

The State of Ohio,)
County of Lorain.) SS:

IN THE COURT OF COMMON PLEAS

The State of Ohio,)

Plaintiff)

vs.)

Raymond A. Smith,)

Daniel Dean Smith, and)

Stanley Jalowiec,)

Defendants)

Case Nos. 95CR046838
95CR046839
95CR046840

* * *

Deposition of MICHAEL A. SMITH, a Witness herein,
called by the State of Ohio as upon direct examination,
taken before Jacquelyn Hellwig, Registered Professional
Reporter and a Notary Public within and for the State of
Ohio, at the Lorain County Courthouse, Elyria, Ohio, on
Friday, June 16, 1995, at 2:00 p.m.

* * *

CAMILLO COURT REPORTERS
COMPUTERIZED TRANSCRIPTION

589 W. BROAD STREET

ELYRIA, OHIO 44035

(216) 323-3381

EXHIBIT
54

STATE'S
EXHIBIT

Jalowiec State's Exhibits
Page 185

SUPREME COURT OF OHIO
CASE NO. 98-912
FILE REC'D 6/1/98

SUPREME COURT OF OHIO
CASE NO. 98-1074
DATE REC'D 6/17/98

APPEARANCES:

On behalf of the State of Ohio:

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

On behalf of the Defendant, Raymond Smith:

Thomas J. Elwell, Jr., Esq.

On behalf of the Defendant, Daniel Smith:

Michael J. Duff, Esq.
and
Smith & Smith, by
Daniel G. Wightman, Esq.

On behalf of the Defendant, Stanley Jalowiec:

Grunda & Grunda, by
Joseph C. Grunda, Esq.

ALSO PRESENT:

Det. Al Leiby
Det. Duane Whitely
Patty Lane, Probation Officer
Gerald Mielcarek, Investigator
Raymond Smith
Daniel Dean Smith
Stanley Jalowiec

1 MICHAEL A. SMITH,

2 being first duly sworn and/or affirmed,
3 as hereinafter certified, was examined
4 and testified as follows:

5 DIRECT EXAMINATION OF MICHAEL A. SMITH

6 BY MR. ROSENBAUM:

7 Q Will you state your name, please.

8 A Michael A. Smith.

9 Q Now, Michael, there are three people at the trial table
10 that are not in coats and ties at this time. Starting from
11 two seats from my left, do you recognize the first person?

12 A Danny Smith.

13 Q And how do you know Danny Smith?

14 A He's my brother.

15 Q And then there is Mr. Elwell in a suit and tie and
16 another gentleman, do you know the next gentleman?

17 A Raymond Smith.

18 Q And how do you know Raymond Smith?

19 A He's my father.

20 Q And seated to Raymond Smith's left, your right, is
21 another person, do you recognize him?

22 A Stan Jalowiec.

23 Q How do you know Stan Jalowiec?

24 A By association through my brother.

25 Q And how long have you known him?

1 A About a couple years.

2 Q Now, you came forward with some information to
3 Det. Leiby; is that correct?

4 A That's true.

5 Q Will you state for the record why you came forward with
6 this information?

7 A Because I just couldn't -- for the last year and a half,
8 I --

9 MR. DUFF: Object to that, but go ahead.

10 Q Go ahead.

11 A For the last year now, I've been living with this
12 situation that just -- it broke me down mentally. It caused
13 me a lot of mental anguish. I wound up hospitalized two or
14 three times, three or four times after this, and I just
15 couldn't go on with my life. I just had to get this out.

16 Q Did you attempt to hurt yourself as a result of this?

17 A Yes, I did.

18 Q How?

19 A Couple times I tried to hang myself. I was Life
20 Flighted to Metro. I was hospitalized for about two weeks.
21 I had -- I was going to jump off a bridge.

22 Q Can you --

23 A But I was stopped from doing that.

24 Q Will you state for the record what it is that caused
25 this mental anguish.

1 A The murder of Ron Lally.

2 Q And why is it that that bothered you?

3 A Because it just --

4 Q I guess my question is: Were you there?

5 A Yes, I was.

6 Q And did you witness it?

7 A Yes, I did.

8 Q And can you tell for the record when that was?

9 A It was the early part of '94, January.

10 Q And what time in the morning did that murder occur?

11 A The murder itself occurred -- it had to be like 4:30.

12 Q Will you state for the record the events that led up to
13 the death of Ronald Lally.

14 A Around 2:45 a.m., I had met my brother and my father, my
15 brother Danny Smith and my father Raymond Smith, over at
16 Mom's Open Kitchen in Elyria, Ohio, Lorain County. We were
17 sitting there. We ate breakfast. My father made a phone
18 call, and then he came back to the table and he said,
19 "Getting ready to take a ride. Do you want to go?"

20 And I said, "Yeah."

21 At that point we left, me, my brother Danny Smith and my
22 father Raymond Smith. We had left, and my brother dropped us
23 off on Middle Avenue, down by the tracks on the south side of
24 Elyria.

25 Q Now, did your father say where you were going to ride to

1 or why you were taking this ride?

2 A At that time, no.

3 Q But you agreed to go with him?

4 A Yeah. He's my father.

5 Q And you were dropped off with your father by whom?

6 A By my brother Danny Smith.

7 Q And whose car?

8 A My brother Danny Smith's car.

9 Q And he drove?

10 A Yes.

11 Q And where on Middle Avenue did he drop you off?

12 A By the railroad tracks, down past Wood Street.

13 Q And what happened then?

14 A Approximately 20 to 30 minutes later, Stan Jalowiec
15 drove up, him and another party. At that point I got in the
16 back, seated behind the driver, and the gentleman that was in
17 the front seat got in the back seat, and my father was in the
18 front seat. The gentleman that was sitting next to me was
19 Ron Lally.

20 Q Did you know his last name at that time?

21 A No, I didn't.

22 Q Did they introduce you to him by first name?

23 A Yes.

24 Q Then what happened?

25 What time would this be now?

1 A This had to be about 3:30.

2 Q And then what happened?

3 A We drove, and my father Raymond Smith brandished a
4 pistol on Ron Lally and told him, "Don't make no stupid
5 moves," and Ron said he wasn't.

6 So at that point we went to Speedway, where we got some
7 gas, and then we got on the highway.

8 Q Whose car was Stanley Jalowiec driving?

9 A Queen Bee's car.

10 Q And what kind of car is that?

11 A It's a blue drop top LeBaron.

12 Q Do you know Queen Bee's real name?

13 A No, I don't.

14 Q And did you tell already where everyone was seated?

15 A Yeah. I was -- Stan Jalowiec was driving, my father
16 Raymond Smith was in the passenger seat, deceased Ron Lally
17 was on the -- in the back seat behind the passenger, and I
18 was in the back seat behind the driver.

19 Q So you said you got gas at the Speedway?

20 A Correct.

21 Q Which one is that?

22 A On 254, North Ridge.

23 Q And then you were going where?

24 A We got on Rte. 2 and were going -- was going to
25 Cleveland.

1 Q And was there any conversation then between your father
2 and Ron Lally?

3 A My father asked Ron Lally did he set my brother up.

4 Q And your brother being?

5 A Danny Smith.

6 Q And what does that mean?

7 A Did he set him up for some drug buys, was he wired.

8 Q And did Ron admit to this at first?

9 A At first, no, he didn't admit to it.

10 Q What did he say?

11 A He said no, it wasn't him. It wasn't him. He kept
12 saying it wasn't him.

13 Q Did your father accept that explanation?

14 A No.

15 Q What happened?

16 A At that point -- at that point, my father told him about
17 the tape that we had heard and we knew it was him. And,
18 after a couple minutes, Ron admitted to being the one that
19 set him up. And so --

20 Q Did your father say where this tape came from or anybody
21 in the car say where this tape came from?

22 A No, not that I can remember.

23 At this point, Ron was asked, you know, where did he
24 want to go. We were going to give him -- he was going to get
25 some money and get on a Greyhound bus and leave town and not

1 come back.

2 Q Did he agree to do that?

3 A Yes, he did.

4 Q And what happened after that?

5 A Everything was a lot smoother. It was -- you know,
6 everybody was okay. At that point, everybody was getting
7 high. We was all getting high in the car. We was all
8 smoking crack cocaine, and then we -- as we went to
9 Cleveland. At that point we were going to go up into East
10 Cleveland, Ohio to get some more. We were going to get --
11 Ron was told he was getting ready to get some more to take
12 with him on his trip. But, when we got up in East Cleveland
13 on Euclid, there was something going on. There was police
14 and fire trucks and stuff out there, so we didn't go there.
15 We rode around Cleveland for about another 45 minutes,
16 and then we went back towards downtown. We wound up on
17 Woodland at the Woodland Cemetery. And, at this point, Stan
18 stopped the car in the cemetery. My father got out and he
19 made Ron get out.

20 Q How did he make Ron get out?

21 A He pointed the gun at him and told him to get out.

22 Q What part of Ron did he point the gun at?

23 A To his face.

24 Q Did Ron get out?

25 A Yeah, he got out.

1 Q Then what happened?

2 A And then there was some words exchanged, and I couldn't
3 really hear exactly what was being said, and then I heard a
4 gunshot.

5 Q Did you hear anything else?

6 A I heard -- I heard Ron say out loud that, "Oh, you shot
7 me in the head. You shot me in the head."

8 And, at that point, my father had told us to get out the
9 car. And Stan got out the car and he helped my father beat
10 him. And they said something about the gun being jammed.

11 Q Who said that?

12 A My father did.

13 And so he asked -- asked Stan did he have a knife, and
14 Stan said no, but there's some on this key chain. And so he
15 came back to the car and got the keys.

16 And, at that point, after the beating and whatnot, there
17 was nothing else to be heard.

18 Q Can you describe this beating? Could you hear it?

19 A Yeah, you could hear the thumps and the smacks and the
20 stomps. It was --

21 Q What was Ron Lally doing during this?

22 A He was, you know, talking about, "I won't tell nobody.
23 Don't kill me. Please don't kill me." And those were the
24 last words you would hear.

25 Q Then what happened?

1 A Everybody got back in the -- well, they tried to put him
2 in the trunk, but he wouldn't fit. At this point they got
3 back in the car.

4 Q Who tried to put him in the trunk?

5 A My father Raymond and Stan.

6 And at this point everybody got back in the car, and
7 Stan backed the car up over Ron two or three times.

8 Q How did he do that?

9 A He put the car in reverse and just kept backing it up,
10 putting it in reverse, putting it in drive, putting it in
11 reverse, putting it in drive.

12 Q Did Ron Lally's body stop the movement of the car?

13 A Yes, it did.

14 Q Okay. Then what happened?

15 A We pulled out of the cemetery and we got on the highway,
16 and we was arguing about what I didn't do or what I should
17 have done; and my father was taking the gun apart and
18 throwing it away piece by piece two or three miles down the
19 road going down Rte. 2.

20 Q And what happened after that?

21 A They dropped me off at my brother's apartment and then
22 they left.

23 Q Did you ever discuss this then with either --

24 A No.

25 Q -- your brother, Stan Jalowiec --

1 A No.

2 Q -- or your father?

3 A No.

4 MR. ROSENBAUM: I have no questions again.

5 MR. DUFF: Mr. Smith --

6 MR. ROSENBAUM: We'll stipulate for the record
7 that he made a statement and there it is.

8 MR. DUFF: To Elyria Police Department?

9 MR. ROSENBAUM: Right. There's a transcript
10 of it. So now we'll take a break.

11 (Recess had.)

12 CROSS-EXAMINATION OF MICHAEL A. SMITH

13 BY MR. DUFF:

14 Q Michael, I'd like to ask you some questions. My name is
15 Mike Duff. I represent your brother Danny, okay? Do you
16 understand that?

17 A Yes.

18 Q All right. And I've had a chance to go over the
19 statement you gave on April 12th, 1995; and that was done at
20 the Justice Center, Downtown Cleveland?

21 A Yes, it was.

22 Q Okay. That's the only statement you gave to them that
23 was tape-recorded as far as you know?

24 A As far as I know, yes.

25 Q All right. No other handwritten statements were given

1 to them?

2 A No.

3 Q And that's the first time you discussed this incident
4 with the police?

5 A Yes.

6 Q Now, I understand your Probation Officer is present here
7 in Court today?

8 A Yes.

9 Q Can you tell me what you're on probation for?

10 A Robbery.

11 Q All right. What Judge is that?

12 A Glavas. Judge Glavas.

13 Q And what was the sentence you received in that case?

14 A Five-year probation.

15 Q Do you know what was suspended, though? What amount of
16 time of incarceration was suspended?

17 A I don't -- I can't recall. I don't know.

18 Q Well, what year were you convicted of that robbery?

19 A '94.

20 Q What was that a robbery of?

21 A A gift shop in Lorain.

22 Q Margie's Hallmark?

23 A Yeah.

24 Q Now, were you alone when you did that?

25 A Yes, I was.

- 1 MR. ROSENBAUM: Objection.
- 2 Q Danny wasn't involved in that, was he?
- 3 A No, he wasn't.
- 4 Q And any other criminal record on your part? Have you
- 5 been convicted of any other felonies?
- 6 A No.
- 7 Q Just that one?
- 8 A Yes.
- 9 Q All right. How about misdemeanors involving theft or
- 10 anything like that?
- 11 A Not that I can remember, no.
- 12 Q You don't have any misdemeanor theft convictions?
- 13 A No.
- 14 Q Receiving stolen property convictions?
- 15 A Oh, yeah. I do have a receiving stolen property.
- 16 Oh, no. Uh-uh.
- 17 Q What do you have?
- 18 A How was that put? Improper -- unauthorized use of a
- 19 motor vehicle.
- 20 Q All right. What year was that?
- 21 A '93? No. What is this, '95? '93, I think it was.
- 22 '93.
- 23 Q All right. What Judge handled that case, do you know,
- 24 what Court?
- 25 A It was Cuyahoga Falls.

1 Q Were you on probation for that?

2 A No.

3 Q So you're just on probation for the robbery?

4 A Yes.

5 Q Do you have any other criminal offenses in your
6 background?

7 A No.

8 Q Now, do you know when this incident occurred
9 approximately?

10 A It was sometime in January of '94.

11 Q And you recall telling the police in your statement --
12 have you had a chance to review your statement?

13 A No, I haven't.

14 Q Have you ever read the statement you gave?

15 A No, I haven't.

16 Q Have you met the Prosecutor and gone over the testimony
17 here today?

18 A Yes, I have.

19 Q How many times have you met with Mr. Rosenbaum and
20 discussed this?

21 A Just today.

22 Q When was that?

23 A About 11:30.

24 Q 11:30 at his office?

25 A Yes.

1 Q You went up to his office?

2 A Yes, I did.

3 Q And he went through what he was going to expect you to
4 testify to?

5 A He went through for me to say what was the truth.

6 Q He went through what your testimony would be?

7 A What my testimony was as I stated it, yes.

8 Q And you didn't get a chance to review this statement?

9 A No, I didn't.

10 Q Do you remember telling the police back in April when
11 you met with them in Cleveland that your brother Danny, my
12 client Danny, never mentioned at any time to you hurting
13 Ron Lally; do you remember telling them that?

14 A Not -- I don't. I don't remember. Me and my brother
15 never discussed that.

16 Q You never did?

17 A I don't remember. I don't remember saying it.

18 Q Pardon?

19 A I do not remember.

20 Q Saying that?

21 A Right.

22 Q All right. On Page 2 of your statement, "M.S.: And,
23 you know, it was like my" --

24 MR. ROSENBAUM: Well, just show an objection
25 for the record because I don't think that's inconsistent with

1 anything he said on direct.

2 MR. DUFF: He said he didn't remember.

3 Q Does that refresh your recollection? Do you want to
4 take a minute and read that?

5 Michael, what I'm asking you -- make it real simple,
6 Michael.

7 A Okay.

8 Q Did you state in here, "My brother never mentioned doing
9 anything wrong, physically, whatever"?

10 He never mentioned anything like that?

11 A No, he never mentioned that.

12 Q And that's what you told the police, correct?

13 A Correct.

14 Q All right. And, in fact, your statement to the police
15 was that you couldn't believe that your brother had anything
16 to do with this, your brother Danny?

17 A Yes, that's the statement I made.

18 Q Pardon?

19 A Yes.

20 Q And that's the truth, correct?

21 A Correct. That's the truth.

22 Q And you didn't participate in any conspiracy to kill
23 Mr. Lally, did you?

24 A No, I didn't.

25 Q And, as far as you know, your brother did not, your

1 brother Danny did not?

2 A As far as I know.

3 Q As far as you know, he did not?

4 A As far as I know.

5 Q Now, the key chain that you spoke about, whose key chain
6 was that?

7 A I believe that was Queen Bee's because it was in the
8 car. It was in the ignition.

9 Q Now, did this key chain have some kind of knife attached
10 to --

11 A That's the statement that I heard. I don't know. I
12 didn't see for myself, so I can't -- I can't say.

13 Q You didn't see the key chain?

14 A No, I didn't.

15 Q Now, you'd admit; and I think you admitted to the
16 police, you'd admit it now, this whole night you were drunk?

17 A I was high, yes.

18 Q Drunk, too; drinking alcohol?

19 A Yes.

20 Q What, drinking malt liquor?

21 A Yes.

22 Q And you were also using drugs this night?

23 A Yes.

24 Q What do you smoke, crack?

25 A I did then, yes.

1 Q That night?

2 A Yes.

3 Q So you had crack in your system and you were drinking
4 alcohol?

5 A Yes.

6 Q Malt liquor?

7 A Yes.

8 Q And I think you told the police several times that you
9 were real drunk that night, correct?

10 A No, I don't remember telling them I was real drunk, but
11 I did tell them that I was drunk.

12 Q All right. But you did tell them that you were drunk?

13 A Yes.

14 Q Several times in the statement back in April when you
15 talked to them, do you remember telling them a couple
16 different times that you were drunk during this whole
17 incident?

18 A It's possible.

19 Q Do you want me to show it to you?

20 A Yeah.

21 Q Page 20, 6 and 16.

22 Your statement was, "Shit, we was all under the
23 influence"; is that correct? Is that what you told them?

24 A Right.

25 Q Do you remember telling them that?

1 A Correct.

2 MR. GRUNDA: What page is that?

3 A 20.

4 Q On Page 16, "All this shit jumped off. I was pretty
5 drunk." Do you remember telling them that? Is that correct?

6 What do you mean by the word "jumped"? Started? When
7 this stuff commenced; is that what you mean by the word
8 "jumped"?

9 A Yes.

10 Q So you mean when this night started you were all pretty
11 drunk?

12 A I was under the influence.

13 Q Can we agree that you were pretty drunk?

14 A I was pretty drunk.

15 Q On Page 6, do you remember telling the police, "I mean,
16 I was drunk that night"; you told them that, right?

17 A Yes.

18 Q All right. Not only were you drunk, but you were using
19 drugs, correct?

20 A Correct.

21 Q And do you remember telling the police on April 12th at
22 the Justice Center that Tammy Green drove you and your father
23 out to Middle Avenue; do you remember telling them that?

24 A No, I don't.

25 Q You don't remember saying that?

1 MR. DUFF: The statement, by Det. Leiby,
2 Page 6, Mr. Rosenbaum.

3 MR. ROSENBAUM: Well, go ahead.

4 Q "This girl drove you guys out there?" Question by
5 Det. Leiby.

6 "M.S." is you, correct?

7 A Yeah, that's -- I think. I mean, I was drunk that
8 night.

9 Q That was what you thought. You thought that the girl
10 drove you out there, Tammy?

11 A I couldn't remember whether Tammy was in the car or not.
12 I know I was out there with my brother. My brother dropped
13 us off.

14 Q Well, did you state that the girl drove the car, Tammy;
15 you thought that?

16 A That's what I stated.

17 Q Is your memory better today than April 12th?

18 A Some things I can remember, some things I can't.

19 Q All right. Page 16. So the question was: Did you tell
20 the police that it wasn't Danny that dropped you off?

21 A That it wasn't Danny that dropped me off?

22 Q That it wasn't Danny that drove and dropped you off on
23 Middle Avenue? Where at on Middle Avenue was that?

24 A Towards -- it was past Wood Street by the railroad
25 tracks.

1 Q Is that South Middle Avenue?

2 A South Middle Avenue.

3 Q All right. Let's call it South Middle Avenue.

4 Now, did you tell Det. Leiby on April 12th that it
5 wasn't -- I'll show you. You can't consult with Mr. Leiby.

6 A I was just looking at that.

7 Q When I want you to see something, I'll show it to you.

8 Did you tell Det. Leiby on April 12th that --
9 specifically, that it wasn't your brother who dropped you
10 off, that it wasn't Danny? Did you ever tell him that? Do
11 you remember that, yes or no?

12 A No.

13 Q All right. May I show you Page 16.

14 Det. Leiby, "A.L.: So she was in the car?"

15 MR. ROSENBAUM: Do you want to read that?

16 Q I'm reading it to him.

17 MR. ROSENBAUM: If he wants to read the whole
18 thing, he has the right to see it, not just parts of it.

19 Q Did you make the statement, "No. Shit. I don't know.
20 It was"--

21 MR. ROSENBAUM: Did you get to read it all
22 yet?

23 Q Michael, are you done reading it? Have you read it?

24 "It wasn't my brother that dropped me off"; did you make
25 that statement?

1 A He probably drove. My brother was there, too. I
2 forgot.

3 Q Now, you testified on your direct examination --

4 A Okay.

5 Q -- that Danny drove; is that what you said?

6 A That's what I said.

7 Q And you were under oath the second time you told that
8 story, correct? You swore to tell the truth?

9 A I -- I'm not saying I didn't tell the truth. I forgot.

10 Q You forgot a lot of this, haven't you?

11 A Okay. Yeah.

12 Q And the truth of the matter is you can't say for sure
13 now, because you were drunk and on drugs, who drove that car
14 out there; you can't be sure about that?

15 A Not at this point.

16 Q All right. When you told the police that your brother
17 here, Michael, Danny, that he never arranged for Ron Lally to
18 leave town, because Ron Lally and your brother wouldn't even
19 talk, would they?

20 A That's correct.

21 Q They weren't on talking terms, were they?

22 A That's correct.

23 Q So Danny would have had nothing to do with arranging for
24 Ron Lally to leave town; is that correct?

25 A Correct.

1 Q And, after you got back that night, you never discussed
2 this with Danny, did you?

3 A No.

4 Q You went right to sleep?

5 A Yes.

6 Q And, when you got to Danny's house, Tammy Green was
7 there, correct?

8 A Correct.

9 Q All right. She was Danny's girlfriend?

10 A Correct.

11 Q All right. You never discussed this case with her?

12 A No.

13 Q What happened?

14 A No.

15 Q And you never have ever?

16 A No.

17 Q You don't know if Dan, your brother -- has Dan always
18 lived in -- no, strike that.

19 So, at any time after the incident, you never discussed
20 this matter with Danny, did you?

21 A No.

22 Q And, as far as you know, Danny played no role in this
23 killing, as far as you know?

24 A As far as I know, no.

25 Q And, as far as you know, Danny played no role in the

1 planning or the conspiring to do this killing?

2 A As far as I know, no.

3 Q And you know that Danny wasn't there when this occurred,
4 correct?

5 A I know that for a fact, yes.

6 Q Because you're claiming you were there, right?

7 A Correct.

8 Q Have you ever been diagnosed with a psychological or
9 psychiatric problem?

10 A Yes, I have.

11 Q What is the nature of your problem?

12 A Major depression.

13 Q Major depression.

14 Who was the doctor that diagnosed that?

15 A Doctor -- I forgot his -- I forgot his name. He's at
16 Elyria Memorial. Dr. Young, I think it is.

17 Q What is it?

18 A Dr. Young, I believe.

19 Q And it would be a fair statement that at no time prior
20 to this incident did your brother Danny ever mention to you
21 any type of hurting of Ron Lally?

22 A No, he didn't.

23 Q And you have no evidence to give to this Court that
24 would indicate Danny Smith, your brother, was involved in
25 this murder before it occurred?

1 A No, I don't.

2 Q You have no knowledge of any evidence of that sort?

3 A No, I don't.

4 MR. DUFF: Dan?

5 MR. WIGHTMAN: That should do it.

6 MR. DUFF: All right. I don't have anything
7 else.

8 MR. GRUNDA: Mr. Smith, my name is Joe Grunda.
9 I represent Stan Jalowiec, okay? Obviously, I get to ask you
10 questions, too.

11 THE WITNESS: Okay.

12 CROSS-EXAMINATION OF MICHAEL A. SMITH

13 BY MR. GRUNDA:

14 Q First, to follow up on what Mr. Duff just asked you, on
15 your diagnosis for the psychiatric problem, were you on
16 medication?

17 A At one point I was, yes.

18 Q Can you tell me when and what you were on?

19 A I was on Prozac just this past year.

20 Q In '94?

21 A Latter part of '94. Around May they put me on it.

22 Q And I believe it was your testimony that you said being
23 there at this incident is what caused a lot of your
24 depression and your psychological problems?

25 A At that point, yes.

1 Q And that at no time prior to that did you have any
2 problems, psychological or otherwise?

3 A None for years, no.

4 Q So you did have psychological problems before this?

5 A Yes, I had some.

6 Q And, in fact, you tried to kill yourself before the time
7 of this alleged incident, right?

8 A Yes, years prior to that.

9 Q And how many times is that, two or three times?

10 A Well, once.

11 Q Just once?

12 A Yes.

13 Q And that's --

14 A That I can remember.

15 Q Is that the time when you tried to hang yourself?

16 A No, that was after this incident.

17 Q What did you do at that time, the time before this
18 incident?

19 A Oh, I had took some pills. That was back in '86. Back
20 in '86, I had took some pills.

21 Q Did you leave a note at that time?

22 A No. Where I was staying at, some people at the house,
23 they had found me and had found the empty bottle. They had
24 called the ambulance.

25 Q You left no note, though?

1 A No.

2 Q And you're saying that's the only time before this
3 alleged incident in '94 that you had any psychological
4 problems and attempted to kill yourself?

5 A Yes.

6 Q And do you recall a time when you tried to kill yourself
7 and left a note to your girlfriend that you used the money
8 that she was going to use, I believe, for a car payment, you
9 used it for crack? That was after this incident?

10 A It was after this incident.

11 Q So, in fact, all your psychological problems are not as
12 a result of this alleged incident then, right?

13 A The majority of them are.

14 Q Okay. But you said before they were all from this
15 incident, right?

16 A I didn't say they were all from this incident.

17 Q Well, we know now there's another one that is not as a
18 result of this incident. It is from your crack usage, right?

19 A Partly.

20 Q Pardon?

21 A Partly.

22 Q Did you put in that note anything about this murder?

23 A No, I didn't.

24 Q You only put in there it was because you used her money
25 for the car payment for crack, right?

1 A I don't even remember writing a note, to be honest with
2 you; that's why I'm sitting up here thinking to myself, what
3 note?

4 Q But you do agree that's all that was about, using her
5 money for crack?

6 A Partly.

7 Q How much crack did you smoke back in 1993 and '94?

8 A That's -- I -- I couldn't even give you an estimate.

9 Q Were you using it every day?

10 A No, I wasn't.

11 Q You were using it a lot, though, right?

12 A It was quite a bit.

13 Q You on medication today?

14 A No, I'm not.

15 Q You on any other drugs today?

16 A No, I don't.

17 Q On alcohol?

18 A No, I don't.

19 Q I noticed you have a bump on your forehead.

20 A That's a cyst.

21 Q Now, other than giving your statement on April 12th,
22 '95, at the Justice Center, and in talking to Mr. Rosenbaum
23 today, you're saying you never had any contact with anybody
24 else to discuss this, right?

25 A No, I haven't.

1 Q Well, let's go back over your testimony here.

2 Now, initially, you said you initiated this statement in
3 April because you were mentally breaking down, right?

4 A Correct.

5 Q But you've also admitted today that you've had these
6 other problems with crack, so it wasn't just because of this
7 alleged incident, right?

8 A I'll put it to you like this --

9 Q No, just answer the question. Yes or no?

10 A Yes.

11 Q Then you said you'd been hospitalized two, three, four
12 or five times, right?

13 A Correct.

14 Q Where were these hospitalizations at?

15 A Cleveland Psychiatric Institute, Huron Road Hospital,
16 St. Vincent Charity, Elyria Memorial and Metro.

17 Q Do you recall the dates of those --

18 A No, not right offhand.

19 Q -- hospitalizations?

20 A Not right offhand, no, I don't.

21 Q Now, you indicated that you met your father and Danny at
22 Mom's at about 2:45 a.m., at Mom's Open Kitchen, right?

23 A That's about the approximate time, yes.

24 Q Okay. Nobody else was there?

25 A Not that I can remember. Not that I can remember.

1 Q Then you said you ate breakfast, right?

2 A Correct.

3 Q Phone call was made, then the three of you left, right?

4 A Yes.

5 Q Yet Mr. Duff just asked you, in your statement to the
6 police you indicated that a girl dropped you off, right?

7 A Yes.

8 Q And you do agree that something's wrong there because
9 that's not consistent, right?

10 MR. ROSENBAUM: I object. Just show for the
11 record that that is consistent with his statement on the
12 bottom of Page 16 that Mr. Duff stated as he pointed out.

13 MR. DUFF: Object, Jon.

14 MR. ROSENBAUM: You can object all you want.

15 MR. DUFF: So can you.

16 MR. ROSENBAUM: I did.

17 MR. DUFF: I object to your objection.

18 MR. ROSENBAUM: Thank you.

19 BY MR. GRUNDA:

20 Q Now, what you just answered pursuant to the questions of
21 Mr. Rosenbaum, you never mentioned a girl being there, right?

22 A I had forgotten, to be honest.

23 Q Well, the question was --

24 A Okay. She was.

25 Q You never mentioned it, right? When he asked you here

1 today, you never mentioned it, right?

2 A Right.

3 Q And you said you got dropped off at the railroad tracks?

4 A Correct.

5 Q Past Wood Street, right?

6 A Correct.

7 Q And then you said you stood around 20 to 30 minutes
8 there, right?

9 A Correct.

10 Q What did you do in the 20 or 30 minutes?

11 A Stood there.

12 Q Why?

13 A Waiting.

14 Q Why?

15 A Because that's what we were supposed to do; that's
16 what -- that's where we were supposed to wait at.

17 Q So now you're supposed to wait.

18 Who told you to wait there?

19 A My understanding from what I was told, my father said
20 Stan was picking us up out there, okay? And that's what
21 happened.

22 Q How cold was it?

23 A It was real cold.

24 Q And how far away from home were you?

25 A Quite a ways.

1 Q And so you just stand there for 20 or 30 minutes, you
2 don't bother to walk home?

3 A No.

4 Q Now, you said then after this 20 or 30 minutes, this car
5 drives up?

6 A Correct.

7 Q You knew it to be Queen Bee's car?

8 A Yes.

9 Q And you said Stan was driving?

10 A Correct.

11 Q Ron Lally was in the front passenger seat?

12 A I said there was another person in the front passenger
13 that I come to find out later it was Ron, yes.

14 Q So he's in the front passenger seat?

15 A At that time, yes.

16 Q Okay. Now, when they stopped -- it's a two-door car,
17 right?

18 A Correct.

19 Q What color is it?

20 A Powder blue, light blue.

21 Q Is it also snowing out, too, at this time?

22 A Yes, it is.

23 Q Did Stan and Ron get out of the car?

24 A Yes, Stan. He had to get out for me to get in, yeah.

25 Q So you got in the driver's side?

- 1 A I got in the back seat on the driver's side, correct.
- 2 Q And then apparently Ron got out of the passenger side?
- 3 A And got in.
- 4 Q And got in the back seat next to you, right?
- 5 A Right. Right.
- 6 Q And you didn't see anything unusual at that point,
- 7 right?
- 8 A I didn't know Ron Lally.
- 9 Q Okay. But I'm --
- 10 A So I didn't know what he looked like, so I don't know.
- 11 I didn't see no --
- 12 Q But Stan wasn't forcing him to be in the car?
- 13 A No, not at that time.
- 14 Q In fact, this guy that you later learned was Ron Lally
- 15 got out and got in the back seat?
- 16 A Right.
- 17 Q Nobody told him to, did they?
- 18 A My father told him to get in the back, he was getting in
- 19 the front.
- 20 Q Stan didn't, right?
- 21 A No.
- 22 Q You didn't see Stan have a gun on him?
- 23 A Not at that time, no.
- 24 Q Stan never had a gun on him, did he?
- 25 A No.

1 Q Now, your position, Stan's driving, your father's in the
2 front seat, you're in the back seat behind the driver, and
3 Ron's in the passenger back seat?

4 A Correct.

5 Q Now, at that point, when they all got in the car in that
6 position, nobody was forcing Ron to get in the back?

7 A No, they just told him to get in the back. He got in
8 the back.

9 Q But nobody threatened him to get in there? There was no
10 gun or knife on him to do that, was there?

11 A Not at that point, no.

12 Q Now, you make two statements today. The first one,
13 before you were sworn in, you indicated that at that point
14 after you got in the car, it's about 3:30. Then you said
15 your father brandished the gun?

16 A Correct.

17 Q And that was before you went to the Speedway Station?

18 A Correct.

19 Q What does brandished mean?

20 A He put the gun in his face; that's what it means.

21 Q That's a police term, isn't it?

22 A Is it?

23 Q It's a police term, isn't it, brandishing?

24 A Yeah, that's what I used to use when I worked for the
25 State of Illinois, brandish.

1 Q Describe the gun.

2 A It's a little semiautomatic.

3 Q What color was it?

4 A I can't remember.

5 Q You'd agree that there's a difference between chrome and
6 blue, right?

7 A Correct.

8 Q You can't remember?

9 A Pretty sure it was -- I think it was -- it was chrome,
10 if I am correct.

11 Q You think. You don't know, right?

12 A I can't quite remember, no.

13 Q You can't remember.

14 And part of the reason you can't remember is because you
15 were drinking and doing drugs at the time?

16 A At that point, no.

17 Q You weren't high at that point?

18 A I was -- I was a little bit, but not that high as to why
19 I don't know what a gun looks like.

20 Q Stan never had that gun, did he?

21 A No.

22 Q Didn't have any lights on inside the car, did you?

23 A No.

24 Q Then you went to Speedway Gas Station?

25 A Right.

1 Q Describe where it was at and how you got there.

2 A We went -- I don't remember how we got there. I
3 can't -- I don't remember the actual way we took to get
4 there.

5 Q Where was the Speedway located?

6 A On North Ridge by Rte. 2.

7 Q You don't remember which direction you took from when
8 you were at Wood Street and got picked up to how you got to
9 the Speedway Gas Station on North Ridge?

10 A We went down Middle. We went out -- we went out to --
11 we went down Middle, went over past the mall, went out 254.

12 Q Which way did you turn on 254?

13 A We would have to have turned right onto 254 for West
14 River.

15 Q So you're saying you went past the mall? You could have
16 got on 2 right there, but you didn't, right?

17 A Right.

18 Q You went down and turned right on 254. And you stopped
19 and got gas at that point, right?

20 A Correct.

21 Q Who put the gas in?

22 A I don't -- I don't remember whether it was dad or Stan.
23 I don't know which one put the gas in.

24 Q You didn't decide to get out of the car then, did you?

25 A No.

1 Q And leave?

2 A No.

3 Q You voluntarily went along with the situation, right?

4 A As far as I knew, at that point he was just going to go
5 to -- they was going to take him to Cleveland, drop him off
6 at the bus stop. So, yeah, I went along with the situation.

7 Q That wasn't discussed, was it?

8 A On the way to Speedway, something about it was said.

9 Q Who said that?

10 A My father was talking to him about it.

11 Q Stan never said that, did he?

12 A No, Stan was just driving.

13 Q Did you have the windows up or down in the car at that
14 point?

15 A They were up.

16 Q Then you said after you left the Speedway, that's when
17 you got on Rte. 2, started to go to Cleveland?

18 A (Indicating affirmatively.)

19 Q And this was because the plan -- what was stated by your
20 father was that you were just taking Ron to Cleveland and
21 drop him off at the bus station, right?

22 A Make sure he get on the bus, go wherever he wanted to
23 go.

24 Q And, at this point, all Stan's involvement is, he's just
25 driving?

1 A At that point, yeah.

2 Q So, basically, your father's telling him to drive to
3 Cleveland and drop him off at the bus station, right?

4 A My father didn't direct him. It was like he already
5 knew where to go.

6 Q And, then, on the way there, you said apparently you
7 were drinking and smoking crack at the time, right?

8 A Correct.

9 Q Everybody in the car was, right?

10 A Correct.

11 Q So it was not a threatening situation?

12 A At that time, no.

13 Q Everybody was friendly and cordial, I guess, if you're
14 all drinking and smoking crack, right?

15 A At that time, yes.

16 Q And you're saying Stan was drinking and smoking this
17 crack while he was driving?

18 A Yes, he was.

19 Q How were you smoking the crack?

20 A In a little glass stem.

21 Q Okay. And, in order to smoke the crack then in a little
22 glass stem, how would you have to do it?

23 A Hold it with one hand and light it with the other.

24 Q Takes two hands then, right?

25 A Yeah.

1 Q So, then, if you're saying Stan's doing that, then,
2 obviously, he doesn't have his hands on the wheel, right?

3 A No, he doesn't.

4 Q You didn't crash along the way, did you?

5 A No, we didn't.

6 It's possible to smoke crack and drive at the same time.

7 Q I'm not --

8 A I've done it.

9 Q I'm asking you the questions, okay?

10 When you made your statement before, you were driving to
11 Cleveland, you said you were going to drop him off because
12 Ron supposedly had set up your brother, right?

13 A Correct.

14 Q And you said, we had heard the tape. When did you hear
15 the tape?

16 A I went to my -- I had went with my brother to his
17 lawyers and heard it.

18 Q So you heard the tape?

19 A Yes.

20 Q So you knew Ron was involved?

21 A I didn't know who it was at the time.

22 Q Well, here's the guy you heard on the tape, and you're
23 sitting in the back seat with him, right?

24 A Okay.

25 Q So you know now it's the guy that supposedly set up your

1 brother?

2 A After he admitted to it, yes, because I couldn't really
3 distinguish his voice on the tape. I didn't know Ron Lally.

4 Q You go to Cleveland, and you said you rode around for
5 45 minutes, right?

6 A About that.

7 Q Okay. Now, let's get some timing down.

8 What time did you leave Mom's?

9 A I don't know. It had to be about 3:15, 3:30, somewhere
10 in there.

11 Q 3:15 or 3:30. Okay. How long did it take you to drive
12 over to the Speedway?

13 A I -- I really -- it's hard for me because I didn't have
14 a watch on. I wasn't really looking at the time. All I
15 know, it was almost daybreak when we got back.

16 Q No. We're going step by step here.

17 A Okay.

18 Q How long did it take for you to get from -- you left
19 Mom's, and you said you stood there about 20 or 30 minutes?

20 A Okay.

21 Q We knew that, right?

22 A Okay.

23 Q So you leave at 3:15, and there's another 20 to 30
24 minutes before you're picked up, right?

25 A Okay.

1 Q Then you drive over to the Speedway, right?

2 A Correct.

3 Q Now, how long does it take you from where you're picked
4 up to get over to the Speedway?

5 A I don't know. About 20 more minutes.

6 Q And then how long were you stopped there at the Speedway
7 getting gas?

8 A About 5 minutes.

9 Q Then how long did it take you to drive over to
10 Cleveland?

11 A 30, 35 minutes.

12 Q Now, is that to downtown or to the East Side?

13 A Downtown.

14 Q Then how long did it take you to get over to the East
15 Side where you said you saw these cops and problems?

16 A About another 30 minutes.

17 Q Then what, then you drove back downtown, right?

18 A Correct.

19 Q So I guess it would take about another 30 minutes,
20 right?

21 A No, it didn't take that long because at that point they
22 knew exactly where they were going, so about maybe 15, 20.

23 Q And then you're saying that it took 15 to 20 minutes to
24 get to the cemetery?

25 A Correct.

1 Q How long were you at the cemetery?

2 A I don't know. I -- I don't know. I don't know.

3 Q Well, there's a big difference, you'd say, between
4 5 minutes and an hour, right? Would you agree with that
5 there's a big difference between 5 minutes and an hour?

6 A Who said 5 minutes?

7 Q I'm asking you: Would you agree there's a big
8 difference in time between 5 minutes and an hour, right?

9 A I don't understand the question.

10 Q I'm trying to understand how long you were at the
11 cemetery.

12 A Okay. We were there more than 5 minutes; I know that.

13 Q Okay. Were you there more than an hour?

14 A No.

15 Q Were you there more than a half an hour?

16 A No, I don't think it was that long. About maybe,
17 guesstimate, 20 minutes.

18 Q And then how long did it take you to drive home?

19 A I don't know. Maybe another 45 minutes.

20 Q And your testimony is you got home at what, 5:30?

21 A Might have been about 5:30, 6:00 o'clock, somewhere like
22 that.

23 Q 5:30 to 6:00.

24 And you're sure about that time because it was just
25 getting light out, right?

1 A Approximately.

2 Q Well, was it light or was it still dark?

3 A It was still -- it was still dark, but you could see it
4 kind of glowing.

5 Q Well, we have a problem because then your times don't
6 add up.

7 You start at 3:15. You get dropped off on the way.
8 I'll give you the benefit of the doubt at all times. You
9 said 15 to 20 minutes, so I'll say 20, so that makes it 3:35
10 okay?

11 A Okay.

12 Q Then it takes you 20 minutes to drive over to the
13 Speedway, so that makes it 3:55?

14 A Okay.

15 Q 5 minutes to 4:00.

16 Then you're at the Speedway for five minutes?

17 A Okay.

18 Q So you're leaving there about 4:00 o'clock in the
19 morning?

20 A Okay.

21 Q Then you said you get Downtown. It took you 30 to 35
22 minutes, so I'll give you 30, so you're at 4:30 in the
23 morning, that's Downtown Cleveland. Then it took you another
24 30 minutes to go to the East Side; that's 5:00 o'clock. Then
25 you said it took you another 15 to 20 minutes to get back.

1 Downtown, so that's already 5:15. Then you said you were at
2 the cemetery for 20 minutes, so that already makes it 5:30?

3 A Okay.

4 Q And then it took you another 45 minutes to get home, so
5 that means it's already after 6:00; and that's giving you the
6 benefit of the doubt on everything.

7 A So my time's off a little bit.

8 Q So your time's off?

9 A My time's off a little bit.

10 Q Like a lot of other things could be off.

11 MR. ROSENBAUM: Is that a question?

12 Q You do agree that a lot of things so far have been off,
13 right?

14 A Some things I remember, some things I don't.

15 Q But, so far, you do agree that a lot of things you've
16 said have been off, right?

17 A A little bit.

18 Q Now, to go back to where we were, on your way to
19 Cleveland you were smoking crack and drinking beer, right?

20 A Correct.

21 Q Where did you get the beer?

22 A It was already in the car. It was in the car.

23 Q Back seat or front seat?

24 A I don't remember. All I know I was handed a beer.

25 Q And what were you drinking?

1 A I don't remember.

2 Q Do you remember anything at all?

3 A I remember this much: My father shot Ron Lally and Stan
4 was there.

5 Q I'm asking you the questions.

6 A And I was there.

7 Q I'm asking you the questions and you respond to them.
8 I don't care what you say. You answer my questions; do you
9 understand? Do you understand English?

10 A One, two, three, four, five, six, seven, eight, nine,
11 ten. Yes, sir.

12 MR. GRUNDA: Let the record reflect that he
13 had to count to ten, showing that he's upset.

14 MR. ROSENBAUM: Let the record reflect that
15 Joey Grunda is upset and badgering the witness and is yelling
16 and screaming at him.

17 MR. GRUNDA: That's because the witness won't
18 answer.

19 MR. ROSENBAUM: Then let the record reflect
20 that's your opinion, also.

21 BY MR. GRUNDA:

22 Q Who was the one that brought the drugs?

23 A To be honest with you, I don't know whether Stan had
24 them or my dad had them.

25 Q It wasn't your crack you were smoking?

1 A No.

2 Q Now, you go to East Cleveland, you go back downtown.
3 You said you stopped at the cemetery, right?

4 A Correct.

5 Q What manner did you enter the cemetery?

6 A Through the entrance.

7 Q Did you drive around or was the car just one car length
8 in and stopped?

9 A No, we went in and around to like a dead-end part where
10 they had shoveled and stopped.

11 Q Was it just one lane?

12 A It was two, in and then turn.

13 Q Was there a median in there?

14 A Not that I can remember.

15 Q So it was just shoveled two lanes wide; is that what
16 you're saying?

17 A No, it was shoveled one lane wide.

18 Q So there wasn't enough room for a car to turn around?

19 A We went in and we drove -- it's like you come in and
20 then you turn onto the other lane. No, you'd have to back up
21 and then pull back out.

22 Q Okay. So, when you drive in, and the way it was
23 shoveled --

24 A When you drive in -- when you drive in, you go to your
25 left, and there's a -- it connects into a road that goes this

1 way. That's the cemetery. You go one way and it connects
2 into another road, like to a T.

3 Q And the road that was a T, that wasn't all shoveled?

4 A Where we were at, it was shoveled, yes.

5 Q So you're saying you drove down the one road, got to
6 where it T'd, and you turned which way?

7 A We turned left.

8 Q Okay. Did you drive far and then stop or just backed up
9 right there?

10 A No, it wasn't -- it wasn't too far, no.

11 Q Okay. So you turned left. So, then, in order for you
12 to get back up, you'd have to back up?

13 A Correct.

14 Q Okay. And then go back down that road --

15 A Correct.

16 Q -- you came in on?

17 A Right.

18 Q Okay. Now, when you're there, you drive down, you turn
19 left, okay, that's where we're at?

20 A Okay.

21 Q That's when your father and Ron Lally got out of the
22 car, right?

23 A Correct.

24 Q Stan didn't get out of the car then, right?

25 A Not at that point, no.

1 Q So you and Stan were on the driver's side. You stayed
2 in the car, right?

3 A Correct.

4 Q Were the windows up or down?

5 A Windows were cracked. They were down.

6 Q Okay. When you say cracked, how far down?

7 A About midway.

8 Q Even though it was cold out and snowing?

9 A Yes.

10 Q Do you know who put the windows down?

11 A No, I don't. It wasn't me. I was in the back.

12 Q And this was a convertible you're in, right?

13 A Yes.

14 Q Are there windows in the back for the passenger, too, or
15 just the windows are for the -- just up in the front for the
16 front seat passengers?

17 A The windows, I don't think they come down in the back.
18 I'm not sure. I know those were up.

19 Q But is there a window for the passengers in the back
20 seat?

21 A Yes.

22 Q After they got out of the car, did you see where they
23 went?

24 A They were behind the car, because my father --

25 Q On the passenger side, behind on the driver's side?

- 1 A Behind on the passenger side.
- 2 Q Did you see them go back there?
- 3 A That's the direction that they went, and I remember my
- 4 father pushing Ron up against the car.
- 5 Q Okay. But did you see him go back there?
- 6 A No.
- 7 Q You didn't turn around and look or anything?
- 8 A No.
- 9 Q And you said that you couldn't hear exactly what they
- 10 were saying, right?
- 11 A I couldn't hear everything they were saying, no.
- 12 Q Was it dark there?
- 13 A Yes, it was.
- 14 Q There was no lighting at all, right?
- 15 A No.
- 16 Q Were the car lights on or not?
- 17 A No.
- 18 Q Now, was the car running at that time, the engine, I
- 19 mean?
- 20 A No, it wasn't.
- 21 Q And the lights you said were turned off?
- 22 A Correct.
- 23 Q And you didn't actually see what went on outside of the
- 24 car, right?
- 25 A No.

- 1 Q Stan didn't have a gun on him, did he?
- 2 A No.
- 3 Q At the cemetery, we're talking about?
- 4 A No.
- 5 Q Never saw him touch it or anything like that?
- 6 A No.
- 7 Q You never saw him shoot him or do anything to Mr. Lally,
- 8 did he?
- 9 A No.
- 10 Q In fact, he didn't do anything, did he?
- 11 A I didn't say that.
- 12 Q You didn't see him do anything, did you?
- 13 A I didn't see it. I heard it.
- 14 Q I asked you: Did you see him --
- 15 A No, I didn't.
- 16 Q -- with your own eyes --
- 17 A No, I didn't.
- 18 Q -- do anything to Mr. Lally?
- 19 A No, I didn't.
- 20 Q You just know something was going on behind the car?
- 21 A Correct.
- 22 Q More on the passenger side, right?
- 23 A Right.
- 24 Q Were you still drinking at the cemetery there?
- 25 A No, I wasn't.

1 Q Now, were the roads -- did they have -- even though they
2 were plowed, were they -- was there snow on them or were they
3 icy?

4 A They were icy.

5 Q And at no time up to this point did anybody ever discuss
6 any harm coming to Mr. Lally while you were in the car?

7 A No.

8 Q Then you said you heard a shot, right?

9 A Right.

10 Q Only after the shot, that's when you heard your father
11 tell you and Stan to get out of the car, right?

12 A No, after the shot, that's when I heard him say, "Oh,
13 you shot me in the head."

14 Q But after that, that's when he wanted both of you to get
15 out of the car, right?

16 A Correct.

17 Q And you said they tried to put him in the trunk?

18 A Correct.

19 Q Who opened the trunk?

20 A I -- I don't know for sure.

21 Q You didn't see any of them?

22 A No.

23 Q But you said he was too stiff to put in the trunk,
24 right?

25 A That's what I heard them say, he was too stiff to put in

1 the trunk. Then I heard them drop him back on the ground;
2 that's when they closed the trunk and got in the car.

3 Q But this is all things that you did not see with your
4 eyes, right?

5 A These were things that I heard.

6 Q At that point, with your own eyes, you never saw Stan
7 touch Mr. Lally, right?

8 A No.

9 Q Stan never threatened Mr. Lally, did he?

10 A No.

11 Q And, at that point, you knew there was apparently some
12 legal proceeding against your brother, right?

13 A Yes.

14 Q There was no legal proceedings or anything against
15 Stan Jalowiec, was there?

16 A None that I know of.

17 Q Now, you really don't know where Ron Lally was behind
18 the car, right?

19 A Not directly, no.

20 Q You don't know if he was in the middle, off to one side,
21 the passenger side or driver's side or whatever, right?

22 A No.

23 Q And, in order for you to get out, at that point
24 everybody's back in the car and going to leave, right?

25 A Correct.

1 Q It is, by what you just briefly told me, because of this
2 road being in a T you'd have to back up to go back out the
3 road you came in on, right?

4 A Correct.

5 Q And he backed up, but you don't know, in fact, what was
6 behind the car?

7 A They said, "Run his ass over."

8 Q Did you see anything behind the car?

9 A No, I didn't see it.

10 Q So you don't know what was behind the car, right?

11 A No.

12 Q And, in fact, you said that he was backing up, and
13 whatever he hit stopped it so he couldn't go over it, right?

14 A Right.

15 Q So would it be fair to say your testimony is he never
16 ran over what was behind the car, he ran up to it and
17 stopped?

18 A I never said he ran him over.

19 Q But that's what I'm trying to bring out.

20 A Right.

21 Q Okay. So you do agree then that he never ran over
22 whatever it was stopped the car, right?

23 A Yeah.

24 Q I just did not -- in case there's a misinterpretation,
25 you're agreeing he didn't run over what it was, right?

1 A No. He didn't run him over completely, no.

2 Q Well, he didn't run him over, right?

3 A Ran into him.

4 Q And you do agree that running up to him and over him are
5 two different things, right?

6 A Yes.

7 Q Then you said after he backed up that way, went back out
8 the road, you came back to Lorain -- or I mean to Elyria,
9 right?

10 A Correct.

11 Q Back down Rte. 2?

12 A Correct.

13 Q And, at that point, you never saw Stan handle the gun,
14 touch the gun, anything like that in the car, right?

15 A No.

16 Q Did you ever physically see with your eyes Ron Lally
17 there at the cemetery?

18 A Excuse me?

19 Q After he got out of the car?

20 A What do you mean, did I physically see him? He was
21 there.

22 Q No. Did you see him?

23 A I seen him when he got out the car. He was still there.

24 Q Best of your recollection, that's what I'm saying, the
25 last time you saw him was when he got out of the car?

1 A Was at the cemetery, right.

2 Q And, after he got out the door, you never saw him?

3 A No.

4 Q Or where he was or anything?

5 A No.

6 Q All right. Then you came home to Elyria, went to your
7 brother's house, right, which would be Danny?

8 A Correct.

9 Q And then you went to sleep?

10 A Correct.

11 Q Never told anybody?

12 A No.

13 Q This incident that was so troubling to you that you went
14 right to sleep?

15 A I went to sleep. I was hoping it was all a bad dream.

16 MR. GRUNDA: I have no further questions at
17 this time.

18 DET. LEIBY: He has to use the restroom. I'll
19 walk out with him.

20 (Brief recess had.)

21 MR. ELWELL: Mr. Smith, my name is Tom Elwell.
22 I represent your father, Raymond. I have a series of
23 questions as well. I hopefully won't cover ground that's
24 already been covered, but, if I do, please bear with me.

25 CROSS-EXAMINATION OF MICHAEL A. SMITH

1 BY MR. ELWELL:

2 Q How old are you?

3 A 29.

4 Q Where were you born, what city?

5 A Elyria.

6 Q So you've been a lifelong resident of this County?

7 A For the most part, yeah.

8 Q Did you live elsewhere?

9 A Yes.

10 Q Any other state?

11 A Illinois.

12 Q Over what span of time did you reside in Illinois?

13 A It was '88 to '92.

14 Q Did your whole family move there or just yourself?

15 A Just me.

16 Q For employment or for what reason?

17 A I was going to Job Corps at the time.

18 Q How far did you get in school?

19 A I got my GED. I went all the way to twelfth grade, but
20 I dropped out and got my GED.

21 Q And your marital status right now?

22 A Married.

23 Q When were you married?

24 A I don't think that has anything to do with this. I
25 choose not to answer that.

1 Q When were you married?

2 MR. ROSENBAUM: I've explained to him that he
3 does not have to answer any questions regarding his family or
4 his personal life as a result of him being in fear, so I will
5 object to those questions and tell him not to answer. If you
6 need to have a hearing, I guess we'll have to consult with
7 Judge Glavas.

8 Q All right. You indicated that you've been in Cleveland
9 Psychiatric Institute three or four times?

10 A Correct.

11 Q One time since this incident?

12 A No.

13 Q How many times since the incident?

14 A Three.

15 Wait a minute. One, two -- four. Four since this
16 incident.

17 Q Four times at CPI since the incident?

18 A Correct.

19 Q How many times prior to the incident?

20 A I've never been to CPI prior to the incident.

21 Q Although you did attempt suicide several times before
22 the incident?

23 A No, I didn't.

24 Q How many times did you attempt suicide prior to the
25 incident?

1 A Once in '86.

2 Q Excuse me? What year?

3 A '86.

4 Q And that was by means of what?

5 A I took some pills. I was in Hanna Pavilion at
6 University.

7 Q There were no other incidents of attempted suicide
8 prior?

9 A No.

10 Q How about an incident where you were attempting to jump
11 off a bridge in Cleveland?

12 A No, that was in Elyria.

13 Q A bridge in Elyria?

14 A Yeah.

15 Q And when was that?

16 A That was this past year in April.

17 Q When did you first contact authorities to discuss this
18 matter?

19 A April.

20 Q How long prior to this statement that was made on
21 April 12th?

22 A Excuse me?

23 Q Your statement was made on April 12th, correct?

24 A Correct.

25 Q How long prior to that had you contacted authorities?

1 A It was about -- I think it was -- I'm pretty sure it was
2 a week before that.

3 Q Why did you wait so long?

4 A Because at that time I just couldn't see myself
5 testifying against my family.

6 Q Who did you contact first?

7 A I had -- I had told a Police Officer that I needed to
8 talk to Det. Leiby.

9 Q You asked to talk to Det. Leiby?

10 A Yes.

11 Q How did you know that Det. Leiby was the one to contact?

12 A Leiby was -- Leiby is really the only one that I know by
13 name and face at the Department, so that's why I asked to
14 speak to him.

15 Q And it was just a coincidence that he happened to be the
16 Detective on the case?

17 A Yes.

18 Q You had no idea prior to this that he was the Detective
19 on the case?

20 A No.

21 Q Had he contacted you or had any other member of the
22 Elyria Police Department contacted you prior to this incident
23 to discuss the case?

24 A No.

25 Q Do you remember what day of the week this alleged

1 killing took place?

2 A No, I don't.

3 Q Do you know if it was a weekday or a weekend?

4 A I can't remember if it was a weekday.

5 Q Were you employed at the time?

6 A No, I wasn't.

7 Q When is the last time you've been employed?

8 A About three weeks ago. No. Two weeks ago.

9 Q You indicated that you met at Mom's Open Kitchen at
10 around quarter till 3:00 a.m.?

11 A Correct.

12 Q Where had you been earlier that evening?

13 A Bugsy's.

14 Q Excuse me?

15 A I had went into Bugsy's. I had been down to Camel's.

16 Q About what time did you start hitting the bars? What
17 time of the evening?

18 A It was late in the evening. It was about 12:30.

19 Q That's when you started?

20 A Yeah.

21 Q And where had you been prior to that that evening before
22 you started hitting the bars?

23 A I was at -- I was at my room.

24 Q Excuse me?

25 A I was at my room.

1 Q Doing what?

2 A Watching TV.

3 Q So at around 12:30 you went out to drink. Were you
4 alone or with someone?

5 A I was alone.

6 Q Did you walk or drive or what? By what means did you
7 get to these places?

8 A How did I get downtown that day? I -- I can't remember
9 how I got downtown that night. Oh, there was someone that
10 had a room out there with me -- well, out there by me, and I
11 rode with them downtown; and then I basically walked because
12 all the bars are together.

13 Q So somebody gave you a ride downtown?

14 A Yeah.

15 Q You don't remember the person?

16 A Girl named Dawn. Dawn -- I can't remember her last
17 name.

18 Q Dawn is the first name?

19 A Yeah. I can't remember her last name.

20 Q It's a female?

21 A Yeah.

22 Q And you get downtown about 12:30?

23 A About 12:30.

24 Q And you first go to Bugsy's or to Camel's?

25 A I was in Camel's at first, but I walked down to Bugsy's.

- 1 Q How long were you at Camel's?
- 2 A About 45 minutes.
- 3 Q And you were drinking there?
- 4 A Yeah.
- 5 Q Colt 45?
- 6 A Yeah.
- 7 Q What size of Colt 45 were you drinking there?
- 8 A 12-ounce bottle.
- 9 Q How many of them did you have there?
- 10 A I think I had two.
- 11 Q Then where did you go?
- 12 A I went down to Bugsy's.
- 13 Q And how long did you remain there?
- 14 A I think I was there basically 'til they closed.
- 15 Q So, if you got to Camel's around 12:30 and stayed for,
- 16 what did you say, a half an hour?
- 17 A About a half an hour, 45 minutes.
- 18 Q So around approximately 1:00 in the morning you're at
- 19 Bugsy's?
- 20 A Right.
- 21 Q These are both on Broad Street, correct?
- 22 A Right.
- 23 Q Matter of a few minutes' walking distance between each
- 24 other?
- 25 A Right.

1 Q And then you stayed at Bugsy's until you went to Mom's
2 Open Kitchen --

3 A Right.

4 Q -- which is also on Broad Street; in fact, real close to
5 Bugsy's, right?

6 A Correct.

7 Q So, if around 1:00 in the morning until 2:30 you were at
8 Bugsy's --

9 A I won't say exactly 1:00 because, I mean, I did stop and
10 talk to people on the way, and, you know, we talked for about
11 15, 20 minutes. It wasn't like I went straight from one bar
12 to the other. I did hold conversation.

13 Q But, then, once you arrived at Bugsy's, you stayed there
14 until you went to Mom's Open Kitchen?

15 A Correct.

16 Q Somewhere around a quarter to 3:00, you said?

17 A About 2:30, quarter to 3:00.

18 Q And continued to drink?

19 A I think I drank a couple. I'm not a heavy drinker.

20 Q Using any drugs up until this point?

21 A No.

22 Q No?

23 A No. No.

24 Q Are you still alone at this point when you're leaving
25 Bugsy's?

1 A Yeah.

2 Q And did you know your father was going to be at Mom's
3 Open Kitchen?

4 A No.

5 Q Was he already there when you got there or did he arrive
6 after you?

7 A He was there when I got there. Him and my brother and
8 Tammy was there when I got there.

9 Q And Tammy?

10 A Yeah.

11 Q Had they already eaten or were they just waiting to be
12 served?

13 A They -- I don't think they had been there too much
14 longer before I got there because they had not really ordered
15 yet.

16 Q Did you sit down at the same table with them?

17 A Yeah.

18 Q And was any conversation going on?

19 A Talking about the night; basically, that's all.

20 Q So I take it there was no conversation at all at the
21 table there about Ronald Lally?

22 A No.

23 Q And then a phone call was made, correct?

24 A Correct.

25 Q You don't know the nature of that call, correct?

1 A No.

2 Q In fact, you don't even know of your own personal
3 knowledge who was called, correct?

4 A Who was called?

5 Q You don't know of your own personal knowledge?

6 A That someone was on the other end?

7 Q Yes, who was called.

8 A Oh, who was called? No, I don't.

9 Q And then I assume after you ate, you all got up and
10 started to leave?

11 A Correct.

12 Q Did you know how you were going to get home?

13 A Not at that point.

14 Q Well, you walked with your brother and your father
15 and --

16 A Tammy, yeah.

17 Q -- and Tammy out?

18 A (Indicating affirmatively.)

19 Q Did you ask them for a ride home or what?

20 A Well, at that point, I was asked did I want to go for a
21 ride, and I said yeah; that's what I mean, you know. I
22 didn't really expect to go home just yet.

23 Q Who asked you to go for a ride?

24 A My father.

25 Q And that's when you drove to this location on Middle

1 Avenue?

2 A Correct.

3 Q And you got out of the vehicle?

4 A Correct.

5 Q Why did you get out?

6 A Because he said we had another ride coming.

7 Q You didn't question him further about that?

8 A No. He's my father. I didn't think I had to.

9 Q It was very cold?

10 A Yeah, it was.

11 Q And you decided just to get out into the cold and wait
12 for another ride?

13 A Yeah.

14 Q And, as was indicated in your previous testimony, you're
15 not sure who actually drove you there, whether it was your
16 brother or Tammy?

17 A Right. I -- I could not actually remember. I honestly
18 forgot all about Tammy. I did.

19 Q And you stood in the cold for a half hour?

20 A 20 minutes to a half hour.

21 Q Just you and your father?

22 A (Indicating affirmatively.)

23 Q And are you speaking with him? Is there a conversation
24 going on?

25 A I just asked him, I said, you know, "How much longer

1 before they get there?"

2 He just said, "They coming, they coming."

3 I was just talking about how cold it was; but, no, we
4 didn't have a big conversation, no.

5 Q So finally this car arrives, this LeBaron, correct?

6 A Correct.

7 Q And did you recognize the driver?

8 A No, not right offhand.

9 Q Did you recognize the passenger?

10 A No.

11 Q Nobody introduced you to these persons?

12 A I knew the car.

13 Q I understand that.

14 Did anyone introduce you when you got into the car?

15 Were introductions made as to who these other people were?

16 A When the car stopped, I knew who it was driving because
17 Stan got out the car.

18 Q So you had met Stan prior to this date?

19 A Yes.

20 Q So you didn't need to be introduced to him?

21 A No.

22 Q How about the passenger in the front seat, were you
23 introduced to that person?

24 A You mean the one what wound up in the back with me, Ron?

25 Q Yes.

1 A Yes, I was introduced to him.

2 Q Who introduced you to him?

3 A My father.

4 Q Is that the first time you'd ever heard that name?

5 A No, it wasn't the first time I heard it.

6 Q So you knew who the person was?

7 A No, I didn't. I had never seen Ron Lally. I knew
8 nothing about Ron Lally.

9 Q But you had heard the name prior to that?

10 A I had heard the name before.

11 Q How did you know the name?

12 A I just had heard it.

13 Q From whom?

14 A I heard it when me and my bride had came down with my
15 brother to a hearing and his lawyer had mentioned it;
16 that's -- that's as far as I knew about Ron Lally.

17 Q So you knew this was the person who set up your brother?

18 A No, I didn't.

19 Q Well, you came to a Court hearing involved in that?

20 A He was not -- he wasn't there.

21 Q I realize that. But, by name, you knew who this person
22 was then, correct?

23 A I knew I've heard the first name. I never heard -- I
24 heard him mention Ron. I never heard him mention the last
25 name.

1 Q But you're saying the name was mentioned when you went
2 to Court with your brother, the name was mentioned by his
3 lawyer, right?

4 A All he says was Ron. He didn't go into detail. All I
5 knew was Ron. I didn't know the specifics of it.

6 Q Well, I asked if you had heard the name Ron Lally
7 before, and you said, yes, correct?

8 A I heard the name Ron. I didn't hear Ron Lally. I
9 didn't know Ron Lally until that night. It was after this
10 was over with.

11 Q So now you're saying you never heard the name Ron Lally
12 before that night?

13 A Correct.

14 Q When was this meeting at the lawyer's office with your
15 brother? When was that?

16 A That was way before this; but at that time we just heard
17 the tape and nobody knew who it was.

18 Q And you listened to this tape?

19 A I heard the tape, yeah.

20 Q And you heard the name Ron Lally then, correct?

21 A No, I did not hear the name Ron Lally.

22 Q So you're saying you had no idea who this person was
23 when you met him?

24 A That's correct.

25 Q So you indicated shortly after everyone gets into the

1 car, your father turns around and tells this Ron, don't make
2 any stupid moves?

3 A Correct.

4 Q Do you remember saying something different to the Police
5 Officer who was questioning you at the Justice Center?

6 A No.

7 Q May I see the statement, please?

8 Directing you to Page 7 of your statement, if you'd read
9 that, please.

10 A Okay.

11 Q Does that refresh your memory as to what you told the
12 Detectives when you were being interviewed at the Justice
13 Center?

14 A Yeah.

15 Q So there was never anything said about don't make any
16 stupid moves?

17 A No, he did say that.

18 Q What?

19 A He did say that. Maybe I didn't say that in the
20 statement, but he did say it.

21 Q Well, are you saying that your memory now is better than
22 it was then?

23 A I -- I remember some things better than I did then,
24 yeah.

25 Q Because all that's said according to your statement is

1 that he turned around and said, "We're going to get you out
2 of town, put you on a bus"; nothing about don't make any
3 stupid moves, right?

4 A Well, that's what he told him in beginning.

5 Q Which --

6 A He said, "Don't make any stupid moves."

7 And Ron said, "I ain't, man. I ain't gonna do nothing."

8 Q So your statement earlier isn't actually accurate in
9 that respect?

10 A In that respect, no. A little mixed up.

11 Q So, then, on the way to Cleveland, you were smoking
12 crack, correct?

13 A Correct.

14 Q All four of you?

15 A Correct.

16 Q Do you know how many rocks of crack were smoked?

17 A Not right offhand.

18 Q More than one?

19 A More than -- more than -- more than four.

20 Q More than four?

21 A About -- more than four, less than eight. About six or
22 seven.

23 Q Six or seven rocks?

24 A Yeah, between the four of us.

25 Q Did all of you smoke an equal amount, in your opinion,

1 or was one smoking more than another, if you can recall?

2 A I -- I really -- I can't -- I don't know. I mean, it
3 wasn't about who was smoking more or less.

4 Q All right. So you go to this cemetery and you
5 indicate -- let me see if I understand this -- it was plowed,
6 so that there was just one lane of travel?

7 A Correct.

8 Q And the entrance road meets another road in a T?

9 A Correct.

10 Q And then you turned left onto that road that the
11 entrance road met, correct?

12 A Correct.

13 Q And that road that you then turned left onto, is that
14 also plowed so that there was only one lane of travel?

15 A Yes, because it was like a dead end. It was like snow
16 was piled up.

17 Q So there was only one lane of travel on that road as
18 well?

19 A Correct.

20 Q And how far down that road did the car travel?

21 A A few feet. It didn't go very far at all.

22 Q Did the car make the turn completely onto that road?

23 A Yes, it did.

24 Q And then traveled only a few feet?

25 A Right.

1 certainly didn't see anything at all, correct?

2 A No.

3 Q So you don't know what may have gone on between the two
4 people who left the car, do you?

5 A No.

6 Q You don't know if this Lally had a weapon, do you?

7 A Not to my knowledge.

8 Q You don't know if Lally tried to attack your father, do
9 you?

10 A Not to my knowledge.

11 Q You don't know if that happened or not, correct? You
12 didn't see, correct?

13 A No.

14 Q You don't know if there was a struggle between them, do
15 you?

16 A There was some bumping up against the car just before
17 the gunshot went off.

18 Q And you don't know really what the nature of that
19 bumping was, who started it or what caused it or what was
20 going on between them, do you?

21 A No.

22 Q And then you indicate that the car was driven and had
23 backed into what you think was a body, correct?

24 A Correct.

25 Q Again, you didn't see that?

- 1 A Correct.
- 2 Q You're just assuming it was, correct?
- 3 A Correct.
- 4 Q So apparently the body was blocking the car from going
5 backwards, correct?
- 6 A Correct.
- 7 Q But you indicated that the car never ran over the body,
8 correct?
- 9 A Correct.
- 10 Q Then how did the car get out of there?
- 11 A It just -- I just know it got out of there.
- 12 Q Well, there was one lane, correct?
- 13 A Right.
- 14 Q And, to get out, you would have had to back up, correct?
- 15 A It went over to the side. It turned, they cut over to
16 the side and went out. It ran into the snow, I mean.
- 17 Q I thought you said it was a big embankment and it was
18 only one lane?
- 19 A There was a big embankment in the front of the car.
- 20 Q So now you're saying there was room to go around; that's
21 what you're saying now?
- 22 A Yeah.
- 23 Q And, then, on the way home, you argued with your father
24 because you didn't help him?
- 25 A Correct.

1 Q So he apparently was indicating that he was in need of
2 some help from you back there at the car?

3 A Correct.

4 Q So he may have been in some danger that you're not aware
5 of; is that what you're saying?

6 A No, that's not what I'm saying.

7 Q But he was angry over you not helping?

8 A Correct.

9 Q You're on probation now, correct?

10 A Correct.

11 Q And I see your Probation Officer is here.

12 Has any proceeding been started to revoke your
13 probation?

14 A No, there hasn't.

15 Q Has that been threatened?

16 A No, it hasn't.

17 Q Who is your lawyer in the case that you received
18 probation on?

19 A Jeanne Mattes.

20 Q Is she still your lawyer?

21 A I don't have a lawyer. I don't need one.

22 Q Have you had any conversations with either the
23 Prosecutor or any law enforcement official as to the fact
24 that you won't be prosecuted if you testify?

25 A No, I haven't.

1 Q So he apparently was indicating that he was in need of
2 some help from you back there at the car?

3 A Correct.

4 Q So he may have been in some danger that you're not aware
5 of; is that what you're saying?

6 A No, that's not what I'm saying.

7 Q But he was angry over you not helping?

8 A Correct.

9 Q You're on probation now, correct?

10 A Correct.

11 Q And I see your Probation Officer is here.

12 Has any proceeding been started to revoke your
13 probation?

14 A No, there hasn't.

15 Q Has that been threatened?

16 A No, it hasn't.

17 Q Who is your lawyer in the case that you received
18 probation on?

19 A Jeanne Mattes.

20 Q Is she still your lawyer?

21 A I don't have a lawyer. I don't need one.

22 Q Have you had any conversations with either the
23 Prosecutor or any law enforcement official as to the fact
24 that you won't be prosecuted if you testify?

25 A No, I haven't.

1 this incident?

2 A We've talked. We never talked in the last -- I don't
3 know, two or three months, but we've talked.

4 Q Who was the Police Officer that you spoke to that you
5 say you knew that got you in touch with Leiby?

6 A I really -- I don't know the Officer's name.

7 Q And you're willing to testify at the trial of this
8 matter, correct?

9 A Yes, I am.

10 Q And you plan to make yourself available to testify at
11 that matter, do you not?

12 A Yes, I do.

13 Q If our investigator wanted to ask you questions
14 subsequent to today's date, after today's date, before trial,
15 would you be available to answer questions?

16 MR. ROSENBAUM: He's not going to comment on
17 that and we're not going to tell you where he is, and I'm
18 going to certify that in Court. He's in danger that he
19 feels --

20 Q Do you feel you're in danger?

21 A I did receive a threat.

22 Q That's not the question.

23 A Two weeks --

24 Q Do you feel you're in danger?

25 A Yeah. I feel I am, yeah, for me and my family.

1 Q Well, they're incarcerated, correct?

2 A So they're incarcerated.

3 Q Excuse me?

4 A They're incarcerated, and --

5 Q They're no real threat to you now, are they, yes or no?

6 A It's a possibility.

7 RAYMOND SMITH: -- kill --

8 MR. ELWELL: I have no further questions.

9 MR. ROSENBAUM: I thank you very much.

10

11 (Deposition concluded.)

12

13

14

15

16

17

18

19

20

21

22

23

24

25

C E R T I F I C A T E

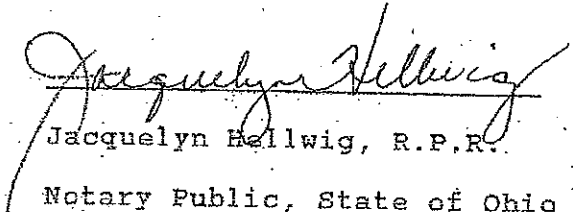
The State of Ohio,)
County of Lorain.) SS:

I, Jacquelyn Hellwig, Registered Professional
Reporter and a Notary Public within and for the State
of Ohio, duly commissioned and qualified, do hereby
certify that the within-named witness:

MICHAEL A. SMITH,
was by me duly sworn to testify the truth, the whole
truth, and nothing but the truth in the cause aforesaid.

I do further certify that this deposition
is a true record of the testimony given by the witness.

IN WITNESS WHEREOF, I have set my hand
and affixed my seal of office at Elyria, Ohio, this
26th day of June, 1995.


Jacquelyn Hellwig, R.P.R.

Notary Public, State of Ohio

589 W. Broad Street

Elyria, Ohio 44035

My commission expires 10-24-95.