

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

6 DIRECT EXAMINATION OF TERRY HOPKINS

7 BY MR. ROSENBAUM:

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

9 A Terry Hopkins.

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

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

13 Q Are you employed at this time, sir?

14 A Yes.

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

16 A I am a -- lay carpet.

17 Q How long have you done that for?

18 A About three weeks.

19 Q Do you have a criminal record, sir?

20 A Yes, I do.

21 Q Will you tell the Court and jury what it is, please?

22 A Attempted aggravated burglary, attempted felonious
23 assault.

24 Q You served any time for that?

25 A Yes, I did.

EXHIBIT

19

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

3 A Yes, I do.

4 Q How is it that you know him, sir?

5 A Through his son.

6 Q What is his name?

7 A -- Raymond.

8 Q Do you know the last name?

9 A Smith.

10 Q What is his son's name that you know?

11 A Danny.

12 Q How is it that you know Danny Smith?

13 A Went to school with him, used to see him out.

14 Q Do you have any other relationship with him?

15 A He became a friend after awhile, but that is how I
16 knew him, from school and stuff. We was friends.

17 Q So you have known Danny for how long then?

18 A Five or six years probably.

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

20 A No, I didn't.

21 Q Now, do you remember a night in January of '84 where
22 you were downtown Elyria at some bars with the Defendant
23 and some other people?

24 A Yes.

25 Q Do you recall what the date was?

*John Lally, Jr.
also known as
"The Kid"*

- 1 A No, I don't.
- 2 Q So it was in January?
- 3 A Yes.
- 4 Q Can you tell the Court and jury of what year?
- 5 A Ninety-four. I think it was '94.
- 6 Q And will you describe the events of that evening
- 7 that pertain to the Defendant and his son, Danny?
- 8 A We went out one night and we were all out about
- 9 drinking --
- 10 Q Who would "we" be?
- 11 A Me, Danny, Tammy, my sister Sharon, I think it was
- 12 just us.
- 13 Q Was anybody there with Danny?
- 14 A Yes, Tammy.
- 15 Q And did you have a girlfriend there?
- 16 A Yeah.
- 17 Q And her name was?
- 18 A Misty.
- 19 Q And your sister?
- 20 A Sharon.
- 21 Q Was there?
- 22 A Right.
- 23 Q What bar were you drinking at?
- 24 A Razzle's, a lot of them, but mostly at Razzle's.
- 25 Q Do you know a person by the name of Stan Jalowiec?

1 A Yes.

2 Q How do you know him?

3 A Through Danny.

4 Q Did you see Stanley that night?

5 A No.

6 Q After you were drinking, what, if anything, did you
7 do and with whom?

8 A After that we went to Mom's Open Kitchen, ate
9 breakfast, me, Tammy, Danny, my sister and Misty and
10 from there --

11 Q Did the Defendant go?

12 A No, he didn't.

13 Q Then what happened?

14 A We went home -- I went to my sister's apartment and
15 then from there I went to Danny's because at the time I
16 was staying at Danny's apartment.

17 Q What time would this be?

18 A It was pretty late or early, whatever you want to call
19 that, about, I would say about three in the morning, 3:30
20 in the morning.

21 Q Danny was there?

22 A Yes.

23 Q Would you describe his condition, how he appeared, to
24 the Court and jury?

25

MR. BRUNER:

Objection.

1 THE COURT:

Did you observe him?

2 THE WITNESS:

Yes, I did.

3 THE COURT:

Overruled.

4 A He was nervous, bothered. I asked him what was wrong
5 with him.

6 Q Did he reply?

7 A Yeah.

8 Q What did Danny say?

9 MR. BRUNER:

Objection.

10 THE COURT:

At this point who

11 was present, who was there?

12 THE WITNESS:

Me and Danny.

13 THE COURT:

Just the two of you

14 alone?

15 THE WITNESS:

Right.

16 THE COURT:

Sustained.

17 MR. ROSENBAUM:

Could we approach.

18 please?

19 THE COURT:

It is the same

20 request again as before.

21 Correct, Mr. Rosenbaum, setting up the same
22 scenario.

23 MR. ROSENBAUM:

I am setting up a

24 hearsay exception, absolutely different.

25 THE COURT:

Yes, approach.

1 please.

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

4 MR. ROSENBAUM: The exception I
5 would tender to the Court is that this is a
6 statement against penal interest.

7 MR. BRUNER: As to my client?

8 MR. ROSENBAUM: That would be --
9 well, it would be 803.1 and I believe 804.3
10 applies, but I would have to bring Danny in to
11 plead the Fifth first for that and I suppose
12 remotely 802 would apply also; 803.3 explains
13 why he feels how he does.

14 THE COURT: Harvey?

15 MR. BRUNER: Your Honor, may I
16 say that there comes a point in time when things
17 have to relate to Ray Smith.

18 MR. ROSENBAUM: This is absolutely
19 going to relate to him.

20 MR. BRUNER: I know what you did
21 with regard to the previous witness. At this
22 point in time Ray is not present. He doesn't
23 know where he is. Danny is making a statement.
24 It does not relate to Ray Smith.

25 All prejudicial to allow this hearsay

1 statement.

2 MR. ROSENBAUM: The statement does
3 relate to Ray. He is going to say they did it.

4 MR. BRUNER: Then you are
5 interpreting Danny's statement to Ray and it
6 becomes his trial, not Ray's.

7 MR. ROSENBAUM: He said it didn't
8 relate to his testimony, it does.

9 MR. BRUNER: Your Honor, if you
10 are taking Danny's admission and prejudicing the
11 jury with regard to that statement, I think there
12 comes a time when hearsay is out when it doesn't
13 relate to my client.

14 THE COURT: Give me a chance to
15 look at this and I will make a ruling in a second.
16 The objection is overruled.

17 (Whereupon, the following proceedings
18 occurred back in the hearing of the jury.)

19 THE COURT: You will have your
20 exceptions, Mr. Bruner.

21 Mr. Rosenbaum, you may continue.

22 BY MR. ROSENBAUM:

23 Q So you were inquiring of Danny why he was in what
24 condition?

25 A What was wrong with him, why was he -- he said he

1 was sick.

2 Q What did he say?

3 A He said that they did it, meaning they killed --

4 MR. BRUNER: Objection, your
5 Honor, and ask that that be stricken and the
6 jury be instructed to disregard that.

7 Q Did you inquire what he meant by that?

8 MR. BRUNER: Your Honor, I
9 would ask that the jury be instructed on that.

10 THE COURT: At this point,
11 ladies and gentlemen, you will disregard
12 anything other than what the statement was,
13 "They did it."

14 Q Did you ask him what he meant by that?

15 A Yeah.

16 Q And what was his response?

17 MR. BRUNER: Objection.

18 THE COURT: Overruled.

19 A He just kind of looked at me like, you know --

20 Q Now, had Danny ever had any previous discussions
21 with you about doing what they did?

22 A Yes.

23 Q Will you detail them for the Court and jury, please?

24 First of all, tell us when these discussions took
25 place as best you can recall.

1 A Well, it was awhile ago at a bar I seen him.

2 Q Was it before this night you are talking about?

3 A Yeah, it was before this.

4 Q How much before, if you can say?

5 A A few months. I told him if he needed something
6 taken care of to let me know, if he had to beat somebody
7 up, you know.

8 Q Why did you say that?

9 A He was having some trouble collecting some money or
10 something and I was just bragging and talking.

11 Q So you offered your services to him to beat someone
12 up?

13 A Yeah, if he needed me to collect the money is what I
14 said and anyway, he come to me later, after that, and he
15 asked if I would take care of this thing for him, this
16 problem.

17 Q What does that mean?

18 A Killing somebody.

19 MR. BRUNER:

20 Honor.

Objection, your

21 THE COURT:

22 minute at this stage.

Well, wait a

23 That objection is sustained.

24 Let's build a little more background.

25 Q Tell me what exactly did Danny say to you when he came

1 to you?

2 MR. BRUNER:

Objection.

3 THE COURT:

Overruled.

4 MR. BRUNER:

Your Honor, there

5 is no time frame or nothing.

6 THE COURT:

Okay. I was under

7 the impression that it was several months before
8 the incident at the bar, correct?

9 THE WITNESS:

Yes.

10 Q And what exactly did Danny say, as best you can recall
11 it?

12 A Just what I said.

13 Q And what was that?

14 A To kill somebody.

15 Q And what was your response?

16 A I didn't want no part of nothing like that.

17 Q Did Danny ask anything else of you on that subject?

18 A No. After that he pretty much left it alone.

19 Q Did he ever inquire if you wouldn't do it, if you
20 had any other information that might help him?

21 A Yes.

22 Q What was that?

23 A If I knew anybody else to do it.

24 Q After that night when Danny said to you, "They did
25 it," you knew what happened?

1 A I grabbed my chest and I left.

2 Q And where did you go?

3 A I went to my sister's apartment.

4 Q Did you ever return back to Danny's apartment then?

5 A Yes.

6 Q When?

7 A The next morning.

8 Q And what transpired then, who was there?

9 A Michael, Raymond, Stanley and Danny.

10 Q And did they have any conversation in your presence
11 about what they had done the night before?

12 A Yes.

13 Q What did they say?

14 MR. BRUNER:

15 "they." Objection as to

16 Who is "they"?

17 Q Who specifically was in this conversation?

18 Let me ask you this.

19 What did Stanley say, if anything, about the night
20 before?

21 A That they had killed the guy.

22 Q Did they say how?

23 A Yeah.

24 Q What did they say?

25 A They said that they --

MR. BRUNER:

Objection.

THE COURT:

Again, "they,"

who is "they"?

You are talking to Stanley?

Q Who was in this conversation?

Is this between you and one person?

A We were all in the same room.

Q Who was all of you people?

A Stan, Raymond, Danny, me, Tammy was in the back bedroom.

Q Describe the conversation as to who said what as best you can?

A Stan said that they had done it.. See, I can't remember who said what exactly. I am going with the whole conversation that went on between us.

I can't say specifically who said what.

Q What happened?

A They said that they had shot the victim and they had run him over with a car and stepped on him and stabbed him with something or something like that.

Q In what tone were they relating this?

A Like they were bragging about it.

Q Did they say anyone else was there, or who did they indicate was there --

MR. BRUNER:

Objection.

1 Q (Continuing) -- when this was done?

2 MR. BRUNER: Objection.

3 Q Did they indicate whether anybody else was there?
4 Yes or no.

5 A No.

6 Q They did say something about Mike?

7 A Yes.

8 Q What did they say about Mike?

9 A They said he was --

10 MR. BRUNER: Objection.

11 Who is "they"?

12 Five people we are talking about.

13 THE COURT: Under the
14 circumstances I think they are relating back
15 the same incident and the same people that
16 were there were Danny, Raymond, Stan and your
17 sister and yourself, the five of you; is that
18 correct?

19 THE WITNESS: At the time of
20 the incident when it happened?

21 THE COURT: No. This
22 conversation -- was your sister there?

23 THE WITNESS: No.

24 THE COURT: I thought she was
25 in the back?

1 THE WITNESS:
2 that is Danny's girlfriend.

No, I said Tammy,

3 THE COURT: All right. Proceed.

4 Q What in this same conversation did they indicate about
5 Mike?

6 A That he was panicking.

7 Q Did they say where he was at the time that this guy
8 died?

9 MR. BRUNER: Objection.

10 A I think they said he was in the car.

11 Q And that he was panicking?

12 A Uh-huh.

13 Q Did Danny ever admit to you that he discussed with
14 other people trying to get them to do this for him?

15 MR. BRUNER: Objection.

16 THE COURT: You can answer
17 that yes or no.

18 A Yes.

19 Q Would you tell what Danny said to the Court and jury,
20 please?

21 MR. BRUNER: Objection.

22 THE COURT: Overruled.

23 A As far as what, you mean --

24 Q Who did he speak to and did he offer anything to
25 accomplish this goal?

1 A He offered to pay for somebody, to buy somebody a car
2 if they would do it. He asked me if I knew somebody and
3 he said he offered to buy this person a car because he
4 knew that I knew he wanted a car.

5 Q Was there a specific person in mind here?

6 A Yes.

7 Q Who was that?

8 A Carl Hartman.

9 Q Was there a specific car in mind?

10 A Yes.

11 Q What was it?

12 A Red BMW.

13 Q So, Danny told you he would buy Carl a red BMW if he
14 killed this person?

15 A Yes.

16 Q Did you know who this person was?

17 A Yes, I know him.

18 Q Who was the person?

19 A He was a close friend.

20 Q I am talking about Carl Hartman?

21 A Yes.

22 Q Now, when you say that Danny wanted you to kill
23 someone, did he ever tell you who he wanted killed?

24 A No.

25 Q Did you know what this person had done that he wanted

1 killed?

2 A Yes.

3 Q What was that?

4 MR. BRUNER:

Objection.

5 THE COURT:

How do you know?

6 THE WITNESS:

He told me.

7 MR. BRUNER:

Objection.

8 THE COURT:

Under those

9 circumstances, it will be sustained.

10 MR. ROSENBAUM:

Could we approach?

11 THE COURT:

All right, come on

12 up.

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

15 MR. ROSENBAUM:

It would be the

16 State's position that these are not hearsay
17 because these statements are made in furtherance
18 of the conspiracy and under 801(D)(2) he lists
19 attempts to get people to carry out the
20 conspiracy and they are not hearsay.

21 MR. BRUNER:

Your Honor, again

22 this is Raymond's trial, not Danny's trial.

23 This is Danny's trial so far.

24 I think he should have tried him first.

25 At any rate, with all due respect, I think there

comes a time when hearsay has to be kept out.

THE COURT: At this point we have gone as far as we can go.

MR. ROSENBAUM: This is different. Danny's efforts for him to recite people are not hearsay. Statements made by members of the conspiracy, are not hearsay. He keeps saying this is hearsay. This is not hearsay by definition.

THE COURT: All right. Go ahead, Harvey.

MR. BRUNER: Your Honor, it is an out-of-court statement that he is trying to show the truth.

MR. ROSENBAUM: It is not hearsay by definition; 801(D)(2)(e).

THE COURT: A statement by a co-conspirator of a party during the course and in furtherance of the conspiracy upon independent proof of the conspiracy.

MR. ROSENBAUM: I think we established the conspiracy.

MR. BRUNER: I understand proof.

MR. ROSENBAUM: State versus Martin says --

1 MR. BRUNER:
2 of Danny's conspiracy.

He has shown proof

3 THE COURT:
4 The Court will
5 retract that and overrule the objection.

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

8 Q My question was, did Danny ever tell you why he was
9 trying to get this person killed?

10 A Yes.

11 Q And why was that, sir?

12 MR. BRUNER:

Objection again.

13 THE COURT:

Overruled.

You may answer.

14 A He said because he had informed the police of his
15 doings.

16 Q Now, do you know a person by the name of Queen Bee?

17 A Yes.

18 Q And do you know her real name?

19 A That is all I know her by.

20 Q Does she have a car?

21 A Yes.

22 Q What kind of car?

23 A Blue LeBaron convertible.

24 Q Did you ever see anyone in that car on the night that
25 Danny was upset and made the admission to you?

1 A Yes, I did.

2 Q Was it before the admission?

3 A Yes.

4 Q Who was in possession of the car that you saw?

5 A Raymond, Stan and Mike.

6 MR. ROSENBAUM: I have no other
7 questions, your Honor.

8 THE COURT: Do we have a
9 statement?

10 MR. BRUNER: Yes, that is the
11 first thing I am going to ask for, your Honor.

12 THE COURT: I figured you
13 would.

14 Ladies and gentlemen, as the statement is
15 rather lengthy, the Court has to review it at
16 this point. Rather than keep you sitting here,
17 I will return you to the jury room and as soon
18 as the Court is finished doing what it has to
19 do, you will again be brought back in.

20 The admonitions that I have given you
21 regarding discussing this case amongst yourselves
22 or letting anyone discuss it with you still hold
23 at this point and as soon as Ms. Skinner gets
24 into the room I will return you to the jury room.

25 (Whereupon, the jury was excused for a short

1 recess.)

2 (Whereupon, the following proceedings
3 occurred in the Judge's chambers with the Defendant
4 and counsel present.)

5 THE COURT:

6 Gentlemen, I have
7 read through the statements. I have read the
8 first statement that took place on January 4th,
9 '95, even more thoroughly than I did the other
10 two.

11 There are some inconsistencies. They all
12 end up in the same position that was testified
13 to. The other statements had a lot more
14 information than what was testified to at
15 this point and Mr. Bruner, there you are.

16 MR. BRUNER:

17 Thank you, your
18 Honor.

19 THE COURT:

20 The
21 inconsistencies that I see do not seem to be
22 totally and completely significant. It might
23 be identification of people who may have been
24 there, this type of thing, so take your time
25 and look at it.

(Whereupon, Mr. Bruner examined the
statement of Terry Hopkins.)

THE COURT:

How about as far

1 as the inconsistencies are concerned, Mr. Bruner?

2 MR. BRUNER: Yes, your Honor.

3 The statement has many additional statements
4 than to what Mr. Hopkins testified, but the main
5 inconsistency, Mr. Hopkins testified that he saw
6 Ray, Mike and Stanley Jalowiec in that LeBaron
7 that evening.

8 In his statement he says on page 18, on his
9 initial statement, or I am sorry, the last
10 statement, the one on January 6th I believe it
11 is, he didn't see Ray in the car, his sister did.
12

13 He was across the street. He didn't see
14 anyone in the car and what he knows about it, he
15 knows from his sister Sharon.

16 In addition to that, in another phone
17 conversation on page 7, I think of his first or
18 second phone conversation, he indicates Sharon
19 says who was in the car, not him. ;

20 That is a clear inconsistency to his
21 testimony.

22 In addition to that he testified under oath
23 that Carl Hartman was offered a red BMW by Danny.
24 In the statement, on page 9, the question by
25 Detective Leiby was, "Didn't Danny offer him a
red BMW?"

1 And to that statement he said, "I don't know
2 what he offered him."

3 That is a clear inconsistency.

4 As to everything else, there is a bunch of
5 additional questions that I will get into, but
6 specifically, as to the statement, that is what
7 I want to ask him about.

8 THE COURT:

Mr. Rosenbaum?

9 MR. ROSENBAUM:

Just those two

10 things. The one is inconsistent. It would
11 depend on the timing of the other, but I concede
12 he should be permitted to ask, but I assume we
13 are not going to have, like we have tried to
14 do before, create inconsistencies?

15 THE COURT:

I don't think we

16 will at this point.

17 MR. BRUNER:

No, I would like

18 to show him that statement as to his statement
19 as to his sister's view of the car anyway.

20 THE COURT:

And again, when

21 you get to that question I think, Mr. Leiby, if
22 you can look up that area or whatever it is.

23 MR. BRUNER:

Page 18 and 9 of

24 one of the phone conversations and also to the
25 red BMW, that is page 9. Page 18 is as to his

1 sister and then page --

2 THE COURT: That appears twice?

3 MR. BRUNER: Page 7 on one of
4 the phone conversations.

5 THE COURT: Okay.

6 Ready to bring them back in?

7 MR. BRUNER: Yes.

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

10 THE COURT: Ladies and
11 gentlemen, the Court will report to you that the
12 necessary housework that had to be done has been
13 done and we are now ready to proceed with the
14 cross-examination of this witness, Mr. Bruner,
15 at this point.

16 Deputy, the rule is still to be enforced.

17 THE DEPUTY: Yes, your Honor.

18 MR. BRUNER: Thank you, your
19 Honor.

20

21

22

23

CROSS-EXAMINATION OF TERRY HOPKINS

24 BY MR. BRUNER:

25 Q Mr. Hopkins, you are a convicted felon, correct?

1 A Yes.

2 Q And I think you are convicted of aggravated --
3 attempted aggravated burglary?

4 A Yes.

5 Q And attempted felonious assault?

6 A Yes.

7 Q That was for beating up your girlfriend, right?

8 A -- No.

9 Q Okay. How long were you in prison as a result of
10 that?

11 A Nine months.

12 Q What was your original sentence?

13 A Five to fifteen years.

14 Q Five to fifteen years and you were in prison nine
15 months?

16 A Yes, sir.

17 Q How did you get out of prison?

18 A Shock probation.

19 Q Did Detective Leiby of the Elyria Police Department
20 talk to Judge Glavas about your cooperation here to get
21 out?

22 A Yes.

23 Q So you got out on shock probation after nine months
24 as a result of your testimony in this case, correct?

25 A Yes.

1 Q Until you were approached as far as you knew you were
2 going to do five to fifteen years in prison, correct?

3 A Yes.

4 Q By the way, when were you eligible for parole when you
5 initially went?

6 A July of '98.

7 Q When did you get out of prison?

8 A Two months ago, September 23rd.

9 Q September of '95?

10 A Yes, sir.

11 Q Three years earlier, right?

12 A Uh-huh.

13 Q It is important for you to get out of prison, wasn't
14 it?

15 A Yep.

16 Q Now, on the night that you talked about here, you
17 went to Raffle's, correct?

18 A Razzle's.

19 Q I am sorry, Razzle's, Raffle's is in Cleveland.
20 You went there to drink, correct?

21 A Yes.

22 Q And you were drinking with who?

23 A Danny, Sharon, Misty, myself and Tammy.

24 Q Danny, Sharon, Misty, yourself and Tammy?

25 A Yes.

1 Q That is it?

2 A Yes.

3 Q No one else was there?

4 A No. I mean there was other people there, not just
5 us.

6 Q What time did you get there?

7 A About 8:30, nine o'clock I would guess.

8 Q What time did you leave the bar?

9 A We closed it.

10 Q You closed it.

11 I don't presume you were sitting there talking, you
12 were drinking?

13 A We left at 2:30 in the morning.

14 Q You were drinking, right?

15 A Yes.

16 Q What do you drink, Mr. Hopkins?

17 A Beer.

18 Q Only beer?

19 A Liquor, too.

20 Q Liquor, too?

21 A Uh-huh.

22 Q What were you drinking that night?

23 A Beer and liquor.

24 Q Beer and liquor?

25 A Yes, sir.

1 Q Okay. From 8:30 to ten o'clock, how many beers did
2 you have?

3 A I don't remember.

4 Q Three, four?

5 A I don't remember.

6 Q How many did you have by two o'clock that night, five,
7 six, ten?

8 A Quite a few.

9 Q Quite a few, right?

10 A Yes.

11 Q That can mean a lot of things to a lot of people,
12 right?

13 Quite a few can be to you ten, to me four?

14 A Yes.

15 Q How many is quite a few?

16 A More than ten.

17 Q More than ten. Okay. So you had more than ten beers.
18 How many glasses of liquor did you have?
19 What kind of liquor do you drink?

20 A Any kind. I don't remember how many.

21 Q You don't remember how many?

22 A No.

23 Q Do you drink Scotch?

24 A No.

25 Q Do you drink bourbon?

1 A Whatever.

2 Q Whiskey?

3 A Whatever.

4 Q Okay. So you don't remember whatever you were drinking
5 that night, is that right?

6 A No, that was two years ago.

7 Q Okay. But it would be fair to say, Mr. Hopkins, that
8 you had a number of drinks, too, liquor I am talking about?

9 A No.

10 Q You didn't?

11 You testified initially you had beer and liquor.

12 A But not a substantial amount.

13 Q Not a substantial amount?

14 A I had a couple maybe.

15 Q Maybe four?

16 A No, a couple.

17 Q A couple, that is two, three?

18 A About two, probably as far as I could remember. That
19 was a long time ago, like I said.

20 Q It is hard to remember what day of the week you were
21 drinking, right?

22 A Yeah.

23 Q So you left this bar and you closed it at about 2:30
24 at night, right?

25 A Yes.

- 1 Q Are you driving?
- 2 A No.
- 3 Q You are not driving?
- 4 A No.
- 5 Q Who is driving?
- 6 A My girlfriend.
- 7 Q So you are with the same people you testified to?
- 8 A No, after the bar we went to Mom's Open Kitchen and
- 9 ate breakfast.
- 10 Q Were you with the same people when you left from
- 11 Razzle's and went to Mom's?
- 12 A Yes.
- 13 Q Did you drive from Razzle's to Mom's?
- 14 A No, it is across the street.
- 15 Q You walked?
- 16 A Yes.
- 17 Q Who did you walk with?
- 18 A Danny, Tammy, Misty and Sharon.
- 19 Q Was it cold outside?
- 20 A Yes.
- 21 Q How cold was it?
- 22 A I don't remember.
- 23 Q You don't remember how cold it was?
- 24 A No, but it was cold.
- 25 Q Very cold or kind of cold?

1 A It was cold.

2 Q And you walked there and you are sure that you went
3 there with Sharon, is that correct?

4 A Yes.

5 Q And you were sitting there with Sharon, is that
6 right, at Mom's?

7 A Yes.

8 Q Who were you sitting with at Mom's?

9 A You just said Sharon.

10 Q You were with a number of people, who else?

11 A Stan -- not Stan, Danny, Tammy, Misty and me and
12 my sister.

13 Q Not Pops, Ray Smith?

14 A No.

15 Q And he wasn't at Razzle's?

16 A I didn't see him.

17 Q You didn't see him in or at Mom's, correct?

18 A No, I didn't.

19 Q Sharon wasn't sitting alone at a table by herself,
20 right?

21 A No.

22 Q She wouldn't do that?

23 A No.

24 Q Okay. And you were not discussing during that night
25 up until that time a guy by the name of Ron Lally with

1 Danny at that time, correct?

2 A I never knew who Ron Lally was.

3 Q Danny didn't appear to be nervous, excited?

4 He was drinking and laughing and eating and having a
5 good time with the rest of you?

6 A He wasn't eating.

7 Q Was he drinking?

8 A Yeah.

9 Q By the way, in addition to the drinking, did you have
10 anything else?

11 Did you have any marijuana?

12 A No.

13 Q You partook in marijuana, correct, at that time?

14 A I said no.

15 Q That night you did not?

16 A No.

17 Q How about cocaine?

18 A No, I did not.

19 Q You didn't have any cocaine?

20 A No.

21 Q How about your sister?

22 A No.

23 Q Or anybody in your party?

24 A No.

25 Q So up until that time, at what time did you go

1 to Mom's, three o'clock in the morning maybe?

2 A About 25 to three, the bar closed and we went.

3 Q The bar closes at 2:30, right?

4 A Yes.

5 Q So, at 2:30 you walk over to Mom's, you are there
6 about 20 to three, so far you have not seen Ray Smith,
7 correct?

8 A I had seen Ray Smith earlier in the car with Stan
9 and Mike.

10 Q You saw Ray Smith earlier parked in a car with Stan
11 and Mike?

12 A Right.

13 Q Was there a fourth person in the car?

14 A I didn't see a fourth person, no.

15 Q Where was that car?

16 A In the alley between Mom's and I think it is a music
17 store or something over there.

18 Q When would you have seen it earlier?

19 A You can look out the window of Razzle's. You can see
20 it right out of the window.

21 MR. BRUNER:
22 statement for a moment.

Let me have the

23 Can I have the statement, your Honor?

24 THE COURT:

Yes.

25 MR. BRUNER:

Thank you.

1 Q Now, there came a time before you testified here
2 today -- do you need water or something like that?

3 A No, I am okay.

4 Q There came a time when you made a statement to
5 Detective Leiby about this case, right?

6 Do you remember that?

7 A Yes.

8 Q Do you remember giving him a statement about what
9 you saw that night?

10 A Yes.

11 Q Okay. And you told him the truth then, is that
12 correct?

13 A Yes.

14 Q You are telling these ladies and gentlemen --

15 A I talked to Detective Leiby two times. At one time
16 I did not know anything.

17 Q Would that statement have taken place on, I believe,
18 January 6th -- sometime in January, '95, is that correct?

19 A Yes.

20 Q You went to the police station?

21 A Yes.

22 Q You made a taped statement?

23 A Yes.

24 Q And you were telling him the truth about everything
25 then, right?

1 A From what I remembered.

2 Q From what you remembered?

3 A Yeah.

4 Q Do you remember telling Detective Leiby -- he asked
5 you, "You were able to see Raymond Smith in the car and
6 Stan Jalowiec," and your answer was, "I am not able, my
7 sister --

8 "And he said, "Oh, your sister Sharon," and your
9 answer was, "I was across the street outside of Razzle's."

10 He said, "Okay, your sister Sharon was there and able
11 to see who was in the car," and your answer was, "Right"?
12 You didn't see who was in the car, did you?

13 A I did.

14 Q But you forgot to tell him that, is that right?

15 A I don't know.

16 Q Do you remember having a phone call with Detective
17 Leiby about the same thing?

18 A Yes.

19 Q I think that is page 7.

20 You had that phone call with him at about the same
21 time in January of '95, right?

22 A I don't know.

23 Q It is December of '95 now?

24 A Yes.

25 Q You testified, or you told Detective Leiby when she

1 pulled the car up that is when it was, when she pulled
2 the car up, I think that is when she seen them, because
3 I specifically had asked her who was in the car.

4 I said, "Well, who was that, Stan and them," and
5 she said, "Yeah, Stan and Pops and his brother, because
6 I guess his brother was trying to talk to my sister, or
7 whatever."

8 Do you remember saying that?

9 A Yes.

10 Q You didn't tell him at that point you had seen who
11 was in the car, you told him your sister seen it, correct?

12 A Yes.

13 Q Now you are saying something different to the ladies
14 and gentlemen of the jury?

15 A I seen Stan in the car and I asked her who else was
16 in the car.

17 Q You seen Stan in the car and asked her who else was
18 in the car?

19 A Yes, and when she told me --

20 Q She told you and that is what you are telling the
21 ladies and gentlemen of the jury, what she told you?

22 A Yes.

23 Q Okay. That is not what you observed, it is what
24 she observed, correct?

25 A Yes.

1 Q So you didn't see somebody in the car, it was her
2 and you got that from her and that is what you told the
3 police?

4 A I did see somebody in the car.

5 Q How far from that car were you?

6 A About 20 yards, 25 yards.

7 Q Did you see Stan driving?

8 A Yeah, he was driving.

9 Q Who was in the back?

10 A Mike was in the back.

11 Q And is there a large street light over the car, did
12 it illuminate the interior of the car?

13 A No.

14 Q Who was in the front?

15 A Raymond was in the front.

16 Q Raymond and as far as you know, no one is in the back?

17 A I seen three people in the car. I seen Stan for sure
18 and my sister told me that Raymond and Mike were in the car
19 and Mike is a big guy.

20 I seen Mike in the back.

21 Q Let's get this straight. You saw Stan in a car.

22 Is that what your testimony is now?

23 A Yes.

24 Q You didn't see Raymond, your sister told you Raymond
25 was there, right?

*How could he see in
back window*

1 A Yes.

2 Q Of course, your view of all this took place after you
3 had all your drinks at Razzle's?

4 A Yes, it did.

5 Q And you were crystal clear about everything that was
6 going on, right?

7 A No, not exactly.

8 Q You were kind of messed up, right?

9 A Yeah.

10 Q Now, your testimony is that you went -- then went to
11 Mom's Kitchen, right?

12 A Yes.

13 Q No discussion about anything happening to Ron Lally,
14 right?

15 A No.

16 Q As a matter of fact, I think your testimony was like
17 three or four months before Danny had asked you to beat
18 him up, right?

19 A No.

20 Q Because you are good at that thing, beating people up?

21 A No.

22 Q Well, excuse me. You went to prison for attempted
23 felonious assault.

24 That is trying to hurt somebody, right?

25 A Uh-huh.

1 Q Who was that somebody that you attempted to hurt?

2 A Jason Justin.

3 Q Excuse me?

4 A Jason Justin.

5 Q What did you do to him?

6 MR. ROSENBAUM:

Objection.

7 THE COURT:

Sustained.

8 Q He asked you to beat somebody up, you didn't know
9 who that somebody was, right?

10 A No, he didn't.

11 Q Danny?

12 A He didn't ask me to beat nobody up.

13 Q He requested that you beat somebody up?

14 A No, he didn't.

15 Q He talked about beating somebody up?

16 A No, he didn't.

17 Q Okay. I thought you said you were kind of drunk
18 and you kind of volunteered to help him?

19 A That was another time, that was before then.

20 Q That is what I am talking about. I am talking
21 about three or four months before.

22 A I didn't know what you were talking about.

23 Q Forgive me, it is my fault. Let's talk about three
24 or four months before.

25 You said that he requested that you beat somebody up?

1 A He said he was having trouble collecting some money
2 and I told him if he needed help collecting money, that
3 I would do it, help him.

4 Q Help him?

5 A Yes.

6 Q And you knew that that meant to beat somebody up?

7 A I guess.

8 Q Ray never asked you to beat anybody up?

9 A No.

10 Q He never asked you to kill anybody?

11 A No, he didn't.

12 Q He never asked you to take a witness out for him,
13 did he?

14 A No.

15 Q You never had any conversation or discussion with
16 Ray about any of that, did you?

17 A No.

18 Q Now, at that point -- let's go back to that night.
19 You go to Mom's, right?

20 A Yes.

21 Q And your testimony is that you are sitting with.
22 your sister Sharon and your girlfriend?

23 A And Danny and Tammy.

24 Q And Danny and Tammy, right?

25 A Yes.

1 Q And you leave there, right?

2 A Yes.

3 Q And how do you get out of there, what car do you
4 drive?

5 A I don't drive. My girlfriend gives me a ride.

6 Q So she drove you out of there?

7 A Yeah.

8 Q Had she been drinking?

9 A Yes.

10 Q How about your sister, where does she go?

11 A She left with Danny and Tammy.

12 Q She left with Danny and Tammy?

13 A Yes.

14 Q She didn't leave with Ray and Michael?

15 A No.

16 Q They didn't get in a car with her, right?

17 A No.

18 Q Now, at some point in time you see Danny?

19 There was a conversation with you that evening,
20 right?

21 A What?

22 Q That evening, later on, you went and where did you
23 go, to the Knight's Inn?

24 A No, I went home. We thought we went to the Knight's
25 Inn. After I thought about it, I didn't go to the

1 Knight's Inn.

2 Q You told the police that you went to the Knight's Inn?

3 A I also told him that that wasn't right, that I don't
4 remember later.

5 Q At one point you told him that you went to the Knight's
6 Inn, correct?

7 MR. ROSENBAUM: Your Honor, this is
8 what we discussed, I think.

9 MR. BRUNER: I will withdraw
10 that..

11 Q Did you go to the Knight's Inn?

12 A No.

13 Q Okay. Did you ever tell anyone you went to the
14 Knight's Inn?

15 A Yes.

16 Q Who did you tell?

17 A Detective Leiby.

18 Q And when did you do that?

19 A When he interviewed me.

20 Q Okay. That was in January of '95, right?

21 MR. ROSENBAUM: Your Honor, can
22 we approach?

23 THE COURT: Yes.

24 (Whereupon, the following proceedings
25 occurred at the bench out of the hearing of the jury.)

1 MR. ROSENBAUM: He is now using
2 the statement to correct inconsistencies and
3 even though he said he would not, he went
4 ahead and did it anyway.

5 THE COURT: At this point
6 continue, but be careful.

7 MR. BRUNER: I understand.

8 MR. ROSENBAUM: Why should he
9 be permitted to continue?

10 You are using the statement to create
11 one inconsistency.

12 THE COURT: I am going to
13 overrule the objection, but, Mr. Bruner, be
14 careful.

15 MR. BRUNER: I understand,
16 your Honor.

17 THE COURT: Okay.

18 (Whereupon, the following proceedings
19 occurred back in the hearing of the jury.)

20 Q Your testimony here is that you did not go to the
21 Knight's Inn?

22 A Correct.

23 Q Is your memory better today than it was in January?

24 A What is that supposed to mean?

25 Q I asked you a question.

1 Is your memory better today?

2 THE COURT:

Well, Mr. Bruner,

3 I think the question -- I think you ought to say,

4 "Is your memory about the incident better today?"

5 Q I am sorry. I will say it that way.

6 Is your memory about the incident better today than it
7 was that day?

8 A No, it is not.

9 Q Okay. Now, your testimony today is, where did you go
10 with your girlfriend?

11 A To my sister's apartment.

12 Q I think your testimony previously was you went -- at
13 some point you talked to Danny that night?

14 A Yes, I did.

15 Q And all the time he was with you when you were
16 drinking at Razzle's, you went to Mom's, he was not
17 excited or nervous or anything like that, correct,
18 isn't that correct?

19 A I really don't remember.

20 Q Okay. And then you saw him what time?

21 A About 3:30; maybe four, in the morning I seen him.

22 Q Three, 3:30, four in the morning?

23 Let's figure this out.

24 You get to Mom's about 25 to three, right?

25 A Yes.

1 Q How long of a time did you spend at Mom's?

2 A I don't know, about half hour, 45 minutes.

3 Q Okay. And then you go to your sister's apartment?

4 A Yes.

5 Q By the way, where was your sister when you go to her
6 apartment?

7 A She was with Danny and Stan, I mean Danny and Tammy.

8 Q Who was at your sister's apartment?

9 A Nobody.

10 Q Does she have a child?

11 A Yes.

12 Q Where was her child?

13 A With my mother.

14 Q You get to the apartment, no one is there, you don't
15 go to sleep at 3:30 in the morning?

16 A No, I don't live there.

17 Q You don't live there?

18 A No.

19 Q What did you go there for?

20 A I waited for Danny to come home.

21 Q Danny was living there?

22 A No, I stayed at Danny's apartment for about a month.

23 Q Didn't you have a key to Danny's?

24 A No.

25 Q To just go in?

1 A No.

2 Q So you then went to Danny's apartment about what time?

3 A Three, 3:30, four o'clock, something like that.

4 Q At that point in time you have a conversation with
5 Danny?

6 A Yeah, when I went back to go home.

7 Q You said he was nervous?

8 A Right. On the way up the steps to the apartment.

9 Q He looked sick? *Drinking all night*

10 A Yes.

11 Q He didn't look sick at any time before?

12 A No.

13 Q Ray wasn't there, right?

14 A No.

15 Q You didn't have any discussion with Ray Smith at
16 that point, correct?

17 A No.

18 Q And Danny is the one that said, "They did it,"
19 right?

20 A Yes.

21 Q They is what he said?

22 A Yes.

23 Q But you didn't see -- I think if I got this correct
24 -- you didn't even see Ray at any time that night?

25 A Yes.

- 1 Q Is that right?
- 2 A Yes.
- 3 Q Up until that point?
- 4 A I didn't even see him that night.
- 5 Q Okay. Now, that is what, 3:30, four o'clock in the
- 6 morning that you hear this from Danny?
- 7 A Yes.
- 8 Q How did you get from your sister's apartment to
- 9 Danny's?
- 10 A They only live right across the street.
- 11 Q Walked across?
- 12 A No, drove.
- 13 Q Drove across, you did?
- 14 A Me and my girlfriend.
- 15 Q And how much time did you spend at Danny's?
- 16 Were you staying there that night?
- 17 A I was going to stay there that night. After I
- 18 found out what happened, I left and went back to my
- 19 sister's.
- 20 Q After he stated, "They did it," you left?
- 21 A Yes.
- 22 Q And you went to your sister's?
- 23 A Yes.
- 24 Q Did you go to sleep?
- 25 A Yes.

- 1 Q How long did you sleep?
- 2 A I don't know. I have no idea.
- 3 Q What time did you get up?
- 4 A I don't know.
- 5 Q You don't know?
- 6 A I don't remember.
- 7 Q -- At some point in time you said you were back at
8 Danny's and you saw Stan?
- 9 A Yes.
- 10 Q What time was that?
- 11 A I don't remember what time it was.
- 12 Q Was it the next day?
- 13 A Yes.
- 14 Q Was it in the afternoon?
- 15 A I don't remember.
- 16 Q You don't remember?
- 17 You remember everything else exactly, but you
18 don't remember?
- 19 A I can't remember what time.
- 20 Q Was it in the morning?
- 21 A I just said I don't remember.
- 22 Q Was it at noon?
- 23 A I don't remember.
- 24 Q Was it at three in the afternoon?
- 25 A I don't remember.

1 Q What were you doing the next morning?

2 A The next morning?

3 Q Do you remember?

4 A I don't remember.

5 Q Or that night?

6 A That night, what night?

7 Q The night that you saw Stan, the next day, what
8 were you doing that night?

9 A I don't remember.

10 Q And you saw Stan there, correct?

11 A At the apartment.

12 Q Whatever time it was?

13 A You said I saw Stan there.

14 Q At Danny's apartment?

15 A Yes.

16 Q The next day?

17 A Yes.

18 Q Whatever time it was?

19 A It was the next day.

20 Q And who was there?

21 You testified Stan was there?

22 A Raymond, Stan, Mike, Tammy and myself.

23 Q Raymond, Stan, Mike, Tammy and yourself?

24 A Right.

25 Q Your sister Sharon wasn't there?

1 A No.

2 Q Danny's girlfriend Tammy was there?

3 A Yes.

4 Q And I think you testified that Stan was talking to
5 you, correct?

6 A They were all talking to me.

7 MR. BRUNER: Well, let's
8 approach for a moment, your Honor, if we can.

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

11 MR. BRUNER: I have to look
12 throughout my notes, but in the statement he
13 says Stan is the one doing the talking.

14 THE COURT: There might be --

15 MR. BRUNER: Stan is the one
16 admitting, so I would like to think Stan is the
17 one doing the talking.

18 THE COURT: I think there might
19 be a inconsistency.

20 MR. ROSENBAUM: What page is that?

21 MR. BRUNER: Page 4, page 5 --
22 page 4 is the phone call, too.

23 Your Honor, I am going to withdraw that.

24 THE COURT: Very well.

25 (Whereupon, the following proceedings

1 occurred back in the hearing of the jury.)

2 BY MR. BRUNER:

3 Q I think in your direct testimony that you said Stan
4 was doing the most of the talking, right?

5 He is the one that you remember talking, isn't that
6 correct?

7 A -- No.

8 Q You just said this morning that he did the talking and
9 you couldn't remember, but you remembered Stan specifically,
10 right?

11 A I said they were talking about it. They were all
12 talking about it to me.

13 Q All talking about it?

14 A Yes.

15 Q Okay.

16 Q Stan was talking about it specifically, wasn't he, to
17 you?

18 A Yes, talking about what he had done.

19 Q Stan was talking about what he had done?

20 A Yes.

21 Q Stan said that he had the gun, correct?

22 A Yes.

23 Q And Stan said he pulled the trigger, correct?

24 A I don't remember.

25 Q But you know that Stan had the gun, right?

1 A Right, because he had it days before that, the gun
2 itself. I mean possession of the gun.

3 Q He had possession of the gun days before that?

4 A Right.

5 Q Ray didn't?

6 A Yes, he didn't.

7 Q -- He did not, correct?

8 A Yes, you are right.

9 Q Thank you. And Ray, before that meeting that you
10 had with Stan, where Stan said he had the gun that night,
11 Ray had no discussion about this, right?

12 None before that date?

13 MR. ROSENBAUM: I object to that
14 question. It is not his testimony.

15 THE COURT: Sustained.

16 Ask it in a different manner.

17 Q Prior to your going over to Danny's apartment that
18 day, the next day after you went to sleep at your
19 sister's --

20 A Yes --

21 Q (Continuing) -- you had no discussions with Raymond
22 about the request that Danny made to you, right?

23 A No.

24 THE COURT: No, you did not,
25 or no, that is not so?

THE WITNESS:

Me and Raymond

didn't talk about Danny's request.

Q And you didn't discuss anything with Danny about Raymond, correct?

A As far as what?

Q What his requests were to you?

A No.

Q Is that correct?

A Correct.

Q Thank you. I think at one point you also testified that Danny promised a BMW to Carl Hartman, correct?

A Correct.

Q He is a buddy of yours?

A Yes.

Q And I think your testimony under oath this morning was that he was promised a BMW by Danny because he needed a car?

A Yes.

Q And you remember talking about that with Detective Leiby when you gave your statement in January of '95?

A Yes.

Q And Detective Leiby asked you, "Danny actually offered to buy Carl a red BMW in trade for working with him," that is what the Detective said?

A Yes.

1 Q And your answer was, "I don't know what he offered
2 him, but Carl told me he didn't want no part of it
3 either"?

4 A Yes.

5 Q So you don't know what Carl was offered at all,
6 correct?

7 A .. I do know.

8 Q From Detective Leiby?

9 A I was acting like I didn't know nothing. I didn't
10 want to involve him. I was asked not to involve him.

11 Q Ray didn't offer Carl Hartman anything?

12 A No, he didn't.

13 Q He didn't offer you anything?

14 A No, he didn't.

15 Q As far as you know, he didn't have any discussions
16 with anyone about that, right?

17 A As far as I know.

18 Q And for your testimony here today, you saved yourself
19 three years in prison, correct?

20 A Yes.

21 MR. BRUNER: I have nothing
22 further.
23
24
25

REDIRECT EXAMINATION OF TERRY HOPKINS

BY MR. ROSENBAUM:

Q Sir, what day did you go to prison?

A January 23rd.

Q Of what year, '95?

A Right.

Q And what day did you give the statement to Leiby?

A I don't remember.

Q Was it long before you went to prison?

A No, it wasn't.

Q Well, it was before you went to prison?

A Yes, it was.

Q Did Mr. Leiby promise you then that he would get you out of prison early?

A At that time?

Q Yes.

A No.

Q So you gave the statement without that promise?

A Yes.

Q Before you even got sent to prison?

A Right.

Q Now, was Danny Smith drinking with you at the bar?

A Yes, but not as much as everybody else was.

Q Okay. Now, do you know who had the gun?

Let me ask you this.

1 The Defendant was, even though he didn't solicit you
2 to kill anyone before, was participating or talking in the
3 conversation the next day about doing the deed, right?

4 MR. BRUNER: Objection.

5 A Yes.

6 THE COURT: Overruled.

7 It is leading, Mr. Rosenbaum. If you would
8 stop at this point.

9 Q Now, who was participating in this conversation about
10 this bragging?

11 A Stan and Raymond.

12 Q And --

13 A And Mike and Danny and all of them right there in the
14 living room.

15 Q And did the Defendant say any of that was not true in
16 your presence?

17 A No.

18 MR. ROSENBAUM: I have no other
19 questions.

20 THE COURT: Mr. Bruner?

21
22
23 RECROSS-EXAMINATION OF TERRY HOPKINS

24 BY MR. BRUNER:

25 Q Detective Leiby, after you made the statement and

1 when you agreed to testify here, got you out of prison,
2 isn't that right?

3 A Yes.

4 Q Just that simple, correct?

5 A I suppose.

6 Q Okay. So you had a tremendous incentive to sit
7 here, correct, three years of your life?

8 A Yes.

9 MR. BRUNER: I have nothing
10 further.

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

13 THE COURT: Thank you, sir,
14 you may step down.

15 (Witness excused.)

16 * * *

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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 Will you state your name, please?

9 A Joann Fike.

10 Q Spell the name for the Reporter?

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

12 Q How old are you, Ma'am?

13 A Thirty-six.

14 Q Are you employed anywhere?

15 A No.

16 Q How do you exist?

17 A I receive social security. I am a widow.

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

20 A I do.

21 Q What is his name?

22 A Raymond Smith.

23 Q How is it that you know him, Ma'am?

24 A Through his son.

25 Q And what is his son's name?

1 I gave you, okay.

2 MR. DUFF: The first tape you
3 gave me is the second one made, it was dated 12-7.

4 THE COURT: Okay.

5 MR. DUFF: All right. He admits
6 in there that he denied it totally his first statement to
7 Detective Leiby, we don't know the date of that first
8 statement, the second time he saw him he did add he never
9 said he never talked to Dan directly, that's the second
10 one. We have that tape.

11 THE COURT: Okay. And I
12 mentioned that.

13 MR. DUFF: Yeah.

14 THE COURT: Okay.

15 MR. DUFF: And then this tape of
16 12-7-95, Detective Leiby, you changed your stories. Can
17 you explain the three stories, how the changes came about.

18 THE COURT: Okay. But somehow
19 that is inconsistent to what he said here on the stand?

20 MR. DUFF: It's just
21 inconsistent.

22 THE COURT: No, no. The
23 inconsistency as to how he's testified is what we got to
24 concern ourselves with.

25 MR. DUFF: All right. On the

1 tape of 1-5-95, it was no one asked him to skill anybody,
2 just beat somebody up.

3 THE COURT: Okay. That I think I
4 pointed out also. I think we may be in somewhat agreement
5 as to the first two tapes that you got. The third tape is
6 the one that I, I said was a lot of conversation and that's
7 about it.

8 MR. DUFF: All I got out of the
9 third tape, Judge, was their talk of the car, which --

10 THE COURT: Yeah.

11 MR. DUFF: -- on the one tape he
12 says --

13 THE COURT: One's a BMW and the
14 other a Mercedes.

15 MR. DUFF: Yeah. No, no. On
16 the tape of 1-5-95 --

17 THE COURT: Okay.

18 MR. DUFF: -- he says, Detective
19 Leiby asked him about the car. He said there was never a
20 car discussed. That's on there. No, there was no car
21 discussed to him.

22 THE COURT: Okay.

23 MR. DUFF: That's inconsistent
24 with the third. Those are the kinds of things. Dan never
25 approached me. He was in the car the whole time. Terry

1 did the talking. Terry asked him about beating him up for
2 two days in a row, came right on to him about it.

3 THE COURT: Okay.

4 MR. DUFF: Those kinds of
5 things.

6 THE COURT: Fine. Mr. Rosenbaum,
7 any vehement, violent disagreement?

8 MR. ROSENBAUM: No.

9 THE COURT: Okay.

10 MR. DUFF: You might want to use
11 it if he denies it.

12 THE COURT: No. You mean as far
13 as he's concerned?

14 MR. DUFF: Yeah, if he denies
15 it, you might want to try to find it.

16 THE COURT: I don't know how to
17 find them.

18 MR. DUFF: That's Dan Wightman's
19 job. He's got transcripts. He can find them.

20 THE COURT: Bring them in. You
21 want to talk about this now?

22 MR. DUFF: And the amounts, too,
23 Judge. The amount of money involved 300 to 5,000 to 35
24 hundred. It moves all over.

25 THE COURT: Okay. You want to

1 talk about this now, 106?

2 MR. DUFF: Mr. Wightman, Your
3 Honor.

4 MR. WIGHTMAN: Yes, Your Honor.
5 Again, Your Honor, Hartman testified about conversation he
6 had with Dan Smith.

7 THE COURT: Absolutely.

8 MR. WIGHTMAN: They were taped
9 conversations, he admitted that.

10 THE COURT: He said they were
11 taped.

12 MR. WIGHTMAN: He talked about the
13 substance of those conversations. He said that Dan Smith
14 wanted him to go to his attorney and state that what he
15 said before was a lie and what he said about Terry was a
16 lie, we are saying the entire conversation that was taped
17 between Hartman and Danny Smith should be played at this
18 time.

19 THE COURT: Why played?

20 MR. WIGHTMAN: Why played?

21 THE COURT: Why played?

22 MR. WIGHTMAN: Why played? In order
23 to put in context those summaries that he made of those
24 taped statements so that the jury actually understands how
25 they were said and what context they were said. That tape

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

1 should be played, and that's Rule 106 we think comes in at
2 this stage.

3 THE COURT: I don't think 106
4 says that, frankly.

5 MR. WIGHTMAN: Certainly, Your
6 Honor, the intent of 106 did not allow a small portion of a
7 statement to come in when the entire statement should be
8 played to understand the whole thing.

9 THE COURT: First of all, first
10 of all, 106 talks about the introduction, okay. When a
11 written or recorded statement or part thereof is introduced
12 by a party, an adverse party may require him at that time
13 to introduce any other part or any other writing or
14 recorded statement which is otherwise admissible and which
15 ought, in fairness, to be considered contemporaneously with
16 it. Okay, I see no introduction. There's no question,
17 there's mention to it.

18 MR. WIGHTMAN: Your Honor, our
19 position would be by him testifying as to the content. The
20 content.

21 THE COURT: That introduces it.
22 There's nothing in evidence yet.

23 MR. WIGHTMAN: His testimony, Your
24 Honor.

25 THE COURT: You may cross-examine

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

1 him on it.

2 MR. WIGHTMAN: I believe this rule
3 allows us to hear this entire tape to get the entire
4 conversation and place what he said was said into context,
5 not to challenge it. Judge, I'm sure other courts are well
6 aware of the commentary as well the staff note.

7 THE COURT: No, I don't have the
8 same book you have. I have the plain rule book.

9 MR. DUFF: Give him the book.

10 THE COURT: I don't need it. I
11 don't need it.

12 MR. WIGHTMAN: Judge, it says the
13 rule is rule of timing, which nees --

14 THE COURT: I know it's a --

15 MR. WIGHTMAN: -- a place. The
16 writing or recording introduced, proper perspective is
17 through cross-examination. And it codifies a common law
18 tradition of requiring an entire statement to come out if
19 requested by the other party. That's really what we are
20 asking to, to get the entire statement out, the whole
21 thing.

22 THE COURT: Mr. Rosenbaum.

23 MR. ROSENBAUM: Your Honor, as we've
24 said before, we intend to introduce these tapes. They will
25 be there for the jury. I'm not playing, like, eight hours

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

1 worth of tapes in my case in chief. I don't think they
2 have a right do that. He commented on what the tapes were
3 about. I don't see it as a summary's rule thousand and six.

4 THE COURT: Okay, I don't see it
5 either.

6 MR. ROSENBAUM: That rule does not
7 say what they say it does.

8 MR. WIGHTMAN: It just, Your Honor,
9 what, you know, they're avoiding the rule by not playing a
10 portion of the tape.

11 MR. ROSENBAUM: I haven't played any
12 of the tape.

13 MR. WIGHTMAN: By coming up here and
14 saying this is it what the statement was and introducing
15 the entire tape the jury should be able to hear the tape of
16 the proceeding, the entire tape to put that statement into
17 context.

18 THE COURT: I'm not going to
19 order them in at this point, okay. You may have your
20 exceptions. Period. I'm not going to sit here and listen
21 to eight hours --

22 MR. DUFF: It's not eight hours.

23 THE COURT: What is it? How long
24 is it?

25 MR. WIGHTMAN: I've listened to

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

1 them. Two hours.

2 THE COURT: Okay. I'm not going
3 put two hours of tape in here.

4 MR. ROSENBAUM: It's a lot more than
5 two hours, Your Honor.

6 THE COURT: I'm not going to put
7 two hours of tape in here when they can listen to that in
8 their jury room. I'm not going to put two hours of tape
9 into the record here.

10 MR. WIGHTMAN: Your Honor, I would
11 also like to make, as part of our objection to the Court's
12 ruling, that we think especially was a summary then of what
13 those tapes are and then therefore under one thousands and
14 six we are entitled. We request it.

15 THE COURT: One thousands and six?

16 MR. WIGHTMAN: The other rule, Your
17 Honor, the summary rule, to have the entire tape played.

18 THE COURT: Well, Court's denying
19 it at this point. And certainly, you have your exceptions.
20 I'm not going to sit here and put two hours worth of tape
21 on this thing. No way. If it is two hours. Probably more
22 than that.

23 MR. WIGHTMAN: Well, Your Honor, we
24 think that in order for the jury to really understand what
25 was the context of the conversation, they have to hear the

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

- 1 A. Yes.
- 2 Q. December 7th?
- 3 A. Yes, somewhere around there.
- 4 Q. Where was that one done at?
- 5 A. Same place.
- 6 Q. Police station?
- 7 A. Yes.
- 8 Q. Now, the day before that you had a warrant out for
9 your arrest, right?
- 10 A. Yes.
- 11 Q. December 6th?
- 12 A. I think. Something like that.
- 13 Q. For violating your probation?
- 14 A. Yes.
- 15 Q. So December 6th that warrant is lifted; is that
16 right?
- 17 A. Yes.
- 18 Q. And Detective Leiby played a role in that, right?
- 19 A. He got me bond so I wouldn't have to go to jail.
- 20 Q. He got you what is known as a personal bond where you
21 sign your name, right?
- 22 A. Yes.
- 23 Q. That happened December 6th, 1995; is that right?
- 24 A. Yes.
- 25 Q. And before you met with him on 1-5-95 and you gave a

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

1 statement, you met with him previous to that, some other
2 date, is that right, and you denied totally knowing
3 anything about this case?

4 A. Yes, on the first one.

5 Q. All right. Now, the first one that we've listened to
6 is a 1-5-95 statement, all right?

7 A. Yes.

8 Q. Now, in there the two of you make reference to a
9 previous time that the two of you met and you denied total
10 knowledge of this incident?

11 A. Yes.

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

13 A. Yes.

14 Q. Can you tell me approximately when, now referencing
15 from 1-5 of '95, January 5th of '95, and you guys talk
16 about an earlier meeting where you totally denied any
17 knowledge?

18 A. Yes.

19 Q. What month and year would that meeting have been,
20 just approximate?

21 A. When I first gave my statement?

22 Q. The first time you met with Detective Leiby and you
23 denied any knowledge of this case at all.

24 A. That was the first of '95. January 5th, '95.

25 Q. Well, no. Let me tell you this, Mr. Hartman, in that

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

1 1-5-95 taped statement, you and Detective Leiby talk about,
2 well, he says to you that you met with him previous to
3 that, to 1-5-95. Do you understand? I don't want to lose
4 you.

5 A. All right.

6 Q. If I speak too fast, slow me down and I'll try to
7 repeat it. You meet with him January 5th, '95, he said you
8 met before and you totally denied knowledge of this
9 incident. I'm just asking you when that would have been.
10 Do you understand what I'm saying? Now, it had to be
11 before 1-5-95.

12 A. He called me and then on the first of -- January 5th
13 of '95, that was the first time I ever met with him.

14 Q. You had talked to him before on the phone?

15 A. He called me at the garage.

16 Q. And you told him you knew nothing about this case?

17 A. Yes.

18 Q. All right. That's my question then. When would that
19 have been, month and year, approximately?

20 A. It was '94.

21 Q. All right. Month? Fall? Winter?

22 A. When I met with Detective Leiby?

23 Q. No, no, no. When he called you. You say he called
24 you at the county garage and you denied total knowledge of
25 this case. I'm trying got the month and year that that

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

1 occurred, approximately.

2 A. Probably November or December.

3 Q. November, December '94?

4 A. Yes.

5 Q. You say you had no knowledge of this case, right?

6 A. That's what I said.

7 Q. And that's a phone call. You didn't meet with him
8 face-to-face?

9 A. No, not at the time.

10 Q. All right. So that's the first statement you gave to
11 him over the phone, right?

12 A. Yes.

13 Q. All right. And then, as I understand it, you had,
14 you've been doing a lot of running from your probation
15 officer, right?

16 A. Yes.

17 Q. You told Detective Leiby that, that "I've been
18 running from my probation officer," right?

19 A. He knew I was running.

20 Q. Yeah. And as I understand it, you did not have a
21 warrant for your arrest on January 5th of '95, when you met
22 with him?

23 A. No, because I was working then and I couldn't have.

24 Q. Do you recall Detective Leiby telling you during that
25 taped statement of '95, 1-5-95 that if you weren't being,

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

1 "If you weren't cooperating with me, I'd put you back over
2 in your probation officer's office;" do you recall him
3 telling you that?

4 A. No.

5 Q. He didn't take care of anything with your probation
6 officer on that date?

7 A. No.

8 Q. Are you sure of that?

9 A. Yeah. Well, if that's the day I went to court.

10 Q. No, that's not the date. This is January of '95.

11 A. No, he didn't.

12 Q. And if the court records indicate that there is a
13 warrant for your arrest during that time, those court
14 records would be wrong?

15 A. No, they wouldn't be. I would probably be wrong. I
16 couldn't remember dates.

17 Q. All right. So you might have had a warrant for your
18 arrest during that time?

19 A. I might have.

20 Q. All right. Now, at that time, you give him a
21 statement; is that right?

22 A. The '95, January?

23 Q. Yeah, January 5th, '95.

24 A. Yes.

25 Q. First taped statement. Now, in that statement, you

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

1 say that Terry Hopkins did all the talking for Danny,
2 right?

3 A. Yeah, I did say that.

4 Q. That you never talked to Danny directly, that Danny
5 stayed out in the car, correct?

6 A. Yes.

7 Q. Talked to Terry, Terry Hopkins. Why don't you tell
8 the jury how Terry Hopkins is related to you?

9 A. He's just a good friend. He had been living with us
10 since he was about 15.

11 Q. He got out of a group home?

12 A. Yes.

13 Q. And he moved in with you in your home, right?

14 A. Yes.

15 Q. He's more than a good friend, he's more like family,
16 right?

17 A. Yes.

18 Q. He's got another relation to you, right?

19 A. His sister --

20 Q. Your brother got his sister pregnant, right?

21 A. Yes.

22 Q. Sharon Hopkins, right?

23 A. Yes.

24 Q. He's very, he's family to you?

25 A. Yes.

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

1 Q. Now, on your 1-5-95 statement, your statement at that
2 time was you spoke only to Terry, right?

3 A. Yeah.

4 Q. Not to Danny?

5 A. Yes.

6 Q. And this is while you're working at the county garage
7 and you're doing well, right?

8 A. Uh-huh.

9 Q. And that Detective Leiby -- and there was no mention
10 you said to Detective Leiby in the statement that there was
11 not mention of killing anyone; Terry Hopkins just wanted
12 you to beat somebody up, right?

13 A. For Danny, yes.

14 Q. Just answer my question. That Terry just wanted you
15 to beat somebody up?

16 A. Yeah.

17 Q. No mention of killing. And that the price for this
18 was \$500, right?

19 A. Yes.

20 Q. And you say you were never, you told them in that
21 statement that you were never approached about killing
22 anyone, just to beat someone up, right?

23 A. Yes.

24 Q. All right. And that no names were given to you about
25 who the alleged person you were going to beat up was,

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

1 right?

2 A. Right.

3 Q. No name?

4 A. Right.

5 Q. You had no idea who it was?

6 A. Right. Yes.

7 Q. And as I said, and you've agreed already that you
8 never personally talked to Danny at this point; is what you
9 told him?

10 A. Right.

11 Q. All right. And then it came up, did it not, that,
12 well, Detective Leiby told you he had to talked to Terry
13 Hopkins, right, not your brother-in-law, your close family
14 member, your very close friend let's call him?

15 A. I don't remember him telling me he had talked to
16 Terry.

17 Q. Do you remember telling him, Detective Leiby, that
18 Terry Hopkins just happened to be awaiting sentence to a
19 felony charge at the county; do you remember him telling
20 you that?

21 A. Yeah.

22 Q. That he was awaiting PSI?

23 A. Right.

24 Q. Why don't you tell the jury what awaiting PSI means?

25 A. That's pre-sentence investigation.

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

- 1 Q. You've been through that, haven't you?
- 2 A. Yes.
- 3 Q. Tell us what that means.
- 4 A. You sit and wait to see if you're getting probation
- 5 or not.
- 6 Q. You don't know what's going to happen to you?
- 7 A. Yes.
- 8 Q. You're either going to prison or you're going to get
- 9 probation?
- 10 A. Yes.
- 11 Q. You told them that Terry, he was in the time frame
- 12 right then, right?
- 13 A. Yeah, he was in jail.
- 14 Q. On 1-5 of '95?
- 15 A. He could have been.
- 16 Q. Yeah. Did Detective Leiby tell you at that time on
- 17 that tape that he had the ability to make it uncomfortable
- 18 for Mr. Terry Hopkins because he's awaiting PSI, he could
- 19 talk to people at the courthouse and make it uncomfortable
- 20 for Mr. Hopkins? Did he tell you that?
- 21 A. That's that statement.
- 22 Q. Did he tell you that?
- 23 A. I wrote on the statement.
- 24 Q. I didn't get to read the statement. I listened to
- 25 the tape. Did you get a chance to read a copy of that?

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

1 A. I just seen a, it was a statement that I had.

2 Q. Do you remember him telling you that?

3 A. Something like that.

4 Q. All right. And he told you he was going to talk to
5 Terry Hopkins, and if necessary, make it uncomfortable for
6 him, right?

7 A. It was something like that.

8 Q. Because he was in the crucial period of awaiting PSI,
9 right?

10 Now, you further told him that this incident with
11 Terry Hopkins, where he asked you to beat somebody up, that
12 he bugged you for about two days, two straight days, came
13 to you talking about beating him up, and that was last you
14 heard about it until you overheard Terry on the phone; is
15 that correct?

16 A. Yeah, I could have said that.

17 Q. All right, two straight days. And then you said
18 later on that tape that Terry, you overheard Terry Hopkins
19 talking to Danny on the phone; is that right?

20 A. Yes.

21 Q. Because Terry was living with you?

22 A. Yes.

23 Q. All right. And at this time you said that that's how
24 you found out someone else took care of this other than
25 you, that you heard it through Terry, right?

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

1 A. I heard it was taken care of on the phone when he
2 was talking.

3 Q. When Terry and Danny were talking, right, you
4 overheard it?

5 A. Uh-huh.

6 Q. And that you never told Detective Leiby in that
7 statement that Danny told you face-to-face that he had this
8 taken care of by someone else, you never told him that?

9 A. I have told him that later on down the line.

10 Q. No, the 1-5-95 statement, you never told him?

11 A. No, not that in that.

12 Q. You told him some other story. You told him you
13 overheard Terry and Danny talking on the phone business,
14 right?

15 A. Yes.

16 Q. Is that right?

17 A. Yes.

18 Q. Okay. And Detective Leiby told you after you gave
19 this statement that after the statement I've just outlined
20 there, 1-5-95, you had a lot of things going for you,
21 right, you had a job at the county garage; is that right?

22 A. Yes.

23 MR. ROSENBAUM: Could we approach the
24 bench?

25 THE COURT: Sure.

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

3 MR. ROSENBAUM: Again, I believe --

4 THE COURT: You're using the --

5 MR. ROSENBAUM: The entire statement
6 against him that's not the purpose.

7 MR. DUFF: I'm not using it to
8 impeach. We talked about it before lunch.

9 MR. ROSENBAUM: It was gone over
10 twice.

11 MR. DUFF: No, I haven't.
12 Judge, I'm allowed to ask him about anything that's really
13 haven't, no matter how I come about laws I -- can I finish?

14 MR. ROSENBAUM: That's not true.

15 MR. DUFF: Can I continue? I'm
16 not allowed to do this. I'm stuck with his answers because
17 I've got the information from the tape, Judge. If he
18 denies, I can impeach him with the tapes. That's, the
19 ruling says I'm stuck with the answer.

20 MR. ROSENBAUM: That's not what the
21 rule says.

22 MR. DUFF: You can't foreclose
23 me from having the relevant information, Judge. It's
24 highly relevant. I got it from the other transcript.

25 MR. ROSENBAUM: What other transcript?

1 MR. DUFF: From the previous
2 trials.

3 MR. ROSENBAUM: This stuff wasn't
4 asked in the other trials. That's their fault. Now, if
5 wasn't in the other trials --

6 MR. DUFF: Some of it, I did
7 some of the tapes.

8 THE COURT: All right. All
9 right.

10 MR. DUFF: It's highly relevant,
11 Your Honor. I'll get through it.

12 MR. ROSENBAUM: That's the test of
13 the truth.

14 MR. DUFF: I'm --

15 MR. ROSENBAUM: Would you like to
16 just make your speech to them now?

17 MR. DUFF: No, no, you are.

18 MR. ROSENBAUM: Why don't you just
19 shout it.

20 MR. ROSENBAUM: We know what the
21 purpose of the tape is and he's exceeded it.

22 THE COURT: Not the tape.

23 MR. DUFF: I am erasing it from
24 my mind.

25 THE COURT: For purpose of

1 impeachment and only --

2 MR. DUFF: Judge, I'm impeaching
3 him. I'm stuck with the answers. I'm going to different
4 details.

5 MR. ROSENBAUM: Prior inconsistencies
6 on direct and only direct.

7 MR. DUFF: And the inconsistent
8 statement he's given to the different tapes. I'm allowed
9 to do it. The only way to do it. How else can I do that?

10 THE COURT: He's not inconsistent
11 on the tapes.

12 MR. ROSENBAUM: That's not the test.
13 That's not the test.

14 THE COURT: That's not the point.

15 MR. DUFF: Yes, it is.

16 THE COURT: Ladies and gentlemen,
17 you stay right there. There is a dispute. Bring the
18 defendant into chambers, please. Everybody please stay in
19 place.

20 (The following took place in chambers.)

21 THE COURT: We happen to come
22 from a jurisdiction that permits defense counsel to hear
23 the tape. There are many jurisdictions in this State of
24 Ohio that allows only the judge to hear it and state what
25 the inconsistencies are, okay.

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

1 The rule is for inconsistent statements made while on
2 the stand as opposed to what was made on tape. That's what
3 the rule is, okay. The Ninth District says, fine, let
4 defense counsel listen to the entire tape. And I think
5 it's primarily to check on what the judge says is or is not
6 inconsistent.

7 Now, it does not mean that, and I grant you that
8 there are inconsistent statements on one tape as opposed to
9 on another tape, I grant you that there are, but it's not
10 inconsistent, and one of those tapes has to inconsistent
11 statements that you can question them on. But you cannot
12 pick up additional information to testify.

13 MR. DUFF: Yes, you can, Judge.

14 THE COURT: How about those
15 jurisdictions, Mike, that don't allow you to see the tape?
16 How can you --

17 MR. DUFF: Then their counsel
18 are going to be straight-jacketed. I'm sorry, but we don't
19 live in the district.

20 THE COURT: The purpose of the
21 rule is --

22 MR. DUFF: Judge, 611(B) is
23 cross-examination shall be permitted mandantory shall all
24 relevant matters and matters affecting the credibility.
25 The fact that he's told different stories at different

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

1 times affect his credibility and that's a relevant matter.
2 I don't know how to get around that, Judge. 611(B).

3 THE COURT: Let me see that.

4 MR. DUFF: Uses the word
5 "shall."

6 THE COURT: Cross-examination
7 shall be permitted in all relevant matters and matters
8 affecting credibility. That's the basic, that's the basic
9 permissibility for cross.

10 MR. DUFF: My point is, Judge,
11 if he told A, B and C stories and they're all different
12 from the one he said on the stand, that's relevant and it
13 affects his credibility whether you're going to believe
14 him, if you've told different stories. That's all I'm
15 doing, outlining the different stories he told.

16 MR. ROSENBAUM: That rule has to be
17 read in light of 16(B)(1)(g).

18 THE COURT: 16(B)(1)(g).

19 MR. ROSENBAUM: It's the discovery
20 rule which says that they get these things to determine if
21 it's consistent between the direct and no other.

22 THE COURT: Pull me that, either
23 the green or red.

24 MR. ROSENBAUM: The inconsistency is
25 through something he particularly no longer has knowledge

1 of. And the answer to his question in court is he is
2 required to forget it exists.

3 MR. DUFF: No, I'm stuck with
4 the answer.

5 MR. ROSENBAUM: No, the question
6 isn't even to be put. I can ask any question, Judge, that
7 is relevant and has a good faith basis, just pull things
8 out of the area.

9 THE COURT: Like?

10 MR. ROSENBAUM: You are not, didn't
11 you say on certain time and certain place on a tape which
12 you are --

13 THE COURT: But you see --

14 MR. ROSENBAUM: Which you should not
15 be --

16 THE COURT: You can ask that
17 question so properly by not referring to the tape.

18 MR. ROSENBAUM: But it does -- he
19 wouldn't know.

20 MR. DUFF: I won't refer to the
21 tape. I don't refer to the tape.

22 MR. ROSENBAUM: That's great. Your
23 Honor, you're permitting him to in corrections what I --

24 THE COURT: The subject to
25 disclosure.

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

1 MR. DUFF: Mr. Rosenbaum, he's
2 told a lot of different stories and none of them match, and
3 they are inconsistent.

4 MR. ROSENBAUM: No.

5 MR. DUFF: Okay, so --

6 THE COURT: Upon completion of a
7 witness' direct examination at trial, the Court, by motion
8 of the defendant, shall conduct an in-camera inspection of
9 the witness' written or recorded statement with the defense
10 attorney and prosecuting attorney present and
11 participating, to determine the existence of inconsistency,
12 if any, between the testimony of such witness and the prior
13 statement, and the prior statement.

14 MR. DUFF: Statements. There
15 are three of them, Judge, in this case, statements.

16 THE COURT: If the Court
17 determines that inconsistencies exist, the statement shall
18 be given to the different attorneys for use in
19 cross-examination of the witness as to inconsistencies.

20 MR. DUFF: Right.

21 THE COURT: If the Court
22 determines that inconsistencies do not exist, the
23 statements shall not be given to the defense attorney and
24 shall not be permitted to cross-examine or comment thereon.
25 Whenever the defense attorney is not given the entire

1 statement, shall preserve from the record of the Court to
2 be made available to the appellate court in the event of
3 appeal.

4 MR. DUFF: Judge, you determine
5 if the statements in and of themselves are inconsistent.

6 THE COURT: If the Court
7 determines inconsistencies exist, the statements shall be
8 given to the defense attorney for use in cross-examination
9 of the witness as to the inconsistencies.

10 MR. ROSENBAUM: And he's not doing
11 that.

12 THE COURT: As to --

13 MR. ROSENBAUM: He's not.

14 THE COURT: The next thing says,
15 "If the Court determines that inconsistencies do not exist,
16 the statements shall not be given to the defense attorney
17 and he shall not be permitted to cross-examine or comment
18 thereon. "

19 MR. DUFF: Well, how could you
20 if you don't know about them?

21 MR. ROSENBAUM: I would like to point
22 out he's not doing what he claims to do. He is not
23 confronting this witness with inconsistencies between
24 direct or even among the tapes. What he's arguing is
25 didn't Detective Leiby tell you this on the certain time.

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

1 Didn't Detective Leiby do that on a certain time. He's not
2 even remotely attempting to establish that this witness has
3 inconsistent statements, regardless of where he is trying
4 to continue his assault on Detective Leiby through tapes
5 improperly --

6 THE COURT: As liberally as I can
7 put, possibly put, construe this rule on the defense, I
8 can't disagree with what Mr. Rosenbaum is saying on that.

9 MR. DUFF: Well, Judge, you
10 yourself have said on this record these statements are
11 inconsistent amongst themselves.

12 THE COURT: Amongst themselves,
13 correct. And you can certainly, on any one of those three
14 tapes, you can certainly cross-examine on any
15 inconsistencies that appear.

16 MR. ROSENBAUM: Well, perhaps
17 attorney Duff would like to state for the record how the
18 statements are inconsistent amongst themselves regarding
19 what Detective Leiby said.

20 THE COURT: Oh, all I've said, I
21 didn't say anything about Detective Leiby.

22 MR. ROSENBAUM: No, that's what I'm
23 saying. He's doing the same thing here he tried to do --

24 MR. DUFF: Judge, I'm putting
25 him on trial.

1 THE COURT: Of course you are.

2 MR. DUFF: That's my job.

3 THE COURT: The answer to my
4 question is, how is his statement -- because Carl Hartman's
5 statement's inconsistent, so what does that have to do with
6 what Detective Leiby has ever done with them?

7 MR. ROSENBAUM: And they're not.

8 MR. DUFF: Judge, I read the
9 prior transcripts of Mr. Cleary and Mr. Grunda.

10 THE COURT: What was out butt

11 MR. DUFF: He put on the
12 probation officer and he said he was going to handle that.

13 MR. ROSENBAUM: How is that --

14 THE COURT: How --

15 MR. DUFF: It's a relevant
16 matter. I'm not permitted by 611(B).

17 MR. ROSENBAUM: It's not relevant.

18 MR. DUFF: It's relevant.

19 MR. ROSENBAUM: You're trying --

20 MR. DUFF: Judge, if he goes to
21 Mr. Risner, his probation officer, does that meet 611(B)?
22 To hell with 16.

23 MR. ROSENBAUM: You can ask Hartman
24 what consideration Detective Leiby --

25 THE COURT: Ask him if he got any

1 consideration.

2 MR. ROSENBAUM: He's cross-examined
3 him with, if the Court will recall, on what Detective Leiby
4 promised Terry Hopkins.

5 MR. DUFF: You can straighten it
6 out on direct.

7 MR. ROSENBAUM: I don't have to
8 straighten out anything on redirect that you improperly
9 did.

10 MR. DUFF: It's relevant and
11 affects credibility.

12 THE COURT: The rule says
13 inconsistencies and that's where we are going to stay with
14 the rule. That's what it says. Don't you think I
15 understand what we are trying here? I know what we are
16 trying.

17 MR. DUFF: I know what we're
18 trying.

19 THE COURT: I know what we are
20 trying here. The rules, the rule, guys, I didn't write it.
21 I enforce, or at least try to. Let's go back.

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

24 THE COURT: Ladies and gentlemen,
25 Court and counsel have had a conference and we have

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

1 obviously disagreed with each other, and you know, which is
2 not an unusual situation in cases of this nature. The
3 Court has made its ruling and we are now ready to proceed.

4 MR. DUFF: Thank you, Your
5 Honor.

6 BY MR. DUFF:

7 Q. So we were, I think when we left off, we were going
8 through your details of your statement of 1-5-95; is that
9 correct?

10 A. Yes.

11 Q. Now, was there discussion, do you recall Detective
12 Leiby asking you about a red BMW?

13 A. Yes.

14 MR. ROSENBAUM: Objection.

15 Q. Did you tell --

16 THE COURT: Okay.

17 Q. Did you tell Detective Leiby --

18 THE COURT: Sustained. But go
19 ahead. Now, sustained again, you know.

20 MR. DUFF: I'll do my best.

21 THE COURT: I understand,

22 Mr. Duff and I understand it's difficult.

23 Q. Did you mention anything to him about a red BMW?

24 MR. ROSENBAUM: Objection.

25 THE COURT: Again, it's not

1 consistent.

2 MR. DUFF: Yes, with the other
3 statements, Your Honor.

4 THE COURT: Which one?

5 MR. DUFF: Last one. The last
6 statement, 2-8-96.

7 THE COURT: Come here.

8 (Conference at the bench between the Court
9 and counsel, as follows:)

10 MR. DUFF: Because he said
11 that he told him about a car, the 2-8-96 he says he was
12 promised a car, and the first one he said there's no
13 mention of a car.

14 MR. ROSENBAUM: It was the
15 inconsistent with what he said in court?

16 MR. DUFF: In consistent between
17 the statement. It doesn't have to be in court.

18 MR. ROSENBAUM: That's the whole
19 point.

20 THE COURT: It's from his
21 testimony.

22 MR. DUFF: It's inconsistent.
23 He didn't mention a car.

24 THE COURT: If he doesn't mention
25 it, it's not inconsistent.

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

1 MR. DUFF: He can leave it out
2 and I can't get into that?

3 THE COURT: It's not
4 inconsistent.

5 MR. DUFF: It's a relevant
6 matter.

7 THE COURT: Go ahead.

8 MR. DUFF: It's in the
9 transcript, Your Honor, the previous trial.

10 (Thereupon, the following took place
11 within the hearing of the jury.)

12 BY MR. DUFF:

13 Q. Now, you have made no mention, you have made no
14 mention in this trial, in your direct examination about any
15 car being offered to you, have you?

16 A. No.

17 Q. All right. But in fact, you've testified in previous
18 cases in this matter, right?

19 A. Yes.

20 Q. Page 63. Is that right?

21 A. Yes.

22 Q. 53. You testified in the case involving Stanley
23 Jaloweic; is that right?

24 A. Yes.

25 Q. In that case you said that he offered to buy you a

1 BMW and give you 5,000 in cash; is that right?

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

3 Q. That was your testimony in that case, right?

4 A. Yes.

5 Q. When was that trial held?

6 A. About two months ago, a month-and-a-half ago.

7 Q. Would you agree about March 14th?

8 THE COURT: For the record,
9 that's close enough, I think, Mr. Duff, at this point. I
10 don't know whether this man would remember what date that
11 was.

12 A. I do not.

13 Q. Red BMW and 5,000 in cash, right?

14 A. Yes.

15 Q. All right. The first time you told Detective Leiby
16 about the red BMW was when you gave a statement, and you
17 gave another statement February 8th of '96; is that right?

18 A. Wasn't it December?

19 MR. ROSENBAUM: Objection.

20 THE COURT: Did you, did you ever
21 make mention --

22 MR. ROSENBAUM: I object for other
23 reasons.

24 THE COURT: Sustained. Sustained

25 Q. In February, on February 8th, '96, did you give a

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

1 taped statement to Detective Leiby?

2 MR. ROSENBAUM: Objection.

3 THE COURT: Did you get a taped
4 statement?

5 MR. DUFF: February 8th, '96,
6 did you give --

7 THE COURT: I'll overrule. He
8 may answer that one if he remembers.

9 Q. Did you give a taped statement?

10 A. I gave two taped statements, but I don't know which
11 months. You know, I don't remember.

12 Q. We are going to go through them. Let's try to do
13 them in order so they could be understood.

14 We are talking about January 5th, the next time you
15 spoke to him on tape was 12-7-95; is that right?

16 A. Yes.

17 Q. Now, did you, that's the date that the day before
18 that you testified Detective Leiby went to the probation
19 department and got you a personal bond, right?

20 A. Yes.

21 Q. Because you were going to go to jail for a probation
22 violation?

23 A. Yes.

24 Q. And you had time hanging over your head, did you not,
25 sir?

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

1 A. Yes.

2 Q. How much?

3 A. About 18 months.

4 Q. Eighteen months. And you didn't want to go back to
5 prison, right?

6 A. No, I didn't.

7 Q. Now, on this statement of 12-7-95, all right, you
8 said Dan did the talking to you, right?

9 A. Yeah.

10 Q. And that he asked you to, at this point you said that
11 he wanted you to take care of Ron. You knew the person's
12 name, right?

13 A. He said his name, yes.

14 Q. According to this version, right?

15 MR. ROSENBAUM: Objection.

16 THE COURT: According to that
17 tape.

18 MR. ROSENBAUM: We are doing the same
19 thing again, Your Honor.

20 MR. DUFF: No, we are not,
21 Judge.

22 THE COURT: No, please approach
23 at this point.

24 (Conference at the bench between the Court
25 and counsel, as follows:)

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

1 THE COURT: In one of those
2 tapes, there is an indication that he didn't know what it
3 was he testified.

4 MR. ROSENBAUM: Is that inconsistent
5 with anything that happened at trial?

6 THE COURT: But he said, yeah, he
7 originally mentioned Ron's name. He did mention Ron's name
8 in another tape. He said he didn't know who the guy was.
9 Period.

10 MR. ROSENBAUM: All right.

11 THE COURT: Proceed.

12 (Thereupon, the following took place
13 within the hearing of the jury.)

14 BY MR. DUFF:

15 Q. So in the this statement you say Dan mentioned his
16 name to you, right?

17 A. Yes.

18 Q. All right. And you also mentioned that, didn't you,
19 from the 1-5-95 statement, you mention that now the subject
20 of poison comes up, right?

21 A. Yes.

22 Q. All right. And now, the price for this, according to
23 your statement 12-7-95, your price was 500 plus a car; is
24 that right?

25 A. To do what?

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

1 Q. To take care of this thing allegedly that you're
2 saying that Danny wanted you to do?

3 A. You're talking about to get rid of him was \$5,000 and
4 a car.

5 Q. Five thousands and a car?

6 A. Yes.

7 Q. That's not what you said on 12-7-95, is it, sir? Do
8 you remember telling him, Detective Leiby, that the price
9 was five hundred and a car, or about 43 hundred total?

10 A. Yeah.

11 Q. All right. And the car was a Mercedes Benz; is that
12 right?

13 A. That's what I thought it was.

14 Q. You thought it was a Mercedes Benz?

15 A. Yes.

16 Q. Not a red BMW, right?

17 A. Right, at the time.

18 Q. Yeah. Now, in the statement you told Detective
19 Leiby, I think you testified on direct that it was in
20 Sheffield, somewhere in Sheffield you ran into Danny.

21 A. He came to my sister's house in Sheffield.

22 Q. In Sheffield Village?

23 A. Sheffield Lake.

24 Q. Sheffield Lake?

25 A. On Colorado Avenue.

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

1 Q. All right. And at that time, according to your
2 testimony on direct examination, he told you this was
3 already taken care of?

4 A. Yes.

5 Q. All right. So you found out about it in Sheffield,
6 right? Is that right?

7 A. That's what he said.

8 Q. Yeah. But not, not like you had said earlier on the
9 1-5-95 statement, wherein you said you found out it was
10 taken care of by overhearing Terry on the phone, right?

11 A. Well, yeah. Yes.

12 Q. So as I understand it, you first talked to Detective
13 Leiby on the phone sometime November-December '94, you say
14 you had no knowledge of this case, right?

15 A. Yes.

16 Q. And then it went on from there; is that right?

17 A. Yes.

18 Q. And the stories change as laid out there on my notes;
19 is that right?

20 A. Yes.

21 Q. So you'd agree you've told several different stories
22 in this case to Detective Leiby, have you not, sir?

23 A. At least two.

24 Q. You've told more than that. You told one on 12-7 and
25 1-5, right, that's two. You told another one

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

1 November-December '94, right?

2 A. I could have. I remember two.

3 Q. Do you remember telling him you had nothing to do
4 with it?

5 A. Yeah.

6 Q. You knew nothing about it?

7 A. Yes.

8 Q. That's another story, right?

9 A. Yes.

10 Q. That's three. Now, were you told by Detective Leiby
11 that he was going to talk to your probation officer for
12 you?

13 A. He told me he would get me a bond.

14 Q. And he'd talk to your probation officer if you
15 cooperated?

16 A. Just told me he would get a personal bond.

17 Q. There was no further discussion about him talking to
18 Mr. Risner?

19 A. No.

20 Q. Who's Mr. Risner?

21 A. My probation officer.

22 Q. You testified in the case involving Stan, right?

23 A. Yes.

24 Q. And you testified in there that you thought, did you
25 testify in that case that you thought Danny, whatever he

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1 was talking to you, was just blowing smoke, was just
2 kidding?

3 A. Yeah.

4 Q. And that was in March of this year, right? You just
5 thought it was all just a joke, right?

6 A. I didn't think he was serious.

7 Q. Right. Now, you got all these people, according to
8 your latest version here, you got this person asking you to
9 kill someone. Did you ever go to the police about that?

10 A. No.

11 Q. You never thought of doing anything like that?

12 A. No.

13 Q. And you never really disclosed this until it became
14 advantageous to you, sir, right, until you could get
15 something out of it, right?

16 A. Not really, but yeah, you could say that.

17 Q. Well, would you agree that you got something out of
18 this story?

19 A. Yeah, I got a bond. I didn't go to jail.

20 Q. And you haven't been violated on your probation,
21 right?

22 A. Right.

23 Q. You're still on probation, right?

24 A. Yes.

25 Q. That's still pending, right, that whole matter?

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

1 A. Yes.

2 Q. Handing what has been previously marked and the
3 previous case as Defendant's Exhibit A, do you recognize
4 that document, sir?

5 A. Yes.

6 Q. What is it?

7 A. It's my file.

8 Q. It's your file. It's the case you have pending over
9 you for aggravated assault?

10 A. Yes.

11 Q. All right. It that statement of -- so it would be a
12 fair statement that the first time you mention anything
13 about a killing to Detective Leiby, a killing of anyone,
14 was after Mr. Detective Leiby went and got your bond
15 personal and took care of you with the probation
16 department, right, that's the first time you mention to him
17 about a killing; is that right?

18 A. Yeah.

19 Q. So 12-7-95. Just a minute, Your Honor.

20 Did the -- you quoted another price to Detective
21 Leiby, did you not, for this alleged deal?

22 A. What was it?

23 MR. ROSENBAUM: Objection.

24 Q. February 8th.

25 THE COURT: Wait a minute.

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

1 MR. ROSENBAUM: Objection to the
2 question.
3 MR. DUFF: Did you ever give --
4 MR. ROSENBAUM: Objection.
5 THE COURT: I'm thinking on this
6 one.
7 MR. DUFF: I'm going through
8 this other one, Judge. It's just amount quoted.
9 THE COURT: No, I think, I think
10 at this point this is what he testified to.
11 BY MR. DUFF:
12 Q. Well, you testified on direct examination the price
13 was what?
14 A. A car and \$5,000.
15 Q. A car and \$5,000?
16 A. Yes.
17 Q. So that makes a total value, what, about 10 grand?
18 A. You could say, yeah. Eight, somewhere around there.
19 Six to eight.
20 Q. So now it's 4-22-96 and the price goes to 10,000; is
21 that right?
22 THE COURT: Goes a car and 5,000.
23 Q. Car plus 5,000. Approximately 10,000, right? Is
24 that right?
25 A. I don't know.

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

1 Q. Well, is that what you're testifying on direct
2 examination?

3 A. I don't know how much the car costs exactly. 28
4 hundred.

5 Q. Your understanding was it was about 5,000, right?

6 A. The car?

7 Q. Yeah.

8 A. No.

9 Q. Did you ever tell Detective Leiby that the going rate
10 for something like this was 10,000, and you were going to
11 get a car and 5,000 cash?

12 A. I told him the going rate was that.

13 Q. You told him that's what you're going to do it for, a
14 car plus five?

15 A. I didn't tell him that's what I was going to do it
16 for. I told him that's what was offered to me.

17 Q. That's all I'm asking, offered to you. And that was
18 February 8th, '96, right?

19 A. Yeah. I don't remember the date.

20 Q. You won't argue with that date, will you?

21 A. No.

22 Q. Going rate 10,000, right?

23 A. Yeah.

24 MR. ROSENBAUM: Your Honor, object.
25 That's not what he said.

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1 MR. DUFF: Yes, it is.

2 THE COURT: No. He said -- go
3 ahead, what did you say?

4 THE WITNESS: That's what he
5 offered me.

6 THE COURT: He offered you that?

7 THE WITNESS: Yes.

8 THE COURT: You said, did you say
9 anything to him about the going rate?

10 THE WITNESS: I told him what the
11 going rate was.

12 BY MR. DUFF:

13 Q. \$10,000, right?

14 A. Yes.

15 Q. That's what he said the going rate was. And you were
16 going to achieve that by 5,000 plus a car, right?

17 A. That don't equal 10,000, the car.

18 Q. That's close, isn't it?

19 A. About 25 hundred off.

20 Q. The price, you would agree in your stories, the price
21 has gone all over the board, has it not? It started from
22 \$500 and it went all the way up to 10,000; isn't that
23 right?

24 A. Yes.

25 MR. DUFF: If I could have just

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1 a minute, Your Honor. All right, that's it, Judge.

2 THE COURT: Mr. Rosenbaum.

3 REDIRECT EXAMINATION OF KARL HARTMAN

4 BY MR. ROSENBAUM:

5 Q. Is it fair to say what Mr. Duff has written here is
6 three different versions?

7 MR. DUFF: Judge, I don't want
8 him writing.

9 Q. A car plus 5,000 is approximately 10.

10 MR. DUFF: Go ahead. I don't
11 mind.

12 Q. With the BMW, 5,000 and 5,000 plus the car and 10 is
13 going pretty much the same.

14 MR. DUFF: Object. He's
15 leading.

16 Q. Is that three different versions?

17 MR. DUFF: Leading.

18 A. Yes, it is.

19 Q. The same thing?

20 A. Basically the same.

21 THE COURT: Are they basically
22 the same?

23 THE WITNESS: Basically the same
24 thing.

25 Q. If he were to try create the impression by writing

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1 the same things different times, different days, that might
2 not be accurate?

3 MR. DUFF: Object. He's not
4 leading?

5 A. No.

6 Q. Let me ask you this.

7 THE COURT: He's not leading.

8 Q. Why didn't you go to Detective Leiby and tell him the
9 truth the first time?

10 A. Because I just got out of prison; I didn't want to
11 get involved. I had a good job and I was just tired of
12 everything.

13 Q. Why didn't you tell him the whole truth when you
14 first did finally speak to him?

15 A. I was scared. I didn't want to get involved.

16 Q. So is it fair to say that you gave maybe three
17 different versions, like I don't know anything, only part
18 of the truth, and then the whole truth?

19 A. Yes, it is.

20 Q. Even though you thought Danny Smith was blowing smoke
21 when he came to you, did you later learn that he was not?

22 MR. DUFF: Object. Leading,
23 Your Honor.

24 THE COURT: That is leading.

25 A. Yes, I did.

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