have got there any number of ways,

20 right?

21 A Yes, sir.

22 Q You indicated that Raymond Smith came back with him

23 with the car, could have been Raymond?

24 A Yes, sir.

25 Q With Stan not even being there, right?

1 A They came back together. That is all I know.

2 Q But you don't know if Stan was in that car the entire
3 time?

4 A I don't know that for a fact, no.

5 Q You don't know that that didn't happen either, right?

6 A Right.

7 Q Sir, would it be fair to say, since you did drink some
8 alcohol that night, it would be fair to say you smoked quite
9 a few rocks of crack?

10 A Yes, sir.

11 Q For a lack of better term, you were pretty messed up?

12 A I had a buzz.

13 Q Pretty good buzz?

14 A Yes.

15 MR. GRUNDA: No other questions.

16 THE COURT: Mr. Rosenbaum?

17

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20 REDIRECT EXAMINATION OF BRIAN DAVID HOWINGTON

21 BY MR. ROSENBAUM:

22 Q Sir, when you have a buzz induced by cocaine, are your
23 senses inhibited or reduced?

24 MR. GRUNDA: Objection.

25 THE COURT: I don't know that he

1 can say how it affects him. I don't know that he
2 is an expert in that field.

3 Do you know how it affected you?

4 THE WITNESS: Yes, sir. It
5 enhances.

6 Q Do you have trouble seeing things, remembering things?
7 Is it different from being high or depressed on
8 alcohol?

9 MR. GRUNDA: Objection.

10 THE COURT: Again, if he is
11 in a position to be able to testify to that, he
12 may.

13 Q Have you ever been drunk?

14 A Yes, sir.

15 Q Is being high on crack different than being drunk?

16 A Yes, sir.

17 MR. ROSENBAUM: No other questions.

18

19

20

21 RECROSS-EXAMINATION OF BRIAN DAVID HOWINGTON

22 BY MR. GRUNDA:

23 Q But even if you had this buzz on this night, okay, you
24 do admit that that buzz still affects you?

25 A It affects you, yes.

1 Q And really through the whole night there was nothing
2 that seemed out of character or improper, right?

3 A No, sir.

4 MR. GRUNDA: No other questions.

5 THE COURT: Mr. Rosenbaum?

6 MR. ROSENBAUM: No, sir.

7 THE COURT: You may step down.

8 (Witness excused.)

9 * * *

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

6 DIRECT EXAMINATION OF JOANN FIKE

7 BY MR. ROSENBAUM:

8 Q What is your name?

9 A Joann Corinne Fike.

10 Q Spell the name for the Reporter?

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

12 Q Do you go by Joann?

13 A No, Corinne.

14 Q Anybody call you Joann?

15 A Not usually.

16 Q But your first name is Joann?

17 A Yes.

18 Q How old are you, Ma'am?

19 A Thirty-six.

20 Q Are you employed?

21 A No.

22 Q How do you get by?

23 A A widow. I receive social security.

24 Q Do you know the person seated under my right hand?

25 (Indicating)

1 A I do.

2 Q What is his name?

3 A Stan Jalowiec.

4 Q How is it that you know him?

5 A Through drugs.

6 Q Did anyone introduce you to him?

7 A I think Danny Smith.

8 Q And how do you know Danny Smith?

9 A Through drugs.

10 Q And what exactly does that mean?

11 A I used to smoke crack.

12 Q And what did Danny do or not do for you?

13 MR. GRUNDA: Objection.

14 THE COURT: Overruled.

15 Q Go ahead.

16 A Okay. He supplied it.

17 Q And did you ever meet his father?

18 A I did.

19 Q What is his father's name?

20 A Raymond.

21 Q And how was it that you know Raymond?

22 A Through drugs.

23 Q Did Raymond give you drugs ever?

24 A Yes.

25 Q Did you do drugs with Raymond?

1 A Yes.

2 Q Did you ever do drugs with Danny?

3 A No.

4 Q Did you ever do drugs with the Defendant?

5 A Yes.

6 Q What type of drugs?

7 A Crack.

8 Q And who gave you the crack on those occasions?

9 A I would purchase it.

10 Q From --

11 A Stanley or Danny.

12 Q Did you ever purchase it from Raymond?

13 A No, I don't think so.

14 Q Would you purchase the drugs with money?

15 A Occasionally.

16 Q And what other method would you purchase the drugs?

17 A I would let Danny use my car.

18 Q What type of car do you own?

19 A I have a '92 LeBaron.

20 Q And is it a soft top or hard top?

21 A It is soft.

22 Q What color is it?

23 A Blue.

24 Q I would like to hand you four pictures that have been

25 marked as State's Exhibits 3-A through 3-D, ask you to look

1 at them, please.

2 Do you recognize the car depicted in those pictures?

3 A I do.

4 Q Whose car is it?

5 A Mine.

6 Q Did the police come and impound your car at one time?

7 A Yes.

8 Q Did they return the trunk liner of your car when they

9 returned the car?

10 A No, a piece was removed.

11 Q How long have you known Danny Smith, Raymond Smith?

12 A Two or three years.

13 Q How about the Defendant?

14 A The same.

15 Q Now, did you lend your car to anyone on a very cold

16 night in January?

17 A No.

18 Q Was your car taken from your home on a very cold

19 night in January?

20 A Yes.

21 Q What year would this have been in?

22 A Ninety-four.

23 Q Will you tell the Court and jury how it is that you

24 became aware that someone had your car and who that was?

25 A I was out with a friend for the evening and when I

1 returned home my car was not there, my nephew was at the
2 home and he said he let Stan use it to take somebody home.

3 Q And your nephew would be whom?

4 A Brian Howington.

5 Q What time in the morning would this be?

6 A Like 2:30, three o'clock in the morning.

7 Q And when did your car reappear?

8 A Not till like five or six the next morning.

9 Q That would be the same morning as you came home?

10 A Right.

11 Q Three or four hours later like?

12 A Yes.

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

15 A Stanley and Raymond.

16 Q That would be the Defendant and Raymond who?

17 A Smith.

18 Q Can you describe the condition the car was in?

19 A It was frozen over. It was a sheet of ice.

20 Q What was the weather like on this day?

21 A It was extremely cold, below zero.

22 Q And did you notice anything else unusual about your
23 car?

24 A There was some blood on the car.

25 Q Did you ask anyone about that?

1 A I did.

2 Q Who did you ask and what did you ask?

3 A I asked Mr. Jalowiec.

4 Q And what did you ask him?

5 A What was up with the blood on my car.

6 Q Did he also tell you how the ice got on it?

7 A He said he washed it.

8 Q What was Mr. Jalowiec's response about the blood
9 being on your car?

10 A That he had a fight with somebody, like downtown
11 Elyria, by Mom's Open Kitchen.

12 Q Did anyone ever replace any parts on your car
13 before the police impounded it?

14 A The front tires were replaced.

15 Q By whom?

16 A Danny Smith.

17 Q And when was that?

18 A Towards springtime, I would say, about April.

19 Q Of that same year?

20 A Yes.

21 Q Now, after Raymond Smith and Stan Jalowiec returned
22 your car, what happened?

23 A I took Raymond to his son's house.

24 Q And that would be Danny's house?

25 A Yes.

1 Q And what happened then?

2 A Raymond went upstairs and I stayed in the car.

3 Q And then what happened?

4 A And he came down --

5 MR. GRUNDA: Objection.

6 It is not about Raymond Smith. We are
7 here on Stan.

8 THE COURT: Well, yes, all
9 right. At this point I think it is all
10 background.

11 Q Were you alone with Raymond Smith at this time?

12 A When we were in the car, yes.

13 Q Did you meet anyone at Danny's house?

14 A I waited in the car. I didn't even go in the
15 apartment.

16 Q Did they come out?

17 A Raymond did.

18 Q Was Stanley there at all?

19 A He was at my house.

20 Q So, did you return to your house?

21 A Yes.

22 Q And Stanley was there?

23 A Yes.

24 Q And that would be you, Raymond Smith and Stanley
25 Jalowiec at your house?

1 A And Brian.
2 Q Brian Howington?
3 A Yes.
4 Q What happened then?
5 A We got high.
6 Q Who is we?
7 A I think all of us.
8 Q And get high means what exactly?
9 A Smoking crack.
10 Q How long did that go on for?
11 A A couple hours.
12 Q I would like to hand you a photograph that has been
13 marked for identification as State's Exhibit 12. I will
14 ask you to look at it, please.
15 Do you recognize that, Ma'am?
16 A I do.
17 Q The scene in that photo?
18 A I do.
19 Q What is that a photograph of?
20 A My dog.
21 Q And your dog's name is --
22 A Cleo.
23 Q Did Detective Leiby ever come to the home and take
24 hair samples from Cleo?
25 A Yes, he did.

1 Q Does that picture depict what Cleo looks like?

2 A Yes, that is her.

3 MR. ROSENBAUM: I have no other
4 questions, your Honor.

5 THE COURT: Thank you.

6 You may cross.

7

8

9

10 CROSS-EXAMINATION OF JOANN FIKE

11 BY MR. GRUNDA:

12 Q Ma'am, did you give a statement to the police?

13 A I did.

14 Q Do you recall when that was?

15 A No, I don't recall.

16 Q You don't know if it was in the summer or fall or
17 winter or anything like that?

18 A I would say in the summer.

19 Q Summer of what year?

20 A Ninety-four.

21 Q Summer of '94.

22 Did you go to the police station in the summer of
23 '94 to give this or were you contacted?

24 A I was contacted and we met at my attorney's office.

25 Q When was your car taken from you by the police?

1 A I don't recall for sure, but I believe it was in
2 November.

3 Q Of what year?

4 A Ninety-four.

5 Q So they took your car in November of '94?

6 A I think so. I might not have the dates correct,
7 but they had my car for a year.

8 Q They had your car for a year?

9 A They had it impounded for a year, yes.

10 Q Would it be fair to say that almost a year transpired
11 from when they are talking about till they took your car?

12 A I don't understand what you are saying.

13 Q Well, the thing that I am -- you are giving all these
14 dates as the summer of '94, November of '94, right?

15 A Yeah.

16 Q This incident didn't even happen then. You are ahead
17 of time.

18 Do you understand that?

19 A I said I am sorry, I might not have the dates exact.
20 It has been a long time, sir.

21 Q You are not sure about a lot of things?

22 MR. ROSENBAUM: Summer of '94, come
23 back to January of '94, as far as I know.

24 THE COURT: Okay.

25 Q Now, how did and when did it come that they took your

1 car?

2 A They just came and impounded it. I wasn't even home
3 when that happened either.

4 Q But the taking of your car was in November, '94?

5 A I believe.

6 Q Okay. But you had given them the statement in the
7 summer of '94, right?

8 A No. I don't recall.

9 Q What happened first?

10 A They took my car first.

11 Q They took your car first?

12 A Yes.

13 Q Let's see if we can get this on the right track.

14 When you say they took your car first, who do you mean?
15 Who do you mean by that?

16 A I am assuming you are meaning the police?

17 Q I am asking you who took it.

18 Do you know who took it?

19 THE COURT: Can you give us the
20 sequence of events?

21 THE WITNESS: Are you talking when
22 the incident occurred or when the police impounded
23 the car?

24 Q We are talking from this incident. I want to know how
25 things happened, give me the order that they happened.

1 A When they used my car?

2 A No, after that. I want to know what happened to your
3 car, who took it and when.

4 THE COURT: Mr. Grunda, you are
5 confusing me.

6 Do you recall when your car was borrowed?

7 MR. GRUNDA: All I am interested
8 in is after that.

9 THE COURT: The car had been
10 borrowed and returned.

11 THE WITNESS: Okay.

12 Q After this incident, what happened first, the police
13 come -- you talk about the statement, or did they take your
14 car first?

15 A They came and took my car first.

16 Q Okay. And that, I believe you indicated was like
17 November of '94, right?

18 A I think so, yes.

19 Q And this incident allegedly happened like in January
20 of '94, right?

21 A Yes.

22 Q So, it is like eleven months in between?

23 A Yes.

24 Q Almost a year.

25 Would it be fair to say that a lot of people used

1 your car in those eleven months, right?

2 A No, a lot of people did not use my car.

3 Q You do admit that you were letting people borrow
4 your car for drugs?

5 A Yes.

6 Q So, if you didn't say a lot of people, it was all
7 the same people that you normally let use your car for
8 drugs, you were still letting them use it up until
9 November?

10 A Yes.

11 Q So, other people were using your car until the
12 police had taken it in November?

13 A Yes.

14 Q And after that you gave a statement?

15 A Yes.

16 Q After they had taken your car?

17 A Yes.

18 Q Now, the problem I have is because you are saying
19 that they took the car first, which is in November of
20 '84 and you say they took your statement after, in the
21 summer, but you are saying the summer of '94.

22 A I was confused.

23 Q Okay. So it is really not the summer of '94, it
24 is the summer after they took your car?

25 A Yes.

1 MR. GRUNDA: Now, your Honor,
2 I would request an in-camera inspection of the
3 statement.

4 THE COURT: All is not lost on
5 this one. Okay?

6 I will make -- we will conduct the in-camera
7 inspection, but in the meantime we will take an
8 early recess, send you to lunch early and ask you
9 to please return at one o'clock or thereabouts,
10 probably won't get started right at one, but come
11 back at one and in the meantime we will try to
12 kill two birds with one stone by taking lunch and
13 what have you to cut down on the unnecessary
14 delays in this area.

15 The admonitions that I have given you in the
16 past about discussing it amongst yourselves,
17 letting anyone discuss it with you, letting
18 anybody read about it or letting you read about
19 it or anybody reading about it to you, do not at
20 this point.

21 We are getting close now to you getting
22 everything into this case, so do not.

23 And with those admonitions we will take
24 our luncheon recess and come back at one.

25 (Whereupon, a luncheon recess was had.)

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Volume 5

No. 95 CRO 46840

The State of Ohio, Plaintiff,
vs. Stanley E. Jalowiec, Defendant.

Supreme Court of Ohio
Case No. 99-1753
Date Rec'd 10/5/99

98-1074

FILED
JUN 17 1998
MARCIA J. MENGEL, CLERK
SUPREME COURT OF OHIO

1 AFTERNOON SESSION, FRIDAY, MARCH 15, 1996

2 (Whereupon, the following proceedings
3 occurred out of the hearing of the jury in the Judge's
4 chambers.)

5 THE COURT: I have read --
6 there are two statements involved here.

7 First one was December 27th, '84, and the
8 other one was January 11th, '95.

9 The December 27th, '94, statement is replete
10 with inconsistencies, what have you, but those
11 were corrected on January 11th.

12 In the January 11th, 1995, statement I find
13 no inconsistencies in the testimony at this point.

14 In the first statement the inconsistency is,
15 she was confused as to whether the car was
16 borrowed and what have you. Danny and Tammy
17 borrowed it and what have you and it is
18 corrected on this one. That is what I find.

19 You can go at it.

20 MR. CLEARY: Thank you.

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

24 THE COURT: For the record,
25 Mr. Grunda, the statements and questions have

1 been given to the defense counsel and the Court
2 earlier indicated for the record it found no
3 ultimate inconsistencies.

4 Mr. Grunda, what do you say?

5 MR. GRUNDA: Thank you, your
6 Honor.

7 The statement that was given on December
8 27th of '94 had two inconsistencies. She was
9 very specific about lending the car to Tammy
10 and Danny Smith and the time was about six or
11 seven because they were taking the car to
12 Cleveland.

13 THE COURT: That was
14 different than what she testified and that I
15 saw.

16 MR. GRUNDA: And the other
17 inconsistency was later, on page 9, where she
18 indicated she would only lend the car to Danny,
19 not Stanley.

20 THE COURT: But subsequently
21 with the second statement those were corrected,
22 correct?

23 They were changed?

24 MR. GRUNDA: Second statement,
25 January 11th, she only changed the part about who

1 she lent the car to.

2 THE COURT: Right, okay.

3 You may cross-examine her, sir.

4 MR. GRUNDA: Okay.

5 (Whereupon, the jury was returned to the
6 courtroom and the following proceedings occurred.)
7
8

9 CROSS-EXAMINATION OF JOANN FIKE (Cont.)

10 BY MR. GRUNDA:

11 Q Now, Ms. Fike, during the recess period we had we had
12 an opportunity to look at two statements that you gave to
13 the police, okay?

14 A Yes.

15 Q I believe before we left you thought you had only
16 given one statement?

17 A Yes.

18 Q So, in fact, you did give two?

19 A Yes.

20 Q One was on December 27th of '94, the other January
21 11th, '95.

22 Would that be right?

23 A Yes.

24 Q You just forgot about the other one before?

25 A Well, I called Detective Leiby, I needed to change

1 a few things.

2 Q So, the first time you talked to Detective Leiby,
3 that was not on your own request?

4 A No.

5 Q And that was at, you indicated, your attorney's office?

6 A Yes.

7 Q Apparently you felt that you needed some type of legal
8 counselling at that point?

9 A Yes, I was confused, I didn't know what was happening.

10 Q So that was done there?

11 A Yes.

12 Q Now, I believe in your first statement that you gave
13 at your attorney's office, which was December 27th of '94,
14 isn't it correct, Ma'am, that you indicated to Detective
15 Leiby at that time that you had lent the car to Tammy and
16 Danny Smith so they can go to night court in Cleveland for
17 a speeding ticket that they had and that was six or
18 sevenish?

19 A Yes, I thought that was the day in question because
20 I did lend them the car.

21 Q That is what you told him there at your attorney's
22 office?

23 A Yes --

24 Q The answer is simply yes or no, okay?

25 Later on in that you also indicated that you would

- 1 only lend the car to Danny?
- 2 A Yes.
- 3 Q But I recall you saying on the stand earlier that
- 4 you would lend it to Stan also?
- 5 A I never lent Stan my car.
- 6 Q Never ever?
- 7 A No.
- 8 Q So, if there was prior testimony from your nephew,
- 9 who is Brian Howington --
- 10 A Yes --
- 11 Q (Continuing) -- if he indicated that you lent the
- 12 car out to Stan for drugs, he wouldn't be telling the
- 13 truth?
- 14 A I don't believe I did, no. For one, Stan didn't
- 15 have a license.
- 16 Q You indicated you were lending the car out though
- 17 for -- in return to get crack cocaine?
- 18 A Yes.
- 19 Q Okay. And you did have a bad crack problem at that
- 20 time?
- 21 A I did, yes.
- 22 Q And who else was living at your house at that time?
- 23 A Brian, my nephew.
- 24 Q And your daughter?
- 25 A Yes.

1 Q She was how old at that time?
2 A Thirteen, 14. She is 14 now.
3 Q This night you said you were out till about two in
4 the morning?
5 A Yes.
6 Q Was this a common thing for you, to let your daughter
7 home alone?
8 A I don't believe she was home that day.
9 Q You don't know?
10 A No, I don't remember, sir.
11 Q You can't really recall that day, right?
12 A No.
13 Q Now, the picture the Prosecutor showed you, 3-A,
14 that is 3-A, right?
15 A Yes.
16 Q Looks like your car?
17 A Yes.
18 Q It is up on a lift?
19 A Yes.
20 Q Three-B, that is also a picture of your car?
21 A Yes.
22 Q It shows that it has a black convertible top?
23 A Yes.
24 Q Would it be fair to say with that black convertible
25 top, you have a very small rear window in it?

1 A Back here, sir? (Indicating)
2 Q No, on the side?
3 A There is little side windows.
4 Q Okay. And then you also have the window in the back?
5 A Yes.
6 Q Since it is a convertible, it is not glass?
7 A It is glass.
8 Q But it is smaller than on a normal size LeBaron,
9 right?
10 A I think so.
11 Q Okay. You do agree that the picture is right and it
12 shows that the black convertible top is covering part of
13 the way in the back of the car, right?
14 A On the side here? (Indicating)
15 Q In other words, it is not all glass?
16 A No, no.
17 Q The convertible top, the canvas, is on part of it on
18 the back?
19 A Yes.
20 Q Three-D, that is also a picture of the interior of
21 your car?
22 A Is that the back seat?
23 Q Yes.
24 A Yes.
25 Q It shows here on the side, at least on the passenger

1 side, you can see where the top comes down into it?

2 A Yes.

3 Q With that top it kind of takes up some of the room
4 in the back in the interior?

5 A It folded down behind the seat.

6 Q And the arm mechanism there on the side?

7 A Right.

8 Q So the back seat is narrower than the front?

9 A Extremely.

10 Q Although you can't really see it too clearly in
11 here, this is the picture of the head rest on the back
12 of the bucket seats?

13 A Yes.

14 Q It would be about head height sitting in there,
15 right?

16 A Yes.

17 Q So, in any event, when you gave your first statement
18 at your attorney's office you tell him Tammy and Danny had
19 the car and then you change your mind about that, right?

20 A Yes.

21 Q Okay. And then you tell Detective Leiby an entirely
22 different thing then, right, that you weren't even home?

23 A No.

24 Q Because the first one you said you were home and that
25 you lent them the car about six or seven?

1 A Yes.

2 Q And the second statement now, you are not even at home
3 and you were out till two o'clock in the morning?

4 A Yes.

5 Q And then, then you find out that your nephew was the
6 one that gave permission to use the car?

7 A Yes.

8 Q Okay. You questioned him about that and he said he
9 was just taking someone home?

10 A Yes.

11 Q But isn't it also true that in the first statement
12 that you gave in December when you said you lent it to
13 Danny, you were so worried about it because you only
14 lent it out a couple hours, that you kept paging and
15 paging and paging Danny to get it back?

16 A I had the dates wrong.

17 Q I am asking, is that what you told him the first
18 time?

19 A Would you repeat that, please?

20 Q The first time that you gave the statement in
21 December, December 27th of '94, you said that you lent
22 the car to Tammy Kasper, Danny Smith, you were worried
23 about the car because they had it longer than a couple
24 hours and you were paging and paging them to try to
25 get it back?

1 A Yes.

2 Q And in the second statement in January, all that

3 changed?

4 A Because I was aware.

5 Q Did all that change?

6 A Yes, it did.

7 Q Okay. Now, you indicated that the police

8 confiscated your car in November, right?

9 A Yes.

10 Q Ninety-four. Okay.

11 It is also true that you had the car confiscated

12 or taken by the police earlier than that, too?

13 A Yes.

14 Q And that would have been in about April?

15 A I don't remember.

16 Q You don't remember when it was impounded?

17 A No, I don't.

18 Q You don't remember how long it was impounded and

19 you didn't have access to your car?

20 A Yes, I do.

21 Q How long was that?

22 A It was a long time. I had to pay a storage fee.

23 Q So this incident supposedly happens in January,

24 you are without -- your car gets impounded around in

25 April, do you remember?

1 A I don't recall.

2 Q They had it for a long period of time, you had to
3 pay storage on it?

4 You get it back, did you have it a long time before
5 they took it again in November?

6 A I don't remember.

7 Q You don't remember?

8 A No.

9 Q But you do know the first time your car was impounded
10 and you didn't have access to it, no tests, no nothing
11 were run on it?

12 A No, I don't think so.

13 Q You were never questioned about it?

14 A No.

15 Q Nobody asked you about it?

16 A No.

17 Q You get it back, then they come back and take it again?

18 A (Whereupon, the witness nodded in the affirmative.)

19 THE COURT: You have to answer
20 yes or no.

21 THE WITNESS: Yes.

22 Q I take it the first time it was impounded it wasn't
23 done voluntarily on your part, the police impounded it?

24 A Yes.

25 Q Okay. You indicated the front tires were changed by

1 Danny on the front of your car, not all four, right?

2 A Yes.

3 Q That was in April you said?

4 A Yes.

5 Q Do you recall from that time, was that before or after
6 the police impounded it the first time?

7 A I don't recall.

8 Q You don't know if they had impounded it first and then
9 you got it back, the tire change was done and then they
10 impounded it again?

11 You don't know if that is the way it occurred?

12 A I don't recall.

13 Q But you do know that it was in April when the tires
14 were changed?

15 A Yes.

16 Q Not in January, February or March?

17 A No.

18 Q Now, you testified again today, you indicated that
19 when you got back home you then smoked crack with Raymond
20 Smith, all four of you got high?

21 A Yes.

22 Q Stan and your nephew, Brian?

23 A Yes.

24 Q And that was not anything unusual at that point?

25 A No.

1 Q Nobody was acting unusual or strange?

2 A No.

3 Q It was just like it had been many times before?

4 A Yes.

5 MR. GRUNDA: Nothing further.

6

7

8

9 REDIRECT EXAMINATION OF JOANN FIKE

10 BY MR. ROSENBAUM:

11 Q Ma'am, you indicated that you lent your car to some
12 different people?

13 A Yes.

14 Q Who would that be?

15 A One time I lent it to Bernard Berry and Rick Patterson
16 and Altpater.

17 Q And Danny -- did you lend it to Raymond?

18 A No.

19 Q So, it would be Danny?

20 A Bernard Berry and Rick -- Altpater.

21 Q How many times did he borrow it?

22 A Once.

23 Q Now, you indicated that you gave two different
24 statements to Detective Leiby?

25 A Yes, I did.

1 Q And Mr. Grunda began to ask you about the difference.

2 Why were your statements different?

3 A I had the one date because I lent Danny my car a
4 couple times and I had the date confused as to when the
5 incident occurred on the time I gave Danny the car.

6 Q Did you recontact Detective Leiby for the second
7 statement?

8 A I called him.

9 MR. ROSENBAUM: I have no other
10 questions.

11 THE COURT: Mr. Grunda?
12
13
14

15 RECROSS-EXAMINATION OF JOANN FIKE

16 BY MR. GRUNDA:

17 Q These people that you said you lent the car to, was
18 that always under the same conditions, in exchange to
19 receive drugs?

20 A Not always.

21 Q Sometimes money?

22 A Sometimes I just let them use it.

23 Q Okay. But you are indicating you never let Stan use
24 it?

25 A I don't think I did, no.

1 Q So, if your nephew Brian testified that he said it
2 was okay for Stan to use it because you lent him the car
3 before, that would not be correct?

4 A No.

5 Q Would he have any reason to lie like that?

6 A I wouldn't know, sir.

7 Q But you do agree you are confused about the dates,
8 the times, the events when things took place?

9 A I was confused, yes.

10 Q And you are saying that you became enlightened only
11 after talking to Detective Leiby?

12 A Yes.

13 MR. GRUNDA: No other questions.

14

15

16

17 REDIRECT EXAMINATION OF JOANN FIKE

18 BY MR. ROSENBAUM:

19 Q Did Detective Leiby enlighten you?

20 A No.

21 Q How did that come about?

22 A I recollected and piecing things back together that
23 had occurred and I pinpointed the proper date.

24 MR. ROSENBAUM: Thank you.

25

RECROSS-EXAMINATION OF JOANN FIKE

BY MR. GRUNDA:

Q Which was about a year after this incident?

A Yes.

MR. GRUNDA: Nothing further.

MR. ROSENBAUM: Nothing further.

THE COURT: You may step down.

(Witness excused.)

* * *

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

6 DIRECT EXAMINATION OF MICHAEL SMITH

7 BY MR. ROSENBAUM:

8 Q Would you state your name, please?

9 A Michael A. Smith.

10 Q How old are you, Michael?

11 A Twenty-nine.

12 Q You working anywhere?

13 A Yes, I work for Ram Medical.

14 Q When was the last time you worked?

15 A Thursday.

16 Q What is your dad's name?

17 A Raymond A. Smith.

18 Q And do you have any brothers or sisters?

19 A Yes, I do.

20 Q Do you have a brother by the name of Danny Smith?

21 A Yes, I do.

22 Q Do you know the person that is seated immediately
23 below my right hand? (Indicating)

24 A Yes, I do.

25 Q What is his name?

1 A Stan Jalowiec.
2 Q How long have you known him for?
3 A A couple years.
4 Q How do you know him?
5 A Through association with my brother.
6 Q Which brother?
7 A Danny Smith.
8 Q How many other brothers do you have?
9 A One other brother.
10 Q Sisters?
11 A Two.
12 Q Now, why have you not worked since Thursday?
13 A Because it is an agency and they didn't have no
14 work.
15 Q Where are you staying now?
16 A Right now?
17 Q Right now.
18 Q Elyria City Jail.
19 Q Why are you there?
20 A Probation violation.
21 Q And when did you first allegedly violate your
22 probation?
23 A Back in August.
24 Q And where have you been since then?
25 A I was out in Arizona for awhile.

1 Q Is there a warrant out for your arrest?
2 A As far as I know.
3 Q The police been looking for you?
4 A As far as I know.
5 Q How is it that you came to be arrested?
6 A I turned myself in.
7 Q When?
8 A Tuesday.
9 Q To whom?
10 A To Sergeant Marvin Cross in Cleveland.
11 Q Now, did know Ronald Lally?
12 A No.
13 Q Did you ever see him before he died?
14 A No.
15 Q Were you with him before he died?
16 A The night of his death, yes.
17 Q Was that the only time you saw him?
18 A Yes.
19 Q Were you present during the events that led to
20 his death?
21 A Yes.
22 Q Did you tell anyone immediately after this about
23 what you had seen or heard?
24 A No, I didn't.
25 Q Why not?

1 A I was scared.

2 Q Did there come a time when you decided to tell?

3 A Yes.

4 Q Do you recall when that was?

5 A April of '94, if I am not mistaken.

6 Q What prompted you to come forward?

7 A At that time I had went to recovery and there was
8 a lot of issues that were bothering me and that was one
9 of them and I couldn't -- I was having a lot of problems
10 with it because I kept remembering and had bad dreams
11 and stuff.

12 I couldn't even go on with my life, so I wound up in
13 the hospital and when I wound up in the hospital I had
14 made contact to try and get ahold of Detective Leiby and
15 have a talk with him about what happened.

16 Q Did you try to hurt yourself as a result of these
17 problems?

18 A Yes.

19 Q What did you try to do?

20 A At one point I was going to -- I tried to hang myself
21 at one time and another time I was going to jump off a
22 bridge.

23 Q Had you had some mental problems before this?

24 A Yes.

25 Q Would you tell the Court and jury again what effect,

1 if any, witnessing this event had on you?

2 A It was the fact of hearing the gunshots and hearing
3 Ron Lally beg for his life and stuff like that. It kept
4 going over and over in my head and I just couldn't deal
5 with it anymore.

6 I didn't want to say nothing because my father was
7 involved and at that particular time, you know, I had to
8 think about me and my life because it was just too much.

9 Q Was anybody there besides your father when this
10 happened?

11 A Yes.

12 Q Who?

13 A Stanley Jalowiec.

14 Q Do you recall the date that this took place?

15 A No, I don't.

16 Q Do you recall the month?

17 A January.

18 Q Of what year?

19 A Ninety-four.

20 Q Would you describe for the jury the events that
21 led up to Ron Lally's demise?

22 A That night I had met my father and my brother at
23 Mom's Open Kitchen.

24 Q What time would this be?

25 A Around 2:30.

1 Q In the morning?

2 A Yes, in the morning.

3 Q Did you plan on meeting them there?

4 A No.

5 Q What caused you to be there?

6 A Well, I just happened to be out and about that night
7 and I seen them down there because a lot of times we would
8 be downtown and we would all meet or wind up at Mom's after
9 the bars and stuff closed and they were in there and I went
10 in there and we all sat down.

11 I sat down with them and ordered some breakfast, sat
12 there and ate. After being there about 15, 20 minutes, my
13 father made a phone call and then he came back to the table
14 and he said he was getting ready to go --

15 MR. CLEARY: Objection as to
16 what he said, your Honor.

17 THE COURT: The father?

18 MR. CLEARY: Correct.

19 THE COURT: Sustained at this
20 point.

21 MR. ROSENBAUM: Well, that would --

22 THE COURT: Well, a statement
23 by -- okay, overruled.

24 Q So, your father, Raymond Smith, said what to you, sir?

25 A He said he was getting ready to go and asked me did I

1 want to go and I told him yes because why not, I wasn't
2 doing nothing else that night, so I would kick it with him.

3 At that point we had left the bar or left Mom's Open
4 Kitchen.

5 Q Who is there leaving with you at this time?

6 A It was me, my brother, Danny Smith, and my father.

7 Q Was Stanley there at that time?

8 A No, he wasn't.

9 Q Then what happened?

10 A So we got in my brother's car and we drove out to
11 South Middle and we were dropped off about a quarter mile
12 past Wood Street and we were out there waiting.

13 Q Do you have any idea why you were out there waiting?

14 A Not at that point. I asked my father, "What are we
15 waiting on?"

16 Q What happened when you went out Middle Avenue that
17 got you out of the car?

18 A He said, "Stop right here," and we got out right
19 there on Middle Avenue. It was like, this is where we
20 get out at.

21 Q Do you recall anybody else being in the car with
22 you besides Danny and your dad?

23 A If I am not mistaken, yeah, my brother's girlfriend
24 was with us, too.

25 Q Anybody else if you know?

1 A No.

2 Q So then what happened?

3 A So we got out of the car.

4 Q What was around there?

5 A Houses, that was it, houses.

6 Q Woods around there, trees, barns, anything?

7 MR. CLEARY: Objection, your
8 Honor.

9 If he wants to testify he can take the
10 stand.

11 THE COURT: What was around
12 there?

13 Sustained.

14 Q Do you recall anything else being around there?

15 A There were trees in the back of the houses.

16 Q So, what exactly happened then?

17 A So I asked dad what we were waiting on and he said,
18 "A ride."

19 MR. CLEARY: Objection.

20 THE COURT: Overruled.

21 Once again, I cite 801(D)(2)(e) for the
22 ruling.

23 A (Continuing) -- So I asked what we were waiting on
24 and he said, "A ride."

25 I asked, you know, why out here and he never really

1 commented on it and he said, "Just look for Queen Bee's
2 car," so that is who I thought was picking us up, so I
3 see the car coming down and when they stopped, Stanley
4 Jalowiec was driving the car and there was another
5 passenger in the car.

6 At that time I didn't know who it was, so dad opened
7 up the passenger side and told the guy to get in the back,
8 you know, he was riding up front.

9 And he got out of the car and let me in on his side,
10 on the driver's side, and at that point dad got in the
11 car and he had -- he had made introductions like you
12 know, "This is my son, Mike, Mike, this is Ron," and
13 at that point I didn't think nothing of it.

14 And then dad brandished a gun and told Ron, don't
15 make any sudden moves.

16 Q What time would this be now, as best you can
17 recall?

18 A A little after three by this time.

19 Q And what kind of car is Queen Bee's car?

20 A It is a powder blue LeBaron coupe.

21 Q Do you know her real name?

22 A No, I don't.

23 Q So, what does your father say to Ron?

24 A He told Ron, "Don't make any sudden moves," and
25 Ron said, "I am not, I am not," and we just started

1 driving and we wound up at Speedway.

2 Q Which is what?

3 A A gas station, minimart.

4 Q Where?

5 A On Abbe Road, North Abbe, and dad got out of the
6 car and went into the store and he had got some gas and
7 beer and some cigarettes and then everybody got back in
8 the car.

9 You know, he got back in the car and we proceeded
10 to go down Route 2 so he asked Ron, you know, "Why did
11 you set my son up," and at that point I knew, you know,
12 it dawned on me who this might be, but when he said that,
13 I knew who he was.

14 And Ron was saying, "I didn't, I didn't," and dad
15 wasn't going for that answer. He is like, like, "We
16 don't go for that type, I know you are vice, you know,
17 and you set up my son."

18 He kept asking him why and, you know, Ron just was
19 like something about the police and, you know, he had
20 to and this and that and the other.

21 He felt scared and this and that so, you know, after
22 that, you know, dad more or less told him, like, "We are
23 going to give you some money, get you a bus ticket, you
24 are going to get out of town," because my brother's
25 trial was coming up.

1 At that point everybody was in the car, everything
2 got a little more comfortable because this is what was
3 supposed to happen and, you know, we were in there
4 getting high and drinking beer and --

5 Q So did Ron Lally agree to get out of town with the
6 bus ticket?

7 A Yes, he did.

8 Q When you say "get high," what do you mean?

9 A We were all smoking crack and drinking beer and when
10 we got to Cleveland, you know, dad was like, "Where can
11 we get some more for him for the trip," and I said,
12 "Well, go up to East Cleveland."

13 So we rode up to East Cleveland. At that time
14 something was going on, I don't know what it was. There
15 was police and fire trucks and stuff so we turned around
16 and we headed back towards downtown, but at that time we
17 had made it down to Woodland, pulled up in the cemetery
18 and --

19 Q Who was driving this whole time?

20 A Stan Jalowiec.

21 Q The Defendant in this case?

22 A Yes.

23 Q Did anyone tell him where to go?

24 A Yeah, my father now was like, you know, go here,
25 go here. He directed him which way to go and when we

1 got by the cemetery is like, turn up here, so he turned
2 up into the cemetery and we pulled in and it was real
3 dark.

4 So dad got out of the car and he put the gun in
5 Ron's face and told Ron to get out and he told Ron --
6 he said, "You will never snitch on nobody again," and
7 that is when I heard the gunshot and I heard Ron say,
8 "You shot me in my head, you shot me in my head."

9 I was tripping, it was wild, so dad was like,
10 "You all get out of the car and help me," and Stan got
11 out and at that point I dropped my head, I couldn't
12 move, so I just sat there and I could hear him, you
13 know, I could hear thumps like hitting and I heard Ron
14 talking about, "I won't tell nobody, please don't kill
15 me, please don't kill me."

16 All I could do is drop my head and sit there.
17 Dad asked Stan if he had a knife. Stan said no, but he
18 said there was some on the key chain, so he come back
19 to the car and got the keys and it got silent for about
20 two to five minutes and next thing I know, you know,
21 they opened up -- somebody opened up the trunk.

22 I don't know who it was. I was trying not to look
23 and I could feel them trying to put something in the
24 trunk and they were like, "He ain't going to fit, he
25 ain't going to fit, he is too stiff," so you could

1 hear him drop, whatever they had in their hands, and
2 they got back in the car.

3 Q Do you remember who said, "He is not going to fit"?

4 A I really -- at this point I couldn't distinguish
5 because I was like there, so they got back in the car
6 and --

7 Q Who got in where?

8 A Stan got back in the driver's seat and my father
9 got back on the passenger side and Stan started the car
10 and he put it in reverse and he backed up three times
11 into -- had to be Ron's body.

12 Q What stopped the car from going backwards?

13 A It was Ron's body.

14 Q And after the body stopped the car from going
15 backwards, what did Stanley do?

16 A Put it in drive, pulled back up and put it in
17 reverse again.

18 Q Ran into the body again?

19 A Yes.

20 Q What did Stan Jalowiec do then?

21 A Put it in drive, pulled up, put it in reverse again
22 and hit it again.

23 Q What degree of speed was he using when he was backing
24 up?

25 A He was gunning it but he couldn't go too fast or too

1 far because there was snow and ice on the ground, but you
2 could feel the hit.

3 Q And then what happened?

4 A At that point he turned the car around and pulled out
5 and we got into this big argument, me and my father, about
6 why didn't I help. "This is for your brother, why didn't
7 you get out and help," and I just -- I was like, like, you
8 know, I ain't with all this.

9 So we was going down the highway. Dad was taking the
10 gun apart piece by piece throwing it out the window a
11 couple miles down the road. Every piece was thrown out
12 the window.

13 We got back to Elyria and I went over my brother's
14 house. They dropped me off there. I knocked on the door
15 and he opened the door and I just got on the couch and I
16 just went to sleep. I just couldn't deal with it.

17 I wanted to sleep. I couldn't. I was hoping this
18 was all a bad dream.

19 Q And now, then your father actually chastised you for
20 not helping him and Stanley kill Ron Lally?

21 A Yes.

22 Q Is the person that got out and helped your father
23 beat Ron Lally to death and drove the car into his body
24 in the courtroom today?

25 A Yes, he is.

1 Q Point him out, please?

2 A Stanley Jalowiec.

3 Q How many people away from you is he?

4 A Three.

5 MR. ROSENBAUM: Would the record
6 reflect he indicated the Defendant?

7 THE COURT: So be it.

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

10

11

12

13 CROSS-EXAMINATION OF MICHAEL SMITH

14 BY MR. CLEARY:

15 Q Good afternoon, Mr. Smith. My name is Edward Cleary.
16 I represent Stanley Jalowiec here, the person who you put
17 in the car that night.

18 Sir, I would like to go back through the evening with
19 you because some of your testimony here indicates that you
20 were just hanging out that night and ran into your father
21 and brother at Mom's Kitchen?

22 A Yes, sir.

23 Q You weren't with them?

24 A No, sir.

25 Q You did not go out with your brother, your father

1 and with Sharon Hopkins, Terry Hopkins?
2 You didn't go out with any of those people?
3 A No, I didn't.
4 Q You were all alone that night?
5 A Yes, I was.
6 Q What did you do?
7 A Basically I was getting ready to go out.
8 Q At some point in the night you went out.
9 What time was that?
10 A About twelve.
11 Q Midnight?
12 A Yes.
13 Q You were home?
14 A Yes.
15 Q What do you consider home?
16 A I can't quite remember. I think I was over my
17 brother's house that night.
18 Q You were staying with your brother?
19 A Off and on, yes.
20 Q Was Terry Hopkins staying with your brother?
21 A Not that I can remember. I know he was there quite
22 a lot.
23 Q He wasn't staying there to your knowledge during
24 any of the time you were staying there?
25 A No.

- 1 Q Did you see Terry Hopkins at all that night?
- 2 A Not that I can remember.
- 3 Q Did you see Sharon Hopkins at all that night?
- 4 A Not that I can remember.
- 5 Q Did you have something to eat at Mom's Open Kitchen?
- 6 A Yes, I did.
- 7 Q Do you remember eating breakfast with Sharon sitting
- 8 at a table over by herself?
- 9 A I really can't remember. I wasn't sitting with them
- 10 so I don't know.
- 11 Q Who were you sitting with?
- 12 A I was sitting with my father and my brother.
- 13 Q Anyone else?
- 14 A And Tammy.
- 15 Q Sir, if I were to tell you the testimony showed that
- 16 you had gone out that night with the Hopkins, with Tammy,
- 17 your brother, your father, would you say that that
- 18 testimony was incorrect?
- 19 A Yes, I would.
- 20 Q Regardless of the number of people who would say it?
- 21 A Regardless. I seen them downtown. I didn't go
- 22 downtown with them.
- 23 Q When you say you are out with somebody, do you have
- 24 to leave from home and go out with them or can you meet
- 25 up with them?

1 A You can meet up with them, but I didn't go out with
2 them.

3 Q Were you out in a bar with them at all?

4 A There was a lot of people in bars.

5 Q If you don't know, say you don't know.

6 A No, I don't know.

7 Q You weren't drinking with them?

8 A That night I really can't remember.

9 Q Do you remember having anything to drink that night?

10 A Yeah, quite a few drinks that night.

11 Q Were you intoxicated?

12 A At that point, no.

13 Q At what point are we talking about here?

14 A When I first went out, no.

15 Q But the purpose of going out probably would be to
16 get intoxicated, correct?

17 A (Whereupon, the witness nodded in the affirmative.)

18 THE COURT: Sir, you have to
19 answer.

20 THE WITNESS: I don't know.

21 I don't really go out to get intoxicated.

22 Q By the end of the evening, by the time you got to
23 Mom's Kitchen, were you intoxicated?

24 A I was pretty much high.

25 Q Well, now let's again check our terms here because

1 high appears amongst the group of people that we were
2 talking about here to be something completely different
3 than drunk.

4 Were you high on drugs as well?

5 A No, not at that point I wasn't.

6 Q Not at that point?

7 A No.

8 Q However, later you did get high on drugs?

9 A Yes.

10 Q Now, sir, the times that you gave here, when you
11 went out you talked about 2:30 at Mom's Open Kitchen?

12 A Yes.

13 Q Where you did not see Terry Hopkins, you only saw
14 your father, brother, basically, and Tammy?

15 A Correct.

16 Q Which is your brother's girlfriend?

17 A Correct.

18 Q So, at that point you say your father answered
19 the phone or made the call or answered a page?

20 A He made a call.

21 Q There was no page or anything?

22 A Not to my knowledge. My father didn't have a pager.

23 Q He got up, made a phone call, came back and said,
24 "We are going for a ride"?

25 A Yes.

1 Q "Do you want to come?"
2 A Yes.
3 Q He asked you if you wanted to come?
4 A Yes.
5 Q No order or anything?
6 A No.
7 Q By the way, sir, if I were to tell you that Terry
8 Hopkins insisted that you were not at Mom's Open Kitchen
9 and he, instead, was, would that be an accurate statement?
10 A No, it wouldn't.
11 Q Completely wrong?
12 A Completely.
13 Q Okay. So then you went for a ride in your brother's
14 car?
15 A Yes.
16 Q Who was in the car?
17 A Me, my father, my brother and Tammy, if I am correct.
18 Q And that is it?
19 A Right.
20 Q Absolutely, 100%, positively no one else in the car?
21 A As far as I can remember, no.
22 Q As far as you can remember, what kind of a car is
23 this?
24 A Ford Taurus.
25 Q Four door?

1 A Yes.

2 Q Who got in the back seat?

3 A Me and my father.

4 Q And you were dropped off, right?

5 A Correct.

6 Q You were dropped off down Middle Avenue?

7 A Correct.

8 Q And all this time did you ask where you were going or
9 what you were doing?

10 A I asked him why we got dropped off out here and he
11 said that we was going to get a ride, Queen Bee was coming.

12 Q Now, sir, this is the first time in any testimony
13 that you have ever mentioned --

14 MR. ROSENBAUM: Objection.

15 MR. CLEARY: I will withdraw
16 that.

17 Q Sir, you made prior statements, have you not?

18 A To --

19 Q In regard to this matter, to this case?

20 A Yes, I have.

21 Q All right. On a number of occasions, correct?

22 A Once.

23 Q Once prior to in a deposition with a court reporter
24 present?

25 A Correct.

1 Q That would be Friday, June 16th, '95, at 2:00 p.m.?

2 A Correct.

3 Q Did you give a statement to the police at an earlier
4 date?

5 A Correct.

6 MR. CLEARY: Your Honor, at this
7 time I would request an in-camera inspection of
8 the police statement.

9 THE COURT: Do you have that
10 statement?

11 MR. ROSENBAUM: Yes.

12 THE COURT: Again, ladies and
13 gentlemen, we have come to that area where it
14 needs to be done outside of your hearing.

15 The admonitions I have given you in the
16 past hold more so than ever because we are
17 deeper and deeper into the evidence.

18 Don't let anybody discuss it with you.

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

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

24 THE COURT: Gentlemen, I have
25 read the statement and again, I will be the first

1 one to tell you I didn't study it, I just breezed
2 through it because of the time.

3 It is consistent. It is going to take you
4 awhile to read it. Ultimately it all matches to
5 what he said at this point.

6 MR. GRUNDA: Not in the
7 beginning.

8 THE COURT: Then it changes.
9 He changes it on his own. Nobody, you know,
10 pushed him at it, but here you go, that is my
11 position.

12 (Whereupon, the following proceedings
13 occurred in the courtroom out of the hearing of the
14 jury.)

15 THE COURT: The Court has read
16 the statement and has made its remarks for the
17 record.

18 What say you now, Mr. Cleary?

19 MR. CLEARY: Your Honor, on
20 page 1 of the statement, I am sorry, page 2 of
21 the statement, the witness testified that Stan
22 had picked his father up and that he and Stan
23 were supposed to take Ron to a bus.

24 There is no mention of his own involvement
25 here. That is, as you pointed out on the record

1 earlier, was changed almost relatively immediately
2 thereafter.

3 Secondly, on page --

4 THE COURT: Give me the
5 inconsistency between the two statements, give me
6 inconsistencies that ultimately stand.

7 MR. CLEARY: Between his
8 testimony?

9 THE COURT: All right, but give
10 me the inconsistencies as they came out in the
11 written statement compared to what he testified
12 to.

13 MR. CLEARY: He initially gave
14 one story that changed to a second one which may
15 have been the testimony on the stand.

16 MR. ROSENBAUM: What is the
17 inconsistency?

18 MR. CLEARY: That he wasn't
19 involved, that Stan picked his father up and did
20 all this stuff.

21 MR. GRUNDA: He wasn't there.

22 MR. ROSENBAUM: Where does it say
23 that?

24 MR. CLEARY: Page 2.

25 MR. ROSENBAUM: Top, bottom, middle?

1 MR. GRUNDA: Through the whole
2 thing he is talking about the first person,
3 leaving himself out of it.

4 MR. ROSENBAUM: I see where he says
5 Stan was to have picked up Ron and Stan did pick
6 up Ron.

7 MR. CLEARY: Paragraph
8 immediately before it says, "It is not our
9 intention to arrest you."

10 MR. GRUNDA: He is leaving
11 himself out of the entire thing the first time.

12 THE COURT: Go ahead.

13 MR. CLEARY: Your Honor, I have
14 on page -- his testimony on the stand, your Honor,
15 was that he didn't know anything about this, that
16 he went for a ride and completely out of the blue,
17 on page 5 of the statement here he states that he
18 didn't conspire, he wasn't buying any of this.

19 That, I believe, coupled with the statement
20 on page 11 that a trip was supposed to have been
21 arranged with Ron, leads me to find inconsistency
22 there between those two comments and the
23 testimony.

24 THE COURT: I think you are
25 digging on that, but go ahead, I will let you

1 inquire on that.

2 MR. CLEARY: As well, your Honor,
3 there is a third car appearing on the scene when
4 they meet. I think this testimony here was that
5 his brother, his father, his brother's girlfriend
6 and himself went out -- I am sorry, his father
7 and himself were dropped off somewhere and then
8 met back with his brother's car here.

9 There is a third car on page 16 mentioned as
10 a burgundy Cutlass that he was in. I believe his
11 testimony was that --

12 THE COURT: Okay --

13 MR. CLEARY: (Continuing) -- that
14 there was only his brother's car.

15 MR. ROSENBAUM: I don't see that on
16 page 16.

17 THE COURT: Nor do I at this
18 point.

19 MR. CLEARY: Let me see the
20 statement.

21 MR. GRUNDA: There were --

22 MR. CLEARY: The paragraph starts
23 on page 16 and ends on page 17.

24 MR. GRUNDA: Because they talk
25 about being in a Taurus, in a burgundy Cutlass

1 and then met with the LeBaron, so there is three
2 cars there.

3 THE COURT: Mentions three
4 different makes.

5 MR. GRUNDA: Makes of cars with
6 different people in each one.

7 MR. CLEARY: Three cars at one
8 time, your Honor, meeting at this place here.

9 THE COURT: I don't recall
10 seeing that, frankly.

11 MR. LEIBY: Two cars together,
12 not at any point three cars together.

13 THE COURT: I don't recall
14 seeing that, frankly.

15 MR. LEIBY: It is where the
16 two of them pulled in together.

17 MR. GRUNDA: "It was my brother
18 that dropped us off, we seen her, we had seen
19 her, she -- my brother had pulled off and we
20 had stopped at that time, got out of the car
21 and talked to and talked to my brother. She
22 was in --" let's see, "we were in a burgundy
23 Cutlass, Terry's sister was in the Sable that
24 my brother drove."

25 THE COURT: All right. You

1 may inquire on that aspect of it.

2 MR. CLEARY: Thank you, your
3 Honor.

4 That is it.

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

7 BY MR. CLEARY:

8 Q Mr. Smith, I believe we were at the gathering of
9 automobiles when people were being dropped off and picked
10 up in the middle of the night.

11 Do you recall where we were there?

12 A Not exactly.

13 Q What we were talking about?

14 A Not exactly.

15 Q Let's go back a little bit.

16 You were in a car with your father, your brother
17 and your brother's girlfriend?

18 A Correct.

19 Q You were not in a car with Sharon Hopkins?

20 A I don't remember.

21 Q Your testimony earlier was she was not there.

22 Are you changing that now?

23 MR. ROSENBAUM: Objection.

24 He said he didn't recall.

25 THE COURT: No, he didn't

1 recall.

2 Q Well, at that point you were dropped off up Middle
3 Avenue with your father, waiting, right?

4 A Correct.

5 Q Waiting for somebody to pick you up?

6 A Correct.

7 Q And all during that time you didn't ask him what
8 this was about or anything else?

9 A No, I didn't.

10 Q You had no idea what was happening or why you were
11 standing in the middle -- on the side of the road or
12 middle of the field?

13 A On the side of the road.

14 Q By the woods?

15 A Yes.

16 Q Did you say your aunt lives out that way?

17 A No, she doesn't.

18 Q You had no idea why you were standing on a freezing,
19 cold night on the side of the road and you didn't ask?

20 A No.

21 Q It didn't strike you as unusual or anything?

22 A I mean, I was with my father, no.

23 Q Are you used to this kind of thing happening with
24 your father?

25 A Pretty much, trust my father's judgment.

1 Q Did you get cold?
2 A Yeah, I did.
3 Q Did you complain to him about the cold and say,
4 "What are we doing out here in the freezing cold"?
5 A I asked him how much longer it was going to take
6 us being out here. He said, "Somebody will be along
7 in a few minutes."
8 Q But you were never told exactly who?
9 A Not that I remember, no.
10 Q Now, sir, do you have a license to drive?
11 A Yes, I do.
12 Q Do you drive at all, do you have a car?
13 A No, I don't.
14 Q Do you ever drive anybody else's car?
15 A Not lately.
16 Q I mean at the time, did you have transportation
17 available to you?
18 If you needed a car could you borrow it?
19 A No.
20 Q So you are standing out here in the cold with your
21 father?
22 A Yes.
23 Q Waiting to be picked up?
24 A Yes.
25 Q Okay. Now, is it a cold enough night where you

1 would have gone and called somebody if you were stuck
2 out there to come and pick you up?

3 A Yes.

4 Q And such as the nature of these rides out and not
5 being unusual, your friends would have been available
6 to do that if you needed them to?

7 A I really can't say.

8 Q If you called somebody, would they come and get you?

9 A All depends.

10 Q You don't know?

11 Now, at any rate, you go -- you were picked up at
12 that time by, I believe what you call, a crystal blue --
13 is that the description that you used?

14 A No.

15 Q What color was that?

16 A I said it was a blue LeBaron.

17 Q And you drove out to where?

18 A When they picked us up we drove over to Speedway.

19 Q Were you pulled over at any time during that night?

20 A Not that I remember.

21 Q On the way to Speedway?

22 A Not that I remember.

23 Q Okay. Do you remember a car following you and
24 flashing lights?

25 A Not that I can remember.

1 Q You don't remember pulling over and having the
2 driver step out of the car and speak to somebody?

3 A No, I don't remember.

4 Q Do you remember what kind of car your brother
5 owned?

6 A It was a Ford Taurus.

7 Q Do you remember a Cutlass?

8 A Yeah.

9 Q Do you remember meeting up with one?

10 A No, I don't.

11 Q So, you didn't meet up with any cars that night
12 at all?

13 A Not that I can remember.

14 Q Okay. So, if anyone testified that the car had
15 pulled over and there was a conversation held between
16 your brother, Danny, and anyone else, you couldn't --
17 you wouldn't have the vaguest notion whether they were
18 telling the truth or telling a lie?

19 A I can't remember.

20 Q Sir, did you have a discussion with Detective Leiby
21 while we were on the break?

22 A Not about the case.

23 Q Did you talk with him?

24 A Yes.

25 Q Nothing about this whatsoever, nothing about your

1 testimony?

2 A No.

3 Q Okay. Now, you then went to Speedway which is
4 where?

5 A It is off of Route 254.

6 Q In Sheffield?

7 A Yes.

8 Q Near Abbe Road?

9 A Yes.

10 Q Okay. Did anything happen before you got there or
11 different involving your father?

12 A Could you clarify that a little more?

13 Q Sure. You went to Speedway?

14 A Uh-huh.

15 Q At some point during the night your testimony was,
16 to your complete utter astonishment and surprise, your
17 father turned around and brandished a gun upon Ron
18 Lally?

19 A That was before we got to Speedway.

20 Q This was before you got there?

21 A Correct.

22 Q Okay. And you, sitting in the back seat, all right,
23 you were sitting in the back seat with Ron Lally in this
24 car?

25 A Yes.

- 1 Q All right. Now, where did this happen?
- 2 Do you know where you were when it happened?
- 3 A We were still on Middle Avenue at that time.
- 4 Q Do you know the route that you took to Route 254?
- 5 A It is not clear.
- 6 Q Okay. Did you take a highway or a back road?
- 7 A No, if I am not mistaken, I believe we went through
- 8 town going that way.
- 9 Q Through town, meaning up Middle by the mall, right
- 10 down there?
- 11 A Correct.
- 12 Q And then did you hop on Route 2 to get to the
- 13 Speedway or drive north to 254?
- 14 A North to 254 to get to Speedway.
- 15 Q You stayed in the city during this whole trip?
- 16 A Yes.
- 17 Q You described about a 30 second conversation wherein
- 18 your father says, "Don't make any sudden moves," okay,
- 19 when he pulled the gun, correct?
- 20 A Correct.
- 21 Q And this is, again you had no idea --
- 22 A No --
- 23 Q (Continuing) -- that that was going to happen?
- 24 A No.
- 25 Q But you are sitting in the back seat and your father

- 1 is sitting in the front?
- 2 A Correct.
- 3 Q How was he turned around, to the right or the left,
- 4 to hold the gun as you were seated?
- 5 A He turned to his left.
- 6 Q To his left?
- 7 A Yes.
- 8 Q So he is on the passenger side, he reached the gun
- 9 around in the middle?
- 10 Is he right or left handed?
- 11 You don't know?
- 12 A No.
- 13 Q Was he holding the gun in the right or left hand?
- 14 A Right hand.
- 15 Q So, he was turned around holding a gun on him in
- 16 this car, all right, and you are sitting in the back
- 17 seat next to this guy?
- 18 A Correct.
- 19 Q Having nothing to do with this whole thing?
- 20 A Correct.
- 21 Q Now, at this point you drive to Speedway, you
- 22 work something out with the guy, correct?
- 23 A I didn't.
- 24 Q Well, they did, because you are still in shock?
- 25 A Correct.

1 Q So, while you are sitting there watching your father
2 point the gun at this guy sitting next to you, you know,
3 what is your immediate concern?

4 A At that point I didn't know what was going to happen,
5 I didn't know what was going on. It was like, oh, boy, I
6 mean, this is not even -- I could say I was just surprised.

7 Q Driving on city streets, driving up the highway, right
8 up here, were you worried that the gun might go off, that
9 you might be in danger?

10 A What could I do, I was in the back seat?
11 I couldn't move.

12 Q So, you are removing yourself mentally from the
13 situation?

14 A Yes.

15 Q You are just fading into the seat?

16 A Basically.

17 Q But suddenly things are rosy again and you guys
18 stop for a beer?

19 A Correct.

20 Q Who got out of the car?

21 A My father did.

22 Q Your father.

23 Did your father get the gas?

24 A Yes.

25 Q Now, isn't it true that before you couldn't remember

1 who got the gas?

2 A No, I didn't say that.

3 Q You do remember specifically that it was your father
4 getting the gas?

5 A As far as I can remember.

6 Q So then he went in and paid for the gas?

7 A Yes.

8 Q Okay. So Ron is in the back seat, your father is
9 in the store with a gun paying the cashier, and this
10 guy doesn't like try to leave?

11 A No.

12 Q He is happy and content to sit there, right?

13 A I guess.

14 Q And you don't have a problem with it, right?
15 There is peace in the valley?

16 A Yeah, at that point.

17 Q And you are used to seeing these crazy things,
18 apparently?

19 A No, I am not.

20 Q Now, so your father is in the gas station, Ron is
21 sitting in the car, you guys light up a crack pipe,
22 right?

23 A Not that I can remember.

24 Q Not yet, but you do smoke crack on your way in to
25 Cleveland as part of this newly found party atmosphere?

- 1 A Yes.
- 2 Q Now, your father comes out with beer?
- 3 A Yes.
- 4 Q How does he buy beer at three o'clock in the morning
- 5 in Lorain County?
- 6 A I have not the slightest.
- 7 Q You don't think he brandished a weapon on the people
- 8 at the counter, do you?
- 9 A I don't know.
- 10 Q But no alarms were going off as you drove away?
- 11 A No.
- 12 Q So, you can presume that your father stayed in the
- 13 store and paid for it then?
- 14 So, anyway, you are in there with beer, you are all
- 15 drinking it?
- 16 A Correct.
- 17 Q All of you?
- 18 A Correct.
- 19 Q Stan is drinking a beer?
- 20 A Correct.
- 21 Q Your father is drinking beer?
- 22 A Yes.
- 23 Q Ron Lally is drinking a beer?
- 24 A Yes.
- 25 Q And you are drinking a beer?

1 A Yes.

2 Q What if I were to tell you the coroner's report
3 showed absolutely no alcohol in Ron Lally's system?

4 A I don't know how it could be because he was
5 drinking.

6 Q Magically disappeared. Okay.

7 Now, you get in the car, you are back in the car,
8 you never got out of the car?

9 A No.

10 Q And you weren't like watching Ron or anything to
11 make sure he was comfortable, like wouldn't get away
12 or anything like this?

13 A No, I wasn't.

14 Q Did you partake in any conversations at all?

15 A No.

16 Q You didn't answer yes when you were asked, "Do you
17 want a hit off the pipe"?

18 A Yes, I did.

19 Q I do believe that you stated earlier that you didn't
20 recall who produced any particular crack or anything, is
21 that correct?

22 A pipe or stem, how would you refer to it?

23 A Stem.

24 Q Now, how many hands do you need to smoke a stem of
25 crack?

1 A Two.

2 Q Two hands?

3 A Correct.

4 Q So, we have one guy driving?

5 A Uh-huh.

6 Q All right. Is he smoking crack?

7 A Yes.

8 Q He is doing a no hander?

9 A Yes.

10 Q You watched him drive with no hands and this concerned

11 you not either?

12 A No.

13 Q Now, you have Raymond with a gun?

14 A Yes.

15 Q He is with the gun, where is the gun?

16 A I really wasn't paying a whole lot of attention at that

17 point.

18 Q There is a gun that has been pointed at somebody

19 sitting next to you and you are not paying attention?

20 What does it take to get your attention?

21 A I don't know.

22 Q Okay. But you -- anyway, you are not concerned, right?

23 A No.

24 Q Because everything is cool at this point, right?

25 A At that point it was like, as we were going to

1 Cleveland, they said what they had to say as far as Ron
2 Lally getting on a bus.

3 Q Sir, everything was cool?

4 A Yes.

5 Q Is the gun put away?

6 A As far as I could remember, it was put down, yes.

7 Q You don't remember where a gun is?

8 A I am in the back seat.

9 Q You are in the back seat, where your father was turned
10 around pointing the gun next to you, right over some of the
11 roughest city streets around and you weren't concerned that
12 might go off and hit you?

13 MR. ROSENBAUM: Your Honor, I think
14 that assumes facts that are not in evidence.

15 If he would like to establish them, like
16 the conditions of the road, maybe that would be
17 legitimate.

18 THE COURT: Correct.

19 MR. CLEARY: He said that they
20 went down 254, drove north through the city.

21 THE COURT: Okay.

22 Q How rough were the roads?

23 A I don't know.

24 MR. CLEARY: I will withdraw the
25 earlier question.

1 Q You weren't the least bit concerned about the gun going
2 off because it was pointed at the guy next to you, right?

3 A Correct.

4 Q And your concern was for safety, right?

5 A At that point my concerns were little of none, for me
6 or anyone else.

7 Q You are saying you had no concern for anything that
8 was going on?

9 A No.

10 Q When did he put the gun down?

11 A Somewhere on the highway, I guess.

12 Q Was Ron satisfied to sit in the car while the person
13 with the gun went into the store and bought beer and paid
14 for gasoline?

15 Was he content to sit in the car?

16 A He didn't move. I guess he was.

17 Q Did he say anything about, "I got to get out of here"?

18 A No.

19 Q Did he like joke and laugh like, "Boy, I am glad that
20 is over"?

21 A Nothing was really said.

22 Q You were back on the highway before the first stem was
23 lit up?

24 A Yes.

25 Q Were you back on the highway or was it before you

1 stopped at the store when the gun was put away?

2 A Evidently the gun was put away after we got to the
3 store.

4 Q After you got to the store?

5 Evidently means you don't know, correct?

6 A Means I can't say for sure.

7 Q Evidently means that you don't know, correct?

8 A Okay.

9 Q Either it does or it doesn't.

10 A No.

11 Q It doesn't. Wasn't the gun mentioned again as you
12 proceeded into Cleveland?

13 A No.

14 Q Was the bus ride mentioned?

15 A Yes, it was.

16 Q Was money mentioned?

17 A Yes, it was.

18 Q And this is all in the peace loving way when you
19 guys made up and you were on the road?

20 A Correct.

21 Q You are into Cuyahoga County?

22 A Yes.

23 Q And there is absolutely no discussion of any further
24 danger or anything else?

25 A No.

- 1 Q No threat made to anybody on the highway?
- 2 A Only thing that was said was he was to get out of
- 3 town and not come back.
- 4 Q He didn't say where he wanted to go?
- 5 A Not that I can remember, no.
- 6 Q Nobody else is threatening him on the highway once
- 7 you guys are on your way to Cleveland?
- 8 A It was said if he needs it to get out, take the
- 9 money, take the bus trip, don't come back.
- 10 Q Okay. Now, sir, you said you rode around in East
- 11 Cleveland?
- 12 A Correct.
- 13 Q But there was some police and fire or something going
- 14 on like that, something with a lot of flashing lights?
- 15 A Correct.
- 16 Q Which you wanted to avoid, or presumably you wanted
- 17 to avoid?
- 18 A Correct.
- 19 Q And at that point -- how long after you left the
- 20 Speedway was this?
- 21 A I don't know. From the time of Speedway until the
- 22 time we got there, it had to be about 45 minutes.
- 23 Q Now, is that to downtown or to East Cleveland?
- 24 A To East Cleveland.
- 25 Q And at that point your dad is still in control,

1 right?

2 A Yes.

3 Q Your dad is still in control and he is calling the

4 shots here, correct?

5 A Yes.

6 Q Whose idea was it to go to East Cleveland?

7 A It was my father's.

8 Q He said, "Go to East Cleveland"?

9 A Yes.

10 Q Stan promptly drove to East Cleveland, according

11 to you?

12 A Yes.

13 Q Once you saw the ambulance, what did your dad then

14 say to do?

15 A Turn around and go back towards town.

16 Q So, the guy with the gun is calling the shots?

17 A Yes.

18 Q If you were driving would you have done what he said?

19 A Yes.

20 Q Nothing was said -- you showed no testimony, am I

21 correct, that anything was said by Stan as to where to go

22 or anything?

23 A That is correct.

24 Q So anywhere that you did go, presumably since he

25 wasn't asking where to go and he was given directions

1 here, it was not his idea, correct?

2 A Correct as far as I know.

3 Q Were you aware of where you were?

4 Were you aware of being in East Cleveland?

5 A Yes.

6 Q Were you aware of the time?

7 A No, I can't quite remember exactly what time it was.

8 Q So, at that point you came to pull into a cemetery,

9 correct?

10 A Correct.

11 Q And I believe it was your testimony that your father

12 said, "Turn here," or, "Stop here"?

13 A He told him to turn into a cemetery and Stan turned

14 up into the cemetery.

15 Q He told him where to go, told him where to drive?

16 A Correct.

17 Q Now, he pulled up -- presuming he was told to stop

18 here or something like that?

19 A Correct.

20 Q All right. So he is even told where to stop?

21 A Yes.

22 Q You pull up and what happens?

23 Your testimony here was that your father immediately

24 got out of the car?

25 A Yes.

- 1 Q All right. Stood up, did he pull the seat back?
- 2 A He pulled the seat back and put the gun in Ron's
- 3 face and told him to get out of the car.
- 4 Q Was there any verbal indication between Stan and
- 5 your father or were you all surprised?
- 6 A No.
- 7 Q Were you surprised?
- 8 A I know I was surprised.
- 9 Q You were shocked, right?
- 10 A Yes.
- 11 Q Because nothing, no conversation, no attitudes,
- 12 nothing would indicate to you that this thing was going
- 13 to happen?
- 14 A No.
- 15 Q You were raised by your father?
- 16 A He was there.
- 17 Q Were you raised by your father?
- 18 A He was there.
- 19 Q I am sorry, I misunderstood that completely.
- 20 So you know him?
- 21 A Yes, I know my father.
- 22 Q And you, who know him, you were completely surprised
- 23 by this behavior?
- 24 A Yes.
- 25 Q Came out of the blue, unexpected?

1 A Yes.

2 Q Okay. Now, there is a couple things that you testified
3 to that are not too clear.

4 Exactly when did you put your hand over your face and
5 stop looking at the world?

6 A When I heard the gunshot.

7 Q And when your father got him out of the car and took
8 him around back, you weren't looking, is that correct?

9 A That is correct.

10 Q All right. From the minute Ron Lally got out of this
11 car you never saw another thing, correct?

12 A Correct.

13 Q You never saw Ron Lally again, correct?

14 A Correct.

15 Q So you don't know if there was a scuffle, you don't
16 know what happened behind that car, correct?

17 A I know that when --

18 Q Sir, yes or no?

19 A Correct.

20 Q Correct, you don't know what happened behind that car?
21 Now, you heard a gunshot, right?

22 A Yes.

23 Q All right. What we are dealing with is what you are
24 hearing here.

25 You heard a gunshot and you heard a man who was shot

1 through the teeth into the throat, where the bullet lodged
2 in the back near the spinal cord, you heard this man
3 speaking audibly, "You shot me in the head," you heard
4 this?

5 A This is what I heard.

6 Q Twice?

7 A Yes.

8 Q You say you heard him beg for his life?

9 A Yes.

10 Q Were you aware, sir, that he was shot, where he was
11 shot?

12 A I heard him say, "You shot me in my head." That is
13 what I heard.

14 Q Apparently you remember a few other things he said
15 here as well.

16 Your testimony earlier today, was it not, was that
17 he was begging for his life, correct?

18 A That is correct.

19 Q And then right after he said, "You shot me in the
20 head," he started saying, "I won't tell nobody, I won't
21 tell nobody"?

22 A Correct.

23 Q Now, sir, do you remember at that point you never
24 heard from Stan again, correct, or you never heard from
25 Ron?

1 A No.

2 Q After that, right?

3 A No.

4 Q And you next say that Stan got out of the car?

5 Let me back up here a little bit. I finally found

6 what I was looking for here.

7 Your testimony was that after this person who is

8 shot in the throat, through the teeth and with a bullet

9 still lodged back there, says, to you in a manner which

10 you can clearly hear it, that, "You shot me in the head,"

11 twice, your testimony is that Raymond then called for

12 help?

13 A Yes.

14 Q Now, you can tell whose voice was who here, right?

15 A Yes.

16 Q So he just called for help though?

17 A Yes.

18 Q Do you know whether or not at that point Raymond may

19 have been in a struggle with him?

20 A At that point I don't know.

21 Q How big was Ron Lally?

22 A I don't even remember.

23 Q How tall are you?

24 A Six two.

25 Q Taller than you?

1 A I don't know, I didn't come up face to face with Ron
2 Lally.

3 Q If I told you the autopsy report, sir, says he was six
4 feet four -- 78 inches tall -- would that be about right,
5 that he had four inches on you?

6 A I don't know.

7 Q How tall is your dad, if you know?

8 A Six foot.

9 Q Your dad is six feet tall?

10 A Yes.

11 Q This Lally was a pretty big guy, wasn't he?

12 A I guess, I really didn't, you know, pay a lot of
13 attention to him.

14 Q The bottom line is, you don't know what is going on
15 behind the car, you don't know who is in trouble?

16 A No, I don't.

17 Q You hear a guy say, "You shot me in the head."

18 What are you thinking when you hear that?

19 How could a guy be shot in the head and say anything,
20 right?

21 A I don't know. I am not a coroner, I can't say that.

22 Q I am not asking you what the medical things are, I
23 am asking what you are thinking at the time.

24 THE COURT: Can you tell us
25 what your thinking was?

1 MR. ROSENBAUM: Your Honor, he
2 answered he doesn't know.

3 THE COURT: He said he didn't
4 know what was happening.

5 Can you tell us what your thinking was, if
6 you can remember?

7 THE WITNESS: Judge Glavas, there
8 is only one thing I know definite.

9 MR. CLEARY: I am going to object
10 to what he is about to say. It is unresponsive to
11 you or me.

12 THE COURT: All right. Let's
13 hold off here.

14 Ask your question.

15 MR. CLEARY: Thank you, your
16 Honor.

17 Q I will withdraw the question with regard to what you
18 were thinking as you heard someone speak.

19 You don't know whether your father was in trouble and
20 needed help, right?

21 You don't know?

22 A At that point I am not sure, I don't know.

23 Q You don't know, correct?

24 A No.

25 Q Thank you. And because you never saw anything of what

1 went on behind that car, you cannot tell us what happened
2 back there, correct?

3 A Correct. What I can tell you is --

4 THE COURT: You have answered
5 the question. Proceed. Next question.

6 Q Now, you said something here today that during all this
7 going on, as Ray was supposedly getting help from Stan, he
8 called -- Stan got out, right, and answered -- this is your
9 testimony -- your father's call for help, right?

10 A Correct.

11 Q Stan got out, you heard noises?

12 A Yes.

13 Q But you don't know what it was, correct?

14 A No.

15 THE COURT: How many times are
16 we going over this?

17 MR. CLEARY: This is a different
18 noise.

19 THE COURT: But you are
20 repeating the same situation again. Let's get
21 on with it.

22 MR. CLEARY: Stan is out of the
23 car, your Honor.

24 THE COURT: Let's get on with
25 the questions.

1 Q You say then that people -- that your father and/or
2 Stan, though you can't see -- tried to put the deceased in
3 he trunk of the car, correct?

4 A When the trunk opened I felt the car moving quite a
5 few times and what was said is, he wouldn't fit, he wouldn't
6 fit, and I could hear the thump of them dropping the body,
7 whatever.

8 Q Now, sir, this is -- is this a recently recalled thing
9 where you heard them say, "It won't fit, it won't fit"?

10 A Some things I remember better than others. Some things
11 come back to me.

12 Q So, you are saying that this could be recently recalled
13 even though it may not have been stated in any of the prior
14 testimony you have given in this case?

15 A Yes.

16 Q Okay. Do things fade in and out with you?

17 A At times.

18 Q So things fade out as well?

19 A Yes.

20 THE COURT: In and out, he
21 said, at times. Next question.

22 MR. CLEARY: Thank you, your
23 Honor.

24 Q Then again, when the car was backing up -- they got
25 back in the car -- while the car is moving are you still

1 down in the seat?

2 A I am still sitting there, yes.

3 Q When the car is moving, could you see anything?

4 A No.

5 Q You felt the car back into something?

6 A Yes.

7 Q You don't know what it was, correct?

8 A Correct.

9 Q It could have been a snowbank, correct?

10 A Could have been.

11 Q Then you went back home, got yelled at for not

12 helping?

13 A Yes.

14 Q This is your story and things were being thrown

15 out the window of the car, correct?

16 A Pieces of the gun was being thrown out the window

17 of the car.

18 Q Okay. All right. Now, sir, do you have a criminal

19 record?

20 A Yes, I do.

21 Q And what is this, any felonies?

22 A Yes.

23 Q What is the felony, sir?

24 A Robbery.

25 Q Are you still on probation for that felony?

- 1 A Yes, I am.
- 2 Q And, in fact, you have been on probation during the
- 3 entire term of this?
- 4 A Yes.
- 5 Q Okay. Sir, when this case -- when did you plead
- 6 guilty and when were you put on probation, if you recall?
- 7 A I can't recall exactly when.
- 8 Q Now, there came a time, did there not, after this
- 9 episode, when you stated you couldn't bear the pain
- 10 anymore, wanted to come in and give a statement to
- 11 Detective Leiby, correct?
- 12 A Correct.
- 13 Q And that time, was it not, was after your father had
- 14 gone in to talk to Detective Leiby and after your brother
- 15 had gone in as well?
- 16 A I don't know. I knew nothing about that.
- 17 Q You don't know that just about everybody else involved
- 18 in this had gone in for an interview here before you?
- 19 A I was staying in Cleveland. I know nothing about it.
- 20 Q It wouldn't have been of concern to you, would it,
- 21 that perhaps this might --
- 22 A I knew nothing about it. I had been in Cleveland.
- 23 Q You had been in Cleveland for how long?
- 24 A Two and a half, three years.
- 25 Q Two and a half, three years.

1 You take part in this episode, so obviously you were
2 back here then?

3 You were staying with your brother, right?

4 A Something like that.

5 Q Well, I want to know where you were staying?

6 A I moved to Cleveland in '94.

7 Q After this happened?

8 A Yes.

9 Q Okay. After you left town, went to Cleveland, all
10 right, you never talked about this again to anybody?

11 A No.

12 Q It was never a matter of concern?

13 A I was too scared.

14 Q Now, sir, you have a psychiatric history as well, is
15 that correct?

16 A Yes.

17 Q And before any of this happened you attempted suicide,
18 correct?

19 A Yes.

20 Q And this suicide attempt was nonsuccessful, obviously,
21 but at any rate you tried to take pills, correct?

22 A Correct.

23 Q And since that time as well, since that suicide
24 attempt, you have been a crack cocaine user?

25 A Yes.

1 Q To the point where your crack cocaine use led you
2 to attempt another suicide?
3 A Correct.
4 Q Okay. And what directly was the cause of that?
5 A It was a lot of different issues.
6 Q Does one involve a microwave?
7 A No.
8 Q Or a stealing of your girlfriend's money?
9 A No.
10 Q How long have you had these psychiatric problems?
11 A I don't know. Comes and goes sometimes.
12 Q Are you on medication?
13 A No, not at this time.
14 Q During what period were you on medication?
15 A My last attempt, my first and last attempt I was
16 on medication.
17 Q How long did they usually keep you on?
18 A I guess it all depends.
19 Q Your last time was just before you came and gave a
20 statement to Detective Leiby?
21 A Correct.
22 Q Was it fair to say that you were on this medication
23 at the time?
24 A Yes.
25 Q Now, sir, in all these psychiatric episodes, has there

1 ever been any episode of violence?

2 A No.

3 Q You once, as a young person, tried to attack a neighbor
4 with a butcher knife?

5 A No.

6 Q No?

7 A No.

8 Q During all of this there have been a number of people,
9 according to you, involved in a number of different things,
10 but one thing is very clear, that you didn't have any dope,
11 you didn't have anything to do with the setting of this up
12 or going, it was a complete and total surprise to you,
13 correct?

14 A Correct.

15 Q And for that, in your mind, you bear no responsibility
16 for anything, any of this, correct?

17 A At one point in time I felt guilty thinking maybe --
18 because maybe something -- there was something I could
19 have done to stop it.

20 Q But at this point in time you have resolved that,
21 right?

22 A Yes.

23 Q Okay. Now, your testimony here -- in fact, you are
24 the only person in this car not charged with murder,
25 correct?

- 1 A Yes.
- 2 Q You walked, correct?
- 3 A Correct.
- 4 Q And though you are on probation right now, you were
- 5 on probation, even on probation for awhile here, you were
- 6 missing, you left the state, I believe?
- 7 A Correct.
- 8 Q And, sir, was there any mention of once you gave your
- 9 testimony, you getting on a bus and getting out of town
- 10 with the cooperation of the police?
- 11 A That had nothing to do with what I did.
- 12 Q I am not asking you that.
- 13 I am asking if they said, "You give us what we want,
- 14 we will put you on a bus"?
- 15 A They advised me to tell the truth and that is what I
- 16 did and I asked them to get me out of town.
- 17 Q And they said --
- 18 A They would see what they could do.
- 19 Q In fact, you mentioned during a deposition about
- 20 wanting to get your bus ticket and get out of this,
- 21 correct?
- 22 A Correct.
- 23 Q And you have been gone for awhile, correct?
- 24 A Correct.
- 25 Q All right. So, you are the only person basically

1 -- strike that.

2 Let's recap here about Stan.

3 Even with your testimony, okay, even with your
4 testimony, you never, with your own eyes, you never saw
5 Stanley lay a finger on Ron Lally, correct?

6 A Correct.

7 Q You never heard Stan threaten Ron Lally in any way,
8 correct?

9 A Correct.

10 Q There was no, to your knowledge, legal proceedings
11 against Stanley Jalowiec involving Ron Lally, correct?

12 A Could you repeat that?

13 Q Ron Lally, to your knowledge, wasn't on the tapes
14 that you and your brother heard, correct?

15 A Correct.

16 Q I am talking about your brother?

17 A Correct.

18 Q And you really didn't know where Ron Lally was
19 behind the car, you never saw him again once he got out?

20 A No, I didn't.

21 Q There was never a plan discussed in the car?

22 A No.

23 Q And never anything -- you were surprised when a gun
24 was pulled and Stan, according to you, drove where he was
25 told to drive?

1 A Correct.

2 Q And never saw Stanley touch a gun in any way, correct?

3 A Correct.

4 Q And when it was all over with, the horrible night, you
5 went home and went to sleep, correct?

6 A Correct.

7 MR. CLEARY: No further
8 questions.

9 THE COURT: Mr. Rosenbaum?

10

11

12

13 REDIRECT EXAMINATION OF MICHAEL SMITH

14 BY MR. ROSENBAUM:

15 Q Sir, when your father went into the Speedway to get
16 the beer and pay for the gas, where were you?

17 A I was in the car.

18 Q Exactly where?

19 A Behind the driver's seat.

20 Q And where was Stanley?

21 A Sitting in the driver's seat.

22 Q And where was Mr. Lally?

23 A Sitting in the passenger seat in the back.

24 Q At any time did you tell Ron Lally that you would not
25 harm him if he got out of that car?

- 1 A I didn't say nothing to Ron.
- 2 Q At any time did Stanley Jalowiec tell Ron Lally that
- 3 he would not harm him if he got out of that car?
- 4 A No.
- 5 Q Did anyone tell Ron Lally that Stanley Jalowiec had
- 6 no gun?
- 7 A No.
- 8 Q Did anyone tell Ron Lally that you had no gun?
- 9 A No.
- 10 Q How far away from the store was your dad with the
- 11 one gun that Mr. Lally knew about?
- 12 A He had went to the store.
- 13 Q How far away was that?
- 14 A Fifty feet.
- 15 Q And what condition was Ron Lally in at this time?
- 16 A He seemed to be in the state of shock.
- 17 Q So, your father was 50 feet away from him with a
- 18 gun, you were seated in the car?
- 19 A Correct.
- 20 Q How tall are you?
- 21 A Six two.
- 22 Q What do you weigh?
- 23 A Two fifty-two.
- 24 Q And Stanley was seated in the car, right?
- 25 A Correct.

1 Q Now, is this car easy to get out of the back seat of?

2 A No.

3 Q Why is that?

4 A Because it is a small car.

5 Q How many doors does it have?

6 A Two.

7 Q So, under the circumstances, for some reason, Ron
8 Lally elected not to try and flee, is that correct?

9 A That is correct.

10 Q And was it at this time that there had been already
11 some discussion about if he just got out of town, he
12 would be all right?

13 A I can't remember.

14 Q When that happened?

15 A Right.

16 Q Now, would you need a gun to keep him in the back
17 seat, you and Stanley, if you really wanted to?

18 MR. CLEARY: Objection.

19 A I don't understand.

20 Q My question is, you didn't have a gun, which you
21 didn't, right?

22 A Right.

23 Q Say Mr. Lally knew, knew that, would you and Stanley
24 be able to keep him in the back seat of that car if you
25 really wanted to?

1 A Possibly.

2 Q Would you be able to keep him there for your father
3 to come back the 50 feet with the gun?

4 MR. GRUNDA: Objection.
5 speculation.

6 THE COURT: Speculation.
7 Sustained.

8 Q Now, you testified that Stanley -- no one told Stanley
9 where to drive, is that correct?

10 MR. GRUNDA: Objection.
11 That is the exact opposite of what he said.

12 Q Nobody told him where to drive.

13 Your testimony is that your dad told Stanley where to
14 drive?

15 A Correct.

16 Q And that was at what point in time?

17 A From the time we got off the highway in Cleveland till
18 the time we got back to the highway.

19 Q Did anybody tell him to get on the highway and go to
20 Cleveland?

21 A No.

22 Q Who was in the car telling Stanley where to drive Ron
23 Lally to meet you and your dad out Middle Avenue?

24 A No one else was in the car at that time.

25 Q So, Ron -- Stanley drove the car with the victim in

1 it out south of town at 2:30 in the morning on a freezing,
2 cold night with no one else in the car but Ron Lally?

3 A Correct.

4 Q Do you have any way of knowing how involved Stanley
5 was in this plan to kill Ron Lally?

6 A No, I don't.

7 Q Now, where exactly was the car in Cleveland when it
8 stopped?

9 A Sixty-ninth and Woodland.

10 Q What type of place was it?

11 A A cemetery.

12 Q Now, Mr. Cleary made it very clear you did not see
13 what happened outside of the car in that cemetery, is that
14 correct?

15 A Correct.

16 Q Does that preclude you from knowing what happened in
17 that cemetery?

18 A No, it doesn't.

19 Q Why is that?

20 A Because I know three people got out and only two got
21 back in.

22 Q Who got out first?

23 A My father.

24 Q What did he say when he got out?

25 A He put the gun in Ron's face, told Ron to get out.

1 MR. CLEARY: Objection, your
2 Honor.

3 This was all covered before. This is
4 redirect.

5 THE COURT: But it was
6 covered on cross and I think he needs to get
7 that explained.

8 Overruled. Still within the scope.

9 Q He told Ron to do what?

10 A Get out of the car.

11 Q Did you see that?

12 A Yes, I seen him get out of the car.

13 Q And did you see your father say that?

14 A Yes, I did.

15 Q Did your father have the gun out at this time?

16 A Yes, he did.

17 Q What did Ron Lally do?

18 A Got out of the car.

19 Q Then what do you know happened?

20 A I know that when Ron got out of that car, my dad said
21 that he would never tell on nobody again. Then I heard
22 the gunshot.

23 After I heard the gunshot I heard Ron say, "You shot
24 me in my head." I heard movement and I heard dad say,
25 "You all get out and help me."

1 Q How many times did the gun go off?

2 A Once.

3 Q Do you know if your father had any difficulty with
4 that gun?

5 A He said something about it jammed.

6 Q So, when the gun was working, your father did not
7 call for help?

8 A No.

9 Q But after the gun jammed --

10 A He called for some help.

11 Stan got out of the car. You could hear the scuffle.
12 I heard dad asking if he had a knife. He said, "No, there
13 was something on the key chain."

14 Stan came back to the car, got something out of the
15 ignition and went back out there and after a few more
16 minutes I heard nothing until they opened the trunk.

17 Q Then what did you hear?

18 A I felt the car moving as if they were trying to put
19 something in the trunk and they said, "It won't fit, it
20 won't fit, he was too stiff."

21 They let whatever they had in their hands, which I
22 presumed to be Ron Lally, drop. They got back in the car.
23 Stan started the car. He put it in drive --

24 Q Did you see him do that?

25 A Yes. Then he put it in reverse and he backed up over

1 what I believed to be Ron Lally.

2 The car stopped. He put it in drive again, went up,
3 stopped, put it in reverse again, hit him again and did
4 it one more time.

5 Q Even though you didn't see the car striking Ron
6 Lally, do you feel you can truthfully tell these people
7 that is what happened?

8 MR. GRUNDA: Objection.

9 A That is what I truthfully believe.

10 THE COURT: Overruled.

11 Q Even though you didn't see the shot go off, do you
12 know who shot Ron Lally?

13 A My father had the gun and so I would have to say it
14 was him.

15 Q Now, Mr. Cleary was asking you about being on
16 probation?

17 A Yes.

18 Q You fled and violated probation, right?

19 A Yes, I did.

20 Q Are you in jail now because of that?

21 A Yes, I am.

22 Q Did the police seek you the entire time that you
23 were gone?

24 A Yes, they did.

25 Q Has anyone promised you that you would not be

1 prosecuted for your probation violation?

2 A No, they didn't.

3 MR. ROSENBAUM: I have no other
4 questions, your Honor.

5 THE COURT: Mr. Cleary?

6

7

8

9 RECROSS-EXAMINATION OF MICHAEL SMITH

10 BY MR. CLEARY:

11 Q Are you charged with murder?

12 A No, I am not.

13 Q In fact, it is fair to say that you have to answer
14 pretty quickly to that probation violation here, too,
15 right?

16 A Yes.

17 Q And you mention in this deposition, in front of
18 Officer Leiby, and about 12 attorneys, it seems that way,
19 about five attorneys and a group of corrections officers,
20 that you wanted to get your bus ticket and get out of
21 town.

22 Isn't that correct?

23 A That is correct.

24 Q So, you said this in front of all these police
25 officers, yet they violate you on probation for leaving

1 town?

2 A They had nothing to do with me leaving. That is
3 why I left on my own and it caused me some headache.

4 Q It wasn't a big surprise though, was it?

5 MR. ROSENBAUM: To whom?

6 MR. CLEARY: I will withdraw
7 that.

8 Q How much jail time is hanging over your head, Mr.
9 Smith?

10 A I don't remember.

11 Q You don't know how much?
12 What was your original sentence?

13 A I can't remember at this point.

14 Q Has anyone talked to you about what is going to happen
15 at your probation hearing?

16 A No, they have not.

17 Q You were asked whether you guys went out of your way
18 to tell Ron Lally that you and Stan didn't have guns, but
19 as far as this, no one in that car, to your knowledge,
20 had a gun except for Raymond Smith, correct?

21 A As far as I know.

22 Q And there was no conversation involving Stan to Ron
23 Lally threatening him in any manner whatsoever, correct?

24 A Correct.

25 Q So, despite what Mr. Rosenbaum asked you, there is

1 no real need to like tell somebody he is the one with the
2 gun, we are okay, we are in this with you -- there was no
3 need for you to tell him that you didn't have a gun, was
4 there?

5 A No.

6 Q And therefor there was no need for Mr. Jalowiec
7 to tell him the same thing that you would have to,
8 right?

9 A No.

10 Q You knew -- you have no knowledge whatsoever, sir,
11 is this correct, of any plan to take him down there and
12 kill him?

13 A No, sir, I didn't.

14 MR. CLEARY: Thank you.

15

16

17

18 REDIRECT EXAMINATION OF MICHAEL SMITH

19 BY MR. ROSENBAUM:

20 Q I take it you had no knowledge in advance of that
21 night, correct?

22 A Correct.

23 Q Was it a coincidence that Stanley Jalowiec showed
24 up out Middle Avenue in the middle of the night in the
25 woods?

1 MR. CLEARY: Objection.
2 THE COURT: I think it is a
3 little beyond.
4 MR. ROSENBAUM: He asked if he had
5 knowledge of a plan.
6 MR. CLEARY: And he asked whether
7 something was a coincidence.
8 Q Is it indicative of a plan that Stanley showed up where
9 you were and your father was waiting to get in the car with
10 him in the woods at gunpoint?
11 MR. CLEARY: Objection.
12 THE COURT: Sustained.
13 MR. ROSENBAUM: I have nothing
14 further.
15 THE COURT: You may step down.
16 (Witness excused.)
17 * * *
18 THE COURT: Ladies and
19 gentlemen, it is ten after five; another long
20 day. We will have an adjournment at this point
21 and reconvene on Monday morning.
22 Now, ladies and gentlemen, a couple of things
23 that I would like to discuss with you at this
24 point.
25 Number One, it is a weekend coming up and you

1 will have time on your hands. You will be doing
2 things and what have you.

3 My best advice to you is, go home, relax and
4 enjoy your families, have a good night out if you
5 are going to dinner or anything of this nature and
6 come back Monday morning relaxed, okay, at this
7 point.

8 The other thing that I would like to say to
9 you is that on Monday, so that you can plan your
10 days, too, we will only go until noon. We will
11 not have an afternoon session Monday so you can
12 make your plans accordingly.

13 More than likely we will be back Tuesday
14 morning and more than likely Tuesday morning we
15 should be completed.

16 Please do not read anything about this in
17 the newspapers. We have had reporters here
18 throughout the whole day and more than likely
19 there will be stories in the papers. Avoid
20 reading them and we will stand adjourned until
21 Monday morning.

22 (Whereupon, the trial in the above-entitled
23 matter was adjourned to reconvene on Monday, March 18,
24 1996, at 8:30 a.m.)

25 * * *

1 MORNING SESSION, MONDAY, MARCH 18, 1996

2 (Whereupon, the Court resumed the bench and
3 the following proceedings occurred.)

4 THE COURT: Let's get to the
5 exhibits that have been introduced rather than
6 bring the jury out and back in.

7 Can we discuss about the admission of some
8 of these exhibits while the jury is still not
9 here?

10 MR. GRUNDA: We can, but I
11 have to make my motion at the end of the trial
12 anyway.

13 THE COURT: And you may.

14 MR. GRUNDA: I thought you
15 would do it all then, however you want to do it.

16 THE COURT: Your motion is not
17 going to take half as long as the exhibits. I
18 am trying to save time.

19 Now, let's go back to the exhibits at this
20 point.

21 State's Exhibit 2-B is admitted.

22 Nine -- that is the confidential informant
23 agreement. I don't know that that has been
24 admitted at this point.

25 MR. ROSENBAUM: It has not.

1 THE COURT: What say you, Mr.
2 Grunda or Mr. Cleary?
3 MR. GRUNDA: I have no objection
4 to it.
5 THE COURT: Admitted.
6 Ten is the buy tape.
7 MR. GRUNDA: I object to that,
8 has only to do with Raymond and Danny.
9 THE COURT: I think it has to
10 do with why we are here, because of a recognition
11 of a voice.
12 Admitted. There has been testimony on that.
13 Exhibit No. 6 is an arrest report for
14 Raymond.
15 MR. GRUNDA: Again, I object
16 to it because it has nothing to do with Mr.
17 Jalowiec.
18 THE COURT: Mr. Rosenbaum, I
19 would like to hear from you.
20 MR. ROSENBAUM: Your Honor, all
21 these exhibits have to do with motive for the
22 killing. They prove that he was a witness and
23 that he was killed because of that.
24 Obviously it is relative to the
25 specification, to identify him as a State's

1 witness, which we have to prove.

2 THE COURT: Anything to rebut
3 that, Mr. Grunda?

4 MR. GRUNDA: Which one are we
5 talking about now?

6 THE COURT: State's Exhibits
7 6 and 7.

8 MR. GRUNDA: Again, your Honor,
9 it has to deal with those two and there is no
10 mention of Stan in the buy tape or in the arrest
11 reports. Besides that, they are cumulative.
12 What is in the report is the same thing.

13 THE COURT: One is on the 19th
14 and one is on --

15 MR. GRUNDA: It still relates to
16 what is in the tape. All in the arrest report is
17 in the tape so I say it is cumulative.

18 THE COURT: I will admit it.
19 State's Exhibits 6 and 7 will be admitted.
20 State's Exhibit 4, Indictment of Raymond
21 Smith, the court file.

22 MR. GRUNDA: Again, I object
23 because it has to deal with Raymond and not with
24 Mr. Jalowiec.

25 THE COURT: I can read that

1 very well. Other than that, do you have any
2 other kind of objection?

3 MR. GRUNDA: Lacks total
4 relevancy.

5 THE COURT: Well, it will be
6 admitted.

7 State's Exhibit 5, I am sure same argument
8 regarding Danny?

9 MR. GRUNDA: Right, exactly.

10 THE COURT: Admitted.

11 You have Defendant's Exhibit A. That is
12 your exhibit which is the case of 91 CRO 40397.

13 MR. GRUNDA: I would ask that
14 that be admitted.

15 MR. ROSENBAUM: We are not done
16 with my exhibits.

17 THE COURT: No, no. I am
18 taking them in order here. Try to get as much
19 done as we can.

20 MR. ROSENBAUM: I have no objection
21 to that.

22 THE COURT: Admitted.

23 1-A and 1-B have already been admitted.

24 MR. ROSENBAUM: Right.

25 THE COURT: Next is State's

1 Exhibit 3-H which are the clothes.

2 MR. GRUNDA: Well, they have
3 been marked as a total exhibit. My objection
4 is to part of it, part of the clothing that was
5 on him. I don't object to the other parts that
6 were not on him.

7 I do object because there was no showing
8 that they came off him. They only stated they
9 were in the proximity, nothing to show that they
10 fit him or they were ever on him or no showing
11 of ownership and the mere proximity is not
12 enough.

13 THE COURT: Mr. Rosenbaum?

14 MR. ROSENBAUM: I dispute that claim
15 that that would be to weight, not admissibility of
16 the jacket. That was found folded with the knife
17 in it. I believe dog hairs were taken that were
18 matched to the car and the dog as well.

19 THE COURT: I am going to admit
20 3-H.

21 3-F, lighters and cigarettes found in the
22 area.

23 MR. GRUNDA: Again, no showing
24 where they came from. They could have come from
25 any other place, so I will object to that.

1 THE COURT: Admitted.
2 3-E is the blood sample and hair.
3 MR. GRUNDA: I don't know which
4 hair we are talking about.
5 MR. ROSENBAUM: Items taken from
6 the scene.
7 MR. GRUNDA: Well, again, your
8 Honor, I will object to those because there is
9 no showing that they came off him, that there
10 is any relevancy to him or Mr. Jalowiec.
11 THE COURT: Admitted.
12 State's Exhibit 3-G, the steak knife.
13 MR. GRUNDA: Same objection.
14 THE COURT: Found in the jacket.
15 MR. GRUNDA: No, nothing that it
16 had anything to do with Mr. Jalowiec or any kind
17 of ownership, happened to be in the area.
18 THE COURT: I think the jury
19 can apply whatever weight they may want to this
20 stuff, but it was in the area.
21 MR. ROSENBAUM: The steak knife had
22 blood of the same group of the victim.
23 THE COURT: Okay. As I say, Mr.
24 Grunda, the jury can do with them as they see fit,
25 but they are part of the entire picture here.

1 It will be admitted.

2 State's Exhibits 2-A through 2-CC have
3 already been admitted.

4 Next thing is State's Exhibit 2 which is the
5 coroner's protocol.

6 MR. GRUNDA: We don't object to
7 that, your Honor.

8 THE COURT: Admitted.

9 State's Exhibit 3 is a copy of the Trace
10 Evidence Department report.

11 MR. GRUNDA: No objection.

12 THE COURT: Admitted.

13 3-A, B, C and D, which are the views of the
14 automobile, the convertible LeBaron.

15 MR. GRUNDA: No objection, your
16 Honor.

17 THE COURT: Admitted.

18 3-I, which is the trunk liner and pieces of
19 that.

20 MR. GRUNDA: I would object to
21 those, your Honor.

22 THE COURT: Mr. Rosenbaum, do
23 you want to be heard?

24 MR. ROSENBAUM: Your Honor, the
25 trunk liner is what has the victim's blood on

1 it. It clearly corroborates Michael's testimony.

2 THE COURT: Any rebuttal?

3 MR. GRUNDA: No, your Honor.

4 THE COURT: Admitted.

5 State's Exhibit 12, a photo of Cleo.

6 MR. GRUNDA: Objection to
7 relevancy, your Honor.

8 THE COURT: Other than it
9 indicates the hairs that were found in the back
10 seat belonged to that dog, I don't know that it
11 has any other weight at this point.

12 MR. ROSENBAUM: Establishes the
13 chain for the hair samples with the knowns that
14 were compared to the car.

15 THE COURT: I will admit that.
16 That is where we are at now.

17 MR. ROSENBAUM: Eight was not used
18 in this trial nor was anything marked as 11,
19 which pertained to Raymond.

20 THE COURT: Okay.

21 Thank you, gentlemen, appreciate your
22 cooperation and obviously, Mr. Grunda, you have
23 exceptions to any of the objections.

24 MR. GRUNDA: Thank you, your
25 Honor.

1 * * *

2 WHEREUPON, STATE'S EXHIBITS 2, 3 THROUGH 7,
3 9, 10 AND 12, HERETOFORE MARKED FOR IDENTIFICATION,
4 WERE ADMITTED INTO EVIDENCE.

5 * * *

6 THE COURT: Now, let's see if
7 we can get ahold of Barbara.

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

10 THE COURT: Good morning, ladies
11 and gentlemen.

12 Ladies and gentlemen, a couple of preliminary
13 announcements at this point.

14 As you know, tomorrow is election day and
15 chances are that you folks may be tied up
16 throughout the entire day. You could probably
17 vote first thing in the morning or you can vote
18 absentee this evening by going to the election
19 booth. Whether you vote or not is your business,
20 but I am giving you a reminder.

21 The other thing is that it looks like
22 tomorrow morning you probably should bring a bag
23 with you, an overnight bag, okay?

24 We will know about it at the time we adjourn
25 here today, but my guess is that you probably

1 should at this point, okay, and I told you I
2 would try to give you as much notice as I could
3 when that was to happen.

4 Ladies and gentlemen, as you recall, we had
5 just finished the testimony of Michael Smith and
6 we are now ready to proceed further with the
7 prosecution's case in chief at this point.

8 Mr. Rosenbaum, you may call your next
9 witness.

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

6 DIRECT EXAMINATION OF ALAN LEIBY

7 BY MR. ROSENBAUM:

8 Q Will you state your name, please?

9 A Alan, A-L-A-N, Leiby, L-E-I-B-Y.

10 Q Are you employed, sir?

11 A I am.

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

14 A I am a Police Officer, Police Detective, for the City
15 of Elyria.

16 Q How long have you served the City of Elyria as a Police
17 Officer, sir?

18 A In excess of 18 years.

19 Q Are you currently assigned to a particular unit or
20 division of the police department?

21 A Currently assigned to the Detective Bureau.

22 Q First time you have been in the Detective Bureau?

23 A No, sir, second time.

24 Q How many years total have you been a detective?

25 A Approximately eight, nine years.

1 Q Prior to coming to the Detective Bureau for this time,
2 did you serve in another unit or division of the police
3 department?

4 A I did.

5 Q And what was that?

6 A I worked first in NIU and transferred to narcotics and
7 worked narcotics, then transferred to my current position.

8 Q When did you leave narcotics to go to the Detective
9 Bureau the last time?

10 A Approximately two years ago.

11 Q I would like to hand you a photograph, sir, that has
12 been marked for identification as State's Exhibit 2-B and
13 ask, as a result of working the Narcotics Unit, if you are
14 able to recognize the person depicted in that photograph?

15 A I am. That is Ron Lally.

16 Q How is it that you came to know Ron Lally?

17 A He was an informant for me.

18 Q Can you tell the Court and jury when he became an
19 informant?

20 A On the morning of 6-7 of '83 Ron Lally came to the
21 Elyria Police Department. He spoke to the officer in
22 charge of the shift, explained that he had a crack cocaine
23 problem.

24 He wanted to do something to resolve it and he
25 needed --

1 MR. CLEARY: Your Honor, I
2 object to all the hearsay.

3 THE COURT: How did you get
4 to know him and when did you get to know him?

5 THE WITNESS: Okay.

6 A On the morning of 6-7-93 I made contact with Ron Lally
7 and he indicated to me that he wanted to make controlled
8 drug buys for the police.

9 Q Can you identify what has been marked for
10 identification as State's Exhibit 8?

11 A Yes, this is a two-page document that we fill out on
12 all CIs.

13 The first page is the CI informant agreement. It
14 indicates nine rules or things that are expected of the
15 informant, they can or cannot do while working for us.

16 This is signed by Ronald Lally in my presence with
17 myself and Scott Ashley being there, being signed at seven
18 o'clock in the morning on 6-7 of '93 at 125 Court Street,
19 which is the old Drug Unit.

20 Q And on that same day did you take steps to use Mr.
21 Lally as an informant?

22 A We did.

23 Q Will you tell the Court and jury what you did, please?

24 A Wired Mr. Lally up with an electronic listening device.
25 Myself, Detective Ashley and Detective Eichenlaub took him

1 over to 1446 West River Road.

2 We released him and maintained surveillance on him as
3 he entered the apartment building. Prior to releasing him
4 we searched him to be sure he wasn't in possession of any
5 illegal drugs.

6 MR. CLEARY: May we approach?

7 THE COURT: Certainly.

8 (Whereupon, the following proceedings
9 occurred at the bench out of the hearing of the jury.)

10 MR. CLEARY: This was all
11 testified to by Ashley. Every bit of this has
12 been testified to already, your Honor.

13 It is pretty repetitive.

14 THE COURT: This Officer has
15 the right to go into that, what he has done.

16 MR. CLEARY: Okay. Thank you.

17 THE COURT: Proceed, Mr.
18 Rosenbaum.

19 (Whereupon, the following proceedings
20 occurred back in the hearing of the jury.)

21 A (Continuing) -- searched him to insure that he didn't
22 have any drugs. We released him, watched him go into 1446
23 West River.

24 We then monitored the conversation and also tape
25 recorded the conversation.

1 Q I would like to hand you what has been marked for
2 identification as State's Exhibit 10 and ask if you also
3 can identify it, please?

4 A I can. We provided \$100 marked buy money. We mark
5 buy money. We xerox it so we have the serial numbers.

6 He purchased rocks. He got us six rocks of crack
7 cocaine and that weighed out at .557 grams, about half a
8 gram.

9 This is a copy of the buy tape of that buy and made
10 -- this copy has my writing on it. Elyria Case No. 93-
11 14317. It is dated 6-7 of '93 and it says Lally-Smith
12 buy tape copy, in my writing.

13 Q As a result of that, then were charges preferred
14 against anyone?

15 A They were.

16 Q Who would that be?

17 A Daniel Smith and Raymond Smith.

18 Q Were they eventually arrested?

19 A They were.

20 Q I would like to hand you State's Exhibit 6 and ask
21 you if you can identify that, please?

22 A First, State's Exhibit 6 is a standard Elyria Police
23 Department arrest report. It is dated August 19th, '93,
24 at about 5:45 in the evening and it is for Raymond A. Smith
25 and he was taken into custody by myself and Detective Ashley

1 and other officers assisted us.

2 He was arrested at the residence at 512 Bond Street.
3 charged with one count of Aggravated Trafficking in Drugs.

4 No. 7 is again an Elyria Police Department arrest
5 report. It is dated August 12th of '93. It occurred at
6 about 9:10 in the evening, 2111 hours, according to the
7 report, for Danny Smith and once again I was the primary
8 arresting officer and this time Officer Dussel assisted
9 me as well as others.

10 Q Were you able to utilize Ron as an informant after
11 that?

12 A One other time. On that instance Detective Eichenlaub
13 was the primary officer that handled him and I was not
14 present for that buy he purchased from a Michael Sheldon.

15 Q Why wasn't he used again?

16 A Ron drifted away as do a lot of others. They come in
17 very aggressive and want to get their problem straightened
18 out and they drift back into the drug community and it is
19 hard to make contact with them.

20 Even when we would like to see them, they don't show
21 up.

22 Q Now, was the case against Danny Smith and Raymond
23 Smith set for trial in this courthouse?

24 A Yes.

25 Q Did it go to trial?

1 A No, it did not.

2 Q Can you identify what has been marked for
3 identification as State's Exhibits 4 and 5?

4 A State's Exhibit 4 is a Lorain County 93CRO44157 case
5 against Raymond Augustus Smith and you and I got this from
6 the Court records.

7 Exhibit No. 5 is Case No. 93CRO44167 against Danny D.
8 Smith and on the front of both of these cases is written
9 in large letters, "Dismissed."

10 Q And do you know why those cases were dismissed?

11 A Because the primary witness was deceased.

12 Q And that primary witness would be --

13 A Ron Lally.

14 Q What day were those cases set for trial?

15 A The morning that Ron Lally died.

16 Q Sir, I would like to hand you four photographs that
17 have been marked for identification as State's Exhibits
18 3-A through 3-D and ask you to look at them and if you
19 can identify them?

20 A Yeah, two photographs of Corinne Fike's Chrysler
21 LeBaron. I seized this vehicle with a search warrant on
22 December 4th of '94.

23 These photographs were taken at the Elyria Sewage
24 Treatment Plant. They have a garage with a lift that
25 the department uses for processing vehicles.

1 Two exterior views of the vehicle, one view of the
2 trunk with the liner in it and one entire view of the back
3 seat.

4 Q And was the liner confiscated from that vehicle?

5 A It was.

6 Q And I would like to place before you what has been
7 marked for identification as State's Exhibit 3-I and ask if
8 you can identify it, please?

9 A It is marked as tire cover and liner. This would be
10 the tire cover from the trunk of her vehicle and this would
11 be the liner from the inner fender with a dark stain on it.

12 Q Where were those items taken, if anywhere?

13 A They were taken from the vehicle at the treatment plant
14 and released at that time to the Cleveland Cuyahoga County
15 Coroner's Police Evidence Unit.

16 Q Are those exhibits in substantially the same condition
17 today as when they were impounded?

18 A Yes.

19 Q Now, you testified that you impounded that vehicle on
20 what date?

21 A We impounded it on 12-4-94.

22 Q Was it impounded another time?

23 A It was impounded prior to that, on a, I believe, a
24 driving under suspension charge. Someone had been caught
25 driving under suspension. It was impounded.

1 I had no knowledge that it was impounded or at the
2 time it was impounded did I have any knowledge that it was
3 involved in the homicide.

4 Q Subsequently released?

5 A It was.

6 Q And on that impoundment, Fike had to pay the storage
7 charges?

8 A Correct.

9 Q Did she have to pay the storage charges when you
10 impounded it as a result of the investigation of this case?

11 A No, sir.

12 Q I would like to hand you a photograph which has been
13 marked for identification as State's Exhibit 12 and ask you
14 to look at it, please.

15 Do you recognize that photograph?

16 A Yes, that is Cleo.

17 Q Who or what is Cleo?

18 A Written on the back of State's Exhibit 12 is a sticker
19 that I put on it. Photo taken on 1-6-95 by Detective A. L.
20 Leiby No. 200. That is my department computer number. That
21 is how I am identified.

22 Elyria Police Department, photo depicts Cleopatra, a
23 registered female brindle boxer, age approximately four
24 years old, the property of Joann Corinne Fike, 112 Greenway,
25 Elyria, has owned the dog since it was a pup and has

1 registration papers. I took that photograph.

2 Q Why?

3 A The Cuyahoga County Trace Evidence Unit asked me to
4 see if I could obtain dog hairs and a photograph of the
5 dog as they had recovered it from the back of Mr. Lally's
6 coat.

7 Q And did you take the hairs to them?

8 A I did.

9 Q Now, did you make any efforts to ascertain whether
10 or not there was a fight behind Mom's Open Kitchen on the
11 early morning of January 19th, '94?

12 A I did. I submitted a written request to John Payne
13 who is in charge of the record room. He is a civilian
14 and requested a response in writing. I requested that
15 the record be checked from 1800 hours or 6:00 p.m. on
16 1-18-94 through eight o'clock in the morning on 1-19-94.

17 There were no records of disturbances.

18 Q Now, you have seen the exhibits offered into evidence
19 today, have you not?

20 A That is correct.

21 Q Are you familiar with these exhibits?

22 A Yes, sir.

23 Q Are they in substantially the same condition today,
24 to the best of your knowledge, as when they were impounded
25 by law enforcement authorities?

1 A They are.

2 Q Can you tell the Court and jury what fate beheld them
3 after they were taken into custody?

4 A You mean -- the vast majority of evidence was --

5 MR. CLEARY: Objection.

6 THE COURT: If you know.

7 A (Continuing) -- the vast majority was seized by the
8 Cleveland Police Department or Cuyahoga County Coroner's
9 Office and any evidence that I personally took, I also
10 released to the Cleveland Police Department or the Trace
11 Evidence Unit.

12 Q And where was it before it came to this courthouse?

13 A Cleveland Police Department.

14 Q And was any of it kept at the Coroner's Office as
15 well?

16 A Yes.

17 Q Did those people bring it, like did Detective Beaman
18 bring what is here?

19 A Yes.

20 Q And did Linda Luke bring the rest?

21 A Someone from the County Coroner's Office brought the
22 rest.

23 Q And they remained here ever since they were brought
24 to the courthouse?

25 A That is correct.

1 Q In the custody --

2 A Of the Court.

3 Q Now, Mr. Grunda brought up that Brian Howington was
4 granted immunity in your interview of him.

5 Will you tell the Court and jury what he was granted
6 immunity for?

7 A Sure. When I initially attempted to interview him
8 he was being evasive about his answers. I was aware of
9 the fact that he had been smoking crack.

10 He was concerned that he would be charged with some
11 kind of drug offense if he spoke to me. I advised him
12 that I would not charge him with any drug offenses.

13 MR. CLEARY: Objection, your
14 Honor.

15 THE COURT: Not -- well,
16 hearsay. He didn't give the conversation and
17 you went into it.

18 MR. GRUNDA: The proper person
19 would have been Brian, not him, to testify as
20 to what Howington knew or did or why.

21 THE COURT: He is the one who
22 authorized whatever happened on this point, Mr.
23 Grunda.

24 Overruled.

25 Q Did you make any promises to Michael -- or did anyone

1 make any promises to Michael Smith to secure his
2 cooperation?

3 A No, sir.

4 Q When, in the development of the investigation of this
5 case, did Michael Smith enter the picture?

6 A After the indictments.

7 Q Now, did you make any promises to Terry Hopkins?

8 A There were no promises made.

9 Q Can you tell the Court and jury what happened
10 regarding Mr. Hopkins' shock probation?

11 A Yes, sir. I interviewed Terry on, I believe it was
12 January, '95. I obtained a statement from him shortly
13 thereafter, found out that he was on criminal charges.

14 It was not discussed initially. He did go through
15 the Court procedures and was sentenced to jail for a
16 first offense. He advised me he was coming up for
17 shock and asked if I would speak to the Judge.

18 I advised the Judge that this gentleman was possibly
19 a witness in our case. I was not specific about what case
20 and I advised the Judge if he felt this person was a good
21 possibility for shock, that I would appreciate any
22 consideration.

23 Q Did you do this before or after Michael -- Terry
24 Hopkins gave you the statement?

25 A After the statement had been obtained.

1 Q Was there any discussion regarding Mr. Hopkins'
2 predicament versus his prosecution before the statement
3 was obtained?

4 A No, sir.

5 Q Is it fair to say that you purchased his statement
6 with promises?

7 A No, absolutely not.

8 MR. ROSENBAUM: I have no other
9 questions of this witness, your Honor.

10 THE COURT: Mr. Cleary, will
11 you be cross-examining?

12 MR. CLEARY: Yes, your Honor.

13 THE COURT: Proceed.

14 MR. CLEARY: Thank you, your
15 Honor.

16

17

18

19 CROSS-EXAMINATION OF ALAN LEIBY

20 BY MR. CLEARY:

21 Q Good morning, Detective.

22 A Morning.

23 Q Detective, you consider yourself a man of influence
24 around the courthouse here?

25 A That would be a fair statement. I have been on the

1 police department 19 years almost.

2 Q And you have been -- you have gone in to various
3 Judges and requested that certain things be done on
4 behalf of an informant?

5 A I have.

6 Q And in this particular case, sir, you did, indeed,
7 go in and speak to a number of Judges about this
8 particular case, is that correct?

9 A I don't know that it is a fair statement.

10 Q Let's talk about -- let's go through some of your
11 witnesses then.

12 First of all, Carl Hartman.

13 Did you act at all on his behalf to get this person
14 out of jail?

15 A Yes.

16 Q And at that time, sir --

17 A To keep him from going to jail, not out.

18 Q At that time was he not a violent offender?

19 A I am not sure what you mean.

20 Q You do check the charges of someone before you go
21 and get them out of jail, correct?

22 A That is correct, but I did not get Carl out of jail.

23 Q Prevented him from going to jail?

24 A And his charge at that time was a probation violation.

25 Q That probation was based upon a violent offense, was

1 it not?

2 A Yes, sir.

3 Q And he had, indeed, had no less than four arrest
4 warrants during that probationary period?

5 A I couldn't answer that question. I am not sure.

6 Q Nonetheless, you went in and put in a good word on
7 his behalf and he was issued, as a result of that good
8 word, a personal bond, correct?

9 A That is correct.

10 Q And a personal bond, to your knowledge, you know is
11 for someone who signs their name and if they later fail
12 to appear, they are charged money?

13 A That is correct.

14 Q So, this violent offender, due to your intervention,
15 was able to not go to jail because he signed his name and
16 said he would show up later?

17 A If you are indicating that it was solely because of
18 me --

19 Q Sir --

20 A I do not understand the question.

21 Q Because of your intervention he was able to do all
22 this, correct?

23 A Mine only, no.

24 Q Well, due to your intervention -- did you go to the
25 Judge?

1 A I believe I went to the Prosecutor first.

2 Q Then you went to the probation officer?

3 A I spoke with the probation officer.

4 Q And then the probation officer.

5 You don't recall when you spoke to the Judge?

6 A I am sure we did at some point. That would be

7 part of the procedure.

8 Q Well, your procedure is then to go to the Judge

9 after the Prosecutor?

10 A Yes.

11 Q So, you spoke to at least three different people

12 here --

13 A Yes, sir --

14 Q (Continuing) -- in order to allow Carl Hartman to

15 sign his name and not go to jail?

16 A That is correct, sir.

17 Q Now, sir, Terry Hopkins, you would have had to view

18 that as well, no probation officer, he might have been

19 on probation at the time, but for his violent offense

20 was not sentenced yet, to be done later, no sentencing

21 actually done yet when you went in and spoke to the

22 Judge?

23 A I am not sure I understand that either.

24 He was already sentenced and in prison.

25 Q Did you initially go to the Judge -- initially you

1 would have gone to the Prosecutor's Office?

2 A That is correct. Everything runs through them.

3 Q And Terry is a violent offender as well?

4 A That is correct.

5 Q So much so that normal shock procedures he would
6 have had to use a procedure known as super shock in
7 order to get out of prison?

8 A I know it was shock, I don't know the difference
9 super shock or shock.

10 Q Well, his testimony earlier was super shock.

11 A All right.

12 Q His testimony was also though, you promised him
13 nothing, you intervened on his behalf?

14 A I did intervene on his behalf.

15 Q What I would like to know, sir, is, when you went
16 to the Judge before the initial sentencing and you were
17 told then that probation was not viable, but that perhaps
18 shock probation would be appropriate?

19 A That is possible. I don't specifically remember,
20 sir.

21 Q But you definitely remember when the time for super
22 shock probation came up, or shock in your mind, you
23 definitely recall going and speaking with the Judge at
24 that time, intervening on this violent offender's behalf
25 and requesting that he be given due consideration?

- 1 A Yes, sir.
- 2 Q Okay. Now, Corinne Fike, she had made -- I will come
3 back to that in a moment. Let's talk about Michael Smith
4 here.
- 5 Michael Smith, obviously as he stated, is the only
6 person that he says was in that car who is not charged
7 with a crime?
- 8 A Correct.
- 9 Q He is not charged with murder?
- 10 A Correct.
- 11 Q He has walked from these charges, correct?
- 12 A I don't believe that is an appropriate way to put it.
- 13 Q Do you intend to see to it that he is charged?
- 14 A He will not be charged.
- 15 Q He will not be charged?
- 16 A That is correct.
- 17 Q That is based upon his testimony, is it not?
- 18 A No, sir.
- 19 Q It is not?
- 20 A No.
- 21 Q So, if he didn't get up there and testify to any
22 of this stuff, he would not still be charged?
- 23 A That is correct.
- 24 Q When he came in, indictments had already been issued?
- 25 A Correct.

1 Q And you were already talking to other members of this
2 group of people, you were talking with everybody trying to
3 get statements out of them, correct?

4 A That is correct.

5 Q And his father and Danny Smith, these people had
6 already given statements?

7 A Yeah, I believe so.

8 Q Or attempted?

9 A Correct.

10 Q And it was only at that point when he came in and
11 basically was able to walk from all of these charges,
12 correct?

13 A I never anticipated charging Michael Smith in this
14 case.

15 Q Didn't he initially say that he wasn't even there
16 until you said you were going to charge him?

17 A No, sir, that is incorrect.

18 Q Do you recall, in talking with him, that you said,
19 "It is not our intention to arrest you today"?

20 A That is correct.

21 Q And at that point everything flip-flopped and he
22 suddenly was there, do you recall that?

23 A The specific words, no, but I don't doubt it.

24 Q That would be April 12th, '95?

25 A Okay.

1 Q Do you recall that conversation taking place?

2 A Specifically, no, but if you have it in a statement,
3 I am sure it is there.

4 Q Okay. Now, sir, you also -- the influence that you
5 use in the courthouse here, not only goes in terms of
6 getting violent offenders out, correct, you can also use
7 it to -- in a punitive manner?

8 A All I can do is speak to people.

9 Q Well, sir, when you speak to people you don't always
10 speak with the lawyer, is that correct?

11 A That is correct.

12 Q For example, when you went in for Terry Hopkins, there
13 was no lawyer in the room when you spoke to the Judge?

14 A That is correct.

15 Q So that can be a two-edge sword for people, depending
16 on whether they hurt you or help you, correct?

17 A That is correct.

18 Q If someone doesn't give satisfactory performance or
19 doesn't do what you think is right under the circumstances,
20 you can also have those conversations in a manner that
21 would punish them, correct, see to it that a sentence is
22 carried out in a more stringent manner than it might be
23 without your input?

24 A I don't think that it would occur the way that you
25 project it. I do have the ability to speak to a Judge

1 and voice my concern, positive or negative, on a given
2 defendant, yes.

3 Q Let's, instead of projecting, let's go to an exact.

4 Did you go in -- did you speak to anyone in regard
5 to seeing to it that Danny Smith on another case would
6 have his -- would be maxed out or have his sentences
7 stacked?

8 A Did I see to it?

9 Q Did you go to Judge McGough?

10 A Yes.

11 Q Did you speak to Judge McGough outside of the
12 presence of Mr. Smith's attorney in those other cases?

13 A Yes.

14 Q And did you later claim that you had the sentencing
15 stacked?

16 A Did I claim that?

17 Q Yes.

18 A No, sir, not that I remember.

19 Q Do you recall in a statement given with Terry Hopkins,
20 one of the witnesses in this case, that you had Danny
21 Smith's sentences stacked, again on January 4th of '95?

22 A If you have that in a statement, then I am sure I
23 said it.

24 Q So, sir, you can be good or bad to a person,
25 depending on whether you feel they are going to do the

1 right thing?

2 A Whether I feel they are telling the truth or not is
3 the words you are looking for.

4 Q Actually, those weren't the words I am looking for.

5 The question is whether you have the right to make
6 those decisions?

7 A I don't know I am making the decision, I am making
8 statements to a Judge who then makes the decision.

9 Q Without the benefit of cross-examination, without
10 taking the stand and going under oath and without being
11 in front of the other person's attorney?

12 Is that correct?

13 A That is correct.

14 Q Okay. And many times, sir, as an officer, a lot of
15 years under your belt, this comes down to insight with
16 you, does it not?

17 A Yes, sir.

18 Q So, it is whether you feel they are telling the
19 truth or not?

20 A I can generally base it on the facts at hand.

21 Q Generally? Okay.

22 Isn't it fair to say that at one point or another
23 every fact witness, and I use this term loosely, who
24 testified here, Corinne Fike, Terry Hopkins, Michael
25 Smith and Carl Hartman, every one of them had a

1 different story when you first spoke to them, then they
2 ultimately came forward?

3 A That is correct.

4 Q Okay. And when you get to a point where you are
5 satisfied that everything is linked up, that is when
6 you call it quits on the investigation, correct, and
7 make an arrest?

8 A I consider this an open investigation and I am
9 still definitely investigating it.

10 Q Sir, when you checked on the fight behind Mom's
11 Open Kitchen --

12 A Yes --

13 Q (Continuing) -- when you checked, did you check
14 other reported events?

15 A That is correct.

16 Q It didn't mean it didn't happen?

17 A Well, it wasn't reported.

18 Q And it is fair to say that most people -- I don't
19 know whether you can say most -- a large number of
20 fights don't get reported?

21 A Yeah, I am sure there are a number of disturbances
22 that don't get reported.

23 Q Now, also, when you wired up Ron Lally and sent him
24 out, you picked the target and the address, is that
25 correct?

1 A No, sir, he did.

2 Q Did he pick a list of who he will go to?

3 A When we initially briefed him, he named other people.
4 I can refer back to the sheet that we filled out.

5 He indicated that he could do poor Mike, Shawn, Mario,
6 a young guy named Bo, another guy named Emon, E-M-O-N.

7 Q On this -- by the way, this is State's Exhibit 9,
8 you have informant associations.

9 That is what you mean by associations?

10 A People that he can buy from. It is of an intelligence
11 nature as well as an ability to purchase nature. We may
12 know these people.

13 Q But you have poor Mike, Shawn, some girl, Mario, a
14 young guy named Bo and another named Emon. I don't see
15 Danny Smith or Ray Smith?

16 A The reason I did not write Danny Smith's name on
17 this sheet was, he was very specific he wanted to make
18 a buy from Dan Smith that morning. He felt that Dan
19 Smith was his biggest problem.

20 Q He wanted to target Dan Smith?

21 A That is correct.

22 Q You make it sound like there is some animosity
23 there?

24 A He had stolen the girlfriend's microwave and gave
25 it to Dan in exchange for dope.

1 Q So, there is some other animosity there which may
2 go beyond whether or not he would testify against Dan
3 Smith?

4 A You have confused me.

5 Q You are saying there are other elements here which
6 might be in the relationship between Dan Smith and the
7 victim beyond mere drug dealing?

8 A No, their interconnection was crack cocaine. That
9 is where Ron purchased it.

10 Q Actually the whole sheet that we have been talking
11 about here appears to be based upon crack cocaine, but
12 there were other levels of animosity here is what you
13 are telling me?

14 A I guess animosity would be as good a word as any.
15 He wanted the microwave back.

16 Q So, it may not boil down to whether or not this guy
17 was going to testify against Dan Smith in this trial.

18 Dan Smith may have had a completely different reason,
19 if indeed it was Dan Smith?

20 A That is not what my investigation indicated.

21 Q Nonetheless, sir, it is possible, is it not?

22 A Nothing is impossible, that is correct.

23 MR. CLEARY: Thank you very
24 much, Detective.

25 THE COURT: Mr. Rosenbaum?

REDIRECT EXAMINATION OF ALAN LEIBY

BY MR. ROSENBAUM:

Q Your investigation specifically showed that the reason Ron Lally was killed was because he made that drug buy, right?

A That is correct.

Q Now, why do witnesses in a case like this seldom give you the truth when you come to see them?

MR. CLEARY: Objection.

THE COURT: He may answer if he knows through his experience.

A Because most of them are involved in illegal activities and they are concerned they will be charged themselves.

Q And is there an added consideration in a case like this where a witness is killed?

A Yes, sir.

Q What would that be?

MR. CLEARY: Objection.

THE COURT: If he knows, based on his experience, he may answer.

A Say that again, Jon?

Q Is there an additional consideration in a case where a witness is killed that defers people from coming forward?

A They would be afraid they would be killed if they came forward and testified.

1 Q And as a result of that, do they seldom cooperate with
2 you?

3 A That is correct.

4 Q And as a result, do people that cooperate with the
5 police want to end up in jail?

6 A No.

7 Q Why not?

8 A Obvious reasons, they want to stay out of jail.

9 Q Do they have fears of going to jail if they are an
10 informant?

11 MR. CLEARY: Objection as to
12 what fears they have, your Honor.

13 THE COURT: Sustained at this
14 point.

15 Q Why was it necessary to get Carl Hartman out on a
16 personal bond?

17 A The sole reason for that was to prevent him from going
18 out to Lorain County Jail and being locked up with two of
19 the three people that he will be testifying against.

20 MR. CLEARY: Objection.

21 THE COURT: Overruled.

22 Q Now, did Carl Hartman fully cooperate in this
23 investigation?

24 A Initially no.

25 Q And did he come to the first Court date when he was

1 supposed to?

2 A No, sir.

3 Q Is this the first time you were able to secure his
4 presence in Court to testify?

5 A Yes.

6 Q Now, Mr. Cleary questioned you regarding you having
7 contact with Judges without lawyers for the defense, is
8 that correct?

9 A Yes, sir.

10 Q Whether right or wrong, does that happen in this
11 building?

12 A Yes.

13 Q Does it happen as a result of knowing that defense
14 -- defendants or defense lawyers have contact with Judges
15 sometimes without Prosecutors or police being there?

16 MR. CLEARY: Objection.

17 THE COURT: I don't know that
18 that is within his knowledge.

19 Sustained.

20 Q Do you have knowledge of that happening?

21 A Definite knowledge.

22 Q Do you have knowledge of defendants writing to Judges?

23 A Yes.

24 Q Do you have knowledge of defendants and/or defense
25 lawyers handling letter writing campaigns to Judges?

1 MR. CLEARY: Objection.
2 THE COURT: You brought it up
3 from the other end. He may testify if he knows.
4 A No, sir.
5 Q Does that happen as a result of everyone being human
6 and being accessible to one or the other?
7 A That is correct.
8 Q And threats to people who cooperated with you during
9 your investigation being made?
10 MR. CLEARY: Objection.
11 THE COURT: I am going to
12 sustain that objection at this point.
13 No more questions regarding that.
14 Q Was it necessary for you to reassure people that
15 individuals will not be getting out of jail right away
16 so they would cooperate?
17 MR. CLEARY: Objection.
18 THE COURT: Overruled.
19 A Absolutely.
20 Q Was that the purpose of a discussion concerning
21 the length of Danny Smith's jail sentence?
22 A Yes, sir.
23 MR. ROSENBAUM: I have no other
24 questions.
25 THE COURT: Mr. Cleary?

RECROSS-EXAMINATION OF ALAN LEIBY

BY MR. CLEARY:

Q Sir, is it fair to say that the letter writers and all these other things that Mr. Rosenbaum alluded to here, they don't have the immediacy or the effect, the effectiveness of getting a person out of jail as you do?

MR. ROSENBAUM: Objection.

He can't answer that.

THE COURT: Well, if you are in a position to answer that, you may, but I tend to agree.

A I honestly don't believe that I would have the same power as like a defense attorney going to a Judge. I would, at best, put myself on equal grounds with yourself.

Q In this case, and the people we have talked about, the people you wanted in jail are in jail, the people you wanted out are out?

A Yes.

Q On every single case that is the truth, right?

MR. ROSENBAUM: Objection to that question.

THE COURT: Reword that.

Q I mean, in the case of every person involved in this particular trial, every one of those people that you wanted out are out and the people you wanted in are in, correct?

1 A The two I wanted out are out, correct. The three I
2 wanted in are in.

3 Q All right. And Carl Hartman, you said before, you did
4 not know about four prior capias arrest warrants that were
5 issued on him, but you knew of one?

6 A Right, for the probation violation.

7 Q Was he put in jail as a result of that?

8 A No, sir, he turned himself in to, I believe it was
9 Detective Whitely and his probation officer as a good
10 faith gesture.

11 Q That is a fifth warrant he was given a personal
12 bond?

13 A I can't tell you that.

14 Q Because this violent offender acts in good faith?

15 A I don't know how many warrants there were.

16 Q Do you determine what the good faith is?

17 A No, sir, the Judge does that.

18 Q After hearing from you though?

19 A After hearing the facts of the incident.

20 Q You determine what the facts are?

21 A No, sir. The facts are what they are. I
22 investigate them and attempt to relate them to the
23 Judge as best I can.

24 Q You do not know how long Corinne Fike's car was
25 in police custody before you went and got it?

1 A The first time, that is correct, I didn't know
2 it was impounded.

3 Q If I were tell you it was from April to October
4 of '94, would that be inconsistent with what you have
5 here?

6 A Probably sounds close to being accurate.

7 Q So, a month after that, 12-4-94, you come back
8 and take it?

9 A That is correct.

10 Q So she had the car back a month, you come back
11 and get it and then it was another year before she got
12 it back, correct?

13 A Yes.

14 Q And you held her car while she gave the statement,
15 correct?

16 A She gave the statement three days after we impounded
17 her vehicle.

18 Q Then she came back after that and gave another
19 statement?

20 A Approximately a week later.

21 Q Okay. Which was different from the initial one?

22 A Which provided more facts than the first one,
23 correct.

24 MR. CLEARY: No further
25 questions. Thank you.

1 MR. ROSENBAUM: I have no other
2 questions, your Honor.

3 THE COURT: Thank you.

4 THE WITNESS: Thank you, Judge.

5 (Witness excused.)

6 * * *

7 MR. ROSENBAUM: I would like to
8 tender my exhibits and if it please the Court, the
9 State will rest at this time.

10 THE COURT: Ladies and
11 gentlemen, let's take a short recess at this
12 point. The Court needs to do some housework yet
13 out of your hearing.

14 This may be -- well, depending on what is
15 occurring at this point, it may be a lengthy one,
16 it may be a short one, so we will try to get you
17 back as soon as we can at this point.

18 The admonitions that I have given you in
19 the past about discussing this case amongst
20 yourselves, letting anyone discuss it with you
21 still apply.

22 And with that, we will take a recess.

23 (Whereupon, the jurors were excused for a
24 recess.)

25 (Whereupon, the following proceedings

1 occurred out of the hearing of the jury.)

2 MR. GRUNDA: Your Honor, at this
3 time, pursuant to Ohio Rule of Criminal Procedure
4 29, I would move to acquit on this. I am sure
5 the Court heard the evidence.

6 We feel there is lacking in all of the
7 issues, starting first with venue. If there is
8 any, it is not here, and it is improper to be in
9 this County.

10 Secondly, they have shown that on behalf of
11 their -- they have a great case and they have
12 shown a lot of evidence against Danny Smith and
13 some against Raymond, nothing against Stan.

14 There is no evidence showing purpose with
15 prior calculation and design that Mr. Jalowiec
16 intended to cause the death of Mr. Lally.

17 The vast majority and total -- some of the
18 evidence has also been against Raymond Smith and
19 Danny Smith. The name of Stan is only mentioned
20 twice, not even Stan Jalowiec, just Stan.

21 And for all those reasons I don't feel they
22 have met the burden of proof to allow the case
23 to go to the jury and we would ask the Court to
24 acquit at this point.

25 MR. ROSENBAUM: Your Honor, the

1 evidence is quite clear that this was a
2 premeditated crime. It could not have been
3 a coincidence that the Defendant brought the
4 victim with Michael to a point in the woods at
5 2:30 to three in the morning when it is minus
6 20-some degrees and they just happen to have a
7 gun.

8 They got in the car. Premeditation, prior
9 calculation and design is an element that occurred
10 in this County. Although I am not consenting that
11 we could not try it here, it is clear that the
12 State established evidence which has to be
13 construed in the light most favorable to the
14 State, that prior calculation and design fits in
15 this County and there is venue to try the case
16 here.

17 MR. GRUNDA: Nothing further.

18 THE COURT: The motion for a 29
19 is overruled.

20 The Court feels that there is sufficient
21 evidence to submit this question to the jury at
22 this point.

23 MR. GRUNDA: Okay.

24 Your Honor, I have talked with Mr. Jalowiec
25 over the break and since we were not afforded the

1 opportunity to talk to Mr. Smith -- we were told
2 that we cannot talk to him prior to him testifying
3 -- we are not even going to call him.

4 THE COURT: Hold it a second.
5 Who told you you can't talk to him?

6 MR. GRUNDA: That was my
7 information.

8 THE COURT: I told you -- no,
9 sir, you are misconstruing it. I am saying to
10 you that I talked with his attorney, Mr. Bruner,
11 and Mr. Bruner has advised him not to talk to
12 you.

13 MR. GRUNDA: I didn't mean to
14 imply it incorrectly, your Honor, but since we
15 were not afforded the opportunity, all I am
16 saying to the Court, for whatever reason, we
17 are not calling him as a witness.

18 MR. ROSENBAUM: You don't even
19 want to ask him --

20 MR. GRUNDA: We are not calling
21 him, period.

22 THE COURT: Period,
23 P-E-R-I-O-D?

24 MR. GRUNDA: Right.

25 THE COURT: Thank you, Mr.

1 Grunda.

2 Deputy, you may remove the witness.

3 MR. ROSENBAUM: Let the record
4 reflect that he was here.

5 THE COURT: Yes, I will make
6 that statement at this point. Tell Barbara to
7 return the jury to their room.

8 For the record, pursuant to subpoena, Mr.
9 Raymond Augustus Smith was transported by the
10 Lorain County Sheriff's Department to this
11 particular courthouse on the 18th day of March,
12 1996, and now, being 11:25 a.m. by the clock on
13 the courthouse wall, the courtroom wall, Mr.
14 Smith was transported.

15 Mr. Smith was afforded the opportunity to
16 immediately talk to his lawyer, Mr. Harvey Bruner.
17 Mr. Harvey Bruner since then communicated back
18 and has advised me that he has talked to his
19 client, Mr. Raymond Augustus Smith, and has
20 advised him not to talk with Mr. Grunda and Mr.
21 Cleary and if asked any questions on the stand,
22 to take the Fifth Amendment on this matter.

23 MR. ROSENBAUM: And he was brought
24 up in the courtroom.

25 THE COURT: He was in the

1 courtroom, was not administered any oath, at
2 that time was not asked any questions by
3 defense counsel at this point.

4 MR. ROSENBAUM: They had the
5 opportunity to speak to him.

6 THE COURT: Now, as far as
7 I know, Mr. Smith is probably downstairs in
8 the holding cell being prepared to be returned
9 to Mansfield.

10 DEPUTY BELL: That would be
11 correct, sir.

12 THE COURT: Okay.

13 Mr. Grunda, anything you want to add?

14 MR. GRUNDA: Not regarding Mr.
15 Raymond Smith, your Honor.

16 THE COURT: Okay.

17 MR. GRUNDA: Your Honor, to go
18 further I have also discussed this matter with
19 Mr. Jalowiec. He is aware of what was going on
20 with Mr. Raymond Smith and we didn't call him.

21 That is correct, Mr. Jalowiec?

22 THE DEFENDANT: Yes.

23 THE COURT: That is done with
24 your knowledge, Mr. Jalowiec, at this point?

25 THE DEFENDANT: Yes.

1 MR. GRUNDA: And consent?
2 THE DEFENDANT: Yes.
3 THE COURT: Okay.
4 MR. GRUNDA: Regarding Mr. Danny
5 Smith, who is the other person we had the subpoena
6 for, your Honor, at this time after talking with
7 Mr. Jalowiec, there is no need to bring him over.
8 We are not going to call him either.
9 I have talked to Mr. Duff, who was going to
10 have him exercise the Fifth. I understand Mr.
11 Rosenbaum says that we should bring him over. We
12 are not going to go through the procedure of doing
13 that.
14 THE COURT: So, therefore, you
15 are, in effect, withdrawing your subpoena to bring
16 over Mr. Daniel Smith?
17 MR. GRUNDA: That is correct.
18 THE COURT: Captain Bell, to
19 your knowledge is Mr. Daniel Smith in transport
20 from the jail to here?
21 DEPUTY BELL: No, sir, he is
22 standing ready at the Lorain County Jail.
23 THE COURT: Cancel him.
24 MR. GRUNDA: Again, your Honor,
25 that was done after a full explanation with Mr.

1 Jalowiec and with his consent.

2 Is that correct?

3 THE DEFENDANT: Yes.

4 MR. GRUNDA: I have also advised
5 him, Mr. Jalowiec, of his rights in this matter
6 and he is electing not to take the stand.

7 THE COURT: Which is his right.

8 MR. GRUNDA: I want the Court
9 and the record to reflect that I have had this
10 opportunity during this lengthy recess to have
11 the opportunity to talk to him, explain to him
12 how we might proceed, and he is not going to
13 take the stand.

14 He is aware that he could. He is exercising
15 his right not to.

16 Is that correct?

17 THE DEFENDANT: Yes.

18 THE COURT: Okay. Now then,
19 officially do you have any other witnesses to
20 present?

21 MR. GRUNDA: No, your Honor.

22 THE COURT: You rest at this
23 point?

24 MR. GRUNDA: Subject to the
25 admission of my Defendant's Exhibit A.

1 THE COURT: Let's go to your
2 Exhibit A.

3 MR. GRUNDA: I only had the one,
4 I believe.

5 THE COURT: And there was no
6 objection. That was admitted.

7 MR. GRUNDA: I will be requesting
8 it to be admitted.

9 THE COURT: I admitted it at
10 that time and Mr. Rosenbaum inquired as to whether
11 he was having the opportunity to admit the rest.

12 Your one Exhibit A has been admitted.

13 MR. GRUNDA: Okay.

14 * * *

15 WHEREUPON, DEFENDANT'S EXHIBIT A, HERETOFORE
16 MARKED FOR IDENTIFICATION WAS OFFERED AND ADMITTED INTO
17 EVIDENCE.

18 * * *

19 THE COURT: Anything further?

20 MR. GRUNDA: Then at this time I
21 would again renew my motion to acquit pursuant to
22 Rule 29.

23 THE COURT: Same argument as
24 previously?

25 MR. GRUNDA: Yes, your Honor.

1 THE COURT: Mr. Rosenbaum, do
2 you have any further response to the motion for
3 Rule 29?

4 MR. ROSENBAUM: No, sir.

5 THE COURT: Very well.

6 The Court will rule in the same manner as it
7 did before, deny it at this point, certainly give
8 you those exceptions.

9 The Court feels that there is sufficient
10 evidence for this case to go to the jury.

11 Bring in the jury at this time and we will
12 do this officially for the jury's hearing.

13 MR. GRUNDA: My Rule 29, that is
14 coming after everything.

15 THE COURT: You have done it and
16 all we are doing now is to show the jury that you
17 have officially rested.

18 MR. GRUNDA: I understand the
19 Court's schedule.

20 Would we be provided with jury instructions
21 tonight so that we can look at it?

22 THE COURT: Hopefully this
23 afternoon yet.

24 MR. GRUNDA: I wondered if we
25 would have it to prepare the closings.

1 THE COURT: Yes, you will both
2 have them.

3 MR. GRUNDA: Thank you, your
4 Honor.

5 THE COURT: These are the
6 proposed instructions. The Court has not had
7 the opportunity to go over them, even though the
8 Court knows what appears from the previous case,
9 at this point has not had the opportunity to go
10 over them and tomorrow morning we will have that
11 opportunity.

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

14 THE COURT: Good morning, ladies
15 and gentlemen.

16 Mr. Rosenbaum, you have officially rested
17 your case, is that correct?

18 MR. ROSENBAUM: Correct, your Honor.

19 * * *

20 STATE RESTED.

21 * * *

22 THE COURT: And, Mr. Grunda,
23 what say you as far as your case is concerned at
24 this point?

25 MR. GRUNDA: Your Honor, we will

1 rest at this point.

2 THE COURT: Rest?

3 MR. GRUNDA: And I have made
4 the appropriate motions. Thank you.

5 * * *

6 DEFENDANT RESTED.

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8 THE COURT: Ladies and
9 gentlemen, all of the evidence that is to be
10 coming into the case has come in and the next
11 thing that will be forthcoming is the
12 instructions -- closing arguments from counsel
13 and the instructions of law to you for your
14 deliberations.

15 As I indicated to you, we will not be
16 having a session this afternoon and we will
17 not have a session this afternoon.

18 I would like to have you folks show up
19 tomorrow at about quarter to nine, give you a
20 little extra time so that we can hopefully be
21 prepared to proceed right at nine o'clock with
22 closing arguments and instructions at this
23 point and you might start your deliberations.

24 We are going to take a recess here this
25 morning. Tomorrow, ladies and gentlemen,

1 please bring with you your little ditty bags,
2 overnight bags, whatever it is that you want
3 to bring with you because the possibility of
4 being sequestered tomorrow is there at this
5 point.

6 So, make your arrangements with your
7 family and what have you and then we will then
8 be proceeding in that respect, both sides having
9 rested, and we are not having an afternoon
10 session, we will adjourn for today at this point
11 and ask you -- give you the admonitions now that
12 all the evidence is in, but not yet closings or
13 the instructions.

14 Do not read anything about this case, do not
15 talk about this, do not discuss this case amongst
16 yourselves. In fact, the best thing that I can
17 say is, as I did over the weekend, relax.

18 You will be having a good half day with your
19 family at this point and because tomorrow is
20 another day, we hopefully will reconvene tomorrow
21 and the Court would like to start at nine o'clock.

22 I will have the attorneys in earlier than
23 that, but you come in at a quarter to nine and
24 we can get started at 9:00 a.m.

25 For the audience, nine o'clock is sufficient

1 at this point to be here, or a little earlier
2 would be fine. You don't have to show up at
3 eight o'clock.

4 Anything further from counsel?

5 MR. GRUNDA: Not at this time,
6 your Honor.

7 MR. ROSENBAUM: No, sir.

8 THE COURT: Very well.

9 We will take our adjournment for the day and
10 reconvene tomorrow morning at nine o'clock, but
11 you be here at a quarter to nine.

12 (Whereupon, the trial in the above-entitled
13 matter was adjourned to reconvene on Tuesday, the 19th
14 day of March, 1996, at 9:00 a.m.)
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