IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION at DAYTON

JAMES T. CONWAY, III, Petitioner,	:	
	:	**CASE NO. 3:07-CV-00345-WHR-MRM**
v.	:	**JUDGE WALTER H. RICE**
MARC C. HOUK, WARDEN, Respondent.	:	**MAGISTRATE JUDGE MERZ**
	:	

TRIAL TRANSCRIPTS
VOLUME 1 OF 6
PRETRIAL HEARINGS

Respectfully submitted,

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IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO

CRIMINAL DIVISION

- - -

ORIGINAL

STATE OF OHIO, :

Plaintiff, :

vs. : Case No. 02CR-06-3117

JAMES T. CONWAY, III, :

Defendant. :

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TRANSCRIPT OF PROCEEDINGS

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Before Honorable Dale A. Crawford, Judge, beginning on, Friday, December 27, 2002.

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APPEARANCES:

Ms. Sheryl L. Prichard and Ms. Jennifer L. Coriell,

On behalf of Plaintiff.

Messrs. Brian J. Rigg and Robert W. Suhr,

On behalf of Defendant.

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DEFENDANT'S:				
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FRANKLIN COUNTY
OHIO

Friday Morning Session,

December 27, 2002.

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THE BAILIFF: James T. Conway, 02CR3117.

THE COURT: What I'd like to do is I've been given the bound black book and I'd like to go through the motions in which we're not going to have any evidence and just deal with those. And I'm going to ask you if there's any further comments. Like I'll start with the first one which is a motion to suppress identification.

MR. RIGG: Your Honor, I'll be handling the majority of these, if I may. We're going to withdraw that motion, Your Honor, because there was not a photo identification made in this particular case. We filed it and as we proceeded through the discovery -- we're going to withdraw at this time. It may be necessary down the road. We're not sure.

THE COURT: Memorandum -- motion to exclude references to Defendant's criminal record. Any other comments?

MR. RIGG: Not from the defense, Your Honor.

THE COURT: I'm going to comply with the

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Ohio Rules of Evidence with respect to prior record depending on whether he testifies or not. At this point in time that motion will be overruled. Motion to exclude any evidence related to other crimes, wrongs or acts. Any other comments?

MR. RIGG: No, Your Honor.

THE COURT: From the State?

MS. PRICHARD: No further than what's been filed. We'll comply with Rules of Evidence.

THE COURT: I'm going to comply with Rules of Evidence on that and the matters come up in trial I'll make the rulings at the appropriate time. Motion for change of venue.

MR. SUHR: Your Honor, we did file a motion for change of venue. We did attach the copies of the Columbus Dispatch articles indicating articles, about 30 attached to the motion. In addition, recently there was about a 30-day period in which the advertisements for the Columbus Dispatch contained on the obituary page that have a little block advertising the Dispatch had a copy of the paper within that advertisement in which Chris Cicero and the

Defendant appeared in a picture and it was constantly for a 30 day picture reiterating that and bringing that we feel back to the attention of the people within the reading area of the Dispatch. That we feel would have an effect on the ability to impanel a fair and impartial jury in this case.

THE COURT: I will deal with that on the day of trial. And I won't know if the panel has some jurors -- I can tell you that from my review -- I have not seen that, but my review of the articles in the newspaper and my knowledge of how it appears to affect people in Franklin County, I don't see just based upon looking at the articles themselves that there would be a need to change the venue without having an opportunity to voir dire the jurors that we're going to have. At this point in time I'm going to overrule the motion. I will review all articles published. I know there's another trial that's taking place before our trial is set. So that could have an impact depending on how that was covered. So we'll keep an eye on that issue.

But I do want to tell you in advance if

I ever change the venue it would go to Hamilton County because it's the easiest place to go and you might want to think about that in future motions.

Motion to prohibit display of evidentiary exhibits until they're admitted. Any other comments?

MR. RIGG: Just briefly, Your Honor. The way I've been handling it with the prosecutor's office in the last couple years and most recently with Ms. Prichard is that I don't have -- unless I have an objection over certain photographs, I will object if they start showing photographs, especially overheads to jurors before they're admitted. Usually crime scene detectives, the first one that start utilizing photographs and I don't have any problem if the State wants to move for those to be admitted and then that way they can display them to the jurors rather than start showing photographs before they at least go through that procedure.

THE COURT: What I would like to do, it's a total waste of time to have the crime scene detectives sit there, identify the

photograph, go through the detail and go through it again in front of the jury. What I would like to have done is to have all the exhibits exchanged well in advance, maybe a week and a half in a meeting or a hearing in advance if you want to exclude some photographs. But if we could get agreement with respect to most of the stuff in advance that says that when the crime scene detective goes through it can be displayed to the jury as he's going through it. So you all just let me know if there's any problems with any particular photographs and we can deal with that in advance. But basically the answer is yes, I will sustain that motion. Motion for all motions to be heard on the record, that will be granted.

MS. PRICHARD: Judge, I'm sorry, I was just looking over the one we just argued, the display of exhibits. It also is moving to prohibit the prosecution from bringing things into the courtroom and apparently displaying them, having them in boxes or turned around so the jury can't see them. That's what I'm reading.

THE COURT: Just make sure they're covered up so the jury doesn't see the exhibits before they're in.

MR. SUHR: No display on the table.

THE COURT: Motion to dismiss. Any comments?

MR. RIGG: Written document only.

THE COURT: Anything else from the State?

MS. PRICHARD: No, Your Honor.

THE COURT: Motion will be overruled. Motion for protective order. Any other comments?

MR. RIGG: No, Your Honor.

MS. PRICHARD: Nothing other than what's been filed, Your Honor.

THE COURT: I'm going overrule the motion. I'll just express don't try this case in the media. Motion to reduce bias in the annual jury list. Any other comments?

MR. RIGG: No, Your Honor.

MS. PRICHARD: Nothing, Your Honor.

THE COURT: Motion will be overruled. Motion to restrain certain parties from discussing the case with Defendant.

MR. RIGG: Your Honor, just I filed this motion because I had a situation come up one time where a detective, who was actually the detective on the case on a capital murder case, went and interviewed my client regarding the incident at the county jail. On the pretext he was interviewing my client regarding the incident at the jail, I just had asked that no law enforcement officers -- I ask the State not to send any law enforcement officers unless we're present and we maybe have some kind of agreement on that. And that's why I asked to file that. Again it just involves law enforcement, it doesn't involve inmates at the jail, et cetera.

THE COURT: The only problem with that is if your client makes a phone call and makes a request to talk to people, then it's pretty hard for me to say that he can't do that. But I will request the State to advise all the officers involved in this case, there should be no contact with the Defendant that's initiated by the police department without going to defense counsel first.

MS. PRICHARD: Certainly, Your Honor.

THE COURT: Is that okay?

MR. RIGG: Yes, Your Honor, thank you.

THE COURT: Request for appropriate funds for defense investigator.

MR. RIGG: Just briefly, Your Honor. If the Court needs more detailed explanation other than what's written, I propose that we could submit some ex parte billing sheets or estimates from the investigator. We've been focusing on the case involving Judge McGrath's case because that is scheduled first. Initially when I got involved in this case I thought there was a lot of overlap involving the facts or witnesses of this case. And actually after reviewing everything, there's probably only one or two witnesses maybe that overlap your case and Judge McGrath's case. I would have been focusing again on Judge McGrath's case to locate witnesses, find out what happened. And there is literally 40 some audiotapes, there's videotapes that I've gone through regarding some issues and with this case. But mostly it deals with another matter Mr. Suhr is representing Mr. Conway on. And also your case involving the homicide of

Mr. Dotson.

What I'd like to do, Your Honor, if the Court wishes, I can prepare some kind of estimate from our investigator to the Court for investigator fees because we will need his assistance in that when the time arises for his help.

MR. SUHR: I'd also just like to say that before we entered this case, there was a prior counsel who supposedly had gotten some investigation done. However, he has not really turned over much material at all to us. And I have no idea what had been done or anything like that. We never got a real file. We got a packet of some motions and about a total of maybe ten or 15 Xerox copies of interview -- well not really interview sheets, just legal pad Xeroxed that really doesn't have a lot of meaning to us and he won't sit down and talk to us about it. So we need to have the whole thing done as if we were starting.

THE COURT: Well if you need any further funds for purposes of preparing this case for experts or otherwise, make sure you just come and see me and we'll discuss that at the time.

Motion to have the complete copy of the prosecutor's file be made and turned over to the Court for purposes of review. Any other comments?

MR. RIGG: No, Your Honor. Other than the way this is set forth. A, B and C somewhat go together in terms of defense argument. B is a motion for any exculpatory impeachment evidence. I have received some of that from the State witness interviews, et cetera, that implicate maybe other people that may have been involved in this. The purpose of filing for a copy of the prosecutor's file to be sealed is for another body to look at this -- these documents. And also that falls into the same thing in terms of law enforcement officers to turn over all information acquired. That way sometime down the road if there's something they didn't produce to the State even before trial, make sure that the State has everything and that some other governing body can look at maybe potential material that was not given to us because I know that the State honestly tries to give us what they believe is Brady material, but that's their opinion and I would like to

have another Court look at that somewhere down the road, if necessary.

THE COURT: Any comments?

MS. PRICHARD: Judge, I'd ask that if that motion be sustained that the defense be required to do the same. We had a lot of discovery in this case which all couldn't be filed due to the number of documents. We have agreed between the parties that we had a copy of discovery made, we sealed it, it's been kept in my office. But should there be any issues later I just ask that their file be copied as well.

THE COURT: I don't have the motion with respect to that.

MS. PRICHARD: Actually we did put it in our response motion for an order directing the complete copy of the Defendant's file be made, filed December 12th.

THE COURT: I'm going to overrule that. I'm also going to overrule the defense motion requesting that the entire prosecutor's file be sealed. Prosecutor wants to do that voluntarily, that's fine. I will request that the rules of criminal procedure be complied

with and all Brady material and material that's discoverable be turned over. I assume you haven't had any problems or at least you don't believe there's a problem with that at this point in time?

MR. RIGG: Not so far, Your Honor.

THE COURT: Motion to compel disclosure of scientific requests for exculpatory and impeachment evidence.

MR. RIGG: I think you've just covered that, Your Honor, I believe.

THE COURT: That's granted to the extent that the Ohio Rules of Criminal Procedure and Brady requiring it to be done. There's a motion to have the law enforcement officials turn over and advise prosecuting attorneys all information required during the course of the investigation. Any further comments?

MR. RIGG: No, Your Honor.

MS. PRICHARD: Nothing, Your Honor.

THE COURT: Again all the Brady material is to be turned over. All discoverable material to be turned over. Other than that, no other material that's not discoverable will not be ordered turned over. There's a motion

dealing with the defense request to allow the examination with respect to witnesses -- pardon me, prospective jurors regarding their views of capital punishment prior to their excusal. Quite frankly, I don't understand what you mean. I'm going to let you do that. I don't know what you mean prior to their excusal.

MR. RIGG: Your Honor, I'm not sure exactly how you handle the voir dire of jurors, whether it's --

THE COURT: I'll tell you how I do it.

MR. RIGG: -- it's combined with general voir dire.

THE COURT: It is.

MR. RIGG: That's why I was asking if I propose to do.

THE COURT: We will have all the jurors brought upstairs, probably depending on the publicity involved in the first trial, maybe 50 jurors. You'll have all of those jurors' questionnaires in advance. I will, at random, seat them one through 50, whatever it may be. I will have a general statement to those jurors dealing with the case. I will advise them of the nature of the proceedings being a two-step

process. We will set calendars to see what their schedules are.

Then I will tell them that people have different views with respect to capital punishment. Some people feel that under no circumstances that they'd ever make a recommendation of death. Then I will talk to them. If there are people in the middle that can follow the law and realize that under some circumstances death is appropriate and on other circumstances death penalty is not appropriate. And I will tell them that there's people that feel on the other side of the spectrum, the far side of the spectrum that an eye for an eye and a tooth for a tooth and every death requires a death penalty.

I will find out in advance if there's any jurors that formulated any opinions because of publicity with respect to this case or if they read a lot about it. I will also find out if there's any jurors on the two extremes with respect to their views on capital punishment. Any juror that is in the first approximately 35 jurors who say that they know a lot about the case or they know about the case and/or they

have the extreme positions with respect to capital punishment, we will voir dire them individually. Other than that, once we finish with the individual voir dires on those two issues alone, we will do general voir dire where all jurors are involved and you can ask any appropriate questions.

MR. SUHR: So if I interpret the Court's position, unless something comes out either as to a DP or never imposing a death penalty or the publicity, then we would not have the regular death qualification on some jurors.

THE COURT: We're going to have qualification of jurors dealing with their ability to be fair and impartial and that includes all aspects of it including their ability to follow the law dealing with capital punishment and following the law with respect to all of the matters that we're going to be dealing with. We are not going to separately discuss their feelings with respect to capital punishment unless they have advised me in advance that they're at one of the extremes.

MR. RIGG: Or publicity, Judge?

THE COURT: Or publicity, yes.

Memorandum seeking to increase the number of peremptory challenges.

MR. RIGG: No further comments, Judge.

THE COURT: That will be overruled. You will follow the Rules of Criminal Procedure. There's a motion seeking to excuse jurors who cannot consider mitigation testimony.

MR. RIGG: Any mitigating evidence, Your Honor. I believe the Court -- you just addressed that. You indicated on an individual basis of the jurors.

THE COURT: I would, of course, excuse any juror that could not follow the law, the state law. Voir dire instruction you want.

MR. RIGG: Judge, I believe you just addressed that also. Specifical request was as to individual voir dire and the Court, I believe, just clarified your position how you're going to handle that. That was my request was to do individual voir dire.

THE COURT: We're not going to have individual voir dire unless it's necessary. The motion to prohibit any evidence bearing on the character of the victim or victim impact. Any other comments?

MR. RIGG: No, Your Honor. Not from the defense.

THE COURT: Anything from the State?

MS. PRICHARD: Your Honor, I think the State in our motion there is a possibility that something about the victim is going to come out during the trial just in light of the facts and the people who are going to be testifying. So I think it's inevitable and I ask that that motion be overruled. It will not be directly soliciting that information though.

THE COURT: This is more of a motion in limine, at least I perceive it as a motion in limine. I'm going to make the comment that I don't want any character evidence admitted regarding anybody unless it complies with the Rules of Evidence. So let's put it this way, before you get into, quote, character evidence of anybody, make sure you approach the bench before you ask that question.

Motion to prohibit reference to the jury that a verdict as to death is only a recommendation. Any other comments?

MR. RIGG: Not from defense, Your Honor.

MS. PRICHARD: No, Your Honor.

THE COURT: I'm going to advise the jury with respect to the appropriate law in Ohio which will include a statement that they are to make a recommendation to the Court. But I will also tell them that that will not demean their awesome responsibility of making this determination. I will not exclude the word recommendation. Motion's overruled.

Motion to prohibit prosecutor from arguing and Court from giving the instructions regarding statutory mitigation factors not raised by the defense. Are you planning on doing any of that?

MS. PRICHARD: No, Your Honor. We did object to the way the motion made the request, but we'll certainly follow the law on that.

THE COURT: Anything else?

MR. RIGG: No, Your Honor.

THE COURT: If you're not planning on anything, then I'm going to sustain the objection. But I will advise that the only mitigating factors that are going to be considered are those factors that have been raised by the Defendant. For your own edification, if we ever do get to the

mitigation stage, that's going to be immediately following the trial. Next day. It will probably be a day off in between, but it will go to it. So make sure that's prepared in advance.

Motion to permit defense to admit all relevant evidence at sentencing phase.

MR. RIGG: No further comment, Your Honor.

MS. PRICHARD: Nothing further.

THE COURT: I will permit the defense to admit all relevant evidence at the sentencing phase.

Motion in limine to limit prosecutor's argument to the limited circumstances permitted at the trial phase. I'm not sure what is meant by that.

MR. RIGG: I'd argue maybe the nature and circumstances of the offense, those types of arguments or anything else that they have not proven. If they've not proven a certain aggravating circumstance. Those aggravating circumstances are only those things that they prove and not anything else including the nature and circumstances.

THE COURT: It is, quite frankly, the way I read the Supreme Court's decision on this issue is kind of a fine line of what is meant, but they are clear in advising trial courts that the jury is to be instructed that anything on the scale and prosecution is the only -- the aggravating circumstances. Everything else that is to be considered by a jury is in the form of mitigating factors. So history and character of the Defendant and nature and circumstances of the incident are only mitigating factors because they aren't the aggravating circumstances. So to that extent, yes, I'd sustain it. But we will deal with that issue when and if we ever get to mitigation and also on the instructions the jury is to receive. I think that deals with the other motion, motion to limit prosecutor's argument to the mitigating circumstances proven at the first phase. You have duplicate motions, I believe, with respect to that.

Motion for written jury instructions and an opportunity to review. Yes. I will plan on having written instructions to the jury dealing with define reasonable doubt in writing, I will

give the definitions of the offenses and any lesser includeds, if any. And I will give you them, any other written instructions that we all agreed probably will be helpful to the jury. Since I read most of my general instructions, it might be hard to get those in advance. But we can sit down and talk about what would be helpful to the jury in the form of written instructions, especially if we ever get to the mitigation stage. Anything else that I may have missed?

MS. PRICHARD: Judge, there was a motion for continuance filed by the defense November 27th with a response from the State. And then there is a multibranch motion by the defense filed November 29th which we have responded to and have witnesses here, if necessary, as well.

THE COURT: I'm going to deal with any motions that we have witnesses called and any evidentiary matters. I will deal with those now. But let me go to the motion for continuance.

MR. RIGG: Do you have a copy of that, Your Honor?

THE COURT: I don't.

MR. RIGG: Your Honor, we're scheduled right now for January 10th before Judge McGrath and basically involves a situation at a bar, fight started outside that bar, the fight continued. The State's alleging that Mr. Conway shot one individual and killed another individual. They've indicted him on death penalty specifications with attempting to kill one person, attempted murder, and murdering of another individual.

We have been focusing, obviously, on volumes of material. The State has provided, recopied all the discovery. We received some discovery, I believe, this summer, late summer, maybe into September. She recopied the material so we'd have everything which includes over 1,800 pages of written material, 40 plus audiotapes and several videotapes. We are preparing for this trial on January 10th, but not that we've ignored this case, only our focus can be in one direction with two death penalty cases pending.

On January 27th your case is scheduled. We may still be in trial before Judge McGrath.

We're not sure yet. There are numerous witnesses in both cases and especially in the case before Judge McGrath. The other day, I believe it was yesterday, I counted there's at least nine or ten people who made identification of my client at the scene. There's people who have taken depositions accusing my client of doing the shooting. We would just ask for another trial date at this time because the preparation we have got to go forward and even if we would finish we'd turn right around and start a trial in front of you on another capital charge -- capital case which would just be overwhelming in terms of scheduling two capital murder trials in the same month.

THE COURT: Let me ask you a question. And I have not talked to Judge McGrath about these cases at all. Is it likely that anybody is going to be requesting a continuance in front of Judge McGrath?

MR. RIGG: We have not, Your Honor.

THE COURT: Do you perceive any situation in which you might?

MR. SUHR: I can only say this: We have

received in the past two weeks a fairly large amount of new discovery, new lineups, new identifications, things like that. The problems I see, even if at a late date the case was continued, we have not done the preparation on your case to permit us to that, rapidly change gears and go forward. We've tried to do everything we can on both cases. But our real significant focus has been on the Dockside case and that's one that we seem to be we're right up to speed on that except for the fact that I can't tell if any new -- more new received coming. We've had apparently lineups that have been conducted as recently as a week ago, and then a few days before that and a few days before that.

So there's a lot of things coming in that if you'd asked me three weeks ago I'd say well I don't see any possibility. But the problem at this late a date is that even if today was continued, we couldn't get ready for your case to our satisfaction and be effective as counsel. And that's my professional statement on that.

THE COURT: What's the State's position?

MS. PRICHARD: Well Judge, my thought would be that we wait and see what happens with McGrath's case. And obviously I'd be in agreement with a continuance if we were in that trial. I obviously have a lineup, a lot of witnesses and it's my burden.

THE COURT: If that trial goes, I have no problems giving you a continuance. I can tell you right off.

MS. PRICHARD: If it does not, I can be ready January 27th.

THE COURT: I can tell you as a practical matter, this sounds silly, but I have kind of set my entire schedule for the next three or four months based on the fact that I might need two or three weeks in this case. If I don't go forward with this case when it's scheduled, I don't know when I can try it. I don't have a three-week period of time between now and June that is not broken up by something. Not now. I mean, from late February. I am clear from mid January to late February. And actually between mid January and first part -- the last week in March. I have all that time period free.

I don't mind moving it, but if I move it to -- anyway that's going to be like the first week in March if we were going to go two or three weeks, I couldn't finish it. I can move it to February, you know, I'm not sure. I'd like to have everybody's schedules work somehow.

MS. PRICHARD: And Judge, I object to moving it from January 27th if we're not in another trial simply for the reason that I have the co-Defendant scheduled February 21st, I have the other co-Defendant scheduled March 28th. We have the conspiracy to commit murders, we have a lot of safety issues with witnesses. And the further we delay this the more concerns develop.

MR. RIGG: We have our motion hearing -- similar motion hearing this Monday before Judge McGrath. We're supposed to start trial two weeks from today, I believe, in front of Judge McGrath. We're going to be going in real quick.

THE COURT: Is there any outstanding discovery that you have not given to them?

MS. PRICHARD: On this case, Judge?

THE COURT: Yes.

MS. PRICHARD: No. There's nothing further on this case. Nothing that's come to my attention. This one the discovery's been delivered for some time. The Dockside Dolls case has been where there's been discovery because there's 36 witnesses, some are just now being found.

THE COURT: Let's do this, let's hold on to the trial date and see what happens in Judge McGrath's case and then if we need a little bit more time we can probably get a little bit more time. I think when we set this date and set it far enough in advance with the understanding, yes, we knew that there were two cases and we requested that there not be any continuances because I truly have set schedules just kind of around the fact that I might be here for three weeks in this case. How many witnesses do we have in this case?

MS. PRICHARD: Probably I'd say 20. That's an estimate.

THE COURT: How many would you have?

MR. RIGG: I don't think any more than four or five, Your Honor, if that.

THE COURT: It doesn't sound like it's going to last more than probably a week. We can get voir dire done in two days. It shouldn't last -- we should be finished with everything in two weeks. Let's just go see what happens in the next ten days with Judge McGrath's case. In the meantime, just plan on going forward. Okay. What do we need as far as witnesses are concerned?

MS. PRICHARD: There's a multibranch motion to suppress. We have filed a memo contra. If I'm going to be presenting witnesses at this time, there are witnesses who may be for the defense and I know that will be on this witness list who had asked to be excused from the courtroom at this time prior to introducing any further testimony.

THE COURT: Okay.

MS. PRICHARD: Mr. Turner I know is one. I believe the Defendant's sister and mother of his child are also present in the courtroom and I'm not certain who some of these other folks are.

THE COURT: Do you have any proposed witnesses that you're going to call that are in

the courtroom?

MR. RIGG: We're always struggling with trying to find people, Your Honor. Thanks to the prosecutor. Anybody who may testify on Jimmy's case, you have to leave the courtroom. Any phase of the case. You can stay outside and you can't talk about anybody in here, that you're not allowed to talk about what goes on in here once you go outside. Thank you.

THE COURT: Can I have a copy of your motion, please?

MS. PRICHARD: Judge, I plan on calling Zach Scott from the sheriff's office who is in the hallway to address the issues raised in this motion. I presented a copy of the exhibits.

THE COURT: Raise your right hand, please.

(Witness sworn.)

THE COURT: Please be seated. The microphone is not turned on. Keep your voice up.

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ZACHARY SCOTT

Called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. PRICHARD:

Q. Your name, please.

A. My name is Zachary Scott.

Q. And you work for the Franklin County Sheriff's Office?

A. I do.

Q. Were you one of the detectives assigned to the Andrew Dotson homicide?

A. I was.

Q. Do you remember about what date the homicide occurred?

A. Well the time we found the body I think was October 10th of 2001.

Q. And the case, was it solved in any way?

A. No.

Q. At what point, just an approximation, was the case solved?

A. It would be in -- well how do you define solved. I guess would be we had enough to go forth with an indictment I guess would have been in May of 2002.

Q. And how is it that information came to you to implicate James Conway?

A. We had several people tell us they thought he was involved. But before we got actual substantial information would be through an informant.

Q. And that informant is Ronnie Trent?

A. That's correct.

Q. How is it you first spoke with Ronald Trent?

A. Your office called me and apparently he had information and you wanted to have a meeting.

Q. Let me show you State's Exhibit I1 and I2. Tell me if you've seen those documents?

A. Yes, I have.

Q. And are those documents that I, in fact, shared with you?

A. Yeah.

Q. And then based on that information, was a meeting set up to talk with Ronald Trent?

A. That is correct.

Q. Were members of the prosecutor's office present at that meeting?

A. Correct.

Q. Do you recall if Ronald Trent was represented by an attorney at that meeting?

A. He was.

Q. And did he indicate he had information on the Andrew Dotson homicide?

A. Yes, he did.

Q. How did he inform you that he had some information? How did he gather his information?

A. He told us that he was in the same cell with Mr. Conway and that they'd been talking and Mr. Conway had told him certain aspects of the homicide.

Q. Did you or anybody from your agency place Ronald Trent in the same cell with James Conway?

A. No.

THE COURT: Just one second, sir. Can you see all right or is the podium --

MR. SUHR: No.

THE COURT: Just go ahead and slide the podium back.

BY MS. PRICHARD:

Q. When Mr. Conway was in jail, was he in jail on any charges lodged by any agency for

the Andrew Dotson homicide?

A. No.

Q. Do you recall what case he was in jail on?

A. We've referred to it as the Dockside Dolls shooting which I think was Jurvis -- Mr. Jurvis, Jarvis. I may be stating the name wrong.

Q. And was Mr. Conway in jail before or after Ronald Trent was in jail?

A. I don't recall that. I don't remember when Ronnie Trent was arrested. I think Mr. Conway was arrested in February, if I can remember correctly.

MR. SUHR: Excuse me?

THE WITNESS: It may have been February he was arrested. I don't remember exactly.

BY MS. PRICHARD:

Q. So Mr. Conway got arrested and he ends up in the same cell with Ronnie Trent?

A. That is correct.

Q. By no doing of yours or anybody with your agency?

MR. SUHR: Object.

THE COURT: Overruled.

THE WITNESS: That's correct.

THE COURT: Let's not lead the witness.

MS. PRICHARD: Okay, Your Honor. I'm trying to move things.

BY MS. PRICHARD:

Q. Let me show you State's Exhibit I3. Do you recognize that?

A. This is another letter, yes. Another letter written by Ron Trent.

Q. And what's the date of that letter?

A. Wednesday, April 10th, 2002.

Q. Those two letters, were those shared with you by the prosecutor's office?

A. That's correct.

Q. Did you use that information in any way in deciding whether or not you wanted to interview Ronnie Trent?

A. Well, yeah. He had information, so we wanted to actually set up an interview and see if his information was good or if he was just making things up. We didn't know at the time. We wanted to see what he actually knew.

Q. Did something about those letters indicate to you that he might have information?

A. Yeah. Some of the stuff did. Just some

of the comments he made in here.

Q. And steps were made to interview him?

A. Correct.

Q. Do you recall the date of that interview?

A. April 25th, I think.

Q. Was that interview tape-recorded?

A. Yes, it was.

Q. Show you State's Exhibit I7. Do you recognize that?

A. This will be the transcript of the interview on April 25th of 2002.

Q. You were present at that interview?

A. Yes, ma'am.

Q. Prior to that interview, had anyone your agency made any sort of agreement with Ronald Trent?

A. No.

Q. You promised him anything when he gave you that information?

A. No.

Q. You conducted that information and tape-recorded it?

A. Yes.

Q. And at the time you gathered that

information, his attorney was present?
A. Correct.
Q. And the prosecutors were present?
A. Correct.
Q. Were any promises made directly after he gave you that information?
A. No.
MR. SUHR: Excuse me. You said his attorney was present. Are you talking about the Defendant's?
MS. PRICHARD: Ronald Trent.
BY MS. PRICHARD:
Q. The Defendant was not present at this meeting?
A. The Defendant, Jim Conway, no, he was not.
Q. This is Ronald Trent we're talking about?
A. Correct.
Q. What was the purpose of that interview?
A. To see how much information Mr. Trent actually had.
Q. And did he give you information?
A. Yes, he did.
Q. Did he give you information about the

Andrew Dotson homicide?

A. Yes, he did.

Q. Did he give you information about any other crimes?

A. Yes, he did.

Q. What other crimes?

A. Plans to kill other people.

Q. In relation to the Andrew Dotson homicide?

A. Well it was in relation to the Andrew Dotson homicide, in relation to the Dockside Dolls homicide. There's other crimes that it was all related to the killings were the information we were getting.

Q. So Mr. Trent had information related to several different cases?

A. That's correct.

Q. And when that meeting was over, after the tape-recorded interview, what instructions did you give to Mr. Trent?

A. I told him to stop talking to Mr. Conway. Avoid talking about anything to do with the investigations.

Q. Did he indicate to you whether that would be a problem?

A. He said that Conway brings it up to him all the time. I said avoid him. I don't want him talking about it because it doesn't do you any good when you're talking about it and when you're out of jail we asked you to corroborate what you're saying, Mr. Conway's going to look at you and say I just told you. I told him to stop talking about it until you're out of jail.

Q. Did you have plans to get him out of jail?

A. Yes.

Q. And what needed to be done before you could get him out of jail?

A. Work-release-type program had to be set up for him.

Q. Did other people in agencies have to be contacted?

A. Yes, they did.

Q. About how long did that process take?

A. Well we took him out for a polygraph. I can't remember all the dates exactly. There was several dates. The actual first date we got him out may have been like May 16th, maybe.

Q. And this interview is April 25th?

A. Yeah. So it took a while.

Q. You said you polygraphed Mr. Trent?

MR. SUHR: Objection.

THE COURT: Overruled.

THE WITNESS: Yes.

BY MS. PRICHARD:

Q. And that happened before the May 16th date you're referring to?

A. Yes, it did.

Q. So that had to be done?

A. It was contingent. It had to be done before we'd get him out.

Q. And at some point in May, you said you believe the 16th, you got him out of jail. What do you mean by that?

A. He was is down doing work release. We had a step where he was work release he had to be down at the Jackson Pike facility and that's where he stayed and when he came out to work. We took him out of the jail and took him back.

Q. So May 16th he would have been moved out of the cell with James Conway?

A. The actual date that he moved out was probably before May 16th I'd imagine, but I don't know for sure. But I wanted to get him away from Mr. Conway.

Q. When he got moved to Jackson Pike, did he begin working with your agency?
A. Yes.
Q. What did that entail?
A. We gave him his own phone and we take him out and then he would attempt to make contact with Mr. Conway. He made contact with some members of what we labeled at that time Mr. Conway's associates to get instructions for criminal activities that he was told to do by Mr. Conway according to him.
Q. The information that he was getting or I guess the work he was doing, did that relate to the Andrew Dotson homicide?
A. Yes, it did.
Q. In what way?
A. Just trying to obtain corroborative information that was already told to us. We just had basic information we wanted to corroborate that was, in fact, true.
Q. And by that, do you mean corroborating what Ronnie Trent had told you?
A. Correct. By statements made by Mr. Conway.
Q. What was the goal in having these wired

conversations when Ronald Trent was out of jail?

A. Obtain enough information for an indictment.

Q. How long did Ronnie Trent work with your office wired and having these conversations?

A. I don't recall the last date. Started May 16th. Maybe May 28th or something like that we made a stock of the last tapes.

Q. And how would this transpire when he was out working with you? How did that all occur? What would you do?

A. He would call like someone -- like there was -- at that time there was a girlfriend of Mr. Conway's. Sometimes they would get ahold of him that way and he would make a phone call to them. Or is it okay to say the guy's name, he called Jamie, sometimes he called Shawn and he actually went and visited Mr. Conway at jail one time, things of that nature.

Q. Were all of these conversations taped in some fashion?

A. Yes. To the best of our ability, yes.

Q. Was Mr. Trent under any sort of surveillance when all this occurred?

A. Yes.
Q. What was the purpose for taping Ronnie Trent's conversations besides corroboration?
A. Just to get additional information, too, about what was going on.
Q. And then at some point did you cease the wiring of Ronnie Trent?
A. Yeah.
Q. Why was that?
A. They were catching on. They were accusing him of being a cop, all kinds of stuff and I was concerned for his safety at that time.
Q. During any of that period of time, May 16th to approximately May 28th, was there any written agreement, any promises made to Ronnie Trent?
A. Not to my knowledge. No. I can't remember around those dates.
Q. Do you know why an agreement hadn't been made?
A. I don't recall exactly why the agreement hadn't been made. Some problems with attorneys or something, people getting the right information.

Q. So was Mr. Trent essentially working for you without a deal?

A. Yeah. Yeah, he was.

Q. Show you State's Exhibit I5. It's a three-page document. Do you recognize that?

A. Yes. This is the agreement.

Q. What agreement is that?

A. For Ronnie Trent for his assistance working with the sheriff's office.

Q. What date was that agreement made?

A. 6/11 of 2002.

Q. So after he had worked for you?

A. Yeah.

Q. Show you State's Exhibit I6. Do you recognize that document?

A. Yes.

Q. What is that?

A. That was from Ron O'Brien's office to the adult parole authority office.

Q. What was the purpose of that document?

A. Tell them about the agreement.

Q. To tell them about the agreement?

A. Yeah. The adult APA. This is for the hearing, I'm sorry. This is also reference to the hearing.

Q. What's the date of that letter?
A. June 10th, 2002.
Q. Does it say in June an agreement was formalized with Ronald Trent?
A. That is correct.
Q. Prior to that April 25th meeting, have you ever met Ronald Trent before?
A. No.
Q. Any idea who Ronald Trent was at that time?
A. No idea.
Q. Had you ever spoken to James Conway as of that April 25th date, to your recollection?
A. No. Never spoke to him.
Q. After the April 25th meeting with Mr. Trent, was he returned to the jail?
A. Yes. Yes, he was.
Q. And did you give him instructions on that particular day for what would happen when he got returned to the jail?
A. You talking about the first initial interview; correct?
Q. This initial interview that you have a transcript of.
A. That's when we were getting with him and

he'd have to take a polygraph, see if he could pass one concerning the information he gave us. If he passed that, we'd probably go forward with trying to set up a work-release program to get him out to start actually working with us. Instructed him to stop talking to Mr. Conway if at all possible about any of this stuff. He indicated to me it was very difficult in his cell and I said just don't talk about it. Again I don't want you getting instructions from him and then when you get out he said I just told you what to do, why are you asking me. I said it would look bad, so stop talking about it. He said he'd do his best.

Q. And as of April 25th, did you have sufficient information about how Andrew Dotson was killed based upon what Ronald Trent told you?

A. Yeah. I had good information on the 25th.

Q. When you met with Ronald Trent, did you know he had a record?

A. The first day when we initially met I didn't look at his. I think my partner may have. I didn't actually look at it.

Q. At some point you learned he had a criminal record?

A. He was in jail at that time, so I was assuming.

Q. Did you take any precautions because you thought issues of credibility might be raised with him?

A. Yes, we did. We were very cautious with him. We couldn't figure out why he was going to help us. So we were concerned about maybe he was trying to pull something off to injure one of us or something. We didn't know what was up with this guy. But turned out he was very credible and he did a good job.

MR. SUHR: Object.

THE COURT: Overruled.

BY MS. PRICHARD:

Q. Did you take any steps to independently verify some of the information he told you on April 25th?

A. Yes. As far as talking to other people?

Q. Anything. Do you recall anything you did to corroborate what Ronnie Trent had told you on April 25th?

A. We went and spoke to another guy whose

first name -- it was the first time I ever heard the guy's name and it was verified that Ronnie was starting to be credible every time we checked on something, yes.

Q. Were the conversations wired to prevent any later credibility issues?

MR. SUHR: Object.

THE COURT: Overruled.

THE WITNESS: Yes.

BY MS. PRICHARD:

Q. Did they serve any other purpose? What's the main purpose you wired him up when he got out of jail?

A. Corroboration, get evidence -- testimony and evidence to show that Mr. Conway was the one that -- actually involved in killing Andrew Dotson.

Q. The information that was gathered by Ronald Trent during these wired conversations, did some of that deal with other crimes that had not been indicted?

A. That's true. Dealt with the conspiracies to commit murder.

Q. So I guess there was a mix of information, unindicted crimes and indicted?

A. Correct.
Q. Which case was indicted at the time Ronald Trent was working for you?
A. Dockside Dolls.
Q. That was the only one?
A. Right.
Q. And when Ronald Trent was finished working, is that when you sought an indictment on the Andrew Dotson homicide?
A. That is correct.
Q. And indictment on some other charges?
A. That is correct.
Q. Detective Scott, on what date exactly did Mr. Trent start working being an informant for you?
A. May 16th is the best I can remember. That's when we got him out.
Q. And that's 2002?
A. Yes. 2002. I'm sorry.
MS. PRICHARD: Thank you.
THE COURT: Sir?

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CROSS-EXAMINATION

BY MR. SUHR:
Q. Detective Scott, you're indicating that

you had no prior contact -- you yourself had no prior contact with Ronnie Trent before the meetings you described here this morning; is that correct?

A. That is correct.

Q. And you also, I believe, indicated over objection that no one else in your agency had any contact with Ronnie Trent before that?

A. As far as I know, that is correct.

Q. Well you say as far as you knew?

A. Maybe not. As far as I know, nobody did.

Q. Now, specifically relating to a day or so prior to March 22nd of 2002, isn't it a fact that the Franklin County Sheriff's Office took information obtained from Ronnie Trent to the officials in Chillicothe, Ross County, concerning an alleged armed robbery of a TV store down there?

A. Not to my knowledge.

Q. Not to your knowledge?

A. No, sir.

Q. And that pursuant to that on March 22nd, the information was turned over to Ross County authorities and they then arranged to interview

Mr. Trent regarding his information. You know nothing about that; is that right?

A. I don't recall anybody using Ronnie Trent to do that. That is -- no. That is incorrect.

Q. You say it's incorrect or you don't know?

A. It has to be incorrect because nobody that I know of, and I was in charge of the Andrew Dotson case, no one that I know of had spoken to Ronnie Trent and no one brought it to my attention until April 25th. The information concerning Chillicothe would have had to be given by someone else.

Q. And did you have anything to do with that case in Chillicothe?

A. Can you be more specific? What do you mean?

Q. Did you ever go down to Ross County and talk to authorities there?

A. Concerning that specific case?

Q. Yeah.

A. No. I didn't go down to talk about that specific case.

Q. And the Ross County authorities said

that it was Mr. Trent, you would say that they were incorrect?

A. I would say they were incorrect if they thought it was Mr. Trent.

Q. If they talked to Mr. Trent and talked to Franklin County investigators about it?

A. I have no knowledge of that.

Q. Now, in your investigations here, you did find, didn't you, that Mr. Trent had indicated that on March 15th of 2002 he claimed that certain money was put in his account by one of Mr. Conway's associates, put on his books in the jail account?

A. Yes. He did claim that.

Q. And did he also tell you that he had arranged for that, for Conway's associates to get the money from his brother on the pretext of posting bond on his case?

A. I think that's what was stated.

Q. And did he also tell you at that time that the person that posted the bond was informed well this won't do any good because there's a parole holder on Mr. Trent?

A. I don't recall.

Q. And that did you also -- did Mr. Trent

tell you that on the 16th of March, Mr. Conway inquired of Mr. Trent about bond money when he had a parole hold and at that time he admitted he was working for the authorities?

A. I have no knowledge of that.

Q. Did he tell you that?

A. No. I have no knowledge of that.

Q. Mr. Trent is not unknown to the sheriff's office, is he?

A. I don't know. That's my first dealing with him.

Q. Did you ever hear that Mr. Trent had signed a false affidavit claiming to have been the person responsible for a shooting of a person that was convicted here in Franklin County Common Pleas Court claiming responsibility for the shooting for which a Terry Mayle was convicted some years ago?

A. No.

Q. And that the Franklin County Prosecutor's Office had ridiculed this sworn statement of Trent on the basis that he had no credibility and urged the trial courts not to even have a hearing on there?

A. Was there a question there?

Q. Were you aware of that?

A. No, sir.

Q. Now, you say that in this meeting in Exhibit I7 is an interview in which you were present on April 25th of 2002; correct?

A. Correct.

Q. And you've stated that your statement to Mr. Trent was not to ask him any questions whatsoever, to stay away from him so that after you got Trent out, you'd be able to get these conversations on tape or wire or whatever. Is that what your testimony is?

A. That's correct.

Q. And that he was not to ask or get any information on any alleged crimes, for instance, the case we're here about today, Dotson?

A. I don't know if I stated it like you just stated it. I said I'd prefer you not to talk to him about it until we get you out so we could.

Q. Well did you say prefer in your direct testimony here or did you say you instructed him not to say anything because he could be dangerous, he could be wanting to know why he

was repeating it on a phone when he'd already talked about it in jail? Did you say that to him?

A. I said put him off.

Q. Put him off.

A. That's the last page of the transcript. That's what I said. Put him off.

Q. I'm not asking you to read your testimony.

A. You're asking me for the specifics.

Q. I asked you what you stated on direct.

A. To not talk to him about it. I'm speaking in general. Not to talk to him about it.

Q. And specifically, wasn't it a fact that what you stated was just don't talk to him about Dockside? Didn't you say that?

A. Do you know what page that's on?

Q. Well it's towards the end there. Didn't you say if he brings up Dockside, let him make his statements and then you just keep on moving to something else?

A. Probably did because Dockside was an indicted crime at that time.

Q. So then you just keep on moving to

something else. Did you say that in a question?

A. Moving to something else. If you can show me what page we're on.

Q. The exhibit's not numbered, but it's approximately -- looks like the third page from the back.

A. I got you. Move on to something else. If you see where it says move on to something else. I'm saying deflect, talk about something else.

Q. Move on to something else?

A. Talk about the TV, talk about what's on TV.

Q. Did you ever say in here anything about refraining from getting him to talk about the Dotson killing?

A. Refraining from talking?

Q. Yeah. Anywhere in here did you tell him not to ask about Dockside?

A. No. I never told him not to ask about Dockside.

Q. Did you tell him to talk about anything else that was not indicted at the time?

A. Try that again. Ask me the question

again.

Q. When you said if he brings up Dockside, let him make his statements. This is in the future, isn't it, from when you're talking here?

A. Correct.

Q. Let him make a statement and then you just keep moving on to something else.

A. Okay.

Q. At any time did you say don't talk to him while he's in jail because then he'd wonder why he was being asked again on the phone or whatever to repeat those. Did you ever say that in here?

A. Yeah.

Q. Where?

A. The last paragraph. My last instruction.

Q. And what exactly?

A. I don't want you to talk to him about this stuff. Just put him off until we can get like tape recorders and stuff like that so we can control it. And there's no controlling there.

Q. Earlier didn't you say to go on to other

things?

A. Okay. Let's try this again. I'm telling you --

Q. Just one more question.

A. Okay.

Q. Now, you've heard these tapes; correct?

A. Okay.

Q. These alleged tapes. And can you independently verify what's on those tapes, the information?

A. What do you mean independent, corroborate stuff?

Q. Yeah. We've listened -- have you listened to the hundred hours of tapes?

A. Yeah.

Q. Other than Ronnie Trent leading and giving narratives and things like that, what percentage of the information from other people is understandable?

A. Percentage, I have no idea. Are there things that have occurred that only Mr. Conway would know about and the people that he worked with that are on that tape? Yes, sir, there are.

Q. But it comes down to it, you have to

rely on the truthfulness of Ronnie Trent exclusively, don't you?

A. No, sir.

Q. Now, the things that, for instance, you didn't know, that he had informed the Defendant that he was working for the sheriff's department and the prosecutor to get his charges reduced; is that correct, you didn't know that?

A. You're stating that he said that?

Q. Yes.

A. No.

Q. And I'm saying you didn't know that.

A. That is correct.

Q. Before Mr. Conway was arrested on February, I believe, 23rd is it, were you aware of Mr. Trent cooperating with the authorities before that time period on other cases?

A. No, sir.

Q. Now, specifically, were you aware that he gave information regarding Orlando Wilson --

A. No, sir.

Q. -- which led to a further indictment on Mr. Wilson?

A. Okay.

Q. Were you aware?
A. No.
Q. And were you aware that he carried a card from before Mr. Conway's arrest?
A. He carried a what?
Q. Carried a business card from a Franklin County homicide detective that he'd been given during one of his interviews?
A. Before Mr. Conway was arrested?
Q. Before Mr. Conway was arrested.
A. No. He may have. I don't know. Because we spoke to him in April.
Q. I'm talking back in February.
A. No. I had no idea.
Q. Were you aware that he claimed to have close connection to Sheriff Karnes?
A. No, sir.
Q. Were you aware that he'd been charged with a disciplinary violation by being in a fight and was convicted by disciplinary panel, sentenced to seven days in the hole that he was to begin on February 14th and when he was taken out of one cell to be put in disciplinary, immediately by order of Sheriff Karnes that was removed, his appeal was granted and he was

taken off that? Were you aware of that?

A. No, sir.

Q. So when you say that neither you nor your agency had any prior contact with Ronnie Trent, as far as you're concerned, you didn't have any prior contact?

A. I did not.

Q. But you can't speak for the rest of the sheriff's agency and officials of the jail, including Sheriff Karnes?

A. No. I cannot for them. Correct.

Q. Now, you have, I suppose, at some point checked out Mr. Trent's record?

A. Yeah. I glanced over his record. That's correct.

Q. And it appears that back in 1990 he was convicted of burglary and GSI?

A. Maybe. I don't know. I did not memorize his record.

Q. And is it also true that you checked and found that he was -- he had done an original sentence of eight to 15 years?

A. I recall that he did some time. The exact amount I don't remember.

Q. And after about seven years he was

released on parole; is that correct?
A. It sounds right.
Q. And that after and while he was on parole -- and this was the same parole he was on while he was dealing with you, was it not, for those original charges?
A. I think so.
Q. And while he was on parole, did you also discover that he had a receiving stolen property indictment, felony, another burglary and then two GSIs?
A. I know about the GSI for sure. The other stuff I don't know about that.
Q. And for those -- all offenses during his release while he was on parole, all those charges have been reduced to misdemeanors. Were you aware of that?
A. The GSI one I was aware of.
Q. How about the ones before that?
A. No.
Q. Did you know that he bragged in jail about working with Sheriff Karnes on the outside when he had his dope house and that every now and then he would give them some people and that would keep them off his neck?

Were you aware that he made those statements?

A. No, sir. I was not.

Q. You were aware that he bragged in jail about knowing how to beat polygraph tests?

A. No, sir. I was not aware of that.

Q. That all you have to do is know how to control your heartbeat? Were you aware of that?

A. I do polygraphs for the department. I haven't met anyone that could control their heartbeat.

Q. Obviously if they're successful you wouldn't know.

A. I've never known anyone that could control a heartbeat, sir, I'm sorry.

Q. Do you know it's regularly taught in various CIA functions?

A. It's pretty much physically impossible.

Q. Yeah. Okay. Do you know that he bragged about doing that?

A. I don't know anything about that.

MR. SUHR: Excuse me, Your Honor. One second.

BY MR. SUHR:

Q. Now, when these letters from Ronnie

Trent came in, they were referred to you; is that correct?

A. They actually were going to the prosecutor's office. I saw them and actually had our first meeting.

Q. So when you had your first meeting, who all was there?

A. Myself, Detective Floyd, Sheryl Prichard was there, I don't remember if she had someone else with her. Ronnie Trent and Ronnie Trent's attorney, Ms. Beauchamp.

Q. So if I understand what your testimony is, until you met, nobody had actually talked to Ronnie Trent? He had sent a couple letters and that was it?

A. That's correct.

Q. And Detective Floyd is with the sheriff's department?

A. Correct.

Q. And you're with the sheriff's department?

A. That's correct.

Q. Was anybody present from the Columbus Police Department?

A. On our first meeting? I don't think so.

Q. Isn't it true that Mr. Trent's communications only concerned Dockside?

A. Could you be more specific about the dates of communication?

Q. The letters that he wrote that we're referring to right here only refer to Dockside Dolls?

A. As best I can remember, that is probably correct.

Q. And Dockside Dolls is a Columbus case?

A. That is correct.

Q. Isn't it a little unusual that if that was the only information you had, that the sheriff's department would be called in rather than the Columbus Police Department since it was their case?

A. Well we had information that Mr. Conway was involved in Andrew's homicide. It was known to the prosecutor's office.

Q. So what you're claiming is that because of that connection, you didn't bring in -- nobody brought in Columbus, but only the sheriff on the basis that if he knows about Dockside maybe he knows something about this case?

A. No. We had spoken with Columbus prior to April concerning Mr. Conway's involvement in our homicide. We met with Detective Cohen, we met with quite a few people. They had common knowledge, too, that we felt Mr. Conway was involved in Dotson's homicide. But we didn't have anything to corroborate.

Q. How far back did that go?

A. I don't recall how far back we were talking about detectives. I found out they were interviewing Mr. Conway and some of his associates.

Q. They interviewed Mr. Conway?

A. I thought Mr. -- Detective Cohen attempted to.

Q. Didn't he invoke his Miranda rights and ask for a lawyer?

A. He might have. But that was more of him being a victim or something. Don't know the whole case. I just know that they had information and we had information.

Q. Well now, as a matter of fact, somebody provided a lot of background information to Mr. Trent from the get-go about the Dockside case. Were you aware of that?

A. No, sir.
Q. Even before the arrest of Mr. Conway?
A. If you say so.
Q. Now, were you aware that Columbus Police had Mr. Conway under surveillance for a period of time before he was arrested?
A. Yes.
Q. And you knew that any time they wanted, they could go out and bring him in because they knew where he was, they had him under surveillance; right?
A. For the most part.
Q. And when they brought him in, they put him in a cell where Mr. Trent was already located up on eight north; right?
A. I have no idea.
Q. You don't know that they were -- all these conversations allegedly arose out of eight north?
A. You're asking me do I know Ronnie was already in there prior to Mr. Conway getting in there. I have no knowledge of that.
THE COURT: Anything further?
MR. SUHR: Nothing further.
THE COURT: Ms. Prichard?

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REDIRECT EXAMINATION

BY MS. PRICHARD:

Q. Do you recall whether Dave DeVillers was at the meeting April 25th?

A. Dave DeVillers was there.

Q. Did Mr. DeVillers have conversations with Mr. Trent as well that aren't in the transcript?

A. Correct.

Q. When those letters that are addressed to me were given to you, is that the first information you had that Ronald Trent had some information?

A. Yes.

Q. And you were assigned to which case?

A. Andrew Dotson homicide.

Q. And who's the person who contacted you to set up this Ronald Trent meeting?

A. Best I can remember it was you.

Q. When Mr. Trent was brought to that meeting, what were the topics that were discussed? Which crimes?

A. He talked a little bit about Dockside and then we asked him about the Andrew Dotson

homicide and he had knowledge of both of them actually. And future crimes that he was told -- hired to do.

Q. Did you have to ask about Andrew Dotson or did he tell you he knew something about Andrew Dotson?

A. I don't recall if I brought it up or if he told me.

Q. Why would you have just brought that up? If you brought it up, why would you have just brought that up?

A. Because of his association with Jim Conway. I had prior knowledge -- prior information. Like I said, nothing that I could corroborate at that time that Mr. Conway was involved in the Andrew Dotson homicide.

Q. Did you and I discuss Ronald Trent before this meeting?

A. On the phone.

Q. Based on that information, did you think it was appropriate to talk to him about the Andrew Dotson homicide?

A. Correct.

Q. Because of our discussions?

A. Correct.

Q. Were you aware of discussions between his attorney and the prosecutor's office before you ever met him?

A. Before I ever met him?

Q. Were you aware that Sarah Beauchamp had been in contact?

A. With you. We talked on the phone. But I don't know -- I can't remember the content of the conversations.

Q. Is it fair to say based on information from me we asked you to interview Ronald Trent?

MR. SUHR: Object.

THE WITNESS: That's true.

THE COURT: Overruled.

THE WITNESS: You did.

BY MS. PRICHARD:

Q. And that's when discussions of the Andrew Dotson homicide evolved?

A. That is correct.

Q. And in this transcript on April 25th, does that contain information about the Andrew Dotson homicide?

A. Yes, it does.

Q. As well as some other crimes?

A. Yes, it does.

Q. And at the time of this, there was no indictment on James Conway for the Andrew Dotson homicide?

A. No. There was not.

Q. Is this the only case you've dealt with Ronald Trent on?

A. Yes.

Q. You personally?

A. Yes.

Q. When there's information on a particular case that somebody has in the sheriff's office, how does that get to the right person? Does anybody take information or does it get routed?

A. You mean just like a tip called in, is that what you mean?

Q. A tip, somebody in the jail, prosecutor's office has information.

A. What would happen is if it's a specific type of crime, secretaries would get the information or whatever, would get the information, they would look up the offense report pertaining to that crime, find out who's assigned to that case and then that would be routed to that detective.

Q. So when someone like Ronald Trent has

information on your case, it gets looked up and it comes to you?

A. Yes.

Q. So any other -- if Ronald Trent had information on some other cases, would that come to you?

A. No.

Q. Not unless it's your case?

A. Not unless it's my case. That's correct.

Q. And as far as you knew on April 25th, Ronald Trent was not working with any homicide detective that you knew from the sheriff's office?

A. No. Not to my knowledge.

Q. Anything that the Columbus Police Department might have been doing with respect to James Conway, would you have been involved prior to all of these indictments? Do you and the Columbus Police work together?

A. Not usually.

MS. PRICHARD: I have nothing further.

THE COURT: Mr. Suhr?

MR. SUHR: Just a couple things.

- - -

RECROSS-EXAMINATION

BY MR. SUHR:

Q. So I guess the import of the questions you were just asked basically is Mr. Trent wasn't working with any other homicide detective in the sheriff's office; is that correct, prior to your knowledge?

A. Correct.

Q. And that he could have been working with, for instance, a robbery detective; correct?

A. Well we're not segregated as much as Columbus. We have a crimes against persons and a crimes against property. Our area usually handles robberies, rapes and homicides and I know most of the guys in there. Is it possible someone could have been working with him, I'm sure it's possible. But at roll call we try to share notes and I never heard Ronald Trent before that meeting.

Q. But that would just be happenstance before you happen to hear it or not?

A. That's true.

Q. There isn't any procedure where if someone wants to become an informant that you

go on a computer and find out how many other cases that he's given information on?

A. No.

Q. Or what kind of information or what his contacts were or anything?

A. No, sir.

Q. So again, with the relation to March 22nd, '02 by Thomas Hewitt down at Chillicothe Police Department when they said that they were called in reference to a subject that had information pertaining to a robbery down there and that person is Ronnie Trent, you wouldn't have any independent information about that?

A. Do I know who gave them the information?

Q. Right.

A. Yes.

Q. Who?

A. It wasn't Ronnie Trent.

Q. Wait a minute. Who gave who the information?

A. About a robbery. It was not Ronnie Trent.

Q. And that's to Thomas Hewitt?

A. I don't know who it was given to because

I only was on the peripheral side of this, but it was not Ronnie Trent. I know what you're referring to now.

Q. You do?

A. I do know who you're referring to.

Q. And who was the officer that was in charge of that?

A. In Chillicothe?

Q. No. Here.

A. In charge of Chillicothe robbery?

Q. Who provided the information to Chillicothe? It had to come through an officer.

A. Through SIU, our narcotics bureau.

Q. Who was that person?

A. I don't know. If you're asking me specifically, I don't know, sir.

Q. So if the Chillicothe Police Department revealed information to you, lawyers on that case that it was Ronnie Trent, then they would have been mistaken?

A. In my opinion, yeah.

Q. In your opinion.

MR. SUHR: That's all.

THE COURT: Thank you. You may step

down. We're going to go ahead and reconvene at 11:15.

(Recess taken.)

THE COURT: I understand the next State witness is not available right now, so we're going to have a defense witness. You're calling Mr. Trent?

MS. PRICHARD: Correct. You're calling Mr. Trent.

MR. SUHR: Yeah.

THE COURT: Raise your right hand, please.

(Witness sworn.)

THE COURT: Please be seated. I've got the microphone turned on. I want you to adjust it and pull it down towards you.

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RONALD TRENT

Called as a witness on behalf of the Defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SUHR:

Q. State your name, please.

A. Ronald Ray Trent.

THE COURT: Mr. Suhr, if you'd come up

here please. Thank you.

BY MR. SUHR:

Q. And you are a witness in this case entitled State of Ohio versus James Conway; is that correct?

A. Correct.

Q. As I understand it, some point in time you were incarcerated in the Franklin County Jail beginning in September of 2001; is that correct?

A. That's correct.

Q. At that time you were charged with several counts of gross sexual imposition with a 13 year old little girl; is that correct?

A. No, it's not. It's one count.

Q. What?

A. It was one count.

Q. One count. And an attempt?

A. Yeah.

Q. There were two counts, weren't there?

A. Yeah.

Q. And during that time that you were in jail, it's true, isn't it, that you had contact with some of the sheriff's department authorities?

A. I was in jail. They're all deputies there, yeah.

Q. And it's also true, isn't it, that at one time you were in a cell area with a person by the name of Orlando Wilson?

A. Yeah.

Q. And you were also in that cell there was a man by the name of Howard Guinn; is that correct?

A. I don't know. May have been.

Q. And with relation to Orlando Wilson, isn't it true that you talked to him at length and at some point you were promising to get him a lawyer. Do you remember that?

A. No.

MS. PRICHARD: Your Honor, can I object to the leading nature of all these questions? It's his witness.

THE COURT: Overruled.

MR. SUHR: Thank you.

BY MR. SUHR:

Q. And in fact, you promised him to get perhaps Mr. Shamansky and that you needed more information about his case to pass on to Shamansky so you could get him interested in

Orlando's case?

A. No.

Q. And as a result of that, you got certain information which resulted in a further indictment of Mr. Wilson?

A. I don't know anything about that.

Q. Now, during that same time period when you're on the fifth floor with Howard Guinn and Orlando Wilson, you had in your possession a business card from a homicide detective from the sheriff's department, didn't you?

A. I may have had, yeah.

Q. And although you told people you threw it away, you later were seen to have had that same card when you were up on the eighth floor where Mr. Conway was?

A. I may have.

Q. When you were down on five, 5N3 specifically that's where you were; right?

A. Yeah. I was on every floor there.

Q. What?

A. Yeah.

Q. You had your second disciplinary hearing when you were there, isn't that correct?

A. That's correct.

Q. And you were found guilty by a panel of three corrections officers and you were given seven days in the hole; is that correct?

A. That's correct.

Q. And that prior to this, you told people in 5N3 that when you were out on the streets running a dope house, that you had a close connection to Sheriff Karnes himself?

A. I wouldn't know Jim Karnes if he was in this courtroom.

Q. And you told the people there in 5N3 and that all you did was turn over a few people on a regular basis and that you could -- that gave you free reign to have your drug house working. Didn't you brag about that?

A. No.

Q. Now, in fact, when you were taken off of 5N3 down to the third floor to do your time in the hole, you had appealed to Sheriff Karnes, didn't you?

A. Yeah.

Q. And the day that you were taken from five down to three, your appeal was granted by Sheriff Karnes?

A. Actually it was granted the day before

that. But it never got processed.
Q. Were you taken to three?
A. Yeah.
Q. So you're taken to three and then you're taken from three up to eight because Sheriff Karnes had reversed -- had granted your appeal and dismissed the charges?
A. Correct.
Q. Was there ever a hearing on that?
A. Yeah. I went to the hearing and was found guilty.
Q. But there wasn't a hearing on the appeal?
A. No.
Q. Do you remember you were convicted in 1990 you had a sentence of eight to 15 years? Do you remember that?
A. Eight to 25.
Q. Eight to 25. And what was that for?
A. Aggravated burglary.
Q. And was there ever a GSI with mandatory time?
A. No.
Q. Now, while you were doing time on that, an individual by the name of Terry Mayle was

convicted of shooting an individual, isn't that correct?

A. Yeah.

Q. And almost immediately you notified people that it wasn't him, he was wrongfully convicted and you swore you did it?

A. That's correct.

Q. That you shot the guy that Terry was convicted of?

A. That's correct.

Q. And that the prosecutor, Tim Braun, and John Cummins of Columbus Police Department came down and talked to you, didn't they?

A. I don't know who it was. Somebody came down, yeah.

Q. Couple guys came down and talked to you. And you later signed an affidavit swearing all that was true?

A. That's correct.

Q. And Terry Mayle is still in prison?

A. Yeah.

Q. And were you aware that several times that it came up about your alleged after-trial confession and that the prosecutors urged that no hearing not even be heard on your confession

because you were totally unbelievable?

A. I wouldn't know nothing about what they thought.

Q. Well you were informed that they didn't believe you at all.

A. No.

THE COURT: Would you pull the mic a little bit closer to you?

BY MR. SUHR:

Q. In fact, the prosecutor in that case said that after you said your name and date of birth he believed nothing you had to say.

A. I guess that's his opinion.

Q. But that case most recently was decided on April 30th, 2002 in the Court of Appeals.

MS. PRICHARD: Objection. Are any of these questions?

THE COURT: I'll sustain the objection.

BY MR. SUHR:

Q. Now, when you were placed on the eighth floor, that's exactly where you'd come from because of the incident which you were found guilty; is that correct?

A. Yeah.

Q. It's true, isn't it, that the incident

with the being found guilty of the infraction by the panel occurred sometime prior to February 14th, 2002; is that correct?

A. I don't know.

Q. I mean, if your records would show that you were scheduled to do your seven days in the hole on February 14th, would you have any reason to dispute that?

A. If that's what it says, I mean.

Q. And that it was on that day that after you went to three then on February 14th, you were transferred up back to the eighth floor?

A. If that's what day it was, yeah.

Q. But I mean, that happened?

A. When I went from the hole I went to eight, yeah.

Q. Now, later that month Mr. Conway -- you were out on the eighth floor when Mr. Conway was placed on the eighth floor; is that correct?

A. That's correct.

Q. And did you, in fact -- was he wounded at the time?

A. Yeah. He was shot.

Q. And did you, in fact, help him clean his

wound and things like that?

A. Yeah.

Q. Now, at some point early in March, the first week, two weeks in March of this year, isn't it true that you described Mr. Conway that your brother, a girlfriend or some member of your family or some close friend was holding about $3,000 for your bond?

A. No.

Q. Isn't it further true that you requested of Mr. Conway to have someone pick up that money from them and put it on your books so that you could post bond on the case?

A. No. He had his family bring it down and put it on my books.

Q. But it came from your family?

A. No. It came from his family.

Q. I see. And that after they put it on the books, they were informed that you couldn't get out anyway because you had a parole holder, is that true?

A. I mean, I don't know. He didn't put no money on my books for bond.

Q. Excuse me?

A. He didn't put no money on my books for

bond.

Q. So you're saying the 3,000 was not for your bond?

A. No. It was to kill Brian McWhorter.

Q. So as of March 14th, you did not tell them -- tell Mr. Conway that you were on parole and couldn't get out on bond?

A. I don't know. I mean, it may have come up in one of the conversations. I don't know.

Q. Is it pretty much true that you would rap to him and say a lot of things that might not be true just to get him to open up to you?

A. No.

Q. Never told him anything that was false?

A. No. Not to my knowledge.

Q. Isn't it also true that when confronted about the bond situation, you explained that you had been working with the sheriff's office to work off charges and things like that, that you had given information to the sheriff?

A. Do what now?

Q. That you had given information to the sheriff?

A. No. I mean, I've told you twice there was no bond situation.

Q. And I mean, well did you tell him that you'd given information to the sheriff?
A. No.
Q. That you were working with the sheriff's department?
A. No.
Q. That you had worked with them before?
A. No.
Q. Now, back when you were on the fifth floor prior to -- back in January of 2002, as a matter of fact, at that time you had in your possession a card from the sheriff's department homicide squad?
A. That's correct.
Q. And that you told people you disposed of that card, but you later had it up on the eighth floor, isn't that right?
A. I don't know. Yeah. I guess.
Q. I mean, you don't remember the floor or you just guess if people would say that that was true?
A. Do what?
Q. Strike that question.
A. Thank you.
Q. You have been since your release on --

from the institution on parole, how many felony charges have you been charged with?

A. One.

Q. There was a burglary?

A. No.

Q. Was there a receiving stolen property felony?

A. Yeah. There was a receiving stolen property.

Q. Was there a gross sexual imposition?

A. Yeah.

Q. Was there an attempted gross sexual imposition?

A. Yeah.

Q. And all of those charges were reduced to misdemeanors, weren't they?

A. No. Actually the receiving stolen property I did 13 months for.

Q. Was that in jail over here?

A. It was in prison, yeah.

Q. And was that for the actual charge of RSP or did you go back on parole?

A. It was for both.

Q. And so you had a violation, you did 13 months and you got more charges?

A. No. I got the 13 months for the violation.
Q. For the violation?
A. Yeah. I got, I think, six months for receiving and six months for the violation.
Q. Did the receiving go down to the misdemeanor receiving?
A. No. I don't think so. I don't think it did, no.
Q. Credit for time served?
A. No. I did 13 months.
Q. Well I wasn't asking about the parole.
A. It wasn't just the parole. It was both cases. The receiving and the parole.
Q. I see. It also is true, isn't it, that when you admitted that you -- when you were working for the sheriff's department, but you told Mr. Conway don't worry, it's just something that I can do, I'm not going to affect you? Didn't you tell him that?
A. No.
Q. And at that point in time, did you suggest certain things such as eliminating witnesses on the Dockside Dolls case?
A. No.

Q. Specifically did you come up with a plan to eliminate Brian McWhorter?

A. Why would I?

Q. I'm not asking you that, sir.

A. Okay. No.

Q. Did you do that? And when Mr. Conway objected, isn't it also true that you said that, hey, I've got the ear of the sheriff's department and the prosecutor, you better go along with me or I'll tell them that you confessed all kinds of stuff?

A. No.

Q. You remember telling him that?

A. No.

Q. You gathered information for quite some time, didn't you?

A. Yeah.

Q. When do you think the first time was that you got some information you gathered from Mr. Conway?

A. What do you mean?

Q. Well what was the first date when you got in to talk about something that was relevant later on to these charges?

A. I never got him to talk about nothing.

He just talked about it. I don't remember the date.

Q. So when did you collect the information? How long after he was in jail?

A. I'm not sure. I mean, it was -- we was probably there a month and he started telling me about the Dockside.

Q. A month. What about the robbery, the alleged robbery in Chillicothe? When did he start telling you about that?

A. I don't remember.

Q. Do you remember him telling you about that?

A. Yeah.

Q. And as a matter of fact, you turned that information over, didn't you?

A. Yeah.

Q. And you did that before you wrote a letter, didn't you?

A. No. I don't think so.

Q. Now, on March 22nd, the authorities in Chillicothe had the results of your statements about the events down there in Chillicothe?

A. It's impossible. I've never talked to anybody in Chillicothe.

Q. Now, how many times did you talk to the homicide detective that you had his card?
A. Once.
Q. And what time of day or night is that, if you remember?
A. I don't remember exactly.
Q. And was that -- approximately when in this whole series of events was that?
A. What do you mean? It was before I even met Jimmy.
Q. So it was back when you were on the fifth floor?
A. Yeah.
Q. Weren't there several other occasions that you saw that individual?
A. Saw what, the detective?
Q. Uh-huh.
A. No.
Q. But you don't have an approximate date of when that would be that you saw him?
A. No.
Q. Now, we've heard other testimony. You're saying that you wrote a letter to the prosecutor's office; is that correct?
A. That's correct.

Q. And that was your first communication; is that right, to the prosecutor?
A. No. Actually my lawyer was the first communications.
Q. And when was that?
A. I'm not sure. You'd have to ask her.
Q. It was sometime prior to that letter though?
A. Oh, yeah.
Q. Your first letter?
A. Yeah.
Q. And then at whose instruction did you write that letter?
A. I didn't have no instructions.
Q. Nobody told you? Your lawyer didn't tell you go ahead and write a letter?
A. No.
Q. Now, in that letter, all you talked about was the Dockside Dolls case, isn't that true?
A. Possibly, yeah.
Q. Is that true or not?
A. I don't know. I don't have the letter in front of me.
Q. Let me hand you what's been marked for

identification purposes as, I believe it's I1. Is that a copy of the letter that you first wrote?

A. Yeah.

Q. And in that letter, that copy of a letter, does it mention anything about the cornfield case or the Dotson case?

A. No.

Q. It purely has to do with the Dockside case; is that correct?

A. That's correct.

Q. And later you had a meeting; is that correct?

A. That's correct.

Q. Now, did you understand that Dockside was in Columbus and was a Columbus case?

A. Yeah.

Q. Excuse me?

A. Yeah.

Q. At that meeting, was there anyone there from the Columbus Police?

A. I don't remember who all was there.

Q. But you weren't introduced to somebody from CPD?

A. I think someone from CPD was there, but

I'm not for sure.

Q. And do you remember what the person would have looked like?

A. No.

Q. Do you remember being asked about Dockside Dolls there?

A. No.

Q. Were you asked about another case?

A. Yeah.

Q. And that was this case, the cornfield case?

A. Yeah.

Q. Now, you were at some point in time placed on an unusual kind of work release; is that correct?

A. That's correct.

Q. Which basically indicated that you were to be released at twelve o'clock noon; is that right?

A. I don't think so. I think it was 2:00 to 10:00 or 2:00 to midnight.

Q. It wasn't noon until 2:00 a.m.?

A. No.

Q. Well you say it was what?

A. Noon to midnight, I believe.

Q. Noon to midnight. And was that to go to some kind of job?

A. No.

Q. It was primarily to get evidence on Mr. Conway and other people he knew --

A. That's correct.

Q. -- is that true? And that at that time you knew that the more information you could produce could produce better results for you?

A. No.

Q. Well I suppose you weren't concerned at all about the GSI and the attempted GSI?

A. No. Actually I wasn't.

Q. And so this was all just part of your civic duty?

A. No. It wasn't part of my civic duty. It was about somebody killing somebody for no reason at all and laughing at their mother's face. That's what it was about to me.

Q. How about it being the same kind of thing you were trying to pull with Terry Mayle, trying to pull the wool over people's eyes?

A. Am I setting here saying I stuck somebody in the chest twice?

Q. No.

A. Okay. Then it's no way near the same.

THE COURT: Mr. Suhr, we're not going to do a discovery deposition here. We're going to talk about the things in the motion and let's deal with those things only.

MR. SUHR: Certainly.

BY MR. SUHR:

Q. Now, as a result of your activities, you revealed information about alleged plans to kill witnesses that's the subject of another indictment; is that correct, and those kinds of items? Also you revealed information regarding a certain possible sham, robbery in Chillicothe involving some folks; correct?

A. Correct.

Q. And certain information that will be used in this particular case; is that correct?

A. That's correct.

Q. And certain information that could be used in some manner in the Dockside Dolls case; is that correct?

A. I don't have any idea about that.

MR. SUHR: One moment, Your Honor. That's all we have.

THE COURT: Ms. Prichard?

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CROSS-EXAMINATION

BY MS. PRICHARD:

Q. Of all the information you gathered with respect to the Andrew Dotson case, that all happened before you had the meeting with us; right?

A. Yeah.

Q. Before the April 25th meeting of which we have a transcript that you looked at earlier; right?

A. Yeah.

Q. At the time of that April 25th meeting, were you working with anyone from the Franklin County Sheriff's Office? Did you have any sort of agreement?

A. No.

Q. Did you have an agreement with anyone from the prosecutor's office?

A. No.

Q. How about Columbus Police?

A. Nobody, period.

Q. No agencies?

A. No.

Q. And it just happened that you ended up

in the same tank with Jim Conway?
A. No. He came to the tank where I was at.
Q. You were there first; right?
A. Yeah.
Q. He came in later?
A. Correct.
Q. And you two, I guess, talked as most people in the cell do and he told you about what crimes?
A. The Dockside Dolls first and then the robbery in Chillicothe and then the Andrew Dotson case.
Q. So he told you about all three of those things?
A. (Witness nods head affirmatively.)
Q. Did all three of those things occur before you ever met with the sheriff's office and me on April 25th?
A. Yeah.
Q. So you knew all that back then?
A. Yeah.
Q. And you -- did you tell your attorney all that information and ask her to contact us?
A. Yeah.
Q. Do you know whether or not she contacted

us?

A. I don't believe she did. I mean, eventually -- I don't know -- I don't know. I don't think she did herself. I'm not sure. I think it was my letter to you, I believe, is what initiated the contact.

Q. So you had talked to your attorney about all this before you ever wrote me the letters?

A. Oh, yeah.

Q. And when you wrote the letters, they only mention Dockside Dolls. Why don't they mention the Andrew Dotson homicide in those April 4th and April 11th (sic) letters?

A. Well I mean, to be honest, I didn't know if he was just blowing smoke or if he was being for real.

Q. Did anything happen -- I leave you with Exhibit I3 if you need to refer to it, your April 10th letter, I believe. Would it have been after you wrote those letters that you would have found out about the Andrew Dotson homicide?

A. Yeah. It was after this. The day I found out about Andrew Dotson was when Andrew's mother come to visit Jimmy in jail.

Q. Does April 16th sound accurate?
A. It may be, yeah. It sounds about right.
Q. And at that point after you'd written these letters you found out he committed the Andrew Dotson murder?
A. Correct.
Q. He told you that?
A. Yeah.
Q. At the time you were in jail had a pending trial on gross sexual imposition and attempted gross sexual imposition?
A. Correct.
Q. One incident?
A. Yeah.
Q. And you were on parole at the time?
A. Correct.
Q. At that April 25th meeting when you gave that information, were you promised anything in exchange for that information?
A. No.
Q. You gave this information and my office said we'll talk about what we might do for you; is that right?
A. Correct.
Q. During the time when you were on the

supposed work release and working with the sheriff's office, did you have any agreement, any promise that had been made to you?

A. No.

Q. You were just working because you thought it was the right thing to do?

A. Yeah. Well I mean, if I may, my GSI cases, I have audiotapes, they've already admitted that they set me up, it was a frame. I was never worried about my GSI case. That's what I'm trying to get across to everybody. I wasn't worried about it. I mean, as a matter of fact, I was willing to take my case to trial and take a lie detector test and everything. So that's not even an issue.

Q. So you were working without any promise that anything would happen on your case?

A. Right.

Q. Then in June -- on June 11th, Exhibit I5 here, we made this agreement with you anyway; right?

A. Correct.

Q. You already done all your work and it was over; is that right?

A. That's correct.

Q. Information you had on the Chillicothe case, some of that information gleaned when you wore that wire?

A. Yeah.

Q. In fact, you gave information that led to the indictment of other people?

A. Correct.

Q. After your meeting with us on April 25th which is the subject of that transcript there, we told you not to talk to Conway, didn't we?

A. Yeah.

Q. Told you not to go eliciting any information; right?

A. Correct.

Q. In fact, you were told just to keep your ears open?

A. (Witness nods head affirmatively.)

Q. Did you ever threaten Conway to tell you information in any way?

A. No.

Q. The information he gave to you, was that just all volunteered?

A. Yeah.

Q. And at the time he first told you about the Dotson homicide, you weren't working with

anyone?

A. No.

MS. PRICHARD: Nothing further.

THE COURT: Mr. Suhr?

MR. SUHR: Just very briefly.

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REDIRECT EXAMINATION

BY MR. SUHR:

Q. Just to make sure I understand what you're saying, you just stated that at the time you wrote the letters to the prosecutor, which is I3 and I1, starting in April, two different letters, that you did not have any information other than Dockside Dolls at that time?

A. No. He told me about Dotson, but I didn't believe it until Andrew's mom come to visit him.

Q. Well didn't you just state that you didn't have that information, that's why it's not in the letters?

A. No. I stated I didn't put it in that and that's why I didn't put it in that.

Q. So now you're stating that you had information from when?

A. I mean, I'm not exactly sure when. I

mean, he didn't give names or nothing like that. He didn't get into particulars after Andrew's mom come to visit him.

Q. You didn't have enough to go on, so you didn't put it in the letter; is that right?

A. No. I didn't believe it so I didn't put it in the letter.

Q. So after you wrote the letters and before April 26th (sic) is when you gathered the information you gave them on April 26th (sic), isn't that correct?

A. I guess, yeah.

Q. Well is that correct or not?

A. I'm telling you I don't know.

Q. But you didn't put it in the prior letters, would you agree on that?

A. Obviously not, yeah.

Q. Now, it was clear to you in the interview on April 25th that they wanted you to gather information on this particular case, wasn't it?

A. Which particular case?

Q. On the cornfield case.

A. Correct.

Q. And was it stated by Scott, let him

bring up Dockside and make your statements and you just keep on moving to something else; is that correct?

A. That's correct.

Q. You remembered that; right?

A. Yeah.

Q. And in fact, you kept moving to something else, didn't you?

A. That's correct.

Q. Now, you indicated that you weren't worried about this GSI and the attempted GSI. Heck, you could pass a polygraph, couldn't you?

A. Yeah.

Q. You bragged about that, didn't you?

A. About what?

Q. That you knew how to control and not get excited in a polygraph. Didn't you go back and say that to Howard Guinn?

A. No.

Q. Huh?

A. No.

Q. You don't remember saying that?

A. I didn't say that.

Q. And you weren't worried about the GSI and the attempted GSI because you can beat

that. But then why did you plead guilty to two misdemeanors after getting this deal?

A. So it would be done and over with.

MS. PRICHARD: Your Honor, I want to object to relevance.

THE COURT: I'll sustain the objection.

MR. SUHR: No further questions.

THE COURT: All right. Anything further, Ms. Prichard?

MS. PRICHARD: No, Your Honor.

THE COURT: Thank you. You may step down. Are you going have any other witnesses?

MR. SUHR: Yeah. We've got Orlando, we've got the other guy subpoenaed from the institution, Howard Guinn. They've got Mr. Braun under subpoena, but I haven't seen him appear yet.

THE COURT: Do you have the other witnesses here that he's talking about?

THE DEPUTY: Yes.

MS. PRICHARD: I guess my first concern:

A: I've never heard these names and there's been no discovery, but,

B: It sounds like these people are being provided to impeach the witness that he

just called, which doesn't deal with the motion that we're talking about. We're talking about when he became an agent, whether Miranda rights were required and whether his lack of credibility in the defense's eyes should prevent him from testifying at the trial.

MR. SUHR: Just to respond to that, it's my contention that in this that the Maine versus Multon case and other cases dealing with informants that were known to be informants, don't deal as much with you are officially now our agent in the jail as it is if you establish a prior history and that the person is working with the aim of providing information and I think that it predates the contention of the prosecution that it's only effective when they finally came up with an agreement in late May. I feel that the case has established that the prior conduct is relevant to show that interrogation in a jail cell, however innocently with the intention of gathering benefits for oneself and turning the information over to the prosecuting authorities is applicable to the rules that are cited.

THE COURT: Well I've heard what appears

to be your theory. One is in a prior case and you made some prior occasion while he was in the jail made some comments dealing with the case out of county, dealing with the sheriff's office, totally unrelated to this, but he carried a business card and he bragged to some people about polygraph and some other matters dealing with impeachment. What's that have to do with this case?

MR. SUHR: I didn't mean to impeach. I thought it was fair notice to ask him the questions. This is not a trial. I'm trying to establish my grounds for the motion to suppress. Rather than waste the Court's time and then put other witnesses on and then call the guy back and ask him if he remembers that stuff, I thought we could put it all in one.

THE COURT: I'm going to let you call witnesses. I'm not going to have a problem. I'm going to let you call the witnesses, but I want it geared toward this. I don't need witnesses dealing with his credibility on the witness stand today or not. We'll go ahead and reconvene at 1:30 then.

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Thereupon, a recess was taken until 1:30 o'clock, p.m., of the same day, to-wit, December 27, 2002.

- - -

Friday Afternoon Session,
December 27, 2002.

- - -

Thereupon, the further trial of this cause was resumed pursuant to adjournment.

- - -

(Witness sworn.)

- - -

DAVID DEVILLERS

Called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. PRICHARD:

Q. Your name for the record, please and spell your last name.

A. David DeVillers, D-E-V-I-L-L-E-R-S.

Q. And Dave, where are you currently employed?

A. With the US Attorney's Office.

Q. And when did you leave the prosecutor's office?

A. In July of this year.

Q. When you worked at the Franklin County Prosecutor's Office, were you assigned to the James Conway case?

A. I was.
Q. Which cases?
A. The cases that were indicted at the time would have been the Dockside Dolls homicide. But I was also working some possible other cases that he may have been involved with.
Q. Would that include the Andrew Dotson homicide?
A. Yes.
Q. Would that include the conspiracy to commit the murders of witnesses?
A. Yes.
Q. Do you recall approximately when James Conway was arrested for the Dockside Dolls case?
A. Early this year, I believe in 2002. I believe around February.
Q. And do you recall any of the circumstances of that arrest?
A. I believe he was -- there was a shooting at another bar a short time, maybe a month or a few times after the Dockside Dolls homicide. And I believe he was actually arrested for a weapons transaction or something involving that incident. And I'm not positive, I think it may

have directly indicted him. I'm not sure if we actually arrested him for the homicide itself via the complaint, but I can't recall.

Q. Do you recall receiving letters at the prosecutor's office from an individual named Ronald Trent?

A. Yes. I believe it was actually mailed to Mark Wodarcyk, who was the attorney prosecuting Ronald Trent the first time I heard about it. Mark Wodarcyk approached me, said there's a guy that may have some information on one of my Defendants, that being Mr. Conway.

Q. Is that the first time you would have heard of Mr. Trent.

A. It was the first time I heard of Mr. Trent.

Q. Let me show you State's Exhibit I1 and I3. Do you recall seeing those letters?

A. Yes to I1. Yes to I3.

Q. And would those letters, which are dated early April, have been around the same time that you had a conversation with Mark Wodarcyk?

A. I believe so.

Q. Did you speak with Mr. Trent or his attorneys in early April?

A. I believe it was early April, yes.
Q. Do you remember who you spoke with?
A. Sarah Beauchamp was his attorney at the time and we agreed to meet and proffer. We did a proffer letter and myself, I believe Chief Martin, Detective Zach Scott, I believe you were there and I believe Sarah Beauchamp was there, met with Mr. Trent in regards to initially what was the Dockside Dolls homicide.
Q. And were there any members from Columbus Police there?
A. I don't believe there were the first time.
Q. Do you recall why not?
A. I want to say that they were on -- the two detectives were on vacation. But I'm not sure. I believe they were on vacation. I believe we told them that they were meeting with a CI on the case, a possible CI, but that's about it.
Q. And at the time that the meeting was set up with Sarah Beauchamp, had you ever talked to Ronald Trent before?
A. No.
Q. Let me show you State's Exhibit I7, a

transcript from April 25th. Would that be the first interview you had with Ronald Trent?

A. Yes.

Q. And at the time of that meeting, what topics were you going to discuss with Ronald Trent?

A. We were going to discuss anything that he knew about Mr. Conway. Specifically the Dockside Dolls homicide. We also had Mr. Conway was a suspect in another homicide involving Andrew Dotson and we did inquire as to that.

Q. And did Sarah Beauchamp inform you that Mr. Trent might have information on that?

A. I believe she did, yes.

Q. Is that, in fact, why you set up a meeting involving the sheriff's office?

A. Yes.

Q. It was their case?

A. Right. The Andrew Dotson homicide was their case.

Q. At the time of that April 25th meeting, did you make any promises or have any deal with Ronald Trent?

A. No.

Q. What did you tell Mr. Trent after that meeting?

A. We told -- I told Mr. Trent after that meeting, as I do with most people we proffer, especially that are in jail, that we're not making any promises, he's going to have to take a polygraph, I believe. At that point that when he goes back to the jail not to ask any questions or inquire anything from Mr. Conway, to listen to what he has to say, but don't initiate any conversation and that we would check what we had to check, we wanted to verify some of the things he said to see if they corroborate with the homicide of Andrew Dotson, specifically via the coroner's report, which we did. Some of the other things that he said that we could corroborate through other witnesses and crime scene details.

That's basically where we were at. We made no promises or deals with him at that time.

Q. And the information that you had gleaned from Mr. Trent before, that is the tape-recorded information on the transcript; right?

A. Yes.

Q. He told you everything he knew about the cases up to that point?

A. I believe so.

Q. And then at what point did you make a deal with Mr. Trent?

A. It was quite a while later. In fact, he was doing the things for us proactively without any promises because we didn't have the power at that point to actually make him a deal. I was in conversations with Ron O'Brien and Mark Wodarcyk over what we could offer and we were trying to get ahold of victims. They were kind of wishy-washy, the victim on Mr. Conway's case, on whether they wanted us to cut a deal or not. We also had a problem with adult parole authority who had a holder on him. So we couldn't make any deal as far as if he'd be revoked on his parole.

I was talking to -- my conversation with Ms. Beauchamp was she didn't want him to really do anything until we cut him a deal. He apparently disagreed with Ms. Beauchamp, that being Mr. Trent, but he worked anyway before we could cut him a deal. Eventually we did. I

believe it was in -- it was after the tape-recorded conversations with the Defendant when Mr. Trent was out working proactively for us. It was well after that.

Q. He had completed his work being wired up and having those conversations, then he got the deal afterwards?

A. Yes. It was already -- they already knew he was a CI at that point before he had a deal.

Q. Here's State's Exhibit I5 and I6. Do you recognize those?

A. Yes. I5 is the Defendant's agreement that we made with Mr. Trent. I6 -- yes. This is -- I believe this is -- this is a letter written by the victim or the victim's mother involved in Mr. Trent's case basically giving us the green light and informing the adult parole authority that they're agreeing with our plea agreement.

Q. So all those things had to be done before a deal was made?

A. That's right.

Q. And then on I5 the date is June 11th. Would that be the date of the Defendant's

agreement with Mr. Trent?

A. That's the date it was typed. I'm not sure when it was signed. Yeah. June 11th of 2002.

Q. And then do you recall the date the Defendant was indicted actually on the Andrew Dotson homicide? Would June 7th sound accurate?

A. That would be about right. I don't recall exactly when.

Q. After Mr. Trent had done the work?

A. Oh, yeah. We didn't -- it wasn't until after the tape-recorded conversations that we got from Mr. Trent and his co-Defendants that anyone was indicted.

Q. Prior to that April 25th meeting, had you used Ronald Trent as a confidential informant on any other case?

A. No. I never used him either before or after as a confidential informant on any case.

Q. Were you a ware of him working on behalf of any other police agencies at the time you met with him on April 25th?

A. No.

MS. PRICHARD: I have nothing further.

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CROSS-EXAMINATION

BY MR. RIGG:

Q. Good afternoon, Mr. DeVillers.

A. Good afternoon, Mr. Rigg.

Q. So the first time that you knew of Mr. Trent and his involvement or his information that he had about the homicide of Mr. Jarvis, I believe, at Dockside Dolls bar, that was the first part of April of 2002?

A. Correct.

Q. And you didn't cut him any deals until after he did the work he said he was going to do, meaning get out of jail, get people on tape. And that's when you gave him a deal, after the indictment of Mr. Conway and other individuals?

A. That's right.

Q. And also I believe you said in the April 25th interview of Mr. Trent, he was told not to ask any questions of Mr. Conway because he was still incarcerated with Mr. Conway at that time; is that right?

A. That's right.

Q. But just to listen if he may say

something, but don't elicit any conversation?

A. Right. And also I think we said not to -- no. I'm sorry. Go ahead.

Q. So approximately is it fair to say sometime in the first part of May 2002 when Mr. Trent got out of the county jail he started working as an informant, at least on a full-time basis being wired for the Franklin County Sheriff's Department and ultimately for your office?

A. I think that's accurate. Although there wasn't a deal cut at the time, he was clearly working doing things for us.

Q. And he was let out of jail on the pretense of a work release sometime, I believe, in May of 2002 so he could meet up with people including Mr. Conway if he had to to get information. Was that part of his duties?

A. Yeah. Yes. That's accurate. I don't think it was actually work release, but we worked it out with Judge Miller to have him released in the custody of the Franklin County Sheriff.

Q. Now, if Mr. Trent could have worked -- could Mr. Trent have worked for other police

agencies prior to you meeting him in April of 2002? Could he have worked for other police agencies as an informant without your knowledge?

A. I suppose he could have, yes.

Q. And a lot of times -- you've been a prosecutor a long time, do people at the county jail, meaning prisoners, brag a lot that they know information or talk about how they are working on cases, et cetera, for the State or for the government?

A. Do they brag about being snitches?

Q. Not really snitches, but being -- have contacts with the police department or know different people. Maybe it's a lie, maybe it's the truth, but a lot of stories go around the county jail.

A. I think a lot of stories go around the county jail. I don't think it would be very wise for someone say that they're in a county jail that they're working for the police.

Q. So from your understanding then, at least from your contact with this case, Mr. Trent began working as an agent or at least as a source of information for the government

approximately May 16th and that's when the first wires were being conducted with Mr. Trent when he was out of the county jail?

A. That's the first time he proactively worked with us. And let me say this: When he was out, we informed him not to talk at all in any way and try to dissuade if he tried to talk any way about the Dockside Dolls homicide because there was an indictment already on that case.

Q. Have you reviewed any of the transcripts or any of the tapes on that?

A. Not lately. When they were going on I would. I get some as the sheriff's -- as they were coming through I review those.

Q. Since you brought that up, didn't he discuss, meaning Mr. Trent, with other people, meaning Mr. Nightingale, et cetera, putting together a videotape of somebody confessing that they actually did the shooting at Dockside Dolls?

A. Yes.

Q. So there was some relationship regarding the Dockside Dolls homicide regarding this video?

A. Yes. While -- before he was released, the Defendant, Mr. Conway, according to Mr. Trent, had asked him. In fact, I think as early as our first meeting he said look, I want you to go out and take care of some witnesses for me. I'm not sure -- I don't recall exactly it was involving the Dockside Dolls homicide specifically. But maybe it was. That he approached Mr. Trent, that meaning Mr. Conway approached Mr. Trent and wanted him to kill a Conway look-alike, someone Mr. Conway had in mind at the time. As such, we had a new crime, new conspiracy to commit murder. And we did as far as that's concerned, as far as that aspect of the case was concerned, yes, we did have him proactively work that case because it was a new crime being committed.

Q. Whether or not you recall this or not, and again there's a lot of tapes, a lot of transcripts involving these conversations, but is it fair to say there is some information in those tapes regarding the homicide at the Dockside Dolls bar ejecting a shell casing, I believe, out of a gun, who was there to see what happened, those kinds of information that

Mr. Trent was trying to elicit from Mr. Conway after May 16th, 2002?

A. If I recall and I do recall that tape because I listened to it a great deal, Mr. Trent didn't know what he was talking about. On the tape you could hear Mr. Conway say remember about that one thing and Mr. Trent is what are you talking about, what one thing. And I think he really didn't know what he was talking about. And he said the one thing about oh, about the shell casing being on the ground or something to that fact. Is that what you're referring to?

Q. Yes. And other matters, too, regarding Dockside?

A. I don't think that -- well I recall Mr. Trent eliciting that other -- eliciting the fact of what do you want me to do with this body of the person you want me to kill. I don't remember him specifically eliciting information from the homicide itself, just the tangential new crime of conspiracy to commit murder.

Q. So is it fair to say then that Mr. Conway was the one that was more proactive

in the conversations with Mr. Trent regarding any type of activity not only just the conspiracy to commit murder, but the other cases involving this case here, Mr. Andrew Dotson homicide?

A. From my reviewing of that particular transcript, as far as the new case, the new conspiracy to commit murder, it was Trent to a large extent eliciting information from Mr. Conway. As far as what happened at the Dockside Dolls homicide in that brief few statements and that particular tape, I believe it was Mr. Conway in telling Mr. Trent what to have this guy say. Remember to have him say this.

Q. Regarding the case we're involved here today, the Dotson homicide, is it fair to say that a majority or at least half of the tapes involve conversations concerning the Dotson homicide in attempting to get either Mr. Conway to make statements or some of the other Mr. Nightingale or Mr. Horton make statements while they're riding around in cars, in cell phones? Is that fair to say about half the tapes?

A. That Mr. Trent is trying to elicit?
Q. Yeah. As regards the Dotson homicide?
A. Yeah. I think that's fair to say.
Q. Who was there, what happened?
A. Sure.
Q. Those kinds of things?
A. Uh-huh.
Q. Whether it's Mr. Conway; is that right, on the cell phone?
A. Uh-huh.
Q. Or maybe Mr. Nightingale?
A. Yes. Definitely Mr. Nightingale and Mr. Horton.
Q. Jamie Horton?
A. Yes.
Q. So about half. And again this is a ballpark figure, about half the tapes involved the case as to what happened to Mr. Andrew Dotson?
A. Of all the tapes, yeah, about half or a third. Chillicothe robbery, that and then the other one.
Q. Then the conspiracy?
A. Right. And then what happened was Mr. Trent told us what Mr. Conway said about

the Andrew Dotson homicide while he was in jail before we ever met him, what he told him about. And then I think he was to some extent rehashing that especially with Nightingale and Horton. And from our direction we told him from my direction I said try to find out what you can find out from Mr. Horton and Mr. Nightingale about the Andrew Dotson homicide.

Q. And also fair to say a lot of those tapes that you reviewed, very little of it involves conversations directly with Mr. Conway. I'm talking about the taped conversations after May 16th.

A. Yeah. The vast majority of them are with Mr. Horton and Mr. Nightingale, yes. Mostly Mr. Horton.

MR. RIGG: Thank you. I have no further questions.

THE COURT: Anything else?

MS. PRICHARD: No, Your Honor.

THE COURT: Thank you. Anything further from the State?

MS. PRICHARD: No, Your Honor.

MR. RIGG: No, Your Honor.

THE COURT: Call your next witness.

MR. RIGG: Call James Conway.

THE COURT:

(Witness sworn.)

- - -

JAMES CONWAY

Called as a witness on behalf of the Defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. RIGG:

Q. Sir, please state your name.

A. James Conway.

Q. And you are the Defendant in this case?

A. Yes.

Q. Mr. Conway, you've been incarcerated in Franklin County Jail for how long?

A. About ten months. Since February 23rd.

Q. Of 2002?

A. 2002, yeah.

Q. Is that the day of your arrest?

A. Yes.

Q. After you were arrested -- and what were you arrested for, do you know?

A. They took me to the hospital and then took me down -- they said they would take me

down for questioning. And then I didn't answer any questions and they told me that -- and then they asked me about the Dockside Dolls case and I told them I want to talk to my lawyer. And then they said well we're going to hold you on that homicide.

Q. So to your knowledge, you were arrested on February 23rd, 2002. You were injured; is that right?

A. Yes.

Q. And after you got out of the hospital that you were arrested and questioned about the Dockside Dolls homicide?

A. Right.

Q. And then you refused to answer any questions without a lawyer?

A. Correct.

Q. Then they took you to the county jail?

A. Yes.

Q. Do you know Ronald Trent?

A. Now I do. Prior to that I had never met him before.

Q. How did you first meet Ronald Trent?

A. Well they put me up there and I was bleeding and the nurse would come by like twice

a day and I was talking to her trying to get my meds and stuff. They wasn't giving me any kind of medical treatment or changing my bandages. And I asked the nurse if they had a medical ward there and she said that they do. I said well hows come I'm not in it and she told me that she didn't know. She said it was normal procedure for a person with an open wound to go to medical facility in the jail. And then so he approaches me and tells me that he would, if I would get the bandages and stuff, that he would help me take care of my wound because part of it --

Q. Let me slow you down. This is Mr. Trent?

A. Mr. Trent, yeah.

Q. He was going to help you with the wounds?

A. Because part of it's in the back and I can't get to it. There's no possible way for me to get to it. But the nurses, they wouldn't give me any kind of gauze or anything for it. So I didn't have no choice but just lay with an open wound.

Q. So you two became somewhat friends?

A. Yeah. More or less. I mean, I talked to him because of that because, I mean, I felt like I had to be social if he was trying to help me out.

Q. Did you at some point in time find out you were related in some way?

A. Well, yeah. But that was probably about a week later. You know, he's telling me all -- he's talking to me back and forth and we have conversation and he's telling me how he's the homicide detective been sweating him and all that stuff trying to preempt because Robert Bethel had found a card from the homicide detectives in his room.

Q. Robert Bethel is who?

A. Just somebody else that was in eight north right. He was -- when you're in jail there's the white people and the black people. You don't really -- don't intermingle. And we were three of the only three white people in the whole tank. So we associated automatically with each other. And he was trying to preempt Bethel telling me about this homicide detective's card being found in his cell. He was telling me the homicide detective been

sweating him and all that stuff.

At the time I had never -- the only thing he knew me by was Conway. And he came when like he came up to me and was talking to me and he said -- told me I remind him of his little brother and his little brother's name was Jimmy, too. And at the time I knew I had never said anything to him about my first name, so I knew automatically that someone -- he had talked to someone about me prior to me getting there.

Q. So again this is the first couple weeks or so you're in jail?

A. Right.

Q. Did any point in time did you talk about your case at that time you're under arrest?

A. No. I didn't say anything. There was never anything going on about my case at that first until I found out he was related to me which was probably about a week and a half, maybe two weeks into my stay there. And he had told me -- he had mentioned some names to me that people that I knew that Jason Clay who takes care of his daughter and he mentioned his dad's name, Danny Trent. And I asked my mom if

she knew him and she said that we were related to him. And then I mentioned it to him and he called his grandma or whatever and found out that we were related. And then we started being buddy-buddy or whatever and palling around.

But we didn't really talk about -- didn't talk about any cases whatsoever except for him talking about his past homicide case where he said he kicked in the door of this dope house and killed a couple people and crippled -- and put some woman in a wheelchair like he shot her where she couldn't walk anymore.

Q. When did you -- Mr. Trent testified that he was not working for any police agency until approximately May of 2002 when he started wearing a wire right out of the county jail. He's claiming that he was not working for anybody. Did you have any understanding or any belief that he may have been working for any kind of law enforcement? He indicated he had a law enforcement calling card?

A. Right. That just let me know that. I knew in my mind that he was. But I mean, it

took him like a day or two to set this up. One night on the phone he's talking to his family and he says do what like real loud. I'm like what's going on. They got my brother in jail. And then he starts telling me about how he don't trust his brother's girlfriend, she's a stripper and he has all these kids and he doesn't want his brother to go to jail and leave his money at the house. He said he had five grand there, but he was loaning his brother two grand to start a painting company.

So he had three grand that he didn't want to trust this woman with. So he asked me if I could have somebody get it and bring it down there, bring it down and put it on his books. I said why don't you just have your brother do it and that's when he tells me about that his brother they was questioning him about this assault or whatever, he shot this dude. He said that they had reported his brother's Blazer stolen. And then like a couple days after they reported it stolen they waited outside this dude's house until he started to come home and then Ronnie Trent jumped out and shot him. So he said his brother was afraid to

bring it down here and he didn't have --

Q. Let me slow you down a little bit. You don't have to go through the whole story. He was concerned his brother would get in trouble if he come down to jail?

A. His brother was concerned. He wasn't concerned. His brother was afraid to come down here.

Q. Because why? When you put money on the books what happens?

A. They check your ID and everything like that. He was afraid he might have a warrant.

Q. Why would that make you concerned that Trent --

A. That wasn't what it was. See, once he did that, he convinced me to bring the money down. I called my brother and he was with Jamie. And him and Jamie brought the money down and put it on his books. When they did this they asked him what it was for and they told him it was for a bond. And when they told the deputy downstairs that when they dropped the money off they said this dude has a parole holder. You know what I'm saying?

Q. Meaning Trent?

A. Right. Trent had a parole holder. And then that right after they dropped the money off, my brother and them called me, but it was like they lock down the cells at 10:30. So it was like about 10:20 and I'm on the phone and they told me this that he had a parole holder and that there was no way he could get out. So I didn't say nothing to him that night.

But the next day I was like why do you always lie to me for, why are you telling me all these lies. I know you got to be a cop or something like that because he had never mentioned anything about the parole holder or anything like that. And I said, I mean, you're constantly, you know what I'm saying, I caught him in a whole bunch of lies about a whole bunch of stuff. And I said, you know, you got to be a cop, you have to be, there's no other way. And that's what I told him about what he said about him knowing my first name and there was no other way he could have known it. And he says well yeah, you're right, man, I am, but you can use this to your advantage. I can go to them and tell them stuff and I can tell you what they got on you here and there and we can

work this out like that.

Q. So how long ago was this after you got there?

A. It was the day after the money got dropped off.

Q. So sometime in the middle of March?

A. No. Yeah, March. Yeah.

Q. Anything else that he did that made you suspicious that maybe he was working for law enforcement?

A. I mean, he told me. He flat out told me that he was working for them.

Q. What about an incident involving a late night visit by a police officer?

A. That was after. I mean, I already knew. I already knew at that time that he was working for them. When they came up to see him, he was telling me they was coming the whole time. He was saying that should be here any day now, they should be come to go see me any time now.

Q. So approximately March and April or actually the month of March 2002 you were very suspicious?

A. The beginning of March I was suspicious. In the middle of March I don't know what --

Bob, Mr. Suhr told me it was March 15th that the money was dropped off. It was the day after that that he told me he confirmed that he was working with the police.

Q. You indicated that Mr. Trent said that he could help you out if you would just work with him or something to that nature?

A. Right.

Q. Did he say anything else to you? Did he make any promises or any threats to you if you'd help him out?

A. Not really at that time. He didn't really make any threats. He just said that, you know what I'm saying, like he had done it before and you know what I'm saying, if you did something and you didn't want to -- you didn't want to go to jail for it, the best thing to do was to be get somebody else convicted of it. So he said that, you know what I'm saying, anything I'd done I can tell him and he'll put it on somebody else and they'll believe him and I don't have to worry about it.

Q. During this time you were obviously incarcerated in the county jail?

A. Right.

MR. RIGG: I think that's all the questions I have.

THE COURT: Ms. Prichard?

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CROSS-EXAMINATION

BY MS. PRICHARD:

Q. So Mr. Trent never physically threatened you; right?

A. Yes. He did physically threaten me.

Q. You just told Mr. Suhr --

A. I said at that time that he had never -- at the time that he told me he was working undercover he had never physically threatened me. But after that towards the end of the time he threatened me and my entire family and that's why I had my entire family, my son, my daughter, my girlfriend and my sister move from the house in 1994 to Delaware to stay in a trailer with my cousin.

Q. When did he threaten you? Give me dates.

A. I don't know the date or I would give it to you. I don't exactly know the exact date that he threatened me.

Q. Who was present when he threatened you?

A. Just me and him.
Q. Just you and him. In a cell?
A. No. Sitting -- like there's two separate picnic tables and all the black people sit at this picnic table and all the white people, which was me, Trent and Bethel. But Bethel pretty much walked up and down the range all day long or he would sit in his cell. So we was at this picnic table by ourself.
Q. In jail you're in custody; right?
A. Right.
Q. And he threatened you?
A. Right.
Q. Did he lay his hands on you?
A. Yes.
Q. Did you report it?
A. I mean, no I didn't report it because I didn't want him to know that I was afraid and I didn't want him to do nothing to my family.
Q. Did you ask the deputies to move you?
A. Yeah.
Q. Did you get moved?
A. No.
Q. So there should be reports of all this?
A. I don't know. I didn't write anything

down. I asked the deputy how I could get moved. He said the only way you can get moved is if you get in a fight. If you get in a fight you go to the hole for ten days, you lose all privileges, you don't get to use the phone, you don't get visits from your family.

Q. You had some supposed threat?

A. It would be to find out because my whole family moved from 1944 Dyre Road to Delaware in a trailer. There will be phone records. I started calling them from jail at my cousin Tina's house, there would be, I mean, any number of ways to check out.

Q. Let's back up. There were black people sitting at one table and white people sitting at another table when this happened?

A. Right.

Q. Mr. Trent laid his hands around you so there would have been people around?

A. People seen that. People asked me about that, about bruises.

Q. Who would that be?

A. Robert Bethel, Howard Guinn, anybody. You can ask anybody that was there. If you want me to name every single person that was

there I will.

Q. You told me nobody saw it?

A. Nobody saw the threat. Nobody heard the threat but they saw the actual assault.

Q. The money you put in the commissary, do you remember when your brother, Jeff, came down and put $2,000 in?

A. Yes. I remember that.

Q. Then you remember when Jamie Horton came and put $3,000 in?

A. Yeah. Jamie came and put the money first and then my brother did. But they were both together anyways both times.

Q. Let's stop a minute. You said that when your brother and Jamie came down to put money in Mr. Trent's commissary that they found out there was a parole holder?

A. Right.

Q. But yet again there was a second deposit in Mr. Trent's account?

A. Right.

Q. There were two?

A. Right.

Q. You supposedly knew he was a cop and you continued to give him money?

A. I didn't give him. That was his money.
Q. You got somebody else to come down and give him money then after you already found out he was a cop?
A. No. I picked up his -- he said he was on my side I wasn't worried about him being a cop. He said he was my cousin. I wasn't really worried about it.
Q. At what point -- you said the day after. You're saying it's like March 16th you knew he was a cop?
A. Right.
Q. And you must have known that before that date you had been figuring out and suspicious he was working for the police before March?
A. Right.
Q. Yet on March 15th you had your brother put $3,000 in his commissary; right?
A. Well I don't know exactly which one gave the ID, but Jamie and my brother were both together.
Q. And then $2,000 on April 9th put in his commissary?
A. Right.
Q. April -- after March you knew he had a

cop you had someone put in April 9th --

A. He was my cousin. There was no correlation between him being -- he didn't have anything against me.

Q. But you thought he was a cop and you were giving him money --

A. I knew he was a cop.

Q. -- to kill witnesses?

A. I didn't give him no money to kill witnesses. That money was his money. He did not trust this woman that lived with his brother. He said she'd stolen jewelry from him and everything else. He did not trust her. He did not want the money left there if his brother got picked up and went to jail. He asked me to have somebody bring the money down and put it on his books for him.

Q. So you apparently trusted him and had a relationship with him?

A. Right.

Q. Up until at least April because you had somebody put money in --

A. Right.

Q. -- for him?

A. Uh-huh.

Q. And you never got -- he never got planted in your cell, you got put in his cell; right?

A. I mean, they have total control over who goes where. So they planted me there with him there already.

Q. Why do you say that?

A. Because he had -- he told me that. And he had paperwork showing that they had dismissed his whole time and all that stuff so he could be put in that cell.

Q. They who?

A. I don't know, whoever he was working for. You probably know. I don't know.

Q. He was in jail before you were in jail, yes?

A. Right.

Q. When you came into jail, the deputies put you in the same cell with him; right?

A. Right.

Q. You learned he was some sort of a distant relative and you guys started talking, yes?

A. Right.

Q. April 16th Andrew Dotson's mom came to

visit you; right?
A. Right. I mean, I'm not exactly positive of the date, but that sounds about right to me.
Q. She came to visit you and you were still in the same cell with Ronald Trent when that visit happened; right?
A. Right.
Q. You told him Andrew's mom had visited, didn't you?
A. I didn't tell him her name. I don't know her name to this day. I don't know who she is. I had never met her before that and I didn't have no way of finding out her name.
Q. A woman came?
A. Right. She came to see me and I didn't know who it was and I refused to visit.
Q. You spoke with her; right?
A. I said who is that and they said somebody Dotson. They told me -- they did say her last name, but I refused to visit.
Q. And she talked to you and you didn't want to talk to her; right?
A. Right.
Q. She asked if you knew anything about her son; right?

A. Right.
Q. Then you went back and told Ronnie Trent I'm not going to talk to that stupid woman, something to that effect as he testified to?
A. No. No.
Q. That never happened?
A. No.
Q. How big are you?
A. I don't know, probably 250 pounds.
Q. Did you weigh more when you came into the jail?
A. Right. Yeah.
Q. What did you weigh when you went into the jail in February?
A. 315 pounds actually about right there.
Q. And how tall are you?
A. About five ten.
Q. Ronnie Trent is smaller than you, would you agree?
A. Right.
Q. You said you never told Ronnie Trent your name?
A. Right.
Q. You're saying he never knew your name was James, Jim or Jimmy? A deputy never called

you by your name?

A. Not Jimmy. No. They called me Conway. When they yell, it was your last name.

Q. Your name was a big secret in the jail?

A. Everything about me was a big secret because I don't talk to people unless they come up and approach me.

Q. And you said Ronnie Trent had this card that let you know he was working for the cops and he had told you he was working for the police?

A. Right.

Q. Yet when he got out of jail you still talked to him on the cell phone, didn't you?

A. He said that -- like it's hard to explain. But I thought that if I didn't cooperate with him that he was going to have something done to my family.

Q. You called him through Mr. Cicero's cell phone, did you not?

A. No. That's not what happened.

Q. Did you ever use Chris Cicero's cell phone to call Ronald Trent when he was out of jail?

A. Right.

Q. You initiated phone calls to Ronald Trent?

A. He called my lawyer and told my lawyer to come see me and gave my lawyer -- gave my lawyer the phone number to call.

Q. You used Chris Cicero's cell phone on at least one occasion to call Ronald Trent, yes?

A. Chris came down and said here's the cell phone, somebody wants to talk to you, here's the number. And when I called I said who is this who is this, um this is whatever, Ronnie. I'm like what do you want, what are you doing. I didn't know what was going on.

Q. Are you saying you hadn't had any phone conversations with Ronnie before this one on Cicero's phone?

A. I didn't know who it was. I didn't know who he was taking to on the phone.

Q. So all the wired conversations that happened you didn't know who you were talking to?

A. Not until May 18th, no, I didn't.

Q. When Ronald Trent left jail, you asked him to contact Jamie Horton; correct?

A. No. That's not correct.

Q. Did you gave him Jamie Horton's number?
A. I gave him my brother and Jamie Horton's number to give to his brother because his brother bought a washer, a dryer and refrigerator off of me and I had my ex-girlfriend come and get the money off of his books for the washer and dryer, $300.
Q. Did you give Brittany Stalling, your girlfriend -- your then girlfriend's number to Ronald Trent so he could contact her for you?
A. He was already talking to him. No, I didn't. His girlfriend Chrissy was talking to her all the time. They had some kind of -- I don't know. They was like -- they was friends or something.
Q. So you're saying you didn't give Ronald Trent any of these phone numbers so that he could communicate about your case for you? Is that what you're saying?
A. Right. I gave him Jamie's number so that Jamie and them could take the washer and dryer over there to his brother's house. And I gave him -- and I don't even remember why he had Brittany's number. But him and her and Chrissy he was calling threatening Brittany

when I was still in jail. He was calling telling her he was going to do this and that to her when I was still in jail.

Q. When did you give him Shawn Nightingale's number and tell him to contact Shawn for you?

A. I never knew Shawn Nightingale's number. He got that phone number after I was in jail. I had no way of calling him or never knew his number.

Q. You never told him to contact any of your friends when he got out of jail for you?

A. Right. I never told him to contact any of them.

Q. So awful these conversations that you've I'm sure read on these transcripts just happened mysteriously?

A. He initiated -- I mean, he's trying to work out -- trying to get his time worked off, so he's going to initiate anything.

Q. You also said he came to visit you, too?

A. After I told him I did not want him to visit me.

Q. He came to visit you with a picture of somebody who was purportedly a dead person;

right?

A. I didn't even look at the picture.

Q. You know there was a picture he had came to visit you --

MR. RIGG: Judge, I have to object. My questioning of my client is whether or not --

THE COURT: Sustain the objection.

MS. PRICHARD: Judge, my line of questioning is going as to whether any of these contacts are voluntary or not.

THE COURT: I sustained the objection.

BY MS. PRICHARD:

Q. You had not only several phone conversations with Ronald Trent while you were in jail and he was out on what you thought was work release, there was several of those?

A. No. I didn't think he was on work release. He told me that you, Sheryl Prichard and Dave DeVillers was going to put him in protective custody with Brian and the very first conversation -- the first thing he says to me is they didn't put me with him. That's what he's referring to. You and Dave DeVillers did not put him with Brian McWhorter.

Q. When Ronald Trent got out of jail in

May -- let's start with May 16th when he was out of your cell.

A. Right.

Q. From that point out until the time you got indicted for the Andrew Dotson homicide, you had several conversations with Ronald Trent over the cell phone; right?

A. Right.

Q. While he was out and you were in?

A. Right. Where he called my girlfriend and said I need to talk.

Q. There wasn't a question there. And you said that Ronald Trent had made promises to you basically saying he could help by getting someone else to, I guess, confess to a case or do something like that. When you got in trouble, Ronald Trent was the guy who'd go find someone else or take care of it for you?

A. He said that's how it worked. He said that's the way it worked. He said you get in good with the cops and then you can do whatever you want. You can run your dope house as long as you give them a couple arrests every now and then, then you don't have to worry about ever getting in trouble. You can do whatever you

want.

Q. And you talked to him about that?

A. He talked and I listened.

Q. And you apparently decided to make some kind of an agreement with Ronnie Trent to do things for you?

A. No. He was just telling me he was going to every time something came up, a new charge or indictment he would tell me he was going to do this and that. And I told him it wasn't necessary. And he said well I'm going to do it anyway and I said well knock yourself out.

Q. He was going to do stuff to help you out?

A. Right.

Q. Without your help?

A. That's right.

Q. He was going to try to get you out of trouble?

A. Right.

Q. And you were going to let him?

A. I didn't care what he did. I didn't think that him going around -- if he went around and blew up all the buildings in Columbus that it would have an effect on me.

I'm not responsible for his actions. And I didn't tell him to do anything and I didn't ask him to do anything for me. He wanted to do all this stuff. So I said well go ahead do whatever -- you don't got to tell me what you're going to do.

Q. You're saying he acted voluntarily? He didn't have to threaten you or say anything, he just kind of did his own thing?

A. At first it was like that. And then after he said he was going to do all this stuff, I knew eventually it's going to come back on me because all these people are witnesses in my case. I told him I didn't want to do it. He told me he had too much invested to back out because he told me he had already talked to you and talked to Dave DeVillers.

Q. You didn't get indicted for the Andrew Dotson homicide until June 7th, does that sound right?

A. Yeah.

MS. PRICHARD: I have nothing further.

MR. RIGG: No further questions.

THE COURT: You may step down. You can step right around here if you would, please. I

need you to raise your right hand if you can.

(Witness sworn.)

THE COURT: Please be seated. That microphone is turned on, so go ahead and turn around and speak toward it, please.

MR. ORLANDO WILSON: My lawyer told me to wait until they talked to him.

THE COURT: You don't want to testify?

MR. ORLANDO WILSON: I do, but I talked to my lawyer yesterday and he told me --

MR. RIGG: Derek Farmer.

MR. ORLANDO WILSON: Yeah. He told me to wait until he got ahold of him right there, this attorney.

MR. SUHR: He had okayed the fact that I could go talk to him in the jail. I'd been trying to reach Mr. Farmer all day today and I don't get any answer to his office. But on the other hand, I don't want to mess with his rights either, Orlando's.

MS. PRICHARD: Just for the record, this is the first time I've heard this witness was going to be called. I certainly am going to be afraid to question him about anything. I don't know what he's got pending, I don't want to

step on his rights or anything here. I don't know anything about it.

THE COURT: Let's go ahead and send him back. If he hasn't had contact with his lawyer today let's not do it.

MR. SUHR: We need to check to see if this Howard Guinn is being brought up from the institution. We have a problem with -- just so we can go on the record here, Tim Braun we just got in contact with him. He had received a subpoena, but he is still in Toledo. I suppose I would ask the Court to take judicial notice of the attachment, the exhibit on the motion that indicates that it was filed in the Terry Mayle case for his attitude and the prosecutor's attitude towards that case and towards Mr. Trent's sworn statement in that case since it is part of public record, that being that appellate case number.

THE COURT: I don't know what you're talking about. I have no idea what you're talking about.

MR. SUHR: There is an -- attached to this four-branch motion there is an Exhibit there. Are two exhibits attached to it. One

is Tim Braun's sworn affidavit in case number 90CR1922, State of Ohio versus Terry Mayle in front of Judge Cain and that there is an exhibit that was taken from the appeal of that case to the Franklin County Court of Appeals. It was sworn to and subscribed on the 10th day of July, 2001. And also there is an exhibit from the same Court of Appeals file following that which is an investigative report from the division of police. And I'd ask the Court to take judicial notice of these documents.

THE COURT: I'll take judicial notice of the documents filed. I'm not going to accept the affidavit for the truth of what is said in there.

MR. SUHR: I'm just asking for judicial notice.

THE COURT: The only thing I'm accepting for purposes of judicial notice is that an affidavit exists in the file. I'm not going to accept anything that is said in the affidavit as being true.

MR. SUHR: I would ask then to continue this case until Monday morning to have Mr. Braun present to testify.

THE COURT: Is he available?

MR. SUHR: Yeah. I talked to him on the phone and he was not coming today, but he will make himself available here in Franklin County on Monday if we couldn't reach some sort of agreement between us, which apparently we cannot.

THE COURT: What else do we have to do Monday morning? I'll be in trial starting at 10:30.

MS. PRICHARD: We have death penalty motions in front of McGrath on Monday.

THE COURT: At what time?

MS. PRICHARD: 10:00. The problem with this, I'm still objecting to the relevance of any testimony Tim Braun has regarding a case he may have handled what appears to be like in '92 or something to that effect.

THE COURT: 1990 case.

MS. PRICHARD: Apparently the defense wants Tim Braun to testify about his opinion of Ronnie Trent with respect to that particular case at that particular time regardless of what Tim Braun thinks of Ronald Trent. His credibility is an issue for the jury.

Mr. Braun's opinion is not the opinion of the entire prosecutor's office.

THE COURT: What are you going to have Mr. Braun testify to?

MR. SUHR: Well we filed a branch four here. It is a fair trial motion that basically says this guy is such an incredible liar that it would be unfair for them to base a case where they have him as a witness against my client.

THE COURT: I'm going to overrule that motion based upon the face of the motion.

MR. SUHR: I'm just saying why we have it in there.

THE COURT: The jury is going to judge the credibility of witnesses. But as far as what Mr. Braun's going to say, what's he going to testify to as far as the factual matters contained in the motion to that?

MR. SUHR: What we've listed in the motion itself where we have the transcript six -- the telephone conversation between he and Detective Gary Philips about six weeks ago and to the exhibits in here.

THE COURT: In the 1990 case?

MR. SUHR: Yeah. That was pending at the time of these agreements. These were in front of the Court of Appeals and they didn't render a decision until April 30th of 2002. So it was an ongoing position of the prosecutor's office even while they were using Mr. Trent on this and another court. They were saying it's all right not to have a hearing involving Mr. Trent because it's totally without any ability to be relied on.

THE COURT: What else do you have to do that we haven't done today?

MR. SUHR: Just the two witnesses I have said that apparently -- we have two witnesses that aren't here. We have Braun and Howard Guinn that's not here and Orlando Wilson that doesn't have his lawyer here.

THE COURT: And what's -- where's the one that's not here?

MR. SUHR: He's down at Southeast Correctional.

THE COURT: Did you subpoena him?

MR. SUHR: Yes, we did.

THE COURT: Did you get a convey or something?

MR. SUHR: No. Convey as we found out was only when you're bringing a Defendant back. Otherwise we're permitted to subpoena him and we followed the proper channels for that as we understood that.

MS. PRICHARD: What's the date on your subpoenas?

MR. SUHR: I don't have that particular subpoena right here. But it's been ten days ago anyway. I mean, I talked to him on the phone Tuesday evening and from down at Southeast and he said that the institution had received the subpoena and he would be up here. But apparently he's not.

THE COURT: Can't do anything about that now. Why don't we go ahead and I'm assuming the lawyer is going to be able to get ahold of this guy. Why don't we go ahead and do him at 8:45 Monday morning. We'll have Ron here, but we got to get everything done by 10:00 so you can get up to Judge McGrath's office.

MR. SUHR: Thank you very much, Your Honor.

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Thereupon, the further trial of this cause was adjourned until 8:45 o'clock a.m., December 30, 2002.

- - -

Monday Morning Session,
December 30, 2002.

- - -

Thereupon, the further trial of this cause was resumed pursuant to adjournment.

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THE COURT: You can bring your witness in.

MS. PRICHARD: I don't have any further witnesses, Judge. The defense may.

THE COURT: I'm sorry.

MR. SUHR: We'd call Orlando Wilson maybe I can put another witness on in the meantime while they get him.

THE COURT: Ma'am, raise your right hand, please.

(Witness sworn.)

THE COURT: Please be seated. The microphone is turned on, so I want you to adjust it toward you and speak into it, please.

- - -

JANICE CONWAY

Called as a witness on behalf of the Defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SUHR:

Q. Would you state your name, please?

A. Janice Conway.

Q. And you are the mother of the Defendant; is that correct?

A. Yes.

Q. Now, at some point since the Defendant was placed in jail, was there ever a time in which, at his request, people moved out of his house?

A. Yes.

Q. And who was that that moved out?

A. My grandchildren.

Q. And where were they taken?

A. To my niece's house.

Q. And where is your niece's house?

A. She lives in Morango.

Q. And without getting into why they were moved, were you able to ascertain exactly what that date was that that occurred?

A. I believe it was the 16th of April.

Q. You say you believed that?
A. Yes.
Q. Do you have any records that substantiate that?
A. We have some phone records that we were trying to make sure. They did some three-way calling to my daughter and stuff because my son -- we would call to check on them and we would try to avoid the long-distance phone calls. So we would do the cell phone. Through those records, those are the dates that we made a lot of calls there.
Q. What are you saying? You saying beginning April 16th there were a lot of calls?
A. Sixteenth or the 17th, yes.
Q. And do you have those records with you?
A. Yes.
Q. Let me mark those records for purposes of identification. I've marked those record's Defendant's Exhibit A. Would you go through and indicate what page? Those records were individually page numbered, are they not?
A. Yes.
Q. And what page does it appear that the phone activity increased?

A. Page 31 through 36.
Q. Is that 31 through 36 is your answer?
A. I'm looking. I believe, yes.
MR. SUHR: No further questions.
THE COURT: Any questions?
MS. PRICHARD: Yes, Judge.

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CROSS-EXAMINATION

BY MS. PRICHARD:

Q. Ma'am, you said the reason you believe April 16th and 17th, it has something to do with some -- I guess some sort of calls or something of that nature is because of these records?

A. The reason I believe it is because we had a birthday party for my granddaughter on the 7th and I know that it was after that that they went up there. So those are the records that we went in and looked for, the calls to increase to my niece's house because we checked on the kids on a regular basis.

Q. What kids are we talking about? What are the names of the kids?

A. My grandchildren. James Conway the fourth and Halley (phonetic) Conway.

Q. Is Miranda Oliver the mother of both of these?

A. Of one. Just of Halley (phonetic).

Q. Halley (phonetic). Who's the mother of James the fourth?

A. Mandy Clark.

Q. And who was living with you back up until April? Who lived in -- this is the Dyre Road house?

A. Yes.

Q. Is this your house?

A. Yes.

Q. And your son lived with you there?

A. Yes.

Q. And Brittany Stalling lived there, too; right?

A. No. She didn't live in my house. We had bought a house across the street.

Q. So there are two houses on Dyre Road?

A. Yes.

Q. Where were the kids living?

A. They were living at 1944.

Q. Is that where you live?

A. No. I live at 2005.

Q. So they were living across the street.

And who lived there with them?

A. My daughter, my son.

Q. Jennifer?

A. Yes.

Q. And James?

A. Yes.

Q. And that's where the two kids were living?

A. Yes.

Q. They weren't living in your house then?

A. Not until my son was arrested. Then from February 23rd when he was placed in jail, then they started staying at my house.

Q. And your daughter would take care of them, Brittany Stalling would take care of them?

A. They both helped, yes.

Q. And that went on until, at least by your account, mid-April?

A. Yes.

MS. PRICHARD: I have nothing further.

THE COURT: Anything further.

MR. SUHR: Nothing further.

THE COURT: Thank you. You may step down. Let's renumber your exhibit. We'll

number it Defendant's Exhibit 1. I need you to raise your right hand as much as you can.

(Witness sworn.)

THE COURT: Please be seated.

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ORLANDO WILSON

Called as a witness on behalf of the Defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SUHR:

Q. Would you state your name, please?

A. Orlando Wilson the second.

Q. Orlando, you are currently charged with an offense here in Franklin County Common Pleas Court; is that correct?

A. Yes, I am.

Q. And you're represented by attorney Derek Farmer who is in the courtroom today?

A. Yes.

Q. Now, Orlando, when did you first come into the Franklin County Correctional Center?

A. January the 2nd of 2002.

Q. As I understand it, at that time you either were or shortly thereafter became indicted on the case; is that correct?

A. Yes, I did.
Q. And that case it's alleged that that took place in Obetz; is that correct?
A. Yes. That's correct.
Q. Now, at some point in time, were you housed in close proximity to a person by the name of Ronnie Trent?
A. Yes. He was in there with me around somewhere late January.
Q. And was he also there into February at all or was it just January, if you recall?
A. He was there still in January sometime. He left somewhere in January because my birthday is in February. He left in February sometime.
Q. And were you also there with a Howard Guinn?
A. Yeah. He slept a couple bunks beside me.
Q. Now, during the time that Mr. Trent was there, did he -- can you describe what his attitude towards you was?
A. It was kind of funny though because it was kind of back and forth, you know. He was like -- he act like he was trying to be my

friend and trying to protect me. But at the same time he would ask me questions about my business that I asked him not to ask, but he continued to press the issue. Several times he asked me questions -- personal questions like whether I was gay or something like that. But he turned out to be I thought was a nice guy.

Q. Did he tell you what he was in there for?

A. Well, yeah. He said he was in for murder and some videotapes of him having a dog have sex with a female or something like that.

Q. Did you ever see him with any business card of any law enforcement people?

A. Yeah. He said there was a law enforcement officer. He showed me, I think, by the name of Scott or something like that that brought him a card and was questioning him about some murder. He said murders of his own.

Q. And did this card -- did it have like a star on it?

A. Yeah. It had homicide on it also.

Q. So the star like the sheriff's badge?

A. Yeah.

Q. And it said homicide investigator or

something like that?

A. Right.

Q. And you recall that it was named Scott?

A. Yeah. That's because he showed it to me right after he got back. It was like maybe somewhere after 9:00. We usually work out around then and like right before that it was somewhere after 9:00.

Q. 9:00 you mean like at night?

A. At night.

Q. And so it was a late evening visit?

A. Right.

Q. Did he obtain any information about you, about anything other than what you were currently charged with?

A. Yeah. He promised me that he would get me a lawyer. He told me well -- he told me he was a big dope boy and he had all this money and he paid this lawyer like $40,000 or whatever. He said since he liked me he'd hook me up with his lawyer, Sam Shamansky. But in order for me to do that I have to -- you have to give me -- you got to tell me what you're in here for and anything else that might come up. He said he had to be able to tell his lawyer

about that.

Q. So he was offering to get you a lawyer by the name of Shamansky; is that right?

A. Right.

Q. And that he wanted you to tell him everything that could possibly come up to tell the lawyer, is that it?

A. Right.

Q. And did you, in fact, tell him some things?

A. Yes, I did. I did.

Q. And were they things that did not occur in Obetz?

A. Yes. The things that I told him was I thought wasn't irrelevant to Obetz, but I should tell him anything that might come up so the lawyer would have it firsthand basis on it.

Q. Specifically you told him about some things that did not occur in Obetz?

A. Right.

Q. They occurred in Columbus?

A. Yes.

Q. And you said that he then -- was he taken out of the cell at any time? I mean, was he moved?

A. He was moved like maybe a little over a week before my birthday. My birthday is on the 23rd of February. So I know it was a little over a week before my birthday that he got moved.

Q. And at some point in time then were you subsequently indicted on new charges?

A. Yes, I was.

Q. Involving the things that you had discussed with him?

A. Correct. Yes.

Q. And were these brought -- were these items that had occurred in Columbus rather than Obetz?

A. Yes, sir.

MR. SUHR: That's all the questions I have.

THE COURT: Ms. Prichard?

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CROSS-EXAMINATION

BY MS. PRICHARD:

Q. Were you ever in a cell with James Conway, this guy right here?

A. No.

Q. What type of case is this Columbus case

that you said just came up after you talked to Mr. Trent?

A. A burglary.

Q. Burglary case. That case is pending?

A. It's still pending.

Q. Mr. Farmer represents you on that?

A. Correct.

Q. What Judge is that in front of?

A. Pfeiffer, Beverly Pfeiffer across the hall.

Q. Have you had any court dates on that?

A. Yeah. Coming the 7th I got a court date.

Q. Did you know who your prosecutor is?

A. Yeah.

Q. Who is that?

A. Doug Stead.

MR. SUHR: Objection. Relevance.

BY MS. PRICHARD:

Q. And on your Obetz case, is that case still pending?

A. Yeah.

Q. Is that also Judge Pfeiffer or some other Judge?

A. Yeah. Same Judge.

Q. Same prosecutor, Doug Stead?
A. Yeah.
Q. What case is the Obetz case, what kind of case?
A. Robbery.
MS. PRICHARD: I have nothing further.
MR. SUHR: Nothing further.
THE COURT: Thank you. Anything else, Mr. Suhr?
MR. SUHR: We had notified Mr. Braun to be here this morning. I see he's not shown up. We also had some subpoenas for records -- prosecution records of Ronald Trent addressed to the keeper of records from the prosecuting attorney's office and I don't have anybody from them either.
MS. PRICHARD: What are you asking, all files of prosecution? I've given you Ronnie Trent's file because we sent him up. He's deal --
MR. SUHR: I'm not talking about that case, I'm talking about prior cases, too.
MS. PRICHARD: If you'd asked me, I would have looked into it for you.
THE COURT: What are you seeking?

MR. SUHR: To see notes on what cases that he was working on.

THE COURT: I'm sorry?

MR. SUHR: See if in the prosecutor's files if it indicates what he was doing for them to get certain considerations on other cases other than the one that was pending at the time to show a pattern of conduct.

MS. PRICHARD: What I can state is the only case he had had recently because he was in prison was that gross sexual imposition that arose about a year ago. There was a Defendant's agreement and outlines everything he was supposed to do and the defense has that. So anything even before that wouldn't have anything to do with this guy and would have probably been terminated because he'd been in prison for about seven years by his own testimony. So there were no other active cases.

MR. SUHR: Well we had him under -- there's like three different Social Security Numbers and date of birth. We do have there were some other charges in the past few years that seem to be dealt with in unusual ways just

on from the records we've seen down at the clerk's office.

MS. PRICHARD: And they were completed before this case ever started.

MR. SUHR: There's no question about that. I'm just doing that to show a course of conduct in dealing with this man. I guess I need this: As far as Mr. Braun, I would like to get that testimony into the record at some point. I don't know whether we can take a commission to take a deposition and go up to Toledo and take him just to put it in the record. And you've already indicated to me what your view of the fourth branch of the motion is and I understand that. But I would just like to be able to put testimony --

THE COURT: Was he served?

MR. SUHR: Yes. I've been in contact with him, but I can't seem to get him down here.

THE COURT: Did he say he was going to be here today?

MR. SUHR: He said he would try.

THE COURT: Have you been in contact with him?

MS. PRICHARD: I've not. He's never spoken to me. If to simplify things, I mean, they have listed portions of a transcript. I don't dispute that this may have been a conversation that's listed on pages 24 through 30 of the Defendant's multibranch motion to suppress, I don't doubt that conversation occurred. I've never spoken to Tim Braun, I don't know what context this may have been taken out of, but if that serves any purpose and can move this along.

MR. SUHR: Would you stipulate that if called and put on the witness stand, that's what he would say? Not asking you to stipulate admissibility or whether it's relevant or anything else, just that if we had him down here he would say and I can let you listen to the tape if you'd like.

MS. PRICHARD: I will stipulate that is what he said prior. I don't know that that's what he'd say in the courtroom. I'd bet he'd say something different and try to clarify because the conversation wasn't -- didn't have anything to do with this case, it was based on a past case. I will stipulate that is a

conversation he had with Gary Philips. But that that's what he'd say here with respect to our case and what his opinions of Ronnie Trent are with respect to my case, I don't think that's what he'd say. So I won't stipulate to that.

THE COURT: One of you have a telephone deposition with Mr. Braun.

MR. SUHR: That would be fine. That would be fine.

MS. PRICHARD: I imagine you'll set that up?

MR. SUHR: Yeah. We'll set that up, Your Honor.

THE COURT: Anything further?

MR. SUHR: Do we have Howard Guinn? I guess that's -- then with that we'd rest.

THE COURT: Anything else from the State?

MS. PRICHARD: No. I just move the exhibits into evidence, Judge.

THE COURT: Any objections to those exhibits?

MR. SUHR: Move to admit Number 1 of the Defendant.

THE COURT: Any objections to that?

MS. PRICHARD: No.

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Thereupon, the exhibits last-above offered were admitted into evidence on behalf of the Plaintiff and were marked State's Exhibits I1 THROUGH I7.

- - -

Thereupon, the exhibit last-above offered was admitted into evidence on behalf of the Defendant and was marked Defendant's Exhibit 1.

- - -

THE COURT: When you get that deposition let me know. And I will rule on the motions as soon as I have all the information.

MR. SUHR: That would be fine.

THE COURT: Thank you all.

- - -

CERTIFICATE

I do hereby certify that the foregoing is a true and correct TRANSCRIPT OF PROCEEDINGS in this matter, upon the date of filing but not thereafter, beginning on December 27 and 30, 2002, together with the exhibits attached hereto, taken by me and transcribed from my stenographic notes.

0317901

Lahana DuFour, RPR
Assistant Official
Court Reporter

- - -

2003 JUL 18 AM 11:38
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO

CRIMINAL DIVISION

- - -

FILED
COURT OF COMMON PLEAS
MAY 20 2004
SUPREME COURT OF OHIO

State of Ohio :
:
Plaintiff, :
:
vs. : Case No. 02CR-3117
:
James T. Conway, III, :
:
Defendant :

- - -

SUPPLEMENTAL TRANSCRIPT OF PROCEEDINGS
Motions

- - -

APPEARANCES:

Ms. Sheryl Prichard, Assistant Prosecuting Attorney

On behalf of the Plaintiff.

Mr. Dave Young and Ms. Diane Menashe,
Attorneys at Law

On behalf of the Defendant.

BE IT REMEMBERED, that on the hearing of the above-entitled cause at the July Term, 2003 of the Common Pleas Court of Franklin County, Ohio, before the Honorable Dale A. Crawford, Judge, the following proceedings were had to wit:

02-1[illegible]

FILED
JUN
MARCIA J. MENGEL
SUPREME

Carla D. Manahan, Assistant Official Court Reporter

Friday Morning Session,
July 11, 2003.

- - -

THE COURT: What I'm going to do, I'm going to go through the motions as I have them in this. And I'm going to ask if there's anything to add on the motions. And if there isn't, just go through them one at a time.

Okay. Motion number three, Motion for Notice of State's Evidence. Anything further.

MS. PRICHARD: Not from the State.

MR. YOUNG: Not from the Defense, Your Honor.

THE COURT: Just make sure you comply with the discovery rules and provide the Defense with everything that is appropriate under Rule 16.

Bill of Particulars. I know that a lot of information has been turned over. Is there anything you need further with respect to a Bill of Particulars that's been given to you?

MR. YOUNG: No, Your Honor. Unless otherwise --

THE COURT: That's moot at this point in time.

Motion to Properly Preserve and Catalog

Evidence. That will be done.

Motion for Defendant to Appear in Civilian Clothing. That will be done.

Motion for Accused to Appear Without Restraints. As long as he doesn't create any problems, that will also be done.

Motion to Compel Disclosure of All Statements Made by Defendant. Has that been done?

MS. PRICHARD: Yes, Your Honor.

THE COURT: Motion to Compel Exculpatory Evidence. Has all exculpatory evidence been provided?

MS. PRICHARD: Yes, Your Honor.

THE COURT: Motion for Disclosure of Impeaching Evidence. What evidence are you referring to?

MR. YOUNG: Your Honor, as to that, there's two key witnesses, Ronald Trent and Mike Arthurs. We believe -- we have witnessed at the last hearing that Ronny Trent was in protective custody. As a former prosecutor and having been involved in similar type of cases, that a lot of times when these individuals are in protective custody, they are placed at hotels the night before they testify. They are given whatever financial inducements or any type of agreement that they may have given to these individuals.

Ms. Prichard has given to us just as recently as a couple weeks ago that they are writing various letters to the Parole Board, parole authorities, contacting other agencies regarding these individuals.

It appears that Ronald Trent continues to pick up criminal cases and is released and there's various inducements by the prosecuting attorney's office. We would request they provide us any type of inducement, financially, if they are putting up at hotels, we can get hotel bills. They are providing financial assistance.

THE COURT: I'm not going to have the hotel bills because you don't have any right to know where he's staying. Your client doesn't have any right to know where he's staying. But I will request that the State provide all information with respect to witnesses that they have custody of as far as any inducements that have been given to them. And I don't believe inducements staying in a hotel for purposes of testifying is an inducement.

If there's any other inducements other than where he's going to be staying during his testimony, please provide that information.

MS. PRICHARD: Will do, Your Honor.

THE COURT: Motion for All Motions to be Heard on the Record. That will be granted.

Motion to Compel Disclosure of Aggravating Factors and Information Relating to Mitigating Factors. I don't know what that means.

MR. YOUNG: We will rest on the motion that we submitted on that.

THE COURT: I don't know what it means so you can't rest on it. You have to explain to me what that means.

MR. YOUNG: In the event that they have any evidence that has any bearing in any way on any aggravating circumstances, which I believe the two aggravating circumstances are contained in the indictment -- I don't have my indictment with me -- any evidence of the indictment that they have provided or if they know of any mitigating factors that would bear on Mr. Conway, we request that be disclosed to us.

THE COURT: If you're talking about mitigating factors be exculpatory evidence, they are supposed to provide that information. If you're talking about mitigating factors about his background, I don't know what they would know that you wouldn't know.

MR. YOUNG: Just in the event that they do

know something other than us. We are doing -- obviously, we have our mitigation team working very vigorously in this case.

THE COURT: I will make the legal determination that exculpatory evidence includes knowledge that you would have, unique knowledge that you would have with respect to any mitigating factors. So if you know of anything, anything about the defendant's background that might be mitigating, let's please provide that to the Defense.

MR. YOUNG: Thank you, Your Honor.

THE COURT: Motion to Restrain Certain Parties from Discussing Case with Defendant. Who are the certain parties?

MR. YOUNG: I believe we set forth any social workers, psychiatric personnel, correction officers, police, sheriff's department, prosecutor's office, any representative or agents thereof of any of those type of law enforcement individuals.

THE COURT: What happens if Mr. Conway calls them and says he wants to talk to them?

MR. YOUNG: I think that's different in the event we initiate or he initiates any contact.

THE COURT: You're asking me to restrain them from discussing the case with defendant. I'm

going to restrain them from illegally discussing the case with the defendant, to make any attempts to have any contact without his attorney there or without Mr. Conway initiating.

Motion to Exclude Evidence Relating to Other Crimes, Wrongs or Acts. We will get to that later.

Motion for Preparation of Transcript of Grand Jury Testimony. At this point in time I'm not going to give you any grand jury testimony. If you want to show a particularized need, I will be happy to look at that. At this point in time, I'm not going to do that. Is there any particularized need that you know of?

MS. MENASHE: Not at this time, Your Honor.

THE COURT: Motion to Disclose Grand Jury Witnesses. I will not do that.

Motion for Pretrial Transcripts. Which pretrial transcripts do you want.

MR. YOUNG: Your Honor, it just came to our attention recently -- and it relates to one of the multi-branch motions that you had previously heard -- that there was a motion to suppress evidence or motion to suppress a multi-branch motion that was heard on 12/30 before this court. We would request that.

Diane and I were not present on that. There was testimony from Ronny Trent that he gave before this court. We request his testimony at that hearing be prepared.

THE COURT: I'd be happy to do that.

MS. MENASHE: Actually, Your Honor, I believe the date of that hearing would be the 27th of December.

THE COURT: Motion for Increase in Peremptory Challenges. Any other argument on that?

MS. PRICHARD: Not from the State.

THE COURT: Any other argument?

MR. YOUNG: Nothing.

THE COURT: No. 18, Motion for Increase in Number of Peremptory Challenges.

MR. YOUNG: No, Your Honor.

THE COURT: Stick by the criminal rules.

Motion to Compel Disclosure of Prosecution Jury Selection Data. What's that?

MS. MENASHE: Your Honor, this is just asking should the prosecutor have any data that it's generated regarding prospective jurors in this case, we ask they turn that over to us.

THE COURT: The way we are going do the prospective jurors, I request that fifty extra jurors

be added to our normal pool. I'm going to take the prospective jurors out of our normal pool. And I don't think the prosecutor would have any information on the jurors who are going to be in that pool.

I do have data, just because the court generates it, on basically who our jurors have been since January up through that. And if you'd like to look at that data, it tells you who it is by race, sex, education levels. It's kind of interesting data.

MR. YOUNG: We would like to look at that, Your Honor.

THE COURT: I will be happy to share that.

Motion for Sequestration of Jurors for Duration of Trial. I will only do that if that's necessary. And I'll determine that at the time of trial. I'm not going to do it in advance.

Motion to Excuse Venire persons Who Cannot Consider Mitigating Evidence. Any other argument with respect to that?

MR. YOUNG: Not from the Defense, Your Honor.

MS. PRICHARD: No, Your Honor.

THE COURT: I will exclude all persons who cannot consider any relevant evidence, whether it be mitigating or otherwise. We will do that during voir

dire.

Motion for Second Voir Dire of Jury. I assume you mean before mitigation?

MR. YOUNG: That's correct, Your Honor.

THE COURT: That will not be granted.

Motion to Prohibit any Evidence Bearing on the Character or on Victim Impact. Are you planning on --

MS. PRICHARD: Well, not directly soliciting anything. The mother testified in a prior hearing, so there's some talk of her son. But it doesn't go so far as to talk about his character or his upbringing or anything of that sort. But there will be some testimony that does touch on the victim and who he was.

THE COURT: Let me ask: Obviously co-defendant has been tried in this case. And I know you have had the opportunity to review those trials or have transcripts of those. Just as a practical matter, is this going to be any different than those?

MS. PRICHARD: No, Your Honor, shouldn't be any different. There may be a witness or two less. I don't think there's anything more than Defense counsel has already seen in the prior trial.

THE COURT: With that in mind, is there

anything in that case?

MR. YOUNG: Your Honor, we can witness --

THE COURT: It deals with victim impact or deals with areas that you think are prohibited in this trial.

MR. YOUNG: My co-counsel did witness that, the mother's testimony in the previous trial. And the prosecutor is right. There was nothing other than her factual basis as to her son missing and various things I believe is the gist of her testimony. And it was not, he was growing up a great kid or anything. It was just, I believe her testimony -- Diane, correct me if it's wrong -- I talked to my son. He was gone essentially after that. So I did not know of any additional victim impact.

THE COURT: Well, assuming the prosecutor's proffer is accurate, it doesn't appear there's anything else we need to do dealing with that.

Motion in Limine. What's the Motion in Limine on No. 24?

MR. YOUNG: Essentially to limit the prosecutor's argument as to the aggravating factors in this case and to limit that argument in the mitigation to those aggravating circumstances other than presented to the court.

THE COURT: At this point in time they will be overruled.

Motion for Individual Sequestered Voir Dire. On the issue of publicity I've already advised the counsel how I'm going to conduct the voir dire. I have questionnaires to jurors and those are on my desk and I'll give those to you after we are done, asking jurors if they know the name of the defendant or heard anything about this case. As I suspect it, the only thing anybody has ever heard about it is the name Dockside Dolls. We did ask them about that also. But I will share those with you.

We will be asking the jurors if they know anything about this case; ask the jurors if they have any feelings with respect to capital punishment that are to the far left or far right. And I've explained that to counsel before; any juror that feels that they could not be fair with respect to the penalty phase or any juror who believes that they know something about the case, that will be done sequestered, individually. Other than that, the rest of voir dire is going to be done in a group and not sequestered.

Anything else on the Motion to Dismiss?

MR. YOUNG: No, Your Honor.

THE COURT: They will be overruled,

Motion to Compel Law Enforcement Officials to Turn Over All Information Acquired During Investigation. Has Rule 16 been complied with?

MS. PRICHARD: Yes, Your Honor.

THE COURT: Is there anything else that has not been turned over that is covered under Rule 16?

MS. PRICHARD: No, Your Honor. And if things arise, I will turn them over at the earliest opportunity.

MR. YOUNG: Your Honor, we believe there are certain items that have not been turned over and requesting the court ordering the prosecuting attorney to turn them over.

THE COURT: Like what?

MR. YOUNG: There's a proffered statement by Shawn Nightingale, co-defendant, scheduled to go to trial in two weeks. It was given, recorded, I think transcribed. I believe the statements of any co-defendant, if it was recorded and given to law enforcement under Rule 16 should be turned over to us, not whether they intend to, how they want to do it. It's any recorded statement. I believe the rule requires and we request that proffered statement be given to us.

MS. PRICHARD: Is that the only item?

MR. YOUNG: That's the only one we know of right now.

MS. PRICHARD: Your Honor, there's a recording that I made in an interview between me, the co-defendant Shawn Nightingale, and his counsel in the jail. There was an off-the-record proffer with a proffer letter prepared which could have resulted in a defendant's agreement and it did not. As part of our proffer letter, that will not be used, not turned over unless he signs a defendant's agreement; which he did not.

We had the issue come up in the Sadler case. I have no problem personally turning it over. I know his counsel did and they wished to make argument, and did in front of Judge Sadler, to prevent that tape from being turned over.

THE COURT: What is your office's position with respect to co-defendants' statements, period? Are they and if they are going to be witnesses, do you formerly -- do you take the position that they are turned over as with defense statements?

MS. PRICHARD: Yes, Your Honor, we do turn those over.

THE COURT: Why don't you do this. Why don't you give me that statement in camera. And let's

do it within a week. Give it to me in camera. And you tell me what authority you believe you have that gives you the right to that statement and you tell me what authority you have that tells me why that should not be turned over.

MS. PRICHARD: I will do that, Your Honor.

THE COURT: After discussing that with your co-counsel if you agree it could be turned over, you're going to turn it over anyway, you don't have any problem with it.

MS. PRICHARD: Lou Williams and Jerry Simmons are the ones trying to protect their client's interest.

THE COURT: Why don't you tell them of our discussion here today. If they want to file any statements with respect to their decision, do so within a week.

MR. YOUNG: Your Honor, that would include the proffered letter also?

THE COURT: Yes. Anything that can be considered a statement, direct or indirect.

Motion for Order Directing that Copy of State's File be Made, Turned Over to the Court, and sealed for Appellate Review. I'm not going to have them turn over anything other than is required under

Rule 16. So that motion is overruled.

Motion to Have Reasons for Overruling Objections placed on the record. I'm not going to preclude anybody from the court reporter. But I'm also not going to have -- and I know you all won't do that -- I'm not going to sit around here with Carla taking down oral argument on everything that happens in the courtroom. So but obviously you'll have access to the court reporter for all your objections.

Disclosure of Juvenile Records of State's Witnesses. Do you have those?

MS. PRICHARD: First of all, I'm not sure what witnesses. Nobody is a juvenile currently. I didn't know what witnesses and I didn't believe the Defense was entitled to it. Because according to their own case law, they haven't shown how it's material, relevant or probative. But we have all criminal records -- all the adult records for all of the witnesses who have testified.

MR. YOUNG: Your Honor, we believe that the State should generate those. We don't even know -- we have no access to juvenile records. The State has complete access to that. They showed at least if any of their witnesses be witnesses testify has a juvenile record, it can be given in camera to the court, see if

the court feels necessary to disclose to us prior to cross-examination.

THE COURT: Just have records available under the Rules of Evidence and whatever criminal record is admissible under 60, whatever it is, make sure that's available.

MS. PRICHARD: Will do that, Your Honor.

MS. MENASHE: Your Honor, while we are on the subject of records; if I might, we would also ask that the State produce prior to trial an updated records check for both Ronnie Trent and Mike Arthur. It's my understanding that Ronny Trent has picked up a new criminal charge and I think the records were run on those individuals in particular some time ago. So we would ask for updated records be run.

THE COURT: See that's taken care of.

MS. PRICHARD: Yes. Certainly.

THE COURT: Motion for Disclosure of Rebuttal Witnesses. I assume you don't know the rebuttal witnesses at this point in time. Just make that assumption. But as we all know, some rebuttal witnesses were planned to be called on your case in chief and you just waited and called them in rebuttal. Any witness that you know you're going to call, period, at this point in time in your case in chief or

rebuttal, please turn it over.

MS. PRICHARD: Will do, Your Honor.

THE COURT: Motion for Alternating Voir Dire. Probably seen that before, but I'm not sure what you mean.

MR. YOUNG: Your Honor, just the way you're going to do your voir dire, I believe motion is probably moot and probably withdraw that.

THE COURT: If anything comes up during voir dire, make sure you let me know.

Motion for Comprehensive Voir Dire. I generally don't limit anybody during voir dire process. So it will be comprehensive.

Motion that the State Bears the Burden of Proving the Absence of Any Mitigating Factors Offered by the Defense. That will not be done.

Motion to Exclude Jurors' Addresses and Telephone Numbers From the Media. I do not give media jurors' addresses and telephone numbers. I believe the jurors' addresses, which are not on the questionnaires -- there are public records with respect to all of these things and if the media can go find certain things out, I can't preclude them from doing that. I'm not going to give them the addresses and telephone numbers.

Motion for Written Jury Instructions. That will be done.

What's 37, Motion in Limine?

MR. YOUNG: Your Honor, essentially that's in the event we provide and will provide as soon as we find any witnesses and in fact that if we do not call anyone in our witness list, we don't believe the State would have any right to comment on.

As this court knows, I've tried many cases in here, we always like to disclose to the jurors names of people we potentially could call in the event that they know any of those individuals. And in the event we do not call them, we don't think the government should be able to comment on that.

In the event that our experts do not prepare any reports, we do not believe that they should be able to comment on the fact that our experts did not prepare any reports and I don't believe that they should be able to comment on the costs associated with our trying to get experts. And that's the reason for all of those, filing of this motion.

THE COURT: I will just make the comment, the prosecution is going to be limited to appropriate closing arguments and appropriate comment. And I've always said there's a fine line between saying that

there is no evidence dealing with a particular issue; in other words, whether lights were red or green.

Let's say you were going to have a witness called saying the light was green or red and that witness did not appear, prosecution can comment there is no evidence that says the light was red. I will not permit the prosecution to say that defense tells you on opening statement they are going to call John Smith with respect to the red light and I don't know why they didn't call them, you can go back there and consider that, I will not permit that argument.

Motion to Suppress Photographs, we will deal with that after I have had an opportunity to review the photographs. But obviously, I'm going to permit relevant photographs, prejudicial effect will not outweigh any probative value.

Motion to Limit Prosecutor's Argument to Aggravating Circumstances. Does the prosecution have any belief that they are going to be arguing other than the aggravating circumstances?

MS. PRICHARD: Mr. Lowe and I have tried several death penalty cases and we understand the law and will follow it.

THE COURT: 40, motion in limine. Somebody going to get that for me?

MS. PRICHARD: I'm sorry?

THE COURT: Is that what you're looking for? I said number 40, Motion in Limine.

MS. MENASHE: Your Honor, I just had an opportunity to review the motion. Ms. Prichard has indicated her and Jimmy tried a lot of cases. I understand if we opened the door and tried to use it, the State can then come back and argue to the contrary. However, the motion simply asks, if we don't open the door by arguing that the mitigating factor is the nature and circumstances, we would argue they are not allowed to claim the nature and circumstances are aggravating.

THE COURT: Obviously, nature and circumstances of the incident is mitigating factor and can only be used as such, so --

MR. YOUNG: Sorry, Your Honor. I didn't know you were waiting.

THE COURT: Motion to Prohibit Prosecutor to Comment on Accused's Unsworn Statement.

Do you as a normal practice comment that they are to be reminded that that was an unsworn statement and it was not under oath?

MS. PRICHARD: That is the only comment, which usually if the court makes the instruction we

don't feel the need to comment on it. If there's any comment, that is the only comment that we have ever made.

THE COURT: Well, if you feel that that's inappropriate for them to say to the jury, that this is an unsworn statement, he was not under oath; if you think that's inappropriate, show me some authority for that and I will be glad to look at that. So we will deal with that at the time of trial.

Motion to Prohibit State from Employing Prejudicial Arguments and Themes. Do you know of some prejudicial arguments and themes that are not relevant.

MR. YOUNG: Your Honor, in the event that motion -- essentially saying they can't do illegal or unlawful prejudicial arguments and we will do the appropriate objections at the time in the event they try to employ that.

THE COURT: All right. Motion to Require the Jury to Articulate Its Method of Weighing Aggravating and Mitigating Circumstances. Are you asking them to articulate it orally?

MR. YOUNG: You're referring to Motion 43, I believe?

THE COURT: I am.

MR. YOUNG: No, not orally, Your Honor.

But I believe we would request they be given interrogatories as to how they reached various decisions.

THE COURT: I will not do that.

Motion to Argue Last and to Split Argument. Law is pretty clear that prosecution goes first at all stages as far as the argument is concerned. They have the opportunity for rebuttal argument so I will not change criminal procedure.

Motion for Defense to Examine Prospective Jurors Regarding Views on Capital Punishment, that will be granted.

Motion to Prohibit Prosecutor from Commenting on Accused's Unsworn Statement. That's already been dealt with.

Motion to Preclude Readmission of Trial Phase Evidence and Exhibits in Penalty Phase and Related Prosecutorial Comment. I believe the appropriate procedure is that all evidence relevant to the aggravating circumstances is to be readmitted. Evidence that is not relevant to the aggravating circumstances is not to be admitted and that is not -- that is different evidence. So when we go to the penalty phase, if we do, and we start discussing the exhibits that are to be introduced, I'm going to

exclude those exhibits that are not relevant to the aggravating circumstances.

Motion to Dismiss Alternate Jurors Before the Regular Jurors Retire to Deliberate After the Mitigation Phase. I will do that. I'll hold onto the alternate jurors.

We are going to go directly into mitigation with maybe one day off. I have not looked at the most recent decision with respect to alternate jurors as it applies to capital cases. But it's my belief that the alternate jurors cannot sit in on the trial phase deliberations but they may be kept for purposes of being alternate jurors in mitigation phase. And if somebody for some reason cannot continue on in mitigation phase, they can step in with the admonition that they are bound by the verdict of the regular jury. But I have not read the Supreme Court's new decision dealing with alternate jurors with that in mind.

So if anybody believes that the law is otherwise, make sure you let me know and we'll deal with that when we get to that point, if we get to that point.

Motion to Instruct the Jury to Consider Mercy. I will not do that.

Motion for Jurors to Consider Residual

Doubt, to give a residual doubt instruction. I will not do that also.

Motion for More Specific Bills of Particulars and List of witnesses. I believe we dealt with that early on. It appears you don't need anything more than you've already gotten.

Okay. Any other motions?

MR. YOUNG: I believe there's some particularized motions more that we had discussed the other day; in particular, the Motion for Joinder and a Motion for Change of Venue and there's also a multi-branch motion that I believe you have not ruled on, as my understanding. I was not counsel at the time. And whenever your rulings on all of those -- in fact, as to those three motions, other than those three motions, I believe -- I don't believe there was any other motions that were not ruled on on the record that we are aware of.

THE COURT: I think I told all counsel at this point in time I have no reason to believe there's any need to change venue in this case.

Refresh my memory on the multi-branch motion.

MR. YOUNG: Multi-branch motion -- and probably Sheryl would be better to address that. You

held a hearing here on December 27th which we are requesting a transcript of that hearing and also December 30th. That motion dealt with a determination of whether when Ronny Trent was incarcerated with Mr. Conway; whether he was, in fact, operating as a government agent and under Messiah was working as a government agent and any statements derived from that position that would be suppressed under the Messiah decision.

That I believe was addressed in very similar case with Judge McGrath, who I believe ruled against that motion, and that in this motion they were going to submit the transcript of Timothy Braun. You had heard all of the testimony from David DeVillers, Orlando Wilson, Detective Scott, Ronny Trent, Janice Conway and Mr. Conway also testified. And I believe that has not been ruled on. But Ms. Prichard may be better able to inform the Court as to what happened in Judge McGrath's courtroom.

THE COURT: Did I get the briefs on that? Or have I gotten the briefs on that?

MS. PRICHARD: Yes. They were filed. Ours is December 13, 2002.

THE COURT: Would you pull both sets of briefs out?

MR. YOUNG: Your Honor, if I can approach, I have them here.

THE COURT: Just give them to Linda.

MR. YOUNG: And also Tim Braun transcript.

THE COURT: I know I got a separate transcript. We waited to get Tim Braun's transcript and we got that. But give that to Linda and I will deal with that next week.

I had an informal discussion with all counsel present with respect to the joinder issue. Is there any other argument with respect to that?

MS. PRICHARD: No, Your Honor.

MR. YOUNG: No, Your Honor.

THE COURT: Okay. I'm going to keep this case separate from the other cases. It's not going to be joined.

MS. PRICHARD: I just have two further issues, Your Honor. I know we discussed in chambers but we never put anything on the record, the defendant's consent to Ms. Menashe's representation since she is appointed. And she already indicated to the Court she discussed the fact that she's under indictment in another county with the defendant and he consented to that representation. I thought it would be appropriate since she is appointed to have him

acknowledge that on the record.

THE COURT: That's not necessary.

MS. PRICHARD: The other matter, Your Honor, I don't remember if you wanted to discuss this. This might have been Judge McGrath, but the indigency status of the defendant because he had won the lottery, a hundred twenty-five thousand dollars. He has retained counsel, Mr. Owen.

I couldn't remember if it was you or Judge McGrath said you were going to review that issue.

THE COURT: I don't think I said I would deal with that. But I would be happy to deal with that.

MS. PRICHARD: Well, the State believes the defendant has appointed counsel. He has requested transcripts. He's been getting transcript excerpts and things at county cost. The State believes he is not, in fact, indigent. He's been able to retain counsel where he chooses to. And he testified and provided some support for that, that he had won the lottery. I believe it might have been two or three years ago. I believe that amount was one hundred twenty-five thousand dollars.

THE COURT: Any other comments with respect to that?

MS. MENASHE: Your Honor, just simple comment on a factual basis. Mr. Conway did win the lottery. It was a tune of a hundred thousand. He split that money. That would be fifty thousand. Mr. Conway has gone through at least ten attorneys on his behalf. Started with Chris Cicero, us, Your Honor, Bob Suhr, Brian Rigg. And, Your Honor, although he may have retained counsel in his conspiracy case, there is no evidence or indication that Mr. Conway himself retained that counsel. He's obviously incarcerated. In fact, he's technically incarcerated on the Row given his last conviction. We would maintain he is indigent.

THE COURT: What I would like for you to provide to me, I have received an affidavit of indigency from him, I assume, but I would like to have that affidavit completed with bank accounts, if any, in his name or in his control or any other assets that he may own.

And if you can get that to me within a week, I would appreciate it.

MR. YOUNG: I'll do that, Your Honor.

THE COURT: I have some concerns putting Mr. Conway under oath with respect to those matters at this point in time. Deal with issues that may be relevant to something else.

Anything else?

From the State?

MS. PRICHARD: No, Your Honor.

THE COURT: Anything else from the Defense?

MS. MENASHE: Your Honor, I would like to note just for purposes of the record that neither Mr. Young nor I had requested the court to order the transcripts from Mr. Conway's previous trial in front of Judge McGrath. The reason why we haven't done this, requesting this court to order the transcripts is, respect to judicial economy, if you will.

We have talked to Mr. Simmons who is the counsel on Shawn Nightingale. It is our understanding that their case ordered those transcripts. We are working with Mr. Simmons. It's our case those transcripts have been delivered and transcribed. He's in the process of reviewing them.

We want to put on the record the reason we did not request them. For us to request them and Mr. Nightingale's attorneys to request to give them, it will be a double request, if you will. We do intend to review those transcripts. We just wanted to put on the record why we haven't requested them in this case.

MR. YOUNG: And, Your Honor, in the event that they are preparing the transcripts for Mr.

Simmons, that he will copy them so we don't have to pay.

THE COURT: He is not allowed to do that.

MR. YOUNG: Then, Your Honor, could we get a ruling from the Court that we get authorization to get copies of those transcripts?

THE COURT: Let me ask a question. Why do you need those transcripts? Why do you need the voir dire? Why do you need it?

MR. YOUNG: He has -- they've selected -- we've all sat down and discussed it -- to get Ronald Trent's testimony, Mike Arthur's testimony and I believe one or two other individuals. They did not request a transcript of the entire trial like appellate counsel probably is going to do or has done. We have very selective witnesses, particularized those witnesses that we've requested a transcript. They have requested a transcript of those. And we would similarly request a transcript of their prior recorded testimony.

THE COURT: I will authorize you to have transcript of witnesses that are going to be testifying in this case. But I'm not going to authorize a copy of the transcript, for him to make a copy of the transcript for you because that violates our Local

Court Rules.

MR. YOUNG: And will this Court do the same thing after the conclusion of Shawn Nightingale's trial?

THE COURT: I guess.

MS. PRICHARD: Shawn Nightingale's trial, those transcripts are never going to be complete in time of this trial. That starts July 25th. It's going to be the same testimony as we had in Jamie Horton that we will have in Shawn Nightingale. Since you sat in on Horton, I assume one of you will be present in Nightingale. I don't think that's going to be possible to get Nightingale's.

MR. YOUNG: Your Honor, certainly for time sake we would be willing. The two key people whose testimony we would be interested in would be Ronny Trent and Mike Arthurs. July 25th and August 11th is a tight time frame. Should that case go into mitigation, that would allow us some additional time to get those transcripts done. So those are the two testimony particularly.

THE COURT: If she is not going to have -- I understand she is in the process of having a new computer, a real-time computer. If she's not going to have that real-time capabilities -- I think it's

important for you to have that transcript. Obviously, my suggestion is, why don't you see how much it would cost to hire somebody to take down their testimony.

I don't mind authorizing you to have another court reporter present.

Anything else?

MS. MENASHE: Just one other thing, the audiotapes are, in fact, ready for our pickup. We will get those today. And Sheryl has indicated there are color copies of the photographs.

MS. PRICHARD: You're welcome to take anything you want to copy if you're unhappy with the quality we've made and look at anything. It's all over at the office.

THE COURT: Okay. Thank you all.

MS. PRICHARD: Thank you, Your Honor.

THE COURT: Have a good weekend.

- - -

CERTIFICATE

I do hereby certify that the foregoing is a true, correct, and complete transcript to the best of my ability of the proceedings in this matter of July 11, 2003, taken by me and transcribed from my stenographic notes.

Carla DiNapoli Manahan
Assistant Court Reporter

FILED
COURT OF COMMON PLEAS
DEC 20 2004
COURT REPORTS

Information on criminal case number CRA 0300213

Click for Docket Entries

Party Involved

Defendants Name: Menashe, Diane M
A.K.A.:
Address: 536 S Wall Street
City/State/ZIP: Columbus, Oh 43215
Telephone #: Confidential
Social Security #: Confidential
# of Priors:
Warrant(s): Click

O.L. #: Confidential
Date of Birth: Confidential
Race: Undocumented
Sex: Female
Eye Color: Undocumented
Height:
Weight: Undocumented
Hair Color: Undocumented

Complainant/Officer

Name: Det. Sgt. Brian Edwards
Agency Code: State Of Ohio (Shf)
Unit Number: 1424

D.B.A.:
Address:
City/State/ZIP:

Violation Information

File Date: 02/25/2003
Ticket Number:
Violation Date: 02/04/2002
Violation Time:
Violation Description: Osbst Justice

Section #: 2921.32A4
Degree: 3rd Degree Felony
Points:
BMV Offense Code:
Waive Amount:

Hearing Information

Hearing Date: 03/13/2003
Hearing Time: 03:30 PM
Hearing Type: PRL
Mandatory?: Yes
Time Waived?: Undocumented
Judges Initials: CLC

Waive Attorney?: Undocumented
Attorney Name: Samuel Shamansky
Attorney Code:
Time Limit Days: /O
Time Limit Status: A
Time Limit Jail:

Miscellaneous Information

Summons Issue Date: 02/04/2002
Summons Issued How: Undocument
Summons Returned Date:

Status/Location Date: 03/13/2003
Status Code: Closed
ITN Number:

Transactions

Waived ?: Undocumented
Payor: Menashe, Diane M
Pay Date: 03/13/2003
Payment Type: None
Current Balance: 31.3 5

Receipt #:
Received By:
Balance Due Date:
Bond Paid to Date: .00
Bond Amount Refunded: .00
Bond Amount Available: .00

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June 18, 2004 –
Criminal file sealed →

Charges Dismissed

Dotson

3117

Part 2

{¶ 15} The Supreme Court applied *Apprendi* and *Ring* in *Hurst*. A jury found Timothy Hurst guilty of first-degree murder. Although that offense was a capital felony under Florida law, the jury's verdict alone did not qualify Hurst for the death penalty: at the time of his conviction, Florida law provided that " '[a] person who has been convicted of a capital felony shall be punished by death' only if an additional sentencing proceeding 'results in findings by the court that such person shall be punished by death.' " *Hurst*, ___ U.S. at ___, 136 S.Ct. at 620, 193 L.Ed.2d 504, quoting former Fla.Stat. 775.082(1), C.S.H.B. No. 3033, Ch. 98-3, Laws of Fla. In Hurst's sentencing proceeding, the jury, as required by former Fla.Stat. 921.141(2), C.S.H.B. 207, Ch. 96-302, Laws of Fla., rendered an "advisory sentence" recommending death, but Florida law did not require the jury to specify the aggravating circumstances that influenced its decision. *Id.*, citing former Fla. Stat. 921.141. The sentencing judge then imposed a death sentence after independently determining and weighing aggravating circumstances and mitigating factors. *Id.*, citing former Fla.Stat. 921.141(3). Hurst's sentencing judge, who explained her findings in writing, found that two aggravating circumstances existed. *Id.*

{¶ 16} The United States Supreme Court began its review of Hurst's Sixth Amendment claim by reciting *Apprendi*'s basic tenet: "any fact that 'expose[s] the defendant to a greater punishment than that authorized by the jury's guilty verdict' is an 'element' that must be submitted to a jury." *Hurst* at ___, 136 S.Ct. at 621, quoting *Apprendi*, 530 U.S. at 494, 120 S.Ct. 2348, 147 L.Ed.2d 435. It then explained that the *Apprendi* rule had required invalidation of Arizona's death-penalty scheme in *Ring* because Arizona had allowed the imposition of the death penalty based solely on judicial fact-finding of the aggravating facts. *Hurst* at ___, 136 S.Ct. at 6[illegible] citing *Ring*, 536 U.S. at 591-593, 597, [illegible]4, 122 S.Ct. 2428, 153 L.Ed.2d 556. The *Hurst* court concluded that under the same analysis, Florida's scheme had to be invalidated, because Florida did "not require the jury to make the

things she does in life you may make a different decision whether you want her excused or not. You may want her to go through the rest of the voir dire for that matter.

I will let you wait until tomorrow before you decide.

MR. YOUNG: Thank you, Your Honor.

THE COURT: Okay. Little bit before 9:00 if you would, please.

- - -

Thereupon, the further trial of this cause was adjourned until 9:00 o'clock a.m., September 16, 2003.

- - -

Tuesday Morning Session,

September 16, 2003.

- - -

Thereupon, the further trial of this cause was resumed pursuant to adjournment.

- - -

MR. LOWE: Judge, at this time, State would like to move for separation of witnesses.

MS. MENASHE: No objection, Judge.

THE COURT: If you see any of your witnesses in the courtroom make sure they step outside.

By the way, the one thing I did not do yesterday: Mr. Young did make a request for continuance and change of venue based on publicity. Both will be denied.

- - -

Prospective Juror No. 46 excused for cause.

- - -

Thereupon, the jury resumed their places in the jury box.

- - -

THE COURT: Good morning everybody.

THE PROSPECTIVE JURORS: Good morning.

THE COURT: Amazingly enough, I think we are only missing one person. And the stuff I'm going to do

right now, I don't need that one person here right this minute.

I told you a little bit about our scheduling and I did not have an opportunity to talk to each one of you about any conflicts you might have in the schedule.

The likelihood is we are going to complete the case in two weeks; however, you never know how long deliberations is going to take. I'm not positive how long the rest of the jury selection process will take. But I want to make sure people can go into a third week if, in fact, it is necessary.

So let me see the hands of anybody that thinks that's going to create a problem with your schedules.

All right. Let's deal -- okay. I'll just go down -- first, Ms. Himes. We talked about that.

PROSPECTIVE JUROR NO. 22: I just said I teach school. But I don't teach in a school system. I teach in a Catholic private school. We are financially strapped right now. It could be a financial burden on the school.

THE COURT: Have you talked to the principal?

PROSPECTIVE JUROR NO. 22: I haven't talked to her yet because I wasn't sure what was happening.

THE COURT: All right. Somebody else in the same row.

Yes, ma'am.

PROSPECTIVE JUROR NO. 26: Yes. I lost a staff member about a month and a half ago. So I am one person basically running our division right now. So if it would go maybe a day or two over, it would be okay but anything beyond that, I think it's going to be detrimental to my agency, not really to me.

THE COURT: Where do you work?

PROSPECTIVE JUROR NO. 26: I work for the State of Ohio.

THE COURT: You work for the State of Ohio?

Everybody is financially strapped. I guarantee you the State of Ohio will survive. And I know you're very valuable, but this is the State of Ohio here.

PROSPECTIVE JUROR NO. 26: I may need you to write me a letter, though.

THE COURT: I will be happy to, yes.

Yes, sir. What's your name?

THE COURT: Dean.

PROSPECTIVE JUROR NO. 35: I'm the only one working. I think my company only pays for one week, two weeks jury duty.

THE COURT: Where do you work?

PROSPECTIVE JUROR NO. 35: Mac Tools, Stanley Works.

THE COURT: Okay.

PROSPECTIVE JUROR NO. 35: Why don't you talk to them, call them this afternoon or tonight, see what the situation is. Tell them it's my anticipation we should be done in two weeks. But just -- there are no guarantees. I have eight hundred fifty other cases I'm dealing with. And believe it or not, I have a full docket this morning of other cases and tomorrow and the next day and for the next two weeks.

So we are going to break about 11:30. And while you're off having a two-hour lunch, we are going to be doing the morning docket with all the other cases we have today. I'll be doing the same thing for the next couple of weeks.

Go ahead and let them know and see what the situation would be. I don't want to create major problems. I'm going to create minor problems because the jury service system does create minor problems.

I want you to think what we are doing is important. You obviously know that. And sometimes another couple days or day here -- and I think if you look at the importance of what we are doing, somehow we

can ask your employers can you make arrangements, we are going to give you two-week's notice, can you make arrangements to make some accommodations. I guarantee you if you got sick they'd figure out some way to handle it or some family member.

I always tell the jurors, when your employer says I don't want you to do the jury service, you're that valuable, it's that time to ask for a raise. How valuable you become when they have to pay you and you're not there and it's not vacation, they don't like that. But we don't ask it very often during your lives.

Yes, ma'am. What's your name?

PROSPECTIVE JUROR NO. 38: Ruth Hampton. I have a conference I'm supposed to attend in San Diego.

THE COURT: Do you have your tickets and everything?

PROSPECTIVE JUROR NO. 38: Well, they have the tickets.

THE COURT: That's the type of thing because that creates an economic problem for everybody. What we will do -- you check on it. I'm going to let you make the decision. I don't want you to mess up something you have tickets for, somebody has made arrangements for that. You check on that. Let me know.

What's your name?

PROSPECTIVE JUROR NO. 1: Monique Brown. On Friday the 26th, I have a subpoena to be a witness in another case.

THE COURT: That's one thing I can take care of. Once you're jurors, you're kind of immune from everything else. Nobody can take you out of it. I will take care of that. Make sure Linda knows that. Bring your subpoena down if you're selected and she can take care of that.

Yes, sir. What's your name?

PROSPECTIVE JUROR NO. 41: Jason Fry. My wife is having a major surgery on Monday the 29th. That's the third week.

THE COURT: That would be the first day of the third week. Obviously, you're going to be there somehow. So we will work on it.

I'm going to keep alternate jurors. I'm going to keep probably four alternate jurors. So if we have any major conflicts or something like that happens, you know, I can do one of two things. I can have you excused for the morning or the afternoon or whatever it is and if everything is fine to come back or I can replace you, or we may never get to that point. Okay.

PROSPECTIVE JUROR NO. 17: I'm having some teeth pulled next Tuesday.

THE COURT: When?

PROSPECTIVE JUROR NO. 17: Around 11:30.

THE COURT: You're not going to want to come back in the afternoon probably.

PROSPECTIVE JUROR NO. 17: And also after this week my company won't pay.

THE COURT: They only pay one week?

PROSPECTIVE JUROR NO. 17: Yes.

THE COURT: Since when? What's the company?

PROSPECTIVE JUROR NO. 17: J. C. Penney.

THE COURT: J. C. Penney. They pay more than one week. I can't believe J. C. Penney won't pay more than one week.

PROSPECTIVE JUROR NO. 17: That's what he said.

THE COURT: Who is he?

PROSPECTIVE JUROR NO. 17: My supervisor told me.

THE COURT: I will talk to your supervisor's supervisor.

But I've got a concern with the teeth. Is it something that's really bothering you that you can't reschedule?

PROSPECTIVE JUROR NO. 17: I can probably reschedule.

THE COURT: Why don't you check with your dentist, see if you can reschedule.

All these people I'm talking to who are, in fact, going to be selected, we have forty some odd people, and only twelve jurors and four alternates are going to be selected, sixteen people total. The odds are, whoever I'm talking to, it's kind of like fifty-fifty that you're going to be one of the actual jurors that's going to be seated.

Why don't you check with your dentist. We should have the jury selected probably by the end of the day today. Hopefully that will happen. Just depends how long certain things take. Anyway, why don't you wait until the end of the day and we will check to see with respect to your dental thing and I will check with your employer.

One other thing I did not go over with you. The law provides that any time a jury is deliberating in a case in which there is a potential of capital punishment, the jury must be sequestered. That's during the deliberation process. We never know how long that's going to be. Sometimes the deliberation process is hours, sometimes it could be a day or two days. But if in fact the jury -- and I don't get the case to the jury, I won't give it to you to start your deliberations

late in the afternoon. I don't do that. But I try to get it to you early in the morning so at least you have a day of deliberations before we decide whether there has to be some sequestration.

What that means is, you come down here, Linda is totally in charge of all the jurors at that point. We go to a hotel here in town. You have dinner on us. You have a hotel on us. You have lunch and breakfast. Once you're sequestered, we pay for everything but you cannot have any communication with anybody on the outside, within reason. We don't let you watch any news reports of the case. We do let you watch television but we don't let you read any news accounts of the case. And that applies whether you're sequestered or not sequestered -- listen to any radio. We do let you talk to any family members if there is any problem at home, what have you. You're kind of monitored. We have deputy sheriffs down with the bailiff making sure nobody tries to have individual contact. It's something that is required by law to be done. We've gotten pretty good at it. Hopefully it's very comfortable for everybody.

We tell you in advance when it's going to happen so you can pack your bag and come down here. That also applies while the jury is deliberating if, in

fact, we ever get to the next stage and that next stage will be a sentencing stage. It also applies to that when the jury is deliberating, again, they must be sequestered. So I do want to remind you of that. But we won't have to worry about that for at least a week. Okay.

THE COURT: Mr. McQuade.

Linda said you might have a scheduling problem.

PROSPECTIVE JUROR NO. 44: Right. I have to check with work.

THE COURT: Well, go ahead and do that but wait until the end of the day today. Because at that point in time we should know who is going to be on the jury at that point.

And I'll kind of hold off maybe swearing some of the jurors in until they have had an opportunity to talk to their employer.

Okay. Any questions that you have as far as any of the procedures involved? I'm going to give you an opportunity to ask any questions you might have with respect to the jury selection process at a later point in time -- but just about our procedures and timing.

PROSPECTIVE JUROR NO. 2: I didn't know if you allowed people to take notes.

THE COURT: Okay. Note taking. There are two things that I have a problem with respect to note taking. One is, there are good note takers, some people who are secretaries and know shorthand and other people are not good note takers and what we have is we have somebody going back in the jury room, their notes say, well, my notes say it was 8:00 o'clock. My notes say it was 8:15 and then we have a battle of notes. I don't want somebody to say I take shorthand and it becomes a transcript.

This is the transcript. She is the official transcript and Carla takes down everything. What she says is really right. She has this magic machine -- put it in, it comes up on the screen.

But anyway, I don't like that.

Also, when you're taking notes, unless you're a professional note taker, your head is down, right? You're down here taking notes and then that witness is on the witness stand right here. You're not watching him or her. And the eye contact and a lot of the things that you may have to look to when you're trying to judge credibility of witnesses is lost if your head is down. Because I'm going to instruct you on how you judge credibility of the witnesses. And you all have gone through this in your life. You have to look

at people and see how they act and do different things. If your head is down, you can't do that.

Plus, you know what we really want, we want you to sit back and talk to fellow jurors about the facts of the case and say, you know, this is what I recollect and you have a joint recollection. See, you're a collective body of twelve people when you go back there. And I want you all talking to each other and communicating and finding out collectively what happened in this case because you're fact finders. So if we are dealing with notes, sometimes that doesn't happen.

So my general rule is on criminal cases I don't like it. On criminal cases that are not going to be too long -- if there were going to be five months -- if we were in California, it would be two years. It's going to be two weeks here. If we were going to be someplace else and it was going to be important what happened three months ago or two months ago, yeah, I would probably allow note taking; and especially if it's a civil case dealing with an accounting malpractice dealing with a law firm and how they do all this stuff I might say we will do something else.

Any other questions like that?

PROSPECTIVE JUROR NO. 31: Do alternates go

into the deliberations?

THE COURT: Good question also. Yes and no. And I'm going to deal with that at a later point in time. But we have the Supreme Court having made some recent rulings dealing with alternates in a situation. In general, the rule is alternates do not go in during the deliberation process on a criminal case. And it is kind of thought in looking at the Supreme Court's case -- and I will deal with this later on -- it's kind of thought that they are allowed to sit in at certain stages and not allowed to sit in at other stages. So that will happen at a different point in time.

We are going to be talking to all of you. And it's going to be logistically hard. We do have kind of maps of where everybody is. Those people who have been excused for whatever reason, their seats are blank. We are going to be asking questions of everybody. After all the questioning is completed, I have a few questions of you because the Legislature says I have to ask a few questions and then I will turn it over to the State of Ohio.

State of Ohio always goes first because they have the burden of proof; then the Defense will go second.

And we are going to, as I said, ask

questions of all the people that are here. When we are finished, you will be stepping out of the room. We will step out of the room. Somehow we are going to be separate and we will do the jury selection outside of your hearing.

I always thought it was embarrassing when I was practicing law to say, Juror No. 4, thank you very much. We really love you. But you're excused. It's hard for lawyers sometimes to go through that process. So instead of having to be somewhat embarrassing and thank jurors for being excused, I do it outside of your hearing so you don't know who excused you. It's not important.

These lawyers are very experienced. They have a responsibility on behalf of their clients to go ahead and exercise their peremptory challenges, as they are called. Those are reasons to excuse people for any reason whatsoever. They don't have to give reasons for those. And we don't want to hurt them in their representation of their respective clients so I separate the individuals.

However, when we are asking questions of individual jurors, which we will do, I need everybody to be able to hear the question that's asked. I need everybody to think about the question that's asked

because if that question applies to you and the question is not directed toward you, I need you to raise your hand and say, hey, that applies to me also. Let the person to whom the question is directed answer the question first but then after that, go ahead and raise your hand and say that applies to me.

Let me give you an example of that. If I ask Ms. Harper -- just briefly talked -- I ask Ms. Harper, are you related to a police officer, what would your answer be?

PROSPECTIVE JUROR NO. 2: No.

THE COURT: Now, if anybody is related to a police officer, I need you to immediately raise your hand and say I'm related to a police officer and I don't have to ask the question forty times.

And the same thing, if a non-specific question is asked, if I ask another juror individually if hypothetically if this type of fact came into evidence would that affect your ability to be fair and impartial and you think that would not affect your ability to be fair and impartial and you say no, it's not going to affect my ability but somebody out there says, you know, if something like that happens, something like that happened to a friend of mine a few years ago, it's going to be difficult for me to be fair,

you raise your hand and say my answer is somewhat inconsistent with what the general consensus answer is, we will go ahead and talk about that.

You have the opportunity to ask us any questions you would like to ask of us about the case or about your responsibility, as we are going to be asking you questions. When we are finished with this process, we want to feel that you are a juror that can be fair and impartial, somebody that can set aside any sympathy, prejudice or passion you might have toward any witness, party, attorney, facts of the case or anything else dealing with this or the issues that you're supposed to decide as you have to feel comfortable with your responsibility. You have to believe that you can do this.

I assure you, nobody wants to be here. I assure you that nobody wants to make the decisions that you have to make. But as I said early on, we don't have a list downstairs saying I want to go up on this case and this case and I don't want to deal with these. We don't give you the option. That's what the summons is for that you got at home. But if you feel that you can't do your job, and that's decide all the factual issues and apply the law as I give it to you, then we need you to speak up and tell us what the problem you

might have with the case.

We have copies of your questionnaires. So I've told the attorneys, please don't ask the questions that are on the questionnaire because that would be repeating that which they already know. But if there is anything about your background or your training or your experience or your present state of mind that you think we should know that's not on your questionnaire, feel free to offer that information. The more we know about you and the more you know about us in the case, the better off we all are going to be.

Okay. Before we get started, does anybody have any other questions about the procedures and what we are going to be doing and timing and anything like that?

Okay. First I need everybody to stand up, raise your right hand and get sworn in by Linda.

THE BAILIFF: Do you and each of you solemnly swear you will truthfully answer all questions asked of you during the voir dire examination and this you do as you will answer under God?

PROSPECTIVE JURY PANEL: I do.

THE COURT: As I said, the Legislature tells me I have to ask you a few questions and I'm going to go back up there and put my robe on and play judge instead

of playing somebody that's up here.

Has anybody ever been convicted of a felony offense and not been discharged from that felony?

Is anybody what the Legislature refers to as a chronic alcoholic or drug dependent individual?

Now, I'm going to add on to that, there are some prescriptive drugs that people take for whatever reasons -- antihistamines are the real killers -- that make it difficult for people to stay alert and attentive at 3:00 o'clock in the afternoon after lunch when it might be hot down here and things are going slow. Is anybody taking any medication that makes it difficult for them to be alert and attentive?

We will be taking a recess twice a day. I will try to get started at 9:00 o'clock every morning. It's going to be important for everybody to be on time. If one person is not here, we have to wait for that one person. So we will be starting at 9:00. I will break every morning at probably about 11:30 to handle my morning docket. I will give the jurors a short recess, however, between 9:00 and 11:30. That won't be a long recess, be a short rest room break, what have you. Carla needs the recess more than most of us need it because she is working the hardest up here. So I will be taking a recess in the morning and then we will start

up again at 1:30 and then we will go until 3:00. And I'll take a twenty minute recess at 3:00, start up again at 3:30 and go until 4:30 at the earliest, 5:00 o'clock at the latest. If I have a witness on the witness stand that I can complete by 5:00 o'clock, I will do that. And then we will break at 5:00. You will not be here past 5:00 o'clock while any testimony is being taken.

But if anybody has any difficulties with any prescription medication you're taking, just make sure we know that. And you can bring water in here. That's perfectly fine. We wouldn't want coffee to spill on the very expensive carpets that Franklin County has for you or anything else. Feel free to bring water. That's not a problem.

All right. Does anybody know anybody on a personal basis that works in the Franklin County prosecutor's office?

Has anybody --

Yes, ma'am.

PROSPECTIVE JUROR NO. 31: Judge Mason.

THE COURT: Well, he is not in the prosecutor's office. He is domestic relations judge. He just performed a wedding that I attended this weekend. It was a great ceremony.

Anybody else know anybody in Franklin County

Prosecutor's Office on a personal basis?

Has anybody ever had a lawsuit in which you may have sued Franklin County or Franklin County may have sued you or there's been some litigation between you or the county?

Is anybody or has anybody been seated on the grand jury within the past year or year and a half?

All right. Finally, is anybody not living in Franklin County right now? Has anybody moved out of the county recent months?

Okay.

With that in mind, I'm going to turn it over to the State of Ohio. And again, feel free to raise your hand any time you might have any questions.

MR. LOWE: Thank you, Judge.

Good morning everybody.

THE PROSPECTIVE JURORS: Good morning.

MR. LOWE: As I said yesterday, my name is James Lowe. My co-counsel is Sheryl Prichard.

You may be wondering why you've heard of Ron O'Brien, why he is not here. Mr. O'Brien is the elected county prosecutor but his office handles some eight thousand cases a year. Obviously, he can't handle them all so he hires assistant prosecutors, such as Ms. Prichard and myself to handle cases. That's why you see

us here, not Mr. O'Brien, in case anyone was wondering.

Sorry about my voice. I did a lot of screaming at the Buckeye game on Saturday and I'm just getting it back now.

The goal of voir dire is very, very, very simple. It is to get a fair and impartial jury. We are looking for people that can be fair to both the State and the defense in this matter. That's the only goal.

This is our only chance to talk to you outside of yesterday. And we are not trying to pry. We are just trying to get honest and open answers to see if you should be selected for this jury or not.

There's things in everyone's background, which in certain cases would not make them fair and impartial. If, let's say, the facts of a case occurred to you sometime in the past, you may not be able to emotionally put aside what happened to you and listen to what is presented in the courtroom and be fair to both sides. Those are sometimes things that we don't know to ask because we don't know everything that's happened in your life.

We have this twenty-page questionnaire and that's all we have. So if we don't ask the proper question and you still feel there is a reason that would keep you from being fair and impartial, please bring it

to our attention.

Okay. Like I said, we don't mean to pry, but if it's important, it's important to both sides and we need to know about it. If there is something that makes you uncomfortable and you don't want to discuss it in front of the whole group, I'm sure the Judge would let us go to a side room and discuss it privately.

Okay. Also keep in mind, this is our only chance to talk to you. If you see us outside after a jury has been selected, any of the parties here, we are not going to come up to you. We are not going to say hello. We are not going to get on the same elevator as you. Now, that's not because we are not friendly people or because we would not like to talk to you, we have to avoid any appearance that we are talking about the case. So please don't be offended if we see somebody with a juror's badge and all of a sudden step off.

Anybody have a problem with that at all.

If at the end of this trial you find the defendant guilty and there was a fair trial, we have done our job.

On the flip side of that, if at the end of the trial, you find the defendant not guilty and there is a fair trial, we have done our job. That's the only purpose here and that's why we need to talk to you

today, to figure out if you can be fair to both sides.

I'm going to start with Ms. Brown. How are you this morning?

PROSPECTIVE JUROR NO. 1: All right.

MR. LOWE: You're probably hoping I started somewhere else.

PROSPECTIVE JUROR NO. 1: Yes.

MR. LOWE: I apologize for that. But it's not that bad.

I think a good starting point for voir dire is presumption of innocence. The Judge touched on it briefly yesterday. Remember when the Judge was talking about that?

PROSPECTIVE JUROR NO. 1: Yes.

MR. LOWE: You work for?

PROSPECTIVE JUROR NO. 1: Yes.

MR. LOWE: Are you a Buckeye fan?

PROSPECTIVE JUROR NO. 1: Yes.

MR. LOWE: Do you take the freeway to go to work?

PROSPECTIVE JUROR NO. 1: I drive straight through downtown.

MR. LOWE: Straight through downtown. We will use that. Let's say you're driving through downtown. This is an example used a lot around here.

At the side of the road you see a car that's stopped, a driver in the front seat and you see a police car beside it with it's lights going and an officer by the car. What's the first thing that you think?

PROSPECTIVE JUROR NO. 1: They were pulled over for something they did.

MR. LOWE: I'm going to ask you to keep your voice up because everybody has to hear you. I know it's not easy.

PROSPECTIVE JUROR NO. 1: Routine traffic stop.

MR. LOWE: You think traffic stop.

I think, maybe many people would think, they think speeding. That's the first thing I think. The first thing I think is I'm glad it's not me and I slam on the brakes. And I think he's speeding. That's fine when you're going to work, but it's not fine in the courtroom.

As the defendant sits here, he has a presumption of innocence. Does that sound fair to you?

PROSPECTIVE JUROR NO. 1: Yes.

MR. LOWE: Does anyone think just because he's sitting here he must be guilty?

And you have no problem with that?

PROSPECTIVE JUROR NO. 1: No problem.

MR. LOWE: The Judge also mentioned, though, there is what's known as a presumption that can be rebutted.

Okay. I'm going to take that same example. You're driving to work. You see that person stopped on the side of the road. Let's say we come into the courtroom and I bring the officer that was seated in the police car and the officer gets on the witness stand testifies, I just calibrated my radar that morning. I clocked that individual doing 75 in a 35. And I bring in helicopter pilot with the police force, tells you, I timed it. He was doing 75 in a 35. I visually noticed he was speeding past all the cars.

Okay. Now you have some evidence to prove that individual was in fact speeding. And you as a juror can then judge the credibility of the witnesses. And if you believe them, you could then rebut that presumption of innocence. Does that also make sense?

PROSPECTIVE JUROR NO. 1: Yes.

MR. LOWE: Does that make sense to everybody?

Does anybody have a problem with that concept at all?

Ms. Brown, is there any reason you can think of why you couldn't be fair to both the State and the

Defense in this case?

PROSPECTIVE JUROR NO. 1: No.

MR. LOWE: Last thing I want to talk to you about -- and this is going to be for everybody also. We talked a little bit with some people about the death penalty and we talked about some aggravating circumstances and mitigating factors. I'm going to touch on this briefly. And keep this in mind for everybody, though; should we get to a second phase, which the Judge described yesterday, if you were to find the defendant guilty of the aggravated murder with the specifications, you'd be asked to engage in a second phase.

And second phase you would be asked to weigh aggravating circumstances against mitigating factors. The aggravating circumstances are the things that the Judge talked about, the specifications that make an individual eligible for the death penalty.

Are you with me so far?

Is everybody with me so far?

At the end, the Defense would present mitigating factors. Those are things that are relevant to the defendant and his life. You would be asked to consider those and then engage in a weighing process. Would you be willing to consider those mitigating

factors?

PROSPECTIVE JUROR NO. 1: Yes. But can I go on?

MR. LOWE: Yes.

PROSPECTIVE JUROR NO. 1: I'm not so sure if I would be able to judge someone in a case like this.

MR. LOWE: That's what I'm getting to. You have had some time to think about the death penalty since people filled out the questionnaires and things of that nature. And we talked to some people who were on extreme sides of the death penalty issue. The question is, could you engage in a weighing process and weigh the aggravating circumstances versus the mitigating factors? Keep in mind, the mitigating factors are about the defendant. You don't bring in the victim's family and things of that nature. It's about the defendant. At that time, you engage in a weighing process. And if the aggravating circumstances outweigh the mitigating factors beyond a reasonable doubt, Ohio law dictates that you must sign a verdict imposing death.

Now, the question that I have for everybody is, if you found yourself in that position, could you physically put pen to paper and sign your name to a verdict indicating that death were appropriate?

PROSPECTIVE JUROR NO. 1: I honestly do not

know. I honestly do not know.

MR. LOWE: When you say you do not know, are you saying because your personal beliefs or religious beliefs?

PROSPECTIVE JUROR NO. 1: Well, just me personally. Like, if he was guilty, I could understand that and he needs to do his time or whatever. But I'm just not for sure that I can sign paperwork for somebody's death though.

MR. LOWE: And I don't mean to keep going at this. When you say you're not sure, you don't think you could sign it?

PROSPECTIVE JUROR NO. 1: I guess it would depend on the facts of the case.

MR. LOWE: If we got to the point, though, the facts of the case would have already been decided. You would have found the defendant guilty and you would be dealing with the second phase; not necessarily the facts of the case, but about the defendant. If you found yourself in that position and the scales did tip towards the aggravating circumstances, you would be directed to sign a death verdict. If you found yourself in that situation, would you be able to sign your name to the paperwork?

PROSPECTIVE JUROR NO. 1: Yes.

MR. LOWE: Thank you. Do you have any questions for me?

PROSPECTIVE JUROR NO. 1: No.

MR. LOWE: Let me look at the chart.

What is your name, ma'am?

PROSPECTIVE JUROR NO. 50: Caroline Ritchey.

MR. LOWE: Thank you.

PROSPECTIVE JUROR NO. 50: Yes. With the way you phrased the question to her, I would not be able to sign the paper. Was I supposed to say that now?

MR. LOWE: That's okay. Was it the way I phrased the question or do you mean if you were put in that position you wouldn't be able to sign your name.

PROSPECTIVE JUROR NO. 50: If I were put in that position with all the things that you have said and that I have heard, I would not be able to sign the paper for the death penalty.

MR. LOWE: Could you ever sign your name for the death penalty?

PROSPECTIVE JUROR NO. 50. No, I could not.

MR. LOWE: I'm sorry. Your name, ma'am?

PROSPECTIVE JUROR NO. 16: Debra Harlan. Since yesterday I have had time to think about that issue and I could not sign someone to death.

MR. LOWE: Under no circumstances?

PROSPECTIVE JUROR NO. 16: No.

MR. LOWE: So if you found yourself in that position, you wouldn't be able to follow the law and put your name on that paper?

PROSPECTIVE JUROR NO. 16: I don't believe I could.

MR. LOWE: Did I miss anyone?

Okay. Yes, sir.

PROSPECTIVE JUROR NO. 48: Peter Meyst. I thought about this also for many years. And as I said in my questionnaire, I don't think that I could vote to find guilty if one of the outcomes was death penalty.

MR. LOWE: So you think you would impose your feelings about the death penalty so much that you may skew the outcome of the actual first portion?

PROSPECTIVE JUROR NO.

PROSPECTIVE JUROR NO. 48: : I can only do what I can do. I understand the situation.

MR. LOWE: I'm not judging that. I was asking if I understood what you're saying.

PROSPECTIVE JUROR NO.

PROSPECTIVE JUROR NO. 48: : In deliberating on guilty or innocent, I could not with capital punishment as an option vote to convict.

MR. LOWE: So you would never let it get to

a second phase even if you believed the individual's life were at stake?

PROSPECTIVE JUROR NO. 44: May I be excused to the rest room, please.

THE COURT: Okay. Can you make it brief?

PROSPECTIVE JUROR NO. 44: Yes.

MR. LOWE: Okay. After Mr. Meyst there was one other person that had their hand up.

Sir.

PROSPECTIVE JUROR NO. 45: Yes. John Mitchell. I wouldn't have a problem weighing the facts of the case in terms of making a decision guilty or not guilty; but the sentencing phase I would opt for whatever the longest term is. I don't think I could impose the death sentence.

MR. LOWE: If you got to that point, you don't think you can sign your name imposing death?

PROSPECTIVE JUROR NO. 45: No.

MR. LOWE: Under any circumstances?

PROSPECTIVE JUROR NO. 45: I just have a lot of questions about the death penalty whether it should be imposed at all. It's a final choice. It's irreversible. No.

MR. LOWE: Is there anybody else?

PROSPECTIVE JUROR NO. 25: Yeah.

MR. LOWE: I know your name, Regan, Kathleen.

PROSPECTIVE JUROR NO. 25: We spoke yesterday and the way I felt yesterday, thinking about it and now today, I'm not sure if I could. I know I could be fair and weigh the options. I'm not sure if I could sign.

MR. LOWE: When you say you're not sure --

PROSPECTIVE JUROR NO. 25: I don't think I could.

MR. LOWE: You couldn't. Okay.

PROSPECTIVE JUROR NO. 28: We spoke yesterday as well.

MR. LOWE: What was your name?

PROSPECTIVE JUROR NO. 28: Lisa Wells. I could not sign.

MR. LOWE: You don't think you could sign your name to a death penalty.

Hate to ask, but anybody else?

Nobody. Okay.

Everybody else feel they could sign in the scenario I presented to you?

Ms. Harper, how are you today?

PROSPECTIVE JUROR NO. 2: I'm great. Thank you.

MR. LOWE: Good. I want to talk about some characteristics that make up a good juror. Can you think of any characteristics that a good juror should have?

PROSPECTIVE JUROR NO. 2: Definitely honesty.

PROSPECTIVE JUROR NO. 5: I would say you have to be a good listener.

MR. LOWE: Very good point.

PROSPECTIVE JUROR NO. 2: I hope that they could be fair in any type of circumstance.

MR. LOWE: Let me ask you this: Are you a good listener?

PROSPECTIVE JUROR NO. 2: As far as I know, yes.

MR. LOWE: Are you honest?

PROSPECTIVE JUROR NO. 2: Yes.

MR. LOWE: Think you can be fair?

PROSPECTIVE JUROR NO. 2: Yes.

MR. LOWE: We are going to ask for good listeners. We are going to be here possibly two weeks, maybe a little bit longer. It's not so easy to sit in a courtroom all day and listen to testimony.

You ever watch any of the shows like CSI or Law and Order?

PROSPECTIVE JUROR NO. 2: Actually, no.

MR. LOWE: Does anybody? I'm not the only one. I know I'm not.

You know everything that you hear is very riveting. You're on the edge of your seats because they are writers. We are going to have some testimony in here that's not so enthralling. You're going to be hearing from some people that, hey, man, I'm bored. We need to you listen to everything in great detail. It's very important to both sides. Does everybody understand that?

Is everybody willing to do that?

MR. LOWE: So being a good listener is obviously very important. And you indicate you think you can be fair to both sides?

PROSPECTIVE JUROR NO. 2: Yes.

MR. LOWE: Willing to sit here for two weeks?

PROSPECTIVE JUROR NO. 2: Yes.

MR. LOWE: Any questions for me?

PROSPECTIVE JUROR NO. 2: No.

MR. LOWE: Thank you. That wasn't that bad, was it?

PROSPECTIVE JUROR NO. 2: No, it wasn't.

MR. LOWE: Ms. Foster, how are you?

PROSPECTIVE JUROR NO. 3: I'm fine.

MR. LOWE: Good. Same question: Any other characteristics that you can think of that would be important?

PROSPECTIVE JUROR NO. 3: Good judge of character.

MR. LOWE: And are you?

PROSPECTIVE JUROR NO. 3: Pretty much.

MR. LOWE: Good listener?

PROSPECTIVE JUROR NO. 3: Yeah.

MR. LOWE: I'm going to throw out one. You think it's important that a good juror is patient?

PROSPECTIVE JUROR NO. 3: Definitely.

MR. LOWE: Are you patient?

PROSPECTIVE JUROR NO. 3: Most of the time.

MR. LOWE: As the Judge mentioned, he has other cases to deal with. There are going to be some delays sometimes, things of that nature. And we are not doing it to irritate any jurors. Believe me, we all appreciate you being here, but we are going to ask for your patience.

One thing I can assure you, unlike CSI or Law and Order this case is not going to wrap up in an hour.

So you feel you can sit here for two weeks

and listen to everything and give us patience on that issue?

PROSPECTIVE JUROR NO. 3: Sure.

MR. LOWE: Any reason you can think of at all; anything in your background why you couldn't be fair and impartial to both sides?

PROSPECTIVE JUROR NO. 3: No.

MR. LOWE: You the type of person that can make a decision?

PROSPECTIVE JUROR NO. 3: Sure can.

MR. LOWE: Do you have any questions for me?

PROSPECTIVE JUROR NO. 3: No.

MR. LOWE: Ms. Mancini, how are you?

PROSPECTIVE JUROR NO. 4: Good.

MR. LOWE: You were hoping I was going to skip and go in the back.

PROSPECTIVE JUROR NO. 4: (Nods head in a negative response.)

MR. LOWE: Same question: Any other characteristics jump out at you?

PROSPECTIVE JUROR NO. 4: Being able to think outside the box; not letting your one train of thought be the focus of everything.

MR. LOWE: Okay. That runs along the lines as communicating. Do you communicate well with other

people?

PROSPECTIVE JUROR NO. 4: Yes.

MR. LOWE: Because if we get to that point, you're going to be asked to deliberate with eleven other jurors, give your point of view, what you thought you heard and in turn listen to what they thought they heard and discuss?

PROSPECTIVE JUROR NO. 4: Yes.

MR. LOWE: Are you the type of person that communities well with others?

PROSPECTIVE JUROR NO. 4: Yes.

MR. LOWE: You're not going to shut anybody out -- I heard what I heard, I don't care what you heard?

PROSPECTIVE JUROR NO. 4: No.

MR. LOWE: Is anybody here going to shut anybody else out and not listen to other people's views or thoughts?

That's what we are going to ask you to do if we get to that point.

Are you a good listener?

PROSPECTIVE JUROR NO. 4: Yes.

MR. LOWE: Can you make a decision?

PROSPECTIVE JUROR NO. 4: Yes.

MR. LOWE: Any reason you can think of why

you can't be fair to both sides?

PROSPECTIVE JUROR NO. 4: No.

MR. LOWE: Any questions for me?

PROSPECTIVE JUROR NO. 4: No.

MR. LOWE: You're going to have to help me with your name.

PROSPECTIVE JUROR NO. 5: Fahringer.

MR. LOWE: Not nearly as hard as I thought it was going to be. How are you today?

PROSPECTIVE JUROR NO. 5: Good.

MR. LOWE: Are you a good listener?

PROSPECTIVE JUROR NO. 5: Yes.

MR. LOWE: Communicate well with others?

PROSPECTIVE JUROR NO. 5: Yes.

MR. LOWE: Anything else you can think of that would be good for a juror to have?

PROSPECTIVE JUROR NO. 5: Good observation skills.

MR. LOWE: Do you have those?

PROSPECTIVE JUROR NO. 5: Yes.

MR. LOWE: How about common sense? You think that's important?

PROSPECTIVE JUROR NO. 5: Yes.

MR. LOWE: Tend to think that common sense is the single most important characteristic that a good

juror could have.

We are asking you to come in with a blank slate as to the facts of this case but not a blank slate about the world or anything of that nature. Does that make sense to you?

PROSPECTIVE JUROR NO. 5: Yes.

MR. LOWE: You have common sense?

PROSPECTIVE JUROR NO. 5: I do.

MR. LOWE: Anybody in here that doesn't have a lick of common sense?

We have someone. You're the first person that ever raised your hand on that.

Does that make sense to you though?

PROSPECTIVE JUROR NO. 5: Yes.

MR. LOWE: Are you willing to make a decision?

PROSPECTIVE JUROR NO. 5: Yes.

MR. LOWE: And you can be patient?

PROSPECTIVE JUROR NO. 5: Yes.

MR. LOWE: Judge this case on the facts that you hear in this case?

PROSPECTIVE JUROR NO. 5: Yes.

MR. LOWE: Do you have any questions for me?

PROSPECTIVE JUROR NO. 5: No.

MR. LOWE: Mr. Margraff, is that correct?

PROSPECTIVE JUROR NO. 8: Yes.

MR. LOWE: How are you today?

PROSPECTIVE JUROR NO. 8: Very good.

MR. LOWE: Everything we talk about make sense to you?

PROSPECTIVE JUROR NO. 8: Yes, it did.

MR. LOWE: Very good listener?

PROSPECTIVE JUROR NO. 8: Yes.

MR. LOWE: What are you being asked to listen to? We are talking about evidence. Okay. Evidence isn't what I say. It's not what the lawyers say. Evidence is what's presented from the witness stand -- okay -- and physical evidence, things of that nature. There's two types of evidence. And I'm going to give you an example that's used a lot around here.

Say you're in your house. All the doors and windows are locked. Only you and Johnny are in the house and there is a fresh baked cherry pie on the kitchen table. You walk into the kitchen and Johnny is digging in the pie and shoving it into his mouth. Okay. That's direct evidence that Johnny ate the cherry pie. Make sense?

PROSPECTIVE JUROR NO. 8: Yes.

MR. LOWE: Make sense to everybody?

Direct evidence, what you can see or observe

yourself. Okay.

Second scenario is almost the same thing. Only you and Johnny are in the house. Doors and windows are locked. Fresh baked cherry pie in the kitchen. You walk into the kitchen and Johnny is leaving the table. There's an empty pie tin. He's got pie all over his hands, all over his mouth, lips, tongue. And he's leaving and there's an empty pie tin and the pie is gone. Okay. Would you agree that's strong circumstantial evidence that Johnny ate that pie?

PROSPECTIVE JUROR NO. 8: Pretty strong.

MR. LOWE: You didn't see him eat it but you're inferring from the circumstances that he did eat it.

PROSPECTIVE JUROR NO. 8: Yes.

MR. LOWE: Anyone who doesn't think that's strong circumstantial evidence that Johnny ate that pie?

Do you have any problem with that concept?

PROSPECTIVE JUROR NO. 8: No.

MR. LOWE: Does anybody?

Any reason you can think of at all why you couldn't be fair to both sides?

PROSPECTIVE JUROR NO. 8: No.

MR. LOWE: Do you have any questions for me?

PROSPECTIVE JUROR NO. 8: No.

MR. LOWE: Mr. Williams.

PROSPECTIVE JUROR NO. 9: Yes, sir.

MR. LOWE: How are you today?

PROSPECTIVE JUROR NO. 9: Very good.

MR. LOWE: Mr. Williams, if I had you on the stand and I said to you, Mr. Williams, isn't it true that you saw my co-counsel, Sheryl Prichard, on the street this morning 8:00 o'clock in a clown suit on High Street? What would your answer be?

PROSPECTIVE JUROR NO. 9: I think that's false. I didn't see her.

MR. LOWE: Your answer would be no.

PROSPECTIVE JUROR NO. 9: No.

MR. LOWE: In that scenario, though, doesn't it sound as if I know something?

PROSPECTIVE JUROR NO. 9: I guess you're trying to lead me toward something there.

MR. LOWE: Doesn't it sound as if I may know she was in a clown suit?

PROSPECTIVE JUROR NO. 9: Could be, yes.

MR. LOWE: So you said no. So at this point there is no evidence that Ms. Prichard was in a clown suit this morning.

PROSPECTIVE JUROR NO. 9: I didn't see her.

MR. LOWE: The question itself is not

evidence. The answer could be evidence. You said no.

If I brought a witness in here who said, I saw his Ms. Prichard a clown suit this morning at 8:00 o'clock on High Street there is some evidence that she was in a clown suit.

Does that make sense to everybody.

Any of the topics we've talked about that you don't agree with or you don't feel comfortable with?

PROSPECTIVE JUROR NO. 9: No.

MR. LOWE: Anything else at all that you can think of why you can't be fair to both sides?

PROSPECTIVE JUROR NO. 9: No.

MR. LOWE: Type of person that can make a decision?

PROSPECTIVE JUROR NO. 9: Yes.

MR. LOWE: And you're patient?

PROSPECTIVE JUROR NO. 9: Yes.

MR. LOWE: Any questions?

PROSPECTIVE JUROR NO. 9: No.

MR. LOWE: Ms. Blackburn, how are you today?

Any concepts that we've talked about so far give you any reason to say, you know what, I'm not really comfortable with those?

PROSPECTIVE JUROR NO. 10: No.

MR. LOWE: Anything you can think of why you

can't be fair to both sides?

PROSPECTIVE JUROR NO. 10: No.

MR. LOWE: Are you willing to sit here for two weeks and listen to everything that's presented?

PROSPECTIVE JUROR NO. 10: (Nods head in an affirmative response.)

MR. LOWE: No matter how tedious it gets?

PROSPECTIVE JUROR NO. 10: Yes.

MR. LOWE: Are you the type of person that can make a decision?

PROSPECTIVE JUROR NO. 10: Yes.

MR. LOWE: Do you have any questions for me at all?

PROSPECTIVE JUROR NO. 10: No.

MR. LOWE: Mr. Kutzer.

PROSPECTIVE JUROR NO. 12: Yes.

MR. LOWE: How are you today?

PROSPECTIVE JUROR NO. 12: Good.

MR. LOWE: Talk about listening to evidence, things of that nature and the Judge mentioned earlier talking about credibility, witnesses' credibility. As jurors, you're going to be asked to judge credibility of people to decide whether you believe they are telling the truth or not. Are you comfortable with doing that?

PROSPECTIVE JUROR NO. 12: Yes.

MR. LOWE: Anybody not comfortable doing that?

Anybody have small children? Who has small children?

Okay. Sir, your name?

PROSPECTIVE JUROR NO. 35: Dean Bertschi.

MR. LOWE: How old are your children?

PROSPECTIVE JUROR NO. 35: Four, two and three months.

MR. LOWE: I have all of that. It's easier for you to tell me right now.

Your children ever fib to you?

PROSPECTIVE JUROR NO. 35: Huh?

MR. LOWE: Have your children ever fibbed to you.

PROSPECTIVE JUROR NO. 35: Yes.

MR. LOWE: How did you know?

PROSPECTIVE JUROR NO. 35: Because you know by the way they act when they are lying.

MR. LOWE: Okay. You look at their actions. You look at their body language. Are their stories always believable?

PROSPECTIVE JUROR NO.35: Not all the time.

MR. LOWE: When we were little, my sister, couple years older than me, she drew a house on the side

of the wall with a smokestack and smoke ring. When confronted by my parents, she told them the dog did it. To this day, she insists the dog did it. I think my parents are on to her she was fibbing about it.

You look at the story. Look at their body language.

How about a reasonable lie? Are you trying to get out of trouble by lying? You judge credibility every day. Most people do in their interactions with other people.

Anybody not comfortable with judging credibility of witnesses?

Everybody willing to do that?

That's what you're going to be asked to do with every witness that takes the stand.

Does that make sense to you, sir?

PROSPECTIVE JUROR NO. 12: Yes.

MR. LOWE: Are you the type of person that can make a decision?

PROSPECTIVE JUROR NO. 12: Yes.

MR. LOWE: Be fair to both sides?

PROSPECTIVE JUROR NO. 12. Yeah.

MR. LOWE: Any reason you can think of why you shouldn't be selected on this jury?

PROSPECTIVE JUROR NO. 12: No.

MR. LOWE: Any questions?

PROSPECTIVE JUROR NO. 12: No.

MR. LOWE: Thank you. Saffield, is that right?

PROSPECTIVE JUROR NO. 14: Yes.

MR. LOWE: How are you today?

PROSPECTIVE JUROR NO. 14: Doing fine.

MR. LOWE: Any of the concepts we have talked about trouble you in any way?

PROSPECTIVE JUROR NO. 14: No.

MR. LOWE: You can be fair to both sides?

PROSPECTIVE JUROR NO. 14: Yes.

MR. LOWE: Talk about judging credibility of witnesses. And you're okay with doing that?

PROSPECTIVE JUROR NO. 14: Correct.

MR. LOWE: I'm going to give you another example. Let's say you make the laws in the Caribbean. In the Caribbean, or Caribbean, there are pirates and there is a pirate ship. And on the pirate ship is the captain and two mates. They are taking people on board and they are making them walk the plank. After the people walk the plank, there's been crimes committed. Who would be the witnesses to that offense, to those offenses?

People that walk the plank aren't here.

There is only three people on the ship.

PROSPECTIVE JUROR NO. 14: Be no witnesses.

MR. LOWE: Okay. How about the people who were involved, the captain and the two mates?

PROSPECTIVE JUROR NO. 14: Uh-huh.

MR. LOWE: They would be witnesses to what happened.

PROSPECTIVE JUROR NO. 14: Yes.

MR. LOWE: If you were in control of the laws, would you make a deal with either of the mates to testify against the captain or would you let the people go?

PROSPECTIVE JUROR NO. 14: I think I might determine based upon the offense.

MR. LOWE: Well, let me ask it a different way.

If you had one of the first mates testify as to what happened and he took a deal and testified --

PROSPECTIVE JUROR NO. 14: Okay.

MR. LOWE: -- would you be willing to listen to that individual and what he had to say?

PROSPECTIVE JUROR NO. 14: Absolutely.

MR. LOWE: Keep in mind you can use that to judge his credibility but would you be willing to listen to what he had to say?

PROSPECTIVE JUROR NO. 14: Absolutely.

MR. LOWE: Is there anybody who wouldn't be willing to listen to the individuals just because he was a pirate, say, I'm not going to listen to what he had to say. I'm not going to judge credibility because I'm not going to pay attention. I'm not going to listen. I'm not going to give him the time of day. Anybody feel that way?

Do you have any questions for me.

PROSPECTIVE JUROR NO. 14: No.

MR. LOWE: Ms. Moore, how are you today?

PROSPECTIVE JUROR NO. 15: Fine. How are you?

MR. LOWE: Good, thank you.

Any of the concepts that we've talked about you're not okay with?

PROSPECTIVE JUROR NO. 15: None of that stuff bothers me.

MR. LOWE: None of that stuff bothers you. Are you a fair person?

PROSPECTIVE JUROR NO. 15: Oh, yes.

MR. LOWE: Willing to make a decision?

PROSPECTIVE JUROR NO. 15: Every day.

MR. LOWE: Do you have any problem sitting here for two weeks?

PROSPECTIVE JUROR NO. 15: No.

MR. LOWE: And you feel you can be fair to both sides?

PROSPECTIVE JUROR NO. 15: Of course.

MR. LOWE: Any questions for me at all?

PROSPECTIVE JUROR NO. 15: Not at all.

MR. LOWE: Thank you.

Ms. Harlan, how are you?

PROSPECTIVE JUROR NO. 16: Good.

MR. LOWE: There are going to be times during this trial, Ms. Harlan, where one side or the other is going to make an objection. You're going to hear that word probably quite a bit -- objection, objection. Okay. What I'm trying to get at is, both sides are doing their jobs and we are trying to avoid, if we make an objection, you either speculating as to why we are making the objection or that it's being made just by holding against either side because objections are going to be made. If you hear objections from either side, do you think you can avoid speculating as to why it was done or holding it against either side?

It's hard to keep out thinking about why somebody is doing something; I recognize that. But what we are trying to do is keep you from saying, well, that side is objecting. They are trying to hide something,

so now I'm going to hold it against that side. Does that make sense to you?

PROSPECTIVE JUROR NO. 16: Yes, it does.

MR. LOWE: Do you think if you hear objections from either side you would hold it against that side?

PROSPECTIVE JUROR NO. 16: No.

MR. LOWE: Is there anyone who thinks, if I hear that, I'm going to try to figure out why they did it and try to attribute good or bad to either side?

I know I didn't explain that very well. Hopefully you understand the gist of what I was trying to say.

Anything you can think of why you shouldn't be selected for this jury?

PROSPECTIVE JUROR NO. 16: The only reason that I would think that I would not be a good juror in this case is the death penalty issue. I would probably be sitting there through the whole trial pondering that. So I would probably be distracted because it would be something I definitely wouldn't want to do.

MR. LOWE: You think that your personal beliefs on the death penalty would substantially impair your ability to listen to the facts in this case as it's occurring because you'd be thinking about that?

PROSPECTIVE JUROR NO. 16: Be honest, yes. I believe I would be pondering that fact so I wouldn't be giving it my full attention.

MR. LOWE: Okay.

PROSPECTIVE JUROR NO. 16: Afraid of the outcome.

MR. LOWE: Okay.

Do you have any questions for me?

PROSPECTIVE JUROR NO. 16: No, I don't.

MR. LOWE: Mr. Purifoy, is that right?

PROSPECTIVE JUROR NO. 17: Yes.

MR. LOWE: How are you today?

PROSPECTIVE JUROR NO. 17: Fine.

MR. LOWE: We are going to talk a little bit about burden of proof. You've heard of the term? Have you heard of the term?

PROSPECTIVE JUROR NO. 17: No.

MR. LOWE: Many people have heard of the term burden of proof from books, movies, that type of thing.

In a criminal case, the State has the burden of proof and it's beyond a reasonable doubt. Have you heard of that?

PROSPECTIVE JUROR NO. 17: Uh-huh.

MR. LOWE: I'm not going to define it for

you. The Judge is going to do that at the proper time. But we are going to talk a little bit about what it isn't.

Have you heard the terms beyond all doubt or a shadow of a doubt.

PROSPECTIVE JUROR NO. 17: Yes.

MR. LOWE: That's not what the burden of proof is in a criminal case. It's beyond a reasonable doubt. It's a doubt based on common sense and reason.

If I said to you, Mr. Purifoy, that the sun is not going to come up tomorrow. Does that sound reasonable to you?

PROSPECTIVE JUROR NO. 17: No.

MR. LOWE: But I couldn't prove to you that fact beyond all doubt, beyond any possible doubt. Would you agree with that as well?

PROSPECTIVE JUROR NO. 17: No.

MR. LOWE: Well, you think I could prove to you beyond all doubt either possible or imaginary doubt that the sun is going to come up tomorrow?

PROSPECTIVE JUROR NO. 17: No.

MR. LOWE: Do you understand what I'm saying? I may be confusing you because I haven't explained it well. Do you understand what I'm saying?

PROSPECTIVE JUROR NO. 17: No.

MR. LOWE: Is there anyone who feels I could prove anything beyond all possible doubt, real or imaginary? Is there anybody that feels that way?

That's not what the standard is in Ohio. All I'm asking is that you hold the State to the standard that the Judge is going to give you and not to anything higher than that.

PROSPECTIVE JUROR NO. 17: Uh-huh.

MR. LOWE: That's the only thing I'm trying to get across. Do you agree not to hold the State to a higher standard beyond a reasonable doubt which the Judge will define for you?

PROSPECTIVE JUROR NO. 17: Yes.

MR. LOWE: Is there anyone who thinks they are going to hold the State to a higher standard than beyond a reasonable doubt to one such as beyond all doubt?

Okay. And I'm going to move on past this because I don't know what I did here because I've got a lot of blank stares.

Any reason you can think of why you couldn't be fair to both sides. Mr. Purifoy.

PROSPECTIVE JUROR NO. 17: No.

MR. LOWE: Do you have any questions?

PROSPECTIVE JUROR NO. 17: No.

MR. LOWE: You just want me to move?

PROSPECTIVE JUROR NO. 17: Yes.

MR. LOWE: Ms. Irwin, how are you?

PROSPECTIVE JUROR NO. 18: I'm fine. How are you?

MR. LOWE: Good, thank you. Be better after I forget that example.

You agree not to hold the State to a higher standard, though?

PROSPECTIVE JUROR NO. 18: Yes.

MR. LOWE: Anything you can think of that would keep you from being fair to both sides?

PROSPECTIVE JUROR NO. 18: No, sir.

MR. LOWE: You heard what the charge is in this case. It's aggravated murder along with some other charges. Anything about that that would make you uncomfortable with listening to the facts?

PROSPECTIVE JUROR NO. 18: No.

MR. LOWE: Is there anyone here who's uncomfortable with listening to the facts on such a case that would let those facts influence them in either their conclusion or just listening or paying attention?

Anything you can think of at all why you couldn't be fair to both sides?

PROSPECTIVE JUROR NO. 18: No, sir.

MR. LOWE: Are you a patient person?

PROSPECTIVE JUROR NO. 18: Yeah. Any Buckeye fan has had to be patient. Yes.

MR. LOWE: You're not kidding.

Do you have any questions.

PROSPECTIVE JUROR NO. 18: No.

MR. LOWE: Ms. Paxson, how are you?

PROSPECTIVE JUROR NO. 19: Fine, thank you.

MR. LOWE: Along those same lines of the facts, there are going to be some graphic photos. There's going to be testimony from a coroner. Do you think that that would affect how you view the case?

PROSPECTIVE JUROR NO. 19: No.

MR. LOWE: Is there anyone who thinks, I just can't see graphic photos? I can't hear graphic testimony? I have such an upset stomach that it would make me sick and I couldn't pay attention to what was going on? Anyone feels that way?

Anybody have a problem with pictures that are graphic? Anything at all?

Same question: Any reason why you couldn't be fair to either side?

PROSPECTIVE JUROR NO. 19: No, sir.

MR. LOWE: Type of person who can make a decision?

PROSPECTIVE JUROR NO. 19: Yes, sir.

MR. LOWE: Do you communicate well with others?

PROSPECTIVE JUROR NO. 19: I think so.

MR. LOWE: Willing to listen?

PROSPECTIVE JUROR NO. 19: Yes.

MR. LOWE: Any questions for me?

PROSPECTIVE JUROR NO. 19: No, sir.

MR. LOWE: Thank you. Ms. Demaree.

PROSPECTIVE JUROR NO. 20: Yes.

MR. LOWE: How are you today?

PROSPECTIVE JUROR NO. 20: Little nervous.

MR. LOWE: Nervous. It's not that bad, I promise. There may also be in this case testimony from police officers. Do you have any specific feelings about police officers?

PROSPECTIVE JUROR NO. 20: No. I think they are a good thing to have.

MR. LOWE: The problem that we run into with police officers, there are some people who really aren't willing to judge their credibility. There are people who think all police officers are bad and there are people that think all police officers are good and can't be questioned. We are going to ask you to judge credibility of police officers the same way you would

credibility of anyone else. Are you comfortable with that situation?

PROSPECTIVE JUROR NO. 20: Yes.

MR. LOWE: Is there anybody uncomfortable judging the credibility of a police officer?

Is there anyone who thinks I'm not going to listen to anything a police officer says because I don't believe any police officer?

And the other extreme I talked about, is there anyone who thinks it's a police officer, he's got to be telling the truth? I'm not going to judge his credibility because, hey, he is a police officer?

So everybody is in the middle and everybody is willing to judge their credibility like any other witness?

Ms. Demaree, any reason why you couldn't be fair and impartial to either side?

PROSPECTIVE JUROR NO. 20: No.

MR. LOWE: Do you have any questions for me?

PROSPECTIVE JUROR NO. 20: No.

MR. LOWE: Mr. McKelvey.

PROSPECTIVE JUROR NO. 21: Yes.

MR. LOWE: Is that right? How are you today?

PROSPECTIVE JUROR NO. 21: Fine.

MR. LOWE: I have on my sheet you were a victim of a break in?

PROSPECTIVE JUROR NO. 21: Attempted. There wasn't anybody there. I got home at night and the house had been attempted.

MR. LOWE: They never got in though?

PROSPECTIVE JUROR NO. 21: No.

MR. LOWE: Did you call the police?

PROSPECTIVE JUROR NO. 21: Yes.

MR. LOWE: Come out?

PROSPECTIVE JUROR NO. 21: Yes.

MR. LOWE: Take a report?

PROSPECTIVE JUROR NO. 21: Yes.

MR. LOWE: Find anybody?

PROSPECTIVE JUROR NO. 21: No.

MR. LOWE: Those crimes are hard to solve.

Anything about that experience give you any hard feelings about the police?

PROSPECTIVE JUROR NO. 21: No, not at all.

MR. LOWE: You never got through the system, never got to court or anything else?

Is anybody who was a victim of a crime who was not satisfied with the police or had a problem with the court system in general, coming into court feeling, you know what, I didn't like it and it's going to keep

me from being fair? I didn't like the way I was treated. I didn't like the outcome. Anybody that feels that way?

That's one of those things that I probably couldn't ask the correct question. Hopefully somebody would volunteer -- hey, I had a bad experience, and you know what, it's going to affect me being fair and impartial.

PROSPECTIVE JUROR NO. 22: I will say we just had a vehicle stolen and the police were wonderful about coming out; but yet they aren't pursuing anything or going about anything with the vehicle being stolen. It was recovered and it was completely damaged and set on fire, and you know, but I think that they are so overworked with major crimes. That just happened about a week ago.

MR. LOWE: Anything about that that you think would come into play if you were to sit in this case?

PROSPECTIVE JUROR NO. 22: Probably not. That was definitely something that just happened.

MR. LOWE: But you think you can keep that separate and decide the case based on the facts you hear?

PROSPECTIVE JUROR NO. 22: Yes.

MR. LOWE: And back to you, sir. Anything that you can think of why you couldn't be fair to both sides?

PROSPECTIVE JUROR NO. 21: No, not at all.

MR. LOWE: Do you have any questions for me.

PROSPECTIVE JUROR NO. 22: No.

MR. LOWE: And we will just stay with you, ma'am. You have had a lot to think about and listened to everybody else's answers. Anything that troubles you other than what you've just discussed.

PROSPECTIVE JUROR NO. 22: Other than the fact that I have been thinking, I am a Catholic and I teach in Catholic school and I teach children to value life. And I think I would have a problem signing the death penalty. And I believe in the death penalty but yet I would have trouble being responsible in signing it.

MR. LOWE: It's Ms. Himes, is that correct?

PROSPECTIVE JUROR NO. 22: Mrs. Himes.

MR. LOWE: You feel that your religious beliefs would prevent you from actually signing a piece of paper?

PROSPECTIVE JUROR NO. 22: Probably. It really brothers me.

MR. LOWE: Do you have any questions for me

other than that?

PROSPECTIVE JUROR NO. 22: No.

MR. LOWE: Ms. King, how are you?

PROSPECTIVE JUROR NO. 23: I'm fine.

MR. LOWE: Anything about what we've talked about cause you any concern?

PROSPECTIVE JUROR NO. 23: The death penalty issue does cause me concern. There are situations where I could sign it but I would look at all the other options first.

MR. LOWE: You're going to have to keep your voice up.

PROSPECTIVE JUROR NO. 23: The other recommendations I would look at first. That would be a definite last resort, the death penalty issue.

MR. LOWE: The only question I have is, the scenario I talked about originally, if you found the aggravating circumstances outweigh the mitigating factors, Ohio law would direct you to sign the death sentence. Would you be able to do it in that situation?

PROSPECTIVE JUROR NO. 23: Yes.

MR. LOWE: Okay. Anything else that you could think of why you couldn't be fair to both sides?

PROSPECTIVE JUROR NO. 24: No.

MR. LOWE: Do you have any other questions,

ma'am?

PROSPECTIVE JUROR NO. 23: No.

MR. LOWE: Ms. Thomas.

PROSPECTIVE JUROR NO. 24: Yes.

MR. LOWE: How are you today?

PROSPECTIVE JUROR NO. 24: Fine. How are you?

MR. LOWE: Any of the concepts we talked about that you don't agree with?

PROSPECTIVE JUROR NO. 24: I agree with everything. I understand.

MR. LOWE: You can be fair and impartial?

PROSPECTIVE JUROR NO. 24: Yes, sir.

MR. LOWE: The concept I talked about with the pirate, you would be willing to listen to that individual?

PROSPECTIVE JUROR NO. 24: Uh-huh.

MR. LOWE: Feel comfortable judging his credibility?

PROSPECTIVE JUROR NO. 24: Uh-huh.

MR. LOWE: Do you have any questions for me?

PROSPECTIVE JUROR NO. 24: No, sir.

MR. LOWE: Ms. Regan, how are you?

PROSPECTIVE JUROR NO. 25: Not too bad.

MR. LOWE: The Judge in this case, Judge

Crawford, gives instructions to you and he's going to give you instructions of law. It's your job as a juror and as a jury collectively to listen to the facts and determine what the facts are. But the Judge instructs as to what the law is. Are you comfortable with that fact by itself?

PROSPECTIVE JUROR NO. 25: Yes.

MR. LOWE: The next step is, that is, let's say if the Judge gives you an instruction on law that you don't necessarily agree with. Let's say, jaywalking, for instance. Let's say you personally believe that jaywalking shouldn't be against the law. But the Judge gives you an instruction that it is, in fact, against the law. Would you be able to put your personal beliefs aside and follow the instructions of law as the Judge gives them, whether you agree with them or not?

PROSPECTIVE JUROR NO. 25: Yes.

MR. LOWE: Is there anyone who feels like, you know what, if I don't believe in it, I just couldn't follow that instruction? If I disagree with it, I'm going to substitute my own personal feelings for the judge's instructions on law? Anyone feels that way?

Everyone is agreeing they could follow the law as the Judge gives it to them?

Ms. Regan, is there any other reasons you can think of why you couldn't be fair to both sides?

PROSPECTIVE JUROR NO. 25: No.

MR. LOWE: Do you have any questions?

PROSPECTIVE JUROR NO. 25: No.

MR. LOWE: Ms. Foor.

PROSPECTIVE JUROR NO. 26: Yes.

MR. LOWE: How are you today?

PROSPECTIVE JUROR NO. 26: Good.

MR. LOWE: Same question. Any problem following instructions of law if you don't agree with them?

PROSPECTIVE JUROR NO. 26: No. I do it every day.

MR. LOWE: And are you able to make decisions?

PROSPECTIVE JUROR NO. 26: Yes.

MR. LOWE: Patient?

PROSPECTIVE JUROR NO. 26: Have to be patient.

MR. LOWE: Not going to hold delay against either side?

PROSPECTIVE JUROR NO. 26: No.

MR. LOWE: Only to judge this case based on the facts that you hear in the courtroom?

PROSPECTIVE JUROR NO. 26: Yes.

MR. LOWE: Any reason you can think of why you couldn't be fair to either side?

PROSPECTIVE JUROR NO. 26: No.

MR. LOWE: And should we get to that point the State proved its case, you feel that you can sign guilty verdict form?

PROSPECTIVE JUROR NO. 26: If it's required for me to do so, yes.

MR. LOWE: Do you have any questions for me?

PROSPECTIVE JUROR NO. 26: No.

MR. LOWE: Ms. Haliburton, is that right?

PROSPECTIVE JUROR NO. 27: Yes.

MR. LOWE: You agree with all the concepts that have been presented here today?

PROSPECTIVE JUROR NO. 27: Yes.

MR. LOWE: Anything about them that troubles you in any way?

PROSPECTIVE JUROR NO. 27: No.

MR. LOWE: Can you make a decision.

PROSPECTIVE JUROR NO. 27: Yes.

MR. LOWE: Are you willing to make a decision?

PROSPECTIVE JUROR NO. 27: Yes.

MR. LOWE: Are you comfortable with judging

credibility of others?

PROSPECTIVE JUROR NO. 27: I'm sorry, what?

MR. LOWE: Are you comfortable with judging the credibility of others?

PROSPECTIVE JUROR NO. 27: Yes.

MR. LOWE: Willing to do that in this case?

PROSPECTIVE JUROR NO. 27: Yes.

MR. LOWE: Any reason why you think you shouldn't be selected in this case?

PROSPECTIVE JUROR NO. 27: No.

MR. LOWE: Do you have any questions?

PROSPECTIVE JUROR NO. 27: No.

MR. LOWE: Ms. Wells, how are you?

PROSPECTIVE JUROR NO. 28: Good.

MR. LOWE: Other than what we've already talked about, any other reason why you think you shouldn't be selected for this case?

PROSPECTIVE JUROR NO. 28: No.

MR. LOWE: Any questions for me?

PROSPECTIVE JUROR NO. 28: No.

MR. LOWE: Thank you.

Mr. Fitzsimmons.

PROSPECTIVE JUROR NO. 29: Yes, sir.

MR. LOWE: How are you today?

PROSPECTIVE JUROR NO. 29: Good.

MR. LOWE: Basically the same thing. Anything troubles you? Anything about what we talked about?

PROSPECTIVE JUROR NO. 29: No. It's been very educational.

MR. LOWE: You agree with everything?

PROSPECTIVE JUROR NO. 29: Yes, sir.

MR. LOWE: You agree not to hold the State to a higher standard than what the Judge tells you it is?

PROSPECTIVE JUROR NO. 29: Yes, sir, I understand that.

MR. LOWE: You think you can be fair to both sides?

PROSPECTIVE JUROR NO. 29: I will be.

MR. LOWE: Do you have any questions?

PROSPECTIVE JUROR NO. 29: No, sir.

MR. LOWE: Now you hesitated. You hesitated.

PROSPECTIVE JUROR NO. 29: Well, this is a very serious process and I was going to ask two questions, just because I have a humorous nature.

Number one would be, was there a dog in that locked house with the cherry pie.

MR. LOWE: In my scenario, there was not a

dog.

PROSPECTIVE JUROR NO. 29: And number two would be, who is your hairstylist?

MR. LOWE: That's twice that happened.

PROSPECTIVE JUROR NO. 29: See, I told you I have a sense of humor. I had to ask those questions.

I apologize. I deeply apologize.

MR. LOWE: I'm never going to live this down.

PROSPECTIVE JUROR NO. 29: It does look great.

MR. LOWE: Thank you.

THE COURT: He didn't answer the question.

MR. LOWE: Her name is Joyce. She's been cutting my hair since I was five.

Once I turn back to normal shade, we will move on. I'm not going to ask you any more questions. Thank you.

PROSPECTIVE JUROR NO. 29: I won.

MR. LOWE: You did. You definitely did.

Ms. Fromm, how are you?

PROSPECTIVE JUROR NO.

PROSPECTIVE JUROR NO. 31: I'm fine, thank you.

MR. LOWE: You agree not to hold the State

to a higher standard?

PROSPECTIVE JUROR NO. 31: Yes.

MR. LOWE: You think you can be fair and impartial?

PROSPECTIVE JUROR NO. 31: Yes.

MR. LOWE: You're a patient person?

PROSPECTIVE JUROR NO. 31: I am.

MR. LOWE: You're willing to make a decision.

PROSPECTIVE JUROR NO. 31: I am.

MR. LOWE: Other than the questions already asked, do you have any questions for me?

PROSPECTIVE JUROR NO. 31: No, I do not.

MR. LOWE: Thank you.

Ms. Terry, how are you.

PROSPECTIVE JUROR NO. 33: Fine, thanks.

MR. LOWE: Same concepts. Any problem with anything we've talked about?

PROSPECTIVE JUROR NO. 33: No.

MR. LOWE: Anything you don't agree with?

PROSPECTIVE JUROR NO. 33: No.

MR. LOWE: If you were the queen of the Caribbean and you were making the laws, would you make a deal with one of those pirates?

PROSPECTIVE JUROR NO. 33: Why did you ask

me that? Possibly. Just depends on circumstances.

MR. LOWE: Okay. Well, my scenario, there are three people in that scenario and there are only three witnesses to what happened. They are the only three that can tell you what happened. If you don't make a deal, then the three people go free. In that scenario, would you be willing to make a deal with one of the pirates?

PROSPECTIVE JUROR NO. 33: If I had to.

MR. LOWE: Anything you can think of why you couldn't be fair to either side?

PROSPECTIVE JUROR NO. 33: No.

MR. LOWE: Do you have any questions?

PROSPECTIVE JUROR NO. 33: No.

MR. LOWE: Thank you.

And I know you've told me your name at least four times. One more time.

PROSPECTIVE JUROR NO. 35: Bertschi.

MR. LOWE: How are you today?

PROSPECTIVE JUROR NO. 35: Fine. How are you?

MR. LOWE: Good, thanks.

We talked about credibility. You don't have any problem doing that?

Anything that troubles you at all.

PROSPECTIVE JUROR NO. 35: No.

MR. LOWE: Are you willing to serve if selected?

PROSPECTIVE JUROR NO. 35: Yes.

MR. LOWE: You feel you can be fair to both sides.

PROSPECTIVE JUROR NO. 35: Yes.

MR. LOWE: Do you have any questions?

PROSPECTIVE JUROR NO. 35: No.

MR. LOWE: Ms. Miller, same things. Anything that you don't feel comfortable with?

PROSPECTIVE JUROR NO. 36: Huh-uh.

MR. LOWE: I'm going to go to you. If you were the queen, would you make a deal in that instance?

PROSPECTIVE JUROR NO. 36: Who would I make a deal with? Would I believe what he said? I could make a deal to listen to what he had to say, but whether or not to believe what is said.

MR. LOWE: You would judge credibility and use that as part of your tools to judge credibility.

PROSPECTIVE JUROR NO. 36: Yes.

MR. LOWE: Anything you can think of why you shouldn't be selected for this jury?

PROSPECTIVE JUROR NO. 36: No. Other than my nervousness, no.

MR. LOWE: Are you nervous right now?

PROSPECTIVE JUROR NO. 36: Yes. My hands are freezing. I said, yeah, my hands are freezing.

PROSPECTIVE JUROR NO. 10: That's because it's cold in here.

MR. LOWE: Until about two minutes ago when I was embarrassed, I was freezing also. Now I'm sweating.

You think you can put your nervousness aside.

PROSPECTIVE JUROR NO. 36: Once I get comfortable being downtown. I'm not used to being downtown. This is strange to me.

MR. LOWE: My only question is, if you're selected, we don't somebody who's worried about other things. We want people to pay attention.

PROSPECTIVE JUROR NO. 36: No, I haven't had a problem listening to you at all.

MR. LOWE: Most people do. Do you have any questions.

PROSPECTIVE JUROR NO. 36: No.

MR. LOWE: Anything else?

Mr. Hawkins, how are you.

PROSPECTIVE JUROR NO. 37: Just fine.

MR. LOWE: Any of the concepts trouble you

in any way.

PROSPECTIVE JUROR NO. 37: Not at all.

MR. LOWE: Think you can be fair to both sides?

PROSPECTIVE JUROR NO. 37: Yes.

MR. LOWE: Willing to make a decision if you are selected?

PROSPECTIVE JUROR NO. 37: (Nods head in an affirmative response.)

MR. LOWE: And you're sitting through this process so you must be patient.

PROSPECTIVE JUROR NO. 37: That's it.

MR. LOWE: Do you have any questions for me?

PROSPECTIVE JUROR NO. 37: No.

MR. LOWE: Sure?

Ms. Hampton.

PROSPECTIVE JUROR NO. 38: Yes.

MR. LOWE: Same questions. Any problems with any of the concepts?

PROSPECTIVE JUROR NO. 38: No.

MR. LOWE: If you are in charge, would you make a deal with one of the pirates or would you let them all go?

PROSPECTIVE JUROR NO. 38: No, I wouldn't let them all go. Yeah, I would make a deal and then

judge their credibility.

MR. LOWE: Okay. Anything that you can think of in your background at all that would keep you from being fair to either side?

PROSPECTIVE JUROR NO. 38: No.

MR. LOWE: Do you have any questions?

PROSPECTIVE JUROR NO. 38: No.

MR. LOWE: Thank you.

Ms. Olney, anything that would keep you from being fair and impartial.

PROSPECTIVE JUROR NO. 40: I don't think so.

MR. LOWE: Willing to listen to everything no matter how tedious it gets?

PROSPECTIVE JUROR NO.

PROSPECTIVE JUROR NO. 40: : Yes.

MR. LOWE: You can pay attention?

Comfortable with judging credibility of witnesses?

PROSPECTIVE JUROR NO. 40: I think so.

MR. LOWE: Do you have any questions for me?

PROSPECTIVE JUROR NO.

PROSPECTIVE JUROR NO. 40: : No, I don't.

MR. LOWE: Thank you.

Mr. Fry, same basic concept. Any problems with anything we've talked about?

PROSPECTIVE JUROR NO. 41: No.

MR. LOWE: Agree not to hold the State to a higher burden than the law says it has to meet.

PROSPECTIVE JUROR NO. 41: Yes, sir.

MR. LOWE: Feel you can be fair to both the State and the Defense?

PROSPECTIVE JUROR NO. 41: Yes, I do.

MR. LOWE: Communicate well with others?

PROSPECTIVE JUROR NO. 41: Yes, I think so.

MR. LOWE: Willing to listen to other people?

PROSPECTIVE JUROR NO. 41: Absolutely.

MR. LOWE: Do you have any questions?

PROSPECTIVE JUROR NO. 41: No, sir.

MR. LOWE: Ms. King.

PROSPECTIVE JUROR NO. 42: Uh-huh.

MR. LOWE: How are you, besides hiding?

PROSPECTIVE JUROR NO. 42: I'm fine.

MR. LOWE: Any problems with any of the concepts at all?

PROSPECTIVE JUROR NO. 42: No.

MR. LOWE: Direct and circumstantial evidence that we talked about. You agree that second example was strong circumstantial evidence that Johnny ate that pie.

PROSPECTIVE JUROR NO. 42: No, not circumstantial evidence. No.

MR. LOWE: What troubles you about the hypothetical I set up?

PROSPECTIVE JUROR NO. 42: I really don't think I quite heard you completely.

MR. LOWE: Okay. You heard the first part where only two people in the house. Doors are locked. Windows are locked. Nobody else in the house, no dogs, no one else home and there is a cherry pie there.

PROSPECTIVE JUROR NO. 42: Right. Uh-huh.

MR. LOWE: You walk in, see the individual eating the cherry pie. That's direct evidence he ate the cherry pie.

PROSPECTIVE JUROR NO. 42: Uh-huh.

MR. LOWE: Second scenario, same thing. You come in and the individual is leaving where the pie is, got pie all over his hands, mouth, lips, tongue and the pie is gone. No pie in the trash can. Everything is locked up. No pie anywhere else. That would be circumstantial evidence that that person ate the pie. Does that make sense to you?

PROSPECTIVE JUROR NO. 42: Yeah.

MR. LOWE: If the Judge gave you an instruction that direct evidence and circumstantial

evidence are of equal weight, can you follow that instruction?

PROSPECTIVE JUROR NO. 42: No.

MR. LOWE: You couldn't follow that?

PROSPECTIVE JUROR NO. 42: No.

MR. LOWE: What we talked about before about instructions, the Judge gives you instructions. We are asking that you follow those instructions. You don't feel you could follow the instructions?

PROSPECTIVE JUROR NO. 42: Huh-uh.

MR. LOWE: Is that correct, you could not follow them?

PROSPECTIVE JUROR NO. 42: I could.

MR. LOWE: Either I confused you or you confused me.

PROSPECTIVE JUROR NO. 42: Yes, I could follow them.

MR. LOWE: The bottom line, all I'm asking right now, the Judge is going to give you instructions of law. He's going to tell you what the law is. Even if you don't agree with it, could you follow his instructions?

PROSPECTIVE JUROR NO. 42: Yes.

THE COURT: It's not an accurate statement to say that direct and circumstantial evidence have the

same weight. I'm not going to tell you that. You're going to decide what weight to give to all of the testimony. What I will tell you is that the law makes no distinction between direct and circumstantial evidence as to the degree of proof required. And any fact may be proven by either type of evidence or a combination of them.

Now, obviously circumstantial evidence not only can you take direct evidence and add the inference to get to circumstantial evidence, but on some situations there can be more than one inference.

Let's take the example of the cherry pie. If Johnny is the kitchen with his sister, there is cherry pie down in between them and she's got cherry pie in her hands and he's got cherry pie in his face, you could infer from the direct evidence that Johnny ate it or his sister or they both ate it.

Now, if we are here in a courtroom trying Johnny for eating the cherry pie, what you have to do is say, okay, there is more than one inference I can draw. Now before I can find Johnny guilty of eating that cherry pie, I have to find that inference exists beyond a reasonable doubt.

So you can consider it. But the question is, how much weight you're going to give it to it, what

you deem is appropriate and is it proved beyond a reasonable doubt. So the concepts of direct and circumstantial evidence, I just want you to remember, that any fact can be proven by either type or a combination of them. But how much weight and how powerful that circumstantial evidence is going to be is up to you. Okay.

MR. LOWE: Thank you, Judge.

Do you have any questions?

PROSPECTIVE JUROR NO. 42: (Nods head in a negative response.)

MR. LOWE: Mr. McQuade, how are you?

PROSPECTIVE JUROR NO. 44: Good.

MR. LOWE: Anything about the concepts we talked about you don't agree with?

PROSPECTIVE JUROR NO. 44: No.

MR. LOWE: I know you talked a little bit about scheduling problems.

PROSPECTIVE JUROR NO. 44: Right.

MR. LOWE: If you were to make the jury, you believe you could put work out of your mind and listen to the facts that are presented in this case only and not let other things distract you?

PROSPECTIVE JUROR NO. 44: Yeah, I guess I could. Yeah.

MR. LOWE: We are going to ask for that. If you make this jury we are going to ask that you put other concerns out of your mind, listen to what's going on in the courtroom at that time and not let it interfere with the facts that are presented. You feel you can do that?

PROSPECTIVE JUROR NO. 44: Yeah.

MR. LOWE: You feel you can be fair to both sides?

PROSPECTIVE JUROR NO. 44: Yeah.

MR. LOWE: Do you have any questions for me?

PROSPECTIVE JUROR NO. 44: No.

MR. LOWE: Mr. Mitchell, how are you?

PROSPECTIVE JUROR NO. 45: Good. How are you?

MR. LOWE: Same questions. Think you can be fair and impartial to both sides?

PROSPECTIVE JUROR NO. 45: Yes. I understand the concepts.

MR. LOWE: No problems?

PROSPECTIVE JUROR NO. 45: No.

MR. LOWE: Do you have any questions?

PROSPECTIVE JUROR NO. 45: Not at this time.

MR. LOWE: Thank you. Ms. Graham, how are you?

PROSPECTIVE JUROR NO. 44: I'm good. And yourself.

MR. LOWE: Good, thank you.

Can you be fair to both sides?

PROSPECTIVE JUROR NO. 44: Yes.

MR. LOWE: Anything you can think of at all that would cause you concern to be selected in this case.

PROSPECTIVE JUROR NO. 44: No.

MR. LOWE: Type of person who can make a decision.

PROSPECTIVE JUROR NO. 44: Yes.

MR. LOWE: And you have no trouble judging credibility?

PROSPECTIVE JUROR NO. 44: No.

MR. LOWE: Do you have any questions?

PROSPECTIVE JUROR NO. 44: No.

MR. LOWE: Thank you. Mr. Meyst, how are you?

PROSPECTIVE JUROR NO.

PROSPECTIVE JUROR NO. 48: : Fine. Thank you.

MR. LOWE: Other than what we talked about earlier, anything else give you cause for concern if you were to be selected as a juror in this case?

PROSPECTIVE JUROR NO.

PROSPECTIVE JUROR NO. 48: : No.

MR. LOWE: You can be fair to both sides?

PROSPECTIVE JUROR NO.

PROSPECTIVE JUROR NO. 48: : Yes, I could be.

MR. LOWE: Do you have any questions?

PROSPECTIVE JUROR NO.

PROSPECTIVE JUROR NO. 48: : No.

MR. LOWE: Ms. Brudzinski, is that right?

PROSPECTIVE JUROR NO.

PROSPECTIVE JUROR NO. 49: : Yes.

MR. LOWE: Same questions. You agree not to hold the State to a higher standard?

PROSPECTIVE JUROR NO.

PROSPECTIVE JUROR NO. 49: : Yes.

MR. LOWE: Be fair and impartial to both sides?

PROSPECTIVE JUROR NO.

PROSPECTIVE JUROR NO. 49: : Yes.

MR. LOWE: Willing to take two weeks out of your life and come down here and judge credibility of witnesses?

PROSPECTIVE JUROR NO.

PROSPECTIVE JUROR NO. 49: : Yes.

MR. LOWE: Any questions?

PROSPECTIVE JUROR NO.

PROSPECTIVE JUROR NO. 49: : No.

MR. LOWE: Ms. Ritchey.

PROSPECTIVE JUROR NO. 50: Yes.

MR. LOWE: How are you?

PROSPECTIVE JUROR NO. 50: Pretty good. Thank you.

MR. LOWE: Other than what we talked about earlier, anything cause you any alarm or any problems that you can think of.

PROSPECTIVE JUROR NO. 50: No.

MR. LOWE: Other than that, there is no reason why you shouldn't be selected for this jury?

PROSPECTIVE JUROR NO. 50: No.

MR. LOWE: Willing to be fair to both sides?

PROSPECTIVE JUROR NO. 50: Yes.

MR. LOWE: Any questions?

PROSPECTIVE JUROR NO. 50: No.

MR. LOWE: Mr. Burton, same thing. Any reason you can think of at all why you couldn't be fair to both sides?

PROSPECTIVE JUROR NO. 51: No. I have been on a jury before and I was impartial and we came to a verdict.

MR. LOWE: Don't tell us what the verdict was.

PROSPECTIVE JUROR NO. 51: I won't.

MR. LOWE: But you came to a verdict?

PROSPECTIVE JUROR NO. 51: Yes.

MR. LOWE: Do you have any questions at all?

PROSPECTIVE JUROR NO. 51: No.

MR. LOWE: One thing I want to say to the entire group, is there any reason anyone can think of morally, religiously, personal or philosophical, ethical why you could not sign a guilty verdict form if the State proved its case beyond a reasonable doubt? Anything at all?

Okay. Talked about patience earlier. I thank you very much for your patience this morning. And the Defense is going to have questions.

I don't know if we are going to go right now or not.

THE COURT: No. We are going to go ahead and take a recess. I don't know if there is any witnesses outside in the hallway.

MR. LOWE: Not from us.

THE COURT: We are going to go ahead and take a rest room break, fifteen minute recess. Be back up here at five of 11:00.

Go ahead and use the rest room. Do not discuss the case amongst yourselves or anybody else.

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Thereupon, a recess was taken.

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Thereupon, the jury resumed their places in the jury box.

- - -

THE COURT: Okay. Mr. Young.

MR. YOUNG: Good morning, ladies and gentlemen. Again, my name is David Young. I represent James Conway, along with Diane Menashe, my co-counsel.

A lot of you have indicated that you have some nervousness in answering questions. No question, I'm not going to be able to hide it. I'm extremely nervous when I'm doing this voir dire.

I'm representing James Conway. The State of Ohio is seeking to execute my client. It's a very serious situation that we are dealing with.

The process of voir dire is to allow us, the Defense and the prosecution, to speak to each one of you to see if you can be a fair and impartial juror, to see if you can sit on a capital case, see if you can render the appropriate verdict -- whether it's life without parole, whether it's thirty years to life, whether it's

twenty-five years to life, whether it's the death penalty. It's a tremendous responsibility that both Diane and I have.

I know Mr. Lowe is an incredibly engaging individual in your voir dire. He had said certain things that you all enjoyed yourself. But let's focus on the fact that we are here on a death penalty case. It's the most serious case in the American criminal justice system.

The government has the burden beyond a reasonable doubt to prove this case to each and every one of you who are ultimately selected as a juror. This is life and death in this case.

When I do voir dire, when I talk to jurors, it's very difficult from our perspective, Diane and my perspective and Jimmy's perspective. We are dealing with, talking about sentencing. We have not even heard opening statements. You haven't even heard any evidence. You haven't even heard anything about the case other than a rendition which the Judge is indicating that potentially this case may be.

Diane and myself plan on vigorously and zealously representing my client in this case as to his guilt and innocence in this charge. We are going to be cross-examining witnesses in this case.

At the trial phase it's not -- it's named the trial phase but we need to and you need to focus that while we are not focusing exclusively on penalties and that we just skipped the entire first stage we are on, we are going to vigorously and zealously cross-examine these witnesses that the government puts on.

One of the witnesses is going to be the decedent's mother. Her son was killed. She is going to take the stand. It is going to be extremely emotional testimony.

The decedent's brother is going to take the stand. It is going to be extremely emotional testimony.

The decedent -- I believe the mother of the decedent's child is going to take the stand. It is going to be extremely emotional testimony.

We are going to cross-examine those witnesses. I am going to be honest with you and I'm going to tell you right now, we are going to cross-examine those witnesses. We are going to ask questions of them. We are going to inquire as to what they know, what they do not know.

And I need to ask anyone here, anyone whether that concerns them, that they have any issues with that.

Does anybody here have any issues with that?

I once represented an individual who was alleged to have committed a rape against a thirteen-year old girl. I represented him. I asked the jury in that particular case, I'm going to cross-examine this little girl about her allegations. A juror in that case raised his hand and said, Mr. Young, I don't want you, and if you cross-examine that little girl, I'm going to hold it against your client. This little girl has been victimized once and I don't believe you should keep cross-examining victims. In that case I appreciated that. He was honest with me.

We are here in this voir dire to find honest jurors. If you happen to have some bias, if you happen to have some concerns about the case where you would not be able to sit and be a fair and impartial juror, raise those now. We have to know. We have to in order to impanel and fair and impartial jury just as fair as for the government. They deserve a fair trial. Jimmy deserves a fair trial. If you have any bias against the government, we need to know those now.

And that juror was let off that case, that particular case because he could not sit on and had trouble sitting on that case.

Certain of you have indicated that you have

issues with signing death verdicts. This may not be the appropriate case for you. You have to consider each and every option if we get to the second stage. But keep in mind we are still at the first stage. We just need to get jurors who are what we call, the lawyers, capital eligible so that you can at least consider all the options. Once you consider the options, you may say, I don't believe death is appropriate in this case. That's fine. As long as you can fairly consider each of the options.

In certain cases you may say that no matter what, in the event that someone causes the death, he deserves to die.

I've read all of your questionnaires. And certain people say "an eye for an eye. You take someone's life, you deserve yours to be taken.

We are not here to judge someone's views whether they are right, whether they are wrong.

But in the event that they actually -- we just want people to be honest and this may not be the jury that you can sit on for whatever -- religious purposes -- that you can't sign the verdict or you just think everyone deserves the death penalty who does that. Which is fine and it's understandable. But that would make you ineligible to sit on the jury.

Ms. Mancini.

PROSPECTIVE JUROR NO. 4: Yes.

MR. YOUNG: You indicate that you favor the death penalty. Why you do you favor the death penalty?

PROSPECTIVE JUROR NO. 4: Well, I've done research on it back when I was in college, extensive research on it. My viewpoint was skewed. Because of the research, I had to be for and against.

With the past jobs that I have had, I think it's weighed me more towards the death penalty just from things that I've experienced. I do believe that death penalty should have other factors. There are an unlimited amount of circumstances where one person kills another. It could happen to any of us in defense, in a car accident. While they all have different terms, it's still the taking of a life. So in a circumstance like this, one where it's possibly kidnapping was involved and then this and then that, all of those sway me toward if there needs to be a death penalty then I don't have a problem with that. Because there are other circumstances that are involved. It's not just random.

MR. YOUNG: And you indicate that there was "an eye for an eye, I believe was on your --

PROSPECTIVE JUROR NO. 4: Yes.

MR. YOUNG: Do you believe whenever someone

is convicted of aggravated murder, meaning they purposely caused the death of another that person should receive the death penalty?

PROSPECTIVE JUROR NO. 4: Well, like I said if there are other circumstances also involved.

MR. YOUNG: Okay. Yes. When you say other circumstances, specification that a kidnapping is involved or --

PROSPECTIVE JUROR NO. 4: Correct.

MR. YOUNG: Or a certain type of witness, if they shot a police officer or something like that?

PROSPECTIVE JUROR NO. 4: Right. Right.

MR. YOUNG: And in those cases --

PROSPECTIVE JUROR NO. 4: If it was -- if it involved a young child or a very elderly person or if there was rape involved, if there was anything else that would heighten it to a person not just killing another person but actually committing other crimes that led to the death of that person. Do you understand?

MR. YOUNG: Yes, I understand.

And that was an excellent response.

In this case prior to us getting to the second stage, again, I can't -- it's troubling for me to deal with that. But I do need to deal with that.

In the first stage, you would have found the

individual guilty beyond a reasonable doubt of aggravated murder with one of these other factors meaning a nature of the crime, kidnapping, felonious assault, rape, whatever and/or another type of specification which the Judge will go through, killing the president or something like that. You will have found that he was guilty beyond a reasonable doubt in the very first trial phase.

Now, you're going to step to the second phase. And that is where if you've already found that individual guilty of purposely causing the death of another; then the second is, and you found that specification, the murder, the rape, or the rape, the robbery, the kidnapping. In that second phase, knowing all that, is death the only option you would consider?

PROSPECTIVE JUROR NO. 4: It's not the only one I would consider; but if instructions are handed down that's one of the options, I would consider that.

MR. YOUNG: Would you be willing to consider if the Defense elects to put on, we are not required to put on anything in this case, including at the trial phase -- but in the event we elect to put on anything certain, what we call or what the court is going to instruct on is mitigating factors, various factors that don't deal with blame but deal with the individual

himself. Would you be willing to listen to those factors that we put on?

PROSPECTIVE JUROR NO. 4: Absolutely.

MR. YOUNG: And after listening to those, would you be willing to fairly consider those?

PROSPECTIVE JUROR NO. 4: Uh-huh.

MR. YOUNG: And in the event you find that the aggravating circumstances do not outweigh the mitigating factors, then you would not be, you would not be allowed to find a death verdict.

PROSPECTIVE JUROR NO. 4: True.

MR. YOUNG: And you would be -- you would have to select -- there is three penalties. Once you've gotten to that stage, there is three penalties. Those penalties are life without parole, thirty to life, twenty-five to life. And those are the options that you have to recommend to the court. These are the sentences that you wish to impose. And death would be out of that. You understand all of that?

PROSPECTIVE JUROR NO. 4: Yes.

MR. YOUNG: Would you be fairly consider all of that?

PROSPECTIVE JUROR NO. 4: Oh, yeah.

MR. YOUNG: Okay. You used to work for the Columbus Police Department?

PROSPECTIVE JUROR NO. 4: Yes.

MR. YOUNG: And you work for the Sheriff's Department?

PROSPECTIVE JUROR NO. 4: I used to work for the Sheriff's Department, correct.

MR. YOUNG: And in your capacity working with the sheriff's department -- this is principally a Franklin County sheriff's department case -- you ever get in contact with Chief Martin?

PROSPECTIVE JUROR NO. 4: No.

MR. YOUNG: How about Zach Scott, Detective Zach Scott?

PROSPECTIVE JUROR NO. 4: I don't know who that person is.

MR. YOUNG: How about Detective Floyd?

PROSPECTIVE JUROR NO. 4: I don't know who that is.

MR. YOUNG: And you're married to a police officer?

PROSPECTIVE JUROR NO. 4: Yes.

MR. YOUNG: Is the fact that you're married to a law enforcement agent, does that in any way affect your ability to judge the credibility of a police officer who stands up there and raises his right hand?

PROSPECTIVE JUROR NO. 4: No.

MR. YOUNG: You will be able to judge him as if it's every other witness?

PROSPECTIVE JUROR NO. 4: Uh-huh.

MR. YOUNG: Whether they come in here in their fancy uniform and fancy hat and sit up there, you're going to be able to judge as a regular witness?

PROSPECTIVE JUROR NO. 4: I've dealt with lots of police officers. It's not a problem.

MR. YOUNG: I've got it written down. I'm not going to go in order. No one knows when and where I am going to call on them.

Ms. Thomas.

PROSPECTIVE JUROR NO. 24: Yes, sir.

MR. YOUNG: Why do you favor the death penalty?

PROSPECTIVE JUROR NO. 24: I guess I'm not really in favor in favor of it. But I'm in favor of it in the fact that you should not let serial killers go loose and keep committing -- just bad people doing bad things to innocent people who have done nothing. I don't believe that they should -- I believe that they should not -- if they've taken someone's life in a really horrific way and it's really terrible and they have no right to rape them of their life or take their life before their time, that's when I'm in favor of it.

MR. YOUNG: In favor of the death penalty?

PROSPECTIVE JUROR NO. 24: Yes.

MR. YOUNG: Can you envision any situations in which something that's as heinous as whatever crime --

PROSPECTIVE JUROR NO. 24: It has to be something extremely bad. I'm not -- there is other options according to the law that I can take to prevent it, I would. But if it's something that's just really, really bad, okay, yes, I don't have a problem with that.

MR. YOUNG: Would you consider or use the death penalty, had all these factors been made for the worst of the worst? Is that how -- would that be a fair categorization of your statement? It's the worst of the worst?

PROSPECTIVE JUROR NO. 24: Yes.

MR. YOUNG: Ms. Regan, you also -- Regan, Donald Regan, Ronald Reagan, whatever -- you indicated you're strongly in favor of the death penalty but then this morning you tell us you can't sign a death verdict.

PROSPECTIVE JUROR NO. 25: Well, I think it's one of those things where I've never really been asked to make that decision.

No. I thought about it yesterday. And after filling out the papers, what I did write down I

was pondering it like all day. And then I think when it finally does come down to it, I don't think I would be able to sign for the death penalty. But at the same time, you know, people go out murdering or shooting, you know, they can't get away with it either.

MR. YOUNG: And those circumstances that these people go out murdering and shooting and their crime fits an aggravated murder with specifications, it makes capital eligible. Do you see circumstances where something less than the death penalty may be an appropriate circumstance?

PROSPECTIVE JUROR NO. 25: Would be appropriate, yes -- like life without parole.

MR. YOUNG: So you can see and vision circumstances less.

PROSPECTIVE JUROR NO. 25: Yes.

MR. YOUNG: Ms. Foor, you favor the death penalty. Tell me why.

PROSPECTIVE JUROR NO. 26: I think in certain circumstances it's appropriate. I mean, Daumer -- what if I get a car of people and say, okay, we are going to hit this town, this town, this town. We are going to kill one person in each of these cities. I think it would be appropriate in things of that nature.

MR. YOUNG: What would you want to know

about the individual who went from city to city prior to rendering your verdict?

PROSPECTIVE JUROR NO. 26: Well, I'm sure you get into motive and the whole organization of how they decided they were going to do this. But what was the rationale.

MR. YOUNG: What I'm getting at -- and it's confusing -- and this is a very difficult topic. I'm not going to sit here and say it isn't for everybody, including myself.

When we get to the second phase and we are determining whether or not a death penalty or one of the life sentences is the appropriate sentence, you will have already had to have found the motive, the organization. The government will have required you, will have proved to you beyond a reasonable doubt that this individual you're talking about actually went to town A, B and C, killed individual A, B, and C and found that this is one of those specifications under Ohio law called a two or more or mass murder spec and then you would then have already found that person guilty beyond a reasonable doubt, found that he is eligible to be considered for the death penalty.

Now you're in the second phase. And in the second phase, the government doesn't -- or it may not

put on anything regarding the crimes again. But, in fact, it's the defendant that actually puts on mitigating factors. And the Judge will instruct you what those -- what you may consider, what relevant mitigating factors you may consider.

Having said that long, long question, what kind of mitigating factors or things that you would want to know about the defendant to make a decision as to whether you are going to weigh those factors and balance those?

PROSPECTIVE JUROR NO. 26: Well, I would listen to the information and weigh the factors. But to come up with factors just in my head, I really can't speculate what kinds of things would sway me one way or another.

MR. YOUNG: Okay. That's fair.

Ms. Haliburton, you strongly favor the death penalty.

PROSPECTIVE JUROR NO. 27: Yes.

MR. YOUNG: Why do you strongly favor the death penalty?

I will keep you over here so you can direct your voice towards the court reporter.

PROSPECTIVE JUROR NO. 27: Just taking someone else's life, it's not time for them to leave but

you helped them to leave early, to me, your life needs to be taken too. All depends on, like, you have your mental people that's really not stable to do that crime. Something like that, you can give them like life in prison or something like that, really not knowing what he's doing, somebody to know what you're doing and somebody to take that person's life, I think I could sign away for the death penalty if it came down to it and to weigh the options, if it was -- well, to me basically life in prison; that is death penalty, I think. But to weigh the options on, I guess, mental stage of it.

MR. YOUNG: Mr. Williams.

PROSPECTIVE JUROR NO. 9: Yes, sir.

MR. YOUNG: You favor the death penalty. Why is that?

PROSPECTIVE JUROR NO. 9: If the circumstances, if the evidence shows that, I think it's a necessary evil in our society.

MR. YOUNG: Mr. Lowe uses the pirate hypothetical with everyone. Mr. Williams, you are the governor of the island in the Caribbean, the president, the owner of the island in the Caribbean and these little pirates out there were committing all those crimes. You then arrested these pirates, brought them

back to your Caribbean island. Would you have a death penalty on Mr. Williams' Caribbean island as a penalty?

PROSPECTIVE JUROR NO. 9: Yes.

MR. YOUNG: You would. Why is that?

PROSPECTIVE JUROR NO. 9: I just think it's a necessary deterrent to crime.

MR. YOUNG: Mr. Margraff, you slightly favor the death penalty. Why is that? What's your concerns?

PROSPECTIVE JUROR NO. 8: It's been -- I've traveled the world. I've been in a lot of nations where they do and don't have capital punishment and it seems to be a pretty good crime deterrent.

Having said that, it's a very serious and tough decision to make. It's when someone actually knowing that's the penalty still goes and completes that act, it's kind of hard to decide if they could be reformed or not.

MR. YOUNG: Okay. Ms. -- I forget your name, ma'am.

PROSPECTIVE JUROR NO. 18: Irwin.

MR. YOUNG: Ms. Irwin, you favor the death penalty?

PROSPECTIVE JUROR NO. 18: Yes, sir.

MR. YOUNG: Why?

PROSPECTIVE JUROR NO. 18: Like just about

everyone else, I feel there are circumstances that would require that. That's not to say that I feel that everyone that commits a murder should be given the death penalty. Its a decision that is very serious and has to be taken seriously and I feel like you would have to look at everything, the whole picture before you can make a decision.

Obviously, if the situation warranted it, I wouldn't just automatically give the death penalty. I would want to choose a life imprisonment or twenty-five years to life. It would again depend on the entire situation, the crime itself, the motive, the background of the individuals involved.

MR. YOUNG: So you would fairly consider all the --

PROSPECTIVE JUROR NO. 18: Absolutely.

MR. YOUNG: Mr. McQuade.

PROSPECTIVE JUROR NO. 44: Yes.

MR. YOUNG: You strongly favor the death penalty. Why do you strongly favor the death penalty?

Well, for one reason, I think it would cut down on crime. And then it all depends on motive, you know, the situation.

MR. YOUNG: Do you believe that whenever there is an aggravated murder where someone purposely

causes the death of another or with prior calculation and design kills another, you believe that the death penalty should be given to that individual?

PROSPECTIVE JUROR NO. 44: Yes.

MR. YOUNG: And under any circumstance you would impose death penalty on a person that committed aggravated murder?

PROSPECTIVE JUROR NO. 44: Yes.

MR. YOUNG: You would. You wouldn't consider age or fairly consider certain mitigating factors, but you believe that the death penalty is the only appropriate response to that.

PROSPECTIVE JUROR NO. 44: Yes.

MR. YOUNG: Thank you.

Ms. Harper, you thought I was going to stay in the middle the whole time. You are the queen of the Caribbean island. Would you have a death penalty on your island?

PROSPECTIVE JUROR NO. 2: I suppose there would have to be one because there are people out there that do things that probably warrant that.

MR. YOUNG: How would you implement your death penalty?

PROSPECTIVE JUROR NO. 2: Well, by trial by a jury like we are doing.

MR. YOUNG: Would you reserve it for the worst of the worst criminals?

PROSPECTIVE JUROR NO. 2: Yeah. That's me. I would think someone who is so tainted or demented that they no longer have a conscience about what they've done, then at that point, yes.

MR. YOUNG: Ms. Brown.

PROSPECTIVE JUROR NO. 1: Yes.

MR. YOUNG: Your island, Ms. Brown's island. Would you have the death penalty?

PROSPECTIVE JUROR NO. 1: Yes. I would have the option.

MR. YOUNG: If you can speak up. I was having a hard time hearing you.

PROSPECTIVE JUROR NO. 1: I would have the option for it.

MR. YOUNG: It would be reserved for the worst of the worst?

PROSPECTIVE JUROR NO. 1: Yes.

MR. YOUNG: Ms. Moore.

PROSPECTIVE JUROR NO. 15: Yes. Right here.

MR. YOUNG: You favor the death penalty. Why is that?

PROSPECTIVE JUROR NO. 15: I think it's about the severity of the crime. If a person just

premeditated or thought the whole thing out and intentionally went for it to kill someone, evidently they wouldn't care about anything but themselves, that person that they killed. So I would consider and give them a chance to maybe say they were remorseful or were not. But yet still I would think about they didn't think about that before they committed the crime neither. They didn't give that person a chance to say, well, I deserve to live for whatever reason. They didn't think about that person had children, a mother, a father. Everybody somebody's kid. So that to me would be heartless. But still I could give that person a chance to maybe say something on their behalf.

MR. YOUNG: Okay. Now, remember, you would have had to have found --

PROSPECTIVE JUROR NO. 15: Right.

MR. YOUNG: -- this person beyond a reasonable doubt had already killed somebody, whether it was prior calculation and design, which is some sort of planning, not just sudden passion or something. They killed somebody.

PROSPECTIVE JUROR NO. 15: Right.

MR. YOUNG: Or committed an aggravated murder with a kidnapping. Let's say take them out someplace and kill them or something like that. You

would have already found that.

PROSPECTIVE JUROR NO. 15: Right.

MR. YOUNG: Would you fairly consider --

PROSPECTIVE JUROR NO. 15: I would consider all the options.

MR. YOUNG: -- all the options.

PROSPECTIVE JUROR NO. 15: I wouldn't just automatically say they killed somebody so they should get the death penalty. I would want to maybe see if twenty-five to life could be appropriate for that person or if thirty to life. Just depends on how they can make the case to themselves. It's now up to them to prove to me that they deserve a lesser charge.

MR. YOUNG: They would have to put on some mitigating factors.

PROSPECTIVE JUROR NO. 15: Right.

MR. YOUNG: Something to differentiate themselves for you to their upbringing, their --

PROSPECTIVE JUROR NO. 15: Whether they had remorse or not.

MR. YOUNG: How about you, ma'am? Is it Ms. Saffield?

PROSPECTIVE JUROR NO. 14: Yes. I, like her, you would have had to have made the decision in the first part but the mitigating circumstances is part of

the law as well. You would have to consider those. I think sometimes it might be difficult at times because life is very valuable. But I also believe that there are laws that we are to follow and part of those laws state that you have to consider all the scenarios and all the situations to do that fairly.

MR. YOUNG: Mr. Kutzer, you indicated you favor the death penalty. Can you tell us your position on the death penalty?

PROSPECTIVE JUROR NO. 12: I favor the existence as a deterrent. I agree with most of what's been said here. It's not automatic. You know, in most any case, I think there are going to be mitigating circumstances that should be considered.

MR. YOUNG: So you would consider those circumstances?

PROSPECTIVE JUROR NO. 12: Absolutely.

MR. YOUNG: Whether you agree with them or don't agree with them or give much weight to them is for you and the rest of the jurors to decide on the facts of the case.

PROSPECTIVE JUROR NO. 15: Yes. That's correct.

MR. YOUNG: You would be able to fairly consider those situations or circumstances?

PROSPECTIVE JUROR NO. 12: Yes. It would be unfair not to hear those.

MR. YOUNG: I have to get a drink of water.

Ms. Demaree.

PROSPECTIVE JUROR NO. 20: Yes.

MR. YOUNG: Tell me what your thoughts are about the death penalty.

PROSPECTIVE JUROR NO. 20: I believe in a premeditated murder when somebody has planned it and thought it out, yes, they should receive the death penalty.

MR. YOUNG: Under any circumstances a person you convict, you convicted them with your fellow jurors beyond a reasonable doubt this person committed the crime of aggravated murder with prior calculation and design, planned it out to whatever time, minutes or hours and they planned it out and caused the death of another, do you believe the only appropriate sentence is death in that case?

PROSPECTIVE JUROR NO. 20: Yes, I do.

MR. YOUNG: Thank you.

Mr. Fitzsimmons.

PROSPECTIVE JUROR NO. 29: Yes, sir.

MR. YOUNG: You don't need to know my hairstylist. I barely have any hair.

PROSPECTIVE JUROR NO. 29: It's a good cut.

MR. YOUNG: Short. If you see like Matt Lauer, it's supposed to be short.

What's your position on the death penalty? I notice you had some reservations potentially about it.

PROSPECTIVE JUROR NO. 29: I think the best way for me to explain it is that sixteen years ago I lent my secretary a hundred fifty dollars. When she paid it back to me, she said, thank you for lending me this money for my daughter to get an abortion. I said excuse me. I lent you a hundred fifty dollars. What you did with it is your business.

Maybe that's the way I feel about the death penalty. As a juror, I think it's our responsibility to be fair, to be just and to remember our morals. My signing a piece of paper that states that someone is guilty, what government then follows through with is the governing laws and rules of this nation. So it's not necessarily that I'm signing a paper that sends someone to death; I'm signing a paper that says I feel that this person is guilty. What that guilty action results in is not -- it's not up to me. I am not flipping the switch, so to speak. I may be providing the current. I'm simply not flipping the switch.

MR. YOUNG: Okay. Mr. McKelvey.

PROSPECTIVE JUROR NO. 21: I would -- again, I would have to -- as it's presented, I would have to weigh all the circumstances. I believe it's an option that's necessary as a deterrent. I don't believe it's something that needs to be applied in every case because of circumstances. But, you know, if everything put it down where that was the option and that was your choice and that was the only thing I would have to go with it, but yeah, I would consider other options if they were available.

MR. YOUNG: And you would consider whatever mitigating factors?

PROSPECTIVE JUROR NO. 21: Definitely.

MR. YOUNG: Credible, relevant, mitigating factors.

PROSPECTIVE JUROR NO. 21: They would have to be credible and relative.

MR. YOUNG: Mr. Hawkins, how are you doing? Way in the back there. Tell me about your position on the death penalty.

PROSPECTIVE JUROR NO. 37: You got to have circumstances why, what was caused behind it.

MR. YOUNG: Can you speak up?

PROSPECTIVE JUROR NO. 37: On the same token, you got to understand what the reason was. I

mean to take someone's life and you take it from them, I would have to -- I would have to look at the factors. You know what I'm saying? You got to go through the facts. I'm like this, I want to hear and see it for myself -- know what I mean -- to witness what's going on in order to give my opinion. My opinion is if you take a life, then maybe you need to have your life taken away from you. It's the circumstances I'm looking at. It's, you know, maybe this guy, maybe two people hollering and screaming because one guy take a gun out and shoot them, that's not egregious. You've got to be sensible about the situation. And you know, listening around, stuff around town, know what's happening, people angry, bam, they shoot them, no motive, no reason, just anger. And I don't like that. I feel like this. If you want to take somebody's life maybe you need to have your life taken.

MR. YOUNG: You bring up a very good point. I notice that a couple of you on your questionnaires had indicated that in a murder case and a guy had knowingly did it, the death penalty could be an appropriate option. But in a crime of passion, spontaneous shooting, those kind of things is not appropriate for the death penalty and I wouldn't consider the death penalty in those kind of cases.

The death penalty is not available in those kind of cases. We aren't dealing with those kind of cases. What we are dealing with is someone you would have found purposefully caused the death of another. So you would have already found that this wasn't a crime of passion and they didn't come in and see an individual with his wife and shot him or shot his wife. That is not the type of crime we are dealing with.

In the event you ever get to this second stage, we are dealing with an aggravated murder. So now the issue becomes would you or is your position -- your position is no matter what, would your position be if I know that if this individual purposefully shot and killed that person with prior calculation and design and during a kidnapping, is your only option the death penalty or would you consider certain factors, not resulting in blame or anything, certain factors regarding the actual individual you found guilty of aggravated murder in determining the sentence or would you just say this guy did it. This guy deserves the death penalty. That's the only way I can come back.

PROSPECTIVE JUROR NO. 37: I feel this much: If he was crazy enough to go about what he was doing and the other group was with them doing it, then you know, yes, I say give him -- take him out of here, you know.

Give him life without parole. That's even better for him because he will be there all the rest of his life and he's got to go through what other people that have life that are living. You know what I'm saying? He's taking someone else's life so give him the max. Give him to eternity. So that's what it's all about. Know what I'm saying?

For me to sit up -- I have a feeling, you know, "do unto others what's been done to you. That's been taught to me from childhood. If you're crazy enough to go hurt somebody for something stupid, then you need to suffer for the other person. Look at the other mothers, fathers and sisters and stuff lost their loved ones.

Because I'm angry because I don't like you or whatever, you know, let's face it, that's what's wrong with society now. Everybody thinks about what I got, not what everybody else's got. Know what I'm saying? I'm strongly for that.

I served my country. Got wounded. Came out. Retired from DCSC. I worked all my life and I never asked nobody to give me nothing. I've worked. You know what I'm saying. I learned that from a child up to now. And I respect everybody. And the people I don't like their opinions, I don't listen to their

opinions. I have my own opinions of how I feel about it. Now, if you can change my opinion, fine. We can deal with it. We can talk about it. Until then, I'm staying where I am.

MR. YOUNG: And I don't want to misquote you. And I respect that. Would you fairly consider a situation where a person purposely causes the death of another and mitigating factors outweighed the aggravating circumstances, the death penalty is off the table. Now we are over on this side where there's what we call the "L.Y", life without parole, thirty years, twenty-five years. You indicated that. You don't give him the death penalty and give him aggravated murder, he gets life without parole. Would you fairly consider that in certain circumstances for this aggravated murder -- twenty-five years for life may be an actual appropriate sentence would you fairly consider twenty-five year sentence?

PROSPECTIVE JUROR NO. 37: I would fairly consider that.

MR. YOUNG: Would you fairly consider a thirty-year sentence.

PROSPECTIVE JUROR NO. 37: My feeling? Twenty-five, thirty, as long as he's getting life, that's all that matters.

MR. YOUNG: How long do you think that an individual that's sentenced to twenty-five years in jail has to stay in jail roughly? When do you think they will get out.

PROSPECTIVE JUROR NO. 37: I've heard cases where they are getting out. You know what? That's the system you have. If you're going to go, if you want to go through all of this to convict that person and know they have killed people by the evidence, then it's society and the system that we have. The court's not doing their job. Because if you got a person that takes a person's life and they say, okay twenty-five to thirty, you shouldn't let that go. I'm sorry. Basically get them out.

THE COURT: Let me intervene here. I want to make sure everybody is aware, the law of the State of Ohio may be different than some people perceive it. That's why sometimes I don't like to have questions of what you think the law is. The law in the State of Ohio is if we say twenty-five and life, we mean that you are not eligible for parole under any circumstances until twenty-five full years have expired and thirty to life means you're not eligible for parole until thirty full years have expired, period. And life without parole means life without parole.

So when we are talking about that, let's not speculate on what you think the law might be or the law in the another state. That's the law in the State of Ohio.

PROSPECTIVE JUROR NO. 24: Thank you.

MR. YOUNG: Ms. Wells, we spoke briefly yesterday. And you indicated -- you tell me how your position has changed from yesterday to this morning.

PROSPECTIVE JUROR NO. 28: I guess when I went home, I considering what I would have to agree with that for the only sentence and I think I would have some other options I would not have to agree that the death penalty was the only option -- and I know I couldn't do it. I know myself and I went home and contemplated it and I wouldn't be comfortable with it.

MR. YOUNG: And in the event that you don't find that the aggravating circumstances outweigh the mitigating factors, the death penalty is not even an option. Then you're only given the three things. Is it your position still that under no circumstances could you envision signing the death verdict?

PROSPECTIVE JUROR NO. 28: Correct.

MR. YOUNG: Ruth Hampton.

PROSPECTIVE JUROR NO. 38: Yes.

MR. YOUNG: Tell me your position on the

death penalty.

PROSPECTIVE JUROR NO. 38: I would have to weigh the mitigating circumstances. I believe in the death penalty. However, there are things that you have to weigh into consideration before I would utilize that option.

MR. YOUNG: Would you consider Bowling Green as a mitigating factor if Bowling Green -- I know who you will be rooting for this weekend.

Mr. Fry.

PROSPECTIVE JUROR NO. 41: Yes.

MR. YOUNG: Tell me what your position is on the death penalty.

PROSPECTIVE JUROR NO. 41: I think it's very case specific. Like I've heard from a number of other people, I feel it's a deterrent. It is our law. If you're asking me would I be able to consider what caused that, yes, I would. If I felt that the circumstances outweigh the mitigating factors, then, no, I would not have a problem with the death penalty. If I felt, you know, but I would be able to look at them and if I felt the mitigating factors were strong enough, certainly, I would be able to rule out. I don't think it's a chore. I don't think it's appropriate for every case.

MR. YOUNG: Ms. Olney.

PROSPECTIVE JUROR NO.

PROSPECTIVE JUROR NO. 40: : Yes.

MR. YOUNG: You have the Caribbean island now. You own your own Caribbean island. You have a death penalty on it?

PROSPECTIVE JUROR NO.

PROSPECTIVE JUROR NO. 40: : Yes.

MR. YOUNG: Why is that?

PROSPECTIVE JUROR NO.

PROSPECTIVE JUROR NO. 40: : Basically, I believe in right and wrong. And life is about choices. And if you choose as an adult to make the wrong choices, you could stand for the penalties that are in place for you.

MR. YOUNG: Let's examine that a little bit. When you say "right or wrong," let's say -- we've used a hypothetical -- you found this person guilty of aggravated murder now and you found one of the death specs, as we call them. And you are now -- let's say he killed three young children.

Right.

MR. YOUNG: Would death be the only option in that case?

PROSPECTIVE JUROR NO.

PROSPECTIVE JUROR NO. 40: : No.

MR. YOUNG: Would you consider the other factors.

PROSPECTIVE JUROR NO. 40: I would always consider all the factors.

MR. YOUNG: And decide what you would give him and fairly consider and give him the appropriate weight they are worth.

Absolutely, yes.

MR. YOUNG: And in the event that they did not outweigh you would sign a death verdict?

PROSPECTIVE JUROR NO.

PROSPECTIVE JUROR NO. 40: : I would sign it if a decision was made, yes.

MR. YOUNG: Ms. Himes.

PROSPECTIVE JUROR NO. 22: Yes.

MR. YOUNG: Tell me about your position on the death penalty.

PROSPECTIVE JUROR NO. 22: Well, I marked on my paper that I somewhat agree with it. And I agree that it is a deterrent in some cases. I agree it should be used in cases, extreme cases, cases where the person could not be rehabilitated or the person had no conscience, like she said. I think it should be used only in cases where you have direct evidence that

directly shows that this person did it.

We found cases now where people were on Death Row and with circumstantial evidence and now it's being overturned. So I think in some cases it is good, but when I think about it and think about me being the one signing it, I would have trouble doing it.

MR. YOUNG: Would anybody here not have trouble signing their name to a death verdict?

Ms. Fahringer, tell me your position on the death penalty.

PROSPECTIVE JUROR NO. 5: I would weigh all the factors before deciding either way. I like the idea of having the four options. I would not like going in the case and knowing that capital punishment was the only option. I think capital punishment should be reserved for severe cases. But I would definitely weigh all options before.

MR. YOUNG: You would.

THE COURT: Mr. Young, let me interrupt at this point in time.

One of the things that happens when I'm up here and not down there or back in my office, things have tendency of going away without my help. Most of my morning docket has gone away. That's why I went beyond 11:30. I have a couple things pending which I'm going

to have to get to.

Before we adjourn for lunch, I wanted to address this to a couple of people and anybody else who was asked your personal opinions.

You have been asked by both sides your personal opinions if you were -- whether it's the queen or the owner, whatever it is of an island, what would you personally do. That's fine. People do ask personal opinions. But that's not what we are here in a courtroom for. We are not here to have your personal opinions imposed upon this system or anything else that's going to happen in this courtroom. And sometimes some people may get the wrong impression about the way the question was asked, whether that's what you would do or if you had your choice or had your own personal opinions, would you do that.

Let me specifically go back to Ms. Demaree. I believe it's the way it was. You were asked what your personal opinion would be, and I believe also Mr. McQuade was asked the same thing. Now, we've already explained to both of you what the law is.

And my question to you is, regardless of your personal opinion, could you follow the law and appropriately consider all penalties --

PROSPECTIVE JUROR NO. 20: Yes.

MR. YOUNG: -- as the law would provide and you wouldn't impose your own personal opinion and ignore the law. Could you do that?

PROSPECTIVE JUROR NO. 20: Yes.

PROSPECTIVE JUROR NO. 44: Yes.

THE COURT: Now, we are going to go to lunch. Please do not discuss the case amongst yourselves or anybody else while you are on lunch. Be back up here at 1:30.

If you're here early or you're downstairs early, stay downstairs until just about 1:30 and then come on up here.

Have a good lunch and we will see you at 1:30.

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Thereupon, a luncheon recess was taken until 1:30 o'clock p.m., of the same day, to wit, September 16, 2003.

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Tuesday Afternoon Session,
September 16, 2003.

- - -

THE COURT: Okay. Everybody is here now.

Mr. Young, you may proceed.

MR. YOUNG: Everyone enjoy getting out of the building? Beautiful day out there, isn't it? Didn't want to come back here.

Ms. Graham.

PROSPECTIVE JUROR NO. 47: Yes.

MR. YOUNG: You say you slightly oppose the death penalty. What's your position on the death penalty?

PROSPECTIVE JUROR NO. 47: Well, it goes case by case.

MR. YOUNG: I'm sorry. Speak up a little bit.

PROSPECTIVE JUROR NO. 47: It's really case by case based on the information that's presented in a case, based on the facts, the evidence. It's all conclusive to that as to what I would decide upon.

MR. YOUNG: So you would consider mitigating factors if, in fact, we get to the second stage?

PROSPECTIVE JUROR NO. 47: Yes, I would.

MR. YOUNG: And what kind of mitigating

factors would you be interested in hearing?

PROSPECTIVE JUROR NO. 47: Whether or not the person was mentally incapacitated at the time; whether or not there were certain facts that led up to something else to occur or just different things as far as what caused -- what led up to the incidents.

MR. YOUNG: Certain relative other type of factors that may come into play?

PROSPECTIVE JUROR NO. 47: That's correct.

MR. YOUNG: So you're not in a position just because a person takes a life that his life should necessarily be taken?

PROSPECTIVE JUROR NO. 47: That's correct.

MR. YOUNG: Is it Meyst?

PROSPECTIVE JUROR NO. 48: That's correct.

MR. YOUNG: You indicated that you do not believe in the death penalty. Would that be a fair statement?

PROSPECTIVE JUROR NO. 48: Yes, it would.

MR. YOUNG: And under no circumstances could you impose a death penalty on any human being.

PROSPECTIVE JUROR NO. 48: Can't imagine any.

MR. YOUNG: So you would not be willing to sign a death verdict under any circumstance?

PROSPECTIVE JUROR NO. 48: It would be torture.

MR. YOUNG: Is it Ms. Brudzinski? Tell me your feelings about the death penalty.

PROSPECTIVE JUROR NO. 49: I believe if somebody in their right mind deliberately goes in to murder somebody that they should have either life sentence or death penalty.

MR. YOUNG: Again, you've heard -- you guys in the back think you get a big reprieve. We are only partway through voir dire. I will be able to go back over different things.

You've heard all the examples I've used earlier. You're going to -- if you get to the second stage you will have found the person guilty beyond a reasonable doubt; that they purposely caused the death of another, whether by prior calculation and design or in the commission of a felony, the kidnapping. You will have found that plus you will have found beyond a reasonable doubt one of the, quote, end quote, "death specifications." Under that situation, is your position "an eye for an eye", hat you would automatically give that person the death penalty?

PROSPECTIVE JUROR NO. 49: Yes.

MR. YOUNG: You would. You would not fairly

consider --

PROSPECTIVE JUROR NO. 49: Oh, no. I misunderstood you. Yes, I would fairly consider it.

MR. YOUNG: What type of factors would you be interested in learning about that individual at that stage?

PROSPECTIVE JUROR NO. 49: If, in fact, that all the facts were there that they were guilty?

MR. YOUNG: You will have already found that person guilty of the underlying facts. You will have found that person guilty of aggravated murder with one of the death specifications. That is the trial phase. That's the very first phase that we go through. So that is not the issue.

When you get to the second phase, the second phase is whether you would consider the mitigating factors, the things the Defense would bring out as to explaining the individual and/or the circumstances, how he was raised or so on, whatever one that the Judge would ultimately instruct you on, whatever reasonable facts are relevant factors, does that -- am I confusing you or do you understand what I'm getting at?

PROSPECTIVE JUROR NO. 49: I think I would say if he was brought up in a bad home or something like that or was grown up with murderers -- is that what

you're saying?

MR. YOUNG: Yeah. Abusive parents, whatever we want or thought was relevant and the Judge would consider to be relevant, those would be certain mitigating factors, age or something along those lines. Once you've already found this guy purposely caused the death of another, he's convicted of aggravated murder beyond a reasonable doubt. We are at the second stage. Would you fairly consider those factors when you're making your determination, the balancing test? The aggravating circumstances, you've already found him guilty beyond a reasonable doubt. Those are on one side of the scale. On the second side of the scale is the mitigating factors and when you're doing the balancing test, would you fairly consider these type of factors that the Judge instructs you on?

PROSPECTIVE JUROR NO. 49: Yes, I will.

THE COURT: And in the event that you do not find that the aggravating circumstances outweigh the mitigating factors beyond a reasonable doubt, you will not be asked to find the death penalty. If you know that this person purposely caused the death of another, would you find the death penalty or do you think it's automatic? Or would you consider the mitigating factors in giving a life sentence?

PROSPECTIVE JUROR NO. 49: Life sentence.

MR. YOUNG: Would you consider now that the mitigating factors do not -- or the aggravating circumstances do not outweigh the mitigating factors beyond a reasonable doubt you've now cut off the death penalty. That's no longer to be considered. You then are to consider one of the three life sentences that we've explained. Would you immediately say life without parole and not fairly consider the twenty-five year sentence? Do you think it's ever appropriate that a person who purposely causes the death of another with prior calculation and design gets a twenty-five year to life sentence?

You're shaking your head. Does that mean no?

PROSPECTIVE JUROR NO. 49: I think they should get a life sentence.

MR. YOUNG: A life sentence. Could you explain?

PROSPECTIVE JUROR NO. 49: I think they should go to the twenty-five year to life sentence, whatever the worst is if they meaningly killed somebody.

MR. YOUNG: There is three separate levels. There is a life without parole, which as the Judge has explained to you means they are in prison the rest of

their life.

PROSPECTIVE JUROR NO. 49: And that's what I would go.

MR. YOUNG: And you would not consider the twenty-five or thirty year sentence?

PROSPECTIVE JUROR NO. 49: (Nods head in a negative response.)

MR. YOUNG: Is it Ms. Ritchey?

PROSPECTIVE JUROR NO. 50: Ritchey.

MR. YOUNG: I'm sorry. I got a "K" instead of an "H". What's your position on the death penalty?

PROSPECTIVE JUROR NO. 50: I'm totally against it. I would not ever be able to give the death penalty to anyone.

MR. YOUNG: Why are you totally against it?

PROSPECTIVE JUROR NO. 50: Somewhat it goes with my religion. I'm Catholic. But also, I always think there is that thread of maybe they really weren't guilty and they shouldn't be put to death.

MR. YOUNG: And because there is -- death is final.

PROSPECTIVE JUROR NO. 50: Correct.

MR. YOUNG: You can't go back and correct things once something has happened. Is that the reason? Would that be a fair statement?

PROSPECTIVE JUROR NO. 50: That's fair.

MR. YOUNG: And you could envision no circumstances, whether the most heinous criminal ever is convicted of it, that you would be able to impose the death penalty?

PROSPECTIVE JUROR NO. 50: I would not. I would want to do life with no parole.

MR. YOUNG: But death would not be an option?

PROSPECTIVE JUROR NO. 50: No.

MR. YOUNG: And, Mr. Burton, what's your position on the death penalty?

PROSPECTIVE JUROR NO. 51: I believe the death penalty should be reserved for premeditated murder, for someone who kills someone else during another crime or if someone is like a repeat offender. If they killed someone and gone to prison, get out of prison and kill someone else again, that would show to me that they probably aren't able to be rehabilitated.

MR. YOUNG: Do you believe that someone convicted of those crimes which you are indicating to me should only receive the death penalty?

PROSPECTIVE JUROR NO. 51: Of those three cases, that would be my answer, yes, the death penalty and no other options.

MR. YOUNG: Would you consider any other option?

PROSPECTIVE JUROR NO. 51: Yes, I would. When you talk about mitigating factors, I believe a person should be responsible for his or her own actions. But I understand that there are also mitigating factors as well, as you've talked about, and know how a person has been brought up.

And in the form that I filled out, that's one of the things that I put down is that, you know, we aren't all brought up the same way and some people, you know, have not so great of a childhood or different things in a person's life causes them to think a certain way or act a certain way. But even with mitigating circumstances, I believe a person is still responsible for their own actions.

MR. YOUNG: Okay. And there would be -- the person you're saying they are responsible for their actions. So let me -- I don't want to misstate anything. Talk to a lot of people.

And I'm going to be talking to you for a period of time more. Scare you guys a little bit.

But the death penalty to an extent is reserved and/or the consideration of the death penalty is reserved for the factors or the situations that

you're speaking of, with prior calculation and design. That's the premeditated murder, purposely cause the death of another with prior calculation in mind. That's the premeditation of it. If it's committed during the commission of an offense, which there are certain offenses that make it -- rape, kidnapping, robbery, those kinds of things. That creates the aggravated murder. Then you have the certain specifications. And you understand what those are. There is certain, if you kill the president, those kind of things, that that is a specification that causes the consideration or makes an aggravated murder a death penalty case or death eligible case.

Now, if you know that somebody went to prison, got out of prison and killed again, would you in those circumstances only consider the death penalty or would you fairly consider the mitigating factors that that person presented?

PROSPECTIVE JUROR NO. 51: If they had been in prison before and killed someone else, got out of prison and killed someone else again, then I would say the death penalty is the only solution.

MR. YOUNG: And you would not consider any other?

PROSPECTIVE JUROR NO. 51: No, I would not.

THE COURT: Again, and I just want you to know, how the question is phrased -- now it's very important the question be phrased in a way that deals with what you're going to have to consider. You're not going have to consider a hypothetical case situation because that's not what we have here. You're going to have to take the facts of our case, apply the law as I will give it to you. And the law as I'm going to give it to you. And I wish all questions are phrased this way. If your instruction from me is that you are required to balance, regardless of the nature of the offense, doesn't make any difference what the offense is. If we get to the point which a jury makes a determination that the aggravated circumstance exists and the specification, one or more specification exists, it's at that point and that point only the jury gets in the balancing process. And if I instruct you that you are to balance the aggravating circumstances with the mitigating factors, if I further instruct you that the only time you could consider death is when and if the State of Ohio proves beyond a reasonable doubt that the aggravating circumstances outweigh beyond a reasonable doubt the mitigating factors, it's at that point in time that you can consider death, life without parole, life with parole eligibility after twenty-five years and life

with parole eligibility after thirty years. If the State of Ohio does not prove beyond a reasonable doubt that the aggravating circumstances outweigh the mitigating factors, I'm going to instruct you that you can't consider death and you can only consider the other three.

Now, if I give you those instructions, would you follow those instructions even though you think the law should be something different?

PROSPECTIVE JUROR NO. 51: Yes.

THE COURT: Okay. That's what we are talking about, not what you would like to see or the hypothetical thing of somebody getting out of prison or escaping, if I instruct you, could you follow that instruction. And that's what we are dealing with. Okay.

MR. YOUNG: Is there anybody here that could not follow that instruction; that believes that I cannot sign a death verdict even though the Judge instructs me or I'm going to disregard the court if he provides that instruction? That is another question we need to know.

Does anyone believe or have such a value system that they would not be able to follow the Judge's instructions?

Anybody.

PROSPECTIVE JUROR NO. 16: I'm not sure if I understood that. If the Judge instructed me to sign the death.

MR. YOUNG: No. No.

PROSPECTIVE JUROR NO. 16: I'm not understanding how you phrased that.

THE COURT: Assuming the State of Ohio proves the defendant's guilt beyond a reasonable doubt of the aggravated murder and one of the three specifications, okay, that I give to you, we are in stage two.

PROSPECTIVE JUROR NO. 16: Okay.

THE COURT: Stage two is broken down into two different types of issues. One, is death to be considered or is death not to be considered. Life sentences are always to be considered.

Now, the only way death can be considered is if the aggravating circumstances outweigh the mitigating factors beyond a reasonable doubt, then and only then can you consider death. If they don't outweigh beyond a reasonable doubt, that's not an option and you go to the other options. So I'm not -- I'm never going to tell you what to sign. I'm going to tell you what the law says.

PROSPECTIVE JUROR NO. 16: Okay.

THE COURT: I'm going to tell you what you're supposed to do if you make certain findings. I'm not going to direct you one way or another what to sign and what not to sign.

MR. YOUNG: Mr. Mitchell, have I spoken to you about your position on the death penalty?

PROSPECTIVE JUROR NO. 45: No, you have not.

MR. YOUNG: Can you please tell me your position on the death penalty?

PROSPECTIVE JUROR NO. 45: I just have ambivalence about it.

MR. YOUNG: I'm sorry. I didn't hear you.

PROSPECTIVE JUROR NO. 45: I have ambivalence about it. Given that there are options and we are being asked to weigh the aggravating circumstances against the mitigating factors and that there are other penalty options, I would have difficulty imposing or selecting the death penalty based on that. I don't know if I could take the aggravating factors and outweigh them, allow me to make my decision.

MR. YOUNG: Ms. Miller, did I speak to you about it?

PROSPECTIVE JUROR NO. 36: No, you haven't.

MR. YOUNG: Please tell me your position on the death penalty.

PROSPECTIVE JUROR NO. 36: Well, I agree with most everyone here as far as what they said. But I think it's something that has to be there, the death penalty. You have to have it, I mean, for certain crimes.

MR. YOUNG: And, Mr. Bertschi -- how do you pronounce it?

PROSPECTIVE JUROR NO. 35: Bertschi.

MR. YOUNG: What's your position on the death penalty?

PROSPECTIVE JUROR NO. 35: It needs to be there. That's a deterrent. Supposed to scare people from doing the crimes.

MR. YOUNG: Would you be able to listen to the Judge's instruction and do the balancing test if we ever get to that stage?

PROSPECTIVE JUROR NO. 35: Yes.

MR. YOUNG: Does anybody here have any questions regarding the death penalty? Any positions regarding the death penalty? Anything that they want to tell me or ask me regarding the death penalty?

PROSPECTIVE JUROR NO. 2: Yes. Who chooses the form of death?

THE COURT: Keep your voice up so everybody can hear you.

Dotson

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Part 3

'death-eligible,' and a second phase of the proceedings (the 'mitigation' or 'penalty' or 'sentencing' or 'selection' phase begins"). *See also Jenkins v. Hutton*, ___ U.S. ___, 137 S.Ct. 1769, 1772, 198 L.Ed.2d 415 (2017) (stating that Hutton was death-eligible under Ohio law when the jury found him guilty of aggravated murder and two aggravating circumstances). Accordingly, we approve our analysis in *Belton* and reject Mason's claim that Ohio's death-penalty scheme is unconstitutional under *Hurst*.

2. The Jury's Role in Sentencing

{¶ 30} While we uphold our conclusion in *Belton* that weighing is not a fact-finding process subject to the Sixth Amendment, we further conclude that even if the weighing process were to involve fact-finding under the Sixth Amendment, Ohio adequately affords the right to trial by jury during the penalty phase. Mason contends that it does not, because the process permits a jury only to *recommend* a death sentence. *See* R.C. 2929.03(D)(2). Here, he emphasizes the statement in *Hurst* that "[a] jury's mere recommendation is not enough." *Hurst*, ___ U.S. at ___, 136 S.Ct. at 619, 193 L.Ed.2d 504. But he fails to appreciate the material difference between the process by which an Ohio jury reaches its death recommendation and the Florida process at issue in *Hurst*.

{¶ 31} The Florida statute required the jury to render an "advisory sentence" after hearing the evidence presented in a sentencing-phase proceeding:

> Advisory sentence by the jury.—After hearing all the evidence, the jury shall deliberate and render an advisory sentence to the court, based upon the following matters:
>
> (a) Whether sufficient aggravating circumstances exist as enumerated in subsection (5);
>
> (b) Whether sufficient mitigating circumstances exist which outweigh the aggravating circumstances found to exist; and

IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO

CRIMINAL DIVISION

- - -

State of Ohio	:	
	:	
Plaintiff,	:	
	:	
vs.	:	Case No. 02CR-3117
	:	Volume II
James T. Conway, III,	:	Voir Dire (page 250-311)
	:	Opening Statements
Defendant	:	Trial Proceedings

- - -

TRANSCRIPT OF PROCEEDINGS

- - -

APPEARANCES:

Mr. James Lowe and Ms. Sheryl Prichard,
Assistant Prosecuting Attorneys

On behalf of the Plaintiff.

Mr. Dave Young and Ms. Diane Menashe,
Attorneys at Law

On behalf of the Defendant.

BE IT REMEMBERED, that on the trial of the above-entitled cause at the September Term, 2003 of the Common Pleas Court of Franklin County, Ohio, before the Honorable Dale A. Crawford, Judge, and a jury duly impaneled and sworn, the State of Ohio to maintain the issues on its part to be maintained, offered and introduced in testimony on its behalf the following proceedings to wit:

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PROSPECTIVE JUROR NO. 2: Who would choose the form of death?

THE COURT: That is determined by the Legislature.

MR. YOUNG: Well, as I indicated to you when I originally started, it was very troubling to talk about sentencing, about sentencing at a point in time that we are not even -- we haven't even called the very first witness yet. We haven't presented any evidence.

I'd want to discontinue any talk about sentencing unless you guys have questions.

Now, I would like to ask certain questions about that, not related to the death penalty. But so if anyone has any questions, and if you do have any questions at any time feel free to ask me. But I would like to get into some other areas.

As we indicated, Mr. Lowe and Ms. Prichard are very engaging people. This is not going to be a personality contest between whether you like Mr. Lowe or you like Ms. Prichard or you dislike Diane or you dislike me.

Anything that Diane and I do that in some way irritates you, would you agree to not hold that against Jimmy? Would everyone agree to that?

Let's say you may not like the way I object

or the way I stand or -- I'm not doing anything intentionally to try to make anyone mad. I just don't want -- some people don't like people for whatever reason and I am not intentionally doing anything. And I would just ask whether you all could agree in the event you may like them personally better than us that you would not hold that against Jimmy for something that Diane and I would do. Would everyone agree with that?

The purpose of a trial is to find out the truth. We are seeking the truth in this. So we are seeking twelve fair-minded, impartial jurors that can listen to the evidence, consider the evidence, make a determination as to what the actual truth is. Would everyone agree if, in fact, they are selected that they would do that? Would listen to the evidence that was presented, consider the evidence, give whatever weight the evidence is and consider that?

The government has the burden of proof.

Ms. Paxson.

PROSPECTIVE JUROR NO. 19: Yes.

MR. YOUNG: The government has the sole burden of proof in this case. Do you agree with that statement?

PROSPECTIVE JUROR NO. 19: They have to prove without a shadow of a doubt that he's guilty.

MR. YOUNG: They have the entire proof, burden of proof. We can sit right over here and not say a word, not question a witness.

PROSPECTIVE JUROR NO. 19: No.

MR. YOUNG: Not do anything.

PROSPECTIVE JUROR NO. 19: There has to be a balance.

MR. YOUNG: Excuse me?

PROSPECTIVE JUROR NO. 19: There has to be a balance.

MR. YOUNG: Speak up. There has to be a balance?

PROSPECTIVE JUROR NO. 19: (Nods head in an affirmative response.)

MR. YOUNG: Would you -- if the government has the burden of proof to prove beyond a reasonable doubt each and every charge, if they fail to meet that burden whether or not we make a single statement, make a single comment, say a single word, will you require the government to prove beyond a reasonable doubt that or do you think we have to do something?

PROSPECTIVE JUROR NO. 19: It's up to the government to prove it.

MR. YOUNG: How about you, sir?

PROSPECTIVE JUROR NO. 12: It's up to the

State, yes.

MR. YOUNG: And would you agree if you're selected as a juror require to have the government meet that burden?

PROSPECTIVE JUROR NO. 12: If they can't fulfill it beyond a reasonable doubt, even if you say nothing.

MR. YOUNG: How about you, ma'am? Are you going to require the government to prove beyond a reasonable doubt?

PROSPECTIVE JUROR NO. 10: Yeah.

MR. YOUNG: You're going to hold them to their burden?

PROSPECTIVE JUROR NO. 10: (Nods head in an affirmative response.)

MR. YOUNG: Is everyone going to hold them to their burden?

The government is so right. You need patience. You've now been here two days trying to get on and we again haven't done anything. Are you going to be patient here?

PROSPECTIVE JUROR NO. 4: Sure.

MR. YOUNG: You don't have anything else going on where you're not going to be able to focus?

PROSPECTIVE JUROR NO. 4: No.

MR. YOUNG: How about you, ma'am?

PROSPECTIVE JUROR NO. 5: Yes.

MR. YOUNG: You're going to be patient?

PROSPECTIVE JUROR NO. 5: Yes.

MR. YOUNG: There could be significant delays in here. I have been involved with numerous trials. There could being hours and days delay for whatever reason. Is everybody going to be patient?

Are you going to bring your common sense?

PROSPECTIVE JUROR NO. 15: Definitely.

MR. YOUNG: You think it's important to have common sense?

PROSPECTIVE JUROR NO. 15: Oh, yeah.

MR. YOUNG: Bring it into a trial?

PROSPECTIVE JUROR NO. 15: You have to weigh what you see.

MR. YOUNG: So if someone says the sky is blue or the sky is purple, you would use your common sense? Or they said I was in Cincinnati three minutes ago, would you use your common sense when you judge their credibility --

PROSPECTIVE JUROR NO. 15: Yes.

MR. YOUNG -- that perhaps they may not be telling the truth they were in Cincinnati.

How about you?

PROSPECTIVE JUROR NO. 24: Yes.

MR. YOUNG: Would everyone agree to bring their common sense here?

When you write on the questionnaire, you make a statement, who here believes that the defendant has to testify or should testify? Anyone here believe the defendant should testify in this case?

Mr. Purifoy, how do you pronounce your name?

PROSPECTIVE 17: Purifoy.

MR. YOUNG: Why do you think he has to testify?

PROSPECTIVE JUROR NO. 17: So we can hear what he says.

MR. YOUNG: Does anyone agree with him?

PROSPECTIVE JUROR NO. 16: Yes, I do.

MR. YOUNG: Who else agrees?

PROSPECTIVE JUROR NO. 4: I don't think he has to, but probably just for curiosity sake that everyone has you want to hear his chain of events, how he feels it went along, or, you know, his own words as to what may or may not have happened. For me, it's not a situation where I have to hear what he has to say. But, yeah, honest curiosity says I want to hear what he has to say. And if you choose not to put him on the stand, then okay. They still have the burden of proving

his guilt.

MR. YOUNG: Does anybody here have any issues?

Mr. McQuade, do you have any issues about whether a person should or should not testify?

PROSPECTIVE JUROR NO. 44: Well, he will be speaking through you; so that pretty much will be him talking.

MR. YOUNG: Ms. Regan, do you have any questions?

PROSPECTIVE JUROR NO. 25: I agree with what she said, I think, just out of curiosity to hear his side.

MR. YOUNG: Ma'am, what's your name? Yes, you. Ms. Terry.

PROSPECTIVE JUROR NO. 33: I don't think he has to, but again, it may help. I mean, you could say the sky is blue but he may say the sky is blue and it may make all the difference in the world. Know what I'm saying? Yes, he's speaking through you but there may be one little thing that makes a difference and maybe just in the way that he says. So I think if it was, it would be beneficial to the defendant. But I don't think -- it's just not that cut and dry, he just has to.

MR. YOUNG: I'm sorry. Thank you.

Do you have a comment on that?

PROSPECTIVE JUROR NO. 1: Yes. I believe that he should testify, give the jurors a chance to see his credibility and his characteristics on the stand.

MR. YOUNG: The Judge is going to instruct you that the defendant does not have to testify. And in the event that the defendant does not testify, you cannot infer anything from that. Because under the Constitution, a person has a right to not testify. And whatever decision is made, whether it's by us, by him, whether he has a speech impediment, whether he's nervous in certain circumstances, whether he doesn't speak the natural language of this country, whatever reason, the Judge is going to instruct you in the event that the defendant does not testify you cannot infer anything from that.

What do you think of that?

PROSPECTIVE JUROR NO. 26: I knew he wouldn't have to testify, but then I agree what she said, it would be nice to hear not through a third party the words from the individual.

MR. YOUNG: Would you follow the Judge's instruction if he instructs you that you cannot infer anything from the fact that the defendant did not testify if he didn't?

PROSPECTIVE JUROR NO. 26: Sure.

MR. YOUNG: Ms. Regan.

PROSPECTIVE JUROR NO. 25: I agree.

MR. YOUNG: Who here knows police officers? Other than you.

I believe, Ms. Regan, you know police officers. Who do you know from CPD?

PROSPECTIVE JUROR NO. 25: Well, I've dated one for the last six years, Sergeant Donovan.

MR. YOUNG: Sergeant Donovan?

PROSPECTIVE JUROR NO. 25: Bryan Donovan.

MR. YOUNG: Sergeant Donovan. I don't believe he's involved in this case. Have you heard anything about this? Have you talked to him a lot about his work?

PROSPECTIVE JUROR NO. 25: Not really.

MR. YOUNG: My wife doesn't talk to me about my work either. Ms. Himes.

PROSPECTIVE JUROR NO. 22: I know Mike Marger who is the police chief in Worthington and Dale Sprout, Columbus Police Officer retired.

MR. YOUNG: Do you speak with them about their job?

PROSPECTIVE JUROR NO. 22: Not really, no.

MR. YOUNG: Who else? I saw some other

hands.

PROSPECTIVE JUROR NO. 23: I have a relative who is an officer. Her name is Jacqueline -- I don't know her last name; so hence we are not that close. But yes, I do have a relative.

MR. YOUNG: And you?

PROSPECTIVE JUROR NO. 16: I have an uncle who is an FBI agent and his son is a Grove City police officer.

MR. YOUNG: And do you speak to them very much about what they do?

Is he FBI agent here in central Ohio?

PROSPECTIVE JUROR NO. 16: No. Pittsburgh.

MR. YOUNG: Pittsburgh.

PROSPECTIVE JUROR NO. 16: He's over the bank robberies so --

MR. YOUNG: You back there. I'll make my way back.

PROSPECTIVE JUROR NO. 3: I dated a police officer and his brother and sister are also Columbus PD.

MR. YOUNG: Do you have names? If you want to give them to us.

PROSPECTIVE JUROR NO. 3: The Booth brothers, Carl and Calvin.

MR. YOUNG: Ma'am, in the back.

PROSPECTIVE JUROR NO. 47: I know deputy sheriff, Don Eures, deputy. He works in the --

MR. YOUNG: Ms. Graham.

PROSPECTIVE JUROR NO. 47: I know Don Eures.

MR. YOUNG: Do you talk to him much about --

PROSPECTIVE JUROR NO. 47: No. I haven't seen him in several years.

MR. YOUNG: You will see him if you're around this courthouse for two weeks, I guarantee that.

Is it Ms. Brudzinski?

PROSPECTIVE JUROR NO. 49: Yes, I worked with a gal whose husband I think is now FBI, Jerry Rudolph.

MR. YOUNG: I don't believe there is any FBI or any federal agencies involved in this.

Do you speak with him very often?

PROSPECTIVE JUROR NO. 49: No, I do not.

MR. YOUNG: Anyone else?

PROSPECTIVE JUROR NO. 18: My father is a law enforcement officer, not in Franklin County.

MR. YOUNG: Where is he a law enforcement officer?

PROSPECTIVE JUROR NO. 18: Morrow County. Sheriff up in Morrow County.

MR. YOUNG: The fact that your father is a

sheriff in Morrow County in any way going to influence your viewing police officers' testifying in giving them certain credibility greater than anyone else?

PROSPECTIVE JUROR NO. 18: Absolutely not. I have met the best of them and I've met the most questionable of officers. So it depends on the individual and what they can prove to me as being credible.

MR. YOUNG: And when they take the stand and raise their hand, you will determine their credibility as it needs to be determined?

PROSPECTIVE JUROR NO. 18: Based on what they tell me.

MR. YOUNG: Ms. Haliburton.

PROSPECTIVE JUROR NO. 27: Yes. I have a brother-in-law, he's a sheriff.

MR. YOUNG: He's a sheriff. Do you talk to him much about the case?

PROSPECTIVE JUROR NO. 27: No. No.

MR. YOUNG: You've all listened to the Judge and the prosecutor talking about direct and circumstantial evidence. They used the hypothetical or the example of a dog eating the cherry pie. And I believe -- please state your name.

PROSPECTIVE JUROR NO. 29: Greg Fitzsimmons.

MR. YOUNG: In that case to use a hypothetical, let's say there is a dog in the house -- and do you want to extend it for me? Or I will give it to you. Fresh baked cherry pie sitting on the table. Child has cherry pie all over his hands, Johnny, I believe is the name. A dog was in the house now. Mom walks in and sees Johnny with the cherry pie on his hands. That is circumstantial evidence that he had some association with that cherry pie. But is that circumstantial evidence so supportive that Johnny ate the cherry pie?

You're shaking your head no.

PROSPECTIVE JUROR NO. 10: No.

MR. YOUNG: Is it possible that you can draw certain inferences from that cherry pie? Could the dog have eaten the cherry pie and Johnny who's cleaning it up?

PROSPECTIVE JUROR NO. 10: Could be.

MR. YOUNG: Or Johnny could have eaten the cherry pie. Did mom go and see the dog's face to see whether the dog had cherry pie all over his face? So just because it is circumstantial evidence -- you need to judge the weight of that circumstantial evidence. Similar to direct evidence, as the government had indicated, I saw Johnny eat the cherry pie. Where was

the witness? How did he observe that? Did he have glasses on? Did he not have his glasses on? Did he have the ability to observe? Was he in the mental state to observe? Merely because I say I saw this, there may be further questions as to that.

Mr. Williams, what do you think of that?

PROSPECTIVE JUROR NO. 9: Yeah, you have to note all the facts and all the surrounding circumstances.

MR. YOUNG: And when a person testifies, we have the right of confrontation and the ability to cross-examine a witnesses. Do you agree with that?

PROSPECTIVE JUROR NO. 9: Yes.

MR. YOUNG: Does everyone agree with that?

Ms. Haliburton?

PROSPECTIVE JUROR NO. 27: Yes.

MR. YOUNG: That I have the ability to ask questions of people?

Merely because a person says I saw A do B, is it over?

PROSPECTIVE JUROR NO. 9: Might not be.

MR. YOUNG: I have the ability to ask questions. That's called cross-examining. A lot of times -- and you're the triers of the fact. Listen to the cross-examination. Will you agree to listen to the

cross-examination?

PROSPECTIVE JUROR NO. 9: Absolutely.

MR. YOUNG: Will you agree to listen to the answers given by the cross-examination?

PROSPECTIVE JUROR NO. 9: Absolutely.

MR. YOUNG: And will you consider them and you may consider them as important or more important than the direct examination of the witness?

PROSPECTIVE JUROR NO. 9: Uh-huh.

MR. YOUNG: You agree to do that?

PROSPECTIVE JUROR NO. 9: Yes.

MR. YOUNG: How about you, Mr. Margraff? What do you think about that?

PROSPECTIVE JUROR NO. 8: About listening to the cross-examination?

MR. YOUNG: Yes.

PROSPECTIVE JUROR NO. 8: Sure.

MR. YOUNG: Cross-examination is equally as important or may be as equally as important or more important than the direct examination.

PROSPECTIVE JUROR NO. 8: True.

MR. YOUNG: Certain of you -- I'm not going to get into it -- have been victims of various crimes. Does the fact that any of you have been a victim of a crime in any way going to impact you in sitting on this

jury?

And I don't recall. I know some people have had their car stolen, had their various other assaults or something against them.

Does anyone here, the mere fact that you were a victim have trouble sitting on this case?

Ms. Fromm.

PROSPECTIVE JUROR NO. 31: Yes, sir.

MR. YOUNG: I haven't been able to talk to you yet.

PROSPECTIVE JUROR NO. 31: No, sir.

MR. YOUNG: You thought I was all done.

PROSPECTIVE JUROR NO. 31: No. I knew you weren't done.

MR. YOUNG: If you were charged with something you didn't do, how would you feel?

PROSPECTIVE JUROR NO. 31: I would want a fair trial.

MR. YOUNG: Have you ever been charged with something or accused of something you did not do?

PROSPECTIVE JUROR NO. 31: I'm sure as a child I was.

MR. YOUNG: How did it make you feel?

PROSPECTIVE JUROR NO. 31: Terrible.

MR. YOUNG: How about you, Ms. Himes?

PROSPECTIVE JUROR NO. 22: I have not been accused of anything other than as a child. But it would make me feel terrible.

MR. YOUNG: Ms. Fromm, share with us what you think a fair and impartial juror should be? What is a fair and impartial juror?

PROSPECTIVE JUROR NO. 31: I think a fair and impartial juror is someone who comes into the courtroom completely open minded on both sides, willing to listen to and weigh all of the evidence. And it doesn't matter how major or how minor the charges are, as a juror, we have extreme responsibility because we have something that affects someone else's life. And we have to weigh all of the information that is given to us, listen to the instructions from the Judge, listen to the questions from the attorneys and I think we have to watch the witnesses as well as the defendant and the prosecutors.

MR. YOUNG: Good answer.

Ms. Terry, what do you think a fair and impartial should be?

PROSPECTIVE JUROR NO. 33: You know what? She said it. I mean, what more can I say? I agree. You have to be open minded. Everything is what I'm saying. I'm not trying to get out of answering that.

Everything she said ditto.

MR. YOUNG: Ms. King.

PROSPECTIVE JUROR NO. 42: Which Ms. King?

MR. YOUNG: Carla King. Do you want to answer it, Ms. King? What do you think about it?

PROSPECTIVE JUROR NO. 23: Just to add to what you said, again, objectivity. You must be objective, not to come with preconceived notions about the case.

MR. YOUNG: Carla King, what do you think a fair and impartial juror is?

PROSPECTIVE JUROR NO. 42: I have to say what all three of them said.

MR. YOUNG: If you were sitting where Jimmy is right now, would you want someone like you to be a juror on the case?

PROSPECTIVE JUROR NO. 42: Yeah.

MR. YOUNG: How do you judge and determine the credibility of someone, whether someone is telling you the truth? What do you look for?

PROSPECTIVE JUROR NO. 42: Sincerity, the way they come across when they are relaying what happened, their background.

MR. YOUNG: Mr. Fry, what do you judge when you're judging someone's -- what do you use to judge

someone's credibility?

PROSPECTIVE JUROR NO. 41: I think it was mentioned earlier, obviously some common sense. Also you have to have the ability to put things into context, try to really understand the situation. See what you see, where you think that person is coming from. And just basically you have to have as much knowledge as you can get and to derive that much knowledge. As was stated, you need to be open minded. You have to be able to take it all in and try to best decide with what you know and what you believe to be true, each particular item in representing him. You just keep building that. Hopefully it would take you to the truth.

MR. YOUNG: Ms. Olney.

PROSPECTIVE JUROR NO. 40: Can I have the question again?

MR. YOUNG: What do you use to determine someone's credibility, whether someone is telling you the truth? What do you look for?

PROSPECTIVE JUROR NO. 40: Just things like eye contact, body language, sincerity, of course, maybe a little bit about their past life, like kind of jobs they've held, kind of profile feeling for what kind of person they might be.

MR. YOUNG: So you look at various different

factors.

Ms. Demaree, what do you use to judge a person's credibility?

PROSPECTIVE JUROR NO. 20: I, like her, would also look at their body language and eye contact, the way they speak.

MR. YOUNG: I had the good fortune a couple of years ago to go to England. When I was in England, I went to one of the English courts and witnessed one of these trials over in England. And the judge had on a black robe as Judge Crawford and had his little white hat on. What that judge said, which was quite interesting, to the extent I could understand the English language over there as spoken, was it is equally as important to see what a person or how a person testified as what they said.

And that as Judge Crawford indicated to you, one of his concerns in taking notes is if you're bending down, you are not observing the witness. So the manner in which they testify, their whatever, that may be as important as what they say.

You believe that that could come into play when someone testifies?

PROSPECTIVE JUROR NO. 20: Yes.

MR. YOUNG: Mr. McQuade.

PROSPECTIVE JUROR NO. 44: But they can be taught to act, so -- you know what I mean?

MR. YOUNG: So you think there are times that people can cause a witness or train a witness, if these guys become professional witnesses. You think that can occur?

How about you? Do you think that can occur?

PROSPECTIVE JUROR NO. 35: Yes.

MR. YOUNG: Ms. Regan.

PROSPECTIVE JUROR NO. 25: Yes.

MR. YOUNG: Ms. Foor?

PROSPECTIVE JUROR NO. 26: Possible.

MR. YOUNG: Do you think that there are certain cases that the government or the Defense for that or anybody can actually train a witness how to testify?

PROSPECTIVE JUROR NO. 26: Yes.

MR. YOUNG: Ms. Himes, what do you think about somebody paying for testimony?

PROSPECTIVE JUROR NO. 22: I know it's done. I know it's done for professional expert witnesses and things. But sometimes you'd have to look at that and wonder, you know, how their story is, but I think you'd have to listen to what is being said. You have to look at the person. You have to see consistency in their

story. Consistency is important to me when I'm dealing with children because then I can see what's happening and what isn't. And I think that's what I would look for whether they were paid or not.

MR. YOUNG: Now, there can be different forms of payment. Do you think that can happen?

PROSPECTIVE JUROR NO. 22: I understand there are.

MR. YOUNG: Mr. McKelvey, what is your position as to the government cutting deals to people for their testimony, essentially letting them get out of jail for their testimony?

PROSPECTIVE JUROR NO. 21: I would like to see where it didn't occur, but I understand the need for it. Because sometimes with different folks that's the only way you can get testimony. I don't know if I could put as much credence in it as I would in somebody else. But on the other hand, can't say I wouldn't either. I'd have to hear what it was, again, the body language, everything about it in order to make a fair determination.

MR. YOUNG: Ms. Paxson, what do you think about the government cutting a deal?

PROSPECTIVE JUROR NO. 19: I didn't hear the question.

MR. YOUNG: What do you think about the government getting testimony from somebody in exchange for a deal -- meaning reduction or no jail time?

PROSPECTIVE JUROR NO. 19: Probably determine the egregiousness of the person to be guilty of the crime.

MR. YOUNG: How about you, ma'am? What do you think about government cutting deal with people?

PROSPECTIVE JUROR NO. 3: Depends on what deal they make with the person.

MR. YOUNG: You think sometimes government cuts deals with the wrong person?

PROSPECTIVE JUROR NO. 3: Probably at times.

MR. YOUNG: You think sometimes government or someone would say whatever they want to get out of jail?

PROSPECTIVE JUROR NO. 3: That's definite.

MR. YOUNG: Anyone else believe that someone may say whatever somebody wants them to say to get out of jail?

Ms. Harper, do you think someone may have an agenda when they testify? They have a hidden agenda?

PROSPECTIVE JUROR NO. 2: I'm sure that happens.

MR. YOUNG: Why do you say "I'm sure that

happens?"

PROSPECTIVE JUROR NO. 2: I guess it depends on which witness or what side they are on. But if they want to see somebody put behind bars, that would be an agenda.

MR. YOUNG: That would be one agenda and there may be other agendas that may not be similar to that.

Ms. Brown -- and this will be to everyone. We are going to see some -- whoever is selected as a juror are going to see some disturbing photographs. The prosecutor and me have all, Diane and myself have seen the photographs and they are disturbing. Is that going to cause you any concern? Any issues?

PROSPECTIVE JUROR NO. 1: No, it shouldn't. I work in -- I work at OSU nursing.

MR. YOUNG: How about you?

PROSPECTIVE JUROR NO. 2: I was thinking about this question earlier. I think I'm sensitive to photos. I'm not going to throw up or anything. But it does make me uncomfortable to look at something gruesome.

MR. YOUNG: Makes everybody, I would hope.

Ms. Blackburn.

PROSPECTIVE JUROR NO. 10: I wouldn't have

any problem with it. My boyfriend thinks it's funny to pause the movie on those scenes.

MR. YOUNG: And you, Mr. Kutzer?

PROSPECTIVE JUROR NO. 12: I wouldn't have any problem with it.

MR. YOUNG: With these photographs you're going to see -- and there won't be that many of these. Anybody by the way going to be troubled to see photographs of an individual that had been exposed to the elements for probably four to six weeks, somewhere around that time?

PROSPECTIVE JUROR NO. 28: Can I ask you to -- what do you mean by troubled? Am I disturbed by these pictures?

MR. YOUNG: Some people may not be able to witness it and not be able to probably sit on the case.

PROSPECTIVE JUROR NO. 28: Okay. You answered my question. The question, so could you not sit on the case because of these photos?

MR. YOUNG: I know some people when you show them a certain photograph, they won't look at it. They won't consider it. And it may be just too disturbing for them that they cannot sit on the case. They don't want to see it and they are not going to see it and they are not going to take a look at it. That person we

could not have on the jury. I know for a fact there is going to be some evidence --

PROSPECTIVE JUROR NO. 28: Okay. The pictures would disturb me.

MR. YOUNG: No question?

PROSPECTIVE JUROR NO. 28: Terribly.

MR. YOUNG: Now, would you be willing to take a look at them if we ask you to take a look at these photographs?

PROSPECTIVE JUROR NO. 28: I wouldn't study them, but I would look at them.

MR. YOUNG: Okay. I just -- I'm asking in case someone would not.

PROSPECTIVE JUROR NO. 25: I would have to say they would be disturbing.

MR. YOUNG: Very troubling?

PROSPECTIVE JUROR NO. 25: Because the body of the alleged victim was out four to six weeks in the environment so there is some decomposition, I would think.

MR. YOUNG: Ms. Saffield, you think sometimes people may not tell the truth when they get up and raise their right hand?

PROSPECTIVE JUROR NO. 14: I would say some people, yes.

MR. YOUNG: Do you think that some people may exaggerate their testimony?

PROSPECTIVE JUROR NO. 14: I think some people would, yes.

MR. YOUNG: Do you think some people try and lessen their participation in certain events?

PROSPECTIVE JUROR NO. 14: I'm sure that happens, yes.

MR. YOUNG: Who here has kids? Who here had kids?

You? How old are your children.

PROSPECTIVE JUROR NO. 35: Four, two and three months. Those are good changes.

MR. YOUNG: Has your child or children ever not accepted responsibility for certain acts?

PROSPECTIVE JUROR NO. 35: At first, but they always own up to it at the end.

MR. YOUNG: I had my little nephew come over to my house and I have a white couch and he wrote his name Nicholas on the couch. And I came home and asked Nicholas, Nicholas, did you write on the couch? No. No. I didn't write on the couch. Billy did. We all knew Nicholas wrote on the couch.

Do you think there are certain situations where adults may actually not accept their blame

involved in certain things?

PROSPECTIVE JUROR NO. 35: Yes.

MR. YOUNG: Have you ever heard or do you know of any teenagers that maybe go out egging or toilet papering houses have you ever heard of anybody do something that crazy?

PROSPECTIVE JUROR NO. 35: Yes.

MR. YOUNG: You have. And have you ever heard that the first one caught says "I didn't do it. Somebody else did," have you ever heard about something like that?

PROSPECTIVE JUROR NO. 35: Uh-huh.

MR. YOUNG: Do you think that could happen?

PROSPECTIVE JUROR NO. 35: Uh-huh.

MR. YOUNG: Do you think that happens in real life?

PROSPECTIVE JUROR NO. 35: Yes.

MR. YOUNG: You think that can happen in serious cases, too?

PROSPECTIVE JUROR NO. 35: Yes.

MR. YOUNG: Does everyone agree that may happen in serious cases?

PROSPECTIVE JUROR NO. 35: Uh-huh.

MR. YOUNG: Maybe the first person comes in and doesn't accept the blame and may put it on other

people, you think that could happen?

There is going to be some forensic and some expert testimony. I don't know how much. But there is going to be a coroner.

Does anybody here -- I think somebody here is in the medical field. Does anyone else have any expertise in the medical field?

You do? What is your --

PROSPECTIVE JUROR NO. 40: I'm a registered nurse.

MR. YOUNG: Registered nurse. Have you worked with the coroner?

PROSPECTIVE JUROR NO. 40: Not the coroner, no.

MR. YOUNG: Would you be able to listen to what the coroner says and his medical opinions and rely upon his medical examinations and opinions when he testifies?

PROSPECTIVE JUROR NO. 40: Yes.

MR. YOUNG: And you would be able to set aside your own knowledge if he may say something, but just take as the court has always said, the evidence from the witness stand? You would be able to sit and listen to that?

PROSPECTIVE JUROR NO. 40: Yes.

MR. YOUNG: Would everybody be able to consider that type of evidence and listen to the coroner?

Mr. Fitzsimmons.

PROSPECTIVE JUROR NO. 29: Yes.

MR. YOUNG: You're selected on this jury, you go out next Friday or next Tuesday, whatever, and you're sequestered. It's now Tuesday night. You go to the hotel. Come back on Wednesday. You deliberate. It's now Wednesday night. You go back to your hotel. You're now deliberating. It's eleven to one; you being the sole individual in this case that does not believe that the government proved their case beyond a reasonable doubt. Would you be willing to hold out to your convictions and your belief after deliberating with everyone else and you still do not believe that the government proved their case beyond a reasonable doubt? Are you the type of person that would just say, "Well, it's Wednesday. I have been in here for three days, two days. I will go along even though I don't believe it?"

PROSPECTIVE JUROR NO. 29: No, I would not give in but I would order a carton of cigarettes. But I would not give in. And at some point, I would probably want to see Judge Crawford.

MR. YOUNG: Mr. McKelvey, same question.

PROSPECTIVE JUROR NO. 21: I wouldn't give in just for the sake of giving in. I would have to be persuaded that I was wrong.

MR. YOUNG: So you would stand on your convictions even though it may get kind of heated in there? No cigarettes.

PROSPECTIVE JUROR NO. 21: Definitely.

MR. YOUNG: Ms. Demaree.

PROSPECTIVE JUROR NO. 20: Well, I don't know, to be honest. I wouldn't just cave in at first. They would certainly have to persuade me to find out why and then I would also wonder what I missed that they all heard. So they would have to convince me to change that opinion.

MR. YOUNG: And if they do not convince you and after all their arguments and all the screaming and yelling and all the delays, deprivations that may be, are you the type of person that would hold out?

PROSPECTIVE JUROR NO. 20: I would like to think so.

MR. YOUNG: Ms. Paxson, I got it right. I knew I would get it right. Same question. Same situation.

PROSPECTIVE JUROR NO. 19: No.

MR. YOUNG: You would hold out?

PROSPECTIVE JUROR NO. 19: I would hold out to the best of my ability.

MR. YOUNG: Mr. Kutzer?

PROSPECTIVE JUROR NO. 12: Hold out.

MR. YOUNG: One second, Your Honor.

Ms. Fromm.

PROSPECTIVE JUROR NO. 31: Yes, sir.

MR. YOUNG: Would you be willing to sign your name if the government hasn't proved beyond a reasonable doubt each and every element, each and every charge in this case for not guilty?

PROSPECTIVE JUROR NO. 31: Would I be willing?

MR. YOUNG: Would you be willing to sign?

PROSPECTIVE JUROR NO. 31: My name?

MR. YOUNG: To a not guilty form in the event the government hasn't proved to you beyond a reasonable doubt.

PROSPECTIVE JUROR NO. 31: If the government has not?

MR. YOUNG: Has not.

PROSPECTIVE JUROR NO. 31: Has not proven to me beyond a reasonable doubt that the defendant was guilty, I would not ever convict somebody of something that I do not believe they had done.

MR. YOUNG: And so you would be willing to sign a not guilty?

PROSPECTIVE JUROR NO. 31: Absolutely.

MR. YOUNG: There is a dead person involved in this case.

PROSPECTIVE JUROR NO. 31: I know there is.

MR. YOUNG: You, ma'am, same question. Can you sign your name to a not guilty?

PROSPECTIVE JUROR NO. 33: If they are not found guilty, right.

MR. YOUNG: If they haven't put enough evidence.

PROSPECTIVE JUROR NO. 33: If they have not been found guilty, I cannot sign my name to something saying that the person is guilty. Would not.

MR. YOUNG: Mr. Mitchell, did you hear the question?

PROSPECTIVE JUROR NO. 45: Yes.

MR. YOUNG: Would you be able to sign your name to a not guilty if these guys haven't put on enough evidence to prove to you beyond a reasonable doubt that Mr. Conway is guilty of the charges? Would you be able to sign not guilty?

PROSPECTIVE JUROR NO. 45: If they haven't met the burden of proof, of course.

MR. YOUNG: You would hold them to their burden of proof?

PROSPECTIVE JUROR NO. 45: They would have to meet the standards. In this case it's reasonable doubt.

MR. YOUNG: And there is a dead body. You're going to see a grieving mother.

PROSPECTIVE JUROR NO. 45: That's not what we are here for.

MR. YOUNG: You're going to see a grieving brother.

PROSPECTIVE JUROR NO. 45: We are not asked to do that. We are asked to judge the facts.

MR. YOUNG: You're going to be asked to consider the evidence, weigh the evidence.

PROSPECTIVE JUROR NO. 45: Yes.

MR. YOUNG: Is there anyone here could not sign a not guilty in the event the government hasn't proved beyond a reasonable doubt each and every element, each and every charge? Would anyone here not?

Does anybody -- as Mr. Lowe had said, we are nearing the end of our ability to talk with you, have you ask questions, let us answer questions.

Does anybody have any question of me?

Ms. Miller, any questions?

PROSPECTIVE JUROR NO. 36: No.

MR. YOUNG: Anybody have any questions, Ms. Foor, about the process? Anybody in the back?

Didn't get to speak much back there. Sure you don't have any questions?

On behalf of Mr. Conway, on behalf of Ms. Menashe, we would like to thank you all for coming down here. The criminal justice system does not work without citizens like you willing to take the responsibilities to come down here. And since we will not be able to speak with you again, we would like to thank you.

THE COURT: Okay. What I'm going to do is have all of you go outside in the hallway. Want to take a quick rest room break, that's fine. But I'm going to give you a recess after we've selected the jury. Don't take the recess yet. Wait right outside the hallway for Linda to come out.

We are going to do the jury selection, as I told you earlier, outside of your hearing. I'm not sure how long it's going to take. It's not going to take that long. Do not discuss the case amongst yourselves or anybody else. Don't draw any opinions or conclusions about the case. We may call a couple of you back into the courtroom individually. So please stay up here. Go ahead and step outside the courtroom.

- - -

Thereupon, the jury was retired from the courtroom and the following proceedings were had out of the presence and hearing of the jury:

- - -

THE COURT: All right.

Ms. Brown, we are back to the same thing we talked about this morning. I'm going to ask you simply: The law provides that for a juror to be qualified in this type of case, they have to be willing to consider all potential penalties and follow the instructions of the court. Do you think that even though it might be against your personal feelings that you could follow the instructions of the court in the appropriate case sign a verdict if that verdict asks for the recommendation of death? You think you can do that?

PROSPECTIVE JUROR NO. 1: Yes. I will have to.

THE COURT: Okay. Thank you. Appreciate it. Go ahead and step outside.

Ms. Harlan.

PROSPECTIVE JUROR NO. 16: Yes.

THE COURT: I'm going to go briefly with you again, because I know you had a little bit change of thoughts last night. As you know, for a juror to be

qualified to sit in this case they have to be willing to consider all of the law as I would give it to you. And in the appropriate circumstances, you have to be willing to consider all potential penalties. If, in fact, that is what the law would require you to do, even though you may be against that, do you think you could follow the law and in the appropriate case, if necessary, you could recommend or sign a verdict form recommending death and if it wasn't appropriate you would not do that? Could you do that?

PROSPECTIVE JUROR NO. 16: No.

THE COURT: Under no circumstances could you ever consider a sentence of death?

PROSPECTIVE JUROR NO. 16: No, sir.

MR. LOWE: Nothing.

MR. YOUNG: Nothing further, Your Honor.

THE COURT: All right. Thank you very much.

MR. YOUNG: Thank you.

THE COURT: Anything from the State with respect to her?

MS. PRICHARD: State would challenge for cause.

THE COURT: Anything else?

MR. YOUNG: No, Your Honor.

THE COURT: She will be excused.

Ms. Himes, go ahead and sit anywhere.

PROSPECTIVE JUROR NO. 22: All right.

THE COURT: As you well know after these two days, before we can consider a juror and before we swear them as a juror we have to make sure that they are able to follow the law whether they would agree with it or not. And I know you have had some consideration with respect to a potential verdict form dealing with and without the death penalty. Do you think if you were selected as a juror in this case and take the oath of office that you could sign a verdict form even though that verdict form may be against what you personally believe?

PROSPECTIVE JUROR NO. 22: You mean a guilty verdict form?

THE COURT: Whatever verdict form it may be, do you think you could sign a verdict form even though you're personally opposed to it? For example, opposed to a particular penalty if the law would call for that verdict form?

PROSPECTIVE JUROR NO. 22: I think I would have a difficult time signing the death penalty.

THE COURT: I think everyone would have the same difficult time. The question is, how difficult.

PROSPECTIVE JUROR NO. 22: I don't think I

could do it.

THE COURT: Do you think under any circumstances you could consider the death penalty if the law required you to do so?

PROSPECTIVE JUROR NO. 22: I don't think I could.

THE COURT: Any questions?

MR. LOWE: No, Your Honor.

THE COURT: Any questions?

MR. YOUNG: No, Your Honor.

THE COURT: Okay. Thank you very much.

MR. LOWE: State would challenge for cause.

MR. YOUNG: No objection.

THE COURT: All right. Will be excused for cause.

Okay. Ms. Regan.

Good day again.

PROSPECTIVE JUROR NO. 25: Good day.

THE COURT: Now, explain to me how you can be in "River Dance" when they are not here in Columbus right now?

PROSPECTIVE JUROR NO. 25: We were here in February, this past February.

THE COURT: I know you were.

PROSPECTIVE JUROR NO. 25: Three times.

THE COURT: Do you live here in Columbus and when they come here you dance with them or --

PROSPECTIVE JUROR NO. 25: I toured with them the last six years. I'm actually finished with them.

THE COURT: Finished. It's a great show. Absolutely fantastic.

PROSPECTIVE JUROR NO. 25: Thank you. Thank you.

THE COURT: You know why we are here. You have had some different considerations with respect to this.

Before we can make the final selection of jurors, we have to make sure every juror we select can do what's asked of them. You're going to take an oath to follow the law and if a juror couldn't do what would be required under the appropriate circumstances, we need to know that.

You have had some concerns with respect to the death penalty. Obviously, there are times where the law would prohibit you from making that recommendation. There are times which the law might require it, depending on the circumstances. If you are selected, do you think you can follow the law even though you personally disagree with it or it would be difficult?

PROSPECTIVE JUROR NO. 25: What was the last bit?

THE COURT: Even though you would personally disagree with it or it would be very difficult.

PROSPECTIVE JUROR NO. 25: It would be very difficult.

THE COURT: Do you think you can do it if the law required that even though it would be difficult?

PROSPECTIVE JUROR NO. 25: You mean to say to sign a paper for the death penalty is what you're asking? Could I do it? No.

THE COURT: Under no circumstances could you do that?

PROSPECTIVE JUROR NO. 25: I don't think so.

THE COURT: Now, you say "I don't think so."

PROSPECTIVE JUROR NO. 25: I would -- even though I'm not making the decision?

THE COURT: No. You are making that decision along with eleven other people but you would be making that decision.

PROSPECTIVE JUROR NO. 25: Right.

THE COURT: It can't be done unless it's unanimous.

PROSPECTIVE JUROR NO. 25: Right. I don't think I could sign the paper for the death penalty.

THE COURT: Any other questions?

MR. LOWE: No, Your Honor.

MR. YOUNG: Is it that you don't think you could?

PROSPECTIVE JUROR NO. 25: I think probably for religious reasons.

MR. YOUNG: Is it for religious reasons?

PROSPECTIVE JUROR NO. 25: I am Catholic and I think it would just be on my conscience thinking about it, even though I know personally I haven't committed the crime or anything like that, just thinking about it later on.

MR. YOUNG: Is it that you could not follow the law at the appropriate point or it would just be too hard personally --

PROSPECTIVE JUROR NO. 25: I think personally.

MR. YOUNG: -- to have you do it.

PROSPECTIVE JUROR NO. 25: I think personally.

MR. YOUNG: Because I know you originally indicated that you were strongly in favor of the -- or for the death penalty.

PROSPECTIVE JUROR NO. 25: I think it's one of those things I've never really been faced with that

question. And thinking about it, I thought I was one way. And I have been pondering over it since yesterday and I don't think I could.

THE COURT: Okay. Thank you.

MR. LOWE: State would challenge.

MR. YOUNG: No objection.

THE COURT: All right. She will be excused. Ms. Demaree.

Please be seated, Ms. Demaree.

At the end of the morning I asked you even though you had very strong feelings with respect to whether you think capital punishment should or should not be imposed, before we can select a juror and before that juror can take the oath, I have to make sure that juror can accept the law even though it may be different than your personal belief.

PROSPECTIVE JUROR NO. 20: Yes, I could.

THE COURT: And as I told you before, there are only very, very limited circumstances which a jury could ever consider death. And could you assure us you could only consider those circumstances going over this case and not anything else you personally think should be considered?

PROSPECTIVE JUROR NO. 20: Yes, I do.

THE COURT: Did you have any questions?

MR. YOUNG: No, Your Honor.

THE COURT: Thank you.

Hi, Ms. King. How are you?

PROSPECTIVE JUROR NO. 23. I'm fine.

THE COURT: We have two Kings. You're not related to Carla, are you?

PROSPECTIVE JUROR NO. 23: No, not that I know of.

THE COURT: Before we can make the final determination with respect to the jurors in this case and before we swear them in, we have to make sure that everybody can do whatever is going to be necessary for that person to do as a jury. You raised your hand this morning and had some concerns with respect to your ability dealing with the issue of capital punishment. And I just need to know that if you are a juror in this case and if the law is such -- and I would be instructing the jury what the appropriate law was -- such if the law would suggest you have to consider it with respect to the imposition of the death penalty, could you fairly do that even though you're personally opposed to it?

PROSPECTIVE JUROR NO. 23: Yes, I could do it as a last resort. Is that you what you're saying? Would it be an option for me?

THE COURT: If you get to that point, the law is going to provide you with, you know, what you have to do, weave through the procedures involved. But if the law provides and you sit down with the jurors and you all decide unanimously that the aggravating circumstances have been proved to you to outweigh the mitigating factors beyond a reasonable doubt, it's going to be your responsibility and all the other jurors' responsibilities that if we make that finding this is what we have to recommend and we have to recommend death if we make that finding. But you don't necessarily have to make that finding. That's something that you're going to have to do personally in weighing the evidence. If you make that finding, could you in fact go through with that and go ahead and make a recommendation of death? And at that point death would be the only option?

PROSPECTIVE JUROR NO. 23: Yes.

THE COURT: You have to make the finding first.

PROSPECTIVE JUROR NO. 23: Yeah.

THE COURT: Okay. Thank you.

Ms. Wells.

PROSPECTIVE JUROR NO. 28: Hello again.

THE COURT: You expressed some concerns this

morning with respect to capital punishment --

PROSPECTIVE JUROR NO. 28: Correct.

THE COURT: -- and your ability to do that. All jurors when they are finally selected -- and we are just about to do that final process -- they are going to be required to take an oath to follow the law. And in this case obviously since we have been talking about it, if the law would call upon you, under certain circumstances to sign a verdict form that would recommend a sentence of death, could you do it even though you might be personally opposed to it?

PROSPECTIVE JUROR NO. 28: No. But with any other option would be -- I would be arrested for breaking the law. I guess that would be my concern.

THE COURT: We don't do that.

PROSPECTIVE JUROR NO. 28: No. No.

THE COURT: What we don't want to have happen -- and this has happened. People get out here and say, oh, that's fine. They get in the jury room and say, I can't do this, folks. I know I'm supposed to. I signed and I promised but I can't do that.

PROSPECTIVE JUROR NO. 28: And I can't. And yesterday I came in front of the group and said okay, after thinking I could and I went home and knew that I could not.

THE COURT: Under no circumstances do you think you could ever sign a verdict form recommending the imposition of death if the law called for it?

PROSPECTIVE JUROR NO. 28: Correct. No.

THE COURT: Anything further?

MR. LOWE: No.

MR. YOUNG: No.

THE COURT: Okay. Thank you.

Okay. We are at McQuade, is that right?

MR. LOWE: State would challenge her for cause.

THE COURT: Challenge for cause. And, Mr. Young, am I correct, there is no objection?

MR. YOUNG: No objection.

THE COURT: Mr. McQuade, I'm just going to go back to the same question I asked you before we broke for lunch and make sure we understand that before jurors are sworn in, we have to be assured that they are of the present frame of mind that they feel they can follow the law whether they disagree with it or not. You've expressed personal opinions with respect to capital punishment. And I've told everybody that's not what we are here for.

PROSPECTIVE JUROR NO. 44: Right.

THE COURT: Now, I would just like to know

if the circumstances are such that the State of Ohio does not prove beyond a reasonable doubt that the aggravating circumstances outweigh the mitigating factors beyond a reasonable doubt, do you understand that you cannot consider a sentence of death? Do you understand that?

PROSPECTIVE JUROR NO. 44: Yes.

THE COURT: Could you follow that law?

PROSPECTIVE JUROR NO. 44: Sure.

THE COURT: Now, if the circumstances are such that the State of Ohio proves beyond a reasonable doubt that the aggravating circumstances do outweigh the mitigating factors beyond a reasonable doubt, can you consider all of the sentences that you can consider and talk about all of the sentences with the jurors and only recommend death if you thought under certain circumstances that that was the appropriate sentence?

PROSPECTIVE JUROR NO. 44: What do you mean? As far as what the full sentence would be?

THE COURT: If the aggravating circumstances do outweigh the mitigating factors beyond a reasonable doubt.

PROSPECTIVE JUROR NO. 44: Okay.

THE COURT: At that point in time you can consider all four sentences. I want to make sure that

now you are permitted to consider death.

PROSPECTIVE JUROR NO. 44: Right.

THE COURT: Can you assure us that you will look at this and appropriately decide what the appropriate sentence would be even though you personally feel that under most circumstances death is the only option? You could consider all sentences regardless of your personal opinions; is that correct?

PROSPECTIVE JUROR NO. 44: Uh-huh.

THE COURT: Any questions?

MR. LOWE: No, Your Honor.

MR. YOUNG: No, Your Honor.

THE COURT: Thank you, Mr. McQuade.

Mr. Mitchell.

Mr. Mitchell, just have a seat up front if you would.

I know you have had some concerns with respect to your ability to go forward and recommend a sentence of death if it was appropriate. As a juror when you raise your right hand, you swear to uphold the law. And in this particular case if the State of Ohio does prove beyond a reasonable doubt that the aggravated murder and the specifications existed and they proved beyond a reasonable doubt that the aggravating circumstances outweigh the mitigating factors, can you

at that point in time if it was appropriate to sign a verdict form that recommended a sentence of death even though you might personally be opposed to that?

PROSPECTIVE JUROR NO. 45: To understand that, I have to weigh those two factors?

THE COURT: Yes. And that's going to be up to you. You're going to sit down with eleven other jurors and you're going to sit there and talk about these things and how you believe. And before you can get to that point, all twelve of you have to unanimously agree that the aggravating circumstances outweigh the mitigating factors. But once all twelve make that agreement that factually this is what we find, at that point in time you've got to be of the frame of mind to say, yes, I can sign a verdict form that recommends the sentence of death. And can you do that?

PROSPECTIVE JUROR NO. 45: No. No. Not the State. And I don't know the law, given the other option when you present the sentencing, there is three life sentence options. I don't know if the aggravating circumstances would outweigh the mitigating factors to such a point where I could escalate it to signing the death penalty.

THE COURT: But let's say at the point in time that you have made your own personal finding. I'm

not going to tell you, you have to make the finding but you make the finding.

And I don't want to use a silly example. I'm going to do that. Let's say the question to decide is whether the light was red or green. Twelve people say the facts are proved to be beyond a reasonable doubt that the light was red. Now, the ramifications of that are something else. But everybody agrees and you agree the light was red.

Now, because the light is red that means something else. If you make the findings that the aggravating circumstance outweigh the mitigating factors, that means something. And at that point in time what it means is, you've got to be able to sign a verdict form under the appropriate circumstances recommending the sentence of death. And you can't say I'm going to skip over that because there is other options. That's not what you're not permitted to do.

PROSPECTIVE JUROR NO. 45: I understand that.

THE COURT: Okay.

PROSPECTIVE JUROR NO. 45: I don't know if I could make those decisions. My training and my experience tells me that there is always options. I don't know if I could separate that out.

THE COURT: Well, the actions in a court of law are guilty or not guilty.

PROSPECTIVE JUROR NO. 45: I understand that. But there is only -- I don't exist in it. I don't work in a court of law.

THE COURT: But we are here today. There are two options. When you go to a street light, if the light is red, you have to stop. If it's green, you have to go. You can't sit there. There is a lot of things we do in our daily lives we don't have options or we may only have two options.

And I'm telling you when we are here deciding this case, your options may be very limited. And what I'm saying is, you've got to be able to say -- to be seated you have to be able to say, I will consider all options. I will not foreclose an option because I have other options.

PROSPECTIVE JUROR NO. 45: I can't say that.

THE COURT: Can you say, no, you can't do it under any circumstances? Or are you saying you don't know whether you can do it?

PROSPECTIVE JUROR NO. 45: To consider the death penalty, I would only consider it as an option if there was -- let's say there is two phases. There is the finding of fact, then sentencing phase as you

explained it. And I assume there is a reason the Legislature separated that out. I don't know what that is. But -- get my train of thought here. I don't know if I could do it.

THE COURT: Do you know that you can't?

PROSPECTIVE JUROR NO. 45: Again, I would only see one situation. If that person was guilty, I felt they did it, the facts as they are presented made the decision. But in a sense that -- and I understand what you're saying. I'm not given the option to do that. I have to make this decision given the instructions and the law. But if I thought the person was going to go on the street and do it again -- you know, the example was given there is an island and I'm the governor of the island, if I was in a situation --

THE COURT: I don't like that example. Because you're not on the island.

PROSPECTIVE JUROR NO. 45: I know. But if the person is not going to be able to do it again, I don't know why to kill them.

THE COURT: Anything else?

MR. LOWE: Do you think your views on the death penalty, your thoughts would impair you from recognizing that death is one of the options in this case?

PROSPECTIVE JUROR NO. 45: Uh-huh.

MR. LOWE: You do feel that?

PROSPECTIVE JUROR NO. 45: I understand that; that that's an option in the case.

MR. LOWE: I'm saying, are your views -- do you feel that would impair you from listening and considering that as one of the options?

PROSPECTIVE JUROR NO. 45: No.

MR. LOWE: So you think you can consider it?

PROSPECTIVE JUROR NO. 45: I can understand it. I can consider it. Would I choose it? More than likely not.

MR. LOWE: Well, that's fine.

THE COURT: Thank you.

PROSPECTIVE JUROR NO. 45: You're welcome.

MR. LOWE: Judge, we would challenge him. I think he is substantially impaired. I don't think he ever gave a straight answer whether he would follow the law or not.

THE COURT: I am not going to excuse him. We will keep Mr. Mitchell.

Okay. We have agreed 48, Mr. Meyst, and Caroline Ritchey, 50, should be excused. Okay.

Do you have your list with the appropriate people crossed off?

MR. YOUNG: Yes.

MR. LOWE: Yes.

THE COURT: Here's what I want you to do: Take your list. In the courtroom we are going to refer to everybody as Mr. or Ms. We are not going to say Diane. We are not going to say Jimmy. We are going to say Mr. So and So.

What I would like you to do -- let's do this: Brown is No. 1; Harper is No. 2; Foster No. 3; Mancini No. 4; Fahringer is No. 5; 6 is Margraff; 7 is Williams; 8 is Blackburn; 9 is Kutzer; 10 is Saffield; 11 is Moore; 12 is Purifoy. And we will draw a line. That's the first 12.

So the State goes first. If the State excuses No. 6 who is now Margraff, then 18 will become 6.

MR. YOUNG: So --

THE COURT: I'm just using that as an example. If the State excuses what is now No. 6, here's the next person regardless of what their number is. We renumbered the first group of 12 and that's an accurate thing right down the list. Okay.

All right. State.

MR. LOWE: Judge, I'm sorry, the last thing -- we are going to keep kicking everybody that's

in the 12, anyone in the top 12?

THE COURT: Yes. As if they were sitting in the box.

MR. LOWE: Okay. First one, the State would excuse Juror No. 1, Ms. Brown.

THE COURT: Monique Brown. 18 becomes No. 1.

Defense.

MR. YOUNG: Excuse Juror No. 9, Thomas Kutzer.

THE COURT: 19 becomes 9.

State.

MR. LOWE: We would excuse Ms. Paxson.

THE COURT: That's number 9.

MR. LOWE: No. 9.

THE COURT: Demaree becomes 9.

MR. YOUNG: Your Honor, we excuse number 9, Susan Demaree.

THE COURT: All right. 21 becomes 9.

MR. LOWE: Excuse Juror No. 10, Ms. Saffield.

THE COURT: Ms. Saffield is No. 10. 23, Ms. King, becomes 10.

MR. YOUNG: McKelvey is No. 9, right?

THE COURT: McKelvey is No. 9, that's

correct.

MS. MENASHE: One moment, Your Honor.

MR. YOUNG: Your Honor, we will excuse Juror No. 4, Mancini.

THE COURT: 24 becomes 4.

All right. State.

MR. LOWE: State would excuse Juror No. 10, Ms. King.

THE COURT: 26 becomes 10.

MR. YOUNG: Your Honor, we will excuse Juror No. 1, Irwin.

THE COURT: 27 becomes No. 1.

MR. LOWE: State would excuse No. 3, Ms. Foster.

THE COURT: 29 becomes 3.

MR. YOUNG: We are on our pick, correct?

THE COURT: Yes.

MR. YOUNG: Juror Lisa Foor, No. 10.

THE COURT: You want to excuse Ms. Foor?

MR. YOUNG: Yes, Ms. Foor.

THE COURT: Okay. No. 31, Alba Fromm, becomes No. 10. Last challenge.

MR. LOWE: State would excuse Mr. Fitzsimmons, Juror No 3.

THE COURT: No. 33 becomes 3. Last

challenge. Defense.

MR. YOUNG: Pass, Your Honor.

THE COURT: We are going to keep four alternates. You each have two challenges. I think there is enough. So we will consider 35, 36, 37, 38 as the four alternates.

State, any challenges on those four? I'm sorry down to 35, 36, 37, 38.

MR. LOWE: State will excuse No. 36, Ms. Miller.

THE COURT: Ms. Miller. Okay. Olney takes 36's place.

MR. YOUNG: Defense would excuse Mr. Bertschi.

THE COURT: 41. I'm going to do this, Linda. 41 takes his place which is 35.

Before we finish this, what I would like to do, I think this is the appropriate way to do it. Since there is no particular order in the alternates we are going to flip, draw straws, one, two, three or four of the four alternates. Is that in agreement? We are going to draw who is number one alternate, who is number two alternate, who is number three alternate.

MS. MENASHE: We were assuming they will be in the order on their list.

THE COURT: That can be juggled. I don't want that to happen by anybody. I don't want anybody to choose who is the first alternate. That's not fair. So I'm taking these as a group. And then what we do is draw straws at the end of that process, see who is actually the first alternate.

MR. LOWE: So in the event we have all of these alternates, let's say Elmore Hawkins is next, he can be the number four alternate or it could be the number one alternate?

That's fine if that's how I believe you're doing it.

THE COURT: There are two ways we can do it: Take it as it reads, the first alternate is the first alternate. When you have a group of twelve, you're not bumping to get the highest on the list. You're in the package. I don't want someone to feel I bumped the fourth alternate and made them first alternate.

MR. YOUNG: We would request keep it as is, that was drawn at random.

Do you want to keep the list?

MR. LOWE: That's fine. That's the way I normally do it. I was going to do it differently this way.

THE COURT: So your first alternate now is

There can be a dual purpose for wanting to have somebody killed.

First of all, I don't intend on introducing that in opening anyway; so we can deal with it later, perhaps, if that's necessary. And I could provide some of the other statements which would show that Ronald Trent would say it was for this particular case.

THE COURT: Well, before you have an opportunity to ask Mr. Trent any questions, make sure he does not refer to any matters other than those which are relevant in this case; and that includes not to have any reference to any robbery in Chillicothe.

MS. PRICHARD: That's understood, Your Honor.

I didn't know if we were putting the jurors' questionnaires, surveys in the record.

THE COURT: I'm going to.

MS. PRICHARD: And also I'm unsure if the consent to representation that Ms. Menashe had signed, the statement, has been filed.

THE COURT: It has not been filed. I'm keeping it for purposes of the record. I think we have that copy. It will eventually be placed in the record. At this point in time, it is not placed in the record.

MS. PRICHARD: That's it, Your Honor.

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Thereupon, a recess was taken.

- - -

Thereupon, the jury resumed their places in the jury box.

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Thereupon, opening statements were made on behalf of the State of Ohio and on behalf of the Defendant by counsel as follows:

- - -

Thereupon, the jury resumed their places in the jury box.

- - -

THE COURT: Okay. Everybody, please be seated. It's going to be a little crowded that way. But we are going to adjourn after we hear the opening comments of counsel. So it won't be too long.

Tomorrow we are going to go down to my courtroom on the eighth floor. So you're going to have a little bit different meeting place.

But I'm going to give you some preliminary instructions today. We are also going to hear the opening comments today and then we are going to go ahead and adjourn. Before we do anything now, you have to stand up and get sworn in as actual jurors. Raise your

right hand.

- - -

Thereupon, the jury was duly sworn.

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THE COURT: Now, before we have an opportunity to hear the opening comments of counsel and before we take any evidence, I think it would be helpful if you had some preliminary instructions to follow while you are listening to and considering all of the evidence in this case.

After all of the evidence is completed and after the closing comments of counsel, I will have a final opportunity to address you in some of the actual substantive legal issues that I will not be discussing with you right now. It's at that point in time I'm going to tell you about the factors you can take into consideration, such as credibility of witnesses. I will talk to you about direct evidence, circumstantial evidence. We are going to talk about weight of the evidence. I will define for you reasonable doubt and also give you all of those definitions connected with the charges that you are to be considering.

Now, if in these instructions or in the instructions that I give you at a later point in time, any principle or idea is repeated or stated in varying

ways, no emphasis thereon is intended and none must be inferred by you. Therefore, you must not single out any particular point or individual instruction and ignore the others but, rather, you are to consider all the instructions as a whole and are to consider each instruction in relation to all of the other instructions.

Now, the fact that I give you some of the instructions now and some during the trial has no significance as to their relative importance nor has the order in which I give you these instructions have any significance.

Now, the attorneys for the parties will, of course, have very active roles during the conduct of this case. They've already conducted their voir dire. They are going to make their opening comments. They are going to be examining and cross-examining witnesses. And as their final role, they will make their closing comments to you. I want you to remember, however, the attorneys are not witnesses. And since it's your job to decide the case solely on the evidence that you see or hear, you should not consider as evidence any statement made by one or more counsel.

Now, I mentioned to you that the attorneys would be examining and cross-examining witnesses. And

I'm sure as part of that process we will have objections made by one or more counsel. When an objection is made, it calls upon me to apply the Rules of Evidence and make the legal determination with respect to the admissibility of the evidence that has been objected to.

Now, if an objection to a question is made and I decide that that question is a proper question, I will overrule the objection to that question. In that event, you will hear the answer and I don't want you to speculate as to why you think I ruled the way I did. That's my responsibility to make those legal rulings. Just go ahead and accept that ruling and consider the question and the answer. If I decide a question is improper and that question has been objected to, I will sustain the objection to that question. In that event, you will generally not hear the answer to the question that was given. And you are not to speculate as to what you think the answer to that question might have been. You are to disregard that unanswered question and don't consider either for any purpose whatsoever.

Now, there are times in which witnesses sometimes answer questions before that question has been objected to or sometimes after an objection is made the witness keeps going and answers the question.

Now, if you've heard an answer to a question

and I sustain the objection to that question, you are to disregard the question and the answer and you are not to consider either for any purpose whatsoever. It's a very difficult concept to forget something that you've heard but it's a very important concept to remember in the context of this or any other case that we have down here. So if you hear the answer to a question and I've sustained the objection to that question, I want you to disregard that question and the answer.

Now, a question in and of itself is not evidence. However, if a question supplies meaning to an answer, you can consider the question insofar as it does supply meaning to the answer. For example, if a question is asked of a witness: "Is it a beautiful day outside?" And the witness says, "yes, it is"; "yes, it is" adopts the question. So the question supplied meaning to the answer. So since the "yes" adopted the question, you can consider the question insofar as it did supply meaning to the answer. But if the question does not supply meaning to an answer, in and of itself a question is not evidence.

Now, as jurors you have the sole and exclusive duty to decide the credibility of the witnesses, the weight to be given to the testimony and you're going to be deciding all those questions and

you're going to be applying the law as I give it to you. You're going to be the sole finders of the fact.

Now, we are going to have an opportunity at this point in time to hear the opening comments of counsel. The opening comments of counsel are the attorneys' opinions of what they think the evidence will show. The opening statements, like all other statements that the attorneys make, are not evidence and it is only to assist you in understanding what the parties intend to have the evidence show.

Since the State of Ohio carries the burden of proof, the State will go first in the presentation of the opening statements and all of the evidence.

MS. PRICHARD: Thank you, Your Honor.

THE COURT: Ms. Prichard.

MS. PRICHARD: May I move the podium, please?

THE COURT: Yes, please.

MS. PRICHARD: The State agrees with the Defense on one thing that was mentioned earlier. This is serious business. This is a serious case.

What happened to Andrew Dotson is serious. That's why the State is seeking the death penalty. This is a very serious crime that we are talking about here that the State intends to prove was committed by this

man. It's almost the two-year anniversary of a very serious crime committed by the defendant.

This investigation got started essentially on October 10, 2001 when a fellow by the name of Chris Furnier had his car broken down. He stopped and pulled it over into a parking lot and started walking to his parents' house. He decided to take a shortcut through a cornfield. He started walking through that cornfield and when he got into the corn, which is about five or six feet high, he looked over and he saw something he thought might be a body. Wasn't even sure what the figure he was looking at was.

He got scared. He ran to his parents'. He called the police. The police arrived and he showed them what he had found. The police there found a badly decomposed body, the body of twenty-year old Andrew Dotson; had two stab wounds in the chest and lime had been poured over the body which was left there to decompose. The body was almost unrecognizable. No identification could be made. No physical evidence was found there at that scene and the body was taken back to the morgue in an attempt to make an identification.

Police started going through missing person's reports trying to figure out who this person was. And they found a report made by Lora Eberhard, the

mother of twenty-year old Andrew who had reported him missing. She had last seen him September 15th. He had arrived over at the house. He come over to the house and the police had just been there because they were investigating a crime, a shooting that had occurred the day before on September 14th. They had left a card for Andrew. They wanted to talk to him about the shooting. And so when Andrew arrived, his mother told him the police had been there, gave him the card, asked him to call the police. It was the very last time that she saw him.

This case had been unsolved for more than seven months. It remained unsolved until the point where somebody by the name of Mike Arthurs came forward. And he came forward to the prosecutor's office and he had a meeting with the prosecutors and the police, with his attorney, and he cut a deal. And he got a great deal. No one is going to argue that.

Mike Arthurs told the police everything that happened. He solved the case. He told them what this defendant and some other people who are involved had done step by step. He provided closure for this family. And in exchange, he got a four-year deal. He agreed to testify against everybody else involved.

Now, what Arthurs provided was that Andrew

had witnessed a shooting, a shooting that this man had done, shooting of a guy by the name of Jesse James. Jesse was injured. He was shot in the rear. There was an investigation. Really didn't go too far.

The defendant thought that Andrew was going to tell. He thought that Andrew was going to go to the police who were looking around, were trying to talk to Andrew and implicate him. So he asked two friends to kill Andrew Dotson.

He asked Mike Arthurs and he asked Shawn Nightingale. They were at a party in Chillicothe in mid-September, little hotel party, when the defendant approached them in the bathroom, basically told them they needed to help make Andrew disappear. They agreed. Plan was set in motion.

The next morning, Mike Arthurs went downstairs got in the car with Shawn Nightingale. Apparently the plan had already been set in motion and the instructions were to take Andrew somewhere, take him somewhere and kill him. So they took Andrew to West Virginia under false pretenses. They told them they had some things to take care of, people to see. Took him down to West Virginia. Even at one point led them out of the car, said they were going to look for marijuana plants, to go out in the field.

The two of them decided they couldn't do it. They couldn't kill Andrew. They got back in the car. They had given Andrew some pills. Andrew was unconscious in the back. They brought him back to Columbus. They called this defendant and said, "We couldn't do it. He is not going to tell. You don't have to kill him."

The defendant asked for a meeting. They had a meeting off of 3-C Highway in a parking lot. The defendant arrived with somebody by the name of Jamie Horton, a close friend. And Shawn Nightingale and Mike Arthurs arrived in a car separate with Andrew still in the back. And there was a discussion that took place of what to do next.

The defendant told Shawn and Mike to follow him. They followed to a cornfield off Galloway Road, the place where Andrew met his fate.

Once they were at that cornfield, this defendant told Mike Arthurs to get Andrew out of the car; and he did. Dragged him out of the car. And the defendant said to choke him.

Mike will testify and he will tell you about what he did; that he pretended, he will tell you, to choke Andrew; that he pretended to step on his chest; that he did these things to make the defendant think

that he was complying because he was scared of the defendant. You don't challenge the defendant.

After those things were done, Andrew's body was dragged back into the cornfield. His clothes were taken off, with the exception of his boxer shorts. And then Jamie Horton who had been with the defendant who had arrived at that cornfield went to the back of Shawn's car where they had already had some lime in the back, apparently from the prior day. He took it out, walked back to that cornfield and poured it on Andrew's body.

This defendant's actions at that scene consisted of getting in the back of his truck and pulling out a pickax, large instrument sharp at one end. He took that back into the cornfield. He was alone. The other three were back about ten feet or so. And they heard two thuds and the defendant walked back with the pickax in his hand and wiped blood into the dirt. And then he disassembled the pickax, the clothes that had been taken off of the body, all of the evidence was kind of divided up so it could be destroyed.

Mike Arthurs was given some things to take and destroy. The lime bag was destroyed.

Then they discussed where they should go to have an alibi. And the defendant suggested they go to a

bar. So the four left. They were going to go to a bar.

And Mike Arthurs will tell you he couldn't go. He couldn't be part of that. He went to his cousin's house. He was given things to destroy. He threw some items away. And the defendant, Jamie Horton and Shawn Nightingale all went to a bar and drank.

And then the next morning they picked up Mike Arthurs, told him they needed to get him new shoes and new clothes because they needed to burn those things like they had done with theirs so there wasn't any evidence. They took him shopping and got him some new things.

Only after these statements by Mike could be corroborated was that deal struck.

Much later, you will hear, Shawn Nightingale also cut a deal. He cut a deal in order to support the testimony of Mike Arthurs, the deal in which Shawn Nightingale will serve twenty full years in prison.

We are not asking you to excuse the conduct of Mike Arthurs and Shawn Nightingale. We are not saying they are not equally as guilty. We are asking you to understand the need to make deals, to provide closure, to listen to their testimony, to weigh it fairly, to look at the corroborating evidence.

The coroner will tell you that the two

strikes to the chest were the cause of Andrew Dotson's death. And he looked at an instrument similar to a pickax and determined that, yes, that very instrument is consistent with the wounds. Look at those sort of things that were done to corroborate what they said in determining whether or not you can believe two people who got a deal. Who better to tell you what happened that night than two people who were involved?

The State alleges the defendant was the ring leader. He ordered the hit. He carried it out. And he was subsequently indicted on various counts: One of them being aggravated murder with death penalty specifications for purposely and with prior calculation and design causing the death of Andrew Dotson and/or causing or attempting to cause the death of Andrew Dotson during the commission of a kidnapping.

The specifications are that it was done for the purpose of escaping detection or punishment for another offense, that shooting of Jesse James.

Second specification was that the offense was committed during the course of a kidnapping, basically holding Andrew Dotson against his will, or removing him or restraining him of his liberty.

Specification number three is that Andrew Dotson was a witness to an offense and he was purposely

in this case. I'm not going to go through the 14th, 15th, 16th, 17th. And, in fact, Mike Arthurs even brings August into it when talking about the death of Andrew. Surely we know he was seen after August.

What I'll say to you when determining the credibility of witnesses, just like the Judge will instruct you, listen to their testimony and see if it makes sense. See if Mike Arthurs' story makes sense when he tells you on May 13th he told the detectives that Andrew was killed in August, if that makes sense. And then think about the deal that he's getting. Not an extra day. Which leads me to the failure of the Franklin County Sheriff's Department and the Franklin County prosecutor's office to corroborate the testimony of Mike Arthurs, to substantiate it. And this failure, this repeated failure with each of their paid witnesses, if you will, is in and of itself, is basis for reasonable doubt.

But I want to talk about the other witness that was mentioned in opening statement, and that was Shawn Nightingale. And his deal was really to that he got twenty full years for testifying in this case.

And the evidence will show, again, when determining Mr. Nightingale's credibility, it's not twenty full years to wrap up his involvement in this

case, it's twenty full years to wrap up his involvement in this case, in another case, in another case and into a whole group of unindicted cases.

And again, like Mr. Arthurs, Shawn Nightingale when he got a deal, which was after May 13, 2002, he had nothing to lose, yet everything to gain; particularly, his freedom.

And one other point when considering his credibility and listening to his testimony is that it was simply stated to you on opening that they cut a deal with Shawn Arthurs to corroborate the story. They cut a deal with Shawn Nightingale who corroborates the story of Mike Arthurs. Well, ladies and gentlemen, you will hear Shawn Nightingale testify that the person that he thought killed Andrew Dotson was Mike Arthurs. Certainly, that doesn't corroborate the testimony of Mike Arthurs.

In addition to these two people, there is numerous other people that the State intends to call in this case. And, in fact, although we have no burden of proof in this case, we will be calling witnesses ourselves. And we are confident that after these witnesses testify and we do cross-examination, these witnesses -- and like my co-counsel has told you, we intend to vigorously cross-examine witnesses -- that the

evidence will show that, in fact, James Conway was not the one that shot Jesse James.

And in fact, you heard numerous times that Mr. Conway is here because an indictment has been issued against him, an indictment for aggravated murder with death penalty specifications, et cetera, et cetera. There is no indictment, however, ladies and gentlemen, that says that James Conway shot Jesse James, which is a crime. And the evidence will show that shooting someone or attempting to shoot someone, causing physical harm called felonious assault, there is no indictment alleging -- charging James Conway with a felonious assault of Jesse James.

The evidence will also show that James Conway did not order the hit on Andrew Dotson. In fact, that order came from another person.

We are also confident, the evidence will show, James Conway was not the person responsible for Andrew Dotson's death; that that person was Mike Arthurs.

The State, in a nutshell, has failed to investigate every lead. They failed to pursue every bit of evidence. Simply calling in and cutting a deal with another snitch, if you will, to corroborate Mike Arthurs doesn't get them to their burden of proof. They made a

deal with the devil. They made a deal with Shawn Nightingale. They repeatedly failed to corroborate or substantiate the stories, which the evidence will show are riddled with inconsistency.

And again, please I ask you, ladies and gentlemen, to listen to the testimony of the pirates as they came in just as you promised to do in voir dire. Because the 14th, 15th, 16th, 17th, all again, September, those are huge details when we are dealing with the seriousness of this case here. Therefore, we submit after all the evidence has been presented that quite simply the State with all of its power and all of its resources simply cannot meet its burden of proof in this case and will not meet its burden of proof in this case.

Thank you.

THE COURT: Thank you all.

It's been a long day so we are going to adjourn today until 9:00 o'clock tomorrow morning.

Go ahead -- every day you come in, you have to have your badges scanned downstairs so they know you're here. Then you're going to come up to the eighth floor. You're going to see where it says Judge Crawford and you're going to go around the elevator in my jurors' assembly room behind my courtroom.

All right. Go ahead and check in tomorrow morning at 9:00.

It's going to be very important during the course of this trial that you not have any conversations amongst yourselves or anybody else about this case. And also it's very important that you not hear, read or listen to any of the news accounts of the case.

The Dispatch will have articles probably daily with respect to the case. There may be news stories on radio or TV with respect to the case. There is no reports today, but I suspect there will be tomorrow. As I told you, you will not be filmed during that process. Make sure you tell your family and friends, "Look I'm on jury, I don't want you to tell me anything about it." Just stay away from any news account of anything going on down the courthouse and try to stay away from any radio, TV coverage, for that matter, at all.

Okay. Go home this evening. Have a great evening and we will see you tomorrow morning at 9:00 o'clock up in courtroom 8D.

THE COURT: Okay. Thank you everybody.

- - -

Thereupon, the further trial of this cause was adjourned until 9:00 o'clock, September 17, 2003.

- - -

Wednesday Morning Session,
September 17, 2003.

- - -

Thereupon, the further trial of this cause was resumed pursuant to adjournment.

- - -

MR. YOUNG: Judge, we would like to put something on the record before you bring the jury out.

THE COURT: Go ahead. Your Honor, at this time we would like to move into evidence Defendant's Exhibit A-8 which is a copy of the "Metro" Section from The Columbus Dispatch dated September 17, 2003, C4 whereby the media is again indicating --

THE COURT: I've read it.

MR. YOUNG: You've read it. So it will be introduced?

THE COURT: Okay. Bring them out.

MR. YOUNG: And, Your Honor, I don't know if you want to see if anybody has read that article.

THE COURT: I told them not to read it.

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Thereupon, the jury resumed their places in the jury box.

- - -

THE COURT: Okay. Everybody please be

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A.3d 1250 (2017) (acknowledging that the case was distinguishable from a prior case on the facts, but concluding that the "factual distinction" did not "justif[y] a difference in outcome"). Our decision in *Belton* is binding precedent controlling the outcome of this appeal, because its holding did not go beyond the facts and issues then before the court and its analysis was necessary for our ruling. Therefore, it is not dictum.

{¶ 50} Applying *Belton*, 149 Ohio St.3d 165, 2016-Ohio-1581, 74 N.E.3d 319, I agree that Ohio's death-penalty statutes do not violate the Sixth Amendment right to a jury trial as construed by *Hurst*, __ U.S. ___, 136 S.Ct. 616, 193 L.Ed.2d 504. As we explained in *Belton*, the weighing of aggravating circumstances and mitigating factors required to ensure that only a defendant deserving of the ultimate penalty is sentenced to death "is *not* a fact-finding process subject to the Sixth Amendment" (emphasis sic), *id.* at ¶ 60, but rather "amounts to 'a complex moral judgment' about what penalty to impose upon a defendant who is already death-penalty eligible," *id.*, quoting *United States v. Runyon*, 707 F.3d 475, 515-516 (4th Cir.2013).

{¶ 51} Once the jury found Mason guilty of aggravated murder and at least one aggravating circumstance, under former R.C. 2929.03(C)(2), Am.Sub.S.B. No. 1, 139 Ohio Laws, Part I, 1, 10, the court could impose only one of the following penalties: "death, life imprisonment with parole eligibility after serving twenty full years of imprisonment, or life imprisonment with parole eligibility after serving thirty full years of imprisonment." Therefore, the maximum penalty authorized by the statute following the jury's verdict at the trial phase was death, and no judicial fact-finding could expose Mason to any greater punishment.

{¶ 52} Because Mason was eligible for capital punishment based on the jury's verdict at the end of the trial phase, his argument that Ohio's death-penalty scheme violates the Sixth Amendment because it does not require the jury to make specific findings of fact regarding the mitigating circumstances or why the

seated.

Good morning. I'm sorry that you have chair duty. As far as I'm concerned, I don't care where you sit. Sit anyplace you want to, that's fine. It gets to be a logistical problem sometimes.

As I told you before upstairs, feel free to bring water in here if you want. Nothing more than that.

Okay. Our schedule is going to be very much like I told you before. We are going to try to start right at 9:00 o'clock. I do have a regular docket. I had a meeting this morning at 8:45. It went over a little bit. So I apologize for that. Depending on how my docket is, I will be breaking earlier to handle that. That will generally be around 11:30 and I'll start up at 1:30, go to 4:30 at the earliest and 5:00 o'clock at the latest.

If there's any other conflict, anybody has any problems at home or business, your contact is with Linda. Make sure she knows whatever your problems are and we will deal with it as much as possible.

Okay. With that in mind, go ahead and call your first witness.

MS. PRICHARD: Thank you, Your Honor.

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LORA EBERHARD

called by the State of Ohio on direct examination being first duly sworn, testified as follows:

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DIRECT EXAMINATION

BY MS. PRICHARD:

Q. Would you please state your name and spell your last name for the court reporter.

A. My name is Lora Eberhard, E-b-e-r-h-a-r-d

Q. And, Ms. Eberhard, do you live here in Franklin County?

A. Yes, I do.

Q. How long have you lived here?

A. Forty-two years.

Q. Do you have any children?

A. I have three children.

Q. Their names and ages please.

A. Andrew was my oldest son. When he was murdered he was twenty years old. Cecil is my other son. He is now twenty. And I have a four-year old daughter Natalie.

Q. Let me show you a photograph marked State's Exhibit B. Could you identify the person in that photograph, please?

A. Yes. That's my son Andrew.

Q. Did Andrew live at home with you?

A. No. He lived in an apartment in Hilliard on Leap Road.

Q. And how long had he lived on his own?

A. He had moved out the prior November. Would have been 2000, the year 2000.

Q. Was he living with anybody or living alone?

A. He was living by himself.

Q. Did he have a girlfriend or any children?

A. Yes. His girlfriend, Bobbi Hannah and he has a son Jacob Dotson who was eight months at the time he was murdered.

Q. Did you know many of Andrew's friends?

A. I thought I did. There was kids in the neighborhood and kids he went to school with and kids that came down and played basketball, those kind of things.

Q. Did you know someone by the name of Calvin Jamie Horton?

A. Did I know him then?

Q. Correct.

A. No.

Q. Did you know Shawn Nightingale at that time?

A. No, I didn't.

Q. How about Mike Arthurs?

A. No.

Q. James Conway?

A. No.

Q. Have you ever met any of those people to your knowledge?

A. No.

Q. Let me take you back to September 2001. Back in early September, would you see or talk to Andrew often?

A. Yes. Even though Andrew had moved out, we were close. And my grandson lives just a mile or so from me. So he would often come over with my grandson or we'd talk on the phone about every three days or so.

Q. If you would, please describe the last contact you had with your son.

A. The last day I saw him?

Q. Correct.

A. The last day I saw him was Saturday, September 15th of 2001. He had arrived at our house to borrow his brother's motorcycle. I was pretty upset. I had waited for him all day. He had talked to me the night before and he had witnessed a shooting.

MR. YOUNG: Objection.

THE COURT: Sustained. Jury is to disregard that. As a result of what he told you what did you do. Let's not relate to what he told you.

A. Okay.

Q. (By Ms. Prichard) What did you do based on what he had told you. He told you something the previous day, the 14th?

A. Yes. That Friday night he talked to me on the phone. He called. I answered the phone. I said, what is going on. I was really alarmed that Friday night. Our family had gone out looking for him once I had received a call from his girlfriend Bobbi saying there was a shooting.

MR. YOUNG: Objection. Move to strike.

THE COURT: Sustained. Please don't relate to what somebody told you. And I want you to ask the questions better.

MS. PRICHARD: Sure, Judge.

THE COURT: The jury is to disregard that.

Q. (By Ms. Prichard) You went out looking for Andrew on the 14th?

A. Right.

Q. Because of that phone call?

A. Yes.

Q. And were people --

A. The phone was ringing off the hook. I believe he called his aunt. His aunt was calling and coming over. So when I --

Q. Let me stop you just to make sure you don't relay other people's conversations.

Did you talk to Andrew after you had gone looking for him on September 14, 2001?

A. Yes. He called the house.

Q. You didn't see him that night though; is that correct?

A. No, I did not see him.

Q. Was he acting unusual when you spoke with him September 14th?

A. Yes. He told me that --

Q. Without what he told you, what was his state? What was his, I guess, voice inflection? Was there anything different?

A. He seemed urgent.

Q. Have you heard him sound, I guess, urgent like that before?

A. No. He was typically a pretty quiet, shy kid and didn't move too quickly, didn't -- not much got him riled up so --

Q. Based on your conversations with people on the 14th, did you do anything else that night?

A. Yes. He spoke to my other son. And when Cecil got off the phone -- am I allowed to say?

Q. Don't tell what Cecil said.

Did you and Cecil do something?

A. We went and picked up Andrew's car.

Q. Where did you pick his car up from?

A. Off of the west side of Columbus, off of Evergreen where he left it.

Q. Is that anywhere near where Bobbi lives?

A. It's not far.

Q. Anything further you did that particular evening with respect to Andrew?

A. Not that I can remember.

Q. The following morning, did you speak with Andrew?

A. No.

Q. Did you see Andrew?

A. Not in the morning. I received a call from my son Cecil saying he was coming.

MR. YOUNG: Objection. Hearsay.

THE COURT: Let's not relate to what he told you. What did you do as a result of the phone call.

A. I waited on Andrew as a result of the phone call. And as I was waiting for him that day, I received a knock at the front door. And most people don't come to our front door. I went to the front door and there was two men there from the Franklin County Sheriff's department.

Q. Did they identify themselves as sheriff's

detectives?

A. Yes. They were sheriff's detectives, Detective Green and Detective McDonald.

Q. And did they speak with you?

A. Yes. They asked if Andrew was there. I said no but I was expecting him. They said --

MR. YOUNG: Objection. Hearsay.

THE COURT: Overruled.

MS. PRICHARD: Thank you.

Q. (By Ms. Prichard) Continue.

A. I gave them his cell phone number and spoke with them briefly, asked them if they knew what was going on. They said --

MR. YOUNG: Objection. Hearsay.

THE COURT: Overruled.

Q. (By Ms. Prichard) You can continue. What did they say?

A. They said they believed my son was witness to a shooting and they wanted to talk about it.

THE COURT: Just one second. Hold on.

There are a lot of different concepts in law that are going to come up during the trial. And sometimes I'll have an opportunity to explain them to you and sometimes I'm not really going to be able to do that because they are not really things that are

necessary to explain to you.

But let me just tell you a little bit about what we are talking about hearsay. Normally we don't let witnesses testify to what other people told them because that person is not on the witness stand, the person who actually did the speaking. And the other side wouldn't have a chance to cross-examine that witness. So we normally don't allow people to testify to what other people told them. But there are exceptions to that. And I'm going to let this witness testify to some matters, what other people told them. And I'm not going to let this witness or any other witness testify to certain other matters.

Let me give you an example of what we are allowed to do. If somebody testifies on a witness stand that I received a phone call that there is a disturbance down at Broad and High and then I got in my car and I drove down to Broad and High, I would allow that into testimony for the reason being as why did you go to Broad and High. I went to Broad and High because I got this phone call that there is a disturbance. I'm not letting that be introduced for the truth of the fact that there is a disturbance, only why did you go to Broad and High. I went to Broad and High because somebody told me there is a disturbance.

So I'm going to allow some things in if they apply for the purposes of why did you do what you did. And if it's going to be accepted for the truth of what is said, I'm not going to allow that in.

So I may tell you to disregard some stuff and I may not. So just kind of hang with me on that if you would please. Okay. Let's not relate to anything dealing with somebody told them about any incident, just what they did as a result of what they were told.

And if you don't mind, I'm going to let her lead the witness a little bit around those facts so the witness does not say things they shouldn't say.

MR. YOUNG: No objection, Your Honor.

MS. PRICHARD: Thank you, Your Honor.

Q. (By Ms. Prichard) All right. Detective came to your door, wanted to speak to Andrew, correct?

A. Right.

Q. Did you indicate that Andrew wasn't there?

A. Yes.

Q. Did you indicate that you were expecting Andrew?

A. Yes. And I did also give them his address.

Q. You gave his address and phone number, correct?

A. Yes.

Q. Did they leave you with business cards or any information to relay to Andrew?

A. Yes. They asked me when I saw him to please give them their card and they needed to speak to him.

Q. And they left a business card?

A. Yes. From the Franklin County Sheriff's detectives.

Q. They didn't wait around to talk with Andrew then?

A. No.

Q. Did you later have an opportunity to give Andrew that business card?

A. I did not directly give him the business card. I retrieved my other son's motorcycle helmet. So I decided to go to church on Saturday evening and I placed the business card down inside the helmet and I set it inside the door.

Q. What time was it when the detectives arrived?

A. I think it was around 4:00, 4:30 in the afternoon.

Q. How long did you wait until you finally left the house?

A. I left the house about five till 6:00

Q. And Andrew hasn't shown up or called yet?

A. Not when I left the house. But when I walked to my car in the driveway there was a car in the driveway that had just pulled up.

Q. Was Andrew in that car?

A. Yes.

Q. And did he get out and speak with you?

A. He got out of the car. Didn't walk directly to me, but I walked up to him and wanted to talk to him.

Q. Did you know any of the other people in the car?

A. Not at that time.

Q. Could you describe the car?

A. It was a white Jeep Cherokee, a fairly new model --

Q. Did you notice anything --

A. -- new and shiny. It was new and shiny. That's why I assumed it was new.

Q. Did you at any time notice anything unusual or get a plate or anything from it?

A. Yes, I did. The person who was driving the car got out of the car. That person I know now as Jamie Horton and he also got out of the car right after Andrew did. There was another person in the passenger seat I could only see a shadow of but I didn't know who it was. And I approached Andrew; tried to stand between Andrew and Jamie Horton even though I didn't know who that was because I wanted to talk to him and I had never seen those people before. I had no idea who they were or what they were doing.

Q. Were you trying to talk with Andrew privately?

A. Yes.

Q. Had he gotten out of the back seat of his Jeep?

A. Yes.

Q. And was he there to pick up the motorcycle?

A. Yes. That's what I assumed. I said to him the helmet is in the house. Please go get the helmet. And I spoke very quietly to him and said, "The police detectives were here today to see you." And he immediately jumped, kind of startled and said, "What? The police were here," speaking very -- speaking loudly. And I was nervous about that.

Q. Was that an unusual way for him to act?

A. Yeah. He seemed antsy, kind of jittery.

Q. What happened at that point?

A. I went ahead and got in my car and Andrew proceeded into the house when I backed out of the driveway, I wrote down the license plate number. I noticed it was a Ross County plate and I wrote down the license number. And I went to church. And when I got into church, I went into an area to use the phone and I called my husband.

Q. Why did you call your husband?

A. I didn't know what was going on and I was scared and nervous and couldn't understand why Andrew wouldn't tell us what was going on. And I said, "I got the

license plate number of the car. Did he pick up the helmet?" And my husband said, "yes, he did." I said, "The police detective's card is in that helmet, so maybe he will call them."

Q. Did you have any further contact with Andrew that night?

A. No.

Q. Did you ever speak to Andrew after that point?

A. Never saw or spoke to him again.

Q. You went to church that night?

A. Yes.

Q. And then went home?

A. I went home and made a call into the Franklin County detective's bureau. And I believe I spoke with Detective Green and told him that Andrew did come to the house and I gave him the card.

Q. And the card and helmet were, in fact, missing from the house?

A. Yes. And I also gave him the license plate number.

Q. Did you at some point file a missing person's report?

A. Yes.

Q. When did you do that?

A. I don't exactly remember the date.

Q. Was it close to this period of time?

A. Yes. Yes.

Q. And why did you file a missing person's report?

A. Well, it just wasn't like Andrew for us not to hear in him. And I worried something, something awful had happened to him.

Q. Had you tried to call him?

A. All of our family members went to his apartment, checked with his girlfriend, left messages on his cell phone and we never heard from him.

Q. So he did have a cell phone that was working?

A. Yes.

Q. Let me show you State's Exhibit A.

Show you State's Exhibit A. Tell me if you recognize that.

A. This is Andrew's cell phone bill or a report of the cell phone.

Q. And if you would, flip to the last page. If you would please indicate the date of the, I guess, the last call.

A. The last call incoming or outgoing?

Q. Either. Just the last call on those phone records. When is the cutoff?

A. The cutoff is September 15th. That's the last day I saw him. And there is a call, the 462-6743. I

tried that number. That's the direct dial number to a particular detective at the Franklin County detective bureau, at 7:20.

Q. Then you were reviewing his cell phone records and trying to do some investigating.

A. I had seen a copy of the cell phone records and I thought I recognized that extension 462 and thought that was like a city or county number. And I dialed it and that's where it goes to.

Q. And that was September 15th?

A. Yes, at 7:20 p.m.

Q. When was the next time you heard something about Andrew?

A. There was some rumors from kids that stopped by the house that said --

MR. YOUNG: Objection.

THE COURT: Sustained.

Q. (By Ms. Prichard) There were rumors and lots of things from how long? Weeks? Months?

A. From the moment he left, the last time we saw him we were asking people where is he? Have you seen him? Have you talked to him. Those kind of things.

Q. Were you relaying this information to the sheriff's office?

A. Yes. I did call the sheriff's office and asked

them, I thought maybe he had a motorcycle accident and would they check the area hospitals or do I need to do that. And yes, so that's what they told me, that I needed to do that.

Q. Did you talk with various detectives at the sheriff's office?

A. Yes. Initially, I talked to Detective Green. And once it was brought to my attention by a family friend that a body was found on Galloway Road. I don't know if she didn't want to alarm me. But she just said I don't think it's Andrew, but Andrew could be anywhere and I think you need to call. That's the time that we entered a missing person's report just in case he had been in an accident or the hospital.

Q. And at what point did the sheriff's office ask you to come down and assist with making an identification?

A. From the moment that we saw the article in the paper we called the sheriff's office and said, "My son is missing. Is there any possibility that this could be my son? Could we come down and talk to you about it?" And they initially said we don't think it's your son. So a day or two passed. It seemed like longer than it was actually. But a day or two passed. I told the lady on the phone who answered the sheriff's office, "My son

had a tattoo on one of his arms. Can you tell me if the body has a tattoo?" She said not that she was aware. So I felt relieved.

I went back to work. The morning I went back to work, I got a phone call from Bobbi, Andrew's girlfriend. She was hysterical saying that they are going to come and get you and they want you to bring dental records. And so then I immediately hung up the phone, called the sheriff detectives and said, you know -- you know, what is going on? And they said, "We don't think it's your son, but he is the only male listed missing in Franklin County. We need to check this out." So could you get some dental records and meet us down at the detective bureau.

Q. Would this be about early, mid October, 2001?

A. Yes. Yes. I believe it was around October 17th, I believe.

Q. And did you go down to the sheriff's office with those records?

A. Yes. My husband came and picked me up from work. We went to the dentist's office and they gave us the dental records. And then he drove me down there.

Q. Show you State's Exhibit A-1. Do you know what that is?

A. That's the envelope that they gave me at the

dentist office.

Q. And you took that to the sheriff's office?

A. Yes.

Q. What did you do once you were at the sheriff's office?

A. We entered the sheriff's office. My husband handed them the dental records and we set down. There was a large glass where the receptionist sits and there were several men talking looking at the dental records. Asked my husband, are they saying anything? What are they saying? Can you hear them? He said, No, they are just looking at the dental records. Then a detective came out and said, we are going to take the dental records to the morgue. We will call you. You can go home.

Q. Did you go home?

A. No. We said we cannot leave. I'm going to sit here and wait until you get back and, you know, we need to know if it's my son or not.

Q. Were you ever asked to go look at the body to make an identification?

A. We asked if we could. I had asked once the detective came back. We sat there for about five hours. And the detective came back and asked us not to leave and not to use the phone. So they called us back to a

conference room and said this is Andrew's body. His dental records match. And I said, I need to go see Andrew. And the detective said, you can't see him. And I said, I need -- can I just go be in the room with him. You know, I won't look at him, whatever. And he said, no, I don't want you to remember him that way.

Q. Did you go home that evening?

A. Yes.

Q. Were funeral plans made?

A. Initially they asked us not to say anything to anyone. They wanted a day or two to kind of get a jump start on the investigation; could we just go home and not say anything. They would contact us when it was released to the press. So that's what we did.

Q. Eventually a funeral was held?

A. Yes. Approximately a week later. We initially went to the funeral home and made the arrangements. And I asked the funeral director -- I called the coroner's office. They said they would release the body. And when I went to the funeral home, when the funeral director called, there were some problems at the coroner's office I think because they didn't want that information given out over the phone that Andrew was there so --

Q. So detectives were involved essentially with

parts of the funeral as well; is that accurate?

A. Yes. They did let us know that they would be at the funeral home. They would be outside the funeral home. They asked me to make -- try if I could to make sure everyone signed the registry at the funeral home. And after every service or a break in between they took us back in the room and reviewed who attended the funeral and those kinds of things.

Q. Did you look at that register?

A. I don't know if I looked at it at that time or not. The detective had it.

Q. So at some point later did you look through the registry?

A. Yes. Yes.

Q. Did you see a signature for a James Conway?

A. No, I did not.

Q. How about Shawn Nightingale?

A. No.

Q. Mike Arthurs?

A. No.

Q. Jamie Horton?

A. No.

Q. Did you ever try to contact James Conway?

A. I did go visit him in person at the jail.

Q. And why did you do that?

A. This was about April. My son was killed sometime in September. It didn't appear to me that -- I mean, I didn't know exactly what was going on in the investigation. I wasn't sure that the -- I wasn't sure if this homicide would be solved. And for some reason -- I'm not sure I can explain why I felt the need to go see him and I thought I would know if he is involved in my son's murder.

Q. And did you in fact have a visit with him?

A. Yes. I went to the jail and I didn't know if he would see or even know my last name so when I went to the jail. I put my name down and I had the lady there put Andrew's name down and he did see me.

Q. Well, was this, I guess, through some sort of a partition or something of that sort?

A. Yes. Yes, like a glass.

Q. Were you able to speak with him?

A. Yes, briefly. Sort of. I had never been in a jail before. It's sort of kind of a pay phone situation with the glass and I saw him approach and things are locked from the back and I saw him approach with a guard and I saw him talking to the guard and then he approached me and said I can't see you because I have family coming today and if I see you, I can't see them. He went back and talked to the guard. I think I

commented to the guard, is that true? He talked to the guard briefly and then re-approached and we spoke for just a few minutes.

Q. And what did you say?

A. I asked him -- I'm not sure verbatim I can remember what I said, but something to the effect, I need some help with Andrew. He said, made reference to two girls that lived by a Shell Station that maybe would know. I asked him if he was on a motorcycle ride with my son. He said no. He said Andrew and I were friends. I'm sorry. I'm sorry. And he had to leave.

Q. Had you seen him at the funeral after you saw him in person and saw him there? Had you seen that person at the funeral?

A. No.

Q. Was that the end of your contact, your visit there with Mr. Conway?

A. Yes, it was.

Q. Do you see him in the courtroom today?

A. Yes, I do.

Q. Would you please point to him and describe what he's wearing.

A. He's at the defense table. He's in a dark suit sitting with his two lawyers with a gray tie and white shirt.

MS. PRICHARD: Ask the record reflect the identification of the defendant.

THE COURT: It may.

Q. (By Ms. Prichard) And this was April, 2003?

A. Yes.

Q. And the case was unsolved at this point?

A. Yes.

Q. Were you staying in contact with the sheriff's office during this time just trying to keep updated on the case?

A. Yes. Initially it was rather chaotic. At the time they were going to put it in the paper, Sergeant Verbance said I would be the point person for the family. He would be the point person on the other side trying to -- I would speak to him. He would relay information to me.

And generally we spoke -- I called him once a week. I think for some reason it was a Tuesday morning when he seemed to be available. I checked in once a week and spoke with him.

Q. Did you eventually become aware that there was a break in the case?

A. Yes, I was aware but I'm not sure of the date. It was actually very close to the time of the arrest late in May.

Q. And did you become aware that a deal had been cut with Mike Arthurs?

A. I didn't know it was Mike Arthurs.

MR. YOUNG: Objection. Calls for speculation and/or hearsay.

THE COURT: Overruled.

Q. (By Ms. Prichard) Go ahead.

A. I didn't know Mike Arthurs and they didn't put a name to that person but I knew that someone --

Q. Cut a deal?

A. Someone had cut a deal, yes.

Q. Did you ever see Andrew's cell phone or any personal property of his again?

A. No.

Q. Was there any personal property, any sort of jewelry or anything that he wore regularly?

A. Not that I can think of -- I mean, no, not that I can think of.

Q. And at some point here in the recent past, did you become aware of a deal being cut with Shawn Nightingale?

A. Yes, I did.

Q. And did you participate in that process?

A. Yes.

MS. PRICHARD: If I may have a moment, Your

Honor.

I have nothing further.

THE COURT: Mr. Young.

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CROSS-EXAMINATION

BY MR. YOUNG:

Q. Good morning. Is it Eberhard?

A. Yes.

Q. My name is David Young. I represent Mr. Conway. I have some questions. And I'm sorry for your loss.

A. Thank you.

Q. Prior to testifying today, did you speak with the prosecuting attorneys?

A. Prior to today?

Q. Yes.

A. Yes.

Q. And did you review any of your previous testimony and/or statements given?

A. I glanced at them briefly but I just didn't want to be -- I thought I will be nervous. I don't want to confuse myself. I'm just going to go from my memory.

Q. So you actually physically saw Andrew on September 15th?

A. Yes.

Q. And at approximately five till 6:00 or 6:00

o'clock?

A. Yes.

Q. And you wrote down a license plate number?

A. Yes.

Q. And it had Ross County plates.

A. Correct.

Q. And you gave those to Detective Green or Detective McDonald, whomever?

A. Yes, I did.

Q. And did you actually speak with Andrew on September 14th or did Cecil speak with Andrew on September 14th?

A. I believe I spoke to Andrew because we had a conversation -- yes, I believe I did.

Q. And have you prior to today ever told a detective, ever testified or in any way indicated to anybody that you spoke to Andrew on September 14th?

A. I assume I did.

Q. Did you speak with Detective Scott on October 18th?

A. I'm not sure in regards to what. But I believe we identified his body a week after it was found. And I believe it was found October 10th and I believe it was identified the 17th and we had the funeral the following Wednesday. So it was essentially weeks.

Q. So you identified the body on October 17th, approximately, right around that point?

A. Yes. I mean, I wasn't permitted to actually look at his body but I brought the dental records.

Q. And did Detective Scott, I think with Detective Floyd they came over to your house and had a tape-recorded conversation with you and certain other family members?

A. No. That's not true.

Q. Did you come down to the sheriff's department, you and certain family members and have a tape-recorded interview with them?

A. A different day than the identification? Is that what you're saying?

Q. Yes, a different day.

A. I did not. My husband and my son and other of Andrew's friends, my son accompanying people down that needed rides.

Q. Did you provide to any detective, Detective Green, Detective McDonald, Detective Scott an identification of that individual that you indicated was the driver of this Jeep?

A. I believe even on the day we identified them I attempted to describe the person because I didn't know him and I described him to Bobbi hoping that she would

know who it was. And on other occasions I'm sure I did.

Q. And isn't it correct that your description of the individual that got out of the car was short, chubby and blond?

A. No.

Q. You had been in constant contact with Detective Scott during the pendency of this case and various others, correct?

A. I have been in contact with Sergeant Verbance and then there was a point where he directed me to Detective Scott.

Q. And that would be Zach Scott, the Franklin County sheriff?

A. Yes. Yes.

Q. And at a point in time you have an opportunity to review photographs with one of the members of the detective squad at the Franklin County Sheriff's department?

A. Yes. I did see photographs.

Q. And were those photographs single photographs?

A. When you say "single".

Q. Show you one photograph as opposed to a photo array as they are known.

A. No. I believe I saw several photographs.

Q. And were those in the individual photographs or

were they --

A. One person, right, at a time.

Q. And did you identify anybody from those photographs as a person who was present at your house?

A. Yes. Jamie Horton.

Q. And did you sign and initial and date that photograph that you identified as Jamie Horton?

A. Not that I remember.

Q. You identified the cell records of your son Andrew?

A. Yes, I did.

Q. And on the cell or the cell records or bills, it indicates that the cell, the account name was a Maranda Oliver?

A. Yes. I saw that.

Q. And Maranda is the mother of Mr. Conway's child, correct?

A. I was told that. I don't know that for a fact.

Q. On April 11th, you went down to the jail to speak to Mr. Conway?

A. Yes.

Q. Did you go down a couple days prior to that time --

A. Yes.

Q. -- to try to speak with Mr. Conway?

A. Yes. Approximately a week before I had called, talked to a Sergeant Verbance and told him what I wanted to do. He told me that he couldn't stop me from going. Personally he wouldn't recommend it. And he transferred me over to Detective Scott. And I told him what I wanted to do and asked him, you know, would that hurt our investigation. Could I go down there. And he gave me permission to go. I believe I went earlier that week. I'm not sure what day of the week the 11th is on then. But it was a day you couldn't visit him because of his last name or however that's done.

Q. It was a non-visiting day you go down there?

A. Right. The letter of the alphabet --

Q. Isn't it true A through E on Monday, F through K on Tuesday and so on?

A. Correct.

Q. And, in fact, on the day you went down there you indicated that you went in the jail and you gave the jailors Andrew Dotson's name?

A. In addition to my own name. I told the lady I don't know if he knows me. Would you also put my son's name on there. And she made a comment, he will know you when he sees you. She probably assumed I was a family member.

Q. But he doesn't know?

A. I don't think he knew me.

Q. He didn't know you. So you went up the elevator and you went into the room and Mr. Conway came toward you?

A. Yes.

Q. He's never seen you before, has he, that you know of?

A. Not that I know of.

Q. You've never seen him before, have you?

A. No.

Q. There is a -- you provided a name of your deceased son?

A. Right.

Q. And he indicated to you that he could not see you because it was a visiting day.

A. Right.

Q. And on a visiting day you're only entitled to one visit per person, correct?

A. I think so.

Q. And, in fact, if he saw you, he could not see his family?

A. Right.

Q. And he indicated he could not see you. You, I believe, testified that you asked the guard behind the glass whether it would be permissible to have him talk

to you.

A. I said when he instructed me that he couldn't see me because then he couldn't see his family member -- and I believe he said someone was coming that day -- and I asked the guard is that true.

Q. And did the guard respond to you?

A. I couldn't hear him. He was kind of back where they lock -- bring the inmates in. So I heard -- I saw the two of them talking so I don't know what they said. But he proceeded forward for just a few minutes.

Q. Okay. So Mr. Conway on his own was talking to a deputy?

A. Right.

Q. And this place where you visit there is approximately five to six cubicles, correct?

A. Yes.

Q. And you then approached the glass in one cubicle, correct?

A. Yes.

Q. There is a phone, I believe, on the left or maybe --

A. I don't think I saw a phone. I think there was something in the glass that you spoke through, but I can't say for sure.

Q. Then they bring the person into a cell, a jail

cell?

A. Right.

Q. Very, very small. And they shut the door behind the individual?

A. Right.

Q. Mr. Conway spoke to the guard and the guard permitted him to talk to you?

A. That's what it appeared, yes.

Q. He was polite and respectful to you, wasn't he?

A. When I initially saw him walk to the cell and initially look at me and spoke to the guard, I noticed his hand started shaking and I didn't know what -- I didn't know if he was going to come forward or not come forward. And he approached me, told me I have family members coming. And I said to the guard is that true. He sort of backed up and spoke to the guard, again came forward and spoke a few minutes.

Q. He answered the questions that you asked, didn't he?

A. It didn't seem to make sense to me. But he did engage in a conversation with me, yes.

Q. He looked you directly in the eye when he responded to you?

A. Yes, he did.

Q. He didn't know you, never seen you before?

A. I don't know. I don't think he knew me.

Q. Would it be fair to say that you interrupted -- unexpectedly interrupted his one visiting day?

A. I think that's fair to say, yes.

Q. And you prepared an e-mail and sent it to the detective's bureau as to your observations?

A. Right. I did let them know that I did visit the jail and they asked me to jot down the conversation and turn that in to them.

Q. And in your e-mail that you sent to Franklin County Sheriff's Department, you do not indicate that Mr. Conway's hands were shaking at all?

A. I believe at the bottom of the e-mail I commented upon his demeanor and his -- things I just observed myself. I think if you read at the bottom I talk about that.

Q. And nowhere at the bottom of your e-mail do you indicate that his hands were shaking?

A. Okay.

Q. You filed the missing person police report on October 16th '01, correct?

A. I can't be sure of the date. I didn't keep a copy of it.

MR. YOUNG: May I approach the witness, Your Honor?

THE COURT: Yes.

Q. (By Mr. Young) Showing you what's marked as Defendant's Exhibit 1.

MR. YOUNG: May I approach?

Q. (By Mr. Young) Do you recognize that?

A. Yeah. This appears to be the missing person report the policeman wrote up when we asked him to come out to our house.

Q. And that is a copy. That is not the original, correct?

A. It looks like a copy.

Q. Other than the highlighted areas, is that a true and accurate depiction of the police report which you prepared on October 16th?

A. You said other than?

Q. Other than the highlighted areas.

A. It appears to be accurate.

Q. And on that form, does it list a place where the person was last seen?

A. It says date occurred. I assume -- is that what you mean?

Q. No.

MR. YOUNG: May I approach, Your Honor?

Q. (By Mr. Young) I'm sorry. That box indicated possible destination. Did you write anything in that

box?

A. No. I didn't write really anything on the form. The policeman asked us questions and wrote.

Q. And the policeman who input that information on that form, did they receive that from you or other family members?

A. My husband and my son and I were all in the kitchen with them.

Q. And your son being Cecil?

A. Yes.

Q. And what's the date and time that was filed?

A. When it was filed? The report date?

Q. Report date.

A. Report date is 10/16/01

Q. Andrew had one cell phone, correct?

A. No. I believe he had more than one cell phone. I'm not sure. I know for sure he had one cell phone.

Q. And are you aware, if you know, whether they recovered any cell phones from Andrew's -- let me strike that.

Did you give the detectives permission to go in and search Andrew's apartment?

A. Yes. We gave them a key.

Q. And do you know what they recovered from that apartment?

A. No, I do not.

Q. When you met with Andrew on September 15th at 6:00 o'clock, did you tell Andrew that he was a suspect in a shooting?

A. I believe my words to him were, "the Franklin County detectives had been here. They want to talk to you about the shooting."

Q. And you didn't tell him that either?

Withdraw that. To your knowledge, do you know whether Andrew had ever cooperated with the police in any investigation?

A. As far as?

Q. Before this. Do you know whether he ever became a confidential informant.

A. I have no idea.

Q. Did you ever know whether he ever went undercover, was a witness in anything?

A. No. He never told me that.

Q. I believe there were two names mentioned in your meeting with Mr. Conway. A Summer, who is Summer?

A. I didn't know. I had asked people who that was. I believe Kyra and Summer, I think, friends of Andrew's. But they weren't people I had met prior to this incident.

Q. Has the motorcycle ever been returned to your son

or to yourself? A motorcycle borrowed by Andrew?

A. I mean, it would be hearsay. Do you want me to say where we were told it is?

Q. I will withdraw the question.

A. Okay.

Q. You testified that you and Cecil picked up Andrew's car.

A. Yes.

Q. And where did you and Cecil take Andrew's car?

A. I dropped Cecil off to get it. He came back home. And I'm not clear, but I think he was afraid to leave the car at the house and he took it somewhere. But I can't remember if it was that evening or the next day.

MR. YOUNG: One moment, Your Honor.

Q. (By Mr. Young) Just for purposes of the record, what is your home phone number?

MS. PRICHARD: Objection, Your Honor. Can this be done privately, please.

THE COURT: Let's go ahead and do that afterwards.

Q. (By Mr. Young) And do you know where you dropped Cecil off to pick up that car?

A. Yes. It was -- I went down Evergreen. There is an intersection. But I can't recall the name of the

street. His car was there.

MR. YOUNG: Thank you. I have no further questions.

THE COURT: Redirect.

MS. PRICHARD: Thank you, Your Honor.

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REDIRECT EXAMINATION

BY MS. PRICHARD:

Q. Ms. Eberhard, was there a tape made of an interview with you and several family members being present by the sheriff's office?

A. Yes.

Q. And were there lots of people talking on that tape?

A. Right. I didn't realize when we identified Andrew's body that there was a tape recorder going. I mean, I didn't see the tape recorder. I didn't know we were being recorded.

Q. But you reviewed a tape with you and numerous family members all talking on it?

A. Right. Right.

Q. You had told Mr. Young about some photographs you had looked at over at the sheriff's office, some individual photographs. Was that something you asked detectives if you could do?

A. Yes.

Q. And were detectives showing you things and asking you to sign things or were you flipping through books?

A. I was flipping through a book.

Q. Let's talk about your visit to the jail to see Mr. Conway. You said his hands were shaking, you told Mr. Young.

A. Yes.

Q. Did you describe his demeanor to detectives in that e-mail that was referred to?

A. Yes, I did.

Q. Do you remember what you told him?

A. Yes. He was very -- seemed nervous. I mean, I was nervous. I had never been in a jail before. And obviously if I thought this person killed my son, I was extremely nervous and claustrophobic.

But when I saw him, I saw his handshake. He walked toward me. And the sentences were kind of short and choppy. Didn't necessarily seem to make a lot of sense. But yeah, I believed he seemed anxious.

Q. Was he crying over Andrew or anything like that?

A. No. No.

Q. And about how long would you say that e-mail to the detectives was?

A. Just one page. Listed the date and the time I

went.

Q. Did you say you went through every single detail of everything that happened that day and that evening?

A. Probably not. I just wrote it when I came back. Because the sentences were choppy. I thought I don't know if I'm going to remember the conversation word for word.

Q. Does that visit still stand out to you today?

A. Definitely.

Q. Did you end the visit or did the defendant tell you he had to go?

A. I believe he said he had to go.

Q. Did you ask if you could come back?

A. Yes. I made a comment about, is there a day that your family isn't coming. And his comment to me was "I have a lot of family."

Q. You were shown Defendant's Exhibit 1, the missing person's report.

A. Yes.

Q. I believe you said you didn't write anything on that form.

A. I signed it, but I didn't fill in the details.

Q. And the information you gave to officers, were you also relaying a bunch of hearsay information to them as well?

A. Yes. And when the body was found, we kept calling into Franklin County, the receptionist or the lady that answers. We kept asking kind of the same questions.

She said, "Ma'am, if your son -- if you think something has happened or he hasn't returned home, you need to file a missing person report."

Q. After you didn't hear from Andrew for sometime, did you go to his apartment to try to find his cell phone or any property of his?

A. Yes. My son and I went there, kind of looked around. Just didn't want to stay there. We didn't really know what to do.

Then Bobbi and I after -- his girlfriend and I, after we left the funeral home, drove to Andrew's apartment. She wanted a particular picture of her and Andrew and Jacob and she knew it was at the apartment or she thought it was at the apartment. And we went to the apartment after we left the funeral, after making arrangements and looked for the photograph.

Q. Did you find the photograph?

A. No. We didn't find -- I don't believe we found any photographs.

Q. Did you find the cell phone?

A. No. We didn't find his cell phone.

Q. And had detectives been there at that point or was it after they had been there?

A. Well after they had already been there. But we were in shock and looking for this picture and we thought, you know, maybe we are not supposed to be here. And then we -- but by then we had already been there and looked through the whole apartment so --

Q. Prior to detectives coming out there and searching the place, had you been there?

A. Yes. But before I knew Andrew had died.

Q. And did you see his cell phone laying around at that point?

A. No. No.

MS. PRICHARD: Nothing further.

THE COURT: Anything further, Mr. Young?

MR. YOUNG: Yes, Your Honor. May I approach the witness?

THE COURT: All right.

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RECROSS-EXAMINATION

BY MR. YOUNG:

Q. Showing you what's marked Defendant's Exhibit 2. Do you recognize this?

A. Yes. It's where I jotted down the notes of my visit with Jim Conway at the jail.

Q. And other than maybe some markings, colored markers, is that a true and accurate depiction of the e-mail which you sent to the Franklin County Sheriff's Department on April 12, 2002 at 2 28 fifteen?

A. Does this look like a copy of the e-mail is that what you're asking me?

Q. Yes.

A. Yes.

Q. And in the e-mail it says, did Mr. Conway ask you, what is it you want? And what was your response to that question?

A. I need some help about Andrew.

Q. And then what was Mr. Conway's response to that?

A. I don't know. Have you spoke with Summer, lives by the Shell Station.

Q. Would that be your comment? I don't know if you spoke with Summer.

A. No. That is Jim Conway's comment. I didn't even know a Summer at that point.

Q. Also he indicates or did you indicate, I don't know her.

A. I did. I said I don't know her.

Q. And then he respond "by the Shell Station?"

A. Right. That was his response.

Q. And what was yours?

A. I didn't say anything because I'm thinking how many shell stations are there, you know. I have know -- you know. Didn't seem to make sense.

Q. And there is an indication how about Kyra. I think they saw him last. And who wrote down what was going on?

A. That was my comment to him.

Q. And his response, "Jesse, Jared, Bobbi?"

A. That was my comment.

Q. He states, "No, I heard her boyfriend or something like that did it."

A. Right.

Q. And when he refers -- or if you know whether he refers to her boyfriend, would that be Bobbi's Jared Dilley?

A. I was sort of shocked by that comment. I didn't know what he meant. So I assumed that's what he was trying to tell me.

Q. Then he states, "Andrew and I were friends."

A. Yes.

Q. You state, "Did you see Andrew on a motorcycle ride?"

A. Yes.

Q. He stated, "No. No."

A. Yes.

Q. And then he says, "I'm sorry. I'm sorry. I have to go."

And then you indicate, "Can I come back on the day your family isn't coming?"

His indication is, "I have a lot of family."

A. Yes.

Q. That would be a fair representation of what transpired at the jail?

A. Yes.

Q. If you know, was Bobbi Hannah dating Jared Dilley?

A. Not that I was aware of. I knew they were friend. I think they are childhood friends.

Q. Did you identify the other person in the Jeep as a gentlemen with a slight build and dark hair?

MS. PRICHARD: Objection. Scope.

THE COURT: I will overrule it. Let's limit it to the scope of the redirect.

A. Did I identify the other person in the car?

Q. (By Mr. Young) As a person with a slight build with dark hair?

A. I remember saying a slight build. I don't know if I said -- I can't remember the dark hair.

MR. YOUNG: Thank you.

THE COURT: Thank you. You may step down.

Go ahead and call your next witness.

MR. LOWE: Judge, for the record, 16(B)(1)(g) has been complied with in advance of today's date.

- - -

CECIL DOTSON

called by the State of Ohio on direct examination being first duly sworn, testified as follows:

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DIRECT EXAMINATION

BY MR. LOWE:

Q. Would you please state your full name and spell your last name for the record?

A. Claude Cecil Dotson, D-o-t-s-o-n.

Q. And do you go by Cecil?

A. Yes.

Q. Your mother calls you Cecil?

A. Yes.

Q. And who is your mom?

A. Lora Eberhard.

Q. And if you could, Mr. Dotson, could you tell us about the rest of your family members, please?

A. Natalie my sister, my stepfather, Larry, and my brother, Andrew.

Q. Does your stepfather go by a different name other

than Larry?

A. Bud.

Q. And you mentioned a brother, Andrew?

A. Yes.

Q. Andrew Dotson?

A. Yes.

Q. He was your brother. Was he older or younger than you?

A. Older.

Q. By how many years?

A. About a year and a half.

Q. Mr. Dotson, I'm going to direct your attention back to the year 2001. Where were you living at that time?

A. I was staying with my mother and my brother.

Q. And where is that located?

A. My mother lives in Columbus on the west side.

Q. And who else was staying there at that time?

A. My sister and my stepfather and my mother.

Q. And how long did you live there?

A. I had just moved back from Tennessee. So I was staying there and sometimes I would stay with my brother.

Q. And your brother you're referring to Andrew?

A. Yes.

Q. And where did Andrew live?
A. In Hilliard off Leap Road.
Q. Was this a house or apartment?
A. Apartment.
Q. Did he live by himself?
A. Sometimes his girlfriend and his son stayed there.
Q. And what is his girlfriend's name?
A. Bobbi Hannah.
Q. And his son's name?
A. Jacob Dotson.
Q. Back in 2001 what was Jacob's age?
A. Six, seven months maybe.
Q. If you could, Mr. Dotson, describe the relationship that you had with your brother, Andrew.
A. It was just me, my brother and my mother growing up. So she worked a lot. So it was pretty much me and him at home while she worked. We were pretty close.
Q. You were friends also?
A. Yes.
Q. Did you hang out together?
A. Yes.
Q. Did you know any of his friends?
A. Yes.
Q. I'm going to ask you to tell us if you recognize

any of these names. Do you know an individual by the name of Jim or James Conway?

A. Yes.

Q. And did you know him to be a friend of your brother Andrew's?

A. Yes.

Q. Back in 2001 how long had you known James Conway?

A. I had just met him a couple times.

Q. Did you know how long your brother had been friendly with Mr. Conway?

A. No. Since I moved back. Before then, so --

Q. And when did you move back?

A. I believe it was in April.

Q. Were you ever around your brother when he was with James Conway?

A. Yes.

Q. I'm going to ask you to look around the courtroom, see if you see Mr. Conway in the courtroom today. And if you do, please point to him and describe what he's wearing.

A. Yes. Black suit, white shirt, gray tie in the middle.

MR. LOWE: Thank you. Your Honor, please let the record reflect the witness identified the defendant.

THE COURT: It may.

MR. LOWE: Thank you.

Q. (By Mr. Lowe) What about Shawn Nightingale? Do you know that name?

A. Yes.

Q. Back in 2001, did you know an individual by the name of Shawn Nightingale?

A. Yes.

Q. Had you met him or did you just know the name?

A. I had met him in, I believe, it was October.

Q. And how did you meet Mr. Nightingale?

A. At a party in Chillicothe.

Q. And that was in October?

A. Yes.

Q. What about James Horton?

A. Yes.

Q. And did you know him socially or --

A. I had heard my brother talk about him a few times and I had met him twice also.

Q. And when did you meet Jamie Horton?

A. At the party in Chillicothe and another time about a week later.

Q. You're talking about a party in Chillicothe. You're indicating that occurred sometime in October 2001?

A. Yes.

Q. And what about Mike Arthurs?

A. I'd also met him once at a party, at the same party in Chillicothe.

Q. Am I correct in saying, Mr. Dotson, you met Shawn Nightingale, Mike Arthurs and Jamie Horton all at the same party in Chillicothe?

A. Yes.

Q. All in October?

A. Yes.

Q. You had not met any of those three gentleman prior?

A. No.

Q. Had you heard your brother talk about him prior?

A. Jamie Horton.

Q. I'm going to now direct your attention back to September 14, 2001. Something unusual occur that day?

A. Yes.

Q. And what happened?

A. There was a shooting.

Q. And were you present at the shooting?

A. No.

Q. Did you become aware of an alleged shooting by someone telling you?

A. Yes.

Q. At some point did you talk to your brother Andrew on September 14th?

A. Yes.

Q. Did you also talk to Bobbi Hannah?

A. Yes.

Q. In relation to time, who did you speak to first? Andrew or Bobbi?

A. Bobbi.

Q. You spoke to Bobbi. And as a result of your conversation with Bobbi, what did you do?

A. I had heard that there was a shooting and that my brother Andrew was there.

MR. YOUNG: Objection.

THE COURT: Let's not relate to what anybody told you. What did you do as a result of it.

Q. (By Mr. Lowe) Hold on one second.

You spoke to Bobbi. Was it on the phone or in person?

A. On the phone.

Q. How long did this conversation last?

A. Maybe five minutes.

Q. You were relayed some information. And what did you do based on the information you received?

A. I went to the scene of the shooting.

Q. You went to an area of town?

A. Yes.

Q. Was it in Columbus?

A. Yes. It was about maybe a mile or two from the house.

Q. From the house?

A. Where I was living, yes.

Q. Do you recall the streets?

A. It was in between Evergreen and Fern Hill.

Q. And is that in Franklin County?

A. Yes.

Q. How did you get to that destination?

A. I drove.

Q. What car did you drive? Your car?

A. Yes.

Q. And were you by yourself?

A. Yes.

Q. How long after your conversation with Bobbi did you leave to go to this destination?

A. Right away.

Q. And you indicate it was very close to your house?

A. Yes.

Q. Did it take you long to get there?

A. Maybe five minutes at the most.

Q. And what did you see when you got there?

A. There was an area taped off and there was a few

police officers and there was people standing around.

Q. And did you speak to any police officers?

A. Yes.

Q. And what did you say to the police officers?

A. I had asked them what had happened. They told me.

Q. Not what the police officers said -- you just asked what happened?

A. Yes. I said I was looking for my brother and --

Q. Did you give your brother's name?

A. Yes.

Q. Did you see your brother at that scene at any time?

A. No.

Q. How long did you stay at that scene?

A. Maybe five minutes at the most.

Q. And after this conversation with the police, what did you do?

A. I went back home.

Q. And who was home? Who was present when you arrived back home?

A. I believe my mother, my stepfather and my sister.

Q. Did you have conversation with them at that time?

A. Yes.

Q. Did you tell them about your trip to the

destination?

A. Yes.

Q. At that point had you had any contact with your brother, Andrew Dotson, that day?

A. No.

Q. Did you have any idea where he was at that time?

A. No.

Q. What was the next thing that you did?

A. I had spoken to my aunt on the phone. And I called a few people to see if I could find out where he was.

Q. When you say "he", you're talking about your brother?

A. My brother, yes.

Q. And was that successful? Did you find him?

A. No.

Q. Did you have a conversation with Bobbi Hannah after you spoke with your aunt?

A. I don't recall.

Q. And when was the next time you had any contact at all with your brother Andrew?

A. Later on that evening, maybe eight or nine o'clock, I believe.

Q. And where were you when this contact took place?

A. At home.

Q. And who was present when the contact took place?
A. My mother, my stepfather and my sister.
Q. And was this in person?
A. On the phone.
Q. And who actually spoke to Andrew on the phone?
A. I did.
Q. How long did this conversation last?
A. Maybe ten minutes.
Q. Okay. And what did you say to your brother when you spoke to him?
A. I asked him what happened, where he was. And I told him that I would go pick up his car from the scene.
Q. You asked him what was going on, without telling us what he said, did he answer you?
A. No.
Q. And you indicated that you were going to pick up his car at the scene?
A. Yes.
Q. And what was your purpose in picking up his car?
A. To get it away from the. Area someone might be looking for it.
Q. Okay. And you indicated how long this conversation lasted approximately?
A. Ten minutes maybe.
Q. And did you see Andrew's car at the scene when

you first arrived there?

A. No.

Q. Were you given any information on how to find the car?

A. Yes.

Q. And after your conversation with Andrew, what did you do?

A. I went over and picked up his car.

Q. And how did you get there?

A. My mother dropped me off.

Q. And what time, approximately would this have been?

A. I'm thinking around 9:00 or 9:30 maybe.

Q. In the evening?

A. Yes.

Q. Was it dark out?

A. Yes.

Q. And what street did you go to pick up the car?

A. On Evergreen.

Q. And what kind of car was this?

A. '90 Nissan Stanza.

Q. I want to back up to the conversation you had with your brother. Did you have any plans to meet with your brother later that day?

A. No.

Q. Did you have any plans to meet with him at any other time?

A. No.

Q. Were you expecting to see Andrew at any time?

A. I usually see him. I assumed I would see him that night at his apartment.

Q. You picked up the car. What did you do with it?

A. I drove to Marysville to my cousin's house.

Q. And was that part of something that you and Andrew came up with or was that your idea?

A. Both. It was a mutual --

Q. Okay. And why Marysville?

A. I was going out there anyhow for my cousin's birthday party. I told him instead of taking my car, I would just take his.

Q. What's your cousin's name?

A. Brett Eberhard.

Q. And how close is Marysville to where you were currently staying?

A. Forty-five minutes maybe.

Q. Why didn't you just take the car back to your mother's house?

A. I didn't want it on that side of town, especially if there was a shooting. Somebody might be looking for it. I didn't want them to go to my mother's house or

cause any problems.

Q. So is it fair to say you were hiding the car?

A. Yes.

Q. You mention your cousin, Brett.

A. Eberhard, yes.

Q. How old was Brett at the time?

A. He was turning eighteen

Q. And was he turning eighteen on that day?

A. Yes, I believe. The 13th or the 14th is his birthday.

Q. And are you close with Brett?

A. Yes. Yes.

Q. Was Andrew close with Brett?

A. Yes.

Q. Do you recall when you arrived in Marysville?

A. Maybe 10:30 that night.

Q. And did you relate to your family members, your mother or your stepfather, where you were going?

A. Yes.

Q. And what did you do with the car when you got there?

A. I left it there. I parked it and stayed the night at his house.

Q. When you say "there", are you referring to Brett's place?

A. Yes.

Q. You're taking Andrew's car to your cousin's in Marysville. Do you have any plans on how you were going to get back to Columbus?

A. I assumed drive his car.

Q. And you indicated that you spent the night?

A. Yes.

Q. You woke up at Brett's house?

A. Yes.

Q. So that morning would have been September 15, 2001?

A. Yes.

Q. What's the next thing that you recall happening at Brett's house on September 15th?

A. We are getting ready for his birthday party that was going to happen later on that evening. After that, sometime early afternoon, I'm not sure of the time, I overheard a conversation between my brother and Brett.

Q. Okay. How did you overhear this conversation?

A. I walked into the room when they were talking on the phone.

Q. Was your brother present?

A. No, on the phone.

Q. How long did the conversation between your brother and Brett last?

A. Just a few seconds. After I walked in I had taken the phone from him and starred to talk to my brother.

Q. You got on the phone yourself?

A. Yes.

Q. So you actually had at some point a conversation with your brother on the 15th?

A. Yes.

Q. Were you asked to do anything?

A. To borrow my motorcycle.

Q. What kind of motorcycle are you referring to?

A. A 600 Suzuki Katana.

Q. And where do you keep that motorcycle or where did you --

A. It was at my mother's house at the time.

Q. You also have a motorcycle helmet that goes with it?

A. Yes.

Q. Where was that kept?

A. It was at my mother's house also.

Q. Did you give Andrew permission to take the motorcycle?

A. Yes.

Q. Did you make any arrangements for how it would get to Andrew?

A. He said he was going to pick it up.

Q. And at that time, after your conversation with Andrew, did you know when you would see him again?

A. He said the next day, on Sunday.

Q. So you had plans to see him on the 16th?

A. Yes.

Q. Without telling us what he said, did you talk about the incidents of the night before?

A. Yes.

Q. You had a conversation regarding that?

A. Yes.

Q. Do you know if Andrew was alone during this conversation?

A. He was not.

Q. How do you know that?

A. I heard others in the background.

Q. Based on the fact that you gave Andrew permission to take your motorcycle, did you make any arrangements with anyone at your house regarding Andrew taking the motorcycle?

A. Not at that time.

Q. Did you at some point?

A. Yes. I believe my mother and my stepbrother called and asked if it was okay.

Q. Okay. So they called you to find out if you had,

in fact, given permission?

A. Yes.

Q. And you told them yes?

A. Yes.

Q. And did you relay that Andrew would be coming to get it?

A. Yes. I believe he was already there when they called.

Q. But you did not speak to him?

A. No, not at that time.

Q. Do you know what time approximately that would have been?

A. The early evening, late afternoon, I believe.

Q. The party was to occur approximately what time?

A. 6:00 or so.

Q. Do you know if it was --

A. It was before that.

Q. Before the party?

A. I believe, yes.

Q. Did you have any conversation with Andrew at any time later that day?

A. No.

Q. Did you ever have any other conversation with your brother, Andrew Dotson, after the last conversation regarding your motorcycle?

A. No.

Q. Did you ever see Andrew Dotson again?

A. No.

Q. The last time you would have spoken to him would have been on the morning of the 15th?

A. Yes.

Q. Did you make any other attempts to contact your brother after the last time you spoke to him on September 15th?

A. Yes, several.

Q. What kind of attempts did you make?

A. I tried looking for him, calling his cell phone, leaving messages.

Q. You had cell phone number for him?

A. Yes.

Q. And when you say leaving messages, are you talking on the cell phone or answering machine? What are you talking about?

A. His voicemail on his cell phone.

Q. You left how many messages, would you say?

A. I left a few messages just saying, you know, I was looking for him, wondering what happened. I called and left messages up until the point his cell phone no longer worked anymore.

Q. At some point the cell phone was --

A. Disconnected, yes.

Q. And you never received a response from Andrew?

A. No.

Q. Did you also go to his apartment?

A. Yes.

Q. How soon after September 15th would you say you went to his apartment looking for him?

A. I believe Sunday night.

Q. Sunday would have been the 16th?

A. Yes.

Q. Did you go by yourself?

A. I think my cousin Brett went with me.

Q. Did you have something else going on in your life at that time? Were you're getting ready to depart for something?

A. I had just joined the Army in September.

Q. And did you have a departure date?

A. The 17th of October.

Q. So we are talking about approximately a month after the last phone call with Andrew.

A. Yes.

Q. Were you a part of any missing person's report that was filed by your family?

A. Yes.

Q. And did you have anything to do with that?

A. Yes.

Q. And how did that process occur?

A. Officer came to the house and filled out the report.

Q. And you spoke with officers?

A. Yes.

Q. Who else was present?

A. I believe my mother and my stepfather.

Q. Now, I want to fast forward to this party in Chillicothe where you indicate you met several individuals, including Shawn Nightingale, Jamie Horton and Mike Arthurs.

A. Yes.

Q. Do you recall what date that would have been?

A. It was the first or second weekend in October. I'm not exactly sure. I know it was before the 10th, the weekend or the weekend before that.

Q. Before the 10th of October.

A. Yes.

Q. And why are you sure it was before October 10th?

A. October 10th was the day the body was found and I knew it was before that.

Q. You say "the body," you're referring to Andrew?

A. Yes.

Q. And so you met these individuals before you had

any information of where Andrew was?

A. Yes.

Q. Was James Conway at that party?

A. No.

Q. And where in Chillicothe did that party occur?

A. Some girl's house. It was her 21st birthday party so --

Q. Did you know that girl?

A. We had met her, me, my cousin, Brett and one of his friends were driving down to stay at some family's property and we had met them on the way and they invited us to the party the next night.

Q. Approximately what time would you say you arrived at the party?

A. It was dark. I'm not sure of the time. Maybe 1:00 or 11:00.

Q. And at that time were you introduced to these individuals or did you already know who they were?

A. I did not know who they were. They showed up later and my cousin Brett introduced me.

Q. So Brett introduced you to who first?

A. I believe they were all standing together -- Jamie, Shawn and Mike.

Q. So the three of them, Jamie Horton, Shawn Nightingale and Mike Arthurs were all at the party?

A. Yes.
Q. And Brett introduced you to them?
A. Yes.
Q. You never met any of them before?
A. No.
Q. Did you recognize all of their names?
A. Yes.
Q. As friends or acquaintances of your brother's?
A. I'm sorry. I did not hear Shawn's or Mike's before, but I recognized Jamie's afterwards, yes.
Q. Did you have conversations with them?
A. Yes.
Q. And what were those conversations regarding?
THE COURT: Let's not relate to any conversations.
MR. LOWE: All right.
May I have one moment?
Q. (By Mr. Lowe) You indicated you believe the body was found October 10, 2001.
A. Yes.
Q. Did you have any part in identifying the body?
A. No.
Q. After the body was found, were funeral arrangements made?
A. Yes.

Q. And when did that funeral take place?

A. I don't remember the exact date. I believe it was around a week after; maybe that Wednesday or Thursday. I'm not sure.

Q. But it was several days after the body was found?

A. I believe it was identified -- maybe a week later, that Tuesday following and then the funeral arrangements were made.

Q. And did you attend the funeral?

A. Yes.

Q. Did you see Shawn Nightingale at the funeral?

A. No.

Q. What about Mike Arthurs?

A. No.

Q. What about Jamie Horton?

A. No.

Q. What about James Conway?

A. No.

MR. LOWE: I have nothing further at this time.

THE COURT: Okay. We are going to take a short restroom break, just about ten minutes or so, as soon as everybody is ready. Go ahead and step back in there.

Remember the admonition. Don't discuss the

case amongst yourselves or anybody else. Get back after you are all finished.

- - -

Thereupon, the jury was retired from the courtroom and the following proceedings were had out of the presence and hearing of the jury:

- - -

THE COURT: I just want to tell you, the acoustics are such in here that we can really hear what you're saying to each other. So keep your voices down. It's amazing how it bounces off that wall. Keep your whispers down.

Be back as soon as everybody is ready.

- - -

THEREUPON, the following was proffered for purposes of the record out of the hearing of the Court and Jury.

- - -

MS. MENASHE: We would like to stipulate the phone number for the Eberhards, (614) 870-0056. And additional stipulation is State agrees to the phone number of Roberta Hannah, (614) 870-3832.

- - -

Thereupon, the jury resumed their places in the jury box.

- - -

THE COURT: Mr. Young.

- - -

CROSS-EXAMINATION

BY MR. YOUNG:

Q. Good morning, Mr. Dotson. My name is David Young. I represent James Conway. I just have a couple questions for you.

You spoke with Andrew on the 14th, 2001?

A. Yes.

Q. And you spoke with him again on the 15th, 2001.

A. Yes.

Q. You testified that you went into Andrew's apartment sometime after September 15th?

A. Yes.

Q. Would that have been Sunday, the 17th?

A. 16th, I believe.

Q. 16th. So Friday is the 14th. Sunday would be the 16th.

A. Yes.

Q. And you went into his apartment on that date?

A. Yes.

Q. And I believe that you have previously spoken with the Franklin County Sheriff's Department about your activities.

A. Yes.

Q. You provided them a recorded statement, did you not?

A. Yes.

Q. And the recorded statement is dated October 3, 2001. That's not the correct date. Do you know when you gave the tape to -- the recorded statement to the Franklin County Sheriff's Department?

A. Right after I got back, somewhere around the week of the 17th of October.

Q. And in the statement or when you went into Andrew's apartment on September 16th, did it appear he had been there since the 14th or 15th?

A. I'm not sure when the last time he was there. I wasn't there the 14th or the night of the 15th, so -- it looked like he had been there sometime before but I'm not exactly sure on the last date that he was there before the 16th.

Q. Okay. You spoke with Shawn Nightingale, Mike Arthurs and Jamie Horton at some party?

A. Yes.

Q. Roughly shortly before the recovery of your brother's body, correct?

A. Yes.

Q. And can you describe for the ladies and gentlemen

of the jury what you observed as to their demeanor? What did they look like? What did they do? Did they interact?

A. I spoke to Jamie and Shawn for a good part of the night.

Q. Did you speak with Mike Arthurs?

A. Just a few sentences. But I witnessed him -- he got into a fight at the party. So after that it pretty much ended.

Q. You observed the demeanor of Shawn or Jamie? Describe what you saw they were doing.

A. They were standing around drinking and talking.

Q. Do you know whether Andrew only had one cell phone?

A. Yes, he only had one.

Q. And that would have been a Nextel cell phone?

A. Yes.

MR. YOUNG: I have no further questions, Your Honor.

THE COURT: Anything further, Mr. Lowe?

MR. LOWE: No, Your Honor.

THE COURT: Thank you. You may step down.

MS. PRICHARD: May I approach before the next witness?

- - -

Thereupon, Court and counsel confer at the bench out of the hearing of the jury off the record.

- - -

ROBERTA J. HANNAH

called by the State of Ohio on direct examination being first duly sworn, testified as follows:

- - -

DIRECT EXAMINATION

BY MS. PRICHARD:

Q. Stay real close to the mike. Okay.

Would you please state your name and spell your last name?

A. Roberta J. Hannah, H-a-n-n-a-h.

Q. Do you go by the name of Bobbi?

A. Yes.

Q. How old are you, Bobbi?

A. Twenty-one.

Q. And your child's name?

A. Jacob Dotson.

Q. How old is Jacob?

A. Two.

Q. And who is Jacob's father?

A. Andrew Dotson.

Q. How long did you date Andrew Dotson?

A. Almost four years.

Q. Was this kind of on-and-off relationship?
A. Yeah.
Q. And were you dating back in September of 2001?
A. Yes.
Q. How often would you see Andrew back around that time?
A. Almost every day.
Q. Would you talk to him on the phone almost daily as well?
A. Yes.
Q. Did you sometimes stay over at his apartment?
A. Yes.
Q. Did you know Andrew's friends?
A. Yeah.
Q. Did you know somebody by the name of James Conway?
A. Yes.
Q. How did you know James Conway?
A. He was friends with Andrew.
Q. How often did you see James Conway with Andrew?
A. Not very often.
Q. Do you see James Conway in the courtroom today?
A. Yes.
Q. Would you please point to him and state what he's wearing for the record?

A. He's right there. He's wearing black and white.
Q. Off to your right?
A. Yeah.
MS. PRICHARD: Ask that the record reflect she's identified the defendant.
THE COURT: It may.
Q. (By Ms. Prichard) Did you know Jamie Horton?
A. Yes.
Q. Was he a friend of Andrew's?
A. Yes.
Q. And did you see him frequently?
A. Yeah.
Q. How about Shawn Nightingale and Mike Arthurs? Did you know them?
A. No.
Q. Had you heard of them?
A. Yeah.
Q. And did Andrew mention their names before?
A. Yes.
Q. Did Andrew seem to have a good relationship with James Conway?
A. Yeah.
Q. Did you ever see James Conway treat Andrew in an inappropriate way or be upset with him?
A. Yes.

Q. When was that?

A. This one time Andrew -- I had went with him to meet Jim somewhere and he was trying to -- after they had met, he was trying to leave the neighborhood. So he followed Jim out. And then Jim pulled over to the side of the road and he started yelling at Andrew for following him.

Q. Had Andrew really been following him?

A. No. He was just trying to find his way out of the neighborhood.

Q. Did that behavior surprise you?

A. Yeah.

Q. Let's go to September 14, 2001. Do you remember that day?

A. Yes.

Q. Do you know Jared Dilley?

A. Yes.

Q. How do you know Jared?

A. I went to school with him.

Q. Have you known him for several years?

A. Yeah.

Q. And were you seeing Jared at that time or contemplating dating him?

A. Kind of.

Q. Did Andrew know this?

A. I told him, yeah.

Q. And did Andrew know Jared Dilley?

A. I didn't know at the time that he did; but, yeah.

Q. The incident that occurred on September 14, 2001, did you speak to Andrew on that day?

A. Yeah.

Q. Do you remember the first time you spoke to him that day? Morning? Afternoon?

A. It was in the morning.

Q. And how many conversations would you say you had with Andrew on September 14th?

A. Probably four or five. I don't know. A lot.

Q. A lot in a short time period?

A. Yeah.

Q. Did you become aware of a shooting on September 14, 2001?

A. Yes.

Q. And did you actually hear any shots fired from your home?

A. Yeah.

Q. Did you go out to any scene or go looking around?

A. No.

Q. After you heard shots fired, did you speak with Andrew?

A. Yes.

Q. And when you spoke with him, could you describe his demeanor without telling us what he was saying? What was he like?

A. He was kind of scared, nervous. I don't know.

Q. Did you talk with him after that conversation?

A. Yeah.

Q. Were there several calls after that point?

A. There was, yeah, that day. There was, yeah.

Q. And did he sound the same in all of those conversations, the same tone of voice, I guess, in all those conversations?

A. Yeah.

Q. Have you heard him like that before?

A. No.

Q. Did it alarm you?

A. Yeah.

Q. What did you do based upon those conversations you had with him?

A. I don't remember.

Q. Did you go looking for him or try to reach him?

MS. MENASHE: Objection, Your Honor.

A. Yeah.

THE COURT: I'm sorry.

MS. MENASHE: Objection. Leading.

THE COURT: Let's try not to lead the

witness.

MS. PRICHARD: Trying to avoid hearsay, Your Honor.

THE COURT: I know.

Q. (By Ms. Prichard) Who did you talk to that particular day, September 14, 2001? How many different people were you talking to on that day?

A. I don't know.

Q. Do you know if you spoke with anybody in Andrew's family?

A. I don't remember.

Q. Did you see Andrew at all on September 14th?

A. Yes.

Q. When did you see him?

A. He had came to my house right before the shooting.

Q. Do you know about what time this would be?

A. No. I don't remember.

Q. And why was it that you saw him earlier that day?

A. Why?

Q. Yes.

A. After I had talked to him on the phone, he got upset and he came over and he was mad and we were talking and then he left.

Q. And then you heard shots sometime after that?

A. Yeah.

Q. Do you know about how much later that was?

A. Maybe an hour or so.

Q. And then after shots you said you had a conversation with him on the phone again, several conversations?

A. Yes.

Q. And is that when he sounded scared?

A. Yes.

Q. When was the next time you saw him after that point?

A. I didn't.

Q. When was the next time you spoke with him, not counting those conversations on September 14th?

A. The shooting happened on Friday and he called me on Sunday.

Q. Had there been arrangements made so that you could see him?

A. Yeah.

Q. And what were those arrangements?

A. He was supposed to come over.

Q. Come over to where?

A. To my house.

Q. And why was he coming to your house?

A. Because he said -- I can't.

Q. Okay. Was there a purpose? Was there some sort of purpose to this visit?
A. He wanted to see me and Jacob.
Q. And did he show up on that day?
A. No.
Q. And that was supposed to be what, Saturday the 15th?
A. It was Sunday. It was on a Sunday.
Q. So Sunday, would that be September 16th then?
A. Yeah.
Q. He was supposed to show up at the house?
A. I think that was the day, yeah.
Q. And he didn't show up?
A. No.
Q. Did that worry you?
A. Yeah.
Q. Did you do anything after he didn't show up?
A. No. He called again.
Q. And did you ask him why he didn't show up?
A. Yeah.
Q. Without telling us what he said, did he have an answer for you?
A. Yeah.
Q. And did that answer alarm you?
A. Yeah.

Q. How long was that conversation with him?
A. It wasn't long at all.
Q. Do you know where he was calling from?
A. Chillicothe.
Q. And could you hear other people in the background? Do you know if he was alone or not?
A. I didn't hear anybody in the background.
Q. And what was his demeanor like then? How did he sound to you?
A. Nervous.
Q. And had you heard him like that before?
A. No.
Q. Were there any arrangements made to meet him or see him during that conversation?
A. No.
Q. Any plan to come see Jacob or anything later that day or any other day made?
A. No.
Q. Based upon that conversation with him, did you have any concerns?
A. Yeah.
Q. And what did you do as a result of that?
A. I don't remember.
Q. Did you have any conversations with the family of Andrew after that point?

A. I'm sure I did.
Q. And why were you in contact with him?
A. I don't know.
Q. Have you heard from Andrew again?
A. No.
Q. Did that worry you?
A. Yeah.
Q. Did you express that to his family?
A. Yeah.
Q. And did you ever accompany them to try to locate Andrew?
A. No.
Q. So would it be fair to say the last time you spoke with Andrew would be September 16th?
A. Yeah. I'm pretty sure that's the date, yeah.
Q. And that was the date he was supposed to come over and didn't?
A. Yeah.
Q. Let me take you back to the conversations on the 14th and the 15th. After the shooting, those conversations you had, do you know if Andrew was alone when he was calling you?
A. No, he was with people on the 14th. Yes.
Q. On the 14th, did you recognize any voices or anything?

A. No.

Q. Was that during all of the calls or some, if you even recall?

A. On the 14th all the calls he was with somebody.

Q. Could you tell if it was more than one person?

A. Yeah, it was.

Q. Did you ever try to reach Andrew by his cell phone?

A. Yes.

Q. Were you able to reach him?

A. No.

Q. Did you ever see his cell phone again?

A. No.

Q. Did you ever speak with James Conway --

A. No.

Q. -- after September 14, 2001?

A. No.

Q. When you spoke with Andrew right after the shooting -- did you say he was nervous?

A. Yes.

Q. And how long after the shooting was that?

A. Right after the shooting. Right after the -- right after I heard the shots, he called.

Q. And he was not alone at that time?

A. No.

MS. PRICHARD: May I have a moment?

Q. (By Ms. Prichard) Show you State's Exhibit A. First of all, do you recognize what these are?

A. It's the phone records.

Q. Keep your voice up.

A. Okay.

Q. And let me turn to what is marked as page 42. Under some September 15th entries, do you see your phone number listed on there?

A. Yeah.

Q. Or your previous phone number, rather?

A. Yeah.

Q. And State's Exhibit B, who is that?

A. That's Andrew.

MS. PRICHARD: I have nothing further.

THE COURT: You may cross, Ms. Menashe.

MS. MENASHE: Thank you, Your Honor.

- - -

CROSS-EXAMINATION

BY MS. MENASHE:

Q. Good morning. I'm Diane Menashe. I'm one of the attorneys that represents James Conway.

Fair to say that you have had interviews by the cops in this case a number of times?

A. Yes.

Q. And I saw you just before you came in here. You talked to Ms. Prichard just before you came in?

A. Yes.

Q. And you talked to the prosecutors in this case a number of times?

A. Yes.

Q. And do you remember back on -- was it in July when my investigator came out to your house?

I can get a date here. July 24th. Does that sound about right -- his name is Matt Sauer -- of this year?

A. No. It was just recently.

Q. Right, in July, 24th. Your dad answered the door?

A. Maybe it was. I don't remember the date.

Q. Fair to say you refused to talk to him?

A. Yes.

Q. And when he came to your door -- you live in that apartment complex in Clairbrook Avenue?

A. Yes.

Q. And I've actually been there. You actually have to drive into the complex?

A. Yes.

Q. And it's almost like a community; is that fair to say?

A. Yes.

Q. And when you drive in to get to your place, you drive in this entrance and then you have to veer to the right?

A. Yes.

Q. And there is like a pond or a lake there that sits in front of where you live?

A. Yes.

Q. And the road that you turn onto to get to your apartment complex is Norton Road?

A. Yes.

Q. And Norton Road, would it be fair to say, it's a busy road?

A. Yeah.

Q. A lot of cars travel that road, correct?

A. Yeah.

Q. And in terms of when you say that you heard the shots, have you ever actually driven to where the shooting occurred?

A. Yeah.

Q. You drove there?

A. Uh-huh.

Q. Evergreen and Palmetto?

A. Yeah.

Q. So does it surprise you to know, fair to say,

it's about two miles away?

A. Maybe. I don't know.

Q. Because you go out of the complex and then you turn left onto Norton, right?

A. Uh-huh.

Q. And you got to go to Norton. You got to cross over -- is it Sullivant? There is some major streets that you cross over, right?

A. Yeah.

Q. And then eventually right before you get to Broad Street you turn right onto -- I think it's Palmetto?

A. Yeah.

Q. So it's about two miles?

A. Yeah.

Q. And the shooting took place or at least when you're saying you heard the shots that was at about 5:00 p.m. on the 14th; is that fair to say?

A. Yeah.

Q. And that's usually when people -- there's a lot of traffic on Norton Road at 5:00 p.m.?

A. Yeah.

Q. Prior to the 14th of September, 2001, you had seen James Conway and Andrew together?

A. Yes.

Q. And you had seen Andrew and Jamie Horton

together?

A. Yes.

Q. Never seen Andrew with Mike Arthurs, though?

A. No.

Q. You mentioned Andrew's cell phone, his cell phone that he had set -- Andrew only had one cell phone; is that correct?

A. Yes.

Q. And it was a Nextel?

A. Yes.

Q. Did you know that that account was actually in the name of Mandy Oliver?

A. No.

Q. And do you know who Mandy Oliver is?

A. No.

Q. Just briefly, I want to address -- the prosecutor brought something up. She asked you if Jamie and Andrew are good friends; and you said yes.

A. Yes.

Q. And she asked you about this one incident when you say that Jimmy yelled at Andrew.

A. Yes.

Q. And fair to say that you and Andrew argued quite a bit?

A. Yeah.

Q. In fact, there would be days, ten, fifteen phone calls between you two?

A. Yes.

Q. Pretty volatile relationship?

A. Yes, sometimes.

Q. And in those conversations, it would be fair to say that you yelled at Andrew too, wouldn't it?

A. Yeah.

Q. And you would consider yourself a good friend of Andrew?

A. Yes.

Q. And certainly you didn't kill him?

A. No.

MS. PRICHARD: Objection.

THE COURT: Overruled.

Q. (By Ms. Menashe) As to how you know Jared Dilley, your testimony was that you went to school with him?

A. Yes.

Q. You were actually -- just prior to the 14th, you were actually sleeping with Jared Dilley; isn't that correct?

A. No.

Q. You weren't sleeping with him?

A. No.

Q. No sexual relations with Jared Dilley whatsoever?
A. No.
Q. So true, isn't it, that the shooting, to your knowledge, was over your relationship with Jared Dilley?
A. Yes.
Q. And this would be a relationship just with a friend from school?
A. Yes.
Q. And true that after the shooting took place, after September 14th, Andrew's body was identified a month later, you continued to date Jared Dilley for about a year after that?
A. No. I talked to him on the phone.
Q. Didn't sleep with him?
A. No.
Q. How long did you talk to Jared Dilley on the phone for? I mean was it a year?
A. I don't remember.
Q. Was it -- well, let's try to remember. Was it more like six months? More like a year? More like two years?
A. More like six months.
Q. And true that you testified in a co-defendant's case of Mr. Conway? That would be Jamie Horton.
A. Uh-huh.

Q. And after that trial, isn't it true that you called Jared Dilley?

A. I don't remember.

Q. Don't remember calling him?

A. No.

Q. When was the last time you talked to Jared Dilley?

A. It's been over a year.

Q. Didn't talk to him right at the conclusion of the Horton trial?

A. Not that I remember.

Q. You talked to Andrew on the 14th. Actually you see Andrew on the 14th.

A. Yes.

Q. And then you talk to him that night on the 14th?

A. Yes.

Q. And did you talk to him on the 15th?

A. Not that I can remember.

Q. So a whole day goes by after the shooting before you talk to him?

A. Yeah.

Q. Okay. And then you talk to him again?

A. Yes.

Q. And you talk to him a couple times on the 16th, which would be Sunday?

A. Yes.

Q. And it's your understanding that he makes that phone call from Chillicothe?

A. Yes.

Q. And do you have caller ID at your house?

A. No.

Q. So you don't know which phone Andrew was calling on the 16th, do you?

A. Well, he told me.

Q. Okay. Without getting in to what he told you, we know you knew he was in Chillicothe, right?

A. Yeah.

Q. And did you see his number on your caller ID?

A. No.

Q. Because you don't have caller ID.

A. Yeah.

Q. But he was with other people on the 16th?

A. I didn't hear anybody.

Q. On the 16th he was alone?

A. It sounded like it, yes.

MS. MENASHE: One moment, Your Honor.

THE COURT: Okay.

MS. MENASHE: Nothing further.

THE COURT: Ms. Prichard.

- - -

REDIRECT EXAMINATION

BY MS. PRICHARD:

Q. Bobbi, were you scared when some person showed up at your house in July? He was an investigator, apparently?

MS. MENASHE: Objection. Leading, Your Honor.

THE COURT: Overruled.

Q. (By Ms. Prichard) You can answer that.

A. Oh, yes.

Q. Did you know who that person was?

A. No.

Q. Did myself or Mr. Lowe ever tell you who you could or couldn't talk to?

A. No.

Q. Ms. Menashe asked about your understanding about the shooting being over your relationship with Jared. Was your understanding also that Andrew was present with his friends, including the defendant?

A. Yes.

MS. PRICHARD: Nothing further.

THE COURT: Anything further?

- - -

RECROSS-EXAMINATION

BY MS. MENASHE:

Q. Was your understanding that when Andrew was present with his friends, including the defendant, that he shot Jesse James?

A. No.

Q. Was when my investigator -- you never told detectives that?

A. I don't remember.

Q. Okay. On October -- sorry. I didn't bring my notes.

On October 17th, you made a recorded statement with detectives in this case; is that correct?

A. Yes.

Q. 2001?

A. Yes.

Q. Fair to say that in that interview you told the detectives that you had knowledge that Andrew shot Jesse James?

A. That's what I had heard.

Q. And in terms of the investigator that came to your house, he gave you a card; is that correct? Gave you a card?

MS. PRICHARD: Objection.

A. No.

MS. PRICHARD: I'm sorry. Withdrawn.

Q. (By Ms. Menashe) I'm sorry. I hate to go back and forth.

You spoke with my investigator just briefly, correct?

A. Yeah.

Q. And in your answer to the fact that you were scared, isn't it true that you told my investigator, if you're working for Jimmy Conway, you're not going to talk to me again?

A. Yes.

MS. MENASHE: Nothing further.

THE COURT: All right. You may step down. Thank you.

I'm going to go ahead and recess at this point in time, handle my morning docket.

Of course, while you are on your recess, please do not discuss the case amongst yourselves or anybody else.

Also, if anybody makes an attempt to discuss the case with you or tries to approach you with any discussion about the case, make sure you report that to Linda because I'm supposed to know about it. Nobody is allowed to have any conversations with you about the case.

If you're back before about 1:25 -- because we are going to start up again about 1:30 -- if you're back to the courthouse early, wait down the jurors' assembly room. There's going to be a whole lot of people milling around in the hallway.

When you come up here, come up directly into the jurors' assembly room right behind here. And have a great lunch.

- - -

Thereupon, the jury was retired from the courtroom and the following proceedings were had out of the presence and hearing of the jury:

- - -

THE COURT: All right. Anybody have anything?

MS. PRICHARD: Can I put a few things on the record? We have a stipulation about the phone numbers.

THE COURT: By the way, let me tell you something. Evidence Rule 804, especially (B)(6), is kind of unique because it requires a finding first before it kicks in and says the witness can testify. That finding is what this case is all about. That's the problem with 804(B)(6). You have to make a finding that the individual prevented that testimony from taking place.

So I'm at this point in time not allowing those statements, even though I think most of them came in anyway. But if at a later point in time after the evidence is more -- at this point, I don't know anything about it. So I can't make that finding that's required. So towards the end of the case if you need to recall a witness and have him review the ruling with respect to that, I will be happy to do that.

MS. PRICHARD: Thank you, Your Honor.

And the excited utterance was the other basis we might do that as well.

THE COURT: I understand that.

Okay. Thank you.

- - -

Thereupon, a luncheon recess was taken until 1:30 o'clock p.m., of the same day, to wit, September 17, 2003.

- - -

Wednesday Afternoon Session,
September 17, 2003.

- - -

Thereupon, the further trial of this cause was resumed pursuant to luncheon recess.

- - -

THE COURT: That clock is a little fast. I'll correct that this afternoon.

We have five different clocks and none of them have the same time.

- - -

CHRISTOPHER SCOTT FURNIER

called by the State of Ohio on direct examination being first duly sworn, testified as follows:

- - -

DIRECT EXAMINATION

BY MR. LOWE:

Q. Please state your full name and spell your last name for the record.

A. Christopher Scott Furnier, F-u-r-n-i-e-r.

Q. And Mr. Furnier, how old are you?

A. Thirty.

Q. And you live in Columbus?

A. I live in Galloway.

Q. How long have you resided in Galloway, Ohio?

A. About twenty-five years.

Q. Have you been at the same residence for the past twenty-five years?

A. No, several different.

Q. At some point did you live with your parents in Galloway?

A. Yes.

Q. And what area of Galloway is that?

A. Oak Park region off of Hall Road.

Q. And how long have you lived with your parents in that area?

A. About nineteen years.

Q. Quite familiar with that area?

A. Yes.

Q. Mr. Furnier, I'm going to ask to direct your attention back to October 10th of 2001. Do you recall that day?

A. Yes.

Q. If you could, relate for the jury what you were doing that day, the start of the day.

A. Well, I worked that day. And I got off about 3:30 and was heading home and I decided to stop off at Meijer to pick up a few things. And as I was going into Meijer parking lot on Georgesville Road, my car kind of died out on me and I ended up coasting it into the

parking lot where I worked on it for a little while. I was unable to get it going.

So I called my parents from my cell phone and they weren't home at the time but they were heading home and I decided to walk to their house from the Meijer.

Q. And at that time on October 10, 2001, you did not live at your parents' residence?

A. No, I did not.

Q. And you mentioned the Meijer's. Where is it located?

A. Georgesville Road, Columbus.

Q. How close was it to your parents' home?

A. Probably about seven miles -- six, seven miles.

Q. You made the decision after talking to your parents to walk to your parents' house?

A. Yes. They told me they would let me borrow one of their cars if I came out there.

Q. It was quite a distance. You knew it would take a little bit, at least?

A. Yes.

Q. Did you do that?

A. I actually ended up -- a lady from the parking lot saw me working on my car. She saw me start to walk and she offered me a ride to Leonard Farms Subdivision off of Norton Road which is also in Columbus, which is a

lot closer to my parents' house than Meijer.

Q. So you accepted this ride?

A. Yes, I did.

Q. And you went with this individual?

A. Yes, I did.

Q. And you mentioned 3:30. We are talking about the afternoon?

A. Yeah. I got off at 3:30, went straight to Meijer. It was probably about quarter till when I made it into Meijer parking lot and probably about quarter after 4:00, roughly around in there, maybe 4:30, when I got the ride off the lady.

Q. And you indicated you were taken to a subdivision?

A. Yeah. I think it's called Laurel Green. Leonard Farm, Laurel Green, one of the two. It's right off Norton Road. Both of them sit right next to each other. I'm not sure of the name.

Q. It's not the subdivision of your parents?

A. No, it wasn't. She wasn't headed out that way. I got out as far as I could.

Q. Did you get out of the car?

A. Yes, I did.

Q. What did you do after you got out of the car?

A. I proceeded through the housing development

there. I was very familiar with the area and I knew that it ran from Norton Road to Galloway Road and it came out very close to my parents' house.

Q. And what did you do afterward?

A. I went through and I made it up to Galloway Road. And when I got through, I kind of ran into a cornfield. I knew it was a rural area out of there. I just didn't remember firsthand if there was anything growing in the field at the time. I had planned to go just straight through the field, which would bring me back to my parents' house in like a minute from where I was at. So I was a little discouraged to find there was this corn row in the field at this time. But I decided to go ahead and go through as opposed to walking around, which would have taken me at least half hour, forty-five minutes.

Q. Were you familiar with this field from growing up around there?

A. I grew up right on it.

Q. Were there always crops in?

A. Soy beans, corn; different things different times.

Q. And October 10, 2001 you indicated there was corn?

A. Yes.

Q. If you could explain, Galloway Road is on one side?

A. Uh-huh.

Q. And what is on the other side?

A. From where I started out, Norton Road. You come out on Galloway and you kind of run into a field. And if you go straight across, you can see my parents' subdivision from there. If you go around, you'll come to Hall Road and I would have had to proceed up around, which there's no sidewalks on that road. Pretty busy road. I didn't feel like doing it at the time.

Q. And it would have taken you much longer?

A. Much longer, yes.

Q. So you decided to cut through?

A. Yes.

Q. You did that?

A. Yes.

Q. Can you describe the field? Is there a road?

A. Yes. It sits right on Galloway Road which is a pretty well traveled road, but it's a rural area. At the time it was pretty much full of corn. It was very high.

Q. And did you make it into the corn?

A. Yes. I looked down a little bit to my left, which would have been the south, and I noticed a service

road going up into the corn and I knew that sometimes that road went all the way through. I mean, at times I noticed it went all the way through and I decided I would go down that way, head up the road and get as far as I could into the field.

Q. You mentioned a service road; is this a road that's big enough for like a car?

A. It's a one-lane, kind of gravel road.

Q. And is that the path you, in fact, took?

A. Yes, I did.

Q. And how far into the field does the service road run?

A. Maybe a hundred yards, fifty yards, somewhere in between.

Q. And did you proceed past the service road?

A. Yeah. I made it to the service road and proceeded up. And it actually -- it didn't go all the way through. It dead ended into the cornfield.

Q. And what did you do then?

A. Well, like I said, I made the decision to go ahead and go through. But as I was walking up, I noticed something up ahead of me. I just went ahead and walked up, just kept on going. I had no idea what it was at the time. And when I got up to it, I noticed it was a body.

Q. When you were walking towards your parents' house, how close were you to the object when you first saw it?

A. Ten feet, maybe less.

Q. Could you tell what it was when you first saw it?

A. No. It didn't really get my attention that much at first. Just was a shape. I thought -- I didn't really know what I thought it was.

Q. If you could, could you describe how high the cornstalks actually were?

A. I'm almost six three and it was well over my head.

Q. After you noticed the shape not knowing what it was, did you get closer to it? What did you do?

A. I was actually passing by it. And I looked down at it. And that's when I noticed for sure what it was. I noticed the head and hair and I knew what it was.

Q. And what was your reaction?

A. I actually ran back a little bit the way I came and stopped for a second to get my bearings. And then I decided to go ahead and run back up past it to the field to get to my parents' house, which I did do.

Q. At any time did you stop and touch or move the object in any way?

A. Did not even look at it --

Q. So the closest you got to it would have been --
A. -- at first and then I ran by it without even looking at it the next time I went by.
Q. And you ran through the rest of the field?
A. Yes.
Q. And where did you come out?
A. Pretty much right at my parents' backyard.
Q. What did you do after you got to your parents' backyard?
A. Called 911.
Q. From your parents' house?
A. Yes, I did.
Q. Did you actually speak with someone from 911?
A. Yes.
Q. And did you relay what just happened?
A. Yes.
Q. And what did you do next? Did you stay there?
A. They asked me to stay there and told me a deputy would be coming by my house to pick me up -- my parents' house to pick me up.
Q. And did a deputy, in fact, come by your parents' house?
A. Yes.
Q. Did you have some contact with the deputy?
A. Yes.

Q. Did you make a statement at that time?

A. I don't believe so. I just told him pretty much what happened.

Q. And did you go anywhere at that point with the deputy?

A. I directed him to the field and to the service road and we went there.

Q. Did you show him where the object was you saw?

A. Yes, I did.

Q. Approximately, if you can, tell us what time this would have been.

A. It was October and about that time it was dusk, between maybe 6:00 and 7:00, I would say. Somewhere in that time frame for sure.

Q. After you directed the deputy to the field and the object, was there anybody else around the body at that time?

A. After I directed it to them?

Q. Well, when you took the deputy back and showed him the object, was anybody present at that time?

A. No.

Q. Did you stay at the scene?

A. Yes. Yes, I did. I went back and sat in the cruiser.

Q. Did other people arrive?

A. There were detectives already out along Galloway Road at the time when we arrived. They weren't anywhere really near where he was.

Q. And how long did you stay at the scene?

A. For quite a while. Probably under an hour, but pretty darn close to an hour.

Q. And what happened after you left the scene? Where did you go?

A. I actually went to the detective's office on 4th Street to be questioned.

Q. And you spoke to the detectives at that time?

A. Yes, I did.

Q. And did you write out a statement as to what happened?

A. Yes, I did.

Q. And after you spoke to detectives at that location, did you have any further contact with police officers?

A. No.

MR. LOWE: May I approach the witness?

Q. (By Mr. Lowe) I'm going to show you what's been marked for identification purposes as State's Exhibit C and ask you if you're familiar with this and have you seen this before.

A. Yeah.

Q. You're going to have to keep your voice up.

A. Yes.

Q. If you could, familiarize yourself with the area. If you can, tell us what you recognize on this map. First, what area is this?

A. That is the area where we have been referring to. This is Galloway Road right here. This is my parents' street actually right here.

Q. For the record, the first thing that you pointed to, Galloway Road, is right in the middle of the map?

A. Yes.

Q. Running north and south on this map?

A. Yes.

Q. And you indicated where your parents' house was?

A. Uh-huh.

Q. Where was that?

A. Right here.

Q. Is there a marking on there?

A. Yes, a circle.

Q. And does the circle indicate your parents' home?

A. Yes, it does.

Q. The field that you're referring to, is it on this map?

A. Yes, it is.

Q. And where is it?

A. This is the field here.

Q. Specifically, where you believe you saw the object, is that also on the map?

A. Yes. That's right here.

Q. Is that also marked?

A. Yes, it is.

Q. How is that marked?

A. With a circle and a line.

Q. This map appear to be a true and accurate representation of the area at the time, October 10, 2001?

A. Yes.

Q. I'm going to show you a picture, Mr. Furnier, marked State's D-1. If you could, tell us if you recognize that?

A. Yeah. That's the service road. That's about how it looked at the time, too.

Q. And that's the road you indicated led into the cornfield?

A. Yes.

MR. LOWE: Thank you, Mr. Furnier. The Defense may have some questions for you.

THE COURT: Any cross?

MR. YOUNG: Yes, Your Honor.

THE COURT: All right.

MR. YOUNG: 16(B)(1)(g). Make a motion for 16(B)(1)(g).

MR. LOWE: I believe they have everything, Your Honor.

THE COURT: All right.

- - -

CROSS-EXAMINATION

BY MR. YOUNG:

Q. Is it Mr. Furnier?

A. Yes.

Q. My name is David Young. You and I have not spoken before, have we?

A. No.

Q. I just have some quick questions.

Do you recall giving a statement to the police on -- a statement recorded on 10/10/2001?

A. Yeah, I believe so.

Q. You called 911 and indicated that you found a body, correct?

A. Yes.

Q. And the police then put you in a cruiser, correct?

A. The police picked me up at my parents' house in a cruiser, yes.

Q. And they interrogated you, did they not?

A. They questioned me, yes.

Q. They asked you where you had been that evening, correct?

A. Correct.

Q. And they interrogated you as a suspect, did they not?

A. Correct.

Q. And the body which you -- or the thing which you saw, the body, was badly decomposed, was it not?

A. Yes, it was.

Q. It had a strong pungent odor about it, did it not?

A. Actually, I did not notice an odor, nothing that really struck me.

Q. Do you recall making any statement to Detective Scott where you stated "I had up, like a little smell hit me. I looked down and there was some feces of some sort laying on the hay."

A. Yes. I remember that very well.

Q. And were those feces on the hay in close proximity to the body?

A. It was on the service road but it was closer to Galloway Road than it was to the end of the service road, yes.

Q. But you were interrogated as a suspect in this

case?

A. I believe the exact wording was, "they want to eliminate me as a suspect."

Q. Were the feces human feces or were they animal, if you could tell?

A. Couldn't tell. Looked like animal.

MR. YOUNG: Nothing further.

THE COURT: Anything further, Mr. Lowe?

- - -

REDIRECT EXAMINATION

BY MR. LOWE:

Q. Mr. Furnier, have you ever met Andrew Dotson?

A. No.

MR. LOWE: Nothing further.

THE COURT: Thank you. You may step down.

- - -

ROBERT McMILLIN

called by the State of Ohio on direct examination being first duly sworn, testified as follows:

- - -

DIRECT EXAMINATION

BY MS. PRICHARD:

Q. Would you please introduce yourself to the jury and spell your last name for the court reporter.

A. My name is Robert McMillin, M-c-M-i-l-l-i-n.

Q. And are you, in fact, a detective with Franklin County Sheriff's office?

A. Yes, ma'am, I am.

Q. How long have you been with the sheriff's office?

A. Seventeen and a half years now.

Q. And how long have you been a detective?

A. I have been assigned to the detective bureau for approximately one year.

Q. Back on October 10, 2001, what was your assignment with the sheriff's office?

A. At that time I was assigned to B-Company or second shift patrol working the west side, Prairie Township area.

Q. You worked in a marked cruiser?

A. Yes, ma'am.

Q. Do you remember being dispatched out to Galloway Road on October 10, 2001?

A. Yes, ma'am, I do.

Q. And what was the nature of that dispatch?

A. The nature of the call was a person that was walking home had discovered a dead body in a cornfield and had subsequently called that in.

Q. Do you recall at all approximately what time of day this was?

A. It was -- without seeing the cruiser log or

anything -- an approximation, late afternoon, early evening.

Q. And what did you do when you got that dispatch?

A. Responded to the scene. I was dispatched along with Prairie Township Fire Department due to the nature of the call. We responded to the area on Galloway Road and did an initial search of the area basically along the edge of the cornfield due to the fact that the person who had reported it was not on the scene.

Q. Did you find anything along the edge of the cornfield?

A. No, ma'am, we did not.

Q. So what did you do in this case?

A. What I did was contact the communication center and to basically do a callback of the reporting party to get his information and address. I then responded to that persons' house, which is in the Village Park area, proximately five to seven minutes away to pick up the reporting party to actually pinpoint the location of the body that he discovered.

Q. And would that be Chris Furnier?

A. Yes, ma'am, it would.

Q. You pick Mr. Furnier up. Did he take you to the location where he had seen this object that he believed to be a body?

A. Yes, ma'am. I picked him up, responded back to the location on Galloway Road. And he walked us to the location where he had discovered the body.

Q. Was it an area where you had not really been looking previously?

A. Correct. We didn't have an exact location. It was aired as simply in the cornfield alongside Galloway Road actually on the west side of the roadway, which was a large area. And it was not one of the areas that we initially searched.

Q. Was this area that you did find this body in Franklin County?

A. Yes, ma'am, it was.

Q. When you got there and he pointed this out to you, how far were you from Galloway Road.

A. Approximation, forty to fifty yards off the roadway itself.

Q. And could you just kind of describe that area that led into the portion where the body was found?

A. Yes, ma'am.

Q. It was basically a lane where farm equipment or tractors make entry into the cornfield itself.

A. Grass covered lane.

Q. And you would proceed down that until you had hit actual corn?

A. Yeah. You proceed down the lane and come to the cornfield itself and several rows in was where the body was positioned.

Q. And how high did you say the corn was at this time?

A. Oh, four to five feet. It was pretty high.

Q. Please describe what it was you saw when Mr. Furnier pointed this object out to you?

A. When he showed us the location, saw what appeared to be a male subject laying on his back; was also a white substance that was poured over his face and upper torso.

MR. YOUNG: Objection as to speculation as to how it was --

THE COURT: Overruled.

Q. (By Ms. Prichard) Continue.

A. And to me the body there was some state of decomposition and obvious signs of trauma to the head and upper torso.

Q. Did you do anything to the body? Disturb it in any way?

A. No, ma'am, I didn't.

Q. What steps did you take there at the scene?

A. We did initially contact the patrol supervisor as well as the detective bureau and immediately place crime

scene tape to secure the scene itself, to preserve and protect evidence. I believe Sergeant Massie, street supervisor, also responded and took some initial photographs.

Q. Was your job there to secure the scene and make sure it wasn't disturbed?

A. Yes, ma'am.

Q. And prior to you going to look at the body, did you see anybody else there disturbing it or doing anything?

A. No, ma'am.

Q. Show you a few photographs.

Show you State's Exhibit D-1 through D-16. Glance through those and tell me if you recognize what those depict.

A. Yes, ma'am. It actually depicts the crime scene and the body and position of the body as we discovered it.

Q. Are those fair and accurate representations of the scene and the bodies that appeared on October 10, 2001?

A. Yes, ma'am.

Q. Did you have any further duties or responsibilities at that scene?

A. In addition to securing it, we started a crime

scene log, which is standard SOP.

Q. Just standard operating procedure?

A. Yes, ma'am.

Q. Okay. To basically log anybody that makes entry or exiting into the crime scene their purpose for being there so actually to maintain, secure the scene and maintain the crime scene log until homicide detectives arrived, correct?

A. Yes, ma'am.

Q. Did any special agents or any crime scene personnel arrive?

A. Again, due to the nature of the call being the deceased person, BCI was also contacted and one of their crime scene persons responded also.

Q. After you secured the scene and kept this log, were you able to finally leave the scene?

A. Yes, ma'am. I was directed to actually transport Mr. Furnier back to the detective bureau at that time for interviewing by case investigators.

Q. Would it be standard to interview somebody who had found a body like that?

A. Yes, ma'am.

Q. And did you have any further duties or role in this investigation from that point on?

A. From that point on I didn't. It was turned over

to the case officer.

MS. PRICHARD: If I may have a minute.

I have nothing further. Defense may have some questions for you.

MR. YOUNG: No questions, Your Honor.

THE COURT: Thank you. You may step down.

THE WITNESS: Thank you.

MR. YOUNG: Your Honor, may we approach for one second?

- - -

Thereupon, Court and counsel confer at the bench out of the hearing of the jury as follows:

- - -

MR. YOUNG: I don't want to be a nitpicker, but every time you guys finish your direct examination you say the Defense may have some questions which means that we have some burden to perhaps do something. This last witness, I wouldn't even ask him any questions. Just ask the prosecutors not to say that every time after their direct.

THE COURT: All right. That's fine.

MS. PRICHARD: Sometimes I think they are going to jump up. I like to remind them.

THE COURT: As soon as you say I have no further questions, I will turn to them.

MS. PRICHARD: That's fine.

- - -

Thereupon, the following proceedings were had in the hearing of the jury as follows:

- - -

MS. PRICHARD: We need to set up the opaque projector. It will just take me a couple minutes. We are going to set this projector up.

- - -

GARY SCOTT WILGUS

called by the State of Ohio on direct examination being first duly sworn, testified as follows:

- - -

DIRECT EXAMINATION

BY MR. LOWE:

Q. Please state your full name for the record.

A. My name is Gary Scott Wilgus.

Q. Spell your last name.

A. W-i-l-g-u-s.

Q. And are you employed?

A. Yes, I am.

Q. With who?

A. I'm a special agent with Ohio Bureau of Criminal Investigation which is a part of the Ohio Attorney General's office.

Q. And how long have you been with -- it's commonly referred to as BCI&I?

A. Yes. That's correct.

Q. How long have you been with BCI&I?

A. Since February of 1996.

Q. And that entire time has it been in the same capacity?

A. Yes, as the crime scene agent.

Q. And as a crime scene agent for BCI&I, what are your general job duties?

A. Well, the essence of our job is to help local law enforcement agencies either help with major crimes or smaller crimes to -- when I say "to help them", assist them with forensic work and general investigative work if they need it.

Basically what we do is assist smaller agencies with major crimes and help them get through the investigative process. And that's done without a charge.

Q. And when you do, when you help out these agencies, what specifically are the types of things you would be doing?

A. Being a crime scene agent, what I'm assigned to do is help them forensically to process the scene for physical evidence that can be used in the courtroom.

And the purpose is to gather that information and compare it, then submit it to a laboratory or our laboratory to be analyzed to make some determination from.

Q. Does this job include taking pictures?

A. Yes, it does.

Q. Does it include collecting evidence?

A. Yes, it does.

Q. Special Agent Wilgus, I'm going to direct your attention back to October 10, 2001. Do you recall that day?

A. Yes.

Q. Do you recall being called out to a scene off of Galloway Road?

A. Yes, I do.

Q. Can you explain how you get called to a scene such as that?

A. Typically what occurs when the local agency discovers they have a crime such as a homicide, they in turn will contact a dispatching center that we have. That dispatching center, after getting approval from a supervisor, will contact us and we will drive to the scene.

Q. Are you given any information before you go out to the scene as to what type of a scene to expect?

A. Yes.

Q. And based on that, do you get any special equipment or anything like that?

A. Well, all of our equipment is contained in a van that we drive. We drive it daily, basically. And that is a, basically, a self-contained unit that has everything we will hopefully need.

Q. And if you recall, what time approximately did you respond to the scene off Galloway Road?

A. At 7:42 p.m. in the evening.

Q. And do you work by yourself?

A. Yes. At times, it depends on the crime. If it's a major crime that's going to take a lot of investigative work at the scene and have a lot of physical items to collect, sometimes they send another agent or maybe even a third. But in this particular incident, I responded by myself.

Q. You're speaking of Galloway Road, is that here in Franklin County?

A. Yes, it is.

Q. And when you arrived, were you the first person there?

A. No, I was not.

Q. Who was present, if you know?

A. When I arrived at the scene it was Lieutenant Dan

Casper who is part of the administrative staff of the Franklin County Sheriff's Department; Detective Zach Scott who is also with the Franklin County Sheriff's office; Detective McDonald and Detective Todd Runyon, also members of the Franklin County Sheriff's office. In addition to that, there was some patrol officers as well.

Q. Can you describe the actual scene for us? When you pulled up, what did you notice?

A. Well, to get to the scene, we had to head south on Galloway Road. And that's where we met up with the officers. There was some cruisers setting on the roadway and they explained the body was located in a field which was west of the roadway. And basically what that was, included two cornfields and then a road or gravel road or pathway that led between those two fields.

Q. Did you actually pull your car into the gravel way or did you park somewhere else?

A. What we typically do, and what I did in this particular case, is parked on the roadway. What we will do is physically walk back through that gravel road just to check for any kind of evidence that may have been deposited at the time of the crime -- shoe impressions or tire impressions that we may be able to find along

the way. We typically don't drive onto the scene so we don't destroy any evidence.

Q. Did you look at anything such as tire impressions or evidence along the roadway?

A. Yes, we did.

Q. Did you find any in this case?

A. No, we did not.

Q. And when you approached the actual scene, was there anybody around the actual object that was found?

A. No.

Q. So when you approached, what did you see?

A. What I saw was a gentleman laying on his back, his arms are over his head, his legs are extended and his left foot was missing. He was badly decomposed. You could tell he was a white male and he had short hair. His body was bloated which is a common procedure of the decomposition process and his face was blackened. That's also a process of decomposition.

Q. And you've dealt with decomposition before?

A. Yes, I have.

Q. And does this appear to be a normal decomposition to you?

A. Yes, it did.

Q. And you indicated his left foot was missing?

A. That's correct.

Q. What state of the body's dress or undress was he found?

A. He was undressed except for a pair of blue boxer type shorts.

Q. And could you tell by looking at the body how the foot was missing?

A. We assumed it was based on animals.

MR. YOUNG: Objection. Calls for speculation.

THE COURT: Overruled.

MR. LOWE: You can answer.

A. It appeared that the foot was removed by animals.

Q. (By Mr. Lowe) Did you notice any other missing parts of the body?

A. I did not.

Q. And you indicated just had boxer shorts on. Nothing on its torso?

A. That's correct.

Q. And did you notice anything around the body?

A. Yeah. There was a white powder that was both around the body and on the body as well, some on his upper belly and some on his neck which was actually kind of trapped between his throat, chin and neck and chest area.

Q. And could you tell what the substance was?

A. The only thing I could tell, it was a white powdery substance. I figured it was either lime or some type of cement type of material.

Q. Special Agent Wilgus, did you notice any insect activity around the body?

A. Yes. That's typical of the decomposition process as well. Maggots are chamfering in and out of the body as well as other insects that may attract to the body.

Q. That's something you would expect in a decomposition?

A. Yes, it is.

Q. At some point, did anybody else arrive on the scene to examine the body?

A. The Franklin County coroner did, or the deputy coroner.

Q. And do you recall his name?

A. Doctor Fardal.

Q. How long after you arrived on the scene did Doctor Fardal arrive?

A. He arrived 8:45 p.m. So I was on the scene about an hour or so.

Q. At that point had you or anybody else moved the body in any way?

A. No.

Q. Disturbed the body or anything around it?

A. No.

Q. And at any time, did you ever see anybody other than you or Doctor Fardal disturb the body in any way?

A. No.

Q. At some point were pictures taken?

A. Yes.

Q. And who took those pictures?

A. I did.

Q. At some point did Doctor Fardal examine the body?

A. Yes, he did.

Q. And the state of decomposition, what could you tell about the person's face? Was it recognizable?

A. No, it was not.

Q. Could you describe why it wasn't?

A. Typically in the decomposition process, the skin begins to slip, the body bloats, which distorts the facial appearance. Also, the face is black, which isn't uncommon. Many times that will occur and it becomes so grossly distorted you can't ID who the person is.

Q. At some point was there a decision made as to the best way to identify this body?

A. Yes.

Q. And what was that?

A. Through fingerprints.

Q. And in addition to fingerprints, was there

another decision made between yourself and Doctor Fardal as to how to obtain those fingerprints?

A. Yeah. What we did was, even though the body is decomposing, the fingerprints are severely deteriorated; however, many times we can still make an identification off of those fingerprints.

One of Doctor Fardal's concerns was when we place this body in a body bag that the contact the hands would have with the body bag and the body itself may further deteriorate those fingerprints because the skin is starting to slip, decomposing, obviously, and in very poor condition. So he thought it would be most appropriate to actually remove those fingers so we could protect those fingers and present those to the laboratory to try to make some type of identification off of those.

MR. LOWE: May I approach the witness, Your Honor?

THE COURT: Yes.

Q. (By Mr. Lowe) I'm going to show you a series of photographs, D-1 through D-16. If you can look at all of those and tell me if you recognize all of those and then we will pick out a few of them.

MR. LOWE: Judge, for the record, there also was an agreement as to the pictures that the State plans

to present.

Q. (By Mr. Lowe) Do you recognize those?

A. Yes, I do.

Q. Are those the photos that you took?

A. Not entirely. Some of those are also photographs that the Franklin County deputies or detectives took as well. But they accurately represent the scene.

Q. As it occurred on October 10, 2001?

A. Yes. That's correct.

Q. First photo we are going to talk about is State's D-1. Can you see that?

A. May I stand?

THE COURT: You can stand up. Just make sure you speak toward the jury and not the screen.

A. What State's Exhibit No. D-1 represents is, it's a photograph from the roadway looking down this gravel road and at the two cornfields on either side of that gravel roadway.

Q. (By Mr. Lowe) And that's the service road that you mentioned?

A. Yes.

Q. Show you now State's Exhibit D-2. Show us what that depicts.

A. State's Exhibit No. D-2 is a photograph of the body as we are looking from -- the left foot you can see

here is missing -- up towards the upper part of the body. His head will be turned superior, which the upper part of the body was in the southeast. Basically standing from the northeast or northwest looking southeast over top of the body.

Q. Anything else in that picture that you can identify?

A. We can see some of the white powder that's here on his belly that I spoke about previously as well as surrounding his body and around his left foot.

Q. And what about specifically the vegetation?

A. Basically what we are standing in is mature corn that was not yet harvested that was at its state, at least near being close to being harvested and it was still pretty much upright and intact.

Q. How tall would you say it was?

A. About seven feet or so.

Q. State's D-3.

A. State's Exhibit D-3 is again a photograph looking over top of the body, look down and we are looking from the southeast back towards the northwest. And we are looking at -- we are actually standing at a spot at the top of his body here. You can see what I spoke about, his face is blackened, decomposition and you can see the powder on his chest.

And you're looking here at his belly. These two circular areas are two injures that he had to his body. And they are apparent there on the chest area.

Q. State's D-4.

A. State's Exhibit D-4 is again a photograph and it's looking from the west towards the east. You can see again that his face is heavily blackened with decomposition and again you can see the white powder on his chest. These two circular areas are again the injuries that were found on his chest that evening.

Q. That's just the different view of D-3 basically?

A. Yes. That's correct.

Q. To the left of that photo there is a circle or hole. That's part of the photograph, not the body?

A. Yes. Someone apparently punched a hole. That's correct.

Q. Special Agent Wilgus, as part of your job, do you also compile reports as to the scenes you have been in?

A. Yes, I do.

Q. And how do you compile these reports? What do you do?

A. Manually type them and then distribute those to the local law enforcement agency.

Q. I'm going to show you State's Exhibit E-1, three-page document. If you can look at that and tell

us if you recognize what that is.

A. State's Exhibit E-1 is the report that I typed depicting this case.

Q. And is it a summary of what you did?

A. Yes. That is correct.

Q. Is it an accurate copy of the report you prepared?

A. Yes, it is.

Q. Do you also fill out things that are commonly known as lab requests?

A. Yes, I do.

Q. And what's the purpose of that?

A. Purpose is to get the item submitted into the laboratory and then from there help and assist what analysis or determinations need to be made from those items of evidence.

Q. What about evidence logs or sheets?

A. That's in essence what that is, is an evidence log or sheet.

Q. Show you State's E-2. Look at that and tell us if you know what that is.

A. Yes. State's Exhibit E-2 is that laboratory sheet that I submitted, or depicts the evidence that I submitted.

Q. Okay. So all of the evidence that you had

collected at the scene is, in fact, written down on State's Exhibit E-2?

A. Yes. That's correct.

Q. Is that also an accurate copy of your evidence log?

A. Yes, it is.

Q. State's E-3, explain what that is.

A. State's Exhibit E-3 is a discrepancy notice. Once in a great while we will have this produced out. When I type this, I typed what we removed from him, which was left thumb and two middle fingers. Those had the most detail on it. When I typed it up, I mistakenly put the right thumb instead of left thumb.

Q. You made a mistake?

A. Yeah. When I typed it right instead of left.

Q. And E-3 indicates that a mistake was made and you're correcting it.

A. Yes.

Q. Is that also an accurate copy of the report?

A. Yes, it is.

Q. State's E-4, do you recognize what that is?

A. State's Exhibit No. E-4 is a laboratory analysis report. It details the individual fingers that I submitted. What this report does is basically tell what the result was.

What I ask is that these fingers be examined and actually entered into what we call the AFIS machine. AFIS is Automated Fingerprint Identification System. Basically what this does, it looks at a fingerprint and compares that fingerprint to all the fingerprints on record. And if we have a John Doe like this, our hope is that that fingerprint that we submit will be matched to something in the computer database that will make an identification. That was my hope in this particular case. But when they submitted those, entered those into the computer, no records came back. We were not able to make an identification from that.

Q. No match was found?

A. Yes. That is correct.

Q. Is that an accurate copy?

A. Yes, it is.

Q. State's Exhibit E-5.

A. State's Exhibit No. E-5 is again a laboratory report. And what that details is the white powder that was submitted. I collected samples at the scene of that powder to try to make some type of determination as to exactly what that was. And this originates from the chemistry section which will do analysis on the items to see if they are controlled substances or not. And what the chemistry section determined is that the white

powder was not controlled substance, meaning it wasn't cocaine or something of that nature.

Q. Is that a true and accurate copy?

A. Yes, it is.

Q. State's Exhibit E-6.

A. Okay. State's Exhibit No. E-6 is again another laboratory analysis. And this is from the trace evidence section.

And what the trace evidence section did on this particular case is, they took that white powder and looked at it microscopically to see if they could make some type of determination as to what it was. And the only determination they could make, that it was a cement-type material.

Q. Is that a true and accurate copy?

A. Yes, it is.

MR. LOWE: May I have one moment, Your Honor?

THE COURT: Yes.

Q. (By Mr. Lowe) When you talked about the powder that was on the neck, where else on the body was the powder?

A. It was on his belly around the navel and also on his chest and trapped around the chin and also surrounding the body.

Q. It was surrounding the body. Was it on the ground then?

A. Yes. That's correct.

Q. And what commonly happens to bodies that are exposed to weather?

A. Well, obviously it may have rained on him. And that's what I felt occurred in this particular case. I felt that most of the powder probably was originally on top of his body. And what it looked like, it may have been rained on. The body may have been rained on and the powder slipped and covered the ground around his body and some of it hardened on his chest and stomach as well.

MR. LOWE: Thank you very much.

I have nothing further, Your Honor.

THE COURT: Cross.

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CROSS-EXAMINATION

BY MR. YOUNG:

Q. Good afternoon, Mr. Wilgus. My name is David Young. We met briefly before court.

A. Good afternoon.

Q. Did you see any evidence of any trauma to the head?

A. At the scene?

Q. At the scene.

A. It's difficult to tell because it's so decomposed and entirely bloated. I didn't see any bullet holes. But in terms of blunt force trauma I, wouldn't be able to determine that at the scene.

Q. So you being an expert in crime scene search or crime scene collection or data recovery did not see any evidence of any head trauma?

A. It wasn't clearly visible.

Q. As a crime scene search expert, you do everything possible to preserve the crime scene, correct?

A. That's correct.

Q. And when you arrived, the first officers on the scene had already placed the crime scene tape around the body?

A. Yes. That's correct.

Q. Do you know the date that that body was placed there?

A. I do not.

Q. Do you know the time when that body was placed there?

A. I do not.

Q. Do you know who placed that body there?

A. I do not.

Q. Do you know who killed that person?

A. I do not.

Q. Do you know how that person died?

A. Yes.

Q. Are you a forensic coroner?

A. I am not.

Q. You stated there was powder on his belly or on his chest?

A. That's correct.

Q. Was the vast majority of the powder around the individual's neck?

A. Yes, it was.

Q. And that is the place where it was caked, I guess it was. The largest concentration was around the individual's neck?

A. That's correct.

Q. Did you indicate that -- or you surmised that potentially there was powder elsewhere but it may have washed off because of, whatever, rain or condensation or whatnot?

A. That's correct. It had that appearance.

Q. And you pulled the weather data for the preceding four to six weeks to see, in fact, whether there was any sufficient rain or anything along that line?

A. I did not.

Q. Do you have that capability to do that?

A. Yes, we do.

Q. And did you not do that in this case, did you?

A. It was not necessary.

MR. YOUNG: Nothing further.

THE COURT: Anything further?

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REDIRECT EXAMINATION

BY MR. LOWE:

Q. You don't perform autopsies, right?

A. That's correct. I do not.

Q. So it's not your job to examine the body for all the injuries?

A. That's correct, it's not.

Q. When you were asked the question, you were just telling us what you could see with your naked eye?

A. That's correct.

MR. LOWE: Nothing further.

THE COURT: Anything further?

MR. YOUNG: No, Your Honor.

THE COURT: Thank you. You may step down. Go ahead and call your next witness.

MS. MENASHE: Your Honor, may we approach?

- - -

Thereupon, Court and counsel confer at the bench out of the hearing of the jury as follows:

- - -

MS. MENASHE: Your Honor, prior to the start of voir dire, the State made a separation of witnesses in this case. We've complied with that, had all of our witnesses outside of the courtroom. However, Your Honor, we were in here 1:15 today, Zack Scott went through the holding cell, asked to see an inmate. I asked the deputy which inmate he was going to see. He told me Mike Arthurs.

At 2:05, I asked the deputy if he was still down talking to Mike Arthurs and he indicated, yes, he was. I asked him if Zach Scott had to come out the door so he would see him. He said a deputy is waiting outside to let Zach out. Zach hasn't exited yet.

So Zach Scott who will testify was essentially down talking to Mike Arthurs for at least fifty minutes.

MS. PRICHARD: First of all, Zach Scott has been instructed not to talk about the case. I know for a fact we are having problems with keeping everybody separated and keeping people in tanks and holding cells in various places. Zach was the person designated by the chief just to deal with those problems and those issues so that's what he's been doing is trying to make sure everybody is separate without discussing the case

and there is no problems with everybody being on the floor in a tank with anybody.

THE COURT: Okay. Let's get going.

MR. YOUNG: Also, Your Honor, on the last time Mike Arthurs testified, a representative from Bill Meeks' office who represents Mike Arthurs was present in the courtroom and made some objections and everything while Mike Arthurs was testifying. I see a representative, Lisa Tome from Mr. Meeks' office. I presume she's not going to be allowed to be interrupting any cross-examination or anything.

It was quite odd on the last case that Dave Thomas stood up and started objecting to defense counsel's questions.

MS. PRICHARD: There was privileged communications being asked last time. They stood up and indicated their concern and they approached the bench. I don't know you guys would go the same route. I imagine you would not. If you do, they are protecting privilege.

MR. YOUNG: He has a right to make any comments he makes. He can breach his own privilege.

THE COURT: Let's get on with the case.

MR. LOWE: One more thing. I'm sorry. He is going to say he knows who sold drugs to Conway.

That's his whole situation with Conway. Do you want me to instruct him not to raise that at all?

THE COURT: Let's not deal with that.

MR. LOWE: So I can say something when he gets out here then?

THE COURT: Cross-examination if there is any suggestion that he didn't know Conway or wasn't friends with Conway, that activity with Conway may be admissible.

- - -

Thereupon, the following proceedings were had in the hearing of the jury as follows:

- - -

THE COURT: Go ahead and take the handcuffs off, please.

- - -

MICHAEL ARTHURS

called by the State of Ohio on direct examination being first duly sworn, testified as follows:

- - -

DIRECT EXAMINATION

BY MR. LOWE:

Q. Please state your full name and spell your last name for the record.

A. Michael Lee Arthurs, A-r-t-h-u-r-s.

A. Yes.

Q. And you are to plead guilty to -- do you know the charge?

A. Abduction.

Q. Abduction. Do you know the possible penalty for that charge?

A. Five years, I think.

Q. And the State will recommend that that sentence be run concurrently to the sentence you're currently incarcerated on?

A. Yes.

Q. Is that correct?

A. Yes.

Q. Do you recognize that's a recommendation?

A. Yes.

Q. And, in fact, could be run consecutively for a total of nine possible years?

A. Yes.

Q. And the rest of your agreement is to testify truthfully in this case?

A. Yes.

Q. And you signed an agreement reflecting that arrangement; is that correct?

A. Yeah.

Q. And would that have been on May 23, 2002?

A. I'm not sure. It was somewhere around there.

MR. LOWE: May I approach, Your Honor?

Q. (By Mr. Lowe) Show you what's marked G-1. It's a three-page document. Tell me if you recognize that, if you've ever seen that before.

A. Yeah.

Q. Is your signature on that?

A. Yes.

Q. And is the date accurate, May 23, 2002?

A. Yes.

Q. Part of that agreement was to testify truthfully here today?

A. Yes, it was.

Q. And also part of that agreement you were to testify in Chillicothe on some unrelated matters?

A. Yes.

Q. Do you know an individual by the name of James Conway?

A. Yes.

Q. Are you friends with that individual?

A. I was.

Q. Okay. Let's specifically talk about the year 2001.

A. Yes.

Q. Were you friends with that individual in 2001?

A. Yes.

Q. Back in September of 2001, how long had you known James Conway?

A. Right around a year, somewhere in there.

Q. Did you socialize with him?

A. Yes.

Q. Did you hang out with him a lot?

A. Yes.

Q. Did you see him frequently?

A. Yes.

Q. How frequently would you say you saw him?

A. At least every weekend.

Q. I'm going to ask you to look around the courtroom and see if you see that individual here today. And if you do, please point to him and describe what he's wearing.

A. He's wearing a black suit, gray tie.

Q. What position of the table is he in?

A. He's in the middle.

MR. LOWE: Thank you. Your Honor, please let the record reflect the witness identified the defendant.

THE COURT: It may.

MR. LOWE: Thank you.

Q. (By Mr. Lowe) Let's talk about some other people

and whether you know these people or not. Do you know Shawn Nightingale?

A. Yes.

Q. And were you friend with Shawn Nightingale back in 2001?

A. Yes.

Q. And how long in 2001 had you been friends with Shawn?

A. I knew Shawn off and on since I was real young. Five or six years.

Q. And did Shawn also hang out with you and James Conway?

A. Yes.

Q. What about an individual by the name of Jamie Horton?

A. Yes.

Q. Were you friends with Mr. Horton?

A. Yes.

Q. Same question, back in 2001, how long have you been friends with him?

A. I was friends with Jamie about a year.

Q. Is it fair to say the four of you socialized together?

A. Yes.

Q. Do you know an individual by the name of Andrew

Dotson?

A. Yes.

Q. Back in 2001, how long had you known Andrew Dotson?

A. I had known him not long, couple months. Not real long.

Q. Were you friendly with him?

A. Yes.

Q. Did you know him as well as you knew the other three gentlemen?

A. No.

Q. Did Andrew socialize with the group as well?

A. Yes.

Q. Are you from Columbus, Mr. Arthurs?

A. No. I live in Chillicothe.

Q. When you were in Columbus, were you employed?

A. No.

Q. Did you live down here back in 2001?

A. No.

Q. Did you actually live in Chillicothe?

A. Yes.

Q. So how often did you come to Columbus and see these individuals that we've mentioned?

A. Like I said, at least once a week come up here, go out and do something, you know, at least once a week.

Q. Were there many times you were here more than once a week?

A. Yes.

Q. But each and every time did you go back to Chillicothe?

A. Yeah, just about.

Q. I'm going to direct your attention back to September of 2001. Were you living in Chillicothe at that time?

A. Yes.

Q. What address were you living at?

A. 644 Yellowbud Road.

Q. And did you always stay at that address when you were in Chillicothe?

A. More than likely.

Q. Did you also frequent hotel rooms in Chillicothe?

A. Yes.

Q. And what did you do in the hotel room?

A. Most of the time we just get people together and had little parties and drink. That's about it.

Q. How frequently would you say you got these hotel rooms?

A. A lot. We got them a lot.

Q. Did you get them for one night or more than one night?

A. It varied. Sometimes we get them for one night. Sometimes we get them for a week. I don't know. Sometimes -- it's just different. Sometimes we get them longer than others.

Q. Did you ever have more than one hotel room on the same day?

A. Yes. We used to get two hotel rooms or, you know, whatever we had to get depending on how many people we had.

Q. Did you ever reserve hotel rooms in your name?

A. Sometimes, not very often.

Q. Did you reserve hotel rooms in any other name of the group that we mentioned?

A. Like I said, not often. We used to use a lot of made-up names. We never put our real names on the hotel rooms.

Q. So sometimes you use your name; sometimes you use fake names.

A. Yeah.

Q. Do you recall being at a party on September 14, 2001?

A. Yes.

Q. Who was present at that party?

A. Me, Shawn, Jimmy, Jamie Horton, Ricky Heard, Rick Turner, Andrew.

Q. Do you know exactly what day that was on?
A. I'm not real sure. Only thing I know, it was a birthday party that we went to and we went back to a hotel room after that.
Q. What hotel was it, if you recall?
A. The Hampton Inn.
Q. And let's talk about specifically who was there. You mention these people. Take them one at a time. Who was the first person there?
A. Of course, me.
Q. Okay.
A. And there was Shawn Nightingale.
Q. Shawn Nightingale. Who else?
A. Jimmy Conway.
Q. Okay.
A. Jamie Horton, Ricky Turner, Ricky Heard and Andrew Dotson.
Q. Ricky Heard, is that what you said?
A. Yes.
Q. And Ricky Turner?
A. Yes.
Q. Who are they? Are you friends with them?
A. Yeah. We've all went out. They went out with us and stuff.
Q. And you indicate this was a birthday party.

A. Yeah. We went to a birthday party, a guy in Chillicothe.

Q. Do you know his name?

A. CJ Stevens.

Q. And what time approximately would this have been?

A. 8:00, 9:00 o'clock at night. It was dark.

Q. And how long did you stay at that party?

A. We weren't there very long. Maybe hour, hour and a half maybe. The fight broke out and we left.

Q. At some point that night did you have a conversation with Jimmy Conway?

A. Yeah, that was after we got back to the hotel. Jimmy pulled me and Shawn Nightingale to the bathroom of it. That's where we kept all of our beer and stuff in the bathtub with ice on it. He asked us if we'd kill Andrew and we agreed to it.

Q. Let me stop you there. You indicated you left the party.

A. Yeah. We left the party, went back to the hotel.

Q. Went back to the hotel. And who was present in this room when you went back to the hotel?

A. The people that I named and there was a few girls. I can't remember the name of the girls that was there.

Q. You mentioned something about a bathroom.

Explain that for us.

A. In one of the rooms, in the bathtub we had the beer and whatever else there was to drink, we had it in the bathtub with ice on it. That was our cooler.

Q. And you indicated you had conversation with Jimmy Conway in the bathroom?

A. Yes.

Q. Was the door opened or closed?

A. Closed.

Q. Who was in the bathroom when this conversation took place?

A. Me, Jimmy and Shawn.

Q. Just the three of you?

A. Yeah.

Q. And did you initiate this conversation?

A. No.

Q. Who did?

A. Jimmy.

Q. And what specifically do you recall Mr. Conway saying to you?

A. He asked us if we'd get rid of Andrew for him. We said yeah. Can't really exactly say what he said. I don't remember every exact word. But it was, would we kill Andrew for him. And we got our drinks and went back out to the party.

Q. And you agreed to kill Andrew for him?
A. Yes.
Q. What about Shawn?
A. Yes.
Q. Was there any talk as to why?
A. No, not at that time.
Q. Did you have an understanding as to why Mr. Conway wanted to kill him?
MR. YOUNG: Objection.
THE COURT: Sustained.
Q. (By Mr. Lowe) Well, you agreed to kill Andrew; is that correct?
A. Yes.
Q. Why were you killing Andrew?
A. Me and Shawn, I'm pretty sure, sold Jimmy --
MR. YOUNG: Objection. Calls for speculation.
THE COURT: Overruled. State why you did it and not what anybody else was thinking. Go ahead.
A. Because Andrew saw Jimmy shoot --
MR. YOUNG: Objection.
THE COURT: Overruled.
A. He seen him shoot a guy named Jesse James. And the detectives, I guess --
MR. YOUNG: Objection.

THE COURT: Again, I'm going to instruct the jury like I did this morning that I'm admitting this for the purpose of why he did what he did and why he agreed to that, not in fact that what he said is true.

Go ahead.

MR. LOWE: Thank you, Judge.

Q. (By Mr. Lowe) And you agreed to this?

A. Yeah.

Q. And was there any further discussion in the bathroom as to how any of this was to take place or anything else?

A. No.

Q. You indicate you got your drinks.

A. Yes.

Q. And then you left the bathroom.

A. Yes.

Q. Where did you go?

A. We just went back out and started drinking with everybody else.

Q. And why did you agree to kill someone who you were friendly with?

A. Jimmy just asked us to do it and we said yes. Wasn't -- I don't know why.

Q. And after you rejoined the party, how long did you stay there?

A. We stayed there the whole night.
Q. Did you sleep in the room?
A. Yeah.
Q. Did everybody sleep in the room?
A. As far as -- we had two rooms. As far as I know, everybody slept there.
Q. You had two rooms that night?
A. Yes.
Q. Did you yourself wake up in a room?
A. Yeah.
Q. Who else was present when you woke up?
A. When I woke up it was me and Andrew and Shawn.
Q. Talking about Andrew Dotson?
A. Yes.
Q. And Shawn Nightingale?
A. Yes.
Q. What was the next thing that happened that day?
A. We got a phone call and asked us to come downstairs.

Maybe Shawn was already down there. I think Shawn was already down there.

It was just me and Andrew. And we was asked to come downstairs, meet them out in front of the hotel.
Q. Did you do that?
A. Yeah. We went downstairs and met them.

Q. When you say "we", you're talking about you and who?

A. Me and Andrew.

Q. Dotson?

A. Dotson.

Q. Was there outside the hotel?

A. Yes, out front.

Q. And who did you encounter when you went outside?

A. It was Jimmy Conway, Jamie Horton. That's why I said Shawn -- I think Shawn Nightingale was already out there waiting on us out there with him in Jimmy's Escalade.

Q. Jimmy has an Escalade?

A. Yes.

Q. What color was it?

A. It was a champagne color, light colored.

Q. And were Jimmy Conway, Shawn Nightingale and Jamie Horton all together?

A. Yes.

Q. And were they actually in the vehicle or not?

A. Jamie and Jimmy were in the vehicle and Shawn was waiting outside talking to him when I came out.

Q. So when you came out, Shawn was talking to Jimmy and Jamie?

A. Yeah.

Q. Did you have some conversation with any of the individuals out there at that time?

A. No. They left and then Shawn asked Andrew if he wanted to go to West Virginia with us to pick up some money from somebody he had down there or something. And you know, he asked me -- he knew I would go. We agreed. Took off and went to West Virginia.

Q. Did you believe that was the real purpose for going to West Virginia?

A. No.

Q. What did you think was going to happen in West Virginia?

A. We were supposed to kill Andrew down there.

Q. Who asked Andrew to go with you guys?

A. Shawn did.

Q. And which car did you get into?

A. Shawn's Jeep.

Q. And who was driving?

A. I was.

Q. And where was Shawn?

A. In the passenger seat.

Q. And where was Andrew Dotson?

A. In the back seat.

Q. Was there any discussion among the three of you about what you were going to do in West Virginia?

A. Like I said, the only thing I remember about us talking about it was Shawn saying we were going down there to pick up some money from someone.

Q. Did you, in fact, go to West Virginia?

A. Yes.

Q. And what time of day would this approximately have been?

A. Maybe 11:00, 12:00 o'clock in the afternoon is when we took off.

Q. And you were driving?

A. Yes.

Q. Did you have any weapons on you?

A. Yeah. There was a gun underneath one of the seats, one of the front seats. I can't remember which one. There was a 9MM pistol.

Q. Did you go all the way to West Virginia without stopping?

A. No. On the way there, I started having a rough time thinking about what we were going down here to do. And I stopped and had to go to the rest area because I started crying and I had to clean myself up. I didn't want Andrew to see me crying. And then we came back and took off and went down to West Virginia.

Q. Did you have any conversation with Shawn at the rest stop?

A. He just told me --

MR. YOUNG: Objection. Hearsay.

THE COURT: Just go ahead and answer that yes or no.

A. Yes.

Q. (By Mr. Lowe) And after this conversation, you proceed to West Virginia?

A. Yes.

Q. And Andrew was in the back?

A. Yes.

Q. Did you, in fact, make it to West Virginia?

A. Yes.

Q. And where did you go when you got to West Virginia?

A. We went down to Shawn's brother's. We stopped and talked to his brother first. And then we took off from his brother's house. We went to some back road. I don't even know what it was. Went up some hill off in the woods. And we told Andrew that we were up there looking for weed plants. And we got out and we went to -- I just looked at Shawn and told him I couldn't do it. And he shook his head no, too. And we told Andrew let's go. We just got back in the car. And we left there.

And Shawn really did, I guess, had to go pick up

some money.

And Andrew, he liked to take pills and he wanted to know if Shawn could get some. So Shawn stopped and got some for him. And we headed back to Columbus.

Q. When you stopped in the field, you told Andrew that was to look for weed plants?

A. Yes.

Q. What are weed plants?

A. Marijuana.

Q. And that wasn't the real reason you stopped in that field, though, was it?

A. No.

Q. What was the real reason?

A. We were supposed to kill Andrew up there.

Q. And at some point in that field, you indicated you made the decision not to go through with it?

A. Yes.

Q. And at what point in the field did that happen?

A. It was as soon as we got out, as soon as we started walking behind the Jeep. Like I said, I looked at Shawn and just told him, no, I can't do it. He said he couldn't either. We told Andrew, he was a little bit ahead of us, we told him, let's go. So we got back in the Jeep and left.

Q. How long would you say you were in the field?

A. If it was five minutes --

Q. You got back in the Jeep and you indicated you went and picked up some money.

A. Yeah.

Q. And pills?

A. Yeah.

Q. And after you picked up the money and pills, what did you do?

A. We headed back towards Columbus. And on the way, I'm not sure which one of us, one of us called Jimmy on his cell phone -- or I don't know -- called him. We were on our cell phone and told him we couldn't do it, that we couldn't. He told us to meet him in Columbus.

Q. Had you been drinking that day?

A. There was some beer in the back of the Jeep that -- it was just some old hot beer. We drank one or two of them. We weren't -- we hadn't been drinking enough to be drunk.

Q. You indicated these pills -- what were done with these pills that Shawn collected?

A. He gave them to Andrew. Andrew started taking them almost right as we were pulling out of the driveway.

Q. On the way back, did you say anything to Andrew, any conversation to Andrew?

A. Yeah. We asked him about if he would ever even tell on Jimmy for that stuff that he saw. And he said he wasn't like that. He wasn't going to say nothing.

THE COURT: Is there an objection?

MR. YOUNG: Objection.

THE COURT: Well, at this point, overruled.

MR. LOWE: Thank you.

Q. (By Mr. Lowe) So you had discussion about Andrew telling.

A. Yes.

Q. And how long did that discussion with Andrew take?

A. It didn't take that long. We just asked him if he would tell on Jimmy. He said no.

Q. At some point did Andrew's condition change?

A. Yeah. He passed out in the back seat of the Jeep on the way back.

Q. Was he laying down or was he sitting up?

A. He fell asleep. He was laying down in the back seat.

Q. How close were you to Columbus when you noticed that Andrew was not conscious in the back seat?

A. I'm not real sure. We weren't that far out of Kentucky or West Virginia.

Q. And you indicated you had a conversation with Mr.

Conway.

A. Yes.

Q. And you told him that you couldn't go through with it?

A. Yes.

Q. And what was Mr. Conway's response?

MR. YOUNG: Objection.

THE COURT: Overruled.

A. Go ahead and answer?

Q. (By Mr. Lowe) Yes.

A. He just told us meet him in Columbus at some shopping center there on the west side. Told us quit being bitches.

Q. I didn't hear that last part.

A. Quit being bitches, meet him up there in Columbus.

Q. And what did you take "quit being bitches" to mean?

A. That we weren't doing what we were supposed to be doing. I don't know how to --

Q. Did you agree to meet Mr. Conway?

A. Yes.

Q. And at this point you're still driving?

A. Yes.

Q. Who's in the passenger seat?

A. Shawn still.
Q. And who is in the back?
A. Andrew.
Q. You drive back to Columbus?
A. Yes.
Q. And approximately what time do you get back to Columbus?
A. It was after dark. I'm not sure what time it was. I know it was after dark.
Q. Where did you go when you got to Columbus?
A. We met Jimmy on the west side at a shopping center. I'm not sure what the name of it is.
Q. And did you actually pull in the parking lot?
A. Yeah. We pulled into the parking lot and we saw Jimmy sitting in his dad's truck, him and Jamie. We pulled up. Shawn got out and talked to him and then we followed him to a field, to a cornfield.
Q. You said "Jimmy's dad's truck." Is that different than the Escalade you talked about earlier?
A. Yeah.
Q. What type of truck are you talking about?
A. It's a white Dodge pickup.
Q. A pickup truck?
A. Yes.
Q. And who was driving that car?

A. Jimmy.
Q. And was there anyone in the passenger side?
A. Yeah, Jamie Horton.
Q. Anybody else in the vehicle?
A. No.
Q. You indicated Shawn had some discussion. Did you see who he was talking to?
A. Yeah. He was talking to Jimmy.
Q. Did Shawn get out of the car to do this or was he still in the car?
A. Yeah. He got out and walked over to Jimmy's window.
Q. Could you hear any of this conversation?
A. I kept the windows up in the Jeep.
Q. But you could see it taking place?
A. Yeah.
Q. After Shawn got back in the car, where did you go?
A. We followed Jimmy to the cornfield. I didn't know at the time but I do now, it's Galloway Road, a cornfield on Galloway Road.
Q. You indicated you were following Jimmy. Did you know where you were going before you got there?
A. No. No.
Q. And who pulled in first to this cornfield?

A. Jim.
Q. And at some point did that pickup truck stop?
A. Well, when we pulled into the cornfield, he stopped in front of us in the cornfield.
Q. Was the vehicle parked?
A. Yes.
Q. And did you also stop your vehicle?
A. Yeah. We pulled in behind him, stopped.
Q. And in Jimmy and Jamie's truck, did they stay in the car or did they get out?
A. They got out. All of us -- we all got out.
Q. So that would have been Jimmy Conway, Jamie Horton, you and Shawn Nightingale?
A. Yes.
Q. Did Andrew Dotson also get out?
A. No. He was still asleep in the back seat.
Q. Was anything said to him by you or Shawn?
A. To Andrew?
Q. Yes.
A. No.
Q. What about by Jimmy or Jamie?
A. No.
Q. Did you have a discussion with Mr. Conway at that time?
A. Talked about shooting him or something. We said,

no, it would be too loud. I can't remember exactly who said exactly what. But I know it was said it would be too loud because there was houses right by it. So that didn't happen.

Q. Were you asked to do anything else by Mr. Conway?

A. Get him out of the car. Got him out of the car. Jimmy asked me to choke him.

Q. Okay. Explain how you got him out of the car for us, please.

A. Grabbed him underneath his arms. His head was facing me. I grabbed him underneath his arms, pulled him out and then that's when I was asked to choke him.

Q. Could you tell if he was breathing at that time?

A. Honestly, I'm not -- I don't remember seeing if he was breathing right then or there or not. I don't know.

Q. Okay. You indicated Mr. Conway asked you to choke him. What do you do in response to that?

A. I put my arm around his neck and I acted like I was choking him and then I quit. And when I let him down he was still breathing.

Q. At that point you could tell that Andrew was still breathing?

A. Yes.

Q. You indicated that you put your arm around his

neck. Show us what you did to his neck.

A. I had his head against my chest and his neck would have been right here. I don't know how to explain that. That's how you do it -- a headlock, I guess you'd say.

Q. How much pressure do you apply?

A. Not very much. Not enough to, you know -- I don't know how to explain it. Do you want me to guess?

Q. Was your intention to actually choke him?

A. No. I wasn't trying to kill him.

Q. What were you trying to do?

A. Just make it look like I was, just to satisfy Jimmy.

Q. Just to satisfy Jimmy --

A. Yes.

Q. -- is that what you said?

A. Yes.

Q. After you put your arm around his neck, you indicated you let him go.

A. Yeah.

Q. And where was he at that point?

A. We were still in a cornfield with him.

Q. Specifically where was Andrew? Was he on the ground?

A. Yes, on the ground.

Q. Was he against a car?
A. He was on the ground.
Q. Could you tell which way he was facing? On his back? On his stomach?
A. He was on his back.
Q. And you're standing over him?
A. Yes.
Q. Where is Shawn Nightingale?
A. We were all just standing right around him there, standing there. I don't know how to explain it. I guess you kind of say in a circle talking to each other.
Q. So all four of you were in close proximity to Andrew at that time?
A. Yes.
Q. Did you do anything else to Andrew at that time?
A. Yeah. I'm not sure. I came up with something about me stepping on his throat. So I pulled him over behind the Jeep and put one foot on his throat and kept one foot on the ground. And, you know, I wasn't putting all my pressure, nothing like that, on him. Did that and I quit and that was it.
Q. Okay. Why did you do that?
A. Because he was still breathing. And like I said, to make it look like I was trying to kill him.
Q. Were you actually trying to kill him?

A. No.
Q. At that point after you got off -- explain for us when you said you had one hand on the car. Explain that, please.
A. I was leaning the foot I had on the ground against the back of the Jeep. I had my hand on the Jeep.
Q. Were you putting all your weight on Mr. Dotson?
A. No.
Q. Where was the majority of your weight?
A. On my other foot that was on the ground.
Q. After you got off on Mr. Dotson, was he still breathing?
A. Yes.
Q. And what was the next thing that you did?
A. Me and Jamie drug him back into the corn. That's whenever I came out. Jamie and Shawn went back there with a clear bag, some kind of like trash bag or something. Came back, came back out and had his clothes in the bag.
Q. Okay. Let's stop there. You say you dragged him?
A. Yeah.
Q. Explain for us how you dragged Mr. Dotson.
A. Just by his arms.

Q. And did you do that by yourself?
A. No. Jamie helped me.
Q. And where did you take him?
A. Just straight back into the corn about fifteen, twenty yards, I think. I think that's about how far it was.
Q. At that point, did Mr. Dotson still have all his clothes on?
A. Yes.
Q. And after you dragged Mr. Dotson to the cornfield, did you stay in the back of the cornfield with him?
A. No. I came out. I came back out where the cars are.
Q. Who was back by the cars when you came back?
A. Jimmy and Shawn. And then Jamie came out with me and that's when he grabbed a bag, him and Shawn went back and got his clothes off of him.
Q. Describe this bag for us, please.
A. Just a clear -- looked like a garbage bag, but it was clear.
Q. Do you know where that came from?
A. I'm not sure. I don't know where it come from.
Q. Did you see anyone retrieve it?
A. That's why I said Jamie got it. I don't know.

Q. Who went back in the field next after the bag was retrieved to get his clothes?

A. Jamie and Shawn Nightingale.

Q. Could you see what they were doing from where you were?

A. No.

Q. How close would you say you were to Jamie and Shawn when they were -- when they went back into the cornfield?

A. I was standing by the Jeep.

Q. With who?

A. Jimmy. And like I said, it was like ten or twenty yards into the corn. So it was probably thirty yards away from me.

Q. Were you having any conversations with Jimmy Conway while the two of you were standing by the vehicle?

A. Not that I can remember.

Q. And how long would you say that Shawn Nightingale and Jamie Horton were back with the bag and the body?

A. It wasn't long. I can't say exactly, you know. It wasn't long, though. I came back out.

Q. And you talked about getting clothes. How do you know they got clothes?

A. Because when he came back out, the clothes was in

the bag.

Q. Could you tell whose clothes they were?

A. Yes.

Q. Whose clothes were they?

A. They were Andrew's.

Q. Andrew Dotson?

A. Yes.

Q. After Shawn and Jamie came back with the clothes, where did they go?

A. Put the clothes in the back of the Jeep. Pretty sure. And then that's when Jimmy went back into the corn.

Q. Did you see Jimmy do anything before he went back into the cornfield?

A. He got a pick out of the back of his dad's truck.

Q. Could you describe this pick, please?

A. It had a wooden handle with a metal, like a spike on one end and on the other end it's like a -- I don't know. It's like a squared piece or something you dig the dirt up with.

Q. Did Mr. Conway say anything before he retrieved this pick?

A. Not that I can remember.

Q. And when he retrieved the pick, where did he go?

A. He went back to where Andrew was.

Q. And could you see what he was doing back there?
A. No.
Q. And could you hear anything?
A. I heard just two thuds. That's all I heard. And then Jimmy come walking back out and he took the pick and stuck it in the dirt to get like blood off of it. And then he took -- knocked the top of the pick down off of the handle, put it in the bag with the clothes.
Q. Put what in the bag with the clothes?
A. The metal part of the pick.
Q. And what about the handle? What was done with that?
A. He put that in the back of his dad's truck.
Q. What about the bag of clothes and the top of the pick? What was done with that?
A. That was in the back of Shawn's Jeep.
Q. So you had two vehicles and separate items in each vehicle?
A. Yes.
Q. And did Mr. Conway say anything when he came back when he was dealing with the pick?
A. No.
Q. At that point what did you do?
A. Jamie had got the lime out of the Jeep and went back and poured it on Andrew. And then when he was

walking, I told Shawn, let's go. I was ready to leave. And me and Shawn got into the Jeep and Jamie came out and put the empty bag in the back of Jimmy's dad's truck. And when we was leaving we went separate ways. Me and Shawn got lost.

Q. Now, you indicated Jamie got lime?

A. Yes.

Q. Where was this lime kept?

A. It was in the back of Shawn's Jeep.

Q. And did Jamie go back by himself with the lime?

A. Yes.

Q. Where did he go?

A. Back where Andrew was.

Q. And describe this bag of lime for us, please.

A. It was just a square bag of lime, looked like a bag of mulch or something like that. I don't know how -- just a bag of lime.

Q. When you saw Jamie with this bag of lime, could you tell whether the bag was full or empty?

A. It looked full.

Q. And where did he go?

A. He went back to where Andrew was in the corn.

Q. And how long was he back where Andrew was?

A. It wasn't very long. Just go back there and do what he had to do and come back. That's all.

Q. Did he come back with a bag of lime?
A. He come back with an empty bag.
Q. And did he say anything at that time?
A. No. Like I said, me and Shawn -- I was telling Shawn, let's go. At that time I was ready to go. I was wanting to get out of there.
Q. And where did Jamie go when he came back?
A. He got into the truck with Jimmy.
Q. At the point that Jamie came back, was Jimmy still outside or was he in the truck?
A. I'm not -- I'm not even sure. I can't remember exactly if he was in the truck yet or not because, like I said, I was trying to get out of there. I was trying to tell Shawn, let's go.
Q. At any point, did you have any conversations with Mr. Conway about not killing Andrew?
A. I'm not exactly sure when it was. There was something -- we told him he wasn't even going to tell on him or something. I'm not -- I'm not even sure when it was. I'm sure we let him know, though, that Andrew said he wasn't even going to tell on him.
Q. Did he respond to that?
A. Like I said, I can't even really remember when we told him.
Q. Now, we are at the point where you said you are

telling Shawn you wanted to leave.

A. Yes.

Q. And Jimmy and Jamie were together?

A. Yes.

Q. And you and Shawn were together?

A. Yes.

Q. Where was your truck parked or your Jeep parked in relation to the pickup truck?

A. Behind it.

Q. And did you, in fact, get in the car?

A. Yes.

Q. And who was driving at that time?

A. I was.

Q. And where was Shawn Nightingale?

A. In the passenger seat.

Q. And at that point was Jimmy Conway in his truck?

A. They had to be because when we pulled out, we went the wrong way and they went the other way. So I'd say they had to be. By the time we got pulled out and left, they were pulling out, too, and leaving.

Q. You said you went the wrong way. Did you have any conversation about where you were supposed to go?

A. After when we went the wrong way, we was trying to find our way and Shawn said something, we had to meet Jimmy back at his house and said we were going to go to

Ryod's and get drunk. That was going to be our alibi, whatever, where we was.

And finally we found our way back to Jimmy's house and met Jimmy and Jamie there.

Q. So you actually went to Jimmy Conway's house?

A. Yes.

Q. I mean, did you go inside the house?

A. No.

Q. When you said you met them there, who did you meet?

A. Me and Shawn met Jimmy and Jamie.

Q. And were you all in vehicles at that time?

A. Jamie and Jimmy was standing outside waiting on us.

Q. Did you have some conversation with Mr. Conway at that time?

A. I think I asked him what he did with the pickax or the handle or whatever. He told me he put it in the shed. I seen him walking from the shed. There was something about he put it in the shed. I can't really remember exactly what it was. Something about he put the pick handle in the shed.

Q. And were you given any instructions as to what to do with the clothes or the top of the pick?

A. Not at that time. We decided we were going to go

to Ryod's or whatever. We all got into Shawn's Jeep and I told him I wanted to go to my cousin's, drop me off at my cousin's house.

Q. What was the purpose of going to Ryod's?

A. For an alibi, to say where we was that night.

Q. And did you actually go to Ryod's?

A. No.

Q. Why not?

A. Because what just happened, I was pretty messed up. I didn't want to go there. I just wanted to get away from everything.

Q. So what did you tell Jimmy at that time?

A. I told him to drop me off at my cousin's house.

Q. And what was his response?

A. They just told me take the stuff with me whenever I was getting out, take this stuff and get rid of it.

Q. What stuff are you referring to?

A. The clothes and the pickax.

Q. Was it discussed how you were supposed to get rid of it?

A. No, just take it with you and get rid of it.

Q. And were you, in fact, dropped off?

A. Yes.

Q. And where were you dropped off?

A. At my cousin's house.

THE COURT: Mr. Lowe, I'm going to go ahead and recess at this point. Going a little bit over.

Actually as I said, that clock is a little bit fast. We are going to take twenty minutes.

If you are on this floor, make sure you're back here. If you want to go downstairs, be back up here in twenty minutes.

Again, don't discuss the case amongst yourselves or anybody else.

See you in twenty minutes, which is a little after 3:30.

- - -

Thereupon, the jury was retired from the courtroom and the following proceedings were had out of the presence and hearing of the jury:

- - -

MS. PRICHARD: Quick issue, Judge.

Yesterday, I believe you deferred rulings on issues. Ms. Menashe pulled up a transcript relating to Ronny Trent to indicate that the reason this witness was supposed to be killed was because of something else rather than this crime. I found the transcript in the other documents that support Mr. Trent. That witness will say the reason Mike Arthurs was to be killed, this is page five of the transcript they have which is dated

May 26, 2002 --

THE COURT: Why are we dealing with this now?

MS. PRICHARD: Well, because this witness had to dig his own grave and make a picture and play dead and if we are going to bring this part in --

THE COURT: This witness right here?

MS. PRICHARD: Correct. And the reason he was doing that, because Ronald Trent working with the sheriff's office was told by the defendant that he needed to be killed and Ronald Trent should do it so he won't tell because of this crime.

So I have a transcript to show that that is, in fact, what Ronald Trent will testify to. He said that Conway thought Mike Arthurs was going to talk about Andrew Dotson, the killing of Andrew Dotson, so he was asked to kill him. We intend to introduce that portion of the consciousness of guilt that we mentioned earlier.

MS. MENASHE: Your Honor, can I respond?

THE COURT: Yes.

MS. MENASHE: I apologize, because the copies I had yesterday I don't know where they are.

But what I was bringing to the Court's attention, I believe it was on that when Ronny Trent testified in the Jamie Horton trial, which was his most

recent testimony -- I'm sorry, Your Honor. I will try to find it as quickly as I can.

MS. PRICHARD: He did not testify in the Jamie Horton trial.

MS. MENASHE: It was Dockside Dolls. Ronny Trent, April 9, 2003. Charlie McGowan counsel. Ronny Trent testified.

MS. PRICHARD: I'm sorry. I'm thinking of the wrong case.

MS. MENASHE: It was 62 and 105. It was actually 62. And that testimony which was on April 9, 2003, Ms. Prichard asked why was Mike Arthurs to be killed. Mr. McGowan objected. The court overruled and the witness stated "because they thought that he would tell about a robbery in Chillicothe."

"Who are they?"

"James Conway -- Jamie Horton and Jimmy Conway." That's on page 62.

And on 105, it says: "Prior to your leaving the jail, did Jimmy Conway order you to kill Mike Arthurs?"

And the question, the witness, Ronny Trent said, "excuse me."

Question was again stated: Prior to leaving the jail, did Jimmy Conway tell you he wanted you to

kill Mike Arthurs?"

And the answer is no.

And that's on 105 and 62.

So, Your Honor, I guess what Ms. Prichard is saying, at a minimum inconsistent testimony. If the State is allowed to bring it in, essentially the only way we can impeach the witness is to bring in the inconsistent statement which forces us to bring up a bad act, which is inadmissible, which is a robbery in Chillicothe.

THE COURT: Anyway, I will let you raise that issue or examine on that issue.

MS. MENASHE: We just object for the record 404(B), bad acts.

- - -

Thereupon, a recess was taken.

- - -

Thereupon, the jury resumed their places in the jury box.

- - -

THE COURT: Okay. Everybody, please be seated.

Mr. Lowe.

MR. LOWE: Thank you, Your Honor.

Q. (By Mr. Lowe) Okay. Mr. Arthurs, I believe we

got to the point where you were being dropped off at your cousin's.

A. Yes.

Q. First thing I want to clear up, you talked about Ryod's. What is Ryod's?

A. Ryod is a guy that -- I don't know how Jimmy knows the guy and those guys know him. But he owns a bar and we'd go there sometimes and drink. And it'd just be just us drinking there.

Q. Ryod's is not the name of the bar, though?

A. No.

Q. Do you know the name of the bar?

A. The one on High Street here on the south side of Columbus. I think it's Big Mike's Palace or something like that.

Q. At the point where you got dropped off at your cousin's with a bag of clothes, did that still have the pickax top in it?

A. Yes.

Q. And what did you do when you got dropped off at your cousin's house?

A. Well, I got dropped off and I left and I put it in the trash can out back of the garage out there.

Q. Were you given any other instructions by Mr. Conway as to what to do with it?

A. No. They just dropped me off, gave me the stuff and took off.

Q. When they left, did you have any plans to meet up with them later?

A. Nope. Just drop me off, like I said. And I went up and knocked on the door, asked my cousin will you let me stay the night.

Q. You indicated that he took the stuff to the trash. Where was this trash? Was it in front of the house?

A. No. They dropped me off in the alley behind the house and there is -- he's got a couple trash cans out back of his garage there which you got his house and his yard and there is a garage and behind the garage is where the trash cans are. That's where I put the stuff in the trash can at.

Q. And after you threw the clothes and the top of the pickax away, what did you do?

A. I went up and asked my cousin if I could stay the night. They said, yeah, come on in. Went in there and stayed the night.

Q. For the rest of the night, did you have any contact with James Conway?

A. No.

Q. What about Shawn Nightingale?

A. No.

Q. What about Jamie Horton?

A. No.

Q. When was the next time you had any contact with any of the three of them?

A. The next morning.

Q. Where did that contact take place?

A. One of them, I'm not sure which one, called my cell phone and told me they were on their way to get me. They'd be meeting me out front. So I waited on them to get there. Jamie Horton, Jimmy Conway, Shawn Nightingale picked me up in Jimmy's Escalade.

Q. Who was driving?

A. Jimmy.

Q. Who was in the front seat?

A. I think Jamie was.

Q. And where would Shawn have been?

A. Back seat.

Q. And did you go with those individuals?

A. Yes.

Q. Did you know where you were going?

A. Not before I got in. But once I got in and talking about they had to go to a hardware store, Jimmy had to pick something up for his dad, some dry wrought screws or something.

Q. Where did you go?

A. We went to Great Southern. I think that's the name of it. It's an appliance store.

Q. And who went in?

A. All of us. We all went.

Q. Was there any other discussion as to what you were going to get while you were there?

A. We were walking around and Jimmy grabbed a spade and shovel and said it was for the next time.

MR. YOUNG: Objection.

THE COURT: Overruled.

Q. (By Mr. Lowe) You can answer the question. Jimmy said what?

A. Said it was for the next time. And Jamie kind of laughed and we went on. I didn't pay no attention to it.

Q. What did he grab?

A. A pointed shovel, a spaded shovel.

Q. And after that, did you buy anything else?

A. We went to the mall after that and got some clothes for me, got some clothes and some new shoes. And that was at the Westland Mall.

Q. Sorry to interrupt. Were you in the same clothes on that day as you were the day previous --

A. Yes.

Q. -- when Andrew was killed?

A. Yes.

Q. Was there discussion between you and Mr. Conway about you getting new clothes?

A. Yes. He just told me that he was going to take me to get some new clothes so we could get rid of the old ones I had on the night before.

Q. And you went to Westland Mall to do this?

A. Yes.

Q. Did you, in fact, buy clothes?

A. Yes.

Q. What kind of clothes did you get?

A. I don't remember. We just went to the mall there and got some clothes, some tennis shoes.

Q. Got shoes. And did you get a top?

A. Got a shirt and pair of pants.

Q. Did you take the clothes with you or did you change there?

A. We went out to the truck. That's when I changed, inside the truck.

Q. And what did you do with the clothes that you were wearing at that time that you took off?

A. I put them in the bag that I had got with the other clothes that came in it with the other clothes.

Q. And what did you do with that bag?

A. Well, when we left there, we went back to Jimmy's house and he took them, said he was going to burn them.

Q. Jimmy told you he was going to burn the clothes?

A. Yeah.

Q. Were your shoes included in that?

A. Yeah. Everything.

Q. What did you do after you arrived at Jimmy's? Did you stay there?

A. Me and Shawn got back into his Jeep and we came back to Chillicothe.

Q. Did you have regular contact with Jim Conway after that day?

A. Yeah.

Q. How often did you see him at that time?

A. Still probably about once a week, somewhere around in there. A little bit more sometimes.

Q. After the shopping trip, was there any more discussions about killing of Andrew Dotson between you and Mr. Conway?

A. No. We usually just kept to ourselves. We didn't talk about it too much.

Q. This was in September 2001?

A. Yes.

Q. Do you recall the actual date that this occurred on?

A. I don't know exactly what date it was. The only thing I could even say was close to there was that party we was at. The guys that had the party, which was his birthday. I don't even know his birthday. That's the only way I can say it was near that.

Q. You don't know what the actual date was?

A. No.

Q. What was the next thing that happened in this case?

A. Next thing that happened was the homicide detectives showed up at my house in Chillicothe. I wasn't there. And I called my lawyer about it. And then he talked to them or whatever. And that's when I basically was advised just to go to come forward with the story, do what I had to do.

Q. And when you say "do what you had to do," what do you mean?

A. Testify in this case, let him know what had happened that night.

Q. You indicated that the homicide detectives came to your house. Would this have been in May 2002?

A. Somewhere around in there. I'm not real sure. It was right around that time.

Q. April or May? You're not sure at all?

A. It's been so long ago. I mean, it was right

around that time. I just got bonded out from Chillicothe.

Q. You spoke with your attorneys?

A. Yes.

Q. And at that time you decided to come forward and tell what happened?

A. Yes.

Q. And did you do that?

A. Yes.

Q. Did you participate in what's called a proffered statement?

A. Yes.

Q. And you told detectives what happened on those two days and nights?

A. Yes.

Q. Did you tell them the truth?

A. Yes.

Q. When you spoke to detectives, did you originally tell them that this event occurred in August?

A. Yeah. I got mixed up on the months. And then I corrected myself with him. I'm pretty sure I let him know that I messed up. It was sometime I did let them know I messed up.

Q. Did something unusual happen in September of 2001 that would trigger your memory as to when this event

might actually occur?

A. 9/11, whenever the World Trade Center got hit with the airplanes.

Q. And was the killing of Andrew Dotson before or after that event?

A. Pretty sure it was after.

Q. The night that you went to that party, the birthday party that you were at in Chillicothe, you talked about a meeting in a bathroom in a hotel room.

A. Yes.

Q. Do you know whose name that hotel room was in?

A. I'm not sure. Like I said, we used different names all the time. It's hard to tell what name it was in.

MR. LOWE: If I may approach the witness, Your Honor?

THE COURT: All right.

Q. (By Mr. Lowe) Show you State's Exhibit H. Do you recognize that?

A. Looks like a receipt from the Hampton Inn.

Q. Have you seen that before?

A. This one, yeah. I think I have seen it. Like I said, we stayed there a lot so I seen a lot of receipts. I think you guys showed me that before or something.

Q. And is your signature on this?

A. I don't see it nowhere.
Q. Is your name on it?
A. Yeah.
Q. Is it typed?
A. Yeah.
Q. And do you know if this is the correct receipt of the room you had the night that you spoke to Mr. Conway in the bathroom?
A. What was the date on that?
Q. There's a date from 9/11 to 9/15/01.
A. I was in West Virginia. I woke up. I was there on the 10th and I woke up the next morning when that happened, 9/11 had happened. Seen it on the news. I wasn't even in Chillicothe that night.
Q. So you don't believe that's the correct receipt?
A. No.
Q. And would it have been uncommon for your name to be used to rent rooms?
A. Yeah. Shawn could have rented one under my name.
Q. Couple other things I want to clear up, Mr. Arthurs. When you had a conversation on your way back from West Virginia to Columbus with Mr. Conway and you informed him that you could not go through with the killing of Andrew Dotson, what was Mr. Conway's reaction to that? Could you tell?

MR. YOUNG: Objection. Asked and answered.

THE COURT: I will sustain the objection.

Q. (By Mr. Lowe) I think I asked you if you knew that Andrew was breathing. I want to pinpoint a time. After you dragged Andrew to the back of the cornfield, did you do anything to know if he was breathing or not?

A. Yeah. I got down on my hands and knees and listened to him and he was breathing.

Q. And that was after you dragged him to the back of the cornfield?

A. I know I did it after I done what I had done. So I know it was after that. I'm not sure exactly.

Q. Did you ever have any conversation with Mr. Conway regarding what he did with the pickax handle?

A. The what now? Oh, with the handle?

I think it was the next day when he bought me the clothes I asked him, he said he burnt it and he said he burnt the rest of his clothes, too. I asked him, I said, even the tennis shoes? Said, yeah, it all burns up. It all disappears.

Q. And at any point did Mr. Conway tell you what he did when he was in the back of the cornfield with Mr. Dotson?

A. Yeah. He told me that he had stabbed him twice. And he held his hand where he hit him the first time,

which is right around his belly somewhere right in here and the second time he held his hand on his chest.

Q. And when did that conversation take place?

A. I'm thinking it was the next day, sometime around the next day.

Q. After your proffered statement with detectives, were you asked to do anything in regards to pickax for the State?

A. Yeah. They asked me to go out and get one that looked most like the one we had that night.

Q. And did you, in fact, do that?

A. Yes.

MR. LOWE: May I approach the witness, Your Honor?

THE COURT: Yes.

Q. (By Mr. Lowe) I'm going to show you what's been marked as State's Exhibit J. Do you recognize that?

A. Yes.

Q. And what is State's Exhibit J?

A. That's the pick that I bought that day and gave to my lawyer to give to the detectives.

Q. Is this State's Exhibit J, is that similar to the pick that James Conway used in September of 2001?

A. All except for the yellow part there. The one that Jimmy had was all wood. That one I think is rubber

on the top right there.

Q. State's Exhibit J in the same or similar condition as the last time you saw it?

A. Yes. Yes.

Q. Mr. Arthurs, did you continue to have contact with sheriff's detectives in this case after your proffered statement --

A. Yes.

Q. -- and after you went and picked out the pickax?

A. Yes.

Q. Were you asked to do anything else in regards to this?

A. They asked me to --

MR. YOUNG: Objection. Hearsay.

THE COURT: Overruled.

A. They asked me to dig my own grave and let them take pictures of me in it because --

MR. YOUNG: Objection.

THE COURT: Overruled.

Q. (By Mr. Lowe) Go ahead.

A. -- because Jimmy had hired somebody to kill me.

MR. YOUNG: Objection. Move to strike.

THE COURT: Overruled.

Q. (By Mr. Lowe) And did you, in fact, do that?

A. Yes.

Q. I'm going to show you --

MR. LOWE: May I approach again?

MR. YOUNG: Can I see those quick?

Q. (By Mr. Lowe) I'm going to show you manilla envelope that's marked G-3. And it contains a single photograph. If you can look at that and tell me if you recognize what that is.

A. Yeah. That's me that day whenever they had me --

THE COURT: You have to keep your voice up.

A. This is me whenever they had me dig my grave and take a picture of me, pretend I was dead so they could take it back to Jim.

Q. (By Mr. Lowe) And is that a true and accurate depiction of the scene?

A. Yes.

Q. That's you in the photograph?

A. Yes.

MR. LOWE: One moment, Your Honor.

Q. (By Mr. Lowe) Mr. Arthurs, one last question. How did you meet Jimmy Conway? Who was it through?

A. Shawn Nightingale.

MR. LOWE: I have nothing further. Thank you.

THE COURT: Mr. Young.

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CROSS-EXAMINATION

BY MR. YOUNG:

Q. Mr. Arthurs, did you forget to tell the ladies and gentlemen of the jury how you twisted Andrew Dotson's neck when he was on the ground to such an extent there was a pop?

A. No.

THE COURT: Mr. Young, just a second. I'm going to take a short recess. I apologize. Why don't you step back in the jury room and we will be just a minute.

- - -

Thereupon, a recess was taken.

- - -

THE COURT: One of the jurors has an emergency phone call. I'll let her take it.

Everybody stay right here.

THE WITNESS: Can I talk to my lawyer real quick?

THE COURT: Yeah. Go ahead.

MR. DAVE THOMAS: Thank you, Your Honor.

- - -

Thereupon, the jury resumed their places in the jury box.

- - -

Q. (By Mr. Young) Mr. Arthurs, after you pretended and fake choked Mr. Dotson and after you pretended fake standing on his neck, isn't it true you twisted his head around?

A. No.

Q. So if Shawn Nightingale comes in and testifies that he saw you twist Andrew Dotson's head around, he would be not be telling the truth?

MR. LOWE: Objection.

THE COURT: I will sustain the objection the way it's phrased.

Q. (By Mr. Young) Are your attorneys in the courtroom today?

A. Yes.

Q. Did you speak with the prosecutors prior to testifying today?

A. For just a brief moment.

Q. And did you get a chance to speak to Zach Scott?

A. Yes.

Q. Do you know who Zach Scott is?

A. Yes.

Q. And can you tell the ladies and gentlemen of the jury who Zach Scott is?

A. He is a detective.

Q. And you have been working with this detective?

A. Yes.

Q. And in fact, you talked to Zach Scott about your case today, correct?

A. No.

Q. Did he come down at 1:15 this afternoon down to the jail to talk to you?

A. Yes.

Q. Did he talk to you about the case today?

A. No.

Q. And you're represented by Attorneys Bill Meeks, Dave Thomas and Lisa Tome, correct?

A. Yes.

Q. And in fact, you were arrested or you were indicted in Ross County on April 5, 2002, correct?

A. Yes.

Q. You were indicted for one count of aggravated robbery, correct?

A. Yes.

Q. You were indicted for one count of kidnapping, correct?

A. Yes.

Q. And you were indicted for a three-year gun spec attached to both of those, correct?

A. Yes.

Q. Isn't it true that an aggravated robbery carries

a three-to-ten sentence?

A. I'm not sure.

Q. It's a felony of the first degree?

A. I don't know.

Q. You don't know what you were charged with and what the potential consequences were?

A. I know what I was charged with but I didn't look at what I could get or nothing like that. I just know what I was charged with.

Q. You were charged with aggravated robbery and kidnapping?

A. Yes.

Q. And you don't know what -- your attorneys didn't go over with you the potential consequences of a conviction to an aggravated robbery or aggravated kidnapping?

A. Something about twenty some years with it all together.

Q. You were facing twenty-three years for your conduct down in Ross County, correct?

A. Somewhere around in there. Twenty some years.

Q. You were arrested on April 9, 2002, were you not, by the Ross County detectives or sheriff?

A. I turned myself in.

Q. And then you posted an appearance or surety bond

roughly ten, twelve days later, right?

A. Somewhere around in there.

Q. You immediately hired these lawyers, did you not?

A. My family did.

Q. Your family hired these lawyers?

A. Yes.

Q. They spoke to you in jail, didn't they?

A. The first time I seen them was my arraignment.

Q. And then after your arraignment, you went and spoke to them at their office after you got out?

A. Yes.

Q. And you talked to them about the Ross County situation?

A. Yes.

Q. And, in fact, they immediately, or if you know, immediately contacted the prosecutor down in Ross County, right?

A. I guess. I don't -- yeah.

Q. And the Ross County detectives wanted you to cooperate with regard to your conduct down in Ross County, right?

A. Yes.

Q. And in fact, you, your attorneys and I believe Mr. Nusbaum who is the prosecuting attorney down in Ross County actually reached a deal to have you cooperate

down in Ross County, correct?

A. Yes.

Q. That deal was solid in place prior to any Franklin County homicide detective coming to your house, correct?

A. Yes.

Q. That was the four-year deal which you received down there, right?

A. Yes.

Q. In exchange for your testifying about the Ross County, Ross County conduct, right?

A. Yes.

Q. So on May 10, '02, if you know, you or your attorneys contacted the court and notified them of the plea agreement and to change the date to a plea date as of July 11, '02, right?

A. I don't know.

Q. If you know.

A. I don't know.

Q. What day did you execute your plea agreement?

A. I'm not sure.

Q. But you ultimately pled guilty out of there to an aggravated robbery, a felony of the first degree?

A. Yes.

Q. And part of the agreements which you signed is

that you could receive a basic prison term of three to ten years, correct?

A. If that's what it says.

Q. A possible fine of ten thousand dollars?

A. Yes.

Q. Which you signed on July 11, 2002? You were subsequently sentenced in this case on August 26th, correct?

A. Yes.

Q. And on August 26th you went out the back door and have now been incarcerated ever since, correct?

A. Yes.

Q. So from the time you were arrested in Ross County in April, early April of 2002, you spent approximately ten or twelve days in jail, you were released from April 19th to August 26th?

A. Yes.

Q. You were not on any electronic monitoring devices, were you?

A. No.

Q. You were free to roam and go wherever you wanted to, right?

A. Yes.

Q. You then contacted -- the homicide detectives, I think you've testified, contacted you when?

A. It was soon after I got out on bail from Chillicothe.

Q. And that was 4/19 roughly right around there?

A. Somewhere around there.

Q. And after you got the notice from the homicide detectives, you contacted your lawyers?

A. Yes.

Q. You talked to your lawyers again?

A. Yes.

Q. Did you and your lawyers go over certain things and certain plans and certain schemes as to what you could do and how you could deal with your Franklin County issues?

A. It's between me and my lawyer.

Q. Did you and your lawyer go over various schemes or techniques as to how you planned on dealing with your Franklin County charges?

MR. LOWE: Objection.

THE COURT: Overruled.

A. The only thing that we ever talked about is if they came back -- because I wasn't there when the detectives came the first time. If they said the detectives did come back to have them get on my phone with the lawyer.

Q. (By Mr. Young) Did, in fact, you get on the

phone with your lawyer or did the detectives ever come back?

A. Yeah. They came back and they got on the phone with my lawyer. I still wasn't there. I wasn't there either time they came there.

Q. Then did you ultimately present yourself to talk to the Franklin County Sheriff's department?

A. Yes.

Q. And you talked to them on May 13th, correct?

A. I'm not sure of the exact dates. So if that's what it says on the paper, then yes.

Q. When did you first contact Franklin County Sheriff's -- you were released on April 19th. When did you contact the Sheriff's Department?

A. My lawyers is the ones that got a hold of the detectives or whatever. Like I said, I talked to my lawyers. My lawyers took care of this stuff.

Q. You were ultimately indicted by the Franklin County Grand Jury for one count of abduction, correct?

A. As far as I know.

Q. And abduction is a felony of the third degree, right?

A. Yes.

Q. Carries a possible one to five, right?

A. Yes.

Q. That indictment was sealed, meaning it's not open to the public, correct?

A. I have no idea.

Q. Have you ever even seen that document yet?

A. No.

Q. Have you ever -- nothing has happened with that document or this charge since June of 2002?

A. Not that I know of.

Q. Are you aware what Mr. Conway is currently charged with?

A. No.

Q. Are you aware what other individuals were charged with?

A. No.

Q. Had you not cut a deal you could have been charged with aggravated murder with death penalty specifications. Are you aware of that?

A. Yes.

Q. And you are aware that an aggravated murder with death specifications carries a potential sentence of death --

A. Yes.

Q. -- whereby you will be on Death Row?

A. Yes.

Q. That is a potential possibility of a death

sentence.

A. Yes.

Q. There are other possibilities of life without parole. You know what life without parole is?

A. Yes.

Q. What does that mean to you?

A. You have no chance of parole. You're doing life in prison, rest of your life.

Q. And you ever hear of what's called aggravated murder, thirty years to life. Do you know what that is?

A. I know what thirty years to life is.

Q. And you're in the institution. What does thirty years to life mean to you?

A. I'm pretty sure after thirty years you see the Parole Board and they decide whether they want to give you more time or not.

Q. What does twenty-five years to life mean?

A. See the Parole Board after twenty-five

Q. And that's what you could have been charged with had you not gone to the prosecutor's office, correct?

A. The only thing I was ever told would be the death penalty.

Q. Could have been charged with kidnapping, correct?

A. I guess. I don't know what I could have been charged with.

Q. You have been charged with kidnapping down in Ross County?

A. Yeah.

Q. You could have been charged with kidnapping in this case, correct?

A. That's what I'm saying. I don't know. Could I have?

Q. I would think so.

A. Okay.

Q. But that carries a potential three to ten years, correct?

A. Yes.

Q. And you could have also been charged with possession of a criminal tool, abuse of a corpse, obstruction of justice, tampering with evidence. Everything that, in fact, Mr. Conway is charged with you could have been charged with had you not run to the prosecutor's office. You are aware of that?

A. Yes.

Q. So you could have been charged with what a aggravated murder with whatever you get with aggravated murder whether it's twenty-five, thirty, life without parole or death, plus an additional twenty-two years of time. Are you aware that you could have been charged with that? Your attorneys who are in the courtroom

explained you could have been, all of those could have occurred?

A. I'm not sure. They've told me that, you know, I could have got the death penalty. We didn't go what every little charge I could get and all of that. I don't know about all of that.

Q. And you went to the prosecutor's office and said, I want to make a statement, didn't you, tell them everything that happened?

A. Yes.

Q. And in fact, you made that statement on May 13, 2002?

A. Yes.

Q. And after that statement, the prosecutors, what did they agree to do for you?

A. They said that they would recommend a four-year sentence being ran concurrent with my sentence I'm already doing right now.

Q. And a recommendation of a concurrent sentence means what to you?

A. Just what it is; that they would recommend four years to be run concurrent with my time.

Q. And what does running concurrent with your time mean?

A. I'm serving both sentences at the same time.

Q. How many extra minutes, seconds or hours will you do from your Franklin County case to what you're already doing in Ross County?

A. It depends on if they give me time credit or not. If they don't, I will be doing a year and a couple months more.

Q. If they do, will you be serving one extra second?

A. No.

Q. And that's your understanding of what you plan on getting out of this?

A. Yes.

Q. So you plan on getting not one extra second for anything that you did to Andrew Dotson?

A. Yes.

Q. Now, let's go over your May 13th statement. That wasn't recorded, was it, that you know of?

A. I don't know.

Q. Stated you knew Andrew for two months. Did you?

A. Like I said, I know him a short time. I didn't know him that long.

Q. So you're making this statement in, I believe, May of '02. Your memory was a little bit better back in May of '02 as to the incidents which occurred in September of '01 would you agree than it is today?

A. I'm sure it was better back then.

Q. So you'd probably be more accurate with your statements back in '02 as opposed to in late '03?

A. On some things. Some things I would be thinking about and, you know, I change it because some things I remember better when I sit back because I have had a lot of time to think.

Q. You're telling these ladies and gentlemen of the jury that you were there, you saw, you did, you observed every single thing, correct?

A. Yes.

Q. And you're saying your memory is better today as it is from back then?

A. Said on some things, things that I sat back and thought about.

Q. You thought about the changes what you previously said or you're saying now?

A. What do you mean?

MR. YOUNG: I will withdraw the question.

Q. (By Mr. Young) You stated to the detectives sometime around August 2001 you were instructed to kill Andrew?

A. Yeah. And I messed up. It wasn't August.

Q. You messed up. As to the date when you were ordered to kill Andrew Dotson, you messed up by a month?

A. It was more than that.

Q. You messed up with the -- as you say, the signature date, the focal point being September 11th. You don't know what side of September 11th this occurred on?

A. It was sometime -- I don't understand. It was sometime after September 11th.

Q. Is that since you've gone back, had conversations with the prosecutors, had conversation with Detective Scott, had conversations with your lawyer that you're now correcting your statement or was your statement wrong?

A. I corrected it sometime since then. I'm not sure.

Q. Did you correct it after you saw that receipt from the Hampton Inn that's currently sitting in front of you?

A. No. I just know I had to talk with my lawyer about this on this right here. I was in West Virginia on the 9th or the 10th. I woke up the 11th that morning when it was going on and I came back home that day. So this right here -- I mean, I usually didn't, you know what I mean, get rooms in my name a whole lot. But this could -- I could have got a hotel room that night.

Q. That's worth a couple days. So you stated that you erroneously told the police in August 2001 you were

instructed to kill this person. You weren't given any direction on how to kill this person, were you?

A. No.

Q. Didn't tell you to take him to West Virginia?

A. No.

Q. Didn't tell you to drown him, didn't tell you to shoot him, didn't tell you to stab him or anything?

A. No.

Q. Andrew, I believe you testified, returned to Columbus on motorcycle with Rick Hurt. Do you recall making that statement to the detectives?

A. Huh-uh.

Q. Is it that you didn't make the statement or are you now correcting the statement you previously made?

A. I don't recall making the statement.

Q. Okay. You, Shawn and Andrew drove to West Virginia in Shawn's green Cherokee?

A. Yes.

Q. It says you couldn't do it. It says you were crying on the way down and then you had to pull off because you were crying so hard you didn't want Andrew to know what was going on. Would that be a correct or fair statement of your testimony?

A. I had started crying so I pulled off because I didn't want him to see me crying.

Q. Then you came back to Columbus. You testified or you made a statement on May 13th that you contacted Conway once you came back into Columbus.

A. On the way back.

Q. On May 13, 2002, did you tell Detective Scott that once -- and Detective Floyd was there that once we got into Columbus we called Mr. Conway?

A. I'm not sure if I said "once we got into Columbus." I just know that we called him on the way back from West Virginia. I don't know if we got into -- I don't know where we was when we called them.

Q. You previously testified in another proceeding that you called Mr. Conway when you were in Portsmouth. Did you or did you not?

A. Like I said, it was on the way back from West Virginia. I'm not real sure and I don't remember who it was, me or Shawn that called him.

Q. On direct examination and I may be wrong, but I think, I thought I heard you say you now called him from Ashland, Kentucky or someplace in Kentucky. I may have been wrong. But did you just testify in direct examination that I called him, we called him from Kentucky?

A. No. I said I don't remember what it was. But I said Kentucky because that's the way you come back from

West Virginia. That's the way we come back.

Q. You were in Fort Gay, West Virginia, were you not?

A. We were in Kermit, West Virginia.

Q. Kermit?

A. Yeah.

Q. How do you spell that?

A. I'm not --

Q. Shawn's brother lives in Fort Gay. Do you know, is that near Kermit?

A. I guess. He's got two bothers down there.

Q. Got a brother that lives in Columbus, doesn't he?

A. I don't know.

Q. You don't know about his brother that lives right over next to Galloway Road near the cornfield?

A. No.

Q. So on the May 13th statement you stated that did you not tell Detective Scott you called Conway and met at a shopping center, Harrison Pike. Is that a shopping center you met at?

A. Yes.

Q. And then in a cornfield you act like you were choking?

A. Yes.

Q. And that's all that you said that you did on May

13th, is that you choked him; is that right?

A. I'd have to let me see the papers.

Q. I'm just asking you if you remember what you said.

A. We have had meetings -- yes, that I choked him.

Q. And then you and Jamie drugged the unconscious body into the field?

A. Yes.

Q. And then I believe you made a statement on May 13th, Conway, Jamie and Shawn went to Ryod's on -- or Big Mike's Place on South High?

A. Yeah. After everything had happened.

Q. And you're aware that on September, whatever date that we are going to use, September 14th, 15th, 16th -- August, whatever, that in fact Ryod's had not even purchased that place on South High. Are you aware of that?

A. I don't know if he purchased it or not. But I know we were drinking at Ryod's, his place there on South High.

Q. Were you not drinking at Ryod's in Grove City?

A. We had drank there before. But I just know that we was drinking at his place on South High, you know, there around that time. So I'm not sure if they were talking about going to the one in Grove City or the one

on High Street.

Q. But are you aware that there was no Ryod's on South High Street in September '01?

A. No, I wasn't aware of that.

Q. So you make this statement that you kidnapped, drove this person with the intention to kill him over to West Virginia, drove him back. He's unconscious for all these hours, popping pills, whatever. Come to Columbus, fake choked him and then he gets killed and then you're not arrested.

A. When?

Q. Were you arrested on May 13th after you told them everything that you did?

A. No, I wasn't arrested.

Q. They let you walk out of the offices?

A. Yes.

Q. When were you arrested? The next day?

A. No.

Q. The next time you were arrested was three months later and that's when you were in court?

A. Yeah. When I went to court for Chillicothe.

Q. And Judge Holmes said, Mr. Arthurs, you're coming out the back door. You got back towards then, right?

A. Yes.

Q. All right. 9/14 -- let's use the date 9/14. Was

that the date of the Jesse James shooting?

A. I'm not sure.

Q. Was 9/14 the date of CJ Stevens' party in Chillicothe?

A. I just know that we went to that party that night when that happened. I don't know the exact date what it was.

Q. Let's do this. You were not present at this Jesse James shooting, were you?

A. No.

Q. After what you believe or when you believe that this Jesse James shooting occurred, what happened?

A. What do you mean after?

Q. Did you meet Shawn after the alleged Jesse James --

A. No. Either he called me or I called him on our cell phones just to see where he was at or what he was doing and he told me something bad had happened and he wouldn't tell me on the phone. He said he'd let me know the next day or something like that. Then eventually he told me that, you know, that Jimmy shot Jesse James.

Q. So Shawn did not come immediately to the Hampton Inn down in Chillicothe after the Jesse James shooting?

A. No.

Q. What happened the night after the Jesse James

shooting? Where did everyone go?

A. I'm not sure. I don't know.

Q. Went to the next day, where did everyone go?

A. I don't know. I don't know what you're trying to get at.

Q. I'm trying to have you answer my questions. I don't understand why you're not answering.

THE COURT: Let's not make any comments. All right. Just go ahead and ask questions.

Q. (By Mr. Young) CJ Stevens, where was this party?

A. It was on Misty Harbor Road in Chillicothe.

Q. And do you know what month or what year that party was?

A. It was 2001 -- 2002. And it was I'm pretty sure in September.

Q. September 2002 was the CJ Stevens' party.

A. Yes.

Q. So that's it. That party occurred approximately one month after you were incarcerated; is that correct?

A. Incarcerated? After I was incarcerated. Okay. Then it was 2001.

Q. So you were all at this party. Who was at this CJ Stevens' party?

A. Lot of Chillicothe people. Then the people that came with us, which was me, Shawn Nightingale, Jimmy,

Jamie, Ricky Heard and Ricky Turner.

Q. Was Andrew Dotson there?

A. Yes.

Q. Did you drive one, two, three, four, five cars?

A. I remember we were in Shawn's Jeep. There were a couple of us in Shawn's Jeep and Jimmy drove his Escalade. I can't remember any more cars than that.

Q. So Jimmy is driving his Escalade. And then what goes on? Or you said there was a fight broke out?

A. Yeah.

Q. Who was in the fight?

A. Ricky Turner had hit somebody because they took his hat off his head and he hit somebody. I don't know who it was.

Q. Did you get into it there?

A. No.

Q. Then you left the party. You went back to this Hampton Inn?

A. Yep.

Q. And you would have gone back to the Hampton Inn at this address, the Hampton Inn, I believe on -- the Hampton Inn in Chillicothe?

A. Yes.

Q. And were you in room 104? Do you remember what room you were in?

A. No.

Q. Were you in room 306 at the Hampton Inn?

A. I don't remember what the room number was.

Q. That would be the Hampton Inn at 100 North Plaza, Chillicothe, Ohio; is that correct, Hampton Inn?

A. I don't know if that's the address there or not. I know it's in Chillicothe, Ohio.

Q. Is there only one?

A. There is only one in Chillicothe.

Q. Only one and you were at the one in Chillicothe.

So you go to this party and then you come back to the bathroom or you come back to your hotel room, did you?

A. We came back to the hotel -- to where the hotel rooms was.

Q. Who did you drive with back from CJ Stevens' party?

A. I'm pretty sure I was with Shawn in his Jeep.

Q. Okay. And who followed you?

A. Jimmy in his Escalade and whoever was with him.

Q. Okay. So you walk up to the room. Do you remember what room? Do you remember what floor?

A. We always stayed there lots. So I don't remember.

Q. Okay. Are you aware of the measurements and the

size of the bathrooms at the Hampton Inn?

A. They are different ones, I think, are different sizes. The suites are different from the regular rooms.

Q. And the suite 306 was different than the other suite? There is only three suites at the Hampton Inn.

Do you know whether there is three suites?

MR. LOWE: Objection.

THE COURT: Sustained. Let's not testify.

Q. (By Mr. Young) How many suites does the Hampton have?

A. I thought there were more than three.

Q. How many, if you know?

A. I don't know.

Q. Now, have you been in large suites and small suites?

A. Yeah. I don't remember the suites. I thought that the suites were all the same. They had a bar with a refrigerator and sink and stove. I don't remember them being any different from any other suites.

Q. The bathrooms, do you remember the bathrooms being different in various suites?

A. I don't think, not that I can remember.

Q. So you go back to the suite. You're up in the suite or room or whatever. Who was up in the room?

A. There was, me, Shawn Nightingale, Andrew Dotson,

Jimmy Conway, Jamie Horton, Ricky Turner, Ricky Heard. There were some girls. I don't remember who the girls was.

Q. Do you remember any of the girls?

A. No.

Q. Were you drinking that night?

A. Yes.

Q. Drinking pretty heavily, were you not?

A. Yeah. Sure I was.

Q. What time did you start that day?

A. I don't know.

Q. In those times you drank a lot, didn't you?

A. Yeah.

Q. You were a big boy back in those days?

A. Yeah.

Q. Were you about two fifty back in those days?

A. Somewhere around in there.

Q. How big are you now?

A. Two twenty.

Q. So you're a good thirty pounds heavier that day?

A. Yes.

Q. Were you using any drugs that night?

A. No.

Q. Smoking any dope?

A. No.

Q. So you guys are all drinking pretty heavily that night, right?

A. Yes.

Q. And you're back in the hotel room. So you don't know the name of the girls in the hotel?

A. I can't remember who the girls was.

Q. Who spent the night that evening?

A. Me, Shawn, Andrew, pretty sure Jimmy did, Jamie. That's all. I'm pretty sure that's all who stayed. Or unless the other ones were gone by the time I woke up and I just didn't know that they had stayed.

Q. If certain people testified that they didn't stay that night, would that be accurate or inaccurate?

A. Just depends who it is, who would say that they didn't.

Q. So you wake up in the morning. CJ Stevens' party was on a Friday, right?

A. I don't know.

Q. And back in those days, Fridays were no different than Tuesday, no different than Wednesday?

A. No.

Q. So you don't know whether it was a Friday or Saturday?

A. No.

Q. So you wake up. You say Andrew is in the room

with you?

A. Yes.

Q. And you go down, you check out.

A. We usually just left. We didn't never tell them we were leaving. So we left.

Q. So you wouldn't sign. You would pay for the room the night before at the Hampton Inn, right?

A. Yes.

Q. You paid cash so you could just get up and walk out of the room the next morning, right?

A. That wasn't intent. We just paid for the room and got the room.

Q. You'd pay the night before on each particular time you use the room?

A. Yeah. Whenever we'd stay at those rooms, we would pay the night before. If we wanted to stay a day extra, we would call down and let them know or go down and pay them, whatever.

Q. You would pay them in cash and all the -- did you leave the beer in the bathtub when you left?

A. I'm sure there was some there we did leave it. I don't know if there was or not.

Q. So then you go down, I believe, you testified in the other hearing that you told Andrew -- you asked Andrew to go with you to West Virginia?

A. Yeah.

Q. Did you stop for gas sometime on the way to West Virginia?

A. Honestly can't remember. I can't remember if we did or not.

Q. It's approximately three hours and forty-five minutes on a trip down to West Virginia, right?

A. Somewhere around there.

Q. And I believe in order to get to the west side of Columbus, it's about four and a half hours to get from West Virginia to the west side of Columbus?

MR. LOWE: Objection.

THE COURT: Just phrase that in the form of a question, please.

Q. (By Mr. Young) How long does it take to get from West Virginia, Kermit or wherever you were down there to get to the west side of Columbus up on Galloway Road?

A. Probably right around four hours, somewhere like that.

Q. And did you testify at your last hearing it takes proximately four and a half hours?

A. Somewhere around in there. Somewhere around four, four and a half hours.

Q. So that's one way?

A. (Witness nods head in an affirmative response.)

Q. And you testified you left. Did you check out about 1:44 p.m.? Was it roughly in the afternoon when you guys left the hotel room?

A. No. I don't remember. Like I said, checking out, we just always walked out.

Q. What time did you walk out of the building?

A. We woke up, you know, and they told us come down. And I'm not sure, it was probably right 11:00, 12:00 o'clock. I'm not sure.

Q. You guys were -- how late were you partying? 3:00, 4:00 in the morning?

A. I don't know. I never looked at a clock. I mean, we just partied and when it ended, it ended.

Q. What time did it end that night?

A. I don't know.

Q. Why don't you know?

A. Because it's not something you would even pay attention to. When you're just partying with your friends, you're not going to look at the clock just to see what time it is. I don't.

Q. So you don't think having someone order a hit to murder somebody is a big part of your life? That doesn't distinguish any other day in your life?

A. Well, yeah.

Q. And the day you agree to do a hit to murder

somebody is, hey, I don't remember. It's just a party. Is that what you're telling these ladies and gentlemen?

A. No. I'm saying that when he asked me to do it, I didn't have time to -- or I don't know how to explain it -- to look at a calendar to see if it was this certain date or what time it was or nothing like that. I agreed to do what I agreed to do. And that's just all there was to it. I didn't look at a calendar to see what date it was.

Q. But that night, what time did Mr. Conway make this hit?

A. After we came back from the party. I don't know.

Q. What time did you get back from the party?

A. I don't know.

Q. So after this hit was made, you were completely sober, correct?

A. What do you mean after it was made?

Q. Well, you distinctly remember everything about this one conversation but conveniently had forgotten everything else about the night.

THE COURT: Let's not make any comments.

MR. YOUNG: I'm sorry. I will withdraw that.

THE COURT: Your question is unrelated to what you're going after. So your question deals with a

hit and not with a conversation dealing with it. So let's make sure when you ask the question you're dealing with the incident you're trying to elicit an answer from.

Q. (By Mr. Young) After Mr. Conway made this alleged order to hit, kill Andrew Dotson, what did you do?

A. We agreed to it and went back out to drink with everybody else.

Q. And how long did you continue to drink with everyone else after you agreed to murder someone?

A. I have no idea. I don't know.

Q. Hours?

A. Could have been. Probably was. I don't know.

Q. And you get up. Were you hung over that next morning?

A. Not that I can remember.

Q. Stone cold feeling good the next morning after drinking?

A. I don't remember being sick that morning, so apparently I was feeling all right.

Q. So then you get in the car. Did you ask Andrew to go or did Shawn ask Andrew to go?

A. Shawn asked Andrew if he wanted to go to West Virginia with us.

Q. What did Shawn say?

A. What do you mean? He asked him.

Q. Okay. I'm sorry. So Andrew agreed to go with you guys?

A. Yes.

Q. So it's four hours down. So you're leaving at approximately 11:00 or 12:00?

A. Somewhere around there.

Q. Okay. Then you stopped off when you were crying at a rest area. How long did you stay at the rest area?

A. Maybe five minutes. I just went in real quick, wiped my face off, came back out and we took back off.

Q. And do you know how much gas mileage his Cherokee gets? Does it get about three hundred sixty to three hundred eighty miles, do you know?

A. I have no idea.

Q. So you drive four plus hours down to West Virginia with your stop. Do you get any lunch?

A. I don't think we did.

Q. Then you get down to West Virginia. You go to Shawn's brother's house, right?

A. Yeah.

Q. You all get out. You have been in the car for four plus hours, right?

A. Yes.

Q. Andrew gets out of the car, right?

A. Yeah.

Q. Did you go into Shawn's brother's house for a while?

A. No. Shawn went over and talked to him. Me and Andrew just stood over there by the Jeep, went over and talked to him, then we left.

Q. Shawn's brother came out of the house and observed you -- or did he observe you and Andrew, if you know?

MR. LOWE: Objection.

THE COURT: Sustained.

Q. (By Mr. Young) When you came out of your -- were you and Andrew out of the vehicle physically?

A. Yes.

Q. And where were you standing at Shawn's brother's house?

A. We were standing out in the yard in the driveway.

Q. And what is Shawn's brother's name?

A. I think his name is Mike.

Q. And did you tell Detective Scott, Detective Floyd or any of the Ross County detectives the name of Shawn's brother?

A. I'm not sure. I don't know. Can't remember if I did or not.

Q. You didn't tell them -- did you tell any of those detectives where you went?

A. When?

Q. Did you tell any of the detectives where you went in West Virginia?

A. We went to his brother's house.

Q. And did you tell Detective Scott, Detective Floyd, any of the Ross County detectives where you went in West Virginia when you took Andrew down there?

A. We went to his brother's house.

Q. Did you tell them the city where you went to in West Virginia?

A. At the time I couldn't think of it, of what the name of it was.

Q. But you know now?

A. Yes.

Q. How did you learn it?

A. Somebody had said something. Somewhere along the line somebody was talking about it and they said Kermit. And I think -- I'm not real sure -- but I know that these -- that deputies around here, you know what I mean, they talk to Shawn about stuff and they've talked to me about it and said something about Kermit. But I know that's where his brother lives is down there in Kermit.

Q. So the detectives told you?
A. I didn't say the detective, I said deputies.
Q. Deputies. Okay. Sheriff department individuals.
A. Yes.
Q. The deputies are members of the Franklin County Sheriff's Department, are they not?
A. Yes.
Q. You go down in West Virginia at approximately, let's say, 3:00, 4:00 plus o'clock in the afternoon of this day that you don't know. Would that be right?
A. It would be somewhere around in there. It was in the afternoon.
Q. Late afternoon?
A. Yeah.
Q. Then you go -- how far is it from Shawn's brother's house to this weed -- or I'm sorry, weed field or --
A. We just went up the road and there was just some kind of path cut out, went up the side of a mountain. We went up there.
Q. Walking?
A. No. We drove up to the top.
Q. Drove up to the top. Then where did you go?
A. We just got out right there.
Q. How far did you walk around?

A. Like I said, we got out and as soon as like we walked past the Jeep, I just told Shawn I couldn't do it. And he said, no, you know, me neither. So we got back in the Jeep, told Andrew come on. We came back to Columbus.

Q. Okay. But you didn't come right back to Columbus from the top of that hill, did you?

A. We went -- Shawn had to go pick up some money.

Q. So you went to go get some money. Where was the money?

A. At a guy named Richie Collins.

Q. Richie Collins. Did you tell the detectives, Detective Scott, Detective Floyd, any of the Ross County detectives, any of the prosecuting attorneys in this case that you went and got money from Richie Collins in West Virginia?

A. I'm not sure. I'd have to see what I said on these papers, whatever. I don't know when you're talking about. But that's where we went. We went to Richie Collins'. We picked up money Shawn had there. He picked up some pills because Andrew wanted some pills.

Q. Where does Richie Collins live?

A. Off the main highway there. I don't even know the name of the highway is.

Q. Do you know what city?

A. It's by Kermit right there in West Virginia. It's by Kermit. Like I said, if you've been to West Virginia, most of their driveways cut off into the woods and go up into the woods into somebody's house.

Q. So then it's later in the evening. Is it dark by the time you go pick up these pills, September sometime?

A. I think it started -- it's starting to get dark, the daylight starting to end.

Q. So it's 10:00 o'clock or 9:00 o'clock, 8:00 o'clock?

A. I'm not sure.

Q. Before 8:00 o'clock? After 8:00 o'clock?

A. Had to be before.

Q. So then you start your trip back to Columbus?

A. Yes.

Q. And do you stop for gas?

A. Sure. We would have had to. I don't remember.

Q. Did you stop for gas? Do you remember whether or not you stopped for gas?

A. I don't remember.

Q. You don't know whether you stopped for gas on this one day that you are supposed to commit a homicide? You don't remember those things?

A. That would be the least thing I'd be worrying

about, stopping to get gas.

Q. For a nine hour, ten hour trip, you aren't concerned about getting gas?

A. That's not that big of a deal to stop and put gas in a car.

Q. So you guys have beer in the car?

A. Yeah. There was some old beer in the back.

Q. You guys were drinking that afternoon, weren't you?

A. Drank a couple. It was hot, so we didn't even really drink any of it. Maybe two, three.

Q. How much did Andrew drink?

A. I don't know.

Q. How much did Shawn drink?

A. I don't know how much he drank. I don't think he drank too much. Like I said, it was hot. We didn't like hot beer.

Q. You stated that Shawn took some pills. Who gave him pills?

A. He got some pills.

Q. Shawn got some pills. You said Andrew took some pills?

A. Yes.

Q. You took a pill, too, didn't you?

A. No.

Q. It's your testimony that you didn't take a pill?
A. That's my testimony. I didn't take a pill.
Q. Shawn took a pill. Did you see Shawn take one?
A. No.
Q. Did you see Andrew take one?
A. Yes.
Q. How many did Andrew take?
A. He's just taking them. I don't know how many he took.
Q. What kind?
A. I don't know, you know, what pills, you know, what they are. I never messed with pills. Pretty sure they said something about purple footballs, Somas or something like that.
Q. Took a lot of them, didn't he?
A. Yeah. He was taking some pills, you know what I mean. I don't know what a person usually takes. Like I said, I never took pills. I don't know what it takes to make a person high or whatever. I don't know.
Q. He was all messed up, wasn't he?
A. Yeah. He passed out from it.
Q. And how do you know he passed out?
A. Because he was asleep in the back seat of the Jeep.
Q. And how do you know he was asleep in the back

seat of the Jeep?

A. Just look back at him, he is asleep.

Q. Was he lying down or was he -- you say he was asleep?

A. Yes.

Q. In this four and a half hour journey, I believe you testified that he was asleep shortly after Ashland, Kentucky. That may have been somewhere in Kentucky.

A. Somewhere around there.

Q. A trip from Ashland, Kentucky to Columbus is about two and a half hours. Would that be right?

MR. LOWE: Objection.

THE COURT: Overruled.

A. About three, maybe a little bit more than three hours.

Q. (By Mr. Young) This person is asleep in your car for three hours because he took some narcotics and drank, I believe, one or two beers?

A. Yes.

Q. And you saw him personally ingest a number of pills?

A. Yes.

Q. And then you drove up to Columbus and sometime you called Jimmy --

A. Yes.

Q. -- is that right?

Okay. And you met him at the parking lot.

Now, 9/16 or the day after you faked doing all these things to him, you got a call on a cell phone?

A. Yes.

Q. And you got into Jimmy's Escalade?

A. Yes.

Q. When you went to Great Southern, this is a day after you faked all of this and you killed somebody and you bought some spade shovels, right? Or Jimmy bought some spade shovels?

A. That happened that day he picked me up.

Q. Went to Westland Mall and bought some clothes.

A. Yes.

Q. Changed in the car and went to Jimmy's house.

Now, you've known Andrew Dotson about a month before this happened, right?

A. No. I told you I've known him, you know, a couple months.

Q. One second. You've known Jimmy about eight months prior to this, correct?

A. Do what now?

Q. You knew Mr. Conway eight months prior to this, right?

A. It was right around a year.

Q. So on May 13, 2002, did you not tell Detective Scott and Detective Floyd that I had known Jim Conway for approximately eight months to a year?

A. Yeah.

Q. You've known Shawn Nightingale five to six years?

A. For a long time.

Q. And you've known Jamie Horton one to two years?

A. No. I knew Jamie Horton just as long as I knew Jimmy.

Q. So when you testified you knew him three to four years, that would be incorrect?

A. Yeah. I don't remember testifying I knew him three or four years.

Q. Okay. Let's go to the night of Andrew's death. I believe you testified or you gave or Shawn gave or Andrew self-medicated himself by ten plus pills of Soma and purple footballs?

A. I don't know how many it was. Yeah. He did take some pills though. I don't know how many it was.

Q. Did you testify and/or give statements that it was ten plus pills?

A. Not that I remember.

Q. You, Shawn and Andrew were smoking or drinking alcohol, right?

A. Yeah. We drank a couple beers.

Q. And you recall testifying that you were smoking weed, too?

A. No.

Q. And you passed out with three hours left?

A. Right. Yes.

Q. And you never regained consciousness?

A. No.

Q. Never woke up Andrew?

A. No.

Q. Never was awake again?

A. No.

Q. You got to the cornfield. Now, when you got to the cornfield, it's your testimony that your car was behind the pickup truck?

A. We are in Shawn's Jeep and we parked behind Jimmy's dad's pickup truck.

Q. And that would be -- like the cornfield being the lane would be -- it's a one-lane road. So you would have James Conway's or Mr. Conway's truck, Jimmy's dad's pickup truck, then your truck, your Jeep Cherokee would be behind it?

A. Yes.

Q. Front bumper to rear -- to the rear of that car?

A. Yes.

Q. You were the driver of the vehicle. Shawn was

the passenger and Andrew was lying in the back seat, correct?

A. Yeah.

Q. Andrew's head was facing the driver's side door, right?

A. Yes.

Q. And when you pulled Andrew out of the car, in fact, you opened the rear passenger -- you opened the rear passenger door, correct?

A. Yes.

Q. And the doors open toward you when you open the door. So Andrew's body would have been the farthest thing from Mr. Conway or the pickup truck. I'll say the pickup truck.

A. Yes.

Q. And you pulled Andrew towards you, correct?

A. Yes.

Q. And that would be towards you from the vehicle. And his body was limp?

A. Yes.

Q. You testified that you don't know if he was breathing at that time?

A. I didn't check him at that time. But I mean, as far as we know, all he was, was passed out from the pills.

Q. As far as you know, he was passed out from the pills.

Okay. So you got Andrew out or -- you got Andrew out by his neck, right?

A. No.

Q. You pulled him out of the truck --

A. Yes.

Q. -- under his arms?

A. Yes.

Q. And you laid him on the ground very gently, correct?

A. Laid him on the ground.

Q. You were pretty concerned about his well-being at that point in time, were you?

A. I mean, I wasn't -- you know, I don't know how to explain it. Yeah, I was concerned. I didn't want him dead.

Q. So you gently pulled him out of the vehicle caressing his body when you laid him on the ground, when his limp body fell on the ground. Would that be fair?

A. Yes.

Q. And did you lay his head down when he was out on the ground?

A. I just laid him down.

Q. And his head, in fact, was facing the rear of the

Jeep Cherokee?

Using me as the rear end of the Jeep Cherokee, the front end of the Jeep Cherokee here, the rear end of the pickup truck here, the front end of the pickup truck here, they were all in a line, correct?

A. Yeah.

Q. The body, which you gently pulled out of the vehicle, would you have pulled it -- if this is a north or a south direction, you would have pulled it in a northeast direction. So you would have been pulling him away from how the door opens, correct?

A. Yes.

Q. So you would have been pulling the body away from the vehicle towards the rear of the vehicle. You didn't pull the limp body around the door, right?

A. No.

Q. Then you gently laid the individual down on the ground. Would that be correct?

A. Yes.

Q. Then while this individual is unconscious, you then grabbed his neck. Did you get down on the ground on your hands and knees when you decided to get Mr. Dotson in a headlock?

A. I picked him up and laid him against me, his back would have been against my legs.

Q. How were you sitting?
A. Then I picked him up.
Q. How were you sitting?
A. What do you mean how?
Q. Were you standing?
A. Yes.
Q. So you're picking this limp body up by his neck. His whole limp body is down here and you're choking him like this.

Can you show the ladies and gentlemen of the jury how you were choking him?

MR. YOUNG: Can he demonstrate, Your Honor?

THE COURT: Go ahead.

A. I already did. I had him in a headlock.
Q. (By Mr. Young) So were you standing up at the time?
A. I think I was bent over because he was sitting against my legs and I was bent over doing it.
Q. He was completely limp, right?
A. Yes.
Q. And you were sitting there applying pressure to his trachea and to the outside of his neck, correct?
A. Yes.
Q. You were two hundred fifty pounds, right?
A. Yes.

Q. You were strong as an ox?
A. I don't know about that.
Q. Are you a pretty strong guy?
A. I didn't do nothing back then.
Q. Did you fight a lot?
A. Sometimes, you know, we'd get into fights with someone if we went out somewhere, but not a lot.
Q. Would you ever lose a fight?
A. Yeah, I've lost fights.
Q. When?
A. I lost fights when I was young. I don't know. We have went out --
Q. Did you lose any fights around the time when you were play-acting choking Mr. Dotson?
MR. LOWE: Objection.
THE COURT: Overruled.
A. No.
Q. (By Mr. Young) Now, how long did this play acting, fake choking go on?
THE COURT: Mr. Young, stay at the podium.
Q. (By Mr. Young) How long did this fake play acting choking go on?
A. Not very long.
Q. More than three, four minutes, didn't it?
A. No.

Q. It didn't?

A. (Witness nods head in a negative response.)

Q. How long?

A. Like I said, it wasn't long. Things were happening really fast that night and stuff. You know, it wasn't that long. It didn't -- not that I remember it didn't. I didn't do it that long.

Q. Your head was crazy at that time, right?

A. Yes.

Q. You didn't know what happened, did you? You just kind of flipped out, just blacked out, didn't you?

A. No. No.

Q. You don't recall making those statements Shawn Nightingale and I, quote, "I just kind of flipped out, you know, just blacked out."

A. No.

Q. You don't recall making a statement "my head was crazy at that time?"

A. Yeah, but not that I blacked out or something. Things were just so unreal. Things were just --

Q. What was going on unreal, you were fake choking this individual.

A. Yeah. I think it was just the whole situation.

Q. So after you -- can we get a time frame or do you know if it's one minute, two minutes, five minutes, ten

minutes?

A. I don't know.

Q. Or one second?

A. I don't know. Like I said, it wasn't that long. It was a short time.

Q. It caused you to get -- you had done it for such a duration that you got actually physically tired from choking Mr. Dotson that you had to release him, did you not?

A. The thing is, is like adrenaline and stuff. I wasn't even choking him hard. It was just like my -- I was just -- my whole body just felt like I was wore out or ready to just collapse, my whole body. It wasn't from choking. It was just from the exhaustion of what was going on.

Q. Put so much pressure on this guy that your entire body was exhausted?

A. That's not what I just said. Like I said --

Q. Was your body entirely exhausted?

A. I felt like I was -- yeah -- my whole body. I felt like I was tired, my whole body.

Q. And you were holding Andrew Dotson's neck in your arm when that happened?

A. Afterwards I just felt like that. I don't understand. No, not when I was holding his neck. I

wasn't sitting there saying, oh, I'm so tired I can't do this. I'm saying sometime I was just wore out. I was so tired. It just felt like -- I don't know.

THE COURT: Mr. Young, it's 5:00 o'clock. I'm going to adjourn now.

Be back up here at 9:00 o'clock tomorrow morning.

Remember the admonition I've given you. Make sure you don't hear any news accounts on the radio or TV. Don't read anything in The Dispatch or any other newspaper. Don't have any discussions with any family or friends.

See you back up here at 9:00 o'clock tomorrow morning.

- - -

Thereupon, the further trial of this cause was adjourned until September 18, 2003.

- - -

Thursday Morning Session,
September 18, 2003.

- - -

MS. PRICHARD: Can we approach, Judge?

- - -

Thereupon, Court and counsel confer at the bench out of the hearing of the jury off the record.

- - -

THE COURT: Please be seated. Thank you. Good morning, everybody.

We are ready to go. Stand up. Raise your right hand.

- - -

MICHAEL ARTHURS

Resuming the stand for further cross-examination, having been heretofore duly sworn, continued testifying as follows:

THE COURT: You may continue, Mr. Young.

- - -

CROSS-EXAMINATION

BY MR. YOUNG:

Q. Mr. Arthurs, I believe we left off with you having your arm around Mr. Dotson's neck and he was limp laying on the ground or laying in your arms; is that correct?

A. Yes.

Q. And his face, Andrew Dotson's face, would have been facing away from your body, correct?

A. Yes.

Q. Now, while you had him in this headlock, did you notice that his face was swelling up?

A. No.

Q. Did you notice that his eyes were closed the entire time?

A. No.

Q. And I believe you indicated in one of your statements that your head was crazy at the time you were choking him.

A. I said, you know, that everything was just unreal and it was a weird situation for me.

Q. Okay. Now, after you got done choking him or head locking him or doing whatever, you just dropped him into the ground?

A. Yeah. I laid him on the ground.

Q. Now, in what position did you lay him on the ground in relationship to the green Jeep Cherokee?

A. He would have been laying alongside the Jeep. Just like when I took him out of the Jeep.

Q. So his head would have been in the opposite direction as the front of the Jeep Cherokee?

A. Yes.
Q. And he was laying in the opposite direction?
A. Yes.
Q. And in close proximity to the Jeep Cherokee?
A. Yes.
Q. And then you indicated that you stepped on his neck.
A. Yes.
Q. What foot did you step on his neck with?
A. Pretty sure it was my left foot.
Q. So you put your left foot on his neck. And did you apply any pressure?
A. Just not very much at all.
Q. And I believe your testimony is you indicated you had a hand on the Jeep Cherokee.
A. Yes.
Q. And so it would be your left foot. Were you facing the Jeep Cherokee or were you facing away from the Jeep Cherokee?
A. I pulled up behind the -- pulled him behind the Jeep. We were behind the Jeep when this happened.
Q. Behind the Jeep. Where was your hand on the Jeep Cherokee?
A. On the back window.
Q. On the back window.

So you had taken Andrew while he was limp all the way to the back of the vehicle --

A. Yes.

Q. -- and you put your left foot on his neck?

A. Yeah.

Q. And what caused you to put your hand on the Jeep?

A. I just -- I was on my right foot and I just did -- I leaned against the Jeep.

Q. Would it have been leaning into the Jeep putting more weight on your left foot?

A. No. It would be the other way.

Q. Did you pick up your right foot --

A. No.

Q. -- to cause you to lean against the Jeep?

A. No.

Q. You weighed two hundred fifty, roughly, pounds at about that time?

A. Somewhere around there.

Q. Isn't it true that you pushed so hard on the Jeep that the Jeep began to rock?

A. No.

Q. And that's the Jeep with the Ross County license plates on it, right?

A. Yes.

Q. When you got done doing this fake step -- or not

fake because you actually did step on his neck -- when you got done stepping on this gentleman's neck, isn't it true that his neck was completely flat against the ground?

A. No.

Q. Isn't it true that he had a necklace on?

A. Yes.

Q. Isn't it true that after you got done not applying any pressure but stepping on his neck that his entire necklace was hidden by the skin that enveloped it?

A. No.

Q. Isn't it true that after you got done stepping on this gentleman's neck, not applying any pressure to this gentleman's neck that, in fact, there was a shoe print on his neck?

A. No.

Q. Isn't it true that after you got done stepping on this gentleman's neck, not applying any pressure, that, in fact, Andrew Dotson had urinated and defecated in his pants?

A. No.

Q. After you got done stepping on his neck, isn't it true that you got down on the ground and twisted Andrew's neck similar to a scene from The Exorcist?

A. No.

Q. Did you -- are you aware whether there was a popping sound in Andrew Dotson's neck during your dealing with him?

A. They said his neck popped whenever I was choking him. I didn't hear it pop.

Q. You didn't hear it pop. You didn't hear it because you were crazy at the time?

A. I just didn't hear it.

Q. When you got in fights around this time, did you used to get crazy and just go wild?

A. No.

Q. Then I believe you testified under oath that you then got down on the ground to listen whether Andrew was breathing.

A. Yes.

Q. And that was at the Jeep Cherokee after you choked him, or fake choked him, and after you didn't apply any pressure to his neck?

A. Yes.

Q. And didn't you indicate that he was not breathing at that time?

A. No.

Q. After you choked him, stepped on him, you then -- you dragged him back into the cornfield?

A. Me and Jamie.

Q. How did you drag him back into the cornfield?

A. Had him underneath of his arms pulling him.

Q. Had him underneath his arms. You weren't holding his arms. Jamie wasn't holding his feet?

A. Had him underneath his arms. Jamie had his feet. We were taking him back there.

Q. And Andrew's condition at that time, would it be fair to say, was a lifeless, limp body?

A. His body had been limp the whole time.

Q. His body was limp before you even got to Galloway Road, right?

A. Yes.

Q. In fact, did you not tell Detective Scott that you pulled him out of the vehicle by his neck, not under his arms?

A. No.

MR. YOUNG: May I approach the witness?

THE COURT: Yes.

Q. (By Mr. Young) Show you what purports to be a transcript of your May 23rd statement to Detective Scott. Can you take a look at that, see if you recall making that statement.

A. Yes, I did. Like I said, this has been so long ago.

Q. What was the statement that I indicated in red ink that you gave to Detective Scott on May 23rd?

A. Says I pulled him out by his neck.

Q. You made a statement to Detective Scott on May 13th, correct?

A. I guess that's what the date was.

Q. You made a statement on May 23rd that was tape-recorded, correct?

A. I don't know the exact dates. That's what I'm saying.

Q. Where did James Conway live on September 14th and 15th?

A. I'm not sure if he got his house across -- across the street from his mom and dad's house yet or not.

Q. He was living on the south side of Columbus, wasn't he?

A. Jimmy?

Q. Yes.

A. He was living over by Grove City.

Q. Dire Road?

A. Yeah.

Q. And that's directly off of Route 23, correct? Or very close proximity to 23?

A. Off of 104.

Q. Which is close to 23, right?

A. 23 is all the way across town.

Q. Did you take 23, Route 23 down to Kermit, West Virginia?

A. Yes.

Q. And you drove by Mr. Conway's house. You're purportedly coming back from Kermit, West Virginia, right?

A. We came down 23 and got off -- got on 35 and came down 104.

Q. Did you drive back from West Virginia the same date as you indicated, the 9/11 terrorist attacks?

A. I was by myself on that day. Yeah, I drove back that day.

Q. So you drove back. You got up in the morning. The news broke and you drove back to Columbus.

A. I drove back to Chillicothe.

Q. Chillicothe, I'm sorry.

A. Yeah.

Q. And did you check in the Hampton Inn about 10:30 that night?

A. I don't remember if I did or not. I didn't think I did, but --

Q. You had testified on direct examination --

MR. YOUNG: May I approach the witness, Your Honor?

Q. (By Mr. Young) Regarding State's Exhibit -- is that G? G-3 purports to be a photograph or is a photograph of you lying in a ditch or a hole.

A. Yes.

Q. That photograph was taken on May 23rd, correct?

A. Like I said, it was somewhere around that time. I don't know all the exact dates, but it had been right there around that time, yes.

Q. So you were talking with your lawyers, you and your lawyers. Were you talking with your lawyers on May 23rd prior to going to make this proffer or recorded statement?

A. Yes.

Q. You then went and your lawyers went over to Detective Scott's with the Franklin County Sheriff's Office and gave a statement?

A. Yes.

Q. And then Detective Scott later that day after you did your statement had you go out and pose for this picture?

A. I don't know if it was that exact day. I didn't think it was that exact day, but he did have me go dig a hole and take this picture.

Q. So he had you do that?

A. Yes.

Q. He told you to dig the hole?
A. Yeah.
Q. And he told you to splash the ketchup on you?
A. There was no ketchup on me.
Q. There was no ketchup on you. Are you familiar with a gentleman by the name of Arthur Wood?
A. Yes.
Q. And how are you familiar with Mr. Wood?
A. He was at CRC and he yelled something across the chow hall. And I told the C.O.'s because I didn't want to get in trouble. And then that's all there was to that.
Q. What is CRC, if you can explain to the ladies and gentlemen?
A. It's the Reception Center. Whenever you go to prison that's where they take you in at first, give you your number and decide where you're going to go.
Q. CRC is when you are convicted of a felony offense and are sentenced to prison you go to CRC initially?
A. Yes.
Q. And there you're given your various tests and you're given an inmate number, right?
A. Yes.
Q. And then they assign you to one of the various prisons to be your parent institution, right?

A. Yes.
Q. And typically most people don't stay at CRC?
A. No, not most people. Some people stay right there.
Q. Did you confess and brag to Mr. Wood that you killed Andrew Dotson?
A. No.
Q. Are you familiar with Maranda Oliver, Mandy?
A. Yes.
Q. And Mandy -- or did you attend June 2002 Gus Macker tournament down in Chillicothe?
A. Yes.
Q. And you saw and spoke to Maranda Oliver, Mandy Oliver there?
A. Yes.
Q. And you admonished her for not stopping to talk to you, right?
A. What do you mean?
Q. You asked her why she didn't come and talk to you?
A. No. She stopped to talk to me, I'm pretty sure.
Q. Maranda Oliver is the mother of Mr. Conway's child?
A. Uh-huh.
Q. And did you tell Maranda Oliver, Jimmy really

didn't have anything to do with it, killing of Andrew Dotson?

A. No.

Q. Did you also tell her, I'm not going to spend the rest of my life with him -- meaning Jimmy?

A. I don't even think I talked to her about the case.

Q. After you did these horrible things to Mr. Dotson, do you recall meeting his brother at a party after Andrew's death?

A. I think it was his cousin's. I thought it was his cousin's or something. I don't remember exactly who they was to him. I do remember it was his family.

Q. Do you remember meeting Cecil Dotson after you did these things to him?

A. I don't remember the exact name. Shawn was saying something it was his family's cousin or something.

Q. And that was at a party?

A. Yeah.

Q. And how did that party end that night?

A. Me and Shawn got into a fight with a couple guys and we left.

MR. YOUNG: One moment, Your Honor.

THE COURT: All right.

Q. (By Mr. Young) Mr. Arthurs what was your cell phone number in September 2001?

A. 703-0033 -- or something like that.

Q. Was it 703-0030?

A. Could have been. I had it changed. Once all this stuff happened I had my number changed.

MR. YOUNG: Nothing further, Your Honor.

THE COURT: Mr. Lowe.

- - -

REDIRECT EXAMINATION

BY MR. LOWE:

Q. Mr. Arthurs, why did you have your number changed?

A. Because I didn't want to have these guys calling my cell phone any more.

Q. Who are these guys? Who are you referring to?

A. Shawn, Jamie and Jimmy.

Q. Were you scared of James Conway?

A. Yes.

Q. When you were out in public after you had talked to the police, did you have any concerns for your safety?

A. Yes.

Q. Were you out in the public telling people that you were going to testify against the defendant, James

Conway?

A. No.

Q. Would you ever tell people that?

A. No.

Q. Why not?

A. Because for one, it makes a lot of people not -- a lot of enemies because I'm testifying against somebody. And you know he's -- he knows a lot of people out there.

Q. What happens if you're labeled a snitch?

MR. YOUNG: Objection.

THE COURT: Overruled.

A. You know, nobody talks to you no more. Everybody -- you know what I mean, they don't want to have nothing to do with you.

Q. (By Mr. Lowe) Mr. Arthurs, Mr. Young asked you about the deal you had in place with Ross County as well as with our office. I want to be clear about exactly what it is that you agreed to do in these cases.

In Chillicothe, you agreed to testify against three people in unrelated matters; is that correct --

A. Yeah.

Q. -- three separate people about it?

A. Yes.

Q. And you also agreed to testify in a Franklin

County case on three separate people.

A. Yes.

Q. As well as testify in this case against the defendant as well as two other co-defendants.

A. Yes.

Q. And you also agreed to testify against one other person in Franklin County on an unrelated matter.

A. Yes.

Q. You also agreed to provide information to the police on any other crimes you are aware of; is that correct?

A. Yes.

Q. So you were to do many things in order to receive the deal in Ross County as well as here.

A. Yes.

Q. And all that was predicated upon you testifying truthful in every matter.

A. Yes.

Q. In addition, in this case there was talk about an abduction charge. You mentioned that an indictment was filed. Have you pled guilty yet?

A. No.

Q. And Mr. Young mentioned that was just hanging out there. Do you know when your court date is for that?

A. I think the 26th of this month.

Q. You were asked about a conversation you had with Zach Scott, Detective Scott yesterday; is that correct?

A. Yeah.

Q. Did you talk to him about anything to do with this case?

A. No.

Q. Are you cooperating with Mr. Scott in other matters -- Detective Scott?

A. Yes.

Q. And have you cooperated with Ross County?

A. I haven't had to do anything there yet.

Q. Now, I want to be clear on the timing of you talking to police. Had you been charged with the crime as a result of Andrew Dotson's homicide at that time?

THE COURT: Step back, Mr. Lowe.

MR. LOWE: I'm sorry.

A. I don't think I had. I'm not sure. I don't think I had to. No, I don't think I was.

Q. (By Mr. Lowe) You indicated you weren't home when the police came to your house.

A. No.

Q. Do you know where you were?

A. I was at a friend's house. We were swimming or something. I was at a friend's house. My mom called me.

Q. And at that time, your next step was to do what?
A. I came home.
Q. And after that, did you call your attorneys?
A. Yes.
Q. But at that time you weren't charged or indicted with anything?
A. No.
Q. And was it at that time that you set up a meeting with the police detectives?
A. They told my family that the detectives -- detectives told me that they would be back. And we called my lawyers. They said that if they came back, to put them on the phone with them and they would talk to them. So when they came back, I wasn't there again and he -- one of the detectives, I don't know which one it was, got on the phone with my lawyer and he set a meeting up with them to talk to him without me being there. And then my lawyer got a hold of me and told me to come up there and cooperate.
Q. Was it at that time that you decided to cooperate with the police?
A. Yes.
Q. You had not been charged then?
A. No.
Q. You were asked about an Arthur Wood?

A. Yes.

Q. You said you met him in CRC?

A. Never really met him. He yelled something across the cafeteria. That's all.

Q. Did you know his name when he yelled something to you across the cafeteria?

A. No. I never seen him before.

Q. He yelled something across the cafeteria to you. Did you respond to him?

A. I just -- I looked at him. I said, who are you? And he said it again. I was like, man, I don't even know you. Right when I said that, you sit down to CRC to eat, you only have two, three minutes to eat, you have to leave because they have so many people coming in and out.

Q. Did you have any other interaction with Mr. Wood?

A. No.

Q. Did his comment to you cause you any concern?

A. Yeah.

Q. What did you do in response to Mr. Wood's comment to you?

A. I let the CO in my pod know, you know, what was going on. I told her this is a case that hasn't even came up yet, still waiting and I don't know who this guy is. And they put me in a certain block where you don't

even come out. You sit in that block, that's it. And that's all. Then I left there and went to my parent institution.

Q. You went and told -- who did you tell, I'm sorry?

A. It was an officer in my block where I was at.

Q. And as a result of that, you were placed in protective custody situation?

A. Yes.

Q. In isolation?

A. Yes.

Q. You were asked about several things about what you did on the trip to West Virginia including whether you got gas or not. Do you recall whether you got gas?

A. It's not something that sticks out in my mind. That's why I don't remember. It's not something that, you know --

Q. Let me ask you a different way. Are you positive you did not get gas?

A. No.

Q. So you could have got gas?

A. Yes.

Q. Could you also have stopped for something to eat?

A. Yes.

Q. Do these things stick out to you?

A. No.

Q. What sticks out to you from the night that Andrew Dotson was killed?

A. That he was killed and where it was at and who did it.

Q. Did you have any problems with Andrew Dotson?

A. No.

Q. Did you have any beefs with him?

A. No.

Q. Were you angry with him?

A. No.

Q. Did you ever have a fight with him?

A. No.

Q. Any physical confrontation with Andrew Dotson before that night at all?

A. No.

Q. Were you at the Jesse James shooting?

A. No.

Q. Were you to get any compensation from Mr. Conway for completing this murder?

A. No.

Q. Can you explain, please, why you would agree to kill someone without getting something for it?

A. I don't know why I agreed to it. He asked us to do it and we said we would. Just stupid decision I made. I don't know why we said we would.

Q. Mr. Young asked you about the individual you got drugs from; not you specifically, but you and Shawn in West Virginia.

A. Yes.

Q. Do you recall telling the police that you did stop and get drugs from someone in West Virginia?

A. Yes.

Q. How many times did you tell the police that?

A. I don't know. I don't know. I just know I told them.

Q. Were you ever asked specifically a name?

A. I don't know. I might have been. I don't know.

Q. How many times would you say that you talked to the police regarding this case?

A. Two or three times. Two times, I think.

Q. Is it fair to say it was several times?

A. Yeah.

Q. Mr. Young talked about a statement on May 13th.

A. Like I said, I don't know the exact dates. Just whenever they would ask me to come up, I'd come up and talk to them whatever they wanted me to talk to them about.

Q. You cooperated each and every time you were asked to talk to the police?

A. Yes.

Q. Did you tell them the truth?
A. Yes.
Q. In all the statements you made to the police, did you ever waiver on who put the pickax in Andrew Dotson?
A. No.
Q. Did you ever say anything different than Jimmy Conway told you, asked you to kill Andrew Dotson in the bathroom?
A. No.
Q. And Mr. Young was talking to you about dates and about you originally told the police it might have been August.
A. Yeah.
Q. Do you recall on May 26th -- or May 23rd, excuse me, 2002 making a statement with Detective Scott in which you corrected that?
A. I know that some time I did correct it with him.
Q. If I showed you a transcript, would that refresh your memory as to what you told the detective?
A. Yes.
MR. LOWE: May I approach the witness, Your Honor?
Q. (By Mr. Lowe) It's marked as State's G-2. On page five of the transcript your name, Arthurs -- here, could you read this line, please?

A. "Remember how I was telling you about whatever I told him about the months?"

Q. And then your next statement says.

A. "September. Remember I told you it was August? I had my months mixed up. It was September."

MR. YOUNG: Your Honor, I'm going to object.

THE COURT: Sustained.

Q. (By Mr. Lowe) Actually, just review this page then. Review the entire page. Did you review that?

A. Yeah.

Q. Does that refresh your memory?

A. Yeah.

Q. And did you correct yourself to detectives about the dates?

A. Yes.

Q. You're also shown a receipt by both myself and Mr. Young. Does that transcript also refresh your memory about the receipt?

A. Yes.

Q. And back on May 23, 2002, what did you tell the detectives about that receipt?

A. They asked me if it was in my name and I said that, you know, I didn't think so, but maybe. It could have been.

Q. Did you tell them that that was the right day?

A. They asked -- I'm pretty sure they asked me if that was the day that Andrew was killed. And I said I thought it was after that.

Q. Did you mention specifically about September 11th?

A. Yeah. I told them that I was in West Virginia and woke up and seen the news when the planes hit the building.

Q. So you told them it was after that?

A. Yeah.

Q. Mr. Young talked to you quite extensively about exactly what you did to Mr. Dotson the night that he was killed and you said that you pulled him out of the car.

A. Yes.

Q. After you pulled him out of the car, you indicated that you put your hand around his throat --

A. Yeah.

Q. -- in a headlock?

A. Yes.

Q. His body was fairly limp?

A. Yes.

Q. And you applied some pressure?

A. Yes.

Q. Did you ever at any time twist his neck around?

A. No.

Q. Even a little bit?
A. No.
Q. What about twisting it a hundred eighty degrees?
A. No.
Q. Did you ever step on his neck with such force that you basically flattened his neck into the ground?
A. No.
Q. And I want to be clear on the time, after you did all the acts that you took on Mr. Dotson, it was then that you checked to see if he was breathing?
A. Yes.
Q. And what was his condition at that point?
A. He was still breathing.
Q. So after your last interaction he was alive?
A. Yes.
Q. There was talk about blacking out. Did you blackout that night?
A. No.
Q. Can you explain, when you said things were crazy, are you talking about the situation -- what are you talking about?
A. Like I said, you know, it was just a crazy situation. Somebody was getting killed and something I've never been around or done before. So it was just something -- hard to believe I was there.

Q. Were you happy with the situation you were in?
A. No.
Q. Did you want to be there?
A. No.
Q. And explain for us why you were.
A. Just Jimmy asked us to do it and told us to follow him there or meet him in Columbus and follow him where we were. Jimmy asked us to do it, so we did.
Q. After you decide not to kill Andrew, did you try to talk Jimmy out of doing this?
A. I think somewhere along the line we told him that Andrew said he wasn't even going to tell on him or nothing.
Q. You talked about Maranda Oliver. How do you know Maranda?
A. I know her -- she used to go out with us sometimes whenever we'd go out to club and stuff. Then I seen her around Chillicothe a little bit.
Q. Does she have a relationship with Mr. Conway?
A. Yes.
Q. Does she have a child with Mr. Conway?
A. Yes.
Q. Does she live with the Conway family, if you know?
A. No, not that I ever remember seeing her living

there.

Q. Did you at any time ever tell Maranda Oliver that Jimmy Conway was not involved in this?

A. No.

Q. Are you positive about that?

A. Positive.

Q. Did you ever tell anybody that Jimmy Conway wasn't involved in this?

A. No.

MR. LOWE: May I have one moment?

Q. (By Mr. Lowe) You mentioned that there was a gun in the car. How did you know there was a gun in the car?

A. I think Shawn had told me that Jimmy --

MR. YOUNG: Objection. Hearsay.

THE COURT: Sustained.

MR. LOWE: May we approach, Your Honor?

THE COURT: All right.

- - -

Thereupon, Court and counsel confer at the bench out of the hearing of the jury as follows:

- - -

MR. LOWE: Did you mention the gun on cross-examination?

THE COURT: That's why I sustained the

objection.

MR. LOWE: All right. I apologize, Judge.

- - -

Thereupon, the following proceedings were had in the hearing of the jury as follows:

- - -

Q. (By Mr. Lowe) Mr. Arthurs, you spoke to the police in late April or early May for the first time; is that correct?

A. Yes.

Q. And at that time, you gave a statement or a proffer, Mr. Young showed you the picture of G-3 and asked you if it was that same day. Do you have any idea what day this picture was taken?

A. No. I don't know what day it was exactly.

Q. Do you believe it was the same day you spoke to the police?

A. No.

Q. You believe it was after or before that?

A. It was after.

Q. Was this picture your idea?

A. No.

Q. Were you asked to do it?

A. Yes.

Q. You also asked about pills that Andrew took. Do

you recall how many pills you saw Andrew take?

A. No. I just know he took quite a few of them. I don't remember the exact number. I wasn't counting how many pills he took.

Q. So you have no idea how many he took?

A. No.

Q. And at what point did Andrew pass out in the back seat? Do you recall?

A. It was somewhere after -- or somewhere around Ashland, Kentucky.

Q. And you were also asked about smoking marijuana or other drugs. Did you take anything else that night?

A. No.

Q. So all you had was a few warm beers?

A. Yes.

Q. Were you drunk in any way?

A. No.

Q. Not intoxicated?

A. No.

MR. LOWE: I have nothing further, Your Honor.

THE COURT: Mr. Young.

MR. YOUNG: One moment, Your Honor.

- - -

RECROSS-EXAMINATION

BY MR. YOUNG:

Q. Mr. Arthurs, talk about your abduction deal. In order to get that deal where you don't spend a single second in jail for Andrew Dotson's homicide, you have to please the prosecutors, right?

A. No.

Q. In the event that they do not believe you've lived up to the terms of their deal, whether you testify as they think you're going to testify, they can revoke that deal, right?

A. As long as I tell the truth.

Q. And in the event they revoke that deal, you can get the death penalty?

A. I would have to go through trial first, I guess.

Q. You are aware -- or if you know -- that Arthur Woods was a relative of Andrew Dotson, right?

A. I found out later on that he was.

Q. And do you like prison?

A. No.

Q. You'd do anything you can to get out of prison, right?

A. I don't know about anything; but, yes, I don't like being there.

Q. And in the event your deal is revoked in Ross

and/or here, you would be facing the death penalty plus forty-four years, right?

A. I don't know.

MR. YOUNG: Nothing further, Your Honor.

THE COURT: All right.

That's all right. Take him back.

MS. PRICHARD: Judge, I don't see him yet. I assume he's on his way.

THE COURT: They are waiting for a witness who is not far away.

Go ahead and step back in there. Be a little more comfortable. Stay here.

- - -

Thereupon, the jury was retired from the courtroom and the following proceedings were had out of the presence and hearing of the jury:

- - -

MR. YOUNG: Your Honor, we need to go over the coroner photos; see if we can reach an agreement, see what they are going to show on the opaque.

THE COURT: Let's bring them in the conference room.

- - -

Thereupon, a recess was taken.

- - -

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IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO

CRIMINAL DIVISION

- - -

State of Ohio	:	
	:	
Plaintiff,	:	
	:	
vs.	:	Case No. 02CR-3117
	:	Volume III
James T. Conway, III,	:	
Defendant	:	Trial Proceedings
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TRANSCRIPT OF PROCEEDINGS

- - -

APPEARANCES:

Mr. James Lowe and Ms. Sheryl Prichard,
Assistant Prosecuting Attorneys

On behalf of the Plaintiff.

Mr. Dave Young and Ms. Diane Menashe,
Attorneys at Law

On behalf of the Defendant.

BE IT REMEMBERED, that on the trial of the above-entitled cause at the September Term, 2003 of the Common Pleas Court of Franklin County, Ohio, before the Honorable Dale A. Crawford, Judge, and a jury duly impaneled and sworn, the State of Ohio to maintain the issues on its part to be maintained, offered and introduced in testimony on its behalf the following proceedings to wit:

Thereupon, the jury resumed their places in the jury box.

- - -

PATRICK FARDAL

called by the State of Ohio on direct examination being first duly sworn, testified as follows:

- - -

DIRECT EXAMINATION

BY M LOWE:

Q. Please state your full name and spell your last name for the record.

A. My name is Patrick Fardal, F-a-r-d-a-l.

Q. And where are you employed?

A. I'm employed by the Franklin County Coroner's Office at 520 King Avenue.

Q. And how long have you been employed with the coroner's office?

A. Since July of 1978.

Q. And are you licensed to practice medicine in the State of Ohio?

A. I am.

Q. Can you relate for the jury your educational background, please?

A. I received my medical degree from the University of Wisconsin in Madison, Wisconsin. And from there I

did a four-year residency at Madison. And from there I did a one-year fellowship in forensic pathology in anatomical and clinical pathology in Madison, Wisconsin.

From there I did a one-year fellowship at the Cuyahoga County coroner's office in Cleveland, Ohio.

And from there I came to practice my branch of medicine at the Franklin County coroner's office in 1978.

Q. Are you a member of any professional organizations?

A. I'm a member of the American Society of Clinical Pathologists, the American Academy of Forensic Scientists and the Ohio Society of Pathologists.

Q. And do you have a specialty?

A. Yes.

Q. What's your specialty?

A. My specialty is in anatomical, clinical and forensic pathology.

Q. Are you certified in pathology?

A. I'm board certified in anatomical, clinical and forensic pathology.

Q. Can you explain how you become board certified?

A. Board certification, one is by training and getting grandfathered in. And the other is by training and taking an exam. And so if you take a residency in

some specialty -- and all the residencies are about the same -- you get to sit for a board exam. If you pass that board exam given by your specialty, you get board certified in that discipline.

Q. And this training that you spoke of, where did you receive all your training?

A. I received it at the University of Wisconsin Medical School, Pathology Department, and the other one at the Cuyahoga County coroner's office in Cleveland, Ohio.

Q. And what exactly did the training consist of?

A. Basically anatomical pathology consists of mainly two -- three major branches. One is doing autopsies, the second is surgical pathology, and the third is cytology, looking at pap smears, et cetera. And the third is clinical pathology. And there you rotate through the various laboratories -- clinical, chemistry, microbiology, blood bank, hematology, et cetera. And basically, this is to be so that you can work in a pathology department in a hospital or at a university and be able to read slides, do autopsies, interpret laboratory tests, et cetera.

Q. And in your capacity of being employed with the Franklin County coroner's office, do you have a title?

A. Yes. I'm currently the chief forensic

pathologist and deputy coroner for Franklin County.

Q. And what exactly are your duties that go along with that title?

A. My major duty is to perform autopsies on individuals to determine their cause of death. And basically it's an outside examination of the body and inside examination of the body.

And the outside examination of the body, we do know the height and weight, take appropriate photographs, x-rays if needed, looking for any injuries or naturally-occurring diseases, such as loss of a limb due to diabetes or vascular disease or surgical intervention or traumatic disorders.

Then we look at the inside of the body to check the chest and head and determine if there is any naturally-occurring diseases there and/or traumatic-induced diseases present. And we describe those if there are any present. And then we take little bits of tissue and look at it under the microscope, see if there is any diseases present that are visible under the microscope that aren't visible to the naked eye that may or may not have something to do with either your cause of death or some clinical symptom that you may have presented with, your primary care physician that the family may have been interested in, whatever the

cause of the disorder you may have been presented with.

We also draw fluids from individuals to determine if there is any drugs present in them and if they have a role in the patient's death.

And from all of this, we put it together in an autopsy report and coroner's report and try to come to a conclusion as to what we think is the cause of death of that individual.

Q. And, Doctor Fardal, how many autopsies would you estimate you've performed?

A. Probably done over four thousand autopsies since I began. I used to do three hundred a year and went down to two fifty and two hundred, back up to three hundred. Over twenty years, I would say over four thousand easily.

Q. Have you ever testified in Franklin County before?

A. I have.

Q. How many times, approximately, would you say?

A. I'd say I go about ten times a year in various jurisdictions, including Franklin County; at a minimum, probably two hundred times, at least, in my service in Franklin County.

Q. And have you previously been qualified as an expert in Franklin County?

A. I have.

MR. LOWE: Your Honor, at this time I would ask that the Court declare Doctor Fardal an expert witness in --

THE COURT: That's not necessary. Just go ahead and ask questions.

Q. (By Mr. Lowe) Doctor Fardal, did you have an occasion to perform an autopsy on Andrew Dotson on October 12, 2001?

A. Yes, I did do an autopsy on a patient identified to me as Andrew Dotson on that date.

Q. And how long did that autopsy last?

A. I'd say most autopsies last between an hour and two hours, depending on the circumstances. I would say Mr. Dotson probably took between one and two hours.

Q. Where did it take place?

A. It took place at the Franklin County coroner's office.

Q. And, Doctor, based on the autopsy you performed, within a reasonable degree of medical certainty, have you formed an expert opinion as to the cause of death regarding Andrew Dotson?

A. I did.

Q. And what does that obtain?

A. Mr. Dotson died as a result of two stab wounds to

his chest, heart, liver and the great vessels surrounding the heart.

Q. Doctor, do you prepare a report of your finding?

A. Yes, I do.

Q. And did you prepare one in this case?

A. I did.

Q. Showing you what's been marked for identification purposes as State's Exhibit I. Take a look at that tell us what that is.

A. This is a copy of the autopsy report, coroner's report on the patient identified to us as Andrew Dotson.

Q. And does that report accurately reflect your findings?

A. It does.

Q. How many pages is that report, Doctor?

A. The autopsy report is three pages and the coroner's report is two; so five total pages.

Q. And that report is true and accurate, the report you made regarding Andrew Dotson?

A. It is.

Q. Do you summarize each and every wound that you find when you do an autopsy, Doctor?

A. I do.

Q. And did you in this case?

A. I did.

Q. And if you could, on your report, does it talk about each and every one?

A. It does.

Q. Could you please start with the first one you found in performing your autopsy and explain it for us?

A. Basically, the first one we saw was kind of a gaping circular defect on his right anterior chest and it was about three-quarters inch in diameter and it looked round at the time we did the autopsy.

And so when we proceeded with the autopsy, we took x-rays beforehand. And we didn't see any evidence of any projectiles in him and realized there wasn't any obvious exit wound. It was kind of a peculiar type wound.

When we got into the body itself, reflecting back the pericardial sac, we noticed it was a slit-like space. So this was more compatible with some kind of sharp instrument defect rather than a gunshot wound it looked like externally.

This sharp instrument defect, basically on the outside, like I said, was three-quarters of an inch in diameter. And it was a rim of abrasion on the inferior portion of it. It created one-and-an-eighth inch defect in the pericardial sac and it proceeded to enter into the right ventricle of the heart and right atrium. Both

chambers on the right side of his heart and proceeded to injure his large vessel that returns blood to the heart and also vessels that return blood from the lungs to the heart, the pulmonary veins. Basically, it ended -- it started out approximately one and a quarter inches to the right of his midline and fifty-four and a half inches above his heel and it ended up where it stopped in the back part of his thorax, three-quarters of an inch to the right of his midline and fifty-six inches above his right heel.

So this sharp instrument wound on this patient went from his right side to left side and front side to back side inside in an upward direction towards his head. Basically, it traveled approximately about six inches to his torso, overall length.

Q. Traveled six inches through the body?

A. Yes.

Q. Doctor, you indicated which direction wound was sustained. Can you tell anything after examination of the body where people were standing or how they were positioned during the incident?

A. Well, it's a sharp instrument going in and there is a rim of abrasion around the inferior portion of it. So you know the instrument is going up and towards his -- would be toward his left shoulder as going

through the body. The sharp instrument wound is coming from his right side and down -- upward toward his head and toward his left shoulder. So that's the position the relationship of the sharp instrument was to the patient.

So there is different ways. Obviously, if I'm standing here and somebody came from behind me and stabbed me with a sharp instrument like this from behind, it would cause the same kind of defect or you could be laying on the ground and coming up towards the patient's head standing over him with a sharp instrument in your hand in different ways and going towards his right or left shoulder; or if the patient was sitting down, the same way. So you can recreate how a sharp instrument wound traveled through the body. And by knowing this, you can position the sharp instrument wound to the patient and as long as that is a possibility, then that could be a feasible way that this patient sustained a sharp instrument wound.

So you wouldn't say the knife went like this, like the patient -- struck down at the patient with a sharp instrument wound. That would be a downward track. This was going towards his head, so it was an upward thrust with a sharp instrument.

Q. You can tell what the wound is consistent with?

A. Right.

Q. You can't tell whether the person is standing or sitting?

A. Right. We dictate all our cases as if the patient is in an upward position, looking with the palms forward and the thumbs to the outside. That's a standard anatomical position since under very few circumstances can we actually recreate the exact way the patient sustained the wounds that we see on the patient.

On gunshot wound, say if you get shot in the chest, it would go through you and you were laying on a mattress and the exit hole in the back would overlie the hole in the mattress, you can say the patient was laying down when the gunshot occurred if that fits. So sometimes you can tell, but most of the time you can't.

So there's more than one way that most people can sustain these types of injuries.

Q. Doctor, with the court's permission, I'm going to show you some pictures.

Showing you what's been marked as D-1. Can you tell us if you recognize that?

A. I can't recognize it per se as far as -- just by itself. But I was called to the scene in this case also so I went to where they found the body of Mr. Dotson. And it was lying off the road in a cornfield. And I

assume this is a picture of the cornfield that the body was found.

Q. You actually went out to the scene and identified the body there?

A. Yes. Yes.

Q. State's D-2. Do you recognize what that is?

A. This is, I believe, the part of the body of Mr. Dotson lying in the corn. Obviously, it had stopped growing and it was brown. So it was back off the road. Had to walk to get to the body.

Q. State's D-4.

A. D-4 is how Mr. Dotson looked to me when I first saw him. He was covered partially with some powdered whitish, gray material that could be concrete, could be something else similar to concrete makeup, covering parts of his torso, upper chest and lower abdomen there.

And these are the two wounds that we saw on Mr. Dotson at the time we examined him. And as you can see here, almost circular defects.

So when we first saw them, when I first saw them, I thought they were gunshot wound injuries because of the circularness of the appearance.

And some of the problems in interpreting wounds from the outside are evident in this case, as you can't -- you must not over interpret what you see on the

outside of the body.

Because of the state of decomposition in this patient, the wounds on the outside of the body are altered by the effects of the length of time since death.

Q. And what do you mean by altered by length of time?

A. We undergo postmortem decomposition. So (A) there is two things that happen as postmortem decomposition in the body. You get gases formed and deterioration in the body and undergo degradation of the tissues. So the outside wound is altered by the changes that occurred after death if you're not embalmed, et cetera.

And also the other thing that alters wounds on the outside of the body is infestation by -- postmortemly by insects, especially fly larva, et cetera. So they go where there is openings and they can make small holes into large holes and they can create holes in patients. So sometimes the wounds on the outside of the body are not a true and accurate representation of what they really are. So you have two things that can affect -- main things that can affect the appearance of what the wounds look like on the outside.

Q. Doctor, you already told the court about wound number one; is that correct?

A. That's correct.

Q. Could you please point out the wound that you had already described?

A. There is a wound right here, the rim of abrasion on the inferior surface there, the rim of abrasion on the inferior portion. And there is the three-quarter inch circular defect.

Q. For the record, Doctor, is that the wound that would be closest to the head?

A. That's correct.

Q. Could you explain for us, Doctor, why the head appears to be much darker than the torso?

A. Well, because things -- when you undergo decomposition, body parts are exposed to different elements. And so if the head portion would be exposed more to the sunlight than the rest of the body, the heat, et cetera, accelerates postmortem decomposition for one factor and, therefore, your face would look worse than the rest of the body.

And we see this sometimes in people when they die in their homes if they are laying in front of a window. The part in front of the window undergoes decomposition. And the portion of them doesn't look so bad and another

portion is more markedly decomposed.

Heat speeds up decomposition and cold slows it down. So anything that would cause your whole body or specific body part to be more exposed to a heat source would cause the decomposition to occur faster.

Q. Could foreign substances also come into play, Doctor?

A. Right. Foreign substance is an attempt with this material on the body here would protect areas from the sun, et cetera, and may keep insects from infestation, infesting your body, speed up the composition changes. And so if some of this, say, if his whole body, for instance, would have been covered with this material -- and say it would wash off his face for some reason as compared to his torso for whatever reason, then his face would be exposed to the elements where his torso wouldn't be. So his torso would stay in better shape than his face. So there is a multitude of entities that can affect the rate of postmortem decomposition.

Q. Doctor, you also as well as external examination, you do an internal examination?

A. We do.

Q. You look at the wound from both the outside and the inside?

A. That's correct.

Q. And did you notice any blood in the chest cavity in, specifically in wound number one?

A. Yes. When we rolled this patient over the day he was brought into our office we were looking for -- basically when we took x-rays, we didn't see any projectiles in him and still under the misconception these were gunshot injuries we were looking for exit wounds and sometimes people that are decomposed and exit wounds are sometimes not as evident as they are in normal individuals. So when we rolled this patient over, material, blood-like material came out of his chest cavity through that hole. When we rolled him over to get a look at his back, see if we could see, at the time, exit defect. Since there were no projectiles, if these were, bullets had to exit the body. And we were looking for that.

Q. And, Doctor, finding blood in that wound, what does that suggest to you?

A. Well, the wounds -- you know, one conclusion is that the wounds were created while the patient was alive and bled out into his pericardial sac, et cetera, as a result of the sharp instrument wound to his heart. And when the body was rolled, the bloody fluids leaked out of the hole because of the size of the defect.

Q. Doctor, let's talk about the second wound you

found on the body.

A. The second wound would be this one here. And that was in the left upper quadrant of the abdomen. And basically it was similar-appearing wound, three-quarters inch in diameter and it was located one inch to the left of his midline and fifty-one and a half inches above his heel. Basically there was a one quarter inch abrasion inferiorly on this wound. And you can see the abrasion down here.

So this just means that the instrument, or whatever went into your body, struck the area of the skin before it actually made the defect in the skin and caused an abrasion before it actually pulled through the skin. And this happens with a sharp instrument wound sometimes and a gunshot wound sometimes.

Basically this went into his liver. And this sharp instrument also went from his right side to his left side, from his front to his back and then in an upward direction. So this one also traveled approximately six inches into the body and caused an injury to his liver.

Q. And are the two wounds that you described for us today, are they substantially similar?

A. Yes. They both look the same on the outside of the body, yes.

Q. Did they appear to you to be caused by the same instrument?

A. Yes.

Q. Did you do a thorough examination of the rest of the body?

A. I did.

Q. Did you find any other injuries?

A. I saw no injuries in the inside of his body other than related to the sharp instrument defects that I have been speaking about.

Q. Did you examine the head?

A. Yes.

Q. What about the neck?

A. I did.

Q. No visible injuries there?

A. I saw no evidence of injuries to his neck or head.

Q. And, Doctor, what is the hyoid bone?

A. The hyoid bone is a semicircular bone that rests right underneath your jaw and right above the voice box, lies in your anterior throat.

Q. And was there any trauma to the hyoid bone?

A. I saw no trauma.

Q. Did you find any evidence at all that would suggest that Mr. Dotson was killed by choking?

A. I saw no evidence of any injury in his neck that would specifically indicate choking. The patient, as you can see here, has considerable amount of postmortem decomposition. So subtle changes would be easily missed because they are no longer there. And so people -- people that come to us that are strangled and they only have minimal hemorrhage into their soft tissue of their neck and come to the conclusion that they had been strangled because of some changes such as hemorrhage, et cetera.

But in this patient here, because of the postmortem decomposition that he has, those types of injuries would be gone. Because of what happens after death, blood hemolyzes and extrapolates out into the soft tissue. And so we get what's called infusion of blood. So if there's slight hemorrhage, et cetera, we would not be able to separate that from sufficient fusion of blood after death. So there was no major injuries to his voice box, et cetera.

So if there was choking in this patient, it didn't cause any injuries to either his voice box or hyoid bone. That's all I can say.

Q. Would you expect to see injuries in the voice box or hyoid bone if the neck was turned around three hundred sixty degrees?

A. I would expect to see some sort of hemorrhage in the soft tissue. It depends how much pressure was put on the voice box, et cetera, to cause it to be injured. So if the head was turned, you can cause an injury. And just depends on how violent it was. And there would be hemorrhage the traps muscles, et cetera and subtle changes like that would be lost due to postmortem decomposition that this patient had suffered.

Q. Found no injuries?

A. I saw no vertical injuries, no.

Q. Doctor, you talked about foreign substance. Did you examine the foreign substance found on the body?

A. I didn't examine it per se except at the scene, et cetera. The people from the Bureau of Criminal Investigation gathered some of it up for analysis to determine, if they could, what it was. And I don't know if they came to a conclusion or not as to what it actually was. It was kind of grayish white, looked like some kind of concrete type material, lime, concrete, et cetera. So --

Q. Have you had experience with lime in your job capacity?

A. We have had a couple patients come through our office that have been covered by lime, yes.

Q. And are there different types of lime that you

know of?

A. Yes.

Q. What are different types of limes?

A. There are two different kinds. And one of it, when you place it on the body, it retards decomposition. And the other kind of lime you put on the body, speeds it up. And most of the lime that's available is the kind that retards decomposition rather than speeds it up. So if you want to speed up decomposition, you have to buy a certain kind of lime as compared to stuff like in soils, et cetera. And that stuff is in concrete.

Q. Did the foreign substance that was found on Mr. Dotson's body appear to speed up decomposition or slow it down, do you know?

MS. MENASHE: Objection, Your Honor.

THE COURT: Overruled.

A. I would say that it covered his entire torso. At one point in time it seemed like it kept from the neck down in pretty good shape as compared to his head. So I would say all things being equal that it seemed to retard decomposition rather than speed it up.

Q. (By Mr. Lowe) You found that substance on his neck as well?

A. Yes. You can see it right here.

Q. Show you a different picture now, marked D-6. Is

that a different view? Is that a different view, Doctor?

A. Yes. Showing more of his head and his lower extremity and a close-up of it, you can see the amount of decomposition in his face as compared to his chest here and we have this grayish white substance lying right over his anterior neck.

Q. I'm going to show you D-30, Doctor.

A. D-30 is a picture of Mr. Dotson, how he looked at the time he was at our office the next day and you can see there was postmortem predation by insect larva and this is basically how he looked for us and there was still some of this grayish white material on his body. And unfortunately once the case starts, by the next day it's going at a pretty good rate. So he looks a lot worse, his torso, than it did at the scene that night two days before. So once decomposition starts, it rapidly progresses. And you can see it changed considerably by the time we took that picture.

Q. So that photo was taken in the morgue?

A. I think so, yes.

Q. And his appearance has been altered?

A. Yes.

Q. Doctor, you mentioned insect larva. Specifically you're talking about maggots?

A. Yes.

Q. Can you explain for us how maggots would get in the body?

A. Well, after death, very short time even sometimes in life if you have dead tissue, flies lay eggs on your body. And so once if they have access to it then they find openings. They lay their eggs and eggs hatch and go through a succession of changes until they become adult flies and they feed off unfortunately your remains. And so it's just part of postmortem decomposition changes. Some people are in this shape and don't have any fly larva on them. It's just whether flies have access to your body.

Q. Doctor, can you tell anything about maggots being present in the body with how long a body has been there?

A. They can by measuring them and they can tell what level or stage that maggot larva is in. And so they can get a guesstimate as far as that succession of fly eggs had hatched. Until all your tissues are gone, you'll have succession of flies laying eggs on your body and they go through their development, et cetera. So sometimes we have people that have small fly larva on them as well as the pupae that are already hatched and become large flies by studying entomologies. By studying this, you can get an idea how long the flies

had access to your body by the stage they are in.

Q. You mentioned a guesstimate. Can you specifically tell us how long that body had been out there?

A. I can't tell you from that material, no.

Q. Show you the last picture, D-40. Tell us what's in that picture.

A. This is photograph of the close-ups of the two defects on the patient's body, one next to the one on the right side and one on the abdomen. And again there's some dirt and some remnants of that grayish white material on the photograph.

Q. In this picture, which wound is closer to the head?

A. This one here, the upper torso one.

Q. On the left of the photo?

A. Yes, on the left of the photo. So it would be the patient's right side. And here's the patient's head up here and this is the arm.

Q. Doctor, what about the rest of Mr. Dotson's organs and vitals and things of that nature? Did you also make an examination to determine if there was any other health problems to Mr. Dotson?

A. I did.

Q. And what were your findings regarding that?

A. Other than the injuries he suffered, the rest of his body, the organs seemed to be in a pretty good state of health. There was no naturally-occurring diseases that were evident at the time of autopsy.

Q. You mentioned toxicology is performed on the body.

A. It is.

Q. And who performs that? Do you?

A. Our toxicology lab performs that.

Q. So is that before or after you've completed your examination?

A. It's usually finished after we do our exam. We draw fluids while we are doing the autopsy on the patients and submit it to the lab. And they go through their assessment of the toxicological state of the patient and depending on what they find, et cetera, it takes a period of time to come to their -- get the results.

Q. And the toxicology report, the results, are they included in your report?

A. They are.

Q. And if you could, please, tell us what the results were?

A. The patient at the time of death had a blood ethanol level of .09 grams percent. And he also had the

presence in his body at the time of Diazepam or Valium. And it was level -- it was at a level of four micrograms percent which is within therapeutic range. So those were the two entities they found in Mr. Dotson's blood at the time of death.

Q. Doctor, do you know what ethanol is?

A. Yes.

Q. What is ethanol?

A. Ethanol is drinking alcohol. Just plain drinking alcohol.

Q. And what about Diazepam?

A. It's Valium.

Q. What is Valium? What is it?

A. Anxiety, muscle relaxant. It calms you down basically. Give it sometimes pre-op, during minor surgical procedures. It's to relax the patients.

Q. Does it affect different people differently?

A. It can.

Q. Doctor, could you notice any undigested food in Mr. Dotson's body?

A. There was about 300 cc's of undigested food matter in his stomach at the time of death. It's about a third of a liter, about a third of a quart of undigested food. A quart is 32 ounces. So a third of that is ten ounces of food.

Q. Does that suggest anything to you?

A. Well, that usually suggests -- we usually use for a basic rule of thumb is that you empty your stomach of food and roughly two, four and six hours under normal circumstances. There is lots of parameters that affect how fast food leaves your stomach. So a light meal under ideal circumstances would leave in two hours, a medium-size meal in four hours and a heavy meal would be six hours. So under those circumstances you would have to say, minimally, if nothing else, was different -- stress retards digestion because you don't think about digesting food if you're under a stressful situation because that's not important to you; something else is more important in your life than digesting your dinner. So one of the things that slow down food leaving your stomach.

So under normal circumstances, I would say that you had to have eaten a meal at least, if everything else is the same, within two hours before he died.

Q. Anything else, Doctor, that you note in your examination that we didn't talk about?

A. I saw nothing else on Mr. Dotson, like I say, other than -- the only other thing he had some parts missing because of postmortem decomposition and predation by animals.

Q. Specifically what parts are missing?

A. He had lost his lower left leg, I believe, because of postmortem predation by animals out in the cornfield that had taken it away.

Q. Doctor, were all his fingers intact?

A. Yes, I believe so. I didn't see any that were missing.

Q. Do you recall when you were at the scene was there an attempt to preserve fingers for identification?

A. Yes. Well, one of the things is, you know, to preserve if there is any skin left on the fingers after -- unfortunately lose your skin after death also. So if there is any changes that indicate that you have some fingerprints, et cetera, they would try to preserve those so they could make a fingerprint ID if you have fingerprints on file. So we try to preserve them in the best way we can.

Q. Doctor, were you asked to do something? Did you meet with Detective Zach Scott --

A. I did.

Q. -- from the Franklin County Sheriff's Office?

A. I have.

Q. And were you asked to complete some sort of comparison between the wounds that you talked about previously and an instrument?

A. Yes.

Q. Can you explain for us how that happened?

A. Well, for whatever reason, sheriff's office had come up with an idea that an instrument that they had gotten wind of may be the instrument that caused the wounds to Mr. Dotson. So they brought to me a pickax that they had acquired to see if the wounds within the body were compatible with wounds caused by a pickax. And so we examined the pickax that they had brought us at the coroner's office comparing to the pictures we had of the inside of the body and see if they were at least compatible with that. And from our exam at our office we felt that they were indeed compatible with this. It doesn't mean it was the sole and exclusive cause of these injuries. At least it fit. So it was a possibility that this could be the type of instrument that was used to cause the wounds on Mr. Dotson.

MR. LOWE: May I approach the witness, Your Honor?

THE COURT: All right.

Q. (By Mr. Lowe) Showing you what's been marked State's Exhibit J. Do you recognize that?

A. Other than a pickax. I recognize it as a pickax. It's similar to the one that we have pictures at our office of as far as what we thought might cause the

wounds and we thought the wounds would be caused by this sharp end pickax in this case from the one they brought us. So we took appropriate photographs in our office what the pickax looks like as compared to the wounds.

Q. This would be the type of instrument that would be consistent with the wounds you saw?

A. Yes.

Q. And did you prepare a report indicating those findings?

A. Yes.

Q. Show you what's been marked State's I-1. Do you recognize that?

A. Yes. This is a letter I wrote to Zach and the county prosecutor's office as a comparison of the pickax that was submitted to me and found that it was compatible with the wounds we saw on the inside of the body. So it could fit these type of wounds.

Q. Is that a true and accurate copy, Doctor?

A. Yes.

MR. LOWE: May I have one moment, Your Honor?

If I can approach one more time.

Q. (By Mr. Lowe) Doctor, I'm going to show you a series of photographs, D-17 through D-38? If you can just look at those and tell me if you recognize what

those are.

Do you recognize those?

A. Yes. These are the photographs of the front and the back and the extremities of Mr. Dotson, how he looked to us after he was photographed outside of the cornfield.

Q. Are all those pictures true and accurate pictures of Andrew Dotson?

A. They are.

MR. LOWE: I have nothing further.

THE COURT: Ms. Menashe.

- - -

CROSS-EXAMINATION

BY MS. MENASHE:

Q. Hi, Doctor Fardal.

A. How are you doing?

Q. We met in your office back in July. Does that sound about right?

A. Yes.

Q. I had longer hair back then, though.

A. Okay.

Q. And my co-counsel was there, Mr. Young.

A. Yeah.

Q. And we discussed this case; fair to say?

A. Yes.

Q. Went over the autopsy report together --

A. That's correct.

Q. -- and your findings?

A. Yes.

Q. As you can imagine, there is a bunch of different issues I want to go through. First, I want to touch on some things that were just talked about on your direct examination.

The pickax, I guess, might as well start with that, or rather, the wounds themselves, wound number one and wound number two. Although, they are numbers, they are numbered one and two, fair to say you don't know the sequential order to which the body obtained those wounds?

A. That's correct. Very seldom can we tell the order acquiring wounds, whether gunshot wounds, stab wounds, et cetera. So in this case, it was one of those and it's very infrequent that we can tell the order. So I label them one and two just for dictation purposes and not to mean that's the order the patient received them in.

Q. And those wounds, your testimony was that they were similar in nature?

A. Yes.

Q. In fact, in the report, they measured the same,

exactly the same in diameter?

A. They do.

Q. And they measure the same in depth as well?

A. Yes.

Q. Six inches?

A. That's correct.

Q. Both wounds?

A. Yes.

Q. There wasn't much of anything talked about the process of dying. Essentially what happens when someone dies, what happens to the heart, what happens to the blood, if you can tell the jurors about that.

A. Well, depends on what the mode of you dying is. If you have a simple heart attack, basically your heart either stops beating or it beats irregularly. You pass out because you don't get any blood to your brain. And then if the heart rate isn't restored to its normal, you have a window where your brain especially needs oxygen and glucose in order to survive. If it's not restored, you basically die.

Q. And if I could stop you right there. Fair to say that window is two to ten minutes?

A. Yes. That's a reasonable one. Right.

Q. Sorry.

A. Okay. Then we have other types of wounding. If

you have a wound to the head, say a gunshot wound to the head, well, you're immediately rendered unconscious by this gunshot wound if it goes through your brain, et cetera. And depending what part of the brain it hits, death ensues for the most part fairly quickly after that, depending, like I say, what areas of the brain is struck.

Gunshot wound cases, you have both the track of the bullet and the secondary bullet projectiles that get lodged in your brain, such as bone, that cause damage also. So if the bullet would go through your brain stem or posterior fossa, death occurs much quicker if it goes through your cranium, the cerebral hemisphere. So there are people that can survive gunshot wounds and depending on what area of the brain gets struck. If you have an injury to your trunk, you have -- you have a window whereby depending on what's struck, you bleed out. So you do most of the time. Unless your spinal cord or cervical cord is injured, you can do purposeful and voluntary motion. So thus, you can struggle with a person or you can run for help and get in your car and try to drive for help, whatever. So depending on what organ system is affected, the window is variable.

Q. Doctor, if I can stop you there. On the injuries to the trunk --

A. Yes.

Q. -- you talked about purposeful and voluntary movement.

A. Yes.

Q. Fair to say that injuries to the trunk -- in fact, injuries such as those that you saw in the trunk in this case --

A. Yes.

Q. -- those would not be the type of injuries that would cause instantaneous death?

A. That's correct.

Q. So after those -- let's assume for sake of argument that those wounds were antemortem, before death.

A. Okay. Okay.

Q. The person that obtained those wounds would still be capable of purposeful and voluntary movement?

A. That's correct.

Q. And that purposeful and voluntary movement could go on for a period of minutes. Is that fair to say?

A. That's correct.

Q. And even in some cases, that movement could be so purposeful and voluntary that they could go call for help?

A. That's correct.

Q. Or move their limbs?
A. That's correct.
Q. And I mean arms and feet in this case.
A. Struggle with someone, that's correct.
Q. And I don't have these so --
MS. MENASHE: May I approach the witness, Your Honor?
Q. (By Ms. Menashe) I'm showing you what's previously been marked State's Exhibit D-6. And that was previously on the overhead.
When you were at the crime scene, fair to say that Mr. Dotson's arms were above his head?
A. I believe so when I saw him. From the picture that's where they are also.
Q. And they were -- his legs were right out in front of him?
A. That's correct.
Q. The arms weren't by the side?
A. No. I believe, unless they moved the body before I got there, this is what he looked like to me.
Q. And you testified you've gone to a number of crime scenes. Is that fair to say?
A. I have.
Q. And assume you've dealt with cases that have involved drawing before?

A. Yes.

Q. And that's something you might expect to see in a case where somebody's body has been dragged; is that correct?

A. Yeah. His arms overhead like that could be an indication that the body was moved after the patient died. Yes, that's correct.

Q. And we know the purposeful and voluntary movement could take place for minutes, correct?

A. That's correct.

Q. After the wounds, after the infliction of wounds?

A. That's correct.

Q. If the wounds were given before death?

A. That's correct.

Q. We could go back to what happens to a body after they die. There is a term called flaccidity?

A. That's correct.

Q. And that happens after someone has died; is that correct?

A. That is correct.

Q. And essentially, flaccidity is the loosening of the muscles?

A. That is correct.

Q. That would be all the muscles, the neck muscles, arms muscles and leg muscles?

A. That's correct.

Q. Fair to say during the process of flaccidity, the neck muscle or muscle around the neck loosens?

A. That's correct.

Q. And they can no longer hold up the neck and head?

A. That's correct.

Q. And the same thing happens to the body?

A. That's correct.

Q. And I hated to use sort of a lay person's term. It's almost like the body would be floppy?

A. That's reasonable, yes.

Q. And flaccidity takes place, I believe, because essentially the blood supply can no longer go to the muscles; is that correct?

A. No longer goes to the muscle. You lose neuro control of the tone in the muscles. You have two things affecting them. One is the brain isn't working to tell the muscle to contract; and (B) if they could contract they had no blood to them. They wouldn't be able to. So both of them would work.

Q. And flaccidity, if you could give me and the jurors the time frame on the flaccidity after death.

A. Most people we have what's called the opposite of flaccidity after death is rigor mortis, which is stiffening in a body and for most people under that 70

degree room temperature this usually begins about two to four hours after death and it becomes complete in about eight to twelve hours after death and passes off in twenty-four to thirty-six hours after death and you become flaccid again. So for zero to two hours your muscles would be loose. So if I could grab an arm, I could just move it back and forth and as rigor mortis started, the muscles would become less easily bent but you could bend them. And then when you're in full rigor, depending on your muscular development, it's very hard to break rigor. So I would say under normal, regular circumstances that you'd be flaccid for about two hours after death.

Q. And then rigor mortis sets in?

A. That's correct.

Q. And which is essentially the tightening of the muscles?

A. That's correct.

Q. And then rigor peaks at about twelve hours. Is that fair to say?

A. Yes.

Q. And then essentially, the rigor almost tapers off, if you will.

A. Right. It starts disappearing. That's correct.

Q. The toxicology was talked about during your

direct examination. Before I get into the toxicology in this case, there is -- fair to say, that there is different levels of exposure. There is therapeutic, there is recreational and there is toxic.

A. Right. And there is lethal, too.

Q. Right. There is lethal.

Explain what therapeutic is.

A. Therapeutic is if they go to the doctor and they draw your blood they want it to be in a certain window you're taking the drug and it's in an appropriate amount and gotten into blood stream and it's at an appropriate level. Some drugs have a wide therapeutic range and others have a very narrow one. And depending what drugs it is, you have to make sure (A) the patient is taking it directly and the main thing you have to correct is get too much of it gets into your bloodstream and gets toxic effects. Therapeutic blood range what you want to get the desired results in that patient for what you're giving that drug for.

Q. And on the therapeutic level, like you said, that's essentially between doctor and patient. Therapeutic levels aren't the kind of levels where you would see someone ingest a drink and become unconscious?

A. Right. The therapeutic level is what works with you before you get the toxic side effects hopefully.

And there is a range and depending on the disease they are treating, they might under circumstances that would be given to me, I would get that high of a level. But because of the disease you have, they might increase the dosage in you to a higher level so that you get the desired effect of that drug. So depending on the circumstances of the patient and how well they can tolerate the drug, sometimes they go -- if you would run a drug level on a patient, you would find out it was in a level that would be toxic to lethal, but in that patient it was therapeutic -- so, if he had a pre-death level. So there is a wide range. And (A) depends on the doctor, the patient and the disease they are treating, plus the drug.

Q. So both therapeutic -- if we are on a continuum here, there is the recreational level?

A. Right.

Q. And then there is toxic and then there is lethal?

A. That's correct.

Q. And therapeutic essentially, fair to say, lowest level to exposure to drug or alcohol?

A. Yeah. That's usually therapeutic is the lowest, right.

Q. And the alcohol or the toxicology report or the ethanol was .09?

A. Yes.

Q. And nothing was mentioned about this on direct, but fair to say, that someone could die and not have ingested any alcohol for, let's say, twenty-four, forty-eight hours before their death and still have a .09 alcohol level?

A. That's one of the things that happens to you when you decompose. When we get blood alcohol levels on people who have undergone decomposition, certain bacteria in your body -- not everybody has them. Certain times after death they produce alcohol. When we get the alcohol level on a patient that's decomposing, you have to look at it with certain eyes because it can be postmortem decomposition bacteria production.

Now, it's usually, at our office, probably up to about .12 is about the highest level we've seen and then you can go up to -- in the literature it's been up to, allegedly up to .18. So if you would have somebody that had a blood alcohol of .25 in a decomposed body, you would have to say, well, some of it could be due to bacteria production, some of it is going to be due -- because the patient drank alcohol.

Q. I'm sorry.

A. When you have the .09, there is no way of telling unless you run tests on the bacteria in the body to know

if they produce alcohol. So all it would say, it would be comparable with postmortem production. It doesn't necessarily mean it is. This patient could have drank alcohol either in part or whole to get to the .09. So other than saying it would be compatible with postmortem decomposition that's as far as we can go.

Q. We don't know if that .09 ethanol is from Andrew Dotson drinking or the decomposition --

A. Or a combination?

Q. -- or combination thereof?

A. That's correct. That's correct.

Q. In terms of alcohol exposure, I'm sure you're familiar with the legal limit now at least is .08?

A. That's correct.

Q. It was just lowered recently.

A. Uh-huh.

Q. Fair to say that most people at .08 or .1 are still functioning?

A. Yes. They are still functioning. They have some changes that can be elicited by testing, et cetera. So they have what's called under the influence of alcohol but it wouldn't have a staggering gait or slurred speech or anything like that.

Q. Right.

A. Staggered gait or slurred speech in reality is

something you might see with .2. That's correct.

Q. And .3 blood alcohol level or above you would expect to see unconsciousness. Is that fair to say?

A. People that are an unaccustomed to it could be unconscious at that level, that's correct.

Q. Also on the toxicology report was the presence of Diazepam.

A. Yes.

Q. And it's a metabolite Valium; is that correct?

A. That is -- the Diazepam is the parent compound. The Nordiazepam is a metabolite. So the Valium itself is the parent compound.

Q. Actually, that's my next point. I said that wrong.

But the metabolite, the presence of a metabolite would essentially be present if the drug had been in the system for some period of time and the drug then begins to metabolize. Is that fair to say?

A. That's correct. That's correct.

Q. And the metabolite Diazepam is what?

A. Nordiazepam.

Q. And on the toxicology report under Nordiazepam it says not detected.

A. That's correct.

Q. So what we know from that is the Valium that was

ingested or was present in the body had not started to metabolize?

A. That would be one assumption, that is correct.

Q. I believe it's called -- is it acute exposure of a drug when it didn't metabolize?

A. If you get to where the liver hasn't metabolized Diazepam. So if your liver hasn't had a chance to metabolize it yet, that would show you haven't had it in your body for a period of time to allow the liver to act upon it. So that would be acute exposure, that's correct.

Q. So acute exposure for Valium is what? Less than an hour?

A. I would say within a couple hours beforehand, that's correct.

Q. So if someone had ingested Valium within four hours of their death, you would expect, would you not, to see the metabolite Nordiazepam?

A. Under ideal circumstances, yeah, you should start seeing the metabolite.

Q. And in terms of when people talk about half life of drugs, explain what that is essentially?

A. Basically a drug has a half life whereby if you get to a level of one, say that's your therapeutic range in a half life, half of it is gone. So if I say half

life of a drug is two hours and I measure all the drug and I measure your level, it's .1, two hours after that measurement if I took your blood again, you didn't take any more of this drug, it could be .5 and two hours later .25, et cetera. So every half life you decrease the level in your blood stream by a half. So that's how the half life works.

So sometimes they use that in order to determine what the dosage is for per time of day, et cetera, to give you, if you have a half life, a fairly long -- you only need to give the pills once a day. If you have a short half life, you give it every four to six hours, et cetera, or every twelve hours, whatever the indications would be.

Q. And what's the half life of Valium, if you know?

A. It's around twenty hours.

Q. So someone ingests Valium, you would expect that -- how would the level of that Valium be affected twenty hours later?

A. So a half life is twenty hours, so whatever levels you have under ideal circumstances, if you started out at ten and twenty hours later, he should be at five. So that would be the half life of that drug if he took no more in. So that's how it would be affected.

Q. You're familiar with Soma, the term Soma?

A. Yes.

Q. It's another type of drug?

A. Yes.

Q. And on the toxicology report, there is "no Soma was found in the body?"

A. That's correct.

Q. In fact, no other agents were found in the body at all?

A. That's correct.

Q. And by agents, I mean drugs?

A. Okay. Yes.

Q. And of all the levels that were found in the toxicology report they were all consistent with therapeutic levels?

A. That's correct.

Q. If I could turn to the crime scene. You responded to the crime scene in this case?

A. I did.

Q. And fair to say -- and I believe you pointed to in the testimony that there is a good amount of white substance around the neck area.

A. Uh-huh.

Q. And also on the abdomen?

A. Yes.

Q. And your first impression when you arrived at the

seen was the holes to the body were gunshot wounds?

A. Yes. In fact, I thought they were gunshot wounds myself when I looked at them.

Q. And I know on direct you testified about rolling the body over --

A. Yes.

Q. -- because you were looking for exit wounds.

A. Yes.

Q. Did you roll the body over at the crime scene or in the lab?

A. I rolled it over at the coroner's office myself. I don't know if the body was rolled at the scene after I left or not. That would have to be taken from people that were there when I wasn't around. So I might have moved the body looking at it generally. But the time I remember the fluids coming out was when I rolled it at the coroner's office to get a better look at his back.

Q. And the fluids came out then at the office?

A. Yes.

Q. And again, it was because you're looking -- you were thinking you might see exit wounds?

A. That's correct.

Q. But there were no exit wounds in this case?

A. That's correct.

Q. In fact, the wounds to the body were six inches

deep, correct?

A. Yeah. That's how long the sharp instrument traveled in the body, six inches, that's correct.

Q. And did you happen to measure the depth of the wound to the back of the body, if you will?

A. Yes. I mean, I measured the track in the body, yes. That's the measurement I did towards the back, you know.

Q. And I'm wondering about one additional measurement, which is from the end of the wound to the back of the body where it would have exited.

A. Well, I didn't take that measurement because I just followed the track in the body so I didn't measure any additional measurements, just what I thought was the entire length of the sharp instrument.

Q. Okay.

MS. MENASHE: Your Honor, may I approach?

Q. (By Ms. Menashe) I'm showing you what's previously marked as State's Exhibit J. I think that was the pickax that you were given. And you were given that in October 17th of 2002?

A. Yes.

Q. And a year after the autopsy?

A. Yes.

Q. And you were brought that by Detective Scott?

A. Uh-huh.

Q. And he told you that that pickax resembled the pickax that was used or that was allegedly used on the body of Andrew Dotson?

A. That's correct.

Q. And fair to say that the smaller end of that pickax has four corners to it?

A. Yes.

MS. MENASHE: And if I may approach.

Q. (By Ms. Menashe) And showing the witness what has previously been marked as State's Exhibit D-4. The two wounds that you see on the trunk in those pictures are circular wounds?

A. Yes.

Q. And I want to ask you some questions about the rim of abrasion of those wounds.

A. Uh-huh.

Q. You testified earlier that you thought that the wounds were similar in nature?

A. Yes.

Q. They were caused from the same object?

MS. MENASHE: If I may approach.

Q. (By Ms. Menashe) Fair to say that, I believe it's what you called wound number one, had inferior rim of abrasion?

A. Yes. The bigger one was inferior, right.

Q. And fair to say on wound number two, there is rim of abrasion essentially around the entire, around the entire wound?

A. Yes. I don't have my autopsy in front of me, but there is a rim of abrasion around it and plus if there was a bigger rim of abrasion that's what you would have documented as the bigger rim of abrasion.

Mr. Lowe took my autopsy report so --

MR. LOWE: Sorry, Doctor. Didn't know it was yours.

A. It was one quarter abrasion inferior also. So that's the bigger abrasion, not the smaller abrasion. There is an abrasion around the hole defect. It's larger inferior as it is on the other entire rim. That would be part of the instrument. Part of the skin that was struck first was the one where the bigger rim of abrasion was.

So when a bullet goes through you, you have a tangential mark that strikes the skin. So where it strikes first, it's a larger rim of abrasion around the rest of the rim so -- and this one here, I measured the larger rim of abrasion and that was inferior on both of these wounds. But there was a rim of abrasion around the entire wound.

Q. So there is inferior abrasion around both wounds. However, around one wound, it was around the entire circle?

A. I think there is a rim of abrasion on both wounds. The rim of abrasion is on the bottom inferior of both of the wounds. That's the measurement I took.

Q. And that is the basis you used as to the direction of the instrument that entered the body?

A. Well, the reason I used that direction is that the outside fit with the inside. So what the direction concerns itself -- and that's why you don't interpret wounds on the outside for direction. You trace the wounds inside the body and you trace the direction inside and that tells you the direction.

Now, the outside tells you if it fits with what you see. So when you look at the inside of a body, and say you have an upward direction, and you look at the outside wound. And if the rim of abrasion was superiorly, something is wrong here. And there's a reason for that. So you have to come to conclusion why that reason is there. So in some cases -- because we dictate people in the normal upright position that that's how we dictate the patient.

So if I was, say, shot from below and I was bent over at the waist, the bullet would hit the top part of

the wound first and might go up in the body, depending on the relationship of the torso to the wound. And when you stood the patient up, the track in the body was going one way and the abrasion on the outside is going the opposite way. And that doesn't fit. So then you've got to look for a reason for that, why it doesn't fit. So we are more concerned with the inside track than the outside abrasion.

And then if they fit, then we say that -- that when you try to recreate how the patient was when the instrument was introduced in the patient, whether it's a sharp instrument or gun, bullet and that's how you rotate the body in order to recreate that track. So you use that as an ancillary pivot point for trying to get to an idea of what was the relationship of the instrument to the body when the wound was acquired.

Q. Okay. And as for the outside, the outside of the wound --

A. Yes.

Q. -- the measurement, we know that they are the same in diameter?

A. Yes.

Q. And we also know that obviously -- not to state the obvious -- but those measurements were taken at the coroner's office --

A. Yes.

Q. -- after that body had been exposed to the elements.

A. Yes.

Q. Fair to say that that body had bloated?

A. Yes.

Q. And what happens when a body bloats, if you will? It expands?

A. Yes.

Q. And in fact, the skin expands as well?

A. That's correct.

Q. So when you measure three quarters of an inch, you're measuring the skin as expanded?

A. Right. This measurement is what it looked like at the time of autopsy on the outside of the body. So that in this case here, I would say that's not a true and accurate representation how the wounds looked like when the patient died.

Q. Right. However, fair to say, that when you were brought the pickax, we know that you didn't -- and I don't mean to sound morbid -- we know that you no longer had the body in front of you when you were brought the pickax.

A. That's correct.

Q. So the comparison of the pickax was made to your

autopsy report?

A. That's correct.

Q. And in the autopsy report you had three-quarters inch diameter?

A. Well, what we did, we used the inside measurement when we did that because the wounds on the outside weren't a true and accurate representation of the wounds -- of the wounding instrument in this case. And that's why we took a second other measurement within the body. And that would be the one-and-an-eighth inch defect in the pericardial sac and three-quarters inch defect in the anterior heart.

In most cases when we have sharp instrument wounds in a normal person, we would measure the outside of the body; that would be unless there was some other extenuating circumstances. We wouldn't measure the defects in the organ systems themselves. But in this case, as obviously that the outside wound recapitulate what the injury was -- because, like I say, when I went to the scene, it looked like -- actually today if it looked like -- if they gave it on a test, I would say it looks like a gunshot wound.

Q. So you used the measurement?

A. On the inside.

Q. From the interior?

A. Right. Because when we got to the inside of the body, when we look at the pericardial sac, we could tell it was no longer gunshot wound. It was sharp instrument wound. So that's the measurements I used to compare the length of the pickax travel with the inside wounds and see if it was compatible or not.

Q. Okay. And when you made the findings that it was compatible, fair to say that you can't say that was -- that that was the weapon, is it?

A. No. No. I just said we measured from the tip of the pickax, the sharp point up six inches because we know how long that traversed in the body. And we measured the height of the pickax, the thick part of it. And if it was within an inch and an eighth or whatever the measurement there, that would say that that would be comparable with that type of instrument.

Q. Okay. And I assume when you examined the pickax, noticed that the sharp end was essentially square --

A. Right.

Q. -- as opposed to a roundish shape?

A. That's correct.

Q. And on October 17, 2002, Zach Scott brings you the pickax?

A. Right.

Q. Tells you they have additional information in the

case essentially?

A. Yes.

Q. Never, however, brings you any information that there might have been asphyxiation or strangulation?

A. Not that I know of.

Q. And I'll get into what those mean later. Fair to say that the first time that possibility was ever introduced to you was by a defense attorney?

A. I believe so.

Q. A different defense attorney other than us --

A. That's correct.

Q. -- but still working on all of these cases.

A. That's correct.

Q. And when we met with you in July, my co-counsel and I, we talked to you about asphyxiation and strangulation as well?

A. Uh-huh.

Q. And I want to talk about that a little bit if we could, asphyxiation.

I guess I'll throw out the hypothetical, which is, someone puts their hand or their arm, forearm or biceps, whichever, over someone's mouth --

A. Uh-huh.

Q. -- totally occluding their airway, so covering the nose and the mouth. That can cause asphyxiation?

A. Yes, it can.

Q. That can cause death?

A. Yes.

Q. And fair to say that that could be done, the nose and mouth could be blocked and no pressure whatsoever would need to be put on that area, just occlusion?

A. Well, if the person wasn't struggling, yeah. I mean, are you talking about -- you got two people. You got the person occluding the airway and you have the person getting their airway occluded.

Q. And I forgot to add that, too, the person is not struggling at all. The person is totally limp and this person's arm is occluding the airway.

A. You could asphyxiate somebody like that quite easily.

Q. No pressure at all?

A. That's correct.

Q. And that would happen one to two minutes?

A. Yeah. Yeah. You could have a person pass out within a minute or two. That's correct.

Q. And then there is a point after they pass out that essentially such significant damage is done to the brain that it's irreparable?

A. That's correct.

Q. And that would happen within how many minutes?

A. Within a ten-minute time frame. You have about ten minutes restore blood flow to the brain, and under ideal circumstances, to restore without any damage.

Q. And death even in that circumstance with the person not struggling, mouth and nose occluded, death could occur in two to ten minutes. Is that fair to say?

A. Yes.

Q. And unlike in a case with a gunshot wound or stab wounds that someone could die of an asphyxiation and there would be absolutely no physical mark left.

A. Theoretically that could happen, that's correct.

Q. No signs at all that they are asphyxiated?

A. That would be correct. There could be cases where you could asphyxiate someone and not leave any telltale marks.

Q. Now, there can also be a case where somebody is asphyxiated -- I know people tend to hang like a pillow -- and there might be particular hemorrhages in someone's tissues to show, to help support a theory that they are asphyxiated; is that correct?

A. That's correct.

Q. And in this case we don't know that about the eyes because the body was decomposed.

A. That's correct.

Q. So we don't know if there were or were not

particular hemorrhages?

A. That's correct.

Q. Strangulation different from asphyxiation; is that fair to say?

A. Yeah. I mean, the end result is the same and changes are a little bit different, but basically it's keep blood, oxygen from going to and from your brain. Basically the same kind of thing except a different way from administering it.

Q. And there's two hypotheticals on this. Fair to say that someone could die from having pressure on both sides of the airways?

A. Right. I mean, you could massage both sides of the neck at the same time and cause someone to die without leaving any marks.

Q. In fact, isn't it fair to say that that's why doctors particularly don't massage both sides of the patient's neck because someone could die from that?

A. That's correct.

Q. And there is also an incident where someone could be pushing straight down on someone's neck on the trachea, if you will?

A. That's correct.

Q. And the first hypothetical where there's pressure coming from both sides -- let's say that someone's arm

is around someone's neck like in a headlock.

A. Uh-huh.

Q. Pressure on both sides.

A. Uh-huh.

Q. And how much pressure, if you know, based on your experience would it take? How many pounds per square inch of pressure would it take to block those airways if pressure is coming from both sides?

A. Well, it takes about four pounds per square inch to compress a vein and about ten to twelve pounds per square inch to compress an artery and about thirty-five pounds per square inch to compress your airway. So it doesn't take much pressure.

The first thing that happens is, pressure, you can compress the veins which drain blood from the veins and blood gets pumped up. Can't come back down. With more pressure you could preclude the carotid arteries. No blood up to the brain. So you should die quickly. Then the other mode --

Q. And if I could stop you there: Ten to twelve pounds per square inch to block an artery?

A. Yes.

Q. And when you would see a blocked artery, you would expect to see a different death?

A. Theoretically, it should be quicker because

you're retarding blood to the brain. You shorten the window.

Q. And four pounds per square inch to block a vein?

A. That's correct.

Q. And thirty-five to completely block an airway?

A. That's correct.

Q. And fair to say these aren't large pounds per square inch, four, ten and fifteen?

A. No, that's not very much. No.

Q. And again, assuming in our situation that the body is not struggling -- there is no evidence of struggling?

A. I saw no injuries on the outside of the body.

Q. Right. These measurements, or rather those estimates that you have just given would apply to that hypothetical?

A. Yes.

Q. And in terms of struggle, assuming you've done a number of cases where you examine the body and you actually could see evidence of struggle. Is that fair to say?

A. Yes.

Q. Sometimes, let's say, fingernails or evidence under the fingernails or actual wounds themselves appear to be defensive wounds; is that correct?

A. That's correct.

Q. And there is no such thing in this case?

A. I didn't see anything that would be classified as defensive wounds in this case.

Q. And have you ever seen that in -- well, certainly, certainly if a body is unconscious you wouldn't expect to see defensive wounds?

A. That's correct.

Q. And similarly -- well, we will leave it at that.

In terms of compressing the airway from a persons' foot, fair to say that someone could die from someone stepping on their throat, compressing the airway?

A. Yes.

Q. And I know you were asked about the hyoid bone. And you testified that there was no damage that you saw to the hyoid bone?

A. That's correct.

Q. True, though, that there is a number of strangulation cases where the hyoid bone is completely intact?

A. That's correct.

Q. So that's not like a telltale --

A. That's correct.

Q. Just because the hyoid bone is intact doesn't

mean there is no strangulation in this case?

A. That would be correct.

Q. And someone's foot is pressing on an airway similar to a headlock, same kind of pressure per square inch?

A. That's correct.

Q. We are talking about the airway, we are talking about approximately thirty-five pounds per square inch?

A. That's correct.

Q. Vein, four pounds; artery, ten to twelve?

A. That's correct.

Q. And again, there was never any information given to you by the police that anyone was stepping on the neck of Andrew Dotson?

A. Not to my knowledge.

Q. And Zach Scott never told you that anyone had Andrew in a headlock, correct?

A. Not to my knowledge.

Q. That was brought out by Defense attorneys.

A. Yes. I believe it was brought out at some other trials. That's correct.

Q. There was mention about the blood loss that happened when the body was rolled over.

A. Uh-huh.

Q. There was blood that came out. I'm sorry.

Fair to say that after someone dies, the blood stops circulating?

A. That's correct.

Q. Yet, blood doesn't clot, if you will, for a period of eight to twelve hours?

A. That's correct.

Q. So essentially, the fact that when you rolled over the body, all that blood came out?

A. Uh-huh.

Q. The blood would be loose in a body, if you will, for a period of eight to twelve hours after that?

A. That's correct.

Q. So that person could have been killed six, seven, five hours and that blood would still leak out?

A. That's right. As long as it hasn't clotted in the body, it would leak out of a traumatized vessel. That's correct.

Q. The presence of the blood alone in the chest cavity therefore does not prove that the stab wounds were the cause of death?

A. That per se doesn't establish by reasonable medical certainty that the stab wounds are the cause of death, no.

Q. And I want to talk about the lack of blood which wasn't mentioned. No blood in the stomach, correct?

A. That's correct.

Q. In fact, there is even some 300 cc's of food in the stomach?

A. That's correct.

Q. Yet, there is no blood found in there?

A. That's correct.

Q. I know we talked about this when we met. Fair to say that the absence of blood in the stomach could be used to show that the fatal wounds were postmortem?

A. You mean blood in the abdomen, not in the stomach.

Q. In the abdomen, I'm sorry.

A. Yeah.

Q. And not the fatal wounds. Could be used to show the wounds in the chest were postmortem, after death?

A. The one in the abdomen, if you don't have any bleeding into the area, then that could be compatible with a postmortem injury. That's correct.

Q. And the reason on your report that these two wounds are labeled fatal wounds, fair to say, Doctor, because under normal circumstances had someone obtained these wounds that those wounds would cause the death?

A. That's correct.

Q. However, there is no way to definitively say that these wounds are antemortem versus postmortem?

A. This stage in this patient there is no definitive way, that's correct.

Q. I know it's not a good subject to talk about, but I want to talk about the maggots that were on the body.

A. Yes.

Q. Someone dies and they are left out to elements, outside elements, weather, temperature, those kind of things, fair to say that flies immediately go to a body?

A. They can if they got access to it, yes.

Q. I mean, flies can arrive literally in seconds?

A. Yes. We have people that die at home and are brought into our office and they haven't been dead too long and flies have laid their eggs on them already. That's correct.

Q. And flies come -- they come to the body. Fair to say they are oftentimes attracted to or they are more attracted to openings, such as orifices?

A. Yes.

Q. Nose, mouth?

A. Yes.

Q. And any other openings in the body such as, let's say, like stab wounds, cuts, things of that nature?

A. Yes.

Q. And they lay eggs?

A. That's correct.

Q. And those eggs hatch?
A. Yes.
Q. And then we have our maggots.
A. Yes.
Q. And fair to say that -- assume you've worked with an entomologist before?
A. I have.
Q. And they're sort of bug doctors, if you will?
A. Yes.
Q. And in homicide cases, is it fair to say that entomologists are brought in to determine time of death in cases such as this when bodies decompose?
A. Come in, give an estimation of when the body could have died, that's correct.
Q. And they take soil samples?
A. Yes.
Q. And they take samples of the maggots --
A. Yes.
Q. -- that are on the body?
A. Uh-huh.
Q. And they take those and submit those and test those?
A. Yes.
Q. And essentially, it's the stage of the maggot infestation or the stage of the maggots --

A. Right.

Q. -- that can allow them to date back to when that body was likely put in that location?

A. That's one of the things they can use, yeah. Depends on -- like I say, they go through stages. And so they can tell you when the fly eggs were deposited on that body. And if there is other criteria they would say that would be the minimum amount of time. And other criteria they can use to give an estimate as to how long they thought the body had died. So they use that as one of their parameters in determining time of death.

Q. In this case, however, when you were at the crime scene, there wasn't an entomologist there?

A. Not that I know of. I don't know if BCI gathered some of the bugs up for possible entomology examine or not.

Q. Entomology is a science, though, correct?

A. Yes.

Q. And the maggots in this case, fair to say, they were localized around the neck area?

A. Well from the picture, yes.

Q. And the pictures were taken at the scene --

A. Yes.

Q. -- out in the cornfield?

A. Yes.

MS. MENASHE: If I may approach, Your Honor.

Q. (By Ms. Menashe) Referring to State's Exhibit D-6.

A. Okay.

Q. Fair to say that this, the white dots particularly on the left side of the neck shown in this picture here and again on the left side here, that's the maggot infestation?

A. Yes, I believe that would be. Yes, look like maggots. Yes.

Q. On the side of the neck?

A. Yes.

Q. And we know that flies are often attracted to open areas such as orifices?

A. Uh-huh.

Q. And also any kind of wound type area?

A. Yes.

Q. Because they are trying to get into the body, correct?

A. Yes.

Q. And they are also attracted to hemorrhage areas?

A. Sometimes could be attracted to blood, yes.

Q. Because hemorrhage areas are essentially blood that's come to the surface?

A. That's correct.

Q. And you might expect to see hemorrhaging in a case where someone has been strangled?

A. You can see infusion above the area, correct.

Q. And essentially hemorrhaging is bruising?

A. Right.

MS. MENASHE: If I can have a moment just to review my notes, Your Honor.

Q. (By Ms. Menashe) Doctor Fardal, referring to what is State's Exhibits D-6 again. See if I can ask you about the trunk wounds.

A. The trunk?

Q. Yes.

THE COURT: Okay. Just one second. Before we get to that, how much longer do you have?

MS. MENASHE: Not very long, Your Honor. Almost done.

Q. (By Ms. Menashe) Fair to say that upon visual inspection there is no blood around those wounds?

A. That's correct.

Q. And there is no blood around the wounds or trickling down the body, if you will?

A. That's correct.

Q. And those openings are three quarters of an inch?

A. That's correct.

Q. Went into areas -- and obviously there is a lot

of blood in the chest cavity that you know of that rolled out of the chest cavity?

A. Right.

Q. But nothing on the outside of the body?

A. That's correct.

Q. Fair to say also that there is, on those pictures, there is no maggot activity around those wounds?

A. I don't see any, that's correct.

Q. Just if I could go back to the substance that was on the body. Just going through my notes here, there was discussion of two different types of lime. One retards and one enhances the decomposition.

A. Uh-huh.

Q. And you mentioned that some of the cement material may have washed off the body, if you would, from outside elements.

A. Right, from rain, et cetera.

Q. Did Zach Scott from the Franklin County Sheriff's Department ever give you any weather data?

A. No. I never asked them for any weather data about the case, no.

Q. In terms of unconsciousness of a body, fair to say at an autopsy that you cannot tell whether someone was unconscious or not at the time of their death?

A. Well, you can't tell from the autopsy, but it's highly unlikely that they -- you know, most of the time people drink, become unconscious just before they die, at least for a short period of time. You can't tell from the autopsy that a person was conscious or unconscious, no.

Q. I'm sorry. I didn't make that clear. You can't tell, let's say, if they were unconscious for a period four to five hours before their death.

A. That's correct. If somebody was in the hospital from disease or trauma and somebody else came in there and did something bad to them, I couldn't tell if they were conscious or not, no.

Q. The food in the stomach was 300 cc's?

A. Yes.

Q. A light meal is 200 cc's, let's just say, right at the time you ingest it.

A. I'd say light meal is usually like breakfast, I would say, two or 300 cc's, depending on what you eat, yes.

Q. And then I believe the 800 cc's is like a full stomach full?

A. Eight hundred to a thousand, that's a full stomach. I would say that would be a heavy meal.

Q. And just the middle ground would be a

medium-sized meal?

A. Yeah.

Q. And the food or the matter that was in the stomach wasn't recognizable?

A. I couldn't recognize it, no.

Q. But it was 300 cc's?

A. Yes. And it was undigested food matter, that's correct.

MS. MENASHE: One moment, Your Honor.

Nothing further.

THE COURT: Do you have more than a few minutes?

MR. LOWE: Probably more than a couple minutes.

THE COURT: We are going to adjourn until 1:30.

Remember the admonition I've given you. Don't discuss the case amongst yourselves or anybody else.

Be back up here at 1:30.

- - -

Thereupon, a luncheon recess was taken until 1:30 o'clock p.m., of the same day, to wit, Thursday, September 18, 2003.

- - -

Thursday Afternoon Session
September 18, 2003.

- - -

Thereupon, the further trial of this cause was resumed pursuant to luncheon recess.

- - -

MS. PRICHARD: I'm going to ask to recall Bobbi Hannah based on 404(B)(6), assuming you're going to allow her to testify, as to the witnesses statements at this point in the trial.

THE COURT: What do you want her to say?

MS. PRICHARD: The statements are essentially that she's going to say he was present at the shooting. He had been with Conway. He couldn't ever come home. He and Conway were going to get a flight out of town, something to that effect. That's the gist of it. There was a need to get away because of the shooting and he could never return.

THE COURT: Let's wait on that witness.

MR. YOUNG: We would like to respond.

MS. PRICHARD: When this witness is done, they are bringing the second witness. I want to make sure he got here and instruct him, make sure he's not allowed to say --

If I could have three minutes to tell him

areas he's not to get in to.

THE COURT: What's happening with the other?

MR. YOUNG: Lew Williams has not been here.

THE COURT: He hasn't come at all?

MS. PRICHARD: I left messages. I don't know if you called if it's more powerful than me calling.

THE COURT: Go ahead and bring the jurors in.

- - -

Thereupon, the jury resumed their places in the jury box.

- - -

THE COURT: All right. You may proceed.

- - -

PATRICK FARDAL, M.D.

Resuming the stand for further redirect examination, having been heretofore duly sworn, continued testifying as follows:

- - -

REDIRECT EXAMINATION

BY MR. LOWE:

Q. Okay. Doctor Fardal, there was a discussion about maggots and entomologists. Can inspection of maggots pinpoint exact time of death, if you know?

A. No. It can't pinpoint the exact time of death. It can only pinpoint the exact time the maggots started developing.

Q. They don't actually start after the time of death?

A. As I said before, it's when the flies have access. It would set a minimum, not a maximum.

Q. Does an entomologist work out of Franklin County Coroner's Office?

A. No, we don't have an entomologist at the present time.

Q. Doctor Fardal, do drugs affect each individual differently?

A. Yes.

Q. As well as alcohol?

A. Yes.

Q. And what about the combination between the two?

A. Can affect people differently, that's correct.

Q. Do people handle -- metabolize different drugs at different rates?

A. They do.

Q. There was some talk about the pickax that you were shown and how it wasn't completely round; is that correct?

A. Yes. It was a four-sided instrument, that's

correct.

Q. Yet, your opinion was, it was consistent with the wounds you saw in Andrew Dotson. Can you explain how it could still be consistent?

A. Well, the consistency is, the outside of this patient's wounds aren't what they looked like at the time of death. Doesn't make a difference whether it's sharp instrument wound or gunshot wound or any other type of traumatic episode.

As we alluded to during the discussion during the changes of postmortem decomposition, the appearance of the wounds are changed and, say, gunshot wounds are sometimes made larger than what they were at the time of death. So the outside wound is actually larger than it was when the patient sustained the wound because the postmortem decomposition stretches the skin and (B) because of postmortem effect of insects, et cetera.

So the outside of the wound has becomes less important in a decomposed body for interpreting what the wounding instrument actually is. So we examine the inside of this patient and it was self-evident from looking at the pericardial sac, et cetera, that we were dealing with a sharp instrument rather than gunshot wound then. We went with a sharp instrument type of thing that would be the cause of death.

And with a pickax in a patient was not in a decomposed state, the wound would probably look more characteristically as a pickax would be, just as any other sharp instrument would look like. Each one -- some of them have peculiar characterizations that if you see the patient fresh you can sometimes surmise what the instrument is. So in postmortem decomposition, you just can't rely on what you see as to what it really is.

Q. Okay. There was some discussion as to what you were told by Zach Scott when he brought the pickax about the cause of death; is that correct?

A. Yes.

Q. Prior to Detective Scott bringing the pickax directly on October 12, 2001, when you were performed your autopsy, did you have any information as to how this individual died?

A. No. The only thing I knew is he was found out in this cornfield. And as I stated, when we saw him until we took the x-rays, et cetera, and actually did the autopsy, I thought it was two gunshot wounds to his abdomen and one to his chest. And so at that time, what caused the injuries was that he had been shot.

And the second thing we saw, there was a sharp instrument wound. That's what caused the injuries to

the heart and great vessels, et cetera, in the liver. So that's what we were working under that premise that there was a sharp instrument that caused these defects.

Q. But at that time, you weren't looking for any specific cause of death?

A. Just -- well, I mean, the cause of death, yeah. We were looking for the specific -- what caused the defects in the body and created the defects in the patient's heart, that's the cause of death.

Q. You weren't directed to any specific area. You looked at the whole body.

A. Yes. Yes.

Q. And you made a comment about massages to both sides of the neck.

A. Yes.

Q. There was some talk about that.

A. Yes.

Q. Could you explain what you're talking about?

A. You have two arteries on the side of your neck where the big vessel goes into the neck and it branches and one part goes to your neck and one goes to your brain. There is carotid artery. And they are sensitive to pressure. If someone would massage both sides of your neck at the same time, these cause nervous impulse to be imparted that go to your heart. So if you would

stimulate them both test, the nervous impulse that goes to your heart tells it to stop beating and because of the kinds of nerves they are. So therefore, if you massage both sides at the same time and unfortunately stimulate both of these bodies, then you might not necessarily so but you can cause the actual heart to stop beating. Unless you take some kind of resuscitative efforts, the patient will die right in front of you.

Q. You were asked a question if a person can be strangled or asphyxiated and not leave any marks. Do you remember that question?

A. Yes.

Q. Doctor, if there was violent manipulation of the neck, would you expect there to be any marks or trauma?

A. You would expect there to be hemorrhage in deep tissue and we might not, depending on how much trauma was imparted to the outside of the body. We've seen people that are strangled, we might not see finger marks, et cetera, when you strangle somebody with your hands, but we often see hemorrhages into the deep tissues of the neck and the structures of the muscles of the neck and some of the deeper tissues around the actual voice box, et cetera.

So that's what we look for in people that

strangulation may be a cause of death of these people. And so you can't have people that are strangled that have no overt marks on the outside of the neck even after you do the autopsy, reflect the skin back, looking because you know what the cause of death is and you look again and there is still no bruises, et cetera or scratches, whatever the situation is.

Q. What about if two hundred fifty pound man stepped on the neck as to make it go flat, would you expect trauma in that situation?

A. You expect, (A) again, the minimum it would be. You would see hemorrhages into the soft tissues around the voice box depending on how the voice box and trachea are collapsed. Sometimes you can actually break the person's voice box if it's hard blow to this area, whether it's a foot or a fist or whatever; or (B) you just compress it with constant, steady pressure which allows it to kind of spread out without actually cracking it.

The younger you are, the more pliable these cartilages are. So one of the things is if it was an older person and you put the same kind of force on it, maybe you would be more likely to break these structures than in a twenty-year old male or female because it's not calcified yet. So you could put your foot across a

person's neck and not leave any marks on the outside of the body and cause them to stop breathing by blocking the airway. And you should get at least some hemorrhage into the soft tissues.

Q. If the wounds that you described to Mr. Dotson's chest, torso area were inflicted after death, would you expect to find blood?

A. Well, you can get bleeding after death. It's called postmortem leakage of blood. What happens is when we do autopsies on people -- and say you have a series of injuries to your body. And the classic one is an automobile accident. You have severe head injuries and trunk injuries and, say, you've got a torn lung or heart or something within your thorax, that would normally bleed a heck of a lot. When we do the autopsy on these people, you don't see much blood in there. You see a couple hundred cc's as postmortem leakage, start getting a lot of blood, you know, the patient's heart is bleeding. Because the blood is more than what you just assume as a result of postmortem leakage.

So then we would look and say, well, what happened to this patient that you don't have a whole bunch of blood in their chest cavity that caused him to die before they actively bled out. Say you have a gunshot wound to the head or severe head injury from a

car accident and that took precedence over the chest wounds and a little bit of blood that you see is all what we call postmortem leakage. If you cut the bloods vessels as we were speaking before and the blood hasn't clotted, it will leak out according to gravity. You theoretically can bleed after the death from traumatized vessels.

So we look at cases where we have an injury to a significant structure and ask ourselves why we don't have any hemorrhage in that area and did something else take precedence over it that would cause you to die so suddenly that you wouldn't hemorrhage into the area.

Q. In this case, did the amount of blood found in the wound suggest to you that Mr. Dotson's heart was still beating when the wound was inflicted?

A. The material pulled out of his chest cavity when we rolled him, it was a considerable amount of material. So to me it was an indication that his heart was still beating when he sustained these wounds.

Q. Doctor, Ms. Menashe talked about you meeting with the defense attorney discussing this case --

A. Yes.

Q. -- and talked with them about asphyxiation and strangulation.

A. Yes.

Q. Since your meeting with them, has your opinion as to the cause of death changed in any way?

A. No.

Q. And you were also asked if this was a hundred percent certainty. Were all the opinions you gave today to a reasonable degree of medical certainty?

A. Yes.

Q. Doctor, disregarding any hypotheticals, is there any evidence at all that would suggest Andrew Dotson died from anything other than the sharp instrument wounds to the torso from the wounds that you found?

A. Nothing in the autopsy that I found would suggest any other event. I didn't see any signs of any other traumatic episodes. So I was left with the wounds to the chest and abdomen as the cause of death.

MS. PRICHARD: Thank you. I have nothing further.

THE COURT: Any recross?

MS. MENASHE: Yes, Your Honor.

- - -

RECROSS-EXAMINATION

BY MS. MENASHE:

Q. Appearance of the wounds as to cause of death, because essentially the degree of decomposition; is that correct?

A. Yes. There was -- as I said, degree of decomposition alters the appearance of the body and the soft tissues. So it's not as pristine to do autopsies on these individuals as people -- if it would come to us the day of death or next day or maybe even a couple days later. And on the -- if I could just go back -- the entomologist.

Q. Yes.

A. I don't know how it was interpreted. Certainly an entomologist is oftentimes used to date when the body was placed where it is found. They can be used for that. That's correct.

Q. Okay. And there was talk about how drugs affect different people in different ways, correct?

A. Yes.

Q. And you'd still agree with me, though -- you would agree with me, would you not, that the levels, therapeutic, recreational toxic, lethal, those are generalities, are they not --

A. That's correct.

Q. -- the medical field uses as common terms.

A. Right.

Q. And you wouldn't expect to see one passed out for a period of five hours from the level of Valium that was found in Andrew Dotson's system; is that correct?

A. I would not expect that, no.

Q. And if Andrew Dotson had ingested large quantity of Valium, let's say eleven, twelve pills of Valium within four hours of his death, you would expect to see the metabolites in his system, would you not?

A. I would expect to see some metabolite, correct.

Q. Same if he died five hours of his death?

A. I think that would start forming, yes.

Q. Of the same with six, seven, eight hours?

A. Yeah. The longer the time frame, the greater the amount of metabolite would be present.

Q. And in this case, there was no metabolite?

A. There was none detected.

Q. And the fact there was no metabolite, that doesn't vary from individual to individual?

A. Well, it varies if you don't have the way of metabolizing it, yeah, it does vary.

Q. We know Andrew Dotson had a liver.

A. Yes, we know that. And you can say that from the material that we had it didn't show he had any metabolite in his materials that we tested. So that's what you can say; it wasn't there.

Q. Right. And when you rolled the body over and the blood came out, fair to say you didn't measure the amount of blood that came out?

A. No. I didn't expect that amount of material to come out of his chest, the chest, the defect in his chest because it was just -- most of the time when we roll individuals sometimes blood -- say if it's a gunshot wound -- sometimes blood comes out of the defect on the outside of the body and other times it doesn't.

Q. When Mr. Lowe is talking to you about 300 cc's or 200 cc's, we don't know how much blood came out of Andrew Dotson because it wasn't measured.

A. That's correct.

Q. And the question was asked about strangulation and asphyxiation. And you talked about deep hemorrhaging --

A. Yes.

Q. -- in the deep tissues, rather.

A. That's correct.

Q. And I know in your autopsy report you didn't note any hemorrhaging in the deep tissue?

A. That's correct.

Q. There are soft tissues as well, correct?

A. That's part of the deep structures like of the neck and stuff we go through and we look at the muscles of the neck and deeper muscles as well as the larynx and voice box, et cetera. We don't -- theoretically you can say superficial versus deep. I classified them all

together. If they are there, they are there.

Q. Would you agree with me, though, there will be hemorrhaging, that's obviously close to the skin --

A. Yes.

Q. -- to the upper layer of the skin?

A. Yes.

Q. That would not appear in the deep tissues?

A. That's correct.

Q. And we don't know if there was those hemorrhages there or not because of the decomposition of the body.

A. That's correct.

Q. And those hemorrhages could have been there, in a hypothetical situation, from someone that was strangled?

A. That's correct.

Q. Someone that was put in a headlock?

A. That's correct.

Q. And could have been there from someone that was stepping on the side of someone's throat and, let's say, either blocked a vein --

A. Yes.

Q. -- or an artery?

A. Correct.

Q. Hemorrhaging on the top layer of skin could all have been there?

A. Correct.

Q. But we don't know that?

A. That's correct.

MS. MENASHE: Nothing further.

THE COURT: Thank you, Doctor. You may step down.

MS. PRICHARD: Judge, if I could have a few minutes to locate and instruct the next witness.

THE COURT: Let's take a short recess. It's only going to be a few minutes. Go ahead and step back in there.

Remember my admonition.

- - -

Thereupon, a recess was taken.

- - -

Thereupon, the jury resumed their places in the jury box.

- - -

THE COURT: All right. Ms. Prichard.

- - -

RONNY TRENT

called by the State of Ohio on direct examination being first duly sworn, testified as follows:

MS. PRICHARD: Thank you, Your Honor.

- - -

DIRECT EXAMINATION

BY MS. PRICHARD:

Q. Get yourself comfortable and close to the mike. If you would, please state your name.

A. Ronny Trent.

Q. And how old are you, Mr. Trent?

A. Thirty-one.

Q. Mr. Trent, you have a prior criminal record, do you not?

A. Yes, ma'am.

Q. Back in the '90's were you charged with several aggravated burglaries?

A. Yes, ma'am.

Q. Pled guilty to aggravated burglaries?

A. That's correct.

Q. And did you go to prison for that?

A. Yes, ma'am.

Q. How old were you at the time?

A. Eighteen.

Q. And how long were you sentenced for?

A. I was sentenced to eight to twenty-five. I did nine.

Q. And eight to twenty-five, is that where the parole board can determine how long you're going to serve?

A. Yeah.

Q. In 1999, did you plead guilty to attempted receiving stolen property and attempted escape charge?

A. Yes, ma'am.

Q. And did you serve any additional time for that?

A. Thirteen months.

Q. And was that for these cases or for violating parole?

A. Both.

Q. Are you currently on parole?

A. Yes, ma'am.

Q. Still for those burglary charges?

A. Yes, ma'am.

Q. What is the, I guess, balance of what you could possibly serve if the parole board chose to violate you?

A. Well, she set the guidelines now. I have thirteen years remaining on my sentence; originally eight to twenty-five.

Q. And are you currently incarcerated for a specific case?

A. Yeah. Well, actually not for a case. It's for a parole violation from using someone else's vehicle.

Q. You pled guilty to an unauthorized use of a motor vehicle charge here within, what, the last six months or so?

A. Actually it was a misdemeanor receiving.

Q. Okay. What were you originally charged with?

A. Receiving stolen property.

Q. As a felony of the fourth degree?

A. Yeah.

Q. So it was dropped to a misdemeanor?

A. Correct.

Q. Did I or Mr. Lowe or anybody associated with this case here today have anything to do with that plea?

A. None.

Q. Did we make any recommendations or become involved in any way in that situation?

A. No.

Q. And so the parole board apparently sent you back to prison for that?

A. Correct.

Q. And when do you see the parole board to determine what's going to happen to you?

A. Next month.

Q. Have any promises been made to you by anyone from

my office as to what's going to happen? Or are we supposed to talk to the parole board for you about that?

A. No.

Q. Back in June 2002, you pled guilty to an assault. Do you recall that?

A. Yes, ma'am.

Q. Misdemeanor of the first degree?

A. Correct.

Q. And was that a plea in which I was involved?

A. Yeah.

Q. You were originally charged with gross sexual imposition, a felony of the third degree; is that correct?

A. That's correct.

Q. And one count attempted gross sexual imposition, a felony of the fourth degree?

A. Correct.

Q. Do you know the maximum penalties that that carries?

A. I believe it's five years and eighteen months.

Q. I wasn't your original prosecutor, correct?

A. Correct.

Q. It was Mark Wodarcyk and I later became involved and you were offered a misdemeanor of the first degree --

A. Correct.

Q. -- in exchange for some cooperation.

A. Correct.

Q. What were you sentenced to on that case?

A. Basically I ended up doing like thirteen months. So I was sentenced to, I believe it was -- I believe it was an additional ninety days. But I did thirteen months on the case, maximum supposed to be six months.

Q. You had been sitting in jail, I guess, awaiting disposition of that case?

A. Correct.

Q. So it turned out to be a total of thirteen months?

A. That's correct.

Q. Let me show you State's Exhibit F-1. Do you recognize that document?

A. Yeah.

Q. What is that?

A. It's defendant's agreement, I believe.

Q. An agreement outlining what you were supposed to do for the prosecutors and what we were going to do for you?

A. Correct.

Q. And what date was that agreement?

A. 6/11/2002.

Q. The same day you entered into that plea to the assault?

A. Yes, ma'am.

Q. And prior to getting that deal, was approval gained from the victim's family?

A. Yeah.

Q. Show you State's Exhibit F-2. Do you recognize that document?

A. Yeah. That's a letter from my alleged victim saying she doesn't have a problem with the sentence.

Q. Were there any promises about what we do for you and what we tell the parole board about your cooperation?

A. As far as what? As far as this agreement?

Q. Yes, the defendant's agreement. What have we promised to do for you with the parole board?

A. Just at my parole hearing you would recommend that my parole not be revoked.

Q. And as far as you know, we did that?

A. As far as I know, yeah.

Q. Was your parole, in fact, revoked?

A. No. It was extended.

Q. What are you required to do as part of that defendant's agreement?

A. Cooperate with the prosecuting attorney's office

in this case and unrelated cases.

Q. Well, let me just lead you through this just to be clear.

You're supposed to testify about the Andrew Dotson homicide?

A. Correct.

Q. Against everyone involved?

A. Correct.

Q. And testify against three people in an unrelated Franklin County case?

A. Correct.

Q. Also testify in an unrelated homicide case?

A. Correct.

Q. And testify against three people in an unrelated Chillicothe case?

A. Correct.

Q. Anything else you can recall?

A. Not to my knowledge, no.

Q. And if you don't fulfill the agreement, what happens?

A. Basically it's like I start over from my original charge and the plea that I entered to is like void; so I'm facing the five years, eighteen months all over again.

Q. And you can take that case to trial, enter a

plea, start all over?

A. Right.

Q. Do you recall sometime several years ago submitting a false affidavit to a court?

A. Yeah.

Q. Did that have anything to do with this case?

A. No.

Q. Do you remember what year that case was?

A. What year the case took place?

Q. Yes.

A. I believe it was '91.

Q. And within the past several years, you submitted an affidavit and said some things that weren't true?

A. Right.

Q. Let's go back to what you agreed to do in this case. At the time you started cooperating with the sheriff's office, was that defendant's agreement, that deal in place?

A. No.

Q. Did you have any kind of promise or assurance at the time you started cooperating with the sheriff's office?

A. No.

Q. When, if you recall, did you begin giving information to the sheriff's office about this case?

A. I believe it was sometime in April, April or May, I believe.

Q. What were the first steps you took when you gained some information about this case? What first contact did you make?

A. First I contacted my lawyer and told my lawyer to contact your office. I went through this a couple times. She never did. So eventually I wrote you myself.

Q. And at some point -- would that be April? Does that sound accurate?

A. Yeah.

Q. And at some point, did sheriffs interview you?

A. Yes, ma'am.

Q. And people from my office interviewed you?

A. Correct.

Q. And did you give all of the information that you have about this case?

A. Yes.

Q. Any deal in place at that time?

A. No.

Q. Were you working in any way with any sheriffs of any county or police of any department?

A. No.

Q. At the time that you made contact and indicated

you wanted to cooperate, were you in jail?

A. Yes, ma'am.

Q. Where were you in jail?

A. Franklin County.

Q. And who were you in jail with that you had information on?

A. James Conway.

Q. I note you nodding over to the side. Do you see Mr. Conway here in the courtroom?

A. Yes. He's sitting in the middle right here at defense.

MS. PRICHARD: Ask the record reflect he's identified the defendant.

THE COURT: It may.

Q. (By Ms. Prichard) And you were in jail pending that gross sexual imposition case?

A. Correct.

Q. When you went into -- were you in the jail before he came into the jail?

A. Yeah.

Q. Do you know how long you had been in there?

MR. YOUNG: Objection.

THE COURT: Overruled.

A. Approximately between six and eight months, something like that.

Q. (By Ms. Prichard) And were you housed together?
A. Conway and I?
Q. Yes.
A. Yes.
Q. Do you remember exactly what unit or whatever floor you were on?
A. I believe it was eight north, right one.
Q. And does that mean you were actually sleeping -- I guess, living in the same quarters together?
A. We was in the same tank but they are like single-man cells.
Q. So by "tank", is that like an area you're referring to?
A. Yes. What it is, is somewhat similar to like this room here but it would have cells like against one wall. In the morning after breakfast everybody comes out and you're out in an area like this all day congregating, playing cards, watching TV, using the phone, what have you. And at lockdown everybody goes back in the cells.
Q. So there is a common area you can all gather and talk?
A. Correct.
Q. Are there any areas or opportunities to talk privately to someone?

A. Yeah.

Q. Where would that be?

A. I mean, you could sit in your cell, you can go to each other's cells, sit and talk or just at one. You can sit at one table because the tables are basically from one end of the tank to the other. So, yeah, there is plenty of room to talk.

Q. And do you have access to telephones when you're in the jail?

A. Yes.

Q. Do you have the ability to arrange three-way calls?

A. Yeah.

Q. When Mr. Conway came into the same tank as you, did you know him at that time?

A. No.

Q. How is it that you came to meet him and start talking with him?

A. When he came in the tank, he was shot and he was complaining about being shot.

MS. MENASHE: Objection, Your Honor, as to this information.

THE COURT: Overruled.

A. He was complaining about being infected and them not taking care of it. I offered to help him take care

of his bullet wound.

Q. (By Ms. Prichard) So you developed some sort of a friendship with him?

A. You could say that, yeah.

Q. And, I guess, did you come to trust one another or did he come to trust you?

MS. MENASHE: Objection, Your Honor. Calls for speculation.

THE COURT: Sustained.

Q. (By Ms. Prichard) Did he confide in you about personal matters?

A. Yeah. I mean, after sometime it came -- he brought to my attention that we was related; that his grandmother and my grandmother are sisters, therefore, making us cousins.

Q. And was that, in fact, true?

A. Yeah.

Q. So you realized you were related?

A. Right.

Q. At that point, were you closer and talking more frequently?

A. Yeah.

Q. How often would you talk to him?

A. Every day all day.

Q. And at some point did he start talking to you

about the case that brings you here to court today?

A. Yes, ma'am.

Q. Please describe at what point that occurred.

A. At first -- okay -- well, it had been -- this particular case it had been -- we had been there between a month, two months together, something like that. And he was discussing the case from that led up with the Andrew Dotson case thing. I guess there was a case with some other people that was involved in Chillicothe and he was discussing that. And he was telling me why he was worried about people telling on him, what have you. So we got discussing it and he told me he had some people he wanted to take care of.

Q. Let me interrupt you for a moment.

MS. MENASHE: Your Honor, may we approach on this?

THE COURT: Do you have an objection?

MS. MENASHE: Yes. Objection.

THE COURT: Overruled. Go ahead.

Q. (By Ms. Prichard) Let me interrupt for a moment. Was there any particular event that happened that started you talking about Andrew Dotson?

A. Yeah. We was in the gym one day and they called Conway out for a visit. And he came back after a little while laughing, saying that -- he said that -- I asked

who it was. He said it was Andrew's mom. That stupid bitch actually thinks I'm going to tell her I killed her son. That stupid bitch.

Q. And I said who.

A. He said Andrew.

Q. And that happened right after a visit, you said?

A. A visit with Andrew's mother.

Q. Do you know if there were any other people around at the same time he told you that?

A. There were people around, but they wasn't really paying us attention.

Q. And did that start prompting discussion about what this Andrew thing was about?

A. As far as -- what do you mean?

Q. Did you start asking questions after that point?

A. I did, but I didn't really want to. I asked him, you know, what -- because at this time it was like it was a list, you know, a hit list.

MS. MENASHE: Objection, Your Honor, again.

THE COURT: Overruled.

A. And I had asked him, you know, what is really going on, what's bringing all this on. That's when he let out the way he wanted me to kill Mike Arthurs.

Q. (By Ms. Prichard) Let me slow you down a little bit.

At the time he wanted you to kill Mike Arthurs, had he discussed what happened with Andrew Dotson with you?

A. Yeah.

Q. What did he tell you had happened with Andrew Dotson?

A. He told me that he was afraid Andrew Dotson was going to talk to other authorities about an upcoming case. I believe it was maybe racketeering or something like that. He was afraid Andrew was going to talk on him about that and seeing him shoot somebody at White Castle.

Q. Did he give you any name of who was shot?

A. At White Castle?

Q. Yes.

A. No.

MS. MENASHE: Your Honor, may we approach, please?

THE COURT: Do you have an objection?

MS. MENASHE: Actually, yes. And I do have an objection.

THE COURT: Yes.

- - -

Thereupon, Court and counsel confer at the bench out of the hearing of the jury as follows:

- - -

MS. MENASHE: Your Honor, I object on 404(B). Ms. Prichard indicated the hit on Mike Arthurs was to show consciousness of guilt to shooting Jesse James. That was her whole argument. The witness testified the hit on Mike Arthurs was for a White Castle, the Jesse James shooting and also from the robbery in Chillicothe. We renew the 404(B) motion.

THE COURT: Overruled.

Q. (By Ms. Prichard) I don't recall where we were.

THE COURT: Just read back the question.

- - -

Thereupon, court reporter read back record as requested.

- - -

Q. (By Ms. Prichard) Do you recall if you previously remembered the name and told it to detectives?

A. About the guy that was supposedly shot at White Castle?

Q. Yes.

A. I mean, I may have. There's been so many things that happened from then to now.

Q. Did he tell you at what part of the body this person had been shot?

A. I believe he said he shot him in the butt.

Q. And because of that incident, if you would -- I just lost my train of thought. What did he tell you you needed to do?

A. Basically he wanted -- his reason for killing Andrew Dotson was that he was afraid he was going to tell on him for some upcoming charges and because he seen him shoot somebody in the ass at White Castle.

MS. MENASHE: Objection, Your Honor.

THE COURT: Overruled.

Q. (By Ms. Prichard) Did you have any specifics at that time as to who else, if anyone, was involved in that crime?

A. Yeah.

Q. And where did that information come from?

A. From James Conway.

Q. And who did he tell you was involved in the crime?

A. Shawn Nightingale, Jamie Horton, Mike Arthurs.

Q. And what did he tell you, if anything, about their involvement?

A. He said -- he said he told -- he instructed Mike Arthurs and Shawn Nightingale to get rid of him first, to feed him a bunch of pills, take him down to West Virginia, dump him in the hills and leave him. And I

guess they attempted to do that. They took him down there, fed him a bunch of pills. They just said he would have died. He passed out.

MS. MENASHE: Objection as to what he said.

THE COURT: I'm going to sustain the objection. Make sure he's relating to what Conway told him and not anybody else.

MS. PRICHARD: Sure.

Q. (By Ms. Prichard) Of all of that information you said came from Conway?

A. Correct.

Q. What else did Conway tell you about what he had asked Shawn and Mike to do?

A. Conway said he asked him to take him down in the hills, O.D. him, find a place down in West Virginia and leave him. He said later on they brought him back. They couldn't do it. Later on they brought him back and called him and he met up with them. Him and Jamie met up with them.

Q. Jamie who?

A. Horton.

Q. Then what did he tell you?

A. He said that they asked him where was he at. Jimmy asked Shawn and Mike where was he at. They said in the car. And he asked him was he dead. They said

no. So he told them to get him out of the car.

He told me at this time they stood on his neck and stood on his neck until he was dead.

Q. Did he at any later point tell you something different about what had happened?

A. Yeah.

Q. And we'll come back to that.

When did this conversation -- or was this a series of conversations -- occur?

A. It was a series of conversations. Just they took place over, you know, the duration that me and Conway was in the County together.

Q. And this happened at a time prior to you having an interview with my office?

A. Right.

Q. Did you relay that information to police?

A. Yeah.

Q. Do you remember approximately what date that would have been?

A. I'm not exactly sure. May have been April or May.

Q. And after you gave that information to police, you didn't have a deal at that time, right?

A. Correct.

Q. Did you agree to work with the Franklin County

Sheriff's Office to further the investigation?

A. Yes, ma'am.

Q. And what did you agree to do?

A. Whatever was necessary. I wore body wires, phone taps, met with guys, picked up guns, money, dope.

Q. Let me stop you for a moment. You said you were asked by Mr. Conway to kill Mike Arthurs.

A. Correct.

Q. Why were you supposed to kill Mike Arthurs?

MS. MENASHE: Objection, Your Honor.

THE COURT: Overruled.

Q. Because --

THE COURT: Just one second though.

MS. PRICHARD: Should I lead him?

THE COURT: Ask him to relate not just in general, but I want to know where it came from.

Q. (By Ms. Prichard) What if anything did the defendant -- first of all, did the defendant ask you to do that?

A. Yeah. James Conway asked me to kill Mike Arthurs because he was afraid he was going to tell on him for the robbery in Chillicothe.

MS. MENASHE: Objection, Your Honor.

THE COURT: Overruled.

A. He was afraid that Mike Arthurs was already

talking because Mike Arthurs had been arrested. So --

Q. (By Ms. Prichard) Was he concerned that Mike Arthurs was going to implicate him in this case?

A. Yeah, he said that. He said he was afraid he was going to tell on him about the robbery in Chillicothe and the thing with Andrew.

Q. Did you agree to do anything for him?

A. Yeah.

Q. What did he ask you to do?

A. Asked me to kill people for him.

MS. MENASHE: Objection, Your Honor.

THE COURT: Overruled.

Q. (By Ms. Prichard) Asked you to kill Mike Arthurs for him?

A. Yes.

Q. Let's state specific.

A. Apologize.

Q. And you told him you would do it?

A. Correct.

Q. And what did you do with that information? Did you go out and do it?

A. No. I got contact with your office and met with you and detectives at Franklin County Sheriff's Office.

Q. So you gave all this information to the police and that's when you started cooperating; would that be

accurate?

A. Correct.

Q. When you were cooperating with the police, you were asked to wear a wire, correct?

MR. LOWE: Objection, Your Honor. Leading.

THE COURT: Let's not lead the witness.

Q. (By Ms. Prichard) What did the police have you do on a daily basis? And just be specific, just to what they were doing with you.

A. After I -- originally after I got in contact with your office and the Franklin County Sheriff's Office, I met the detectives and we had started working every day together. I was wearing body wires to meetings, using phone taps, record phone conversations, basically doing whatever detectives asking me to do to gather this information.

Q. You were to gather information to --

A. Andrew Dotson case about him being killed and some unrelated other cases.

Q. How is it that you would be out of jail to be working with the sheriff's office? What was arranged?

A. I was placed in the Franklin County Work House under the perception that it was Work Release. Detectives came and got me every day. And I worked with the detectives from 2:00 -- I believe it was 2:00 to

midnight every day.

And basically what it was, I was in the hole. They come get me out of the hole. I go to work with them. I go back to the hole.

Q. What do you mean by "the hole"?

A. Isolation, segregation.

Q. So you were taken out of the tank with Mr. Conway?

A. Correct.

Q. And did you tell him where you were going?

A. Yeah.

Q. Where did you tell him?

A. Told him I was going to Work Release.

Q. So he didn't know you were cooperating, correct?

A. Correct.

Q. At that time, did you tell him what on Work Release you were going to do anything for him?

A. Yeah. I was supposed to be taking care of the people, taking care of Mike Arthurs.

Q. That's what you relayed to him you would be doing?

A. Correct.

Q. And you said the police would pick you up?

MS. MENASHE: Objection, Your Honor. Leading.

THE COURT: Let's not lead the witness. Let's let him testify.

MS. PRICHARD: I'm trying to avoid other matters, Your Honor.

THE COURT: I know.

Q. (By Ms. Prichard) What would happen at 2:00 o'clock?

A. Two detectives from homicide would come pick me up and we would gather information as far as what really happened to Andrew Dotson, Conway's involvement in it and why he really wanted me to kill Mike Arthurs.

Q. And would they pat you down when they came in contact with you?

A. Yeah. I mean, I was strip stretched before I was wired. Before I met anybody, I was searched. After I was done meeting people, I was searched.

Q. Were you monitored at all times?

A. Yeah.

Q. And you were wired in some fashion at all times?

A. Correct. I was under constant surveillance the whole time.

Q. And would the detectives give you things that you should do?

A. As far as --

Q. Would the detectives tell you, I guess, what the

task was for the day or would you tell them what was necessary?

A. Basically what it was, I would tell them what Conway wanted me to do. He would call me three-way from the jail or from his lawyer's phone he would call me. He would tell me whatever it was he wanted me to do, find out how things were going.

Q. And is this on a cell phone you were using that had some sort of recording device?

A. Yes. It was furnished to me by detectives for this case.

Q. Was the quality of those tapes and the sound always very good?

A. No.

MS. MENASHE: Objection, Your Honor. Leading again. I'm sorry.

THE COURT: Overruled.

Q. (By Ms. Prichard) How were you supposed to accomplish this hit on Mike Arthurs once you got out? Did the defendant give you instructions?

A. Yeah. He gave me instructions and told me I was supposed to get with Jamie Horton and Shawn Nightingale and they were supposed to take me down there and show me where Mike Arthurs lived at, show me who he was. I was supposed to get next to Mike Arthurs and I was supposed

to kill him.

Q. And did you, in fact, end up taking any trips with Jamie Horton?

MS. MENASHE: Objection, Your Honor, as to relevance.

THE COURT: Overruled.

A. Yeah. We went to Chillicothe. I went down there twice, two or three times. Once with Jamie Horton and once with Shawn.

Q. (By Ms. Prichard) Did you go looking for Mike Arthurs down in Chillicothe?

A. Yeah. They took me by his house. I believe it was Yellowbud, Yellowbud Road, something like that.

Q. And did you ever get close to Mike Arthurs and actually kill him?

A. No.

Q. Did you work with detectives to make it look like you killed Mike Arthurs?

A. Yeah. Detectives went and dug a hole and had Mike Arthurs lay in the hole like he was killed, took his clothes off.

MS. MENASHE: Objection, Your Honor. There's no foundation that he was there.

THE COURT: Overruled.

A. And they took Polaroids of his body being in the

hole.

And later on I went to see James Conway on a visit with Jamie Horton and showed him the pictures of Mike Arthurs. I said, "Is this what you wanted?" And he said "Yeah."

Q. (By Ms. Prichard) You visited him where with Jamie Horton?

A. In the County.

Q. And do you recall approximately when this would have been?

A. I believe it was -- I believe it was April, maybe May.

Q. Let me show you State's Exhibit G-3. Do you recognize that?

A. Yeah. That's the picture of Mike Arthurs supposedly killed in the hole.

Q. And is that the picture you took to the jail with you?

A. Yeah.

Q. How is it that you showed that to the defendant?

A. I just held it up to the window and showed it to him.

Q. And Jamie Horton was there with you?

A. Correct.

Q. Were you under surveillance by police at the time

you did that?

A. Yeah. I had a body wire on, tape recorder. SIU, which is special investigations unit, they were surveilling me, monitoring the visit.

Q. And did you just flagrantly put that picture up on top freely --

MS. MENASHE: Objection, Your Honor.

THE COURT: Overruled.

Q. (By Ms. Prichard) -- or were you talking in code?

A. No. It was in code. Actually, I told him I had some pictures of the kids to show him and I showed him the pictures.

Q. And what was his reaction, if any?

A. He just smiled at first. And then, like I said, I asked him if that's what he wanted. And he said yeah.

Q. And did you discuss with him the facts of the Andrew Dotson homicide at that particular visit?

A. Yeah. I told him -- I told him I found out he had lied to me about how Andrew was killed and, you know, I told him I found out that he was -- that James Conway had hit him twice in the chest with a pickax. And I asked him, I asked him why. And he said, "Just to be sure that Andrew was dead."

Q. Did you confront him for lying to you previously?

A. Yeah.

Q. Were you being paid any actual money by the defendant for doing this for him?

A. Yeah. I was paid. They had brought five thousand dollars down, put it on my books.

Q. What do you mean by your books?

A. When you're in jail, your books is kind of like your wallet. You don't actually have the money on your person. It's like in an account. It's called your books, but it's actually your account. They put the money in your account. You want to order things, go to commissaries, spend your money, you have to do it from your account.

Q. So this is something that the jail takes charge of and keeps track of your money coming in and out?

A. Yeah. Whenever anybody brings money down and drops it off in your account, you get a receipt and the person that leaves it gets a receipt.

Q. And did you actually verify there was money on your books?

A. Yeah. I got a receipt.

Q. Did it come in one payment? Two? Five?

A. Two payments. One was three thousand; one was two thousand.

Q. And did the defendant tell you who was bringing

that money down?

A. Yeah, Jamie Horton.

Q. Did you know Jamie Horton before all of this?

A. I never knew none of them before all of this.

Q. Have you ever heard of Andrew Dotson before this?

A. No.

Q. Know anyone in his family?

A. No.

Q. How is it that when you got out you got hooked up with Jamie Horton?

A. Jimmy Conway set the meetings up while he was in jail, called him and told him that I would be getting in contact with him. I was using an alias, Tony. They know me as Tony. He told me if Tony calls me --

MS. MENASHE: Objection, Your Honor, as to what he told Jamie Horton.

THE COURT: Overruled.

A. Actually, I was standing beside him on the phone. He told Jamie Horton, if Tony calls you or comes to see you, give him whatever he wants, tell him whatever he needs to know.

He tells me I was to see Jamie Horton when I got out and to receive additional payment and guns to take care of Mike Arthurs.

Q. (By Ms. Prichard) And so when you got out on

Work Release, you met up with Jamie?

A. The first night I was out actually, I met up with him and got nine ounces of soft cocaine, powder cocaine and a pistol.

Q. And that was compensation to kill Mike Arthurs, correct?

MS. MENASHE: Objection, Your Honor.

THE COURT: Sustained.

Q. (By Ms. Prichard) Was that compensation related to this case?

A. Yes. That was part of the payment for supposedly killing Mike Arthurs.

Q. At some point did this surveillance and this working with police stop?

A. Yeah. Basically after I gathered up all the evidence that was needed, they made their arrest and that was it.

Q. And after that point in time when it was all finished, did you kind of give another summary of everything that had happened to the police?

A. Yeah.

Q. Do you know what date that was?

A. No, I'm not -- I'm not exactly sure on the dates.

Q. If I showed you a transcript, would it refresh your memory?

A. Yeah. May have been May -- April or May, something like that.

Q. Mark this as State's Exhibit N-1. This is May 26th. Do you recognize Exhibit N-1?

A. Yeah.

Q. What is that?

A. That's the this is a summary of basically everything that took place.

Q. And what was the date of that?

A. May 26, 2002.

Q. Would that have been a point where you concluded working with the sheriff's office?

A. I wasn't as far as working with them on gathering evidence of Andrew Dotson, as far as the actual surveillance and things like that. I still give a transcript tape and stuff like that.

Q. Do you remember the date of one of your -- the first taped interview with my office and your attorney and the sheriff's office?

A. No.

Q. If I showed you a transcript, would it refresh your memory?

A. Yes.

Q. Show you State's Exhibit N-2. Take a look at that and tell me if that refreshes your memory as to the

date of that interview was.

A. Yeah. This is the 25th of April.

Q. And your deal was -- the plea you entered into was what day?

A. The plea that I pled guilty to?

Q. The defendant's agreement, your plea date.

A. That was 6/11/2002.

Q. So after these two interviews.

A. Correct.

MS. MENASHE: Your Honor, I'm sorry. Could I see that document, please?

A. Which one?

MS. MENASHE: The one that you were just given, the April 25th. I'm sorry. Go ahead.

Q. (By Ms. Prichard) And prior to April 25th, you had been writing letters to relay information and talking to your attorney.

A. Correct.

Q. Why did you decide to come forward with this information from the defendant?

A. Actually it was a couple different reasons. It wasn't that I was, you know, thinking as far as saving my own butt on the case that I had. Because I was going to take my case to trial.

Thing about it is, I had done -- I done so much

wrong in my life and brought so much pain on other people that, you know, there is a point in your life you just get tired of causing so much pain.

And I pictured -- I pictured Andrew's mother when she was up there begging this guy to find out what happened to her son and he's laughing at her. So to me, it was senseless, you know. They killed this kid senselessly. Spent the whole day killing this kid.

MS. MENASHE: Objection, Your Honor.

THE COURT: Overruled.

A. To me it was just -- it was senseless.

MS. MENASHE: Objection, Your Honor, as to relevance.

THE COURT: I'll sustain the objection.

Go ahead and ask another question.

Q. (By Ms. Prichard) And what's the downside of you doing all of this, if there is one?

A. The downside is, I can't -- I can't even live a normal life, you know. I have been -- attempts have been made on my life. I have been shot at. My house has been broken into. My dogs was cut to pieces. I am a mark. They put fliers all over Columbus.

MS. MENASHE: Objection.

THE COURT: Sustained.

That's all right, Mr. Trent.

MS. PRICHARD: Can I lead right through this, Your Honor?

THE COURT: Go ahead and try.

Q. (By Ms. Prichard) Does your cooperation threaten your safety? Yes or no.

A. Every day, yeah.

MS. PRICHARD: I have nothing further.

THE COURT: All right. You may cross.

MS. MENASHE: Your Honor, make a motion for 16(B)(1)(g).

MS. PRICHARD: Actually, I believe it's been previously provided.

MS. MENASHE: May we approach?

- - -

Thereupon, Court and counsel confer at the bench out of the hearing of the jury as follows:

- - -

MS. MENASHE: Prosecutor has just handed the witness what's marked State's Exhibit N-2. We've never received this document dated April 25, 2002. Checked with co-counsel. Went through all my files. My co-counsel and I never received this.

MS. PRICHARD: I disagree. And I have a full box of what everybody signed they received. This has been introduced at every trial. So I have no reason

to believe it has not been provided. I would be happy to go back in my office and --

THE COURT: That doesn't make any difference.

MS. MENASHE: Actually, there were statements of my client in here that were testified to. So I believe they were required.

MR. YOUNG: We would like an opportunity to take a look at it.

THE COURT: I will give you an opportunity to look at it.

MS. PRICHARD: Are you writing on it?

MS. MENASHE: No. That writing was already there.

MS. PRICHARD: I should make a clean copy for the record. I marked the wrong one.

- - -

Thereupon, the following proceedings were had in the hearing of the jury as follows:

- - -

THE COURT: Let's go ahead and take -- we will take an early afternoon recess at this point in time. Go ahead and take twenty minutes.

Be back up here at five of.

Remember the admonition. Don't discuss the

case amongst yourselves or anybody else.

- - -

Thereupon, a recess was taken.

- - -

Thereupon, the jury resumed their places in the jury box.

- - -

THE COURT: You may inquiry.

- - -

CROSS-EXAMINATION

BY MS. MENASHE:

Q. Ronny, we've never met before, fair to say?

A. Correct.

Q. Hard to know where to start. But I guess I'll start with where you start your criminal record. There is the aggravated burglary, the RSP, correct?

A. Correct.

Q. The escape, the GSI. And those were -- victim in that case was under thirteen?

A. No.

MS. Prichard: Objection.

THE COURT: Just one second. Overruled.

Q. (By Ms. Menashe) That letter that you were shown, State's Exhibit F-2, Tonya Coons letter --

MS. MENASHE: If I may approach.

Q. (By Ms. Menashe) You stated that Tonya Coons was the alleged victim in that GSI case; is that correct?

A. No, her daughter Britnee was.

Q. How old was Britnee?

A. Thirteen.

Q. So she was thirteen. Not under thirteen, but thirteen.

A. Correct.

Q. And that's why the GSI was F-3?

A. I'm assuming. I don't know.

Q. And that's a gross sexual imposition charge.

A. Yes, ma'am.

Q. And then there was a RSP after the GSI, right?

A. Correct.

Q. And that's something that -- one more thing about the RSP. You just picked that up May 9, 2003?

A. That's correct.

Q. Which would be how many months ago? Is that just four months ago? After all your work is done in this case?

A. That's correct.

Q. You're tired of causing -- let me see what that was. If I could see my notes for a moment -- tired of causing so much pain in people's lives that you love.

A. Correct.

Q. May 9, 2003, though, you picked up a RSP and you pled to a lesser charge.

A. That's correct.

Q. That's sort of the theme of those cases, isn't it, that you always plead to a lesser charge?

A. Some of them, yeah.

Q. Well, was there any case that you pled to the indictment?

A. Well, when I first went to prison, yeah.

Q. You didn't plead to the indictment in that case?

A. I pled to three of them.

Q. Three of them. And there was four separate cases. You pled to three counts; isn't that true?

A. Yeah.

Q. Four separate cases; you pled to three counts.

A. Correct.

Q. So out of the one, two, three, four, five felony cases that you picked up, you've never pled to the indictment, correct?

A. That's correct.

Q. And you've never gone to trial?

A. Correct.

Q. And you mentioned on your cross that you're tired of causing so much pain and you want to get your life straightened out, right?

A. That's correct.

Q. Do you remember applying for shock probation in your aggravated burglary case?

A. No. That's better than ten years ago.

Q. Right. Do you remember when you wrote a letter to that judge?

A. No.

Q. Do you ever remember saying anything like, give me a second chance, you'll never hear my name in this courtroom again?

A. I may have said that. I'm not sure.

Q. What about when you wrote to Judge O'Neill two months ago? Do you remember that letter?

A. Yeah.

Q. Let's talk about that if we could. Just write to the judge?

A. Yeah.

Q. When you wrote to the judge, you essentially wrote to her because you thought you shouldn't have been in jail; is that correct?

A. That's correct.

Q. And you wrote to Judge O'Neill. You remember that?

A. Yeah.

Q. And then in the GSI case you wrote to the judge

in that case as well, correct?

A. I may have.

Q. Fair to say you write to the judge in every case?

A. If I feel the need, yeah.

Q. And because you write them letters saying essentially that you shouldn't be in jail?

A. No, that's not it.

Q. Okay. When you wrote to Deborah O'Neill, isn't it true that you told her that you were wrongly incarcerated?

A. I wrote to her and explained to her that I got a vehicle from a woman that let me use the vehicle. When I returned it, she wasn't there. So I called the dispatch myself to report the vehicle and that's when I got arrested.

Q. Actually, I believe that's the first letter you wrote to Judge O'Neill. That would be June 30, 2003. Does that sounds about right?

A. Perhaps, yeah.

Q. Because there was a second letter that you wrote to Judge O'Neill on July 31, 2003; is that correct?

A. Yeah.

Q. And do you remember writing in that letter that you were incarcerated because of a parole holder and you failed to see the relevance of a parole holder?

A. That's correct.

Q. And you also told her that you were an important witness in a homicide case?

A. That's correct.

Q. And this was after she had sentenced you, correct?

A. No.

Q. July 30, 2003 you hadn't been sentenced yet?

A. Yeah. Okay. Yeah. I'm sorry, yeah, I was.

Q. You're sentenced?

A. Yes.

Q. In fact, you were sentenced on July 22nd?

A. That's correct.

Q. Week later you write the judge, say, "Judge, you made a mistake. The parole authorities got a holder on me."

A. Correct.

Q. Said, "You failed to see the relevance of that."

A. That's correct.

Q. In fact, you tell her you're an important witness in a homicide case. Do you remember that?

A. Yeah.

Q. In fact, you then go so far as to say you're friends with police officers, right?

A. There was a couple police officers I'm friends

with, yeah.

Q. And if I could talk about that for just a second. Police officer -- who are you friends with at the police station, Franklin County Sheriff's Office?

A. I believe it was CPD, Rick Hannah and Officer Brooks.

Q. Officer Brooks and Rick Hannah?

A. Yeah.

Q. How are you friends with them?

A. They stopped some guys, like eight cars run off the road and killed someone one night.

Q. So you're friends with them?

A. Yeah.

Q. And you wrote to Judge O'Neill about that?

A. If that's what it says, yeah.

Q. And do you remember Judge O'Neill never wrote you back?

A. Correct.

Q. Do you remember ever having -- is it Judge Johnson? Do you ever remember writing Judge Johnson a letter?

A. No.

Q. Well, do you ever remember writing Sheryl Prichard a letter?

A. Yeah.

Q. More than one letter?
A. Yeah.
Q. When you open your letters to her, what is it, is it my young lady?
MS. Prichard: Objection, Your Honor. Relevance.
THE COURT: Overruled.
Q. (By Ms. Menashe) "Hello young lady", is that how you address Ms. Prichard?
A. Yeah.
Q. That's right?
A. Correct.
Q. You open your letters with that?
A. That's correct.
Q. You're friends with Sheryl now, Ms. Prichard?
A. I wouldn't say friends. It's just respectful way to open a letter.
Q. Hello young lady?
A. Yeah.
Q. And you sign off, "hope to see you soon"?
A. That's correct.
Q. There was a bunch of talk about consideration that you've gotten in this case. And it was mentioned the parole authority and that the State was going to recommend that your parole not be violated for your GSI

case, correct?

A. That's correct.

Q. And the prosecutor asked you, to your knowledge they did make that recommendation?

A. Correct.

Q. Fair to say that they testified at your parole hearing?

A. No, they didn't.

Q. No prosecutor testified at your parole hearing?

A. No.

Q. They wrote a letter, correct?

A. I'm not exactly sure how they did it.

Q. You just know they did?

A. Correct.

Q. You've never been shown a letter that they wrote?

A. No. I don't think so.

Q. And your parole wasn't violated, it was just extended?

A. Correct.

Q. And then since you got it extended you picked up that RSP case?

A. Correct.

Q. On the GSI five years and eighteen months, right, were the punishments on those?

A. Right.

Q. Not to mention every time you picked up a new felony while you're on parole, you also can pick up a parole violation?

A. You can, yeah.

Q. Right, you can?

A. That's correct.

Q. And those are two separate charges, correct?

A. What do you mean?

Q. Well, you've got your felony charges?

A. Right.

Q. And you got your parole violations --

A. Right.

Q. -- correct.

A. Right.

Q. And you got thirteen years hanging over your head on your parole?

A. Correct.

Q. And essentially your parole was just extended as opposed to being revoked on the GSI case?

A. Correct.

Q. And the RSP case, you haven't had your parole hearing on that yet?

A. No.

Q. When do you do that?

A. Next month.

Q. And forgive me if I skip around but when the prosecutor showed you State's Exhibit F-2, that letter --

MS. MENASHE: If I may approach?

Q. (By Ms. Menashe) You said that it's a letter from your alleged victim.

A. That's correct.

Q. But you pled guilty to an offense that came out of this case?

A. That's correct.

Q. So it's not really an alleged victim it, it is the victim.

A. No. Because later she gave my parole officer a tape admitting she set me up.

Q. Ms. Coons did?

A. Ms. Coons's sister did, yeah.

Q. Well, let's be clear about that. Your testimony is that, Tonya Coons's sister did that?

A. Yeah.

Q. Well, this letter isn't from Tonya Coons's sister?

A. I understand that.

Q. It's from Tonya Coons.

A. That's correct.

Q. The mother of the child you allegedly --

A. Yes.

Q. And you pled guilty to something, though. You understand your right to go to trial?

A. Right.

Q. But you didn't exercise that right.

A. Right.

Q. You took a deal.

A. Right.

Q. Pretty sweet deal.

A. If you say so.

Q. Well, it's a question.

A. Well, the prosecutor in the case offered me eighteen months for the case and I refused it and I ended up doing thirteen months anyway. And I mean, my life has been hell since then. So, no, I don't think it's a sweet deal at all.

Q. Let's cover that. Your life has been hell since then. You have been out.

A. That's correct.

Q. You're here in plain clothes.

A. That's correct.

Q. You're in protective custody.

A. Correct.

Q. You're friends with police officers.

A. That's correct.

Q. You write letters to judges.
A. That's correct.
Q. You write the prosecutor, "my young lady," right?
A. No, "hello young lady."
Q. Hello young lady. And you're able to walk the streets.
A. That's correct.
Q. Not living in prison as a sexual offender?
A. No.
Q. And, Mr. Trent, you've testified here that we don't know if it's a really sweet deal or not, you have been in prison for nine years on aggravated burglary.
A. That's correct.
Q. Based on your experiences in prison, you know what it's like to be tagged a sex offender in prison.
A. That's correct.
Q. Not a good life?
A. No.
Q. So your life now is hell out on the streets living at your dad's house, right?
A. No.
Q. Well, you are at CRC right now in protective custody?
A. Yes.
MS. Prichard: Objection, as to his

location, please.

THE COURT: Yes. Sustained.

Q. (By Ms. Menashe) You're in the institution in plain custody.

A. Yes.

Q. Yet you get to come here in plain clothes.

A. Right.

Q. And on the most recent RSP case, which would be the fifth felony on your record, you got Work Release, correct?

A. That's correct.

Q. And to get Work Release presumes you have a job.

A. That's correct.

Q. What's your job?

A. I don't have a job right now. I'm incarcerated.

Q. You don't have a job. What about when you're not incarcerated?

A. I can work for my father.

Q. When you applied for this Work Release that's the address that you wrote as your work address, isn't it, as your home address?

A. Correct.

Q. Danny Trent, father?

A. Correct.

Q. So your work address is your home address?

A. Correct.

Q. Was also just briefly actually -- I'm sorry. There is so much, I don't want to miss anything.

MS. MENASHE: If I can approach with the F-2.

THE COURT: All right.

Q. (By Ms. Menashe) This letter that the prosecutor showed you that says that the -- you said the alleged victim had no problem with it, fair to say that actually on the fourth line from the bottom, she says "I do not join in the recommendation?"

A. It says, "I do not join in the recommendation regarding parole revocation, but I'm satisfied if the parole board or its hearing officer review all the facts, including the new conviction as well and make an independent decision."

Q. Say she joins in the recommendation is inaccurate -- because the letter states she does not join, correct?

MS. Prichard: Objection.

THE COURT: Overruled.

A. I mean, she says she will be satisfied whatever decision they come to. So obviously she must agree with it.

Q. (By Ms. Menashe) It says she doesn't join.

A. Correct.

Q. I believe --

MS. MENASHE: Was the agreement marked?

If I may approach.

Q. (By Ms. Menashe) Showing you what's been marked as State's Exhibit F-1. Mr. Trent, it's fair to say in that agreement -- and you can take a minute to review it if you want -- but there is nowhere in that agreement does it say that if you pick up any new felony offenses that agreement is void, correct?

A. That's correct.

Q. According to that agreement you can continue to commit crimes, correct?

A. Correct.

Q. In fact, you did when you picked up the RSP case.

A. No.

Q. I'm sorry. You didn't commit a crime when you pled guilty in the RSP case?

A. No. I pled guilty in the RSP case because in all -- actually I was in a van that was reported stolen, but I reported it stolen, but I didn't commit no crime.

Q. You know the law better than anyone. You have a right to a jury trial.

A. Correct.

Q. Presumed innocent.

A. Correct.

Q. You know this courtroom better than anybody. How many times have you testified in these cases?

MS. Prichard: Objection.

THE COURT: Let's not make comments. Just go ahead and ask questions.

Q. (By Ms. Menashe) How many times have you testified in these cases?

A. In his whole crew's case?

Q. Not in his whole crew. Did you testify in Jamie Horton's case?

A. Yes, that's part of the crew.

Q. Did you test in Shawn Nightingale?

A. Yes, Andrew Dotson.

Q. And you said you testified in the RSP case that you weren't guilty of.

A. No. I'm saying the van was stolen. I was in a stolen van. Regardless of whether I stole it or knew it was stolen, I took responsibility for it.

Q. And that's a crime.

A. So be it, yeah.

Q. I'm sorry.

A. Yeah.

Q. What about speeding tickets?

A. What about them?

MS. Prichard: Objection.

Q. (By Ms. Menashe) Got any consideration for those?

THE COURT: Sustained.

Q. (By Ms. Menashe) Mr. Trent, it was just briefly alluded to that you wrote a false affidavit.

A. Correct.

Q. And that in that passing mention it was asked of you when that case was, and you testified 1991, correct?

A. I believe that's when it happened, yeah.

Q. I want to talk about that false affidavit. Fair to say that you wrote two false affidavits in that case? You wrote one in '92 and one in the year 2000?

A. I don't know. If you have them, yeah, I guess I did.

MS. MENASHE: May I approach?

THE COURT: Yes.

MS. MENASHE: I'm not sure where we are. Defendant's Exhibit --

Approach the witness with what's previously marked as Defendant Exhibit 10.

Q. (By Ms. Menashe) Mr. Trent, do you recognize that?

A. Yeah.

Q. And what is that?

A. It's an affidavit.

Q. Is it a fair and accurate copy of the affidavit that you signed under oath in the year 2000?

A. Yeah.

Q. Okay. And do you remember signing another affidavit similar to that --

MS. MENASHE: If I may, Your Honor.

Q. (By Ms. Menashe) -- in '92?

A. I don't remember it. No, but I may have.

Q. And this was in connection to a case State v. Terry Mayle; is that correct?

A. That's correct.

Q. And in that affidavit, you said the defendant, Terry Mayle, is innocent. Do you remember that?

A. Yeah.

Q. You said that he's being incarcerated for a shooting --

MS. Prichard: Objection to the facts.

THE COURT: Overruled.

Q. (By Ms. Menashe) -- Being incarcerated for a shooting, which is a crime.

A. That's correct.

Q. And that he's innocent.

A. Correct.

Q. In fact, that since 1992, do you remember

writing, you have been trying to tell everyone that you are the actual shooter?

A. I wrote an affidavit stating that I did the shooting, yeah.

Q. And it says that you wrote that you've made many, many efforts. You contacted prosecuting attorneys. You even list Cynthia Taylor. Do you remember that woman --

A. Yeah.

Q. -- and the attorney general for the State of Ohio?

A. Correct.

Q. Trying to tell everyone that Terry Mayle is innocent, right?

A. That's correct.

Q. And you're the shooter?

A. That's correct.

Q. And you wrote this in 2000 and it was signed as an affidavit, which is a sworn statement.

A. It wasn't -- yeah. I just signed it in a lawyer's office. There wasn't nobody there but me and the lawyer.

Q. And you signed the same thing eight years prior?

A. If you say so, yeah.

Q. And just signed a statement saying that you're responsible for a felonious assault.

A. Yeah.

Q. Terry's doing eight to thirteen on that?

A. Sounds right.

Q. And, in fact, you talked to Terry recently, have you not --

A. Yeah.

Q. -- at the institution that you are at.

A. Have I talked to him this time you mean?

Q. Yes.

A. I seen him when I was going to medical, yeah.

Q. And he works under the warden?

A. I don't know where he works.

Q. And you approached him, fair to say?

A. No, I didn't approach him. He approached me.

Q. And you spoke with him?

A. Correct.

Q. Still doing time on that felonious assault?

A. Correct.

Q. And I believe -- and I know you've testified about the affidavit before. Fair to say that when you submitted the affidavit, that attorneys filed motions based on the affidavit, correct?

A. I don't know if they did or not.

Q. Well, wasn't that why you were approached by the attorney?

A. It was actually Terry's mom that approached me. But he said that was the purpose of the affidavit, yeah.

Q. Terry's mom didn't -- did she give you anything for this affidavit?

A. She gave me a -- what do you mean?

Q. Did she give you anything for this affidavit?

A. No.

Q. You just signed this on your own free will?

A. No. Terry gave me some money to sign it.

Q. You took money from Terry Mayle?

A. Yeah.

Q. And that was enough to get you to confess to a shooting?

A. That the -- yeah.

Q. How much money?

A. I don't recall exactly.

Q. Let's try if you could.

A. I'm not sure. I think it was a couple thousand.

Q. And that sent you to an attorney's office once, right?

A. Correct.

Q. And then twice. Couple thousand?

A. That's not just -- that's not just what sent me, but, yeah.

Q. Okay. And certainly you knew these were, you

saw -- this says "affidavit" on the top.

A. Yeah.

Q. You said that your reason for coming forward was your rendition of what happened when Andrew's mother came to the jail, correct?

A. Correct.

Q. That was why you came forward at first. And fair to say when you came forward to authorities, you wrote like a witness statement. That's what they call it in the jail there.

A. What do you mean?

Q. Well, it's called, "statement of a witness" and it's like you send out a little note. Are you familiar with that?

A. No.

Q. Okay. Are you familiar with your letter that you wrote to Ms. Prichard on April 4, 2002?

A. Vaguely.

Q. First letter you wrote?

A. Vaguely, yeah.

Q. Okay.

MS. MENASHE: May I approach?

THE COURT: Yes.

Q. (By Ms. Menashe) Defendant's Exhibit 11. Mr. Trent, is that the letter, does that look like a copy of

the letter you sent Ms. Prichard?

A. Yeah.

Q. Fair and accurate copy?

A. Yeah.

Q. And without reading the contents of that letter, just want to ask you some questions. That letter -- and you can certainly have an opportunity to review it. Nowhere in that letter does it say the name Andrew Dotson, correct?

A. That was a different murder case.

Q. Okay. So, well, these are my questions. You said you came forward because of a visit from Andrew Dotson's mother.

A. Correct.

Q. So I want to ask you some questions about that. In that letter, yes or no, Andrew Dotson's name doesn't appear.

A. No.

Q. In that letter, yes or no, there's no mention of a pickax.

A. No.

Q. In that letter, yes or no, there is no mention of Galloway Road.

A. No.

Q. Or of Mike Arthurs.

A. No.

Q. Or of West Virginia.

A. No. This letter was originally your client's idea actually.

Q. Oh, okay. However, in that letter is not mentioned the visit from Andrew Dotson's mother.

A. Because she hadn't came down yet.

Q. Okay. So when you say you came forward because of Andrew Dotson's mother's visit, that's actually not true, you came forward before her visit?

A. No. I came forward and told them everything I knew because of the visit. When that letter was wrote, your client wanted me to get --

Q. I'm not asking you that, Mr. Trent.

A. That's the substance of the letter. You're asking me why I wrote it.

THE COURT: Just one second. Let's not going back and forth. There is going to be an opportunity for redirect. Go ahead.

Q. (By Ms. Menashe) I'm going to ask you about the visit from his mother which caused you stress.

MS. MENASHE: Your Honor, may I approach?

THE COURT: Yes.

Q. (By Ms. Menashe) Showing the witness what's previously been marked as Defendant's Exhibit 12. Mr.

Trent, does that look like this statement of a witness that you wrote regarding Ms. Dotson's visit to my client?

A. Yeah.

Q. In the upper left-hand corner of that document there is a date when the report was written; is that correct?

A. Correct.

Q. And the date in the corner is 5/18/02?

A. That's correct.

Q. And further question, there is a line after the words "date of occurrence" for you to fill out.

A. That's correct.

Q. That's empty.

A. Correct.

Q. On the bottom there is another line says "date of occurrence". That's empty.

A. Correct.

Q. 5/18/02 that's written in there by Zach Scott.

A. It may have been. I'm not sure.

MS. MENASHE: May I approach?

Q. (By Ms. Menashe) So even on your witness -- or your statement regarding the visit, you don't list the date?

A. No. The date that that was wrote, that's just a

summary thing basically. That was wrote -- I didn't know the date that Andrew's mom came to see James. He just asked me to write what I knew.

Q. Okay. You testified about that it was such a startling event, the Andrew Dotson's mother's visit, correct? That didn't cause you to write a statement of a witness that day?

A. No. I didn't know I had to.

Q. You didn't know you had to?

A. Right.

Q. You didn't want to. You didn't.

A. Excuse me?

Q. I'm sorry. You didn't write a statement of a witness that day, did you?

A. No.

Q. And would it surprise you to know that that visit was April 11th?

A. No, if that's what you say.

Q. And this statement is dated 5/18/02.

Another reason you said you came forward was the opportunity to get yourself straightened out.

A. Correct.

Q. You told the detectives that on May 26, 2002 --

A. Correct.

Q. -- you told them you were tired of living a life

behind bars.

A. Correct.

Q. Told them that twenty years behind bars, just tired of it.

A. Correct.

Q. And you were asked "Prison sucks, doesn't it?" Remember Zach Scott asking you that?

A. He may have, yeah.

Q. And, of course, that's accurate. You answered yes to that question.

A. I don't know if I did or not. If that's what he's saying.

Q. Well, does prison suck?

A. Yeah.

Q. And then -- I apologize. There's so many pieces of paper.

Page 13, May 26th. As far as why you were coming forward, you gave a statement to the police on May 26, 2002, right?

A. Correct.

Q. Do you remember telling them that you're tired of living your life behind bars; that you see this case as an opportunity to get yourself straightened out, you know? Remember that?

A. Correct.

Q. And then -- excuse my language, but just wonder if you remember saying this: "I'm fucking Jimmy Conway. But so what, you know. I'm getting myself straightened out. And whatever happens, you know, happen, I've already made that known." Remember saying that?

A. Yeah. Correct.

Q. "Whatever happens, you know, happen, you know," right?

A. That's correct.

Q. Didn't mention in that interview as you were concluding it -- and excuse my language -- you were fucking Jimmy Conway because he's guilty.

A. Excuse me?

Q. You didn't say that you were ruining Jimmy's life because he's guilty.

A. But he is.

Q. Well, you tell the detectives that, you know, you're fucking Jimmy Conway, so whatever. As long as you're getting yourself straightened out.

A. That was part of the conversation, the tail end of it actually.

Q. And I think on that same interview in the very last page Detective Scott says, you know, about if anyone has threatened you or made you in any way do this. And you said, "No, I'm doing this all for me."

A. I don't know if that's what it says. I think it may have said I'm doing it on my own.

MS. MENASHE: If I may approach.

Q. (By Ms. Menashe) Would it refresh your recollection to see a copy of your May 26, 2002 statement?

A. Yeah.

Q. Showing the witness what's previously marked as 13.

Mr. Trent, would you take a moment to review that paragraph, that highlighted portion and see if that refreshes your memory.

A. Actually, it says, "and I just want to get myself straightened out." And that's it.

Q. What about that highlighted portion?

A. That's what I just read. You mean at the top?

Q. No, I'm sorry, the highlighted portion.

A. I just read the highlighted portion.

Q. I'm sorry, the top highlighted portion. Does that refresh your memory?

A. Says "I'm doing it for me and my family."

Q. That would be your dad?

A. Yeah.

Q. There is no mention that you're doing it because of Andrew's family?

A. Yeah, there is in some of those transcripts somewhere, I'm sure.

Q. You're sure of that? Some transcript?

A. Yeah.

Q. Payment of services that you've testified about, the five thousand dollars, right --

A. Right.

Q. -- it came in two different increments; is that fair to say?

A. Right.

Q. First three thousand dollars, isn't it true, that Jamie Horton didn't put the three thousand dollars on your book?

A. Yeah, he did. I have a receipt.

Q. Actually, isn't it true that Jeff Conway put that money on your book?

A. The receipt says Jamie Horton.

Q. So your testimony is the three thousand and two thousand is from Jamie Horton?

A. I'm fairly certain, yeah.

Q. Isn't it true that actually the first lump sum money was money that you had the individual get from your brother because you didn't trust your brother with your money?

A. No.

Q. Don't remember that?
A. Yeah. I remember that's not what happened.
Q. What's your brother's name?
A. James Trent.
Q. And that money, the first money was placed on your books March 15th?
A. If you say so.
Q. Well, you had the receipt.
A. I'm not exactly sure of the date.
Q. And you wrote a letter to the prosecutor on April 4th. In fact, you testified that you were told to use, was it Jamie Horton, as a contact person when you got out?
A. Yeah.
Q. And do you remember back then that your brother was moving into a new place?
A. Yep.
Q. Needed a washer, dryer?
A. Yeah.
Q. And isn't it true that Jimmy Conway told you to call Jamie Horton so that your brother could get a washer, dryer?
A. No. He had it delivered while we were both still in jail.
Q. What day was that?

A. I don't remember the exact day.

Q. So your testimony is that that happened before --

A. Before I got out.

Q. -- before you got out.

A. Yeah.

Q. Well, no. Did that happen -- so that would have been what date? What day did you get out? May 16th?

A. I'm not sure.

Q. And that's when he gave you the phone number for Jamie?

A. No. He gave me the phone number of Jamie to get money and gun to kill Mike Arthurs.

Q. Certainly when you get out, you testify, you got guns and money and all that stuff, Jimmy Conway is in jail.

A. Right.

Q. You mentioned on your direct that Jimmy called Jamie and said, hey, there is this guy Tony getting out. When he gets out, make sure you take care of him.

A. He never said I was getting out, just that I would be seeing him.

Q. You would be to see him?

A. Be seeing him or calling him.

Q. Your testimony is Jimmy Conway essentially put you in contact with Jamie Horton?

A. Correct.

Q. Fair to say, though, you made your first contact with Jamie Horton May 16, 2003?

A. I don't remember the date.

Q. The first day you got out?

A. Yeah.

Q. Fair to say when you talked to him on that very first day, on that very first conversation, you say, "hey, it's Tony" and he doesn't know who Tony is?

A. Who doesn't?

Q. Jamie.

A. Yeah, he does.

Q. And you say it's J's cousin?

A. Right.

Q. And Jamie says --

MS. Prichard: Objection. Hearsay.

THE COURT: Overruled.

Q. (By Ms. Menashe) And Jamie says, he didn't know that. Do you remember that?

A. No. I don't remember that.

Q. It's in there.

And the Mike Arthurs subject, when you were in jail with Jimmy, you and Jimmy just used to workout all the time, right?

A. I don't know if we did or not.

Q. You don't know a guy named Quinn, black guy?
A. I may know him if I see him.
Q. And you said that there is all this time to essentially talk privately.
A. Yeah.
Q. Fair to say that when you're in a cell, you can hear what's going on in the cell next to you?
A. If they are loud enough, yeah.
Q. Those cells aren't private, correct? I mean, they are private but they are not soundproof, correct?
A. No, they are not soundproof.
Q. And, in fact, isn't it true during lockdown people talk between each other when their cells are next to each other?
A. Yeah.
Q. And these private conversations that you're saying took place in your unit were either in a cell or at this big table?
A. Sometimes, yeah.
Q. And no one else would have overheard? Did anyone else to your knowledge overhear Jimmy confessing all these things to you?
A. Not that I know of.
Q. And your cell wasn't next to Jimmy?
A. Yeah. We celled right beside each other.

Q. Who was on the other side?
A. On the other side of me?
Q. Yes.
A. I'm not exactly -- Shorty, little white guy.
Q. What's his real name?
A. I don't have a clue.
Q. And you guys would just sit at the table and talk?
A. We sit at the table, in our cell, wherever.
Q. And you wouldn't describe Jimmy Conway as a talkative guy, would you?
A. If he trusts you, yeah.
Q. And your testimony is he trusted you because you're like a -- what level cousin does that make you? Third? Fourth? Fifth removed?
A. I don't have a clue.
Q. Never even met him before then?
A. No.
Q. Fair to say that Jimmy Conway stayed in the cell and kept to himself?
A. No.
Q. He didn't?
A. (Witness nods head in a negative response.)
Q. Out socializing with everybody?
A. With me mostly.

Q. And was there any other inmates he talked to other than you?

A. I'm sure there was.

Q. Well, can you think of any of them?

A. Not by name, no.

Q. In your testimony on direct you said that when you were in jail with Jimmy he gave you instructions on how you were supposed to get with Jamie and kill Mike Arthurs, right?

A. Correct.

Q. Do you remember -- I'm sorry, do you remember testifying in the Jamie Horton trial?

A. Yeah.

Q. And during that trial, you said, "At no time while in jail together did he ever tell you that he wanted Mike Arthurs killed." Did you testify to that?

A. That who told me that?

Q. Is that what your testimony was?

A. I'm asking you, did I say who.

Q. Jimmy.

A. No, I don't remember if I testified to that or not.

Q. Would it refresh your recollection to show your testimony from the Horton trial?

A. Yes.

Q. If you could read that highlighted portion of it just to yourself.

Okay. Does that refresh your memory as to your testimony on August 9th?

A. Yeah.

Q. And that testimony -- you got in the box just like that and raised your hand?

A. Correct.

Q. Swore to tell the whole truth and nothing but the truth so help you God.

A. Correct.

Q. And on that day which was six months ago or so, the question was posed to you, did Jimmy Conway order you to kill Mike Arthurs? Do you remember that --

A. Yeah.

Q. -- now that you've an opportunity to review the transcript.

A. Correct.

Q. And you said no.

A. Correct.

Q. Didn't tell you that when you guys were in jail together.

A. That's what it says, yeah.

Q. That's what it says. Your testimony here today is different from that?

A. Correct.

Q. The jail visit, when you claim that you walked up with Jamie Horton and you throw this picture on the window of the visiting booth, right, that was on May 23rd, correct?

A. It may have been.

Q. You don't remember the date then?

A. Correct.

Q. Do you remember going with Jamie though?

A. Yeah.

Q. Fair to say that the quality of that tape is particularly poor?

A. I don't know. I haven't seen it -- seen or heard the tape.

Q. You haven't. I thought you heard all the tapes in this case.

A. I've read over transcripts of the case.

Q. Oh, okay. So you were shown the transcripts of the tapes, correct?

A. Correct.

Q. And fair to say that you were asked to fill in the blanks?

A. To the best I could, yes.

Q. You filled in the blanks without listening to the tapes?

A. Some of them, yeah, if I could remember.
Q. This is based on your memory?
A. Yeah.
Q. When did you fill in the blanks on the May 23rd?
A. Which date was that?
Q. The one where you went to the jail.
A. I believe it was the next day or the day after.
Q. And your testimony on direct was that after you say to him "I got some pictures of your kids" and then you show him the picture --
A. Showed him two pictures.
Q. Showed him two pictures?
A. Yeah.
Q. And the one picture of Mike Arthurs in particular, your testimony is that he smiled?
A. Correct.
Q. And of course, a smile doesn't show up on a transcript.
A. No.
Q. Correct. And fair to say that after you say that -- because we can't see you show it. But you say you got some pictures of the kids, after that he asked you to call Mike. Do you remember that?
A. No.
Q. Okay. And do you remember saying, "I can't call

him." Do you remember that?

A. No.

Q. Would it refresh your memory if you were able to review the transcript?

A. Yeah.

MS. MENASHE: May I approach?

THE COURT: All right.

Q. (By Ms. Menashe) Showing you page four of May 23rd, if you can review that highlighted portion, please.

Did you have a chance to review it?

A. All right.

Q. Okay. And fair to say now that you have had a chance to review that you say "I don't know. I can't call him, man."

A. No. He's not talking to me. He's talking to Jamie.

Q. I'm sorry.

A. He's talking to Jamie.

Q. Oh, he's talking to Jamie there.

A. Yeah.

Q. So, well, you're there during the conversation, I guess.

A. Yeah.

Q. So he's asking Jamie, then, can you call Mike.

A. I don't know who he was asking me to call.

Q. Well, what about later on the interview, do you remember he says, but I thought he knows for himself -- on page 7 -- and do you remember saying, "Who are you talking about dude? Are you lying?" Do you remember that?

A. Right.

Q. He's talking about Mike, right?

A. I don't know. Oh, okay. Because I showed him the picture again. He says, oh, okay.

Q. Now you showed him the picture again?

A. Yeah.

Q. When did -- after what line did you show him the picture again?

A. He kept -- he was telling Jamie to get a hold of Mike. And Jamie was telling him "I can't", "I can't."

Q. So you're testimony was on direct examination, Mr. Trent, that you said, "I got some picture ss of your kid."

A. Right.

Q. You show him the picture.

A. I showed him two pictures. He thought they were both the same.

Q. And your testimony was he had a big smile on his face, right?

A. Right.

Q. But later he's saying, what up with Mike? You go, "Dude, are you blind?"

A. Right.

Q. But you testified he smiled.

A. Right.

Q. In the Horton trial -- well, I believe you were asked, I believe you were asked by Ms. Prichard about what Jimmy told you what happened out there in that cornfield, right?

A. Yeah.

Q. And there was a thing about Mike stepping on his throat?

A. Correct.

Q. Right. And your testimony is that Jimmy told you that, right?

A. Excuse me?

Q. Your testimony is that Jimmy told you that Mike was stepping on his throat.

A. Originally he told me he stepped on his throat.

Q. He stepped on his throat?

A. Yeah.

Q. He told you that?

A. Yeah.

Q. How much did he weigh then? Three hundred? Fair

to say?

A. Who, Jimmy?

Q. Yes.

A. About that, yeah.

Q. And then he switched his story to say that Mike was stepping on his throat?

A. No. I didn't learn that from Jimmy, I learned that from Jamie that Mike stepped on his throat and that's where I learned the pickax was used. Jimmy didn't tell me that part.

Q. That was my point, Mr. Trent. Ronny, you first heard about the pickax from Jamie Horton, correct?

A. Yeah. I never said I didn't.

Q. When you were out of jail --

A. Right.

Q. You first heard about what happened out on Galloway Road from Jamie Horton when you were out?

A. Right.

Q. Jimmy Conway didn't confess to you about killing Andrew?

A. Yeah. Told me he stood on his neck until he was dead.

Q. Stood on his neck until he was dead. And is that the information you told Zach Scott?

A. Yeah.

Q. When did you tell him that?

A. I believe it was during one of the interviews. I'm not exactly sure.

Q. And I hate to state the obvious, but April is before May 13th, right?

A. Yeah.

Q. And you told Zach Scott that, right?

A. Right.

Q. And also in that April statement, you say that one of the reasons that Jimmy wanted Andrew dead was because of a White Castle shooting, right?

A. Yeah.

Q. Which White Castle?

A. I don't know.

Q. You don't remember where it was?

A. I don't remember. If you told me I might remember.

Q. White Castle is a restaurant. "Shot him in the ass."

Fair to say you don't give a name of who was shot allegedly, right?

A. If that's what it says, yeah.

Q. Okay. Well, do you remember that April 25, 2002 interview?

A. No. I've given so many interviews. There is no

way I can remember every one of them.

Q. How many interviews?

A. For every summary you have in your hand.

Q. Well, would it help you -- well, let me ask you this: They asked you who he shot, right? And that he is actually talking about Andrew; isn't that correct?

A. What now?

Q. Well, you tell the detectives that Jimmy says that he wanted to get rid of Andrew because of a White Castle shooting.

A. Right.

Q. And do you remember Scott asking you when you say he saw him shoot somebody, you're saying that Andrew --

A. No.

Q. You don't remember that?

A. Andrew saw Jimmy shoot him.

Q. And you say Andrew --

A. Andrew saw Jimmy shoot him, yeah.

Q. Were you there at the Jesse James --

A. Was I what now?

Q. Were you at the White Castle?

A. No.

Q. How many times -- well, fair to say that you said to Jimmy once you got out of jail at least ten times that you don't like it that he lied to you?

A. Maybe, yeah.
Q. Ten. How about twenty?
A. If that's what it says.
Q. What about the expression, "Why you playing me like that, dog?"
A. Possibly, yeah.
Q. Said that ten times? More than ten times?
A. May have.
Q. And you said that on the telephone, right?
A. I don't recall that. I may have.
Q. You said if you're talking to Jimmy after you got out, it's got to be on the phone.
A. Yeah, three-way, yeah.
Q. Because Jimmy is in jail?
A. Right.
Q. And you're saying that to him, "Why are you playing me like that, dog?" Do you remember saying that?
A. No. I don't remember saying that.
Q. Is that something you would say?
A. I would say that, yeah, if I thought he was playing me. Yeah.
Q. And you do remember saying, "don't like it that you lied to me" at least ten times?
A. No, I don't remember saying it ten times. If

that's what you're saying, if that's what the transcripts say.

Q. And you're trying to -- you're saying that to him to elicit incriminating information from him, right?

A. No. I was asking him why he lied to me.

Q. Okay. And your thought is that he lied to you because he didn't tell you the details of the Andrew Dotson homicide, right?

A. Because he didn't tell me he stuck him twice with a pickax. Right.

Q. And that's information Zach Scott gave you?

A. No.

Q. The pickax you heard from Jamie Horton?

A. Yeah.

Q. You're out working, out of jail with Zach Scott numerous times, correct?

A. Correct.

Q. And isn't it fair to say when you're being interviewed by Zach Scott on April 25, 2002, before your release date that he's telling you all of the information you need to get from Jimmy, right?

A. Telling me what now?

Q. What kind of information you need to get from Jimmy.

A. Somewhat, yeah.

Q. He's telling you that he wants you -- he wants you to get him to confess to the Andrew Dotson homicide, right?

A. No. He wants to know his involvement.

Q. His involvement? He wants to know his involvement --

A. Correct.

Q. -- in the Andrew Dotson homicide.

A. Correct.

Q. And that's on April 25, 2002?

A. I'm not sure about the dates.

Q. All this stuff, you have been living in hell and your house has been burglarized and your dogs have been abused -- and, Ronny, you have a lot of enemies out there, don't you?

A. Yeah.

Q. And when Jimmy told you, according to your testimony, that he killed Andrew while he was stepping on his neck, that's something you remembered, right?

A. Yeah.

Q. And you remember the White Castle, right?

A. What do you mean?

Q. You remember that he told you he wanted Andrew dead because of White Castle incident, right?

A. He said he seen him do a shooting, seen him shoot

somebody at White Castle and something about he was afraid he was going to tell about some other cases.

Q. And he was afraid he seen some shooting at White Castle, which is a restaurant?

A. Correct.

Q. You know the date Mike Arthurs was arrested?

A. No.

Q. Surprise you to know that Mike Arthurs was arrested on May 9th?

A. Why would it surprise me?

Q. Well, you testified that Jimmy wanted a hit on Mike Arthurs because after he was arrested he ordered a hit because he was afraid Mike would talk to the cops. Do you remember that testimony?

A. All right.

Q. You don't know the date Mike was arrested?

A. No.

Q. But we know -- well, at least in April when you testified at the Horton case, you said Jimmy never ordered the hit on Mike while in jail. That's what you said at the Horton trial.

A. I suppose so. That's what the transcripts say, yeah.

Q. Also this other -- this life of hell that you're leading, when you got out on Work Release to work the

Conway case you were given a cell phone, correct?

A. Correct.

Q. And you used that phone to like call to make your contacts, right?

A. Right.

Q. You also used that phone to call your dad?

A. I have, yeah.

Q. And to call your girlfriend, Kristi?

A. I have.

Q. Just use that phone as your own personal phone?

A. While they was with me, yeah.

MS. MENASHE: One moment, Your Honor.

THE COURT: All right.

MS. MENASHE: Sorry, Your Honor. One moment.

Nothing further, Your Honor.

THE COURT: All right.

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REDIRECT EXAMINATION

BY MS. Prichard:

Q. Mr. Trent, do you know if plea bargaining is common?

MS. MENASHE: Objection, Your Honor.

THE COURT: Overruled.

A. Yeah.

Q. (By Ms. Prichard) So the fact that you had some plea bargains in your past, not unusual?

A. No. That's pretty standard, actually.

Q. There was some questioning about letters to judges. I believe one of them was Judge O'Neill letter. Were you expressing any safety concerns to the judge in that letter?

A. Yeah.

Q. What were your safety concerns?

A. Just the fact that every day I was transported from that jail to here for court or whatever days I was transported, I was around other inmates. There's been a lot of contracts put out on me by Conway --

MS. MENASHE: Objection, Your Honor.

A. -- which was just --

THE COURT: Just one second.

Okay. I want you to rephrase your question and see if he can stick to it.

MS. Prichard: Would you like me to lead, Your Honor?

THE COURT: A little bit.

Q. (By Ms. Prichard) Has your name been in the papers because of your cooperation?

A. Numerous times.

Q. And do people seem to know who you are in the

jail?

A. Yeah.

MS. MENASHE: Objection, Your Honor.

THE COURT: Overruled.

Q. (By Ms. Prichard) And is that what was presenting you some safety concerns?

A. Yeah.

Q. Are you currently incarcerated in any special place because of safety concerns?

A. I'm in the hole, if that's special, but yeah.

Q. Have you been moved around to address safety concerns?

A. Yeah. I'm continually moved around.

Q. And you and I have been working on this case for, what, more than a year and a half probably by now?

A. Yes.

Q. Is that accurate?

A. Correct.

Q. We've obviously had an opportunity to meet dozens of times?

A. Correct.

Q. Currently you're not in any Work Release program, right?

A. No.

Q. You're incarcerated?

A. Yeah.
Q. Serving prison time?
A. Correct.
Q. You have clothes today?
A. Correct.
Q. How did you get clothes today?
A. My father.
Q. Brought them so you could be dressed for court?
A. Yeah.
Q. Ms. Menashe asked you about State's Exhibit F-2 and whether it indicated an agreement. Do you recall whether or not this letter indicates that the family was in agreement with the plea bargain, the reduction?
A. Yeah.
Q. And did it indicate that?
A. I believe so.
Q. Do you need to look at it or are you sure?
A. Yeah, please.
Q. Show you State's Exhibit F-2.
A. Yes. Both parties are in agreement.
Q. In agreement with reducing the charges?
A. Correct.
Q. And with respect to your defendant's agreement, if you commit new crimes, you don't get special treatment, right? You're on your own.

A. Right.

Q. What, if anything, exists to confirm the things that you've told to this jury today?

A. I mean both tables are stacked with transcripts from the whole investigation -- you know, body wires, phone conversations, receipts of the money deposits. So it's not about my testimony. I mean, all you got to do is look at it.

MS. MENASHE: Object.

THE COURT: It's a little bit late to object. Overrule the objection.

Q. (By Ms. Prichard) You were talking about an April 4th letter that you had written to me. And I believe you said you wrote it because of the defendant. Could you explain what you mean?

MS. Prichard: Could I see the letter?

MS. MENASHE: Letter marked 12?

MS. Prichard: You marked it.

MS. MENASHE: Oh.

Q. (By Ms. Prichard) Defendant's Exhibit 11 is the April 4, 2002 letter.

A. What was the question again, please?

Q. You indicated that you wrote it because of the defendant.

A. Right.

Q. What did you mean by that?

A. Basically --

MS. MENASHE: Objection, Your Honor.

THE COURT: Overruled.

A. When this originally started, the defendant wanted me to go to the prosecutor's office and the police department.

MS. MENASHE: Objection. I'm going to object to this.

THE COURT: Overruled.

A. He wanted me to tell them I knew everything about his case so I could get to a witness -- they had a witness in protection -- and kill him. And that's the reason initially they wanted me to get in contact with them. This was his idea to write the letter so they would put me in protective custody once I told about his case. That was the purpose of this letter.

Q. (By Ms. Prichard) And you wrote me a second letter?

A. Yes.

Q. And was that letter with respect to this case?

A. I believe it was.

Q. You were shown State's Exhibit 12 -- or sorry, Defendant's Exhibit 12. And you said you didn't put a date on that.

A. That's correct.

Q. Did you want to guess on a date?

MS. MENASHE: Objection, Your Honor.

THE COURT: Overruled.

A. Do I want to guess on a date?

Q. (By Ms. Prichard) Did you at the time you wrote on that want to guess?

A. No.

Q. Does this document reflect what you told this jury?

A. Yeah. I mean, the day that this was written was this summary of basically what happened between me and Mr. Conway. I don't remember the exact date it happened so I didn't put the date on there. And that's basically what it is.

Q. And that's the one that relates to the visit by Dotson's mother?

A. Correct.

Q. Back on the date of that visit, were you working with the sheriff's office?

A. No.

Q. So did you have documents like that that you were to be filling out that day?

A. No. No.

Q. You were asked about a statement in a transcript

basically about screwing over Mr. Conway, whatever happens happens. What did you mean by that?

A. Right. Basically, I knew I was getting myself in a situation to where -- you know, I'm telling on killers, you know.

MS. MENASHE: Objection, Your Honor.

THE COURT: Overruled.

A. And I knew that I was placing myself in a great deal of danger. I didn't -- I didn't know it was going to be as severe as it was. But at that time, that was my decision. And I believe every remark stemmed from a conversation from the detective. He asked if any promises have been made. I said, no. You guys hadn't made me any promises. I'm still doing what I did. I'm doing what I'm doing and I know I'm fucking Jimmy Conway, whatever happens happens.

Q. (By Ms. Prichard) And you were working at that time without a deal?

A. Correct.

Q. This money that was put on your books, at the time money was put on your books, did you know who Jamie Horton was?

A. No. I never seen him before.

Q. Did you know who Jeff Conway was?

A. Never seen him before.

Q. Would you have any reason to have Jeff Conway or Jamie Horton put money on your books?

A. No.

Q. Would you have had a way to contact them?

A. No.

Q. Ms. Menashe asked you about a phone conversation with Jamie Horton and whether he knew who you were when you called him.

A. Correct.

Q. Do you remember your call to Jamie Horton?

A. No, not exactly. There's a lot of calls.

Q. If I showed you the transcript, would that refresh your memory as to how that call took place?

A. Yeah.

Q. Show you State's Exhibit N-3. If you would take a look at that. And you probably only need to take a look at the bottom of the first page and the top of the second. And I'm going to ask you a question.

A. All right.

Q. Was that a call to Jamie Horton?

A. Yeah.

Q. You called Jamie Horton. Did he know who you were?

A. Yeah. I called him and said, "Hi, this is Tony. Jimmy told me to call you."

"Hey, I'm here visiting with his brother right now."

"Yeah."

"I will be done in a half hour. Can you give me a call me back?"

"Yeah, uh, was my number on your phone?"

"No. Oh, yeah actually, actually, it is."

Q. Did you discuss a washer or a dryer at all in that conversation? And take a minute if you need to flip through it.

A. No, I don't need a minute. The washer and dryer was already at my brother's house before that phone call was ever made between me and Jamie Horton.

Q. You were questioned about testifying in Jamie Horton's trial. Have you reviewed that transcript other than that portion you just saw today?

A. No.

Q. When you testified, was your testimony restricted?

A. Yeah.

Q. And I believe you told Ms. Menashe that you indicated that you denied that the defendant ordered you to or asked you to kill Mike Arthurs. Is that accurate?

A. Yeah.

Q. And is that a true statement?

A. No.

Q. Well, why did you say that in that hearing?

A. Because I was instructed by yourself and as well as the judge on the case that, I believe it was -- I wasn't allowed to discuss anyone else -- any other cases other than what we was there for.

Q. So were you confused? Or what was going on with that testimony?

MS. MENASHE: Objection. Leading.

THE COURT: Sustained. Don't lead your witness.

Q. (By Ms. Prichard) What was that testimony about then?

A. Basically, I didn't want to -- I didn't want to say something that I wasn't supposed to say. And basically, I just kind of, I guess -- I guess actually -- I just kind of got confused on it. Because I didn't want to get myself in trouble with the judge. I didn't want to get nobody else in trouble with the judge. So I wasn't supposed to talk about certain things because of the case, so I didn't.

Q. Prior to testifying in that courtroom, did you tell authorities that the defendant did order you to kill Mike Arthurs?

A. Yeah.

Q. Do you remember on what date you might have told that to detectives?

A. No, not initially. No.

Q. Show you a transcript, would it refresh your memory?

A. Yes.

Q. Show you State's Exhibit N-1. This is May 26, '02. And I'll refer you there just for simplicity, here. Take a look at the first page and take a look at the top of page six.

MS. MENASHE: I'm sorry, what page?

MS. Prichard: Top of six.

Q. (By Ms. Prichard) First of all what was the date of that interview?

A. May 26, 2002.

Q. Do you remember that interview now having looked at that?

A. Yeah.

Q. And did you tell the police anything the defendant told you about Mike Arthurs on that date?

A. Yeah.

Q. What did you tell the police?

A. I told them that Jimmy Conway told me he might have a couple more people for me --

MS. MENASHE: Objection, Your Honor.

Question is about Mike Arthurs.

THE COURT: Overruled.

A. Jimmy Conway told me he might have a couple other people he might need me to kill. So I'm like, okay, now the body count's going -- it's getting astronomical. He thinks Mike Arthurs is already talking. He wants me to take out Mike Arthurs for Andrew Dotson's shit.

Q. (By Ms. Prichard) And it says that in the transcript?

A. Yeah.

Q. And that was before Jamie Horton's trial?

A. Correct.

Q. Do you know somebody by the name of Mike Fuller? Have you heard that name?

A. Yeah.

Q. Is Mike Fuller referenced in any of the transcripts?

A. Yeah. It's referenced quite often.

Q. He's sometimes referenced as Mike instead of a full name?

A. Right.

Q. During your jail visit, I believe it was May 23rd, to the defendant, there was a statement "are you blind?" Why did you make that statement?

MS. MENASHE: Objection.

THE COURT: Overruled.

A. Because when I first went in there, I showed him two pictures of two bodies that --

MS. MENASHE: Objection.

THE COURT: Overruled.

A. -- that he supposedly he wanted me to kill a guy that made a video confession for him --

MS. MENASHE: Objection, Your Honor.

THE COURT: Overruled.

A. -- and Mike Arthurs. I went in and showed him both pictures. He looked at them, smiled. And I mean, just my opinion is he didn't --

THE COURT: Let's not give your own opinion. Go ahead and ask another question.

A. He didn't --

THE COURT: Just a second.

Q. (By Ms. Prichard) So you said "Are you blind" in response to what? That he was --

A. Showing him the pictures. Because he asked, I believe, if I took care of it down there with Mike or something. That's when I said "Are you blind."

Q. Did you show him Mike Arthurs' picture again?

A. Right.

Q. Was there any further discussion about Mike Arthurs from that point on?

A. No. I was -- that was it.

Q. I don't believe -- I believe you told Ms. Menashe that you got some initial information about this case from the defendant. Is that accurate?

A. Correct.

Q. And did you later gain more information from Jamie Horton and Shawn Nightingale?

A. Yeah.

Q. Did you find there to be any differences or additional detail?

A. Yeah.

MS. MENASHE: Objection.

Q. (By Ms. Prichard) Without going into it --

THE COURT: Yes.

Q. (By Ms. Prichard) And what did you do as a result of finding out additional detail?

A. I confronted Jimmy about it.

Q. And was that the conversation you referred to that happened at the jail?

A. Yeah.

Q. When you were working with the police and wired up with all these transcripts, were you playing a role, I guess?

A. Yeah.

Q. Did you try to act natural?

A. Yeah.

Q. When you were around Jamie Horton and people like that, were you just doing normal things?

MS. MENASHE: Objection, Your Honor. Leading.

THE COURT: Overruled.

A. Yeah.

Q. (By Ms. Prichard) Using the phone?

A. Yeah.

Q. Did you use any kind of tactics or try to get people to kind of talk and say some things on tape?

MS. MENASHE: Objection. Leading.

THE COURT: Overruled.

A. Yeah.

Q. (By Ms. Prichard) I'm sorry, yes?

A. Yeah.

Q. I believe Ms. Menashe asked you if you had lots of enemies. Do you have lots of enemies due to this case?

A. Yeah.

Q. To this day, you know all the details about this case?

A. Yeah, from what Jimmy's told me and the rest of his crew told me, yeah.

Q. You don't know specifically from me or Mr. Lowe

or anyone else anything, do you?

A. No. No.

Q. Were there phone conversations with the defendant where there was talk of finding Mike Arthurs?

A. Yeah.

Q. Do you remember the dates of any of those conversations?

A. No.

MS. MENASHE: Beyond the scope. Objection, Your Honor.

THE COURT: Overruled.

A. Not exactly. No.

Q. (By Ms. Prichard) If I showed you a transcript, would it help refresh your memory?

A. Yeah.

Q. State's Exhibit N-4. And you may want to start at the bottom of six and read page seven for simplicity. If you would first of all look at that and tell me if it refreshes your memory of the date of the conversation with Mr. Conway.

MS. MENASHE: I'm sorry. What page?

MS. Prichard: Six and seven.

A. This is from October 10th -- no -- that was the May 18, 2002.

MS. MENASHE: I'm sorry. I don't have page

six and seven.

Q. (By Ms. Prichard) Why don't we take them. I'll let Ms. Menashe see this for a second.

I believe you just said May 18, 2002.

A. Yeah.

Q. A conversation with you and Mr. Conway.

A. Correct.

Q. There is a reference to a name Britnee on the front. Who is Britnee?

A. Jimmy's fiancee.

Q. Then or currently, if you know?

A. I believe it was then. I don't know for sure.

Q. And in that transcript, after reading that transcript, do you now remember whether or not you had a conversation on that date with Mr. Conway about killing Mike Arthurs?

A. Yeah.

Q. And was there such a conversation?

A. Yeah.

Q. What was that conversation about?

A. Somebody was -- they was supposed to be trying to help me find Mike Arthurs so I could take care of him.

Q. And that was before you testified in the Jamie Horton trial, is it not?

A. That's correct.

Q. Do you remember any other specific dates you had conversations with Mr. Conway?

A. No. We had a lot of conversations.

Q. Take this transcript back from you for a minute.

And did you discuss with Jamie Horton at any point in time killing Mike Arthurs?

MS. MENASHE: Objection, Your Honor.

THE COURT: Overruled.

A. Yeah.

Q. (By Ms. Prichard) And do you know what date or dates you would have done that?

A. No, I don't know exact dates.

Q. If I showed you a transcript, would it help refresh your memory?

A. Yeah.

Q. Show you State's Exhibit N-5. Let me take a look at this. And I'll refer you specifically to pages one and two. Try to keep it short.

Look at that and tell me if it refreshes your memory as to a date you spoke with Jamie Horton.

A. May 16, 2002.

Q. Having read that, does that refresh your memory of a conversation with Jamie Horton about Mike Arthurs?

A. Yes.

Q. Does --

MS. MENASHE: Objection, Your Honor. As to what took place.

A. Yeah, it did.

Q. (By Ms. Prichard) And that is reflected in -- is that Exhibit N-5 or N-6?

A. Exhibit N-5. It says --

THE COURT: No. No. Don't repeat.

Q. (By Ms. Prichard) What date is that?

A. May 16, 2002.

Q. And that was before the Jamie Horton trial?

A. Correct.

Q. Then did you, in fact -- or how many conversations would you say you had with various people about the defendant asking you to kill Mike Arthurs prior to Jamie Horton's trial?

MS. MENASHE: Objection, Your Honor.

THE COURT: Overruled.

A. There was numerous conversations. I mean, I can't remember every conversation.

Q. (By Ms. Prichard) More than just the transcripts we went through here?

A. Oh, yeah.

MS. MENASHE: Objection, Your Honor. He said he can't remember.

THE COURT: Overruled.

MS. Prichard: I have nothing further.

THE COURT: Any further cross?

MS. MENASHE: Yes, Your Honor.

- - -

RECROSS-EXAMINATION

BY MS. MENASHE:

Q. Mr. Trent, that transcript that's right in front of you, there is no time on that transcript, right? May 16, 2002. It doesn't say a time.

A. Correct.

Q. And you had a chance to review it to refresh your recollection, correct?

A. Right.

Q. So you know you're in the middle of a sentence with Jamie and you stopped yourself and you say, "First of all, I'm J's cousin. I don't know if Jimmy told you that or not." Right?

A. Right.

Q. And he goes, "No, no. I haven't. I just got -- I don't even really -- I don't know shit." Jamie tells you that, right?

A. Right.

Q. And you say, "I don't know if he told you," right, that you're J's cousin?

A. Right.

Q. This transcript has been made about the Horton trial, what you testified to in the Horton trial and you're familiar with when attorneys object, right?

A. Correct.

Q. You're familiar with that. They object and then essentially the judge makes some ruling as to whether the witness can answer the question or not, correct?

A. If you say so, yeah.

Q. Well, and you had a chance to review your testimony in the Horton case; is that correct?

A. Some of it, yeah.

Q. That portion I showed you, the questions, do you remember that?

A. Yeah.

Q. And that was when the attorney asked you, "prior to leaving jail, did Jimmy Conway order you to kill Mike Arthurs." There wasn't an objection there, was there?

A. I don't know. I didn't read the whole transcript.

MS. MENASHE: May I approach?

Q. (By Ms. Menashe) Would it refresh your recollection to read that portion again?

A. Yep.

MS. MENASHE: May I approach?

Q. (By Ms. Menashe) Page 105, Jamie Horton's

testimony. Does that refresh your memory?

A. Yeah.

Q. No objections there.

A. That's correct.

Q. And the question, "Prior to leaving jail, did Jimmy Conway order you to kill Mike Arthurs?" And you say "excuse me?" Is that fair?

A. Correct.

Q. And then the question is restated, right, by the attorney?

A. Yeah.

Q. And then you say no.

A. Correct.

Q. Didn't say I'm not allowed to talk about that, right?

A. Right.

Q. On this other transcript that you were shown, I believe it's May 16th. Sorry. There is so many the prosecutor showed you. I'm sorry, May 16th.

MS. MENASHE: May I approach?

Q. (By Ms. Menashe) There's two May 16ths, right?

A. Yeah.

Q. The one that has a time on it, 6:59.

MS. MENASHE: Sorry, Your Honor. It's May 18th. May 18th, I'm sorry.

Q. (By Ms. Menashe) And the prosecutor asked you to refresh and you read page six and seven, right? And that was about you talking to Jimmy on the -- sorry for being so close to you -- that you were talking on the phone about the alleged hit on Mike Arthurs.

A. I don't know. I don't have the transcript.

Q. Would it refresh --

A. Yeah.

Q. Okay. And particularly, if you could look at the top of page seven.

A. Right.

Q. Okay. Fair to say that at the top of page seven, you say, "Okay. He's going to help me find Mike." Right? That's you. You're the CI?

A. I don't know. I would have to read the page before that to know. Sometimes they mix them up.

Q. Well, Mr. Trent, my question is, you're the CI.

A. What I'm saying is, sometimes they got those mixed up on the transcript. So I would have to review the transcript really to know.

Thank you.

Q. Does that refresh your recollection as to whether you said that or not?

A. Yeah.

Q. And you said that?

A. Correct.
Q. You said that about helping to find Mike?
A. Right.
Q. Not Mr. Conway, correct?
A. He just said, yeah, right.
Q. He said -- you read that as "yeah. Right".
A. It says yeah or something, doesn't it?
Q. And in terms of, I guess the testimony in Jamie Horton's case -- I guess I will go back to that. That was in April 2003?
A. Perhaps, yeah.
Q. And that was part of your agreement to come in there and testify in that case?
A. Correct.
Q. And you did that?
A. Yeah.
Q. And your agreement wasn't violated after that, correct?
A. Correct.
Q. You still have your agreement, correct?
A. Correct.

MS. MENASHE: One moment, Your Honor.

MR. YOUNG: Nothing.

MS. MENASHE: Nothing further, Your Honor.

THE COURT: Okay. You may step down.

We will reconvene tomorrow morning at 9:00.

Again, check in with the jury commissioner before you come up here.

I'm going to remind you every time we recess, make sure this evening you don't have any conversation with any family or friends.

Please everybody, just quiet for a second.

Don't try to read any accounts of the case, do not listen to anything on the radio or the TV news and don't, of course, have any conversation with any family or friends.

See you back here tomorrow morning at 9:00.

- - -

Thereupon, the further trial of this cause was adjourned until 9:00 o'clock a.m., September 19, 2003.

- - -

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION at DAYTON

JAMES T. CONWAY, III, Petitioner,	:	
	:	**CASE NO. 3:07-CV-00345-WHR-MRM**
v.	:	**JUDGE WALTER H. RICE**
MARC C. HOUK, WARDEN, Respondent.	:	**MAGISTRATE JUDGE MERZ**
	:	

TRIAL TRANSCRIPTS
VOLUME 5 OF 6
TRIAL, VOLUME IV of V

Respectfully submitted,

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COUNSEL FOR RESPONDENT

IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO

CRIMINAL DIVISION

- - -

State of Ohio	:	
	:	
Plaintiff,	:	
	:	
vs.	:	Case No. 02CR-3117
	:	Volume IV
James T. Conway, III,	:	Transcript of Proceedings
	:	(Pages 828 to 1051)
Defendant	:	

- - -

TRANSCRIPT OF PROCEEDINGS

- - -

APPEARANCES:

Mr. James Lowe and Ms. Sheryl Prichard,
Assistant Prosecuting Attorneys

On behalf of the Plaintiff.

Mr. Dave Young and Ms. Diane Menashe,
Attorneys at Law

On behalf of the Defendant.

BE IT REMEMBERED, that on the trial of the above-entitled cause at the September Term, 2003 of the Common Pleas Court of Franklin County, Ohio, before the Honorable Dale A. Crawford, Judge, and a jury duly impaneled and sworn, the State of Ohio to maintain the issues on its part to be maintained, offered and introduced in testimony on its behalf the following proceedings to wit:

INDEX TO WITNESSES
NAMES OF STATE'S WITNESSES

	Page	Line
LORA EBERHARD		
Direct Examination	337	1
Cross Examination	361	5
Redirect Examination	375	7
Recross-examination	379	20
CECIL DOTSON		
Direct Examination	383	10
Cross Examination	408	4
ROBERTA J. HANNAH		
Direct Examination	411	8
Cross Examination	423	19
Redirect Examination	432	1
Recross-examination	433	1
CHRISTOPHER FURNIER		
Direct Examination	437	12
Cross Examination	450	7
Redirect Examination	452	10
ROBERT McMILLIN		
Direct Examination	452	21
GARY SCOTT WILGUS		
Direct Examination	460	14
Cross Examination	477	18
Redirect Examination	480	7
MICHAEL ARTHURS		
Direct Examination	483	14
Cross Examination	540	1
Redirect Examination	606	10
Recross-examination	623	1
PATRICK FARDAL, M.D.		
Direct Examination	625	4
Cross Examination	655	13
Redirect Examination	700	21
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	Page	Line
RONNY TRENT		
Direct Examination	715	6
Cross Examination	752	10
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JESSE JAMES		
Direct Examination	846	19
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Redirect Examination	859	15
ROBERT HALE		
Direct Examination	864	9
Cross Examination	867	1
LINDA GOODMAN		
Direct Examination	868	7
Cross Examination	874	13
Redirect Examination	878	23
BRIAN WOODWORTH		
Direct Examination	881	1
Cross Examination	884	9
MATT SAUER		
Direct Examination	885	4
Cross Examination	892	15
Redirect Examination	893	20
TONYA COONS		
Direct Examination	894	8
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Redirect Examination	899	17
ARTHUR WOOD		
Direct Examination	900	5
Cross Examination	906	11
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Defense Rests: Page 912 Line 13

CHARGE OF THE COURT: Page 988 Line 23

INDEX TO EXHIBITS

STATE'S:		Identified		Admit
		Page	Line	
A	Andrew's cell phone bill	350	13	835
A-1	Envelope from Dentist	353	23	835
B	Photograph	423	22	835
C	Map	447	22	835
D-1	Photograph	457	13	835
D-2	Photograph	470	22	835
D-3	Photograph	471	18	
D-4	Photograph	472	5	835
D-6	Photographs	645	25	835
D-30	Photographs	646	9	835
D-17 through 38	Photographs	654	24	W/D
D-40	Photograph	648	6	835
E-1	Three-page document	472	24	835
E-2	Laboratory Sheet	473	22	835
E-3	Discrepancy Notice	474	7	835
E-4	Laboratory Report	474	22	835
E-5	Laboratory Report	475	17	835
E-6	Laboratory Report	476	5	835
F-1	Defendant's Agreement	719	15	W/D
F-2	Tonya Coons letter	742	13	W/D
G-1	Three-page document	486	3	W/D
G-3	Photograph, Mike Arthurs	539	5	835
H	Hampton Inn Receipt	534	18	W/D
I	Autopsy	631	10	OBJ 835
I-1	Letter to Zach Scott	654	11	OBJ N/A
J	Pickax	537	17	835
N-1	Interview, May 26, 2002	747	3	W/D
N-2	Interview, April 25, 2002	747	24	W/D

INDEX TO EXHIBITS

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DEFENSE:	Identified PAGE	Identified LINE	Admitted
A-1 Dispatch, 9/14/03	2	13	N/A
A-2 to A-7 Media Accounts 9/14/03	2	18	N/A
A-8 Dispatch, 9/17/04	335	10	N/A
1 Missing Person Report	371	3	925
2 Notes of Conway Visit	379	20	N/A
10 Affidavit	770	1	N/A
11 Statement	774	25	N/A
12 Statement	777	1	N/A
16 Hampton Inn Record	871	6	925
17 Diagram Hampton Inn Rm. 306	883	4	925

Friday Morning Session
September 19, 2003.

- - -

Thereupon, the further trial of this cause was resumed pursuant to adjournment.

- - -

MR. YOUNG: Can we put a motion on the record?

THE COURT: Well, I'm bringing Mr. Nightingale out.

Do you need your client here for that?

MR. YOUNG: Yes, we do.

MS. MENASHE: Yes, please.

- - -

Thereupon, defendant present.

Shawn Nightingale present with counsel, Lewis Williams, Esq.

- - -

THE COURT: All right.

For purposes of the record, the State of Ohio has requested that its next witness be Mr. Shawn Nightingale.

And it's my understanding, pursuant to a plea arrangement that was entered into his prior case that he agreed to testify in this matter as part of that

agreement and testify truthfully.

He is represented here by counsel, Mr. Williams. Is that an accurate statement?

MR. WILLIAMS: That's correct. Everything you said is correct, Your Honor.

THE COURT: And it's my understanding you have had an opportunity to talk to him about this?

MR. WILLIAMS: I talked to him in detail day before yesterday and I talked to him yesterday for about another five to ten minutes after discussion with Mr. Lowe.

THE COURT: And you have advised me that he will not testify in this case.

MR. WILLIAMS: That is my understanding from talking with him. He's had a change of heart. He does not wish to be a witness against any of the people involved in this particular incident or other instances.

THE COURT: Are you saying he wishes to exercise his Fifth Amendment Rights against self-incrimination? Is that what he wishes to do?

MR. WILLIAMS: I guess we can put it that way, Your Honor.

THE COURT: Anything else from the State?

MR. LOWE: No, Your Honor.

MR. YOUNG: No, Your Honor.

THE COURT: It is agreed between counsel -- and we have had a brief discussion about this yesterday, it is agreed between counsel that we can enter into a stipulation, if Mr. Nightingale were to be called by the State of Ohio as a witness in this case, he would not testify, he would exercise his Fifth Amendment Rights not to incriminate himself and not to testify.

MR. YOUNG: We would stipulate to that instruction to the jury.

MR. LOWE: Yes, Your Honor.

THE COURT: Okay.

MR. WILLIAMS: Could we have Mr. Nightingale acknowledge everything I've stated representing his position in this particular incident is true and accurate. Is that correct, Shawn?

THE DEFENDANT: Yes, sir.

THE COURT: You do not wish to testify.

MR. NIGHTINGALE: No, sir.

THE COURT: If I ordered you to testify, would you do so?

MR. NIGHTINGALE: No, I wouldn't.

THE COURT: All right. You can step back in. You can take him away now.

MR. NIGHTINGALE: Good luck.

THE COURT: All right. With that in mind --

MR. YOUNG: Your Honor, may I make a quick motion?

THE COURT: Okay.

MR. YOUNG: Your Honor, yesterday Mr. Trent testified over objection that he had knowledge of Mr. Conway's involvement in the Dotson homicide. I believe through regular or statements made by Mr. Conway, upon cross-examination, on his testimony he testified that Mr. Conway told him that he stepped on his throat was Mr. Conway's involvement in that. Mr. Conway did not testify or did not tell him anything regarding pickax or any other evidence related to the Dotson homicide.

On cross-examination he indicated that he acquired that information regarding all of the intricate details of the Dotson homicide from his conversations with Jamie Horton and Shawn Nightingale which we would categorize as being Hearsay evidence. And I don't believe there is any exception to that.

We would request any testimony other than what my client specifically told Mr. Trent be stricken from the record and that curative instruction be given to the jury to disregard anything other than what my client indicated to Mr. Trent.

THE COURT: Just so the record reflects, first of all, I did permit that testimony for two

reasons. One is, there's statements by other coconspirators with respect to this matter, but also that statement was used for why he did further talk to Mr. Conway about this and Mr. Conway verified those things that were said. So the initial statement might not be taken for the truth of the matter stated but only why he went to Mr. Conway later on and discussed that matter with him.

Okay. Do you have your next witness ready?

Is your next witness here?

MR. LOWE: Judge, I don't know if we have a next witness.

MS. PRICHARD: Judge, we were intending to recall Bobbi Hannah apparently who is sick and can't even get out of bed. So we can't recall her at this time.

THE COURT: Let's go ahead with your next witness.

MS. PRICHARD: State would rest at this time subject to admission of our exhibits.

THE COURT: How about the exhibits?

MR. LOWE: Judge, I gave Mr. Young a copy of our witness list. I have one for the court also. If I may approach.

THE COURT: Do they have the same list I do?

MR. LOWE: Yes.

THE COURT: Looking at exhibit list, State versus James Conway, starting with A down to J, are there any objections to any of those being admitted into evidence?

MR. YOUNG: No objection from the Defense as to A.

THE COURT: I just want to know what you object to.

MR. YOUNG: The only thing we object to would be the State's exhibit list I and I-1, the autopsy report. Doctor Fardal testified and I believe that would be cumulative evidence and also the best evidence rule. Everything else that either hasn't been withdrawn, we would have no objection to.

THE COURT: Any comment?

MS. PRICHARD: Based upon the fact that the cause of death is being contested, I would ask those items be admitted so that the jury can look at those reports as well.

THE COURT: I will permit what is the public record.

I don't know -- between those two you have is it one document or is it two documents?

MR. LOWE: There is one document and the

second document is a supplemental report about his interactions with Zach Scott about the ax being brought to him and his conclusions.

THE COURT: I'll exclude that. But I will permit the public record document, being the autopsy.

MR. YOUNG: I believe the public record document is just the front sheet and not the actual autopsy report. I may be wrong as to that but I think when you get a certified copy it's the death certificate which is the front page of the autopsy report. I don't know what -- is that I?

MR. LOWE: States I.

THE COURT: The jury is not going to see these things right this minute. So what I would like you two to check on is what is, in fact, the public record, those things that they are seeking to introduce.

Okay. There is no objections to anything else?

MR. YOUNG: No. And I believe they are only seeking to admit the six photos that the coroner testified to.

MS. PRICHARD: Just the ones that are listed.

MR. YOUNG: And F and G, you are not seeking to admit anything other than the one photograph of Mike

Arthurs?

MS. PRICHARD: That's correct. I don't think it would be permissible to introduce it.

MR. YOUNG: Okay.

- - -

Thereupon, the exhibits previously identified were admitted into evidence as State's Exhibit Nos. A, A-1, B, C, D-1, D-2, D-4, D-6, D-30, D-40, E-1, E-2, E-3, E-4, E-5, E-6, G-3, I, and J.

- - -

THE COURT: Okay. Are you ready to proceed?

MR. YOUNG: Your Honor, first we would like to make a Rule 29 motion.

Obviously, I'll start first with the specifications to the indictment.

As to the Rule 29 I believe as this court knows very well that government has the burden of proof in these cases. Specification (A)(3) which would be Specification One to the indictment is the murder for apprehension. There's been no testimony from a single witness as to what my client was seeking or why he would kill Andrew Dotson and whatever he was preventing the apprehension, escape or detection, escaping detection, apprehension, trial or punishment for another offense by

the offender, to wit: Felonious assault. We've heard nothing regarding the Jesse James shooting. We've heard not one position of anyone that was present that said my client was escaping or killed Andrew Dotson for that reason. There is no been no evidence we believe that the Rule 29 shouldn't be made with respect to Specification One to that count.

More importantly, or also, Specification Three, which is the (A)(8) Section, that's murder for killing a witness. As you read the (A)(8) Section, there is in particular that a criminal proceeding has to have been initiated. In this case, that's the difference between the (A)(3) and the (A)(8) is that an actual criminal proceeding has been initiated. In this case there's never been a charge, indictment, an information or anything regarding the Jesse James shooting.

And if I can address the court in the line of cases that I had researched earlier this morning -- I don't know where they are.

But if you take a look under the Messiah-type of theory, a criminal proceeding is when the police institute some adverse criminal proceeding against Mr. Conway. And there's been nothing regarding the Jesse James shooting. Because there has not been a

criminal proceeding, they have presented no evidence, the jury cannot under any circumstances find that a criminal proceeding has been initiated and he killed a witness in that proceeding. We believe Specification Three to the indictment should likewise be Rule 29.

Now, as to the aggravated murder charge and the felony murder nature of Count One of the indictment, we would think -- I believe, Mike Arthurs testified that Mr. Conway indicated to him that he was supposed to kill Andrew Dotson. There was no indication as to how Mr. Arthurs was going to achieve this killing or disappearance of Andrew Dotson and there is no indication that Mr. Conway ever participated in this kidnapping, the scheme to go to West Virginia -- if in fact they ever went to West Virginia, which we question seriously. And we believe that there's no evidence that he participated in the actual kidnapping. Being that he did not participate in the kidnapping, we believe that the Specification (A)(7) to the indictment would likewise fail under a Rule 29 and we believe that the aggravated murder should also fail in a felony murder nature of that kind in the indictment.

We would argue that prior calculation and design aspect of the Count One also was not proven. And we believe as the court's listened to all of the

evidence they haven't proved anything with regard to abuse of a corpse, that it was such an outrageous -- or whatever the language of Count Three or Count Four of the crime -- they say at most he put a pickax into a dead or live body. If he put a pickax in a live body, that's not abuse of a corpse. If they put it in a dead body, they have not produced any evidence that that act in and of itself was so outrageous that it would comply with the statute.

Similar as to the tampering with evidence, the possession of criminal tools and, I believe, obstruction of justice, they put on no evidence whatsoever that he participated in any of that.

We request a Rule 29 as to all those counts and/or specifications, Your Honor.

THE COURT: Mr. Lowe.

MR. YOUNG: And the kidnapping also.

MR. LOWE: Thank you, Your Honor.

First of all, Mr. Young talked about what was not shown. First thing is in the light most favorable to the State, there was testimony from Ronny Trent, as well as Mike Arthurs, about this defendant's involvement through admissions.

Mike Arthurs testified through his direct observations of what Mr. Conway did. Mr. Arthurs

testified that Mr. Conway asked him to kill Andrew. And his reason for killing Andrew was that he witnessed the shooting of Jesse James.

At that time, Ronny Trent also spoke about that; that this defendant told him that he shot someone in the butt. And that's why Andrew was to be killed.

Mr. Young talked about there was no criminal proceeding. There certainly was an investigation. There was testimony from Andrew's mother that a card was left from the detective. They wanted to talk to him about a shooting.

Mr. Young had the document. He asked if we would object to out of that incident showing how many shell casings were fired. So certainly a criminal investigation was proceeding. Jesse James was interviewed. There were several people interviewed. There was definitely a criminal investigation proceeding.

Mike also told Mr. Conway on the way back when they decided not to kill Andrew that they talked to Andrew and Andrew would not tell about the shooting, so you don't need to kill him. So there is definitely testimony that Mr. Conway wanted Andrew Dotson dead because he did witness a shooting. So we believe the specs do survive.

As well as the other counts, Your Honor. All of these are also under the complicity theory as any count is. The fact that Mr. Conway planned, set the plan in motion and then met up with them afterwards to help finish the plan. He told Ronny Trent that these two individuals didn't kill him so then he had to go to the scene. And at that time there was testimony that he stuck a pickax in.

The coroner clearly says that he believed the heart was beating when the pickax was in.

And as far as abuse of a corpse, I think Mr. Young forgot to mention the lime that was poured on the body in an effort to either corrode or destroy evidence. The fact that lime was poured on the body and the clothing was burned and hidden and new clothes were bought all goes to the other counts.

And we feel at this time that all the counts and specifications should survive.

THE COURT: Anything further, Mr. Young?

MR. YOUNG: Yes, Your Honor, just very briefly.

As to the definition of criminal proceedings, I believe in Kirby v. Illinois, which is a United States Supreme Court says, the definition of a criminal proceedings, a formal charge, preliminary

hearing, an indictment, an information or arraignment.

Kirby v. Illinois further goes on to indicate that the government -- in defining a criminal proceeding, that the government has committed itself to prosecute that charge. Merely by a detective dropping off a card without any filing of any formal charges from the period of September 14th, which is the date of Jesse James shooting, until Mr. Dotson's body was found 10/10, they had ample opportunity if they had committed themselves to prosecute that charge, to file charges against at least Andrew Dotson, but they had not even solved the case. We believe because Jesse James and/or Andrew Dotson -- or Jesse James and/or Jared Dilley did not identify anyone who shot him. And because of that, they had not committed themselves to institute criminal proceedings for the (A)(8) charge. And because they elected not to put anyone on the stand regarding that particular case, we believe that the Specifications (A)(3) and (A)(8) fail for that reason.

THE COURT: The motion is overruled.

MR. YOUNG: And, Your Honor, we are not prepared at the present time to go forward. We have witnesses that are in the process of coming to the courthouse. We have other witnesses that will be probably 1:00 o'clock. We had anticipated at least some

testimony today. So we are prepared to go forward at 1:30, whenever the court, the witnesses -- I personally --

THE COURT: It's my understanding some of your witnesses are here.

MR. YOUNG: I don't know if they are or not.

THE COURT: I think they are here.

MR. YOUNG: I don't know if the inmates are here yet.

MS. MENASHE: One of our witnesses is here, Your Honor.

MR. YOUNG: Okay. Then if we have one of our witnesses here.

Your Honor, with regard to the witnesses which we are going to put on, which would be Jesse James and Jared Dilley, they are two individuals that were -- Jesse James being the individual that was shot at on September 14th and Jared Dilley who was present on September 14th.

Being that the government has not put any evidence on that, tactically we would not put those individuals on. But now confronted with the Court's ruling, we intend on going forward on that. But for that, we would probably tactically would not have put them on, but we intend to proceed as to call Jesse

James.

THE COURT: I had some long conversation last night with Tittle about the other people that were requested six weeks ago. And I have not heard from him this morning. It was my impression we left that conversation that he was going to do everything he could to get those people here.

Do you know anything about it.

DEPUTY: He said there was no way he could get them here today.

THE COURT: All right. I wish he would have told me that first thing this morning so I could have done what I have to do.

I'm going to issue a subpoena to -- and I don't know where they are.

MR. YOUNG: We have the various institutions.

THE COURT: Let me give those to Linda. I want to take that down to the clerk's office and I'm going to have a subpoena issued to the -- what would be the proper name of the person?

MR. YOUNG: Warden --

THE COURT: They are not called wardens any more.

MS. MENASHE: Dave has the name of them.

THE COURT: Well, anyway, get me the institutions and I can do the wardens and I'm going to sign those. And I do want somebody from your office to personally serve those this morning because they are going to be subpoenas to the warden and if they don't bring the people down here today, I'm going to ask the warden to come down and tell me why they can't do that. They had six weeks' notice.

What's the Orient institution's proper name?

MS. MENASHE: CRC.

THE COURT: In the meantime, let's get that other witness.

MR. YOUNG: Is the prosecutor going to rest in front of the jury?

MR. LOWE: Subject to the stipulation.

- - -

Thereupon, the jury resumed their places in the jury box.

- - -

THE COURT: Good morning, everybody. Sorry for the delay. But we have had a couple of things that we have been doing. And we haven't just been sitting around drinking coffee. We have been doing something.

Now, it's my understanding the State has no further witnesses. Is that correct?

MR. LOWE: That's correct, Your Honor.

THE COURT: Now, I understand there's a stipulation between the parties.

Now, what a stipulation is, it's an agreement between the parties that if, in fact, whatever is stipulated happens, you can assume what they have agreed to is, in fact, the truth of what would happen if, in fact, you all understand by the nature of the stipulation what they are talking about.

So, Mr. Lowe, do you want to proceed?

MR. LOWE: Yes, Your Honor.

I believe the stipulation was if Shawn Nightingale were called to testify, he was subpoenaed by the State to testify in spite of a prior agreement with the State to testify he is now choosing not to testify and he is exercising his right to remain silent.

THE COURT: Okay. So stipulated?

MR. YOUNG: So stipulated, Your Honor.

THE COURT: So you can assume that's an accurate statement of what may have happened.

Okay. With that in mind, I understand the State rests?

MR. LOWE: Subject to the right to call rebuttal witnesses, State of Ohio would rest the case, Your Honor.

Dotson

3117

part 5

(c) Based on these considerations, whether the defendant should be sentenced to life imprisonment or death.

Former Fla.Stat. 921.141(2). In *Hurst*, the court held that the Florida scheme violated the Sixth Amendment because it did not require the jury to find that Hurst was guilty of committing a specific aggravating circumstance. *Hurst* at ___, 136 S.Ct. at 622, 624.

{¶ 32} Ohio law, in contrast, requires a jury to find the defendant guilty beyond a reasonable doubt of at least one aggravating circumstance, R.C. 2929.03(B), before the matter proceeds to the penalty phase, when the jury can recommend a death sentence. Ohio's scheme differs from Florida's because Ohio requires the jury to make this specific and critical finding.

{¶ 33} Mason disputes this conclusion, relying on this court's statement in *Rogers*, 28 Ohio St.3d at 430, 504 N.E.2d 52, that Florida's system "is remarkably similar to Ohio's." But *Rogers* involved a different question. *See id.* at 429-430. *Rogers* noted that the systems are similar in that they both allow for jury recommendations; it did not consider the findings that the jury was required to make before recommending a sentence.

{¶ 34} Mason also argues that Ohio's scheme is inadequate under the Sixth Amendment because it requires the jury to render "only a general verdict." Here, Mason relies on *Hurst*'s reference to the " 'specific factual findings' " by a jury that were lacking under Florida's scheme. *See Hurst*, ___ U.S. at ___, 136 S.Ct. at 622, 193 L.Ed.2d 504, quoting *Walton*, 497 U.S. at 648, 110 S.Ct. 3047, 111 L.Ed.2d 511. He contends that this requires a jury to *explain why* it concluded that the aggravating circumstances are sufficient to outweigh the mitigating factors. He contrasts the jury's general verdict to the trial court's sentencing opinion, which indeed must explain "the reasons why the aggravating circumstances the offender

- - -

THEREUPON, STATE OF OHIO RESTED.

- - -

THE COURT: I have already talked to the attorneys about their exhibits. So we will have an opportunity for the Defense to go forward with its case.

- - -

BE IT FURTHER REMEMBERED that the Defendant, to maintain the issues on his part to be maintained, offered and introduced in testimony on his behalf the following evidence, to-wit:

MR. YOUNG: Your Honor, at this time, we will call Jesse James to the stand.

- - -

JESSE JAMES

called by the Defendant on direct examination being first duly sworn, testified as follows:

- - -

DIRECT EXAMINATION

BY MS. MENASHE:

Q. Please state your name for the record.

A. Jesse James.

Q. Jesse, I see you are in uniform, if you will. Are you incarcerated right now?

A. Yes, I am.

Q. And what charge are you in on?
A. Probation violation.
Q. And how much time does that carry?
A. Six months.
Q. Any felonies on your record?
A. No.
Q. And that probation violation would then be for a misdemeanor?
A. Yeah.
Q. Jesse, first of all, have we ever met before?
A. Yes.
Q. And fair to say we've met twice before?
A. Yes.
Q. Once yesterday and then I met you at the jail as well.
A. Yes.
Q. And do you remember a shooting took place on September 14, 2001?
A. Yes, I do.
Q. And who was shot on that date?
A. I was.
Q. And where were you shot?
A. In the thigh, right thigh.
Q. And how many times were you shot?
A. Just once.

Q. And --

THE COURT: Just one second.

Okay.

Q. (By Ms. Menashe) And the entrance wound was where? I'm sorry, the entrance wound, where did the bullet enter your body?

A. In my buttocks.

Q. And where did it exit?

A. Front.

Q. So fair to say it traveled from the back to the front?

A. Yes.

Q. And prior to being shot -- just have a couple of questions -- what was the location of that shooting?

A. Evergreen and Palmetto.

Q. And what kind of -- how would you describe that area right there?

A. Describe it like how?

Q. Is it like commercial? Are there buildings there? Are there houses there?

A. It's a housing residence.

Q. Like a neighborhood? Is that fair to say?

A. Yeah.

Q. And this may seem like a ridiculous question, is there a White Castle anywhere around there?

A. Huh-uh.

Q. Prior to being shot, why were you -- or at least, who were you with at Evergreen and Palmetto?

A. Me, Jared Dilley, Jeremy James, Justin Knisely.

Q. And who drove the four of you to Evergreen and Palmetto?

A. I did.

Q. And what kind of car do you have?

A. Ford Explorer.

Q. And what color was that?

A. Maroon.

Q. And your understanding of why you were at Evergreen and Palmetto on the 14th was what?

A. Andrew Dotson called my phone up and said Jared Dilley --

MR. LOWE: Objection.

THE COURT: I will sustain the objection.

As a result of what he said, what did you do?

Q. (By Ms. Menashe) As a result of what Andrew Dotson said to you on the phone, what did you do?

A. Went over to Evergreen and Palmetto.

Q. And at some point did other individuals arrive at Evergreen and Palmetto?

A. No.

Q. No one else other than you four?

A. No.

Q. Okay. What about the other -- was there another vehicle there at any point?

A. The car that they was in. I really didn't get a look at it.

Q. And when you say "they", how many individuals was that?

A. Four.

Q. And at some point when the four of you were there and the four of these other people are there, do you ever see any weapons?

A. When I pulled up and jumped out, I turned around, turned back around, they all had guns.

Q. When you say "they all", how many had guns of the four?

A. I really can't be positive.

Q. You can't be positive. Was it more than one of them?

A. Yeah.

Q. Was it more than two of them?

A. Yeah.

Q. Was it more than three of them?

A. I don't know.

Q. Okay. What happened after you saw these four

individuals, at least two of them with guns, what did you do, if anything?

A. I was in the middle of the street. I just jumped out of my car. I turned back around. Started shooting. I Ran into a yard. Ran back into my car, jumped in and took off.

Q. When you say "they started shooting", did you hear -- how many bullets did you hear?

A. About forty.

Q. And how did those bullets -- how did you hear those bullets?

Not how did hear, but when those forty or fifty bullets were heard, were they all at one time? Were they at different times?

A. No. When I got shot, got back into the my car, they reloaded and then started shooting at my truck again.

Q. When you say "they", that's more than one person?

A. Uh-huh.

Q. And those shots were coming to your knowledge from more than one gun?

A. Yeah.

Q. Did you have a gun?

A. Huh-uh.

Q. Did any of the individuals that you were with

have guns?

A. Nope.

Q. And when you got shot, fair to say that you were running from the bullets?

A. Yeah.

Q. And is it fair to say that as soon as you saw the guns you started running?

A. Yeah.

Q. And have you ever given a recorded statement regarding the shooting?

A. No.

Q. Have you ever been asked to testify in any proceedings regarding the shooting?

A. No.

Q. Have you ever been in any courtroom like this before regarding the shooting?

A. No.

Q. Has anyone from the prosecutor's office come to talk to you to your knowledge?

A. Mr. Lowe.

Q. And when Mr. Lowe came to talk to you, did you tell him information similar to what you testified here today?

A. Same story.

Q. And have you ever made a positive identification

based on a photograph of the person that shot you?

A. No.

Q. Have you ever been asked to look at an array of photographs to determine who was the person that shot you?

A. No.

Q. And Mr. Lowe when he met you did not show you any photographs?

A. No.

Q. And have you ever signed a piece of paper stating who is the person that shot you?

A. No.

Q. Fair to say that when you got shot, your back was to the individuals with the guns?

A. Yes.

Q. And so you did not see who fired the gun, whose bullet went into your rear; is that fair to say?

A. Yeah.

MS. MENASHE: One moment, Your Honor.

Q. (By Ms. Menashe) Oh, Jesse, what was your cell phone number back in September of 2001?

A. 778-9296.

Q. Were you friends with Andrew Dotson?

A. I seen him a couple times. I didn't really know him.

Q. Did you ever prior to September 14, 2001 give Andrew Dotson your cell phone number?

A. No.

Q. Was there any telephone calls to that 778-9296 from Andrew Dotson on the 14th?

A. That day.

Q. That day? Prior or after the shooting?

A. Prior.

Q. And about the shooting, what time of day did it take place?

A. I can't remember.

Q. Do you remember if it was light out?

A. It was light out.

Q. And that intersection of Evergreen and Palmetto, would you describe it as an open area or as a really populated area?

A. Yeah, it's an open area.

Q. And other than the eight individuals that you've already said were present at the shooting, were there any other people that were just standing by -- bystanders, if you will?

A. Yeah. There was like fifteen bystanders.

MS. MENASHE: One moment, Your Honor.

Q. (By Ms. Menashe) Jesse, just one more question. Couple more actually.

Do you live at that intersection of Evergreen and Palmetto?

A. No.

Q. And why on September 14th did you go to that intersection?

A. They called me up and told me that's where they wanted to meet.

MR. LOWE: Objection.

THE COURT: Overruled. Go ahead.

Q. (By Ms. Menashe) And when you were going to Evergreen and Palmetto, what did you think was going to happen when you got there?

A. Fight.

MS. MENASHE: Nothing further.

THE COURT: Mr. Lowe.

MR. LOWE: Thank you.

- - -

CROSS-EXAMINATION

BY MR. LOWE:

Q. Mr. James, we have met once before; is that correct?

A. Yeah.

Q. And we discussed what happened the night that you were shot?

A. Yeah.

Q. And you were shot in the buttocks; is that correct?

A. Yes.

Q. And it was when you were facing the other way?

A. Yeah.

Q. Isn't it true you told me you didn't know who shot you?

A. Yes.

Q. And you couldn't identify who shot you?

A. No.

Q. Isn't it also true that you said that you did see a big fat white guy there?

A. Yeah.

Q. He was one of the individuals with a gun?

A. Yeah.

Q. And you went there for a fight?

A. Yeah.

Q. But you also had a pipe, didn't you?

A. Uh-huh.

Q. You didn't get a good look at the car they were in, correct?

A. No.

Q. And at first you said they all had guns and then you said, well, you're not sure. How many guns did you see?

A. There was at least three.

Q. Can you describe the guns for us?

A. No.

Q. And when you were turning around, when you started running, correct --

A. Yeah.

Q. -- and that's when the firing started?

A. Yeah.

Q. And you said firing came from more than one gun. Are you positive about that?

A. Yeah.

Q. Now, how are you positive if you didn't see who was shooting?

A. Because I heard multiple gunshots.

Q. You say "multiple gunshots", you mean sound differently?

A. Yeah.

Q. Now, you did get questioned by the police on this offense, didn't you?

A. Yeah. Not really, though. Just that night at the hospital.

Q. Okay. And they came to talk to you, though? Do you remember that?

A. Yeah.

Q. Do you remember telling them that you didn't want

to be involved?

A. Uh-huh.

Q. Do you remember telling them you didn't want to testify?

A. They never asked me.

Q. Well, do you remember them telling you who did this -- asking you who did this?

A. Yeah.

Q. And your response was, you didn't want to be involved?

A. I told them -- I forget what I told them.

Q. Okay. Well, do you remember meeting with me on March 31st?

A. Yeah.

Q. Do you remember telling me at that time you didn't want to be involved?

A. Yeah.

Q. And you weren't shown any photographs by me, correct?

A. Huh-uh.

Q. But isn't that because you told me you wouldn't be able to identify anybody that shot you?

A. Yes.

Q. Do you know an individual by the name of Andrew Dotson?

A. Yes.

Q. Did you see him at that scene?

A. Yes.

Q. He was there that day, correct?

A. Yeah.

Q. He was with the group of four guys?

A. Yeah.

Q. Including the big fat white guy, wasn't he?

A. Yeah.

MR. LOWE: I have nothing further. Thank you.

THE COURT: Ms. Menashe.

MS. MENASHE: Yes, Your Honor. Briefly.

- - -

REDIRECT EXAMINATION

BY MS. MENASHE:

Q. Mr. James, when we met out at the Work House you told me you didn't want to be involved in this case either; is that correct? Or you told me you didn't want to be involved in testifying; is that correct?

A. Yes.

Q. And you're not here today because this is where you want to be, correct?

A. Yes.

Q. I subpoenaed you?

A. Yes.

Q. And then they brought you over here?

A. Yes.

Q. And you did not contact me; is that correct?

A. No.

Q. I came to the Work House and initiated conversation with you.

A. Yes.

Q. And is it fair to say that when we first began to talk, you were more than hesitant to want to get involved at all? Fair to say?

MR. LOWE: Judge, I'm going to object to the leading.

THE COURT: Overruled.

A. Yes.

Q. (By Ms. Menashe) You weren't happy to see me when you knew what I was going to ask you about.

A. No.

Q. And in terms of -- well, to your knowledge, have there ever been any charges filed regarding your shooting?

A. No.

Q. And when you got to the hospital that night, was there ever a bullet recovered?

A. No.

Q. And Mr. Lowe asked you about how you know that different guns were being fired, fair to say? Fair to say that the bullets sounded different?

A. Yeah.

Q. And when the police officers interviewed you at the hospital that night, they asked you what happened?

A. Kind of.

Q. Okay. Didn't ask you a whole lot of questions?

A. No.

Q. And that was the only time the police officers ever interviewed you regarding your shooting?

A. Yes.

Q. And that would have been September 14th of 2001?

A. 13th.

Q. 13th? Do you remember if it was a Thursday, Friday or Saturday?

A. It was Friday the 13th.

Q. There's no doubt and on that date when you were interviewed that was the date that you got shot in the rear, correct?

A. Yes.

Q. And that's the only time you have ever been shot in the rear; is that correct?

A. Yes.

THE COURT: Anything further, Mr. Lowe?

MR. LOWE: No, Your Honor.

THE COURT: All right. Thank you. You may step down.

Approach the bench.

- - -

Thereupon, Court and counsel confer at the bench out of the hearing of the jury off the record.

- - -

THE COURT: I apologize. We've got some problems getting some witnesses here and that's something that we are trying to deal with and it's not anybody's fault. So there's going to be some delay. Defense did not know that they were going to be starting right at this point in time this morning.

So we are going to have a delay and it's going to be significant. We are trying to get a couple witnesses down here at 11:00 o'clock. I know some other witnesses weren't scheduled until 1:30 when I told them to schedule them yesterday. So that's not their fault.

So what I'm going to do, we are going to adjourn until 11:00 o'clock and it's possible we will be adjourning until 1:30 but I won't know that until 11:00 o'clock.

So go ahead, go downstairs, do whatever you want till 11:00 and come back up here at 11:00 o'clock.

And Linda will tell you if we are going forward.

Again, don't discuss the case amongst yourselves or anybody else. See you back up here at 11:00.

- - -

Thereupon, a recess was taken.

- - -

Thereupon, a luncheon recess was taken until 1:30 o'clock p.m., of the same day, to wit, September 19, 2003.

- - -

Friday Afternoon Session,
September 19, 2003.

- - -

Thereupon, the jury resumed their places in the jury box.

- - -

MR. YOUNG: Defense would call Robert Hale.

- - -

ROBERT HALE

called by the Defendant on direct examination being first duly sworn, testified as follows:

- - -

DIRECT EXAMINATION

BY MS. MENASHE:

Q. Mr. Hale, good afternoon.

A. Good afternoon.

Q. Please state your name for the record?

A. Robert Hale.

Q. And, Mr. Hale, where do you live?

A. Evergreen Terrace.

Q. And how close is Evergreen Terrace to the intersection of Evergreen and Palmetto?

A. Oh, probably about a hundred to two hundred feet.

Q. And do you remember what, if anything, happened on September 14, 2001?

A. Yes.

Q. And what was that?

A. I was at a friend's house. I was talking on the phone to her daughter and I heard five gunshots, loud gunshots. And I looked out the front door and seen a young man running and he jumped in a maroon Ford Explorer. And as it sped away, I heard nine more shots shot rapidly from a different gun. Because the shots were loud and they didn't even sound the same.

Q. Okay. And when you say from a different gun, why do you believe they were from a different gun?

A. Because the sound was just totally different from the second set of shots and the first set of shots.

Q. When you said you were at a friend's house when you heard these shots, where is your friend's house in proximity to that intersection?

A. About a hundred fifty feet southwest of that intersection.

Q. Would your phone conversation in any way -- well, how clearly were you able to hear the shots given you were on the phone?

A. I heard them so clearly that Rachel, the girl I was talking to, she heard the shots also.

Q. What, if anything, did you do once you heard the shots?

A. I was in a state of shock and I seen the girl two doors down holler and she ran in the house and she called the sheriff.

Q. And at some point you ran out in the street?

A. No.

Q. Where were you when you saw the person jump into the maroon Ford Explorer?

A. I was at the front door of my friend's house.

Q. And fair to say that we met for the first time at the end of July, this summer?

A. Yes.

Q. Does that sound about right?

A. Yeah.

Q. And I was there with my investigator?

A. Yes, ma'am.

Q. And you never contacted me in this case; is that fair to say?

A. Yes.

Q. And you are here today under subpoena?

A. Yes.

MS. MENASHE: One moment, Your Honor.

Nothing further, Your Honor.

THE COURT: Mr. Lowe.

- - -

CROSS-EXAMINATION

BY MR. LOWE:

Q. Mr. Hale, how are you?

A. I'm fine. How are you?

Q. Good. Thanks.

We just met outside about ten minutes ago?

A. Yes.

Q. Mr. Hale, you didn't call the police that night; isn't that true?

A. Yeah, that's true. I didn't even want to get involved, sir.

Q. You didn't want anything to do with this?

A. No.

Q. So you didn't talk to the police back in 2001 when this happened?

A. No. I figured that the woman that called the cops and her husband would be plenty because I guess he talked to them.

Q. And, sir, you indicated you were on the phone, correct?

A. Yes.

Q. And isn't it also true that there's some bushes in front of where you were looking?

A. Yes.

Q. Hard for you to see what was going on?

A. Right. Yeah. They were like probably anywhere from eight to ten feet high and real thick.

Q. Would you agree with the fact that you couldn't see who was doing the shooting?

A. Yes. I couldn't see.

Q. You didn't see the people who were shooting or the people on the other side being shot at; is that accurate?

A. That's correct, yeah, I couldn't.

MR. LOWE: Thank you. I have nothing further.

THE COURT: Any redirect?

MS. MENASHE: No, Your Honor.

THE COURT: Thank you. You may step down.

THE WITNESS: Thanks.

- - -

LINDA GOODMAN

called by the Defendant on direct examination being first duly sworn, testified as follows:

- - -

DIRECT EXAMINATION

BY MR. YOUNG:

Q. Ms. Goodman -- excuse me, I'm losing my voice.

Ms. Goodman, could you please state your name for the record and spell your last?

A. Linda Goodman, G-o-o-d-m-a-n.

Q. Ms. Goodman, where are you currently employed?

A. At Hampton Inn Suites, Chillicothe, Ohio.

Q. How long have you been employed by the Hampton Inn?

A. Three years.

Q. And what is your position at the Hampton Inn?

A. I'm the general manager.

Q. And as a general manager, are you in charge of maintaining the books and records of the Hampton Inn?

A. Yes, I am.

Q. And did I speak with you on the phone earlier today?

A. Yes, you did.

Q. And did I ask you to bring certain records to court today?

A. Yes, you did.

Q. And what records did I ask you to bring?

A. You asked me if I had any paperwork on a certain gentleman staying at the hotel.

Q. And are your records maintained in the ordinary course of business?

A. Yes.

Q. And did you, in fact, bring those records to court today?

A. Yes, I did.

Q. Prior to us going over those particular records, do you have certain procedures or protocols that you at the Hampton Inn or you have your employees follow when a person checks in for a room?

A. Yes, we do.

Q. And could you describe to the ladies and gentlemen of the jury what your procedures and protocols are for check-ins?

A. Well, it varies depending on how the guest is going to pay.

Q. Okay.

A. If it's credit card, we ask for their credit card and an ID to prove who they are. If they happen to be a Hilton Honors member, which is part of our brand, then we just happen to have -- we get their number, their Honors number and we can put that into our computer and all their information comes up.

If they are paying cash, they have to show a picture ID.

Q. And they actually show a photo identification if they pay cash?

A. Yes, sir.

Q. And is there any other requirements you employ or your staff employs in the event someone pays cash?

A. We ask for an additional cash deposit.

Q. Okay.

MR. YOUNG: May I approach the witness, Your Honor?

Q. (By Mr. Young) Showing you what's marked Defendant's Exhibit 16. Do you recognize that?

A. Yes, I do.

Q. Can you please describe to the ladies and gentlemen of the jury what that is?

A. It's what we refer to in the hotel business as a folio, which is a record of a guest's stay.

Q. And is that folio that you brought to court today, was that kept in the ordinary course of business and with the business records of the Hampton Inn?

A. Yes, it was.

Q. And can you please describe the information contained on that folio?

A. The information provided is the name and address of the guest, confirmation number on the reservation, the room number, the type of room, the date of arrival, the date of departure, as well as the time of arrival and the time of departure, the rate of the room. And then on down in the description, it will give the dates and the charges made to that room on those dates.

Q. And who is the name of the guest?

A. Mike Arthurs.

Q. And does the folio indicate an address for the gentleman you know as Mike Arthurs?

A. Yes, it does.

Q. And can you please tell the ladies and gentlemen of the jury the address?

A. 644 Yellowbud Road, Chillicothe, Ohio.

Q. And does it indicate a check-in date?

A. Yes, it does.

Q. Will you please tell the ladies and gentlemen of the jury the check-in date on that folio?

A. Check-in date of this folio is September 11, 2001, 10:31 p.m.

Q. And does it indicate a check-out time or departure time?

A. Check-out was 9/15/2001 at 11:44 p.m.

Q. And is there any type of handwriting or anything from the guest on your folio?

A. No, there is not.

Q. And can you describe to the ladies and gentlemen of the jury, does a person who is a cash guest, what's their check-out procedures?

A. If the room is already paid in full, they can just leave. They do not have to go to the front desk.

Q. Do you know whether in this case, the gentleman,

Mike Arthurs, checked out or whether your records indicate he did or did not?

A. The room was paid for through the 14th. It doesn't indicate and it would not indicate whether he went to the front desk or if he just left.

Q. Does the Hampton Inn keep any type of copies of the photograph or the picture ID used or anything?

A. No, we don't.

Q. And does the person fill out any type of card in order to get the room?

A. No. With computer check-ins now that's not necessary.

Q. And on the departure date, what is the time of departure?

A. 11:44.

Q. Can you take a look at that again and see if that's --

A. I'm sorry. 1:44 p.m.

Q. And is the folio in front of you, is that a true and accurate depiction of what's contained in your records?

A. Yes, it is.

Q. Has it in any way been altered, modified or anything?

A. No.

Q. During Mr. Arthurs stay, are you aware of whether anyone of you -- either you or any one of your staff had personal contact with Mr. Arthurs?

A. I did not have personal contact with him, but members of my staff did.

Q. And what was the nature of the personal contact?

MS. PRICHARD: Objection.

THE COURT: Sustained.

MR. YOUNG: One minute, Your Honor.

Nothing further, Your Honor.

THE COURT: Any cross?

- - -

CROSS-EXAMINATION

BY MS. PRICHARD:

Q. Good afternoon, Ms. Goodman.

A. Good afternoon.

Q. We met about five, ten minutes ago?

A. Yes.

Q. Prior to being called by Mr. Young to be here, were you interviewed by anybody, any investigators or anybody on behalf of the defendant?

A. No, ma'am.

Q. And what specifically were you asked to bring? What was the search you were supposed to do?

A. We were just -- I was asked to bring if I had

proof that he had, in fact, stayed there.

Q. Were you given specific dates to look for?

A. Yes, I was given specific dates.

Q. What dates were those?

A. 9/11/2001 through 9/15/2001.

Q. And what name or names were you asked to look for?

A. Mike Arthurs.

Q. Were you asked to check any other names?

A. No, ma'am.

Q. Were you asked to pull everybody who stayed from November 11th to, let's say -- I'm sorry, September 11th to, say, September 17th?

A. No.

Q. Did you check Mr. Arthurs in?

A. No, I did not.

Q. Were you even working during this time period?

A. I was in Memphis, Tennessee.

Q. So you have no personal knowledge as to who really checked in under this name Mike Arthurs.

A. No.

Q. What happens if a person doesn't have -- do they have to show a driver's license or is it any picture?

A. Picture ID.

Q. So a school ID would work or state ID, anything

of that sort?

A. Just so the face on the picture is the same as the person checking in.

Q. And do you have regular customers at the hotel?

A. Yes, I do.

Q. Are they always required to show ID?

A. Not if they are Hilton Honors member.

Q. Do you know whether or not all of the people that worked there at the desk always request ID?

A. That's policy to do that. Of course, I'm not there at that desk all the time. So there's no way I would know if they do it for every guest.

Q. And I think you indicated there is no signature or nothing on that form --

A. Correct.

Q. -- that would help match any signatures or verify anything like that?

A. Correct.

Q. And no pictures or anything are kept on file or copies of any ID's?

A. Correct.

Q. You said when there is a cash guest, such as this guest, this was all prepaid?

A. Yes.

Q. Then is it safe to assume when the person leaves,

they can just leave a key in the room and they can leave at any time?

A. Yes, they can.

Q. So the departure date of September 15th, I think it's 1:44 p.m., doesn't mean somebody left on that particular day or time?

A. That would have been the time we checked them out of the room.

Q. Meaning when a maid or somebody went in and saw it empty?

A. Right. Check-out time is 12:00 o'clock. People do ask for later check-outs at times and we do grant them. But 1:44 would have been a reasonable time for us to check them out.

Q. And if somebody prepaid on the 11th, I guess that's three nights, they would leave on the 14th in the middle of the night and you still would write that they checked out on the 15th?

A. That's possible.

Q. Do you know by looking at your records whether or not this person who checked in as Mike Arthurs was with other people?

A. I can't tell that by looking at the record, no.

Q. Would you know whether or not there are other rooms that were secured at that same date and time by

other people?

A. Well, there were definitely other rooms rented in the hotel at that time, yes.

Q. And you weren't asked to bring records to see who else was staying there at that time?

A. No, I was not.

Q. Are you familiar with groups coming to the hotel to, I guess, have little parties at the hotel?

A. Yes. That happens.

Q. That happens there at your hotel?

A. Yes.

Q. Would these groups sometimes get more than one room?

A. Yes.

Q. Do you recall what day of the week September 14th was by any chance?

A. I don't recall.

MS. PRICHARD: One moment, Your Honor.

I have nothing further. Thank you.

THE COURT: Any further questions?

MR. YOUNG: Yes, Your Honor.

- - -

REDIRECT EXAMINATION

BY MR. YOUNG:

Q. Ms. Goodman, were you interviewed by Detective

Zach Scott from the Franklin County Sheriff's Department?

A. No.

Q. Were you interviewed by anyone from the Ross County Sheriff's Department?

A. Interviewed, no.

Q. Did anyone ask you for records from the Ross County Sheriff's Department?

A. They do.

Q. Do they routinely do that?

A. When they have an investigation that involves someone that they feel may have been there, yes, they do come and request that.

Q. You don't know if on this particular receipt that, in fact, the Ross County Sheriff's had asked you for a receipt from Mike Arthurs?

A. I don't recall.

Q. Okay. If they would have asked, would you have provided them the information?

A. Absolutely.

Q. On the receipt it indicates that there are certain payments. For instance, on the very first line, is there a payment of cash?

A. Yes.

Q. And then on September 12th, is there an

indication of payment for cash?

A. Yes.

Q. On September 13th, is there an indication for a payment of cash?

A. Yes.

Q. On 9/14, is there a payment for cash?

A. Yes.

Q. And that would have been to secure the room through those evenings?

A. Yes.

Q. And those were input on those dates --

A. Yes.

Q. -- to the best of your knowledge?

A. Not necessarily.

Q. Not necessarily, but they could have been?

A. They could have all been put in if he -- when Mr. Arthurs came in and checked in, if he said, I want to stay the 11th through the 14th, checking out the 15th, when he checked out the folio was closed. It would show the payments on the dates that he stayed there. That does not necessarily mean that he paid for them then.

MR. YOUNG: Thank you.

MS. PRICHARD: Nothing further.

THE COURT: Thank you. You may step down.

- - -

BRIAN WOODWORTH

called by the Defendant on direct examination being first duly sworn, testified as follows:

- - -

DIRECT EXAMINATION

BY MR. YOUNG:

Q. Is it Mr. Woodworth.

A. Yes.

Q. Mr. Woodworth, please state your name and spell your last for the record.

A. Brian Woodworth, W-o-o-d-w-o-r-t-h.

Q. Mr. Woodworth, are you currently employed?

A. Yes, I am.

Q. Where are you employed?

A. I'm employed with CP Management Company. I work at the Hampton Inn and Suites in Chillicothe, Ohio.

Q. And how long have you worked in the maintenance department over at the Hampton Inn and Suites?

A. Four years.

Q. And did you receive a call from my co-counsel, Diane Menashe?

A. Yes, I did.

Q. And did Diane ask you to take some measurements of a certain room?

A. Yes, she did.

Q. Can you tell the ladies and gentlemen of the jury pursuant to her request what you did?

A. I measured the bathroom in room 306.

Q. And do you recall what -- or can you describe to the ladies and gentlemen of the jury the makeup of the bathroom in room 306.

A. The bathroom has a tub, a toilet and a closet inside of it.

Q. When you say closet, is it a linen closet?

A. Linen closet, yes.

Q. Does it have a sink?

A. No. Not inside the bathroom, no.

Q. And did you actually take measurements of the bathroom?

A. Yes, I did.

Q. And what were the results of your measurements?

A. It's slightly over ten feet by five and a half feet.

Q. Did you create a diagram?

A. Yes, I did.

MR. YOUNG: May I approach the witness, Your Honor.

Q. (By Mr. Young) Showing you what's marked as Defendant's Exhibit 17. Do you recognize this?

A. Yes, I do.

Q. And can you describe for the ladies and gentlemen of the jury what Defendant's 17 represents?

A. It's a hand drawing of the layout of our bathroom in room 306.

Q. And did you prepare that hand drawing?

A. Yes, I did.

Q. And on that hand drawing does it have certain -- what is the surface area for the standing room alone in that bathroom?

A. About three and a half feet by five and a half feet.

Q. How would you describe that standing area in that bathroom?

A. Rectangular shaped, the door opening into it.

Q. Would you say that it's large or small?

A. It's a smaller bathroom in the hotel.

Q. And there are other suites in your hotel, aren't there?

A. Yes, there are.

Q. And are those other suites' bathrooms differ in size than room 306?

A. Yes, they do.

Q. And would it be possible that three rather large adult males would be able to stand in that restroom?

A. I think they could squeeze in but it would be a

squeeze if you consider closing the door.

Q. And if the door was closed, the three gentlemen potentially could squeeze in that bathroom?

A. It would be tight.

MR. YOUNG: Nothing further, Your Honor.

THE COURT: All right. Cross.

- - -

CROSS-EXAMINATION

BY MS. PRICHARD:

Q. Mr. Woodworth, is it? You said some of the other bathrooms in the hotel are larger, different size?

A. Yes, they are.

Q. Different layout?

A. Different layout.

Q. Were you asked to bring any measurements for any of those bathrooms?

A. No, I was not.

Q. You were just asked to measure this particular room?

A. Yes.

MS. PRICHARD: I have nothing further.

THE COURT: Anything?

MR. YOUNG: No, Your Honor.

THE COURT: Thank you. You may step down.

MR. YOUNG: At this time, the Defense would

call Matt Sauer.

- - -

MATT SAUER

called by the Defendant on direct examination being first duly sworn, testified as follows:

- - -

DIRECT EXAMINATION

BY MS. MENASHE:

Q. Please state your full name for the record.

A. Matthew Sauer.

Q. And, Mr. Sauer, what do you do for a living?

A. Private investigator.

Q. And were you hired by the Defense in this case to work as an investigator on the James Conway case?

A. Yes, I was.

Q. And what are your duties as an investigator?

A. Interviewing, court record research, background information.

Q. And did I recently -- did a member of the Defense recently ask you to do a record check on an individual named CJ Stephens?

A. Yes.

Q. And what day was that request made?

A. Yesterday.

Q. And was there any other information given to you

about CJ Stephens that would be helpful in your records track of that individual?

A. That he's lived in Chillicothe.

MS. PRICHARD: Objection, as to any hearsay.

THE COURT: Sustained.

I don't know how we got whatever information he is relaying.

Q. (By Ms. Menashe) Mr. Sauer, based on the request, there was a request to find out some information on a CJ Stephens.

A. Correct.

Q. And what, if anything, did you do based on that request from the Defense counsel?

A. I tried to locate Mr. Stephens.

Q. And what efforts did you make?

A. I checked court -- I called down to Chillicothe Municipal Court and checked his name and got some information through that.

Q. And were you able to -- well, first of all, when you gave the name CJ Stephens, was there more than one CJ Stephens that you obtained court records for?

A. No.

Q. And were you ever able to obtain court records for any CJ Stephens that lived in Chillicothe?

A. I did get -- on that CJ Stephens, I got records.

Q. And how do you spell that name?

A. Well, actually, I had a first name, too, which was Cassady which narrowed it down. The last name was S-t-e-p-h-e-n-s.

Q. And were you able to obtain birth date from the court records?

A. Yes, I was.

MS. PRICHARD: Objection. Hearsay.

THE COURT: Sustained.

Q. (By Ms. Menashe) Did you make any efforts to contact Mr. Stephens?

A. Yes, I did.

Q. And what were those efforts?

A. I went to his house or the address I had for him in Chillicothe yesterday but he was not home.

Q. The court records that you obtained, when did you obtain those?

A. Today.

Q. At what time?

A. This morning, probably 10:30 or so, 11:00 o'clock.

Q. And at what time did you come to the courthouse this afternoon? What time did you come to the courthouse?

A. 1:00 o'clock.

Q. And did you bring those court records with you?

A. Yes, I did.

MS. PRICHARD: I object to the admission of the hearsay document.

THE COURT: Okay. Let's approach the bench.

- - -

Thereupon, Court and counsel confer at the bench out of the hearing of the jury as follows:

- - -

MR. YOUNG: Your Honor, first of all, obviously, all the information that the CJ Stephens birthday --

THE COURT: Certified copy of any court record?

MR. YOUNG: No, it isn't.

THE COURT: Why is it admissible?

MS. MENASHE: Your Honor, I didn't intend to introduce the document.

And, Your Honor, I guess I would say given the short notice -- I know the court is probably not concerned with this -- it was all I could do to get a faxed copy.

THE COURT: That doesn't make any difference. I have to look at the exception itself to Hearsay. I have to look at the exceptions of Hearsay

Rule and which exception does it come under.

MS. MENASHE: Well, I thought it was admissible as a result of the search.

THE COURT: No. It's his search.

MS. MENASHE: He's not -- it's the results of the search. It goes to the weight of the evidence. He's saying he has the birthday --

THE COURT: 803 has twenty-six exceptions. I need one of the exceptions.

MR. YOUNG: Public records.

MS. MENASHE: What about the public records?

THE COURT: That's not a certified copy and it's not a record that's an exception to the Hearsay Rule.

I assume you're trying to introduce it for the truth of what's stated in the records.

MR. YOUNG: That CJ Stephens has a birthday on 9/14.

THE COURT: I assume you're trying to introduce something more than that.

MS. MENASHE: Of course it's not more than that. It's not the danger. You guys can argue that.

THE COURT: That's not the point.

MS. MENASHE: They can obviously argue there was not a CJ Stephens -- there was a birthday party

Friday or Saturday. There was a CJ Stephens that lives in Chillicothe, birthday September 14th. My investigator tried to interview Mr. Stephens and he wasn't at home. Given our short notice, I can't do -- I mean --

THE COURT: Well, it's not short notice. It still has to be an exception. That's not one of them.

MS. PRICHARD: Your Honor, he was mentioned in the last trial. I don't know what the short notice issue is, just for the record.

THE COURT: Okay. Anyway, I will not admit it and I will not let him refer to that.

MS. MENASHE: So just for the record, the court isn't allowing me to ask anything about -- well, he's already testified he found CJ Stephens in Chillicothe and nothing about a birthday.

THE COURT: Anything he's going to say or relate to in this courtroom that did not come from this courtroom is a none judicial declarant. I don't care if the declarant is a record. I don't care if the declarant is reliable. If you had the person here and you ask him the question, that's fine.

MR. YOUNG: Your Honor, we would request time to get a certified record of this particular document and submit it into evidence.

THE COURT: I'm not going to do any more time right now.

MR. YOUNG: That's fine.

THE COURT: Okay.

- - -

Thereupon, the following proceedings were had in the hearing of the jury as follows:

- - -

THE COURT: Anyway, I've sustained the objection.

Q. (By Ms. Menashe) Mr. Sauer, were you ever able to locate somebody in the City of Chillicothe by the name of CJ Stephens?

A. I think I had a good address on him.

Q. And why do you think that?

A. I found a recent traffic ticket.

THE COURT: Let's not relate to anything that somebody else told you and don't relate to anything else that was said on any other document. You can say traffic, the traffic court, but don't say what it was. Okay.

Q. (By Ms. Menashe) Mr. Sauer, did you go to a residence in Chillicothe yesterday?

A. Yes, I did.

Q. And was that at the request of Defense counsel?

A. Yes.

Q. Fair to say that that request was pretty last minute?

A. Oh, yeah.

Q. And this isn't the only case that you had going on; is that correct?

A. No.

Q. And was there anybody home at that address when you went there?

A. No.

MS. MENASHE: Nothing further, Your Honor.

MS. PRICHARD: Thank you, Your Honor.

- - -

CROSS-EXAMINATION

BY MS. PRICHARD:

Q. First time you went looking for a CJ Stephens was yesterday?

A. Right.

Q. You have been the Defense investigator with these attorneys for how long?

A. Several months.

Q. You have been doing work for them for several months then?

A. Right.

Q. Do you recall getting a letter from me dated

August 27, 2003?

A. No, I don't.

Q. Would the address 117 Harding here in Columbus be accurate?

A. Right. Right.

Q. Let me just show you this. I'm not even going to mark it as an exhibit.

Have you seen -- first of all, is that the right address on top of that letter?

A. Well, actually there are two 117 Hardings and sometimes I get their mail; sometimes they get my mail. So a lot of times I don't get my mail.

Q. So you haven't seen a letter like this asking you to contact me before?

A. I don't remember getting this, I will say that.

MS. PRICHARD: Nothing further.

THE COURT: Anything further?

MS. MENASHE: Yes, Your Honor.

- - -

REDIRECT EXAMINATION

BY MS. MENASHE:

Q. Mr. Sauer, you were never directed at any time not to respond to a letter or phone call to the prosecutor's office; is that correct?

A. Right.

MS. MENASHE: Nothing further, Your Honor.

THE COURT: All right. You may step down. Thank you.

MS. MENASHE: One moment, Your Honor.

Defense will call Tonya Coons at this Your Honor.

- - -

TONYA COONS

called by the Defendant on direct examination being first duly sworn, testified as follows:

- - -

DIRECT EXAMINATION

BY MS. MENASHE:

Q. Please state your full name for the record.

A. My name is Tonya Renee Coons.

Q. Spell your last name for the record.

A. K-o-o-n-s.

Q. Do you live here in Franklin County?

A. Yes, ma'am.

Q. And, Ms. Coons, did I have an opportunity to speak to you yesterday?

A. We spoke on the phone.

Q. Was that the first time we had ever talked?

A. Yes, ma'am.

Q. Showing the witness what's previously marked as

State's Exhibit F-2.

MS. MENASHE: May I approach?

Q. (By Ms. Menashe) Ms. Coons, do you recognize that letter?

A. Yeah. I have a copy.

Q. And is that your signature that appears on the bottom of that letter?

A. Yes, ma'am.

Q. And at the time when you signed that letter, what was your position regarding any recommendations that would be made to the parole board regarding Mr. Ronny Trent?

A. I would not agree to go to the parole board and ask them not to revocate Ronny Trent.

Q. And why is it -- were you the only individual that was being asked whether you agreed or disagreed with Mr. Trent's deal?

A. Yes.

Q. And are you the actual victim in that case?

A. No. It's my daughter.

Q. And does that explain why you were the one that was giving consent essentially, if you will?

A. Correct.

Q. And at any point were you asked to testify at a parole hearing?

A. No, I don't believe I was asked to testify. They asked me if I would go along with them to the parole board and ask them not to revocate Ronny.

Q. And what was your answer to that?

A. Absolutely not.

Q. And why was that?

MS. PRICHARD: Objection.

THE COURT: Sustained.

Q. (By Ms. Menashe) And at any point, either before or after the letter, did you ever make any attempts to ask the parole board that Mr. Trent not be revocated?

A. Absolutely not.

MS. MENASHE: One moment, Your Honor.

Nothing further.

THE COURT: All right.

- - -

CROSS-EXAMINATION

BY MS. PRICHARD:

Q. Good afternoon, Ms. Coons. My name is Sheryl Prichard, one of the prosecutors.

Ms. Coons, Mr. O'Brien, the actual head prosecutor himself interacted with you in preparing that letter, correct?

A. Correct.

Q. He came to you and discussed this with you prior

to that being signed?

A. We came to court for a hearing regarding Ronny Trent. Yes, he did approach me.

MS. PRICHARD: If I may approach for a moment.

Q. (By Ms. Prichard) In Exhibit F-2, did you not agree to the reduction of the charge down to a misdemeanor of the first degree?

A. Actually, I didn't. It was made very clear to me if I had agreed or not; that that was the deal that Ronny wanted and that's what they was going to give him.

Q. So you're saying Mr. O'Brien forced you into this?

A. No, I'm not saying he forced me.

Q. You signed this voluntarily?

A. Yes, I did.

Q. Does it not say, "We are in agreement with a reduction of the gross sexual imposition charge to assault, a first degree misdemeanor, in exchange for a guilty plea."

A. Yes, ma'am. That is what it says.

Q. "I understand the assault conviction will result in an additional three months jail sentence with a waiver of jail time credit," et cetera, et cetera.

A. Correct. But I also thought Ronny was going to

be revocated to the parole board.

Q. Hold on a moment. Did you also indicate, "I understand the parole board or a hearing officer will hold a parole revocation hearing due to the assault and the sheriff's office and State are advocating that parole not be revoked due to Trent's cooperation in an unrelated investigation."

And you said, "I do not join in that recommendation regarding parole revocation. But I'm satisfied that if the parole board or hearing office review all the facts, including the new conviction as well as the cooperation and make an independent decision on the issue."

A. Actually, no, I did not want the parole board to go along with this deal. I wanted Ronny to go back to prison.

Q. You signed that. Did you read it?

A. Actually, I didn't read it. I was very, very upset. I didn't expect Mr. O'Brien to come at me as he did that day. And like I said, that was the only reason I agreed to the reduction of the charges because I thought Ronny was going to be revocated and he was going to go back to prison.

Q. You understand there was a reduction and you voluntarily signed off on that part, correct?

A. Yes.

Q. But you're saying you did not understand the --

A. Apparently not. They did tell me they was going to go to the parole board and ask them not to revocate him. No, I did not go along with that.

Q. You said in the letter, "I understand that's what you're going to do, but I don't agree with that"?

A. Yes.

Q. And you signed that?

A. Yes.

Q. And you have a copy of that today?

A. Uh-huh.

MS. PRICHARD: Nothing further.

THE COURT: Anything further?

MS. MENASHE: Just one question.

- - -

REDIRECT EXAMINATION

BY MS. MENASHE:

Q. Ms. Coons, did you prepare this?

A. No.

Q. You didn't type this?

A. No.

MS. MENASHE: Nothing further.

THE COURT: Thank you. You may step down.

MR. YOUNG: Your Honor, may we approach?

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Thereupon, Court and counsel confer at the bench out of the hearing of the jury off the record:

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ARTHUR WOOD

called by the Defendant on direct examination being first duly sworn, testified as follows:

- - -

THE COURT: Mr. Young.

- - -

DIRECT EXAMINATION

BY MR. YOUNG:

Q. Good afternoon, Mr. Wood.

A. Good afternoon.

Q. Can you please state your name for the record and spell your last?

A. Arthur Lee wood, W-o-o-d.

Q. And you're currently incarcerated?

A. Yes, sir.

Q. Where are you incarcerated?

A. CRC, Correctional Reception Center.

Q. And when is your out date at CRC?

A. October 5, 2003.

Q. What are you currently -- what term of imprisonment are you currently serving?

A. A B&E.

Q. And how long have you been incarcerated?

A. For almost eighteen months.

Q. Where have you been housed for those eighteen months?

A. There at CRC.

Q. Was CRC your parent institution?

A. Yes.

Q. Does CRC stand for Correction Reception Center?

A. Yes, it does.

Q. And is that an institution under the Ohio Department of Rehabilitation and Corrections?

A. Yes.

Q. And you have been there for your entire term?

A. Yes.

Q. Do you know a gentleman by the name of -- or did you know a gentleman by the name of Andrew Dotson?

A. Yes, I do.

Q. And how do you know Andrew Dotson?

A. He's supposed to be an adopted cousin in our family.

Q. Did you know him prior to him being deceased?

A. Yes.

Q. During your stay at the Correction Reception Center or CRC, did you have an occasion to meet a

gentleman by the name of Michael or Mike Arthurs?

A. Yes, I have.

Q. How did you meet a person by the name of Mike Arthurs? How did you become aware of him?

A. I was aware of him by another inmate. I come along by him at the chow line at CRC in our food line. And I asked him a question.

Q. What question did you ask Mr. Arthurs?

A. I asked did he murder Andrew Dotson.

Q. And what was Mr. Arthurs' response?

A. He shook his head and said yes.

Q. And what else transpired after you asked him that?

A. Maybe about hour, hour and a half later, I was called to the investigator's office there at CRC. They pulled me in and said that I had threatened somebody by the name of Michael Arthurs. And I said, no. I just asked him a question, did he murder my cousin, Andrew Dotson. And he told me yes.

And he says, well, he's telling us he fears for his life; that you're going to do something to him. I said, I didn't threaten that man in any way. I just asked him a question.

Q. Did you ever threaten Mr. Arthurs?

A. No.

Q. Did you ever make any gestures to threaten Mr. Arthurs?

A. No.

Q. Did you have any implications in any of your actions or conduct which in any way threatened Mr. Arthurs?

A. No.

Q. Were you in the chow line? What's the chow line?

A. It's our food hall. That's where we eat breakfast, lunch and dinner.

Q. How much time do you have to get your food and sit down and eat?

A. Well, you have to stand in line. It probably takes maybe ten minutes by the time -- like I said, by the time I seen him, he was already picking up his tray and I had asked him but he didn't answer me until he went to go sit down. He went to go sit down with his tray and started eating and I asked him in front of everybody out in the chow hall. There was maybe two, three hundred people eating in the chow hall.

Q. Okay.

A. I screamed out there to him. I didn't introduce myself or nothing. He didn't know who I was or anything. And I just asked him did he murder Andrew Dotson.

Q. And what was his response again?

A. He said yes.

Q. What happened after you went to the warden's office or wherever you ended up being interviewed?

A. What happened after that? They just -- they said that -- they had called the State highway patrolman in. For what reason, I don't know. But they acted like it was a big deal or something. He come in and asked me a few questions and he said, I don't see no problem here if you didn't threaten him in any way. I don't see no problem. He just had me -- you know, he wrote a few notes down and everything and he released me.

Q. And in the Ohio Department of Rehabilitation and Corrections, if you know, is the investigative police agency the State Highway Patrol?

A. Excuse me?

Q. I will re-ask the question.

If a crime is committed in the institution -- when I say the institution, I mean the Department of Corrections at CRC -- is the investigating police agency the State Highway Patrol?

A. I'm not sure really. I know we have our own investigator there. But for what reason they called the highway patrol investigator in or something, I don't know.

Q. So they called an outside investigator in?

A. Yes.

Q. And were you ever charged with any menacing by threats, anything along those lines?

A. No.

Q. Have you seen Mike Arthurs since this?

A. No, sir.

Q. Are you aware whether or not Mike Arthurs was transferred out of CRC?

A. I don't know. I heard that they had put him in protective custody.

MR. LOWE: Objection.

THE COURT: Overruled.

Q. (By Mr. Young) Okay. You had been contacted by our investigators or Ms. Menashe. And you're here subject to a subpoena, correct?

A. Yes.

Q. And had you indicated to the members of the Defense that you do not want to be here?

A. Yes, I have.

Q. Why don't you want to be hear today?

A. Because for what Mike Arthurs told me, I don't know that it's true, you know. Like I said, I don't know if he was trying to be a big shot in front of everybody. You know -- I didn't, you know -- I just

heard things and I don't know how it had got back around that somebody knew that I knew that Mike Arthurs told such and such that he told me that.

Q. We don't want to get into hearsay.

A. Okay. That's what I'm saying.

Q. You're going to be released in a couple of weeks?

A. Yes.

MR. YOUNG: Okay. Thank you.

MR. LOWE: Mr. Lowe.

- - -

CROSS-EXAMINATION

BY MR. LOWE:

Q. Mr. Wood, how are you?

A. Good. How you doing?

Q. Good. We met one time before?

A. Yes.

Q. And we talked back in the holding cell?

A. Uh-huh.

Q. Month ago?

A. Yes.

Q. Mr. Young asked you if you were in on a B&E; is that correct?

A. Yes, I am.

Q. That stand for breaking and entering?

A. Yes.

Q. You mentioned that you're supposed to be cousin's with Andrew Dotson. What does that mean?

A. Like I said, I hadn't seen Andrew since he was about nine or ten years old.

THE COURT: Keep your voice up.

A. And I heard that he was adopted into our family. I mean, how sure of it I am, I don't know. But as my aunt, my adopted aunt tells me, I guess she says he is adopted into our family.

Q. (By Mr. Lowe) but you're not sure if you're truly related to Andrew Dotson?

A. True.

Q. Do you know his siblings? What are their names?

A. I know Patty Atkins and Buster Atkins.

Q. Are his brother and sister?

A. Well, no. Oh, you're talking about his siblings?

Q. Yes. I'm sorry.

A. No, I'm talking -- I don't know his brothers and sisters, no.

Q. You don't know them?

A. Huh-uh.

Q. How about his parents? Do you know his parents' names?

A. No. Not his real parents, no.

Q. And last time you saw him, he was nine or ten.

Is that what you're saying?

A. Yeah.

Q. And you work at CRC?

A. Yes. I cadre there.

Q. Which means that you have a job there in the food line?

A. Yeah. I don't work in the food line no more, though.

Q. At the time you worked in the food line?

A. Yes.

Q. At the time, did you know Mike Arthurs?

A. No, I did not.

Q. So you had heard some things about him and you decided you were going to confront him about those things?

A. Yes.

Q. And you confronted him about those things in front of all the other inmates; is that correct?

A. Yes.

Q. And the first time you asked Mr. Arthurs the question about Andrew Dotson, he didn't say anything; isn't that right?

A. That's right. Because we was like face to face. He didn't say nothing to me.

Q. Keep your voice up.

A. Okay.

Q. And this interaction took place actually in the line?

A. Yes.

Q. And it was just kind of you and him?

A. Yeah.

Q. And he didn't answer you.

A. No.

Q. And at that time, he picked up his food and he walked back to a table and he's in a crowded room with two or three hundred other people, correct?

A. Yes.

Q. And it was at that time you shouted at Mr. Arthurs, didn't you?

A. Yeah.

Q. And you asked him the question that you previously indicated.

A. Uh-huh.

Q. In front of all these other inmates, correct?

A. Correct.

Q. And at that time you're saying that he answered them in the affirmative?

A. Yes.

Q. You also made the comment that you didn't know if it was true, correct?

A. That's right.

Q. You weren't there that night that Andrew Dotson was murdered, were you?

A. No.

Q. And all of your information was coming from another inmate?

A. That's right.

Q. And you're saying you don't know if he was just trying to be a big shot?

A. Correct.

Q. Can you explain what that means?

A. I don't know. I mean, I don't see -- it's not going to save your butt to be a big shot in prison no matter what if you say you can murder somebody or not, you know. Nobody is going to look at you that you're a big man just because you murdered somebody.

Q. I'm sorry. Are you finished?

A. Yes.

Q. Mr. Wood, do you remember testifying at a previous hearing?

A. Yes.

Q. Do you remember being asked: "Do people generally tend to leave people alone who are labeled murderers?" Your answer: "Pretty much they stay away from them."

A. Yeah.

Q. What happens to snitches in prison?

A. Not a good thing.

Q. Do people stay away from them?

A. Yes, pretty much.

Q. Well, are the snitches ever put in any physical danger?

A. Oh, yeah.

Q. And if you ask Mr. Arthurs in front of everyone if he killed Andrew Dotson and he said, no, but I'm testifying in that case, would he have been labeled a snitch?

MR. YOUNG: Objection. Calls for speculation.

THE COURT: Overruled.

A. Could you repeat that again?

Q. (By Mr. Lowe) Yeah, if you said, the question that you asked Mr. Arthurs, did you kill Andrew Dotson and he responded with, no, I didn't kill him, I'm testifying against other people in the case, would he have been labeled a snitch?

A. Oh, yes.

MR. LOWE: Thank you, Mr. Wood.

I have nothing further.

THE COURT: Mr. Young.

- - -

REDIRECT EXAMINATION

BY MR. YOUNG:

Q. Mr. Wood, did you ask him whether he was a snitch?

A. No.

Q. What did you ask him?

A. I asked him, did he murder Andrew Dotson.

Q. Did he say yes or no?

A. He said yes.

MS. YOUNG: Nothing further, Your Honor.

MR. LOWE: Nothing.

THE COURT: All right. You may step down. Thank you.

Let's approach the bench if you would.

- - -

Thereupon, Court and counsel confer at the bench out of the hearing of the jury off the record.

- - -

THE COURT: All right.

We are going to go ahead and take our afternoon recess at this point. Go ahead and take twenty minutes.

Be back up here at 3:00 o'clock.

Remember the admonition I've given you.

Don't discuss the case amongst yourselves or anybody else.

See you back up here at 3:00.

- - -

Thereupon, the jury was retired from the courtroom and the following proceedings were had out of the presence and hearing of the jury:

- - -

THE COURT: Are you all going to be resting?

MR. YOUNG: Yes.

THE COURT: You have no rebuttal?

MS. PRICHARD: No.

THE COURT: Have you gone over the exhibits?

MS. PRICHARD: I have them here. There's a couple of objections and a couple not a problem.

- - -

Thereupon, a recess was taken.

- - -

Thereupon, the jury resumed their places in the jury box.

- - -

THE COURT: We have been doing a lot of things while you have been back there. One thing we have done, we found out there is no more testimony.

It's my understanding the Defense rests?

MR. YOUNG: With the introduce of our exhibits, that is correct.

THE COURT: And no rebuttal from the State?

MR. LOWE: Correct, Your Honor.

- - -

THE FOREGOING WAS ALL OF THE EVIDENCE OFFERED, INTRODUCED AND ADMITTED ON BEHALF OF THE PLAINTIFF AND ON BEHALF OF THE DEFENDANT ON THE TRIAL OF THIS CAUSE.

- - -

THE COURT: You've gotten to the point you've heard all of the evidence and starting Monday morning, you're going to hear the closing comments and you're also going to have my instructions which means you will commence your deliberations probably about noon Monday or maybe a little earlier than that.

So now it's very important. I know Linda has talked to you about sequestration and what that means and what you will bring.

It's very important. You are not supposed to go home and start thinking about how you're going to decide this case. It's very important you keep an open mind.

The closing comments and instructions obviously are very important for you.

I want you to go home. Do not discuss the case with any family or friends. Do not listen to the case or listen to anything dealing with the case.

I am waiting for a call from your supervisor. I've talked to them. I understand there's some exceptions, but she is in a meeting. She's not going to be out of a meeting presumably until 4:00. I'm going to have you come back Monday and see what she says. I won't know that until about 4:00 o'clock.

If you want to wait back there for twenty minutes you can. You might give Linda your phone number and maybe she can call you and tell you what we found out.

Okay. We are going to deal with everybody else. I know somebody has airplane tickets and somebody's spouse has surgery.

Anyway, I will deal with all of that Monday morning when we decide alternate jurors and also as far as deliberations.

Okay. Thank you very much. Go home and have a wonderful weekend. And be back up here at 9:00 o'clock Monday morning.

Thank you.

- - -

Thereupon, the jury was retired from the

courtroom and the following proceedings were had out of the presence and hearing of the jury:

- - -

THE COURT: Do we have a list of your exhibits?

MR. YOUNG: No.

And just for purposes of the record, subject to our exhibits, we would renew Rule 29 motion.

THE COURT: It will be overruled.

MS. PRICHARD: Judge, I can tell you which ones we don't object to.

THE COURT: Just show me what you do object to.

MS. PRICHARD: We are objecting to Defense Exhibit 1, 18 and 19. We believe they contain hearsay to the three reports. And most of them have not been authenticated by their author either.

And these two --

MR. YOUNG: Your Honor, we would like to reopen our case.

THE COURT: Just one second.

MS. MENASHE: You said you'd stipulate to those.

MS. PRICHARD: No, we did not.

THE COURT: Defense Exhibit 1, what are they

being introduced for?

MS. MENASHE: I'm sorry, Your Honor, which one is that?

THE COURT: Your Defense 1.

MR. YOUNG: What was that? That was identified.

THE COURT: Don't you know?

MR. YOUNG: No. We don't have it in front of us there. Not on the top of our head.

That's the missing person's report that was testified by Lora Eberhard.

MS. PRICHARD: What's it being introduced for?

MS. MENASHE: She identified the document, Your Honor. Let me get out my notes.

THE COURT: Documents to be introduced for the truth of the matter stated --

MS. MENASHE: Your Honor, I understand that. The State didn't have any objection until they handed them to us. We are not prepared for arguments.

THE COURT: Well, what I'm saying is, what do you want to introduce this for? Do you want to introduce it for what the truth that's in here? And let me know what you're trying to show.

MR. YOUNG: We are introducing it pursuant

to 803(6).

THE COURT: To show what?

MR. YOUNG: 803(6).

THE COURT: To show what? There's a lot of things on this document.

MR. YOUNG: To show that there was a missing person's report filed. This is the report that was filed by this individual showing when it was filed, who it was filed where the possible place of destination of this individual is. We think it's relevant as to the time. And we think it's relevant that in fact this was filed after the body was recovered. It was not filed before the body was recovered. It was signed by Ms. Eberhard. The information placed on that was placed on at that time as to a relevant period of time where they thought Andrew was on 10/16/01; which, in fact, that was not correct and that is the reason we are offering that. And we are moving both -- she identified it. She prepared it. And we believe it also comes in under 803(6).

THE COURT: What's your objection?

MS. PRICHARD: Well, 803(6), it hasn't been shown it's a business record that's regularly kept. But the objection she testified to it. I didn't know what the relevance was since. She testified, yes, it was

filed on that particular day. Apparently she didn't fill it out and she signed it and that was the information contained within which she testified to.

THE COURT: Obviously, it's not been properly authentication.

Do you have any objections based upon authentication?

I mean, you do all admit this is the report?

MS. PRICHARD: It appears to be a copy. I don't think it's properly authenticated, but I'm not going to keep it out just for that reason. I just think it's not relevant and it's cumulative to what was already testified.

THE COURT: I don't see what relevance it has.

I will admit it to show a missing person's record was submitted on that date.

All right. 18, what's the objection on 18? What are you seeking to --

MR. YOUNG: 18 that is the police report filed from the Jesse James shooting, I believe. It's a poor quality.

THE COURT: It's an impound form.

MR. YOUNG: It is an impound form. What we are seeking that to be admitted for again -- again, we

are bringing it in under 803(6). We had, I thought, that it agreed with the prosecuting attorney we are available and do have Detective Bivens on call. I do have --

THE COURT: The testimony is over.

MR. YOUNG: It's brought in, Your Honor, for the sole purpose to indicate that they had indicated and, I believe -- I don't know what they said, but Mike Arthurs said that the reason that Andrew Dotson was killed was that he shot Jesse James.

They didn't bring in any evidence, but nevertheless, this is an indication they say there was one person shooting Jesse James.

This is the police evidence report that they collected multiple bullets, different caliber bullets from the Jesse James scene. We had brought in witnesses -- Mr. Hale and Jesse James himself, multiple gunshots.

THE COURT: I have on here this is the impound form.

MR. YOUNG: Is that the Andrew Dotson form? That is the items recovered from Andrew Dotson's house, his apartment post-death by Detective Scott.

And the reason that's being brought in is Lora Eberhard testified that -- or not Lora, but Cecil

Dotson testified that Shawn -- or Andrew Dotson had one cell phone, a Nextel cell phone. That is a recovered report prepared and completed by the Franklin County Sheriff's Department indicating that a cell phone, Nextel make was recovered from Andrew Dotson's house.

MS. PRICHARD: And, Judge, on this one, we did say there would be a stipulation that we would agree to but it wasn't one the Defense was satisfied with. We did indicate that we would stipulate when the police went there they found a Nextel cell phone but it was not a cell phone that we had records for. So that was the only way we were going to agree to a stipulation on that document, or I guess rather than admitting that document just putting one before the jury.

THE COURT: And who testified to this?

MR. YOUNG: I don't believe anyone. But I had subpoenaed all of the people willing to bring that in to testify and authenticate it.

MS. MENASHE: Your Honor, for the record we had witnesses for both of those records and we discussed this with the State for two days now in row. They said they would stipulate to both of those documents. We called off our witnesses, Your Honor. We had subpoenas for both of those witnesses. It is the State's saying --

MS. PRICHARD: We never agreed to stipulate. We agreed in the same fashion that was testified. We said we would stipulate it was a cell phone, not --

THE COURT: I don't have any stipulation, any agreement, that's it authentic.

So if you want to call somebody Monday morning and have somebody testify with respect to this that knows something about that, I'll allow that Monday.

MS. MENASHE: We will do that, Your Honor.

MR. YOUNG: We have a stipulation that a cell phone was found.

MS. PRICHARD: But it was not --

MS. MENASHE: We don't know that.

THE COURT: Now, you two, you know, I'm going to have one person talk at a time and if there's any more arguments, we are going to have some problems. All right.

If you can't reach a stipulation, I will permit you to call a witness to come in. And if you want to call another witness to say it's not the cell phone, fine. And if in fact it's not the same cell phone, I don't know why we can't reach an agreement with respect to that.

And if we can't, then that's fine.

No. 19.

MR. YOUNG: Again, Your Honor --

THE COURT: Have we had anybody testify about this?

MR. YOUNG: No, we have not.

THE COURT: I'm not going to allow any document in here that nobody has testified about.

MR. YOUNG: We will have Detective Bivens down here on Monday morning, Your Honor.

THE COURT: I'm not saying I'm going to allow them in.

MR. YOUNG: I understand that.

THE COURT: Was there a stipulation that you thought existed with respect to this document?

MR. YOUNG: Yes, I did, Your Honor.

THE COURT: What was the stipulation?

MR. YOUNG: The stipulation is that is a property sheet recovered from the Jesse James shooting on 9/14. It was done by the Franklin County Sheriff's Department and it was prepared by Detective Bivens and Detective McDonald retired and I haven't been able to find him. I have Detective Bivens' cell phone. I was willing to bring him down. They indicated to me it's not necessary to bring somebody down just for the mere purposes of having a property sheet submitted.

MR. LOWE: Judge, I didn't think we had a

stipulation worked out. We did talk about that. I told him we wouldn't make him bring the detective down to show that there were two types of shell casings, but not the document itself was what I was getting at. I would agree to a stipulation but not the document itself. But that's what I thought the agreement that we had was.

MR. YOUNG: We can put a stipulation to that, that's fine.

THE COURT: Well, absent a stipulation, I'm not going to let a document like this to come into evidence.

Okay. Would you read into the record those documents that are not objected to?

MS. PRICHARD: It would be Defendant's Exhibit 17, which is a diagram of a Hampton Inn bathroom 306 apparently. And Defense Exhibit 16 which is also State's Exhibit H. We marked it as a joint exhibit since ours was a copy and this is now a better copy.

THE COURT: And what else?

MR. YOUNG: And that would be it. Your Honor, if we can have those records sealed for purposes of appellate review.

THE COURT: Which records?

MR. YOUNG: The ones we offered and are not admitted.

THE COURT: Sure.

MS. MENASHE: Just have our witnesses here at 9:00 o'clock, Your Honor?

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Thereupon, the exhibits previously identified were admitted into evidence as Defendant's Exhibits 1, 16, 17.

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THE COURT: Anything else?

MR. YOUNG: No, Your Honor.

How do you want to handle -- we have been given a proposed jury instruction.

THE COURT: I want to do that right now.

Anything else?

- - -

Thereupon, the Court and Counsel discussed appropriate jury instructions in chambers, off the record.

- - -

Thereupon, the further trial of this cause was adjourned until 9:00 o'clock a.m., September 22, 2003.

- - -

Monday Morning Session,
September 22, 2003.

- - -

Thereupon, the further trial of this cause was resumed pursuant to adjournment.

- - -

MR. YOUNG: Your Honor, one thing to address before the jurors are brought out.

THE COURT: Go ahead and mark Saturday's article.

MR. YOUNG: A-9. It's Saturday's paper, yes.

And, Your Honor, we have one stipulation between the parties.

THE COURT: Go ahead.

MR. YOUNG: The stipulation between the government and the Defense will be if Detective Green and Detective McDonald, if called to testify, would testify on 9/14/2001 they recovered multiple shell casings, one .45 caliber shell casing; seven .380 caliber shell casings at the scene of the Jesse James shooting at Fern Hill and Palmetto.

MR. LOWE: Fine, Your Honor.

THE COURT: I have had some conversations just briefly about some of the issues that we've talked

about Friday; and in particular, the definition of principal offender and the definition of criminal proceedings.

I have advised all counsel that as far as the specification is concerned dealing with the third specification, witness in a criminal proceedings, I have advised all counsel that it's my belief the criminal proceedings do not have to be commenced at the time of the homicide if the intent of the defendant is to kill a witness who could be a witness in a criminal proceedings. That would be covered under the specification.

I will define criminal proceedings. I believe the appropriate definition of criminal proceedings is commencement of criminal action either by way of affidavit or by way of indictment. I do not read criminal proceedings as the spec provides includes an investigation. Since it was a future criminal proceedings that definitely is probably relevant under these circumstances and I've also told the parties that I will define principal offender as a person who does all the acts constituting the offense to which he is charged.

Okay. With that in mind, just for purposes of the record, we will deal with one of our jurors, Mr.

Purifoy. Mr. Purifoy during the voir dire process told us that his employer only pays for one week jury service. And he's presently working at Penney's Warehouse. I thought that I could discuss that matter with Penney's and hopefully give him the opportunity to be paid for two week's considering Franklin County's jury service has always been two weeks. I have talked to the head of the Human Services Department at Penney's. They have recently changed their policy and only give one week.

Mr. Purifoy is a minimum wage individual and he did advise us that he could not afford to be without pay for a week. I have asked Penney's to make an exception to their policy in this case because I don't want Mr. Purifoy to worry about his family not having any food. She assured me she'd get back to me this morning; see if she can make an exception. Because Mr. Purifoy is to be excused if he, in fact, did not get paid. And he expressed that during the voir dire process.

Hopefully, I will know this morning what Penney's response is to my request.

Anything else?

MR. YOUNG: Your Honor, just for the record, we would renew our Rule 29 as to the specs and all the

charges.

THE COURT: Overruled.

I will make one other comment with respect to Mr. Purifoy. I have had some concerns about his alertness during the course of the trial expressed by defense and prosecution. We will address those at the appropriate time with Mr. Purifoy.

Okay. Let's go ahead and bring them in.

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Thereupon, the jury resumed their places in the jury box.

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THE COURT: Everybody please be seated.

Good morning everybody.

What a mess out there, isn't it?

See, if you got here when I got here at 7:30 this morning, it wasn't raining very hard. Very easy to get in and out of the building because no one was here.

Okay. I'm sorry for the delay. We had other things to talk about while you had been back in there. And I think we are at this point in time ready for one final evidentiary concern. And that is, again, a stipulation.

And I think there was some question about what a stipulation was last time it was mentioned. And

let me just briefly tell you again what I told you before. A stipulation is an agreement between counsel that whatever they have stipulated to you can assume it is an accurate statement of what would have happened.

Let's say that the stipulation deals with a time period and somebody says, okay, we have agreed that at a particular point in time, the time was 10:00 o'clock. And then a jury can with that stipulation they can say, okay, the parties agree that it was 10:00 o'clock. So I can assume that is an accurate statement it was 10:00 o'clock. So a stipulation is an agreement and it's normally an agreement so we don't have to bring witnesses down here and have them testify and go through that long process. What we do is they say we know what this witness is going to testify to, let's just agree to that and we don't have to bring them down.

Anyway, with that in mind, what is the stipulation?

MR. YOUNG: Your Honor, it is agreed between the prosecution and the defense that Detective Green and/or Detective McDonald if called to testify would testify on September 14, 2001, they recovered multiple shell casings, one .45 caliber shell casing, seven .380 shell casings at the scene of Jesse James shooting at Fern Hill and Palmetto in Columbus, Ohio.

THE COURT: So stipulated?

MR. LOWE: Yes, Your Honor.

THE COURT: With that, anything further from the Defense?

MR. YOUNG: No, Your Honor.

THE COURT: Anything further from the State?

MR. LOWE: No, Your Honor.

MS. PRICHARD: No, Your Honor.

- - -

THE FOREGOING WAS ALL OF THE EVIDENCE OFFERED, INTRODUCED AND ADMITTED ON BEHALF OF THE PLAINTIFF AND ON BEHALF OF THE DEFENDANT ON THE TRIAL OF THIS CAUSE.

- - -

THE COURT: All right. We are now going to hear the closing comments of counsel.

In the beginning of the trial, I told you that the attorneys would have an opportunity after all of the evidence to give you their beliefs on what the evidence has shown and they will also have the opportunity to discuss with you, the instructions that I will be giving to you. They do know the instructions so they will be able to discuss those with you.

As with the opening statements, the closing comments are not evidence. They are the attorneys'

opinions of what they think the evidence has shown.

Since the State of Ohio does carry the burden of proof, the law provides the State of Ohio will go first during its closing comments. The Defense will have an opportunity after the State goes to give their closing comments. The law does permit the State to make a rebuttal comment because the burden is on the State. So the State will go first and third and the Defense will go second.

After the closing comments will be my final opportunity to instruct you on the law that you have not had already. And if we can't do that before lunch, we will do that after lunch.

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Thereupon, closing argument was made on behalf of the State of Ohio, and on behalf of the Defendant by counsel as follows:

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THE COURT: Okay.

MS. PRICHARD: Thank you, Your Honor.

Good morning. Floor is a little slippery. Try not to wipe out.

First of all, thank you all for your patience. We appreciate it.

Bear with us a little bit longer. I'm going

to go through some rather technical things here initially with you, the counts of the indictment.

As I mentioned in opening statement, there are several counts, various charges that we believe we've proven. I'm going to go through those with you step by step.

Let me first say, if for some reason I misspeak, if I say something that wasn't in evidence, I may get my words twisted. I know I did in opening in talking about the order in which events happened. Please rely on your own memories. I'm not trying to mislead anybody. There's been a lot of testimony and it could be confusing.

As we know from the evidence, Andrew Dotson's body was found October 10, 2001.

We also know from the evidence, the Jesse James shooting was September 14, 2001.

Therefore, as alleged in the indictment, these events occurred between September 14, 2001 and October 10, 2001. That is an element that we must prove with respect to every element in the indictment.

We also must prove this all occurred in Franklin County. You had testimony from Gary Wilgus that, in fact, this crime occurred in Franklin County. Those are two that run throughout all the counts.

With respect to the other counts -- first of all, can everybody see this or should we dim the lights? Can you see okay?

With respect to these counts, the defendant can be found guilty as a principal offender, which will be defined for you later, or as a complicitor.

Now, complicity is basically when a person aids or abets another. Here it's alleged that the defendant purposely solicited another to commit these offenses: Mike Arthurs, Shawn Nightingale and Jamie Horton; that he purposely aided or abetted another or conspired with another to commit the offenses.

And aid or abet means support, assist, cooperate with, advise or encourage someone.

To solicit means to seek, ask, influence invite, tempt, lead on or bring pressure to bear.

The first count is aggravated murder with the specifications.

Aggravated murder means to purposely and with prior calculation and design cause the death of Andrew Dotson and/or to purposely cause the death of Andrew Dotson while committing or attempting to commit or fleeing immediately after committing or attempting to commit a kidnapping. And I will define kidnapping for you later.

You can find the defendant guilty as aider and abettor on this count. You need not find that he personally delivered the blow that killed Andrew Dotson; although, the State submits that that is exactly what we have proven.

Purpose is basically intent. Determine purpose by looking at a person's conduct. Determine it from the exact facts and circumstances.

Prior calculation and design means by when engaging in a definite process of reasoning in advance the defendant formed a purpose to kill and planned a method which he intended to cause the death. And the circumstances must show a scheme designed to carry out the calculated decision to cause the death.

You will also hear in the jury instructions that no definite period of time must elapse, no particular amount of consideration may be given, but acting on the spur of the moment or after momentary consideration is not sufficient.

Specification One states that the offense was committed for the purpose of escaping detection, apprehension, trial or punishment for another offense committed by this defendant.

The felonious assault, felonious assault is the shooting of Jesse James. And the defendant can be a

complicitor. He could aid or abet with respect to this specification.

The second specification states that the offense was committed while committing or attempting to commit a kidnapping. And that the defendant was the principal offender, the person who delivered the blow that caused the death of Andrew Dotson, or if not the principal offender, committed it with prior calculation and design -- that consideration, that aforethought.

Specification Three states that the victim of the aggravated murder, Andrew Dotson, was a witness to an offense, the Jesse James shooting, and he was purposely killed to prevent his testimony in any criminal proceeding and that the aggravated murder was not committed during the commission of the offense to which the victim was a witness. And the defendant can be found guilty at a complicitor with respect to this specification as well.

Essentially, the specification in accordance with the testimony shows that Andrew Dotson was killed because the defendant thought he was going to tell on him. He told that to Mike Arthurs. He told that to Ronny Trent.

Second count is kidnapping. Kidnapping is by force, threat or deception removing Andrew Dotson

from the place where he was found and/or restraining him of his liberty with the purpose to facilitate the commission of a felony -- here, aggravated murder -- and/or to terrorize or inflict serious physical harm upon Andrew Dotson.

The defendant can be found guilty as a complicitor, aiding or abetting this offense as well. I submit to you the kidnapping occurred when Andrew Dotson was taken to West Virginia under false pretenses. He was removed by deception from the place where he was found.

Kidnapping also occurred when he was pulled from the car in the cornfield. He was removed from the back seat of the car, restrained of his liberty when he was held there in a choke hold by Mike Arthurs.

And he was also kidnapped when he was dragged back in the field, dragged back, put back in the part by the corn. During all of those times, a kidnapping occurred and the defendant being involved, aiding, abetting, soliciting Mike Arthurs to do all of that is guilty of this offense, at a minimum as a complicitor.

Count Three is possessing criminal tools, that the defendant possessed or had under his control a device, a pickax, with the purpose to use it criminally

and that the circumstances indicated that the device was intended for use in the commission of a felony -- here an aggravated murder.

We know that the defendant arrived at the scene of a cornfield with a pickax in the back. He already had that pickax in the back at the time he was at the parking lot and he was followed to that field and he used that pickax in a criminal fashion to cause this aggravated murder.

Count Four is abuse of a corpse. The defendant treated a human corpse, Andrew Dotson's body, in a way that would outrage reasonable community sensibility.

Take a look at the exhibits that will be presented to you and ask yourselves whether or not that behavior, the way Andrew Dotson was treated and left is outrageous community sensibility.

Count Five is obstructing justice, that with purpose to hinder the discovery, apprehension, prosecution, conviction or punishment of another for a crime, the co-defendants, or to assist another to benefit from the commission of the crime, did destroy or conceal physical evidence of that crime. And the crime committed was aggravated murder as we have alleged, or first or second degree felony. Kidnapping is one. And

the defendant new or had reason to believe the crime committed by the person aided was one of those offenses.

Now, we know that lots of evidence was concealed. The body of Andrew Dotson was concealed. The pickax was taken away in two pieces and destroyed. The defendant destroyed his clothing and he had all of his co-defendants' clothing burned, destroyed to conceal any physical evidence as well and had lime poured upon the body to hide it.

Count Six is tampering with evidence, knowing an official proceeding or investigation was in progress -- and here the Jesse James investigation was in progress. Detectives were out at the scene. They had interviewed Jesse James -- or was about to be or likely to be instituted, did alter, destroy, conceal or removed anything -- here, the body of Andrew Dotson and/or the pickax -- with purpose to impair its value or availability in such a proceeding or investigation.

With respect to this aggravated murder, as I mentioned, the defendant concealed the body, tried to make it so it couldn't be found, and it wasn't found for some time, and removed that pickax, took the top off as Mike Arthurs testified, put it in the bag, took the handle, burned the handle and had Mike get rid of the metal portion of that.

Let's take a look at the testimony that you heard. First, you heard from Lora Eberhard. Lora, the mother of Andrew Dotson, last saw her son in the driveway on September 15, 2001. He was acting unusually. He had arrived in a car with Ross County plates with two males. She told Andrew the police had been there and left a business card in the helmet, which had been missing later with the helmet. Therefore, you can infer, if you like, that the business card was taken by Andrew.

To support that inference, Andrew's cell phone records, which you will have, reflects a call to the detectives on September 15th at approximately 7:20 p.m.

Cecil Dotson testified that he learned of a shooting on September 14th, went to the scene, went and got Andrew's car for him. Thought people might be looking for it.

On the 15th, he spoke to Andrew and Andrew asked to use his motorcycle. He thought Andrew would return the motorcycle on September 15th. And he didn't see Andrew on that particular day or thereafter. Also, he testified neither of the defendants or co-defendants were present at the funeral.

Bobbi Hannah testified that the defendant

and Andrew appeared to be friends, although, she recalled an incident where she had been with Andrew and they had been leaving the neighborhood and the defendant got mad at Andrew because he thought Andrew had been following him and he yelled at him.

She said that Andrew called after what she believed to be a shooting. He sounded odd. It was unusual for him to act that way.

The next day, Andrew was supposed to stop by and see his son and he never showed up.

Chris Furnier found Andrew's body October 10, 2001 when his car broke down cutting through the cornfield. As he told you, he called the police. And at the end of that service road where he directed police about ten feet into the corn, which was five or six feet high, was Andrew's body.

Detective McMillin, first officer on the scene, told you he secured the scene. No one was around it. Nobody disturbed anything. He kept guard.

Gary Wilgus, BCI special agent, testified that Andrew was found four hundred ten feet away from the roadway, face up, arms extended over his body wearing only boxer shorts. He had a white lime-like substance on his upper torso. It appeared some had washed away, the white substance around his body. Said

animals and insects had gotten to the body which was badly decomposed.

He also stated there was no other evidence found at the scene. He walked up the gravel and looked. There was no shoe prints or tire marks.

Mike Arthurs. Mike Arthurs, is the only eyewitness to what happened at that cornfield.

Yes, Mike Arthurs got a deal. We told you in opening Mike Arthurs got a deal, and a great deal.

Keep in mind all of the things that Mike Arthurs has to do. Mike Arthurs didn't just get a deal for testifying in this matter. He's testifying in lots of other things, as you heard, some unrelated cases against numerous people.

He came forward and he told detectives he had been told by Shawn that the defendant shot Jesse James. Shawn said "something bad happened. I will tell you about it later."

And that's when things were set in motion down in Chillicothe. The defendant at the Hampton Inn at a party in some hotel room in somebody's name told him that he wanted Andrew dead. The defendant asked Mike Arthurs and Shawn Nightingale to kill Andrew because he witnessed a shooting, to protect himself, to cover his tracks. And yes, they agreed, as Mike told

you, they went down to West Virginia. They couldn't do it and they brought him back.

Mike's testimony is consistent with the physical evidence. Mike told you he pretended to choke Andrew; that he pretended to step on him; that he was doing things to please Conway, to make Conway think that he had killed Andrew.

He testified that he saw the defendant walk back into the cornfield. He heard two thuds. Defendant came back with a pickax, wiping blood on the ground.

That testimony is consistent with the coroner. That testimony is consistent with the pickax that Mike Arthurs brought in that he said resembled the one that had been used that night. Mike Arthurs was candid about his role. He told you what he did.

Ronald Trent testified. Further evidence to support Mike Arthurs testimony. He told you that he developed a relationship with the defendant in jail. They found out they were cousins; that the defendant began to confide in him.

The defendant had a visit from Lora Eberhard. And when he came back from that jail visit, Ronny Trent asked him about it. He said, "That stupid bitch thinks I'm going to tell her I killed her son." That is consistent with the testimony of Lora Eberhard

that she made a jail visit to James Conway.

At first the defendant told Ronny that Andrew had seen him shoot somebody in the butt, which is consistent with what Jesse James said where he was shot, so he asked Shawn and Mike to kill him. They took him to West Virginia but didn't do it.

All of that testimony is consistent with the testimony of Mike Arthurs.

He also said that he and Jamie Horton met them. And initially he said they stood on his neck.

Later Ronny confronted the defendant about it when he was down making a jail visit on May 23rd. He and Jamie Horton had gone down to the jail. He asked why he lied about what had happened, why he didn't tell him about the pickax. Because as Mr. Trent told you, he heard about the pickax in talking with Jamie Horton and Shawn Nightingale. And the defendant said he did it just to be sure Andrew was dead.

Mr. Trent told you that the defendant gave him guns, drugs and money to kill Mike Arthurs. That money was put on his books, put there by Jamie Horton.

MR. YOUNG: Your Honor, I'm going to object as to the misstating the evidence.

THE COURT: Overruled.

MS. PRICHARD: Thank you, Your Honor.

That the goal was to eliminate anybody from snitching. The defendant was trying to prevent anybody from telling on him is why he killed -- I'm sorry -- Andrew Dotson. That's why he wanted to kill Mike Arthurs. He solicited Ronny Trent to kill Mike Arthurs because he thought he was talking to the police. He had him work with Jamie Horton and was trying to set up a plan to make that happen.

And as you heard, Ronald Trent said he was driven past Yellowbud Road, which is where Mike Arthurs lives and that he worked with the police in setting up, making it look like he killed Mike Arthurs, having that photograph made, which he took to the jail along with Jamie Horton. And he read from some transcripts about what happened there; that he held it up to the glass and that he showed the defendant that picture of Mike Arthurs laying in what appeared to be his grave.

Defendant's goal in all of this, kill off people that could implicate him. People who could get him in trouble.

Let's talk about the defendant's role in all of this. Defendant set this plan in motion. He ordered the killing of Andrew Dotson. He was with Horton that morning after he had asked Mike and Shawn to kill Andrew Dotson.

When Mike went downstairs in the hotel, defendant is there. Jamie Horton is there. Shawn Nightingale is there. Mike goes downstairs. And it appears the plan is already in place because there have been some conversations.

Mike gets in the car with Shawn and Andrew is going along. And they are headed to West Virginia.

The defendant later received a call from Mike and Shawn and they say they can't do it. Defendant tells them to quit being bitches. He tells them to meet him in the parking lot, which they do. And the defendant arrives in his Dodge truck which belongs to his father with Jamie Horton.

Defendant and Shawn have a conversation and then the defendant says, follow me. Defendant is the driver in the lead car down to the cornfield with Mike and Shawn following.

They get to the cornfield at some point. Mike testified he told the defendant, Andrew said he's not going to tell. He's not going to tell. Didn't seem to matter.

In this truck they rode in, there is also already a pickax in the back. They are at the scene and the defendant tells Mike to get Andrew out of the car. So Mike pulls him out of the car, tells him to choke

him. Defendant is present when Andrew is dragged back into the corn. He is there when Jamie and Shawn return with Andrew's clothes in the bag. He's standing there and decides to go back into that field with the pickax when the two thuds are heard, when he returns, when he wipes blood off in the dirt and he knocks the top off and separates the two pieces putting the metal piece in the bag with the clothing and the handle in the back of the truck. It's at that point that his passenger gets lime from the back of Shawn's truck. Lime that's already in the back of this Jeep that belongs to Shawn, takes it back into the field and returns with the empty bag.

At that point, they leave, go back to the defendant's. There is talk about going to this bar, Ryod's bar, so that they have an alibi. The clothes are burned. Defendant's clothes, Jamie Horton's clothes, Shawn Nightingale's clothes are burned that night.

The next day, the defendant, Jamie Horton and Shawn Nightingale, all arrive to pick up Mike. Why? To get rid of his clothes and shoes to make sure there is no evidence. Burn his clothes just as they burned theirs the day before. They take him to buy new things. Burn everything, including the shoes.

When they are in Sutherland's, the defendant

grabs a shovel at one point and says "this is for the next time."

Look at some of the acts committed by the defendant considering whether or not they show consciousness of guilt: The clothes being burned, evidence being hidden, going to the bar, trying to have an alibi.

Defendant tried to kill Mike Arthurs, provided the means to do so to Mr. Trent to kill Mike Arthurs because Mike Arthurs knew what happened at that scene and Mike Arthurs could implicate him. He thought Mike Arthurs was talking to the police. His goal, keep Mike Arthurs from talking to the police.

Doctor Fardal testified, he has about twenty-five years experience, that the cause of death were the two puncture wounds to the chest, two sharp instrument wounds. The blood that pulled in the lung area so that Andrew was alive when the wound was inflicted, the wound to the heart was antemortem. All his opinions were to a reasonable degree of medical certainty and based upon all of his years of experience.

Defense witnesses testified, none who were at the scene. Mike Arthurs is the only person who was there during this murder who could tell you exactly what happened. They didn't refute the defendant's role at

the scene.

There is no evidence to refute that the defendant ordered the hit on Andrew Dotson to cover his tracks, to prevent himself from being implicated in the Jesse James shooting, told Mike and Shawn to meet him, drove to the field, pulled the ax out of the truck, hit Andrew twice with the pickax, destroyed evidence, made statements to Ronald Trent and asked Trent to kill Mike Arthurs. The defense witnesses didn't refute those things.

Jesse James told you there was a shooting. He was shot in the rear end. He didn't know who shot him. Said Andrew was there, three males with him, including a heavy male white. There were at least three guns.

He told you he was interviewed by the police. Really didn't want involved in any of this.

What we are asking, just as we did in voir dire, is that you all use your reason and common sense.

There is nothing magical about deliberations, about these instructions. If you use your reason and common sense about everyone's testimony, the consistencies, what are major inconsistencies, what are minor.

What is important about this testimony, we

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capital sentence," *id.*, and the weighing of aggravating circumstances against mitigating factors "is *not* a fact-finding process subject to the Sixth Amendment," (emphasis sic) *id.* at ¶ 60. Mason argues that *Belton* is not controlling here, because the *Hurst* question was not squarely presented in that case.

D. Ohio's Death-Penalty Scheme and the Sixth Amendment

{¶ 19} The Sixth Amendment provides that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury." This entitles criminal defendants "to a jury determination of any fact on which the legislature conditions an increase in their maximum punishment." *Ring*, 536 U.S. at 589, 122 S.Ct. 2428, 153 L.Ed.2d 556. *See also Hurst*, ___ U.S. at ___, 136 S.Ct. at 619, 193 L.Ed.2d 504 ("The Sixth Amendment requires a jury, not a judge, to find each fact necessary to impose a sentence of death"). Ohio's death-sentence scheme satisfies this right.

{¶ 20} When an Ohio capital defendant elects to be tried by jury, the jury decides whether the offender is guilty beyond a reasonable doubt of aggravated murder and—unlike the juries in *Ring* and *Hurst*—the aggravating-circumstance specifications for which the offender was indicted. R.C. 2929.03(B). Then the jury—again unlike in *Ring* and *Hurst*—must "unanimously find[], by proof beyond a reasonable doubt, that the aggravating circumstances the offender was found guilty of committing outweigh the mitigating factors." R.C. 2929.03(D)(2). An Ohio jury recommends a death sentence only after it makes this finding. *Id.* And without that recommendation by the jury, the trial court may not impose the death sentence.

{¶ 21} Ohio law requires the critical jury findings that were not required by the laws at issue in *Ring* and *Hurst*. *See* R.C. 2929.03(C)(2). Ohio's death-penalty scheme, therefore, does not violate the Sixth Amendment. Mason's various arguments to the contrary misapprehend both what the Sixth Amendment requires and what it prohibits.

believe you will agree, that the defendant wanted Andrew dead. He didn't want to get in trouble for the Jesse James shooting. He solicited Mike and Andrew. Ordered Mike and Shawn to kill Andrew. He was upset when they didn't. He told them to meet him. He picked an isolated cornfield as the place in which he wanted Andrew killed. He had a pickax. He was prepared and he used that pickax. And he covered his tracks afterwards by taking care of all of the evidence making sure that there weren't any clothes on Andrew except his boxer shorts; that his clothes weren't around; that his co-defendants' clothes were no longer around. Then as a final act, tried to have Mike Arthurs killed when he thought Mike was talking.

Based upon all of this evidence, we believe we've shown beyond a reasonable doubt that the defendant is guilty of every count in the indictment. Thank you.

THE COURT: Thank you. Mr. Young.

MR. YOUNG: Can everyone see this?

Put it out here.

Good morning, ladies and gentlemen. On behalf of Mr. Conway, on behalf of Ms. Menashe and myself, we would like to thank you so much for your jury service. It's very important in a criminal justice system that people come down and exercise their civil

duty and are responsible enough to have the -- to do their jury service because this system wouldn't work but for you, you people coming down here, taking time out.

I know it's a burden. And this is a very difficult case. So on behalf of us, we would like to thank you so much for coming down and sitting on this jury.

I'm going to go through a lot of what we believe are certain facts. And I do not in any way want to mislead you. I'm not purposefully stating facts that I did not hear. As you all sat in this courtroom for the last week when witnesses testified, Ms. Menashe and I were talking with Mr. Conway, papers were being rustled. I don't know if I heard what exactly a witness said because when we are getting prepared for witnesses. We are writing down questions. We are trying to listen to them. We are listening to my client. So if I misstate any facts today, it's not done intentionally.

The good thing about jury service when you ultimately go in and deliberate in it is that you will be able to all go in and have your collective memories. You will be able to speak with each other. Someone may have heard Mr. Trent say something. Someone may have had heard Mr. Arthurs say something and the other people may have said something. That's the purpose of a jury

system is that you have an opportunity to speak with each other to deliberate and to reach a verdict, to use your collective memories as somebody may have heard a witness say something else. You will be able to discuss that.

Yours is perhaps the most difficult situation in this case.

As you consider the evidence, I'm going to ask you to think about certain questions. Has the government done all that it could have done and that it should have done to clear up some of the mysteries that abound in this trial? Have they done everything? Has the government proven beyond a reasonable doubt that the case it has presented is the only possible one?

As Mr. Conway sits before you, he's innocent. His innocence is given, just as it is for you.

Has the government truly proven otherwise? We believe it has not.

Has the government used its vast resources of which we indicated to you on opening statements to investigate all leads it could have followed to solve the many mysteries we have encountered? We don't believe it has.

Until those questions are answered, there

must be doubt, more than reasonable doubt, as to who killed Andrew Dotson.

I prepared -- I don't have the power point or anything so I decided to use my board last night. I would like to address three different areas.

First of all, I believe this is a three-witness case. There are three witnesses that are key to this entire case; that's Mike Arthurs, Ronny Trent and Doctor Fardal.

First, I've indicated infamous informants.

The second point I will address is lack of corroborating evidence.

And the third point will be reasonable doubt.

And if anyone can see it, I'll eventually get to it, and a flawed time line which you must meet when you analyze the information.

I've indicated "participating snitch." When I say participating snitch, what we are saying is that Mike Arthurs was involved and we believe killed Andrew Dotson. He was a participating snitch, meaning he was there. He saw what happened. He kidnapped Andrew Dotson. He did everything.

And in order, we believe for his testimony to be believed, he must be accurate.

The government in their closing argument indicated to each of you that he was there. He told you everything. He was accurate. He was candid, I believe, is their exact terminology. In order for him to be believable, he must be accurate.

His deal, the Defense would contend is functional equivalent of immunity. He testified that he got four years in Ross County for a robbery which he committed down there. He then says he spoke to his lawyers and went to the police on, I believe, May 13th.

He then reaches an agreement with the government that he gets four years to run concurrently with this current deal, which means if he's given all his jail time similar to what he's doing down from Ross County, he will not spend one second for his role in the Andrew Dotson homicide.

The judge is going to give you an instruction whereby when you analyze his testimony you're going to have to do it with grave suspicion. It's going to be weighed with great caution as to what his testimony is going to be. You're going to have to -- he's an accomplice testimony, they are saying, so you're going to have to weigh that with great caution that he has some self interest in this case as he testified, I believe, that he could have received the

death penalty plus twenty-two years for all the sundry charges, the tampering with evidence, abuse of a corpse. He could have gotten twenty-three years incarceration out of Ross County. He's walking out of this death penalty plus forty-five years for no time for the four.

So we brought you -- we brought you Linda Goodman. We brought you Brian Woodworth. You wonder why did we bring you those? Because we need to see whether, in fact, Mike Arthurs' testimony is corroborated.

The key point as to whether these individuals' stories are believable is whether they can be corroborated.

Mr. Lowe, Ms. Prichard are excellent prosecuting attorneys and they obviously have brought and put before you everything that they had. They are the top prosecuting attorneys in the prosecutor's office. This is a high profile case. This is an aggravated murder, a death penalty case.

They are the best. And if they could bring you something, they would have brought you something. But they didn't bring you, they didn't bring you one piece of corroborating evidence for Mike Arthurs' story. Not one.

You will see the Hampton Inn Suites. Mike

Arthurs testified that they made -- they put names under different people's addresses; but he stayed there at the Hampton Inn, we contend, between 9/11 and 9/14. He came in to the Hampton Inn on 9/11 at 10:30 p.m. which was after the horrible tragedy in New York and Washington later on that evening. He then left on the 15th in the morning. That is when he was there.

He did testify to something correctly on this. He testified that his address was 644 Yellowbud Road, Chillicothe, Ohio. And you'll see that address here.

We brought in Linda Goodman to verify what the procedures they implemented. And what they ask for is a picture ID. And if the government wants you to believe that Mike Arthurs didn't stay here, that someone else was using his name, then Mike Arthurs, we contend, was there and he checked out on September 15th in the morning, or he stayed the night of the 14th and checked out on the 15th in the morning or in afternoon at 1:44 sometime before then. The reason I say that is, it's very important for the entire State's case. The Jesse James shooting occurred on September 14, 2001. That was a stipulation that we read, the shell casings recovered from this.

When they testified, the Jesse James

shooting occurs on the 14th, Mike Arthurs says after the shooting we went to the Hampton Inn. And well, we went to CJ Stephens' birthday party. Fight broke out. We went to the Hampton Inn. He has a room at the Hampton Inn September 14th. Shooting occurred at 5:00 or 6:00 in the afternoon I believe is what Jesse James -- remember, we brought you Jesse James. The shooting occurs on September 14th. They check out on September 15th is Mike Arthurs' story, the night before.

And then they go down, they meet with James Conway or whomever person they are meeting with. They go to West Virginia. And then they come back when they can't kill this person, Andrew, they then call Mr. Conway and say come over to the field, on the night of the 15th. And Andrew is killed or is already deceased at that point. And then Mike Arthurs' story is believable. He has a receipt. He has one corroborating piece of evidence that he has a receipt on 9/14 he was at the Hampton Inn. His story is perfect.

The problem that Mike Arthurs did not understand is that Lora Eberhard, Andrew's mom, very believable witness. I mean, there is no reason for her to misconstrue the facts or evidence, you know. To a certain extent it is that she saw him on September 15th. So Mike Arthurs' story of going to West Virginia

couldn't have happened on the 15th.

Prior to Mike making these statements to the police, did he know about Lora Eberhard's meeting? No.

Cecil Dotson testified he spoke with Andrew on the 15th.

Did Mike Arthurs prior to talking to the police officers know about that? No, he did not. Did Mike Arthurs know about on -- he spoke with Andrew, spoke with Bobbi Hannah on 9/16 prior to him speaking to the police? No, he did not.

Ladies and gentlemen, in order to be believable, he must be accurate. Analyze his testimony. The only receipt we have, again -- and you'll have this submitted -- is for room 306. We contacted Brian Woodworth. He drew a sketch which you will be able to analyze. You all will be able to see as to the makeup of the bathroom of room 306. He indicated that it would be very, very difficult for three very large individuals to be in that bathroom at the same time. Again, we need to look for the corroboration of Mike's story in order for it to be believable.

And then you're going to receive the information about this photograph of Mike Arthurs laying in a ditch. That was done, Mike indicated on -- he didn't know when it was done, but you will receive this

piece of paper back there. You'll see it was done at 5/23 that the police officers made up this -- concocted this fake killing on 5/23, the day that Mike Arthurs gave his proffered testimony to the detectives. And I believe you're going to hear -- you heard from Ronny Trent that I showed him that picture. And my client is like, hey, what's going on with Mike. Aren't you blind? What's going on with Mike? Well, I just killed him. Mike Arthurs is the one, if his testimony is accurate in order to be believable, it must be accurate.

Second point -- and I termed it jailhouse snitch. There is two types of individuals involved in this case, the participating one that was alleged to have done this.

Now, you have Ronny Trent. Ronny Trent is the individual sitting in jail. He's facing a gross sexual imposition, a GSI. He's got parole holders on him. He's sitting in jail. What do I need to do to get out of this jail?

And you notice I don't have believable equals accurate because now this jailhouse snitch is going to say my client confessed to this murder. And he was not there. Doesn't know what had occurred, when it occurred, how it occurred.

He says that my client, I believe, stepped

on his throat. Says my client shot Jesse James at a White Castle. Those are inaccurate statements.

But the question becomes, what's his self interest now in this? The prosecution relies so much on this gentleman, Ronald Trent. They promised you in opening statement that you would see his statements corroborated.

We believe -- I listed down here, false affidavit under oath. I happen to put under penalty of perjury.

Shot at White Castle. And verification similar to Mike Arthurs. You need some corroborating evidence in order for their testimony to be believed, something to verify what they, what Mr. Trent is testifying is truthful.

We know he came in in his clothes. He's in prison. He's in jail. Why didn't he get dressed up in jeans? Was it out of respect for the jury? Or was it a chance to try and mislead you as to where he is currently housed? He is in jail. He was in jail. He got released. He went back in the jail. He had a parole holder. The government -- he testified that the government came down, said everything at their parole hearing, doing everything possible to get Mr. Trent out of jail. We need his testimony. We will do anything

possible. And they did. And they got him out of jail.

And what did Mr. Trent do? He got himself locked up in a car, in his stolen car.

He testified -- and you can recall if I am accurate or inaccurate -- but he testified, we believe, that I knew this car was stolen and so I called up the police officers and told them I'm in a stolen car, come arrest me, if you want to believe. Why wouldn't he just get out of the car and say, if I knew this car was stolen, I'll call the police and say there is a stolen car right off of main street or something? He wants you to believe that he's calling up the police, getting himself arrested and thrown back in prison. There is more to that story, as there is more to all these stories.

The affidavit that is, we believe, is the entire basis for his testimony. He indicates that he filed a false -- he filed an affidavit with the court saying he did the shooting. He was lying. He lied to the jury or to the judge. He tried to change the criminal justice system. He wanted to have an individual who was convicted of shooting someone released and he was going to attest that he was the shooter. Obviously, that was not believed. And he testified to you that he had a false affidavit.

Ladies and gentlemen, we think this is incredibly important. This is not going to be when you sell a car or transfer title to a car, to misstate the number of miles on a car. We are not saying that when you go to a driver's license you misstate your height, weight, whatever, on the driver's license. This is where he purposely filed an affidavit in a courthouse to try and change the outcome of a trial for his personal gain. And he says he got two grand to do that or something like that.

He also made an interesting little statement that when he met Mr. Conway. He sent the letter to the prosecutors for the reason that he could get into protective custody to kill witnesses. Bizarre.

Mr. Trent indicated to you that he was released from jail, went to the Work Release Program. He said, "I was wired. I had a phone. Every phone call recorded. I had surveillance by two, three deputies at all times. Everything I did was recorded."

You saw transcripts, you saw all kinds of things going back and forth. Probably somewhat distracting for you.

These are the best prosecutors. If they could have brought you one recording where my client in any way confessed to anything, they would have. They

didn't. They didn't. One verification that they could have had, would be a tape of my client confessing.

MR. LOWE: Objection, Your Honor.

THE COURT: Overruled.

MR. YOUNG: They didn't. I'll let you determine that.

Now, you're going to receive an instruction that you can believe all, some or none of somebody's testimony.

You're going to also have -- the Judge is going to provide you the definition of reasonable doubt. And on reasonable doubt you're going to get the instruction that you need to rely and act upon the most important affairs of your life.

Are you going to rely on the testimony of Ronald Trent as to whether he was telling the truth? You're determining whether or not to have certainty, are you going to rely upon the testimony of Mike Arthurs? Whether or not you're going to rely upon their testimony, they have a tremendous amount of self interest.

So let's examine corroborating issues. All we need is one piece of corroborating evidence. They introduced Andrew Dotson's cell records, which I believe you will get as State's, I believe, A. You'll get

Andrew Dotson's cell records. They want to emphasize t you that on, I think it's the 15th, he calls the detectives or a call is made from his phone to a 462 number, which is generally the court or the police numbers.

The key thing is corroboration. Mike Arthurs' cell records. He called James Conway. Shawn Nightingale's cell records. Did he call James Conway? James Conway's cell records -- they have the burden of proof. We don't have any of those to corroborate a single story. The only records we have are the dates where Mike Arthurs stayed there. That does not corroborate the story. In fact, it completely doesn't corroborate and I think it fails upon the police or the government.

The Jesse James shooting, did the government put a witness on regarding Jesse James? Did they put one thing on as to the Jesse James shooting? Why would my client want to kill Andrew Dotson regarding the shooting on the 14th? We don't even know who was shooting on that date. They put Mike Arthurs who supposedly wasn't even there.

So there is clearly reasonable doubt as to the whole -- I mean, the entire State's theory in this case is that my client ordered or did whatever and

killed Andrew Dotson because he was going to testify about a shooting.

Ladies and gentlemen, who shot Jesse James? The detectives dropped off a card. There's been no charges filed in the Jesse James shooting. You heard that. The key thing for Mike Arthurs was we had the birthday party, CJ Stephens' birthday party. That was the night where my client ordered the hit.

West Virginia, West Virginia, has the government produced one scintilla of evidence that anybody was in West Virginia? Is there a gas receipt? Was there anyone from West Virginia that came and testified?

Jail records, Ronny Trent says "I got all this money. I got all of this stuff. I got everything. It was put on my books, put on the records. Where is the jail records? Where is the one piece of corroborating evidence?

Reasonable doubt. Willing to rely and act upon it in most important affairs? This is a flawed time line. The government married Mike Arthurs' story. They are stuck with Mike Arthurs' story. They have to cut a deal with Mike Arthurs' story. And it does not work.

Jesse James shooting. He's at the Hampton

Inn. They say they left for West Virginia on the 15th. Couldn't be done. Four hours there, four and a half back. Same thing.

Unfortunately, for the government, the mother met with Andrew at 5:45 right before church. Cecil spoke with Andrew. Was he killed that night?

Unfortunately, the government's case does not work.

Spoke with Bobbi Hannah the next day. Contrary to what the government -- I believe that was the 16th when Andrew indicated he would be over, not the 15th.

The coroner's testimony, the third witness in this. The coroner's testimony is important for a couple of reasons. The coroner's key finding as to the toxicology report is Andrew was not under the influence of any narcotics. He says he has a blood alcohol level of .09, which the Legislature just changed; it's .08 for driving.

But you're going to get this. You're going to have this admitted into evidence. You're going to see the toxicology report. You're going to see the levels in the toxicology report. You'll see it and get an opportunity to examine it. It says that blood alcohol ethanol level of .09, Diazepam, four mg.

Nordiazepam not detected, metabolite for Valium.

Mike Arthurs' story was that he was swallowing all these pills. He was just partying in the back so much so that he passed out, passed out to a comatose state.

The medical records don't support that. The coroner is a scientific individual. They do not support that he passed out. And I believe the coroner specifically testified, you cannot tell -- I mean, the levels in his body were not consistent with somebody that was passed out or would have been passed out or would have been just asleep. It's our contention that Mr. Dotson was dead in that car prior to even going to the cornfield.

You heard Mike Arthurs testify, "I pulled him out and he was this limp." Unconscious body at that time. Is that someone that's passed out? Why didn't he wake up? Or where's his involuntary reactions? You're sleeping on a couch and someone comes up and jumps up on you, you're going to get up. But Mike Arthurs testifies he starts doing all these things to Andrew and nothing happens. There is no involuntary movement. He's completely limp.

I believe that the coroner also testified that you need very little pressure, ten pounds per

square inch, to choke and kill someone. To step on their throat would have been sufficient enough to kill him; that the wounds could have been inflicted post or antemortem.

Now, the charges say my client -- the way the government had up there, there was two separate ways that we get this aggravated murder. They are not married to one or another. They want you to consider a couple alternatives. One, that my client participated in, caused the death of Andrew Dotson during the commission of a kidnapping.

Now, if you believe Mike Arthurs in any respect -- and he says my client wants Andrew Dotson to disappear. He didn't say I want you to kidnap him, take him to West Virginia or anything like that, is that an aggravated murder with prior calculation and design?

You're going to get a definition from the Judge that I think is going to be a little bit different from what the government had up there; that you're going to have a process of reason must have included a mental plan involving studied considerations of method and the means with which to cause the death. That's prior calculation and design. You're going to get this definition.

So you have this purposeful killing of

another, either through kidnapping or this prior calculation and design. And you're going to have these specifications.

The first specification was escaping detection. The entire State's theory on this is that my client shot Jesse James in broad daylight on the corner of Fern Hill and Palmetto with three or four other people in his group with fifteen witnesses around. And that's the reason he wants to kill Andrew Dotson. We believe that's --

And that he was part of this kidnapping scheme? There is no indication my client knew of the kidnapping, where they are going. They are saying they are having all these cell calls. Where is the confirmation for that?

And then you're going to get the last specification to the aggravated murder charge: That he killed a witness. And the Judge is going to instruct you what a criminal proceedings is. No criminal proceeding was instituted or even began on the Jesse James shooting. The only witnesses that had as to Jesse James, I don't know who shot him.

Kidnapping, they're indicating that the kidnapping could have occurred in multiple areas. But I believe on the power point display it was specifically

when he dragged him out of the car and dragged back. A person is dead, there was no kidnapping at that point in time would be our suggestion as to that.

Then the government puts all these other charges, we believe it's a fallback position -- a possession of criminal tools, abuse of a corpse, obstruction of justice. Are they saying my client purposely -- and I believe that's what the prosecutor said is my client caused the fatal wounds.

And then they are saying abuse of a corpse. If he caused the fatal wounds, it would not be abuse of a corpse.

Obstruction of justice, tampering with evidence. We believe that the government's indictment is throwing everything up there.

If you don't believe these, Mr. Arthurs, you don't believe Mr. Trent, well, there is all these other charges, possession of criminal tools that you can consider. We believe that those are inconsistent with their entire theory of the case; that if my client caused the death of Andrew Dotson, that he did so with prior calculation and design and he did so under a felony murder.

Ladies and gentlemen, if you analyze each of the gentlemen's testimony, Mr. Trent, and you analyze

Mr. Arthurs' testimony, their testimony is we believe without any credibility, having no credibility, then we believe that there is a reasonable doubt as to every charge in this case.

Talk among yourselves when you go back there. Analyze the evidence of these two witnesses. Think about one piece of evidence that corroborates them. We believe that there will be none. And we would ask that you find Mr. Conway not guilty, not guilty as to every charge.

If they do not meet their burden -- in voir dire, you indicated that you would hold them to their burden. And they did not meet their burden, ladies and gentlemen, he's not guilty of every charge.

THE COURT: All right. I'm going to go ahead and take a recess at this point in time. We are going to go ahead and take a twenty minute recess. Be back here at ten minutes after.

Again, while you are on recess, don't discuss the case amongst yourselves or anybody else. Keep an open mind. We will see you at ten after.

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Thereupon, a recess was taken.

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Thereupon, the jury resumed their places in

the jury box.

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THE COURT: All right. Everybody be seated. Mr. Lowe.

MR. LOWE: Thank you, Your Honor.

Ladies and gentlemen of the jury, good morning. It's still morning.

You have been thanked numerous times for your patience and I'm going to do it one more time and ask you for a little bit more. I'm going to be the last one to speak about the case right now. And if I can keep you paying attention for a little while longer, we will be through with this.

We do appreciate your time and hard work in this case.

Also appreciate the comments by Mr. Young. But we are here to present the facts. That's all we are here for. That's what we did. You have those facts. And now we are going to talk a little bit about what the facts are.

I would be remiss in my job if I did not talk about some of the points he brought up. And he talked a little bit about corroborating evidence. We are going to talk a little bit about that afterwards.

First, I want to address the comments Mr.

Young made.

Mr. Young made a big issue out of Ronny Trent and Mike Arthurs and the deal, Mike Arthurs' deal.

What he didn't do was attack the facts. He didn't attack Mike Arthurs' testimony. He didn't attack Ronny Trent's testimony; just their deals. Can't believe them because they got a deal.

We told you at the very beginning of this case we were going to be making deals with pirates. Told you that. Talked about it a little bit. Listen to what they had to say. Fairly judge them on what they told you.

Mike Arthurs, no one is going to tell you he did not receive a good deal. He did. Was it immunity? The State doesn't think it was immunity. He got five years with a recommendation for four years to be served concurrently. But he has to testify in this case as well as half a dozen other cases and he has to testify truthfully as to what happened in each and every case. Is that immunity? State doesn't think so.

But the bottom line is, we don't choose who is at a crime. We don't get to choose who our witnesses are. There was only James Conway, Mike Arthurs, Shawn Nightingale, Jamie Horton and Andrew Dotson at Andrew Dotson's murder that night. Andrew Dotson is dead. We

are left with one of the other individuals who are there to tell us what happened. That's why the State cut a deal with Mike Arthurs. That's why he got a great deal. It's not fair, but if Mike Arthurs doesn't make a deal, then no one gets prosecuted. This murder never gets solved then.

You saw Mike Arthurs testify. You saw his demeanor. You saw him on the stand. Ask yourself, do you think he was a very bright individual? You think he was very smart, super intelligent, someone who could come up with all the intricate details and lie to you about everything that happened that night, keep all the facts in place? The State would submit to you, not a chance. Mr. Arthurs is not that smart. He told you what happened from what he remembered what happened.

At one point he was asked a year and he was completely wrong on that. Does he know exact dates? No. But what he was doing was telling the truth. Told you what he remembered. He admitted his involvement. He said, I can't tell you why that man asked me to kill Andrew Dotson who we were friends with. He knew why; because Andrew witnessed the Jesse James shooting. He asked Shawn and myself and we said yes. We can't explain it, but we said yes. Agreed to that.

If he was going to lie to you, he didn't

have to tell you any of that. Could have just said he told us to kill him because he threatened us, whatever. He wouldn't have told you about how he fake choked him. He wouldn't have told you about any of that stuff. Could have made up any story he wanted, but he didn't. He was telling the truth.

Mr. Young made the comment, has the government done everything that it could? The State would submit to you that, yes, the facts are the facts. This case has been investigated. This case has been corroborated. There's been testimony of Mike Arthurs.

And who corroborated him? Ronny Trent. Ronny Trent did not know anybody involved. Didn't know Mike Arthurs. Didn't know Shawn Nightingale. Didn't know James Conway before he was in jail with him. Didn't know Andrew Dotson.

Ask yourself one question: How does Ronny Trent get the facts of this case that he testified to if James Conway doesn't tell him? Case hasn't been solved yet. Wasn't in the paper as to who did what, when and why. But he came in here and told you those facts. He told you what James Conway told him. And the reason James Conway trusted Ronny Trent because when in jail they found out they were distant cousins. And day after day of being in jail together, Mr. Conway finally

started trusting him and told him what he did that night.

Now, if Ronny is going to lie to you, why would he tell you what he told you? Because Ronny said originally Mr. Conway told me that they stepped on his neck and it wasn't until after, when Ronny learned that the pickax was used, that he confronted James Conway: What's going on, dog? Why did you lie to me, tell me you stepped on his neck? And James Conway said, well, I stuck a pickax in him because I wanted to make sure he was dead. Where on earth does Ronny get those facts if it's not from James Conway?

Mr. Young talked about Mike's story and how it was perfect except for one thing, State's Exhibit H and Defendant's Exhibit 16. You will have that back there. That was the receipt that was talked about a lot during this trial. Mr. Young made the point. Perfect story except for one thing. The dates don't add up because of what you see here.

And he went on further to say he didn't know what Lora Eberhard was going to tell the police later, why this couldn't be the correct date. If you remember that comment.

Well, if you remember when Mr. Arthurs was on the stand and he was shown a transcript when he firs

talked to the police back in May of 2002, he told them -- you remember his testimony -- he told them, oh, that receipt, it's not the right one. I don't even think I was there then. I was in West Virginia.

Now, why would he say that that wasn't the correct receipt? He had no idea what Lora Eberhard was going to tell the police later on. Why would he clear that up back in May of 2002 if he had his perfect story? Makes no sense. He told the police when shown a receipt, I don't think this was right. We used fake names. We had more than one room. We did that all the time. And I woke up in West Virginia during the bombings. I wasn't even there then. I think someone else was using the room.

He certainly couldn't have known what Lora was going to tell the police later on and change his story after he heard what Lora told the police. That doesn't make any sense at all.

Mr. Young talked about a diagram. Is an argument seriously you could not fit three people in a bathroom for a conversation that takes place about thirty seconds? Told you that's where they kept the beer in the bathroom on ice. Walked in. James Conway said you got to get rid of Andrew Dotson for me. They said yes. Grabbed some beers and walked out. Three

people can't stand up next to a bathtub for a ten-second conversation and then leave? Use your common sense with that. You'll have the diagram. No one said they were living in there.

Ronny Trent showed James Conway some pictures on 5/23. Showed a picture of Mike Arthurs -- and you'll get to see that -- where Mike was asked to play dead. That was all because James Conway put that plan in motion. James Conway asked Ronny Trent to kill Mike Arthurs. That's why you were shown the picture. That's why he went to visit Mr. Conway. And that's why Mr. Conway smiled.

Ronny Trent was told all his information from Mr. Conway. He's talking about the White Castle and the shooting. Well, Ronny told you the reason James told me he was killing Andrew Dotson was because Andrew witnessed a shooting of an individual who he didn't know the name but he got shot in the butt and he thought it was at White Castle.

Was Ronny right about White Castle? No. But Ronny wasn't at the shooting. He's getting the information from Conway. That's how you know Ronny is telling the truth. If he was lying, he would have the streets, the address, the time, exactly what happened, the guy's name. He didn't have any of that. If this

was force fed to him, that's what he would tell you. Ronny came in here and all he can tell you, hey, this is what that man told me. I wasn't there. That's how you know Ronny Trent was believable.

Did he get a deal to testify? Yes. It certainly wasn't that great of a deal. You heard him testify back and forth. And again, you may not like Ronny Trent. You may not like Mike Arthurs. That's not what you're being asked to do. You're being asked to judge their credibility and whether their stories were corroborated. State submits both their stories were corroborated.

Mr. Young made a comment about Mr. Trent came here in jeans to mislead you. Did he tell you where he was? Did he tell you what his involvement was about the car? Did he tell you what happened? Did he tell you about the conversation? Why he testified? Why he made a deal? Because James Conway came back into his cell after a meeting with Lora Eberhard who Ronny Trent had no idea who she was, Mr. Conway told him what happened -- that stupid bitch thinks I'm going to tell her I killed her son. Where would Ronny get that?

You heard Lora testify corroborating what happened. She had a conversation with Mr. Conway in the jail. How would Ronny know that?

Common sense. This case is about common sense. Mr. Young also talked about protective custody and killing witnesses. Ronny told you that was James Conway's plan to get Ronny Trent in protective custody to kill a witness. You got to see the transcripts. The defense and prosecutors were both asking questions off of it. The Judge decides what evidence is permitted. Please don't speculate.

You were asked why there wasn't a tape played with Mr. Conway confessing. Do you honestly think the defendant called Ronny Trent from jail and re-confessed over the phone? Mr. Trent told you he is in jail with him, next to him. He's cousins. He is agreeing to kill Mike Arthurs for him. That's why James Conway is trusting him.

As to whether there would be a gas receipt from West Virginia to prove they were in West Virginia? This is in September of 2001 and Mike Arthurs talks to the police in May of 2002. Do you honestly believe that he kept a gas receipt that -- you can use a credit card. He told you I don't remember if we stopped for gas or not. That's not what was important to me.

He told you he was asked to kill Andrew Dotson. They went to West Virginia under false pretenses. They tricked Andrew into going there lookin

for weed. He told you not more specifics than he remembered. He didn't say, oh, he took seven pills. He took eight pills. He said, I don't know. I saw him taking a couple pills. He passed out.

There is talk about the coroner and how that's not consistent with him being unconscious. The coroner told you that different drugs affect different people differently. He had Diazepam. He had alcohol.

Why would Mike lie about Andrew being unconscious in the car? The Defense theory is because he was already dead. Ask yourself if that makes any sense whatsoever.

If Andrew Dotson was dead in the car on the way back from West Virginia, we've got some problems with the coroner's testimony. Because after they got to the shopping center, he would already be dead. And when Mr. Conway asked him to follow him to a cornfield, he would already be dead. And when he's dragged out from the car, he would already be dead. When he's taken from the car to the cornfield, he would already be dead. When his clothes are taken off, he would already be dead. And then finally, when James Conway goes back with a pickax and puts the pickax in his chest twice, he would already be dead. Then how on earth is this man's heart pumping?

Twenty-seven years of experience, four thousand autopsies, and he told you there is no evidence whatsoever that Andrew Dotson died of anything other than the sharp instrument wounds to his chest. His opinion, his heart was still beating when a pickax-type instrument was plunged into it.

He was unconscious. He was not dead until Mr. Conway killed him.

And the theory that Mike Arthurs killed him, if Mike wanted him dead -- but you heard Mike testify I didn't have a problem with him, I knew him for a little while. I didn't have a problem, Jimmy did. If he wanted to kill him, why wouldn't he kill him in West Virginia when they were out in the field. Told you they had a gun. You know they had lime in the car. Told you he looked at Shawn, said I can't do this. I cannot kill my friend. Told you why he choked -- why he pretended to choke Andrew was to please that man. To make him think that he was doing what he wanted.

Mr. Young talked about there being no indication that James Conway knew what was going on; you would have not believed Mike Arthurs at all or Ronny Trent at all. They are totally lying about everything, the facts were given to him by somebody.

What indication do we have to show that

James Conway knew what was going on? Number one, he asked that this hit be carried out. Number two, when they called him on the way back and told him we can't do it. He's passed out in the back. But we asked him, we said, Andrew, are you going to tell on Jimmy about the shooting, about the Jesse James shooting? No, I'll never tell. They told that to James Conway. His response? Quit being bitches. Be a man. Kill him. What's wrong with you?

How do we know that he knows what's going on? Because after "quit being bitches", he tells them to meet him. After that, he tells them to follow him to an abandoned cornfield -- excuse me, not abandoned but to a cornfield. No one is around. Stalks are seven feet high. Who pulls in first in the pickup? Jimmy Conway and Jamie Horton. Their car first. Shawn is behind them. Because that makes sense. Because that's corroborated with the testimony. They were following James Conway.

And when Mike Arthurs gets him out of the car, he does not kill him. He drags him back. He told you what he did. But the reason that James Conway goes back and puts the pickax in his chest was because he wasn't dead. And we know why he was killing him, because Andrew saw him shoot Jesse James. And that was

brought up by the Defense.

Mr. Young said, we don't even know who shot Jesse James. Well, Andrew did. And he can't tell you, but Mike Arthurs can and Ronny Trent can. That's the whole point.

We know a criminal investigation was being instituted because the detective went out to the scene or went out to Ms. Eberhard's house looking for Andrew Dotson. Left the card there. You heard the testimony about that. That's how we know that an investigation was proceeding.

We also have the cell phone records. This shows that Andrew called the police that night. We do know who shot Jesse James. James Conway told Mike Arthurs and told Ronny Trent that he did, that he shot him in the butt.

Mr. Young talked about there not being a kidnapping. Not being a kidnapping? Just because he didn't say take him to West Virginia and then let him out in a field, there is no kidnapping? He asked these two individuals to kill Andrew Dotson. Of course, there's been a kidnapping. He can be convicted of that by complicity. You ask someone to do something for you, when they do it, you're part of what they did. To say he's not guilty of kidnapping, doesn't make any sense.

And then when he's at the field and him being pulled out of a car and dragged to the back, he is there for that, he's definitely guilty.

No abuse of a corpse? You saw the lime all over the body. And the purpose of lime is to decompose a body.

Mr. Young talked about there being two ways to commit ag. murder and that we have not picked that there is. Believe one or believe the other. There are two ways to commit ag. murder. You have both. Both fit. Both fit. You can convict Mr. Conway of both ways, committing aggravated murder in both ways. The fact is, ladies and gentlemen, everything that Ronny told you was corroborated by Mike. Everything that Mike told you is corroborated by Ronny.

There is physical evidence in this case. You saw it. The fact is that James Conway told Ronny Trent that he had a problem while he was in jail and the problem was Mike Arthurs, because he thought Mike was weak, thought Mike would tell on what happened because Mike was obviously disturbed what happened that night because he didn't go to Ryod's to drink and form an alibi. He had asked to be dropped off at his cousin's; which happened.

Mr. Conway had a problem. He meets his

cousin. He trusts him and he asks his cousin to deal with his problem and he wants him to kill Mike Arthurs because he was scared he was going to tell on him.

And the truth is, he did tell on him. He was right to be scared of Mike Arthurs because Mike told you what happened that night. He had a problem. Asked him to be killed. Problem solved.

Defense asked questions of the coroner about Mike's twisting his neck, isn't it true you twisted his neck around 360 like The Exorcist? Was that corroborated by the coroner? No. The coroner told you there was no bruising at all to the neck, to the soft tissue, to any tissue. Talk about the hyoid bone. It was not broken.

The question posed to Mr. Arthurs was, didn't you turn his neck all the way around and, in fact, didn't you step on his neck until it was flat to the ground? Doctor Fardal was very clear on the fact that he would expect trauma in those instances and didn't see any. The coroner's testimony corroborated Mike Arthurs.

And ask yourself this: If Mike Arthurs did something to Andrew Dotson on that scene and didn't tell you people what happened that night, don't you think that Doctor Fardal would come in and say, well, I don't

know what happened there that night but I can tell you, the hyoid bone was broken. There was trauma to the neck.

That's how we know Mike Arthurs is telling the truth. Because the coroner would have exposed his story for what it was. If he was lying, he would have told you there was trauma to the neck. There was the hyoid bone broken. There was tissue damage. There was bruising. But there was none of that. That all corroborates Mike's story. I didn't put any pressure on him at all. I was just trying to please that man.

What else do we know that corroborates stories? Ronny Trent told you five thousand dollars is put on his books. That corroborates what he was told by Mr. Conway -- to kill Mike Arthurs.

Do you know who brought him there? He told him to trust Jamie and Shawn because they were solid. That's who he talked to. And Ronny confronted that man as to why he lied to him about the true facts of what happened. He didn't tell him exactly what happened until Ronny said, you lied to me. That's how we know Ronny was telling the truth. Why would Ronny make that part up? If Ronny is lying to you, he would take the stand and say he confessed everything to me. He told me X, Y and Z, put the pickax in the chest because of the

shooting. He didn't. He said he talked to him and didn't tell the truth at first. That's what makes sense because that's the truth.

Ladies and gentlemen, if you look at the facts of this case and judge the credibility of Mike Arthurs and Ronny Trent, you will see that they were being believable. They were telling the truth.

James Conway confessed to Ronny Trent that he, in fact, asked Mike Arthurs and Shawn Nightingale to kill Andrew Dotson; that they couldn't go through with it and that that man there finished the job with an instrument just like this. He plunged a pickax into the heart of Andrew Dotson, not once, but twice just to make sure he was dead and to make sure that he would not tell on him for shooting Jesse James.

When you look at all the facts, review all the testimony in your mind, State is confident you will come to one conclusion: James Conway is guilty of all counts and every specification charged in the indictment.

Thank you very much.

THE COURT: Thank you.

At this point in time, I'm not going to go through with my final instructions because they are going to take us well past lunch and I don't want to do

that at this point.

So for purposes of the record, you're going to be in the custody of our bailiff who is going to take you over for lunch at this point in time.

You'll have lunch and then come back here around 1:30 and then I'll have an opportunity at that point in time to give you the final instructions.

You're not allowed to have any other contact with anybody on the outside at this point. And Linda, of course, will explain that to you.

As I said, at this point you're going to be what's called sequestered. And that's the only way I can get your lunch paid for. If I don't do it that way, you have to buy your own lunch. So I'm going to have you step back in there.

Mr. Purifoy, I want to talk to you with respect to your situation. I'm going to have you stay there.

Everybody else step back there.

And again, while you are at lunch and this recess, don't discuss the case amongst yourselves or anybody else. Keep an open mind.

Go ahead and step back in the jury room.

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Thereupon, the jury was retired from the

courtroom and the following proceedings were had out of the presence and hearing of the jury:

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THE COURT: When we had our original discussion during the jury selection process, you told us if you can't get paid, you can't go a second week or a third week. We talked about that. And I told you I would try to get that changed at Penney's. And I have had a conversation with the human affairs person over there and they are under the position -- and I haven't heard back from them today -- they are under the position they are not going to pay you for anything beyond last week.

Now, let me ask: What type of hardship is this going to be if you stayed this week and didn't get paid?

You're making minimum wage, right?

JUROR PURIFOY: Little bit over.

THE COURT: Do you have a family?

JUROR PURIFOY: Yeah. Not one that I support myself, though. I live with my parents.

THE COURT: Okay.

JUROR PURIFOY: I don't know how much hardship it is. I'm trying to move out soon, but it would depend on if the check I get from this, if I have

to give it to the J.C. Penney's when I go back.

THE COURT: Well, you definitely wouldn't have to give this week to J.C. Penney because they are not paying you.

JUROR PURIFOY: Probably won't be that much hardship.

THE COURT: Now, at the beginning of the trial, I saw you looked like you were nodding off a little bit and I had Linda say something to you. Do you think you've paid sufficient attention and were alert during most of the case?

JUROR PURIFOY: Yes.

THE COURT: You do. Okay. So you want to serve at this point?

JUROR PURIFOY: Yes.

THE COURT: All right. Good.

Go back there with the rest of the jurors and enjoy your lunch.

JUROR PURIFOY: There is something I had to do and I know I wouldn't be able to do it during lunch; I just needed to make a phone call to cancel my dentist appointment tomorrow.

THE COURT: Give that information to Linda who the dentist is and she will make the phone call for you.

Go ahead and step back in there. And thank you.

JUROR PURIFOY: Thank you.

THE COURT: Okay. That's fine. Let me see the attorneys if I could.

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Thereupon, the following proceedings were held in the conference room out of the presence and hearing of the jury and the defendant.

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THE COURT: We had some discussions prior to closing and we are having some discussions now post-closing about the instructions and about any lessers. And I told Defense counsel that I would consider a lesser of murder if the theory was put forth.

And at this point in time, I understand the Defense does not want a lesser included offense of murder.

MR. YOUNG: Yes. We did not raise that in our closing argument and we would not request one.

THE COURT: So you don't request any lesser includeds?

MR. YOUNG: No.

MS. MENASHE: We are thinking about abduction on the lesser of kidnapping. We had not

thought about it until this moment.

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Defense counsel and defendant conferring.

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MR. YOUNG: We are going to request a lesser of abduction.

THE COURT: What's the section? How does it read?

MS. MENASHE: No person shall knowingly do any of the following: One, by force or threat remove the other from the place where found; by force or threat restrain the liberty under circumstances which create a risk of physical harm to the victim; three, hold another in condition of involuntary servitude.

MR. YOUNG: I believe abduction is lesser included of kidnapping.

THE COURT: I forgot. What's the main difference between the (A) and (B) Section? The force? Is it force?

MS. MENASHE: Threat or deception.

MR. YOUNG: It's threat or deception.

MS. MENASHE: I think there is no deception in abduction.

THE COURT: Any comment?

MS. PRICHARD: If you can prove the

kidnapping, if all elements of the kidnapping have been testified to, I don't know why we would need a lesser. It's either guilty or not guilty.

I mean, I don't have a huge problem with it, I guess. I don't see how it's necessary when the elements of the kidnapping according to the evidence --

THE COURT: It's not a question of necessary; it's a question of whether it's appropriate.

Basically, the way I read them, if I recall it correctly, you've got basically the same elements but for the purpose of is different. The abduction happens over here and it's the same thing as kidnapping but the kidnapping has a different purpose.

MS. PRICHARD: According to our theory, the kidnapping is to facilitate the aggravated murder. And under their theory it's just to harm -- I forget how else it reads -- and not for that purpose. That's the whole theory. That's why they take him to kill him, drag him, choke him. It's all to commit an ag. murder.

THE COURT: How's that affect your closing comment?

MR. LOWE: Well, it affects it in the sense that -- I think Dave is right. If that's given and that's what they choose, it does knock out a death spec which I would have addressed, that is clearly not this

but this and I would argue it. I don't know what the result would have been.

THE COURT: Do you want any more argument?

MR. YOUNG: No.

THE COURT: I will give you five more minutes. I will give both sides five more minutes if you want.

Just for purposes of the record, this request -- I have had several conversations with the attorneys about lesser includeds and this is the first time the request has been made after the closing argument is in. I don't think it's fair to anybody to throw this in without the jury at least having the opportunity for people to explain that. But I will go ahead and give it.

MS. PRICHARD: Maybe what we could do -- I know these people are getting tired. If you give it, as long as it's clear to indicate something to the effect of, you know, this was not addressed or whatever, but it's an appropriate instruction, however, you must start at kidnapping. You don't automatically -- I think -- I don't know if Jimmy feels that would clear it up or not. As long as there is sort of an explanation; it was overlooked by all of the parties as being a lesser that we were going to give, therefore, nobody addressed it

but you will be able to consider it, here's how and when.

THE COURT: I will say something to the jury about that.

MR. LOWE: I'm scared if I address it now, it lends credence to the argument.

THE COURT: Think about it. I will give you that opportunity.

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Thereupon, a luncheon recess was taken until 1:30 o'clock p.m., of the same day, to wit, September 22, 2003.

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Monday Afternoon Session,
September 22, 2003.

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MR. YOUNG: Chart is not going back to the jurors, is it?

THE COURT: No. Unless they ask for it, then I'll figure out what to do.

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Thereupon, at 2:30 o'clock p.m., the jury resumed their places in the jury box.

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Thereupon, the Court charged the jury as follows:

- - -

THE COURT: How was your lunch?

THE JURY: Great. Thank you.

THE COURT: Don't thank me, thank the three county commissioners and also thank them for crumby heat and thank them for the lack of carpeting, the fact you didn't have parking spaces this morning.

Who ended up at City Center? I know somebody ended up at City Center. Thank the commissioners for that, too.

Anyway, let's talk about this case. I apologize for the delay. Carla and I were trying to do

something to speed up the process and probably ended up slowing it down a little bit.

What I did, I kind of went back during the lunch hour and I dictated to Carla what I was going to talk about and I had her type it up so I would have it in advance. Instead of messing around with a whole bunch of papers, which I normally do and sometimes miss something, I made sure I already had it in advance. That took a little bit longer than I thought even though her miracle machine does a wonderful job. I apologize for delaying the process for you.

Now, in the beginning of the trial, I told you that you and I have separate functions. You decide all the disputed questions of fact and it's my responsibility to provide the instructions of law.

Now it's your sworn duty to accept the instructions as I've already given them to you and as I will give them to you now. You are not permitted to change the law nor are you permitted to apply your own concept of what you think the law might be.

Now, in the beginning of the trial, we talked a little bit about some evidentiary matters. I told you about the objections that would be made by the attorneys and I told you a little bit about some of the other things that might happen in the courtroom.

Now, I'm not going to repeat those instructions but I do want you to bear those in mind while you are deliberating and considering all of the factual issues in this case.

I would like to start off by talking about direct and circumstantial evidence. Any fact, in this, or any other case for that matter may be proven by either direct or circumstantial evidence.

Now, direct evidence means exactly what the name implies; that is, it is evidence which directly proves a fact without having to infer that fact from some other fact.

Now, direct evidence is usually the testimony given by a witness who has seen or heard the facts to which he or she testified and it will also include the exhibits that have been introduced into evidence.

Circumstantial evidence on the other hand is proof of facts by direct evidence from which you may infer a fact in question. You're not required to make that inference but if the facts support the inference, it's a permissible inference that can be drawn from the direct evidence.

Now, I would like to give you a hypothetical or put you in a hypothetical case situation with respect

to a further explanation of direct and circumstantial evidence.

Let's say in the hypothetical case, the question that you are supposed to decide is whether or not it snowed outside last night.

Now let's say that you are up all night doing whatever it was, watching TV or having a party, whatever it was, and you go outside and you actually see the snow coming down and you're watching it. The snow gets two, three inches on the ground. So if somebody says, did it snow outside, you say yeah, I saw direct evidence of it snowing. I saw it. It came down. It snowed. That's direct evidence.

Let's say we have another witness come into the courtroom and say, you know, I went to bed last night at 9:00 o'clock and there wasn't any snow out there. I woke up this morning at 7:00 o'clock this morning and there was two inches of snow on the ground. From that direct evidence, the fact that there was two inches of snow on the ground in the morning and there was none when she went to bed in the evening, a jury could infer that, in fact, it snowed last night even though she didn't see it snow. That's circumstantial evidence, an inference that can be drawn from direct evidence.

Now, the law makes no distinction between direct and circumstantial evidence as to the degree of proof required. And facts may be proven by either type of evidence or a combination of them. Each is accepted as a reasonable method of proof and is each is respected for such convincing force as it may carry.

Now one other thing about inferences and circumstantial evidence. You are permitted to draw more than one inference from the same set of facts; so you can draw more than one inference. Like in our case with the snow, you could draw an inference that it snowed at night or you could draw another inference that, hey, somebody brought in a whole bunch of snow and put it on my front yard. That's one inference that can be drawn or there's another inference that can be drawn. What you cannot do is take direct evidence and draw an inference to get to circumstantial evidence and without any further evidence draw another inference to get to where you want to go. So we don't have inferences upon an inference. But more than one inference is permitted.

As jurors, you have the sole and the exclusive duty to decide and determine the credibility of the witnesses who have testified in this case; which simply means that it is you who must decide whether to believe or whether to disbelieve a particular witness

and how much weight, if any, to give to the testimony of each witness.

In deciding these questions, these questions of credibility, you will apply the tests of truthfulness that you apply in your own daily lives. These tests will include the appearance of each witness on the witness stand; his or her manner of testifying; the reasonableness of the testimony; the opportunity he or she had to see, hear and know the things concerning which they've testified; the witnesses' accuracy of memory; their frankness or lack thereof. You can consider their intelligence; their interest and bias, if any; together with all facts and circumstances surrounding the testimony, you will apply these tests and you will assign to the testimony of each witness such weight as you deem proper.

Now, you are not required to believe the testimony of a witness simply because it was given under oath. And you may believe all, part or none of the testimony of any of the witnesses who have testified.

Now, do not decide any issue of fact merely on the basis of the number of witnesses who testified on each side of the issue; rather, the final test in judging evidence should be the force and the weight of the evidence regardless of the number of witnesses on

each side of the issue. Remember, the testimony of one witness that is believed by you is sufficient to prove any fact.

Now, if we had any discrepancies in a witness's testimony or between his or her testimony and that of others, that does not necessarily mean that you should disbelieve that witness, as people will commonly forget facts or they may recollect them erroneously after the passage of time. And I'm sure you're all certainly aware of the fact that two people who are witnesses to an incident may often see or hear that incident somewhat differently. When you're deciding about a discrepancy in a witness's testimony, you should decide whether such discrepancy concerns an important fact or a trivial fact.

Now, you have heard the testimony from Mr. Michael Arthurs and that's another person who is accused of the same crime charged in this case and is said to be an accomplice or somebody with whom the defendant may or may not have been in complicity with. An accomplice is one who purposely assists or joins another in the commission of a crime.

Now, whether Mr. Arthurs was an accomplice and the weight to give his testimony are matters for you to determine from all the facts and circumstance in

evidence. The testimony of an accomplice that is supported by other evidence does not become inadmissible because of his complicity, moral turpitude or self interest, but the admitted or claimed complicity of a witness may affect his credibility and may make his testimony subject to grave suspicion and require that it be weighed with great caution. It is for you as jurors in light of all of the facts presented to you and from the witness stand to evaluate such testimony and to determine its quality and worth or its lack of quality and worth. An accomplice may have special motives in testifying. You should carefully examine an accomplice's testimony and use it with great caution an view it with great or grave suspicion.

You have heard the testimony of Doctor Fardal and you have heard his opinions with respect to certain matters in evidence.

Now, the law provides in normal situations that people aren't allowed to give their opinions or their conclusions about matters that are normally left up to the decision of the jury. However, there is an exception to the general rule. And the exception applies to people who we call expert witnesses. People who have become expert in some art, science or professional calling are permitted to state their

opinions with respect to those matters in which they have some expertise. And they can also state their reasons in support of that opinion.

Now, as jurors, you have to decide all of the factual issues in this case and that includes you're going to have to decide matters dealing with the testimony given by the expert.

Now, if you decide that the expert's opinion is not supported by sufficient background, training or experience, or if you decide that there is not a sufficient basis to formulate the opinion, you may disregard that opinion in part or in total.

Now, you're obviously aware that the defendant did not testify in this case. The decision of whether to testify or not to testify in a criminal matter is a decision that's left totally up to the defendant after consultation with his attorneys. There are many reasons why an individual may not testify in a criminal case and that's not something that should not concern you. You are to draw no opinions or any belief one way or another with respect to the defendant's failure to testify. By not testifying, the defendant is exercising his rights that are guaranteed to him under the constitutions of the law of the United States, the laws of the State of Ohio. You are the sole judges of

the facts, the credibility of the witnesses and the weight to be given to the testimony.

Now, the case before us began with the issuance of an indictment. An indictment informs the defendant that he's been charged with the crimes that are set forth in that indictment. A plea of not guilty has been entered and a plea of not guilty is a denial of the charge and puts into issue all the essential elements of the crimes that are set forth therein. The defendant is presumed innocent until his guilt is established beyond a reasonable doubt. Thus, the defendant begins this case with a clean slate, with no evidence against him.

Now, the law only permits legal evidence to be presented to a jury in support of a charge against the accused. So the presumption of innocence alone is sufficient to acquit the defendant unless you are satisfied after a fair and impartial consideration the State has proved his guilt beyond a reasonable doubt.

I've used the term reasonable doubt several times. Let me define it for you.

Reasonable doubt is present when after you've carefully considered and compared all of the evidence, you cannot say you are firmly convinced of the truth of the charge. Reasonable doubt is a doubt based

on reason and common sense. Reasonable doubt is not mere possible doubt because everything related to human affairs or depending on moral evidence is open to some possible or imaginary doubt. Proof beyond a reasonable doubt is proof of such character that an ordinary person would be willing to rely and act on it in the most important of his or her own affairs.

Now, the defendant, James Conway, III, is charged with the following six offenses: Aggravated murder. And with respect to that charge, there are three specifications. He's charged with kidnapping, possession of a criminal tool. And that tool is alleged to have been a pickax. He's charged with abuse of a corpse, charged with obstruction of justice, and Count Six, tampering with evidence.

Now, with respect to all six charges, the prosecution alleges that the defendant was the principal offender. And the prosecution further alleges that if the defendant was not the principal offender on any one or more of the charges, that he was in complicity with someone who was the principal offender. These persons who are alleged to have been in complicity with Mr. Conway are Shawn Nightingale, Mike Arthurs and/or Jamie Horton.

Now, the law provides that in many cases if

a person is not a principal offender, he can be held responsible for all the acts committed if he is found beyond a reasonable doubt to have been in complicity with others who are found beyond a reasonable doubt to have been the principal offender or offenders.

A principal offender in an aggravated murder case is the one who actually did the killing; that is, he personally performed every act constituting the offense.

Now, before you can find the defendant, James T. Conway, III, guilty of being in complicity of the charge of aggravated murder, kidnapping, possession of criminal tools, abuse of a corpse, obstruction of justice and tampering with evidence, you must find beyond a reasonable doubt that on or about September 14, 2001 through October 10, 2001 in Franklin County, Ohio, that the defendant purposely aided or abetted another or others in the commission of the acts charged.

Now, I'm going to define for you purposely a little bit later.

An aider or abettor is one who aids, assists or encourages another to commit a crime and participates in the commission of the crime by some act or gesture.

Aid means to help, assist or strengthen.

Abet means to encourage, counsel, incite or

assist.

Now, it is no defense to a charge of complicity that no person with whom the defendant was in complicity has been convicted as a principal offender. The defendant cannot be found guilty of complicity unless the offense or offenses were actually committed.

Now when two or more persons had a common purpose to commit a crime and one does one part and another performs another part, those acting together are equally guilty of a crime under the theory of complicity. However, the mere association with one who perpetrates an unlawful act does not render a person a participant in the crime as long as his acts are innocent. Before the defendant can be found guilty of aggravated murder as a complicitor, the State must prove beyond a reasonable doubt that this defendant specifically intended to cause the death of Andrew Dotson.

Now, with respect to the other crimes charged in the indictment. The defendant must be found to have the kind of culpability required for the commission of these offenses before he can be found guilty as complicitor the principal offender of these offenses.

Count One, charge of aggravated murder.

Before you can find the defendant guilty, you must find the State has proved beyond a reasonable doubt that on or about a period from September 14, 2001 to October 10, 2001 in Franklin County, Ohio, the defendant, James Conway, III, was a principal offender or was in complicity with another who was the principal offender and who purposely and with prior calculation and design caused the death of Andrew Dotson; or in the alternative, the defendant was the principal offender or was in complicity with another who was the principal offender and purposely caused the death of Andrew Dotson while committing or attempting to commit the offense of kidnapping.

Purpose or purposefully. A person acts purposefully when it is his specific intention to cause a certain result. Now, it must be established in this case at the time in question there was present in the mind of the defendant to either purposefully and with prior calculation and design cause the death of Andrew Dotson, or it must be established in this case at the time in question there was present in the mind of the defendant a specific intention, either with prior calculation and design to cause the death of Andrew Dotson, or a specific intention to cause the death of Andrew Dotson while committing the offense of

kidnapping.

Now, purpose is a decision of the mind to do an act with a conscious objective of producing a specific result. To do an act purposely is to do it intentionally and not accidentally. Purpose and intent mean the same thing.

Now, the purpose with which a person does an act or brings about a result is determined from the manner in which it is done, the means or weapon used and all the other facts and circumstances in evidence.

Now, if a wound is inflicted upon a person with a deadly weapon in a manner calculated to destroy life, the purpose to cause the death may, but is not required to be, inferred from the use of the weapon. The inference, if made, is not conclusive. Proof of motive is not required. The presence or absence of motive is one of the circumstances bearing upon purpose.

Deadly weapon. Deadly weapon means any instrument, device or thing capable of inflicting death and designed or specifically adapted for use as a weapon, or possessed, carried or used in this case as a weapon.

A deadly weapon is an instrument, device or thing that has two characteristics. The first characteristic is that it is capable of inflicting or

causing death. The second characteristic is in the alternative, either the instrument, device or thing was designed or specifically adapted for use as a weapon, such as a gun, or it was possessed, carried or used in this case as a weapon.

So that is the definition of purpose or purposely.

Prior calculation and design. This means that the purpose to cause the death was reached by a definite process of reasoning in advance of the homicide, which process of reasoning must have included a mental plan involving studied consideration of the method and the means or instrument with which to cause the death.

To constitute prior calculation, there must have been sufficient time and opportunity for the planning of an act of homicide and circumstances surrounding the homicide must show a scheme design to carry out the calculated decision to cause death. No definite period of time must elapse and no particular amount of consideration must be given, but acting on the spur of the moment or after momentary consideration of the purpose to cause the death is not sufficient.

Cause is an essential element of the offense of aggravated murder. Cause is an act which directly

produces the death without which it would not have occurred.

I've used the term while committing kidnapping. While committing kidnapping means that the death must occur as part of the acts leading up to or occurring during or immediately after the commission of the kidnapping and that the death was directly associated with the commission of the kidnapping.

I will define for you at a later point in time the definition of kidnapping.

Thus, there are two alternative theories set forth by the State under the charge of aggravated murder. And I'm going to briefly tell you those again.

The first alternative theory is that the defendant, as a principal offender or in complicity with another who was the principal offender, did purposefully and with prior calculation and design cause the death of Andrew Dotson. One alternative.

The other alternative is the defendant was the principal offender or was in complicity with another who was the principal offender who purposefully caused the death of Andrew Dotson while committing the offense of kidnapping.

Any time you are given alternatives or alternate ways of committing an offense, you must

consider each alternative separately. And before you can find the defendant guilty of any alternative theory, you must find unanimously and beyond a reasonable doubt as to that alternative.

Now, I'm going to show you a little chart that I have made up. And that deals specifically with the charge of aggravated murder.

I haven't looked at this before. There is no way in the world I can.

This is going through what I've already told you.

First, is on or about a time period September 14th, '01 to 10/10/01 in Franklin County, Ohio. That has to be proven beyond a reasonable doubt. If it's not proven beyond a reasonable doubt, he's not guilty. So if they do prove that beyond a reasonable doubt, you go over here;

That the defendant, James Conway, principal offender, or someone in complicity with the defendant, James Conway, III, if either one of those is proved, and again, alternative theory, must be proved beyond a reasonable doubt unanimously as to each theory. But if that -- if either one of those two is not proved, not guilty. If either one of those two is proved beyond a reasonable doubt, then you have to look, was it done

purposefully. I gave you the definition of purposefully. If it wasn't done purposefully it's not proven. If it's done purposely then you go over here.

And then with alternative theory, either with prior calculation and design, which I've defined for you, or while committing kidnapping, if that's not proven to you beyond a reasonable doubt, either one of those theories or both, then it's not guilty. If that is proved to you beyond a reasonable doubt, one or both of those theories unanimously, then you go over here and to show that it caused the death of another, Andrew Dotson.

And then if that's proven, guilty of aggravated murder, if that's not proven, not guilty. So when you're going through your consideration --

And by the way, you're going to get this in writing. But now that doesn't mean you don't pay any attention to me.

All right. This is the way you step through it in your mind. Each element is important and each element is independent of each other element. So you just go through each one that way.

Now, assuming the State of Ohio proves his guilt beyond a reasonable doubt on the charge of aggravated murder, then you've got something you else

you have to do and then you have to find out whether th State of Ohio has proved beyond a reasonable doubt any one or more of the specifications connected with the charge of aggravated murder.

Now, if you find that the State of Ohio has failed to prove beyond a reasonable doubt each and every one of the elements of the aggravated murder, you don't even consider the specifications. So we are only talking about the specification under the assumption that the jury has proved or made a determination unanimously with respect to one or both theories that the defendant is guilty of aggravated murder.

Now, there are three specifications attache to the charge of aggravated murder. And each specification must be considered separately and you're going to have separate verdict forms for each one of them, so you're going to be forced to consider them separately.

The first specification is, and it must be proved beyond a reasonable doubt, that the aggravated murder was committed by the defendant or by someone with whom the defendant was in complicity with, and it was committed for the purpose of escaping detection, apprehension, trial, punishment for another offense committed by the defendant; and that offense was the

charge of felonious assault of Jesse James.

Now let me tell you what felonious assault is.

Felonious assault is knowingly causing serious physical harm to another or causing physical harm to another by means of a deadly weapon.

I've already defined for you cause but I haven't defined for you knowingly.

A person acts knowingly regardless of his purposes when he's aware that his conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when he is aware that such circumstances probably exist.

I said that knowingly causing serious physical harm to another. Serious physical harm means, either, any physical harm which carries a substantial risk of death, or any physical harm which involves some permanent incapacity, whether partial or total, or which involves some temporary substantial incapacity, or any physical harm which involves some permanent disfigurement, or which involves some temporary serious disfigurement, or any physical harm which involves acute pain of such duration as to result in substantial suffering or which involves any degree of prolonged or intractable pain. Those are the alternative theories of

serious physical harm.

Now, felonious assault can also be committed, the State of Ohio, and that's the felonious assault that -- you aren't deciding that offense before you, but the State must prove that it was intended to, with respect to that specification, that a felonious assault -- the State has to show that the offense was committed for the purpose of escaping detection, apprehension, trial, punishment for another offense and the other offense is the felonious assault.

Felonious assault can also be committed if some person knowingly causes physical harm by means of a deadly weapon.

And I've already defined for you deadly weapon.

Physical harm means any injury, illness or other physiological impairment regardless of its gravity.

I've defined for you deadly weapon.

That's the first specification.

The second specification which must be proven to you beyond a reasonable doubt is in the alternative. First specification is not in the alternative. Second specification is in the alternative.

The first alternative is that the aggravated murder was committed by the defendant who was the principal offender in the commission of the aggravated murder and that the aggravated murder was committed while committing the offense of kidnapping. Requires defendant to be the principal offender. The alternative theory of specification number two requires that the defendant -- sorry. I just said that theory requires the defendant to be the principal offender.

The second theory of the specification is that the aggravated murder was committed by the defendant or by someone with whom the defendant was in complicity with and that the aggravated murder was committed while committing the offense of kidnapping and that the aggravated murder was committed with prior calculation and design.

Now, the first alternative theory of specification number two requires the defendant to be the principal offender. The second alternative theory of specification number two does not require the defendant to be the principal offender but requires that the aggravated murder be committed with prior calculation and design.

I've already defined for you prior calculation and design.

The third specification is that the victim of the aggravated murder was a witness to the offense of felonious assault and that the defendant or someone who was in complicity with the defendant purposely killed the witness to prevent his testimony in a criminal proceedings.

A criminal proceedings starts with an indictment or affidavit, but it need not be commenced at the time of the murder if the defendant or someone with whom the defendant is in complicity with had the purpose to kill the victim to prevent him from testifying in a future criminal proceedings. These are the three specifications connected with the charge of aggravated murder.

Now I have a chart on the specifications.

Before we even get started on the specifications obviously the State of Ohio had to have proved the aggravated murder beyond a reasonable doubt. Once that has been proved to you, then you're going to consider the specification.

And there are three specifications. This is number one, this is number two and number three.

And number one specification was that the defendant was a principal offender or was in complicity with the principal offender and they committed the

aggravated murder for the purpose of escaping detection, apprehension, trial or punishment for the felonious assault of Jesse James and that was committed by the defendant. That has to be proved beyond a reasonable doubt. If that's not proved beyond a reasonable doubt, then he's not guilty of that specification. If that's proved beyond a reasonable doubt, then that specification has been proved and he's guilty of the specification.

With respect to Count Two, totally independent specification; that he's guilty of the aggravated murder and that the aggravated murder was committed while the defendant was committing the offense of kidnapping. And alternative, either Conway was the principal offender, or if he was not the principal offender, then the person who he was in complicity with committed the murder with prior calculation and design. If that's been proven to you beyond a reasonable doubt, then he's guilty of specification number two. If that's not proved to you beyond a reasonable doubt then he's not guilty of specification number two.

Specification number three, first have to be guilty of aggravated murder. Then if he's guilty of aggravated murder then the State has to prove beyond a reasonable doubt that the defendant was the principal

offender or he was in complicity with the principal offender; and the victim was a witness to the offense of felonious assault; and the victim was purposely killed to prevent the testimony in a criminal proceedings. If that's proved to you beyond a reasonable doubt, then he's guilty of specification number three. If that's not proved to you beyond a reasonable doubt, then he's not guilty of specification number three.

That is all of the information with respect to the charge of aggravated murder and the specifications.

Count No. Two is a charge of kidnapping. Before you can find the defendant guilty of kidnapping, you must find beyond a reasonable doubt that on or about September 14, 2001 through October 10, 2001 in Franklin County, Ohio, that this defendant, James Conway, III, or someone in which James Conway, III was in complicity with, did by force, threat or deception, removed Andrew Dotson from the place where he was found and/or restrained Mr. Dotson of his liberty for the purpose of facilitating the commission of a felony; that felony being aggravated murder; or that they restrained Mr. Dotson of his liberty for the purpose of inflicting serious physical harm.

I've already defined for you purpose.

Force means any violence, compulsion or constraint physically exerted by any means upon or against a person or thing.

Deception means to knowingly deceive another or cause another to be deceived by any false or misleading representations by withholding information, by preventing another from acquiring information or by any other conduct, act or omission which creates, confirms or perpetuates a false impression in another, including a false impression as to the state of mind or other objective or subjective fact.

To remove from the place where found means to change Mr. Dotson's location. This need not be for any specific distance or duration of time or in any specific manner.

To restrain one of his liberty means to limit or restrain Mr. Dotson's freedom of movement. The restraint need not be for any specific duration or in any specific manner.

So to repeat, kidnapping can occur by removing a person from the place where found by force, threat or deception, or by restraining a person of their liberty, either or both of which must be for the purpose of facilitating the commission of a charge of aggravated murder or for the purpose of facilitating or for the

purpose of inflicting serious physical harm.

In Count Three, the defendant is charged with possession of a criminal tool. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about September 14, 2001 through October 10th of 2001, in Franklin County, Ohio, that the defendant or someone with whom the defendant was in complicity with possessed or had under his control a substance, device or instrument, that being a pickax, and they had the purpose to use it criminally.

So that's what has to be proved beyond a reasonable doubt with respect to that charge.

Possess or possession means having control over a thing, but it may not be inferred solely from mere access to that thing through ownership, occupation of the premises upon which the thing is found.

Again, I've already defined for you purpose.

Count Four is a charge of abuse of a corpse. Before you can find the defendant guilty with respect to this charge, you must find beyond a reasonable doubt that on or about September 14, 2001 to October 10, 2001, in Franklin County, Ohio, that the defendant treated a human corpse in a way that would outrage reasonable community sensibility.

Outrage means to make furious or angrily

resentful.

With respect to Count Five, the defendant is charged with obstructing justice. Before you can find the defendant guilty of obstructing justice, you must find beyond a reasonable doubt that on or about September 14, 2001 through October 10, 2001, in Franklin County, Ohio, the defendant or someone with whom the defendant was in complicity with, did with purpose to hinder the prosecution of a crime, did destroy or conceal physical evidence of that crime; and in this case that physical evidence is clothing and/or a pickax.

I've, of course, defined for you the term purpose.

Now, with respect to Count Six, the defendant is charged with tampering with evidence. Before you can find the defendant guilty of tampering with evidence, you must find beyond a reasonable doubt that on or about September 14, 2001 through October 10, 2001, in Franklin County, that the defendant or someone with whom the defendant was in complicity with knowing that an official proceedings or investigation was in progress or about to be or likely to be instituted, did alter, destroy or conceal a thing; that being the body of Andrew Dotson, and/or pickax; and that the person had the purpose to impair its value or availability as

evidence in such proceedings or investigation.

Now, I've completed going through all six offenses that are charged in that indictment.

Now, with regard to those offenses -- pardon me -- with respect to one of those offenses, that being the charge of kidnapping, there is what the law calls a lesser included offense. And that lesser included offense is the charge of abduction.

Now, as you consider the charge of kidnapping, you must first decide whether the State has proven beyond a reasonable doubt each and every one of the elements of the charge of kidnapping. If the State has proved that to you beyond a reasonable doubt, then you don't consider the lesser included offense. You make a determination that he's been found guilty of the charge of kidnapping. If the State has not proven one or more of the elements of kidnapping or if you are unable to agree unanimously on one or more of the elements of the offense of kidnapping, then and only then can you consider the lesser included offense of abduction.

Now, the fact that the law gives you this opportunity to consider lesser included offenses is not intended to relieve you of the unpleasant duty to decide the initial charge. Your ability to consider the lesse

offense is done only to prevent an injustice.

Abduction. Before you can find the defendant guilty with respect to the lesser included offense of abduction, you must find the State has proved beyond a reasonable doubt that on or about September 14, 2001 through October 10, 2001, in Franklin County, Ohio, that the defendant or someone with whom the defendant was in complicity with did, without privilege to do so, and knowingly, by force removed Mr. Dotson from the place where he was found; or knowingly, by force, restrained Mr. Dotson of his liberty under circumstances which created a risk of physical harm to him.

I said without privilege to do so. Privilege means immunity, license or right conferred by law or bestowed by express or implied grant or arising out of status, position, office or relationship or growing out of necessity.

I've already defined for you the term knowingly.

I've defined for you removed from a place where found.

And I've defined for you to restrain one of their liberty.

Now, risk means a significant possibility as contrasted with a remote possibility that a certain

result may occur or certain circumstances may exist.

Physical harm to persons means any injury, illness or other physiological impairment regardless of its gravity and duration.

Abduction and kidnapping are similar. In both abduction and kidnapping, the State must prove that the defendant or someone with whom the defendant is in complicity with, either removed Mr. Dotson from the place where he was found by force or removed Mr. Dotson from the place -- pardon me -- or removed Mr. Dotson from the place where he was found or by force restrained him of his liberty.

However, you will note that in kidnapping, the State must prove an additional element; and that is, that the restraint or removal must have taken place for the purpose of facilitating the commission of aggravated murder or for the purpose of inflicting serious physical harm.

Those are the definitions connected with all of the counts in the indictment.

Now, in deciding this case, you must not be influenced by any consideration of sympathy or prejudice. It's your duty to carefully weigh all of the evidence. You are to decide the disputed questions of fact. You are to apply the instructions I've given to

you to your findings and you are to render your verdict accordingly.

In fulfilling your duties, your efforts must to be arrive at a just verdict. Consider all of the evidence. Use your common sense and make your findings with intelligence, impartiality, without, bias, sympathy or prejudice so that the State of Ohio and the defendant will feel that this case was fairly and impartially tried.

Now, if during the course of the trial you have inadvertently heard any comments outside of the courtroom or you've rendered any opinions as to how you think I feel with respect to the factual matters, I'm going to ask you to disregard them. I don't wish to infringe upon your responsibility to decide the disputed questions of fact as you have not infringed upon my responsibility to provide the instructions of law.

Your initial conduct upon entering the jury room will be a matter of importance. It's not wise to immediately express a determination to insist upon a certain verdict because if your sense of pride is aroused, you may hesitate to change your position even if you would find at a later point in time that opinion or position was wrong.

You should consult with one another.

Consider each other's views and deliberate with the objective of reaching an agreement if you can do so without disturbing your individual judgment. Each of you must decide this case for yourselves but you should do so only after a discussion and consideration of the case with your fellow juniors.

Now, do not hesitate to change an opinion or position if you would later find that that opinion or position is wrong. However, you should not surrender honest convictions in order to be congenial or to reach a verdict solely based upon the opinions of your fellow jurors.

Now, during the deliberations in this trial stage you are not to discuss the subject of punishment. In the event that you would find the defendant guilty of the aggravated murder with one or more of the specifications, I've already advised you we will have a second proceedings. But this is not the time to discuss the subject of punishment. So don't make that part of your deliberations or your consideration.

You are going to have in the jury room all of the evidence that has been introduced in this trial. You may have heard references or comments to something that you don't physically have back there. Please don't ask for it. You have the evidence that's going to be

admitted. There won't be any further evidence coming back to you.

You're also going to have all of the verdict forms that you are to use in deciding this case.

This being a criminal matter before it can be said the jury has reached an agreement on any charge and or the specifications, the jury must unanimously agree on what the appropriate verdict is with respect to the counts and/or the specifications. When you've made that determination, go ahead and select the appropriate form, fill out that form and go ahead and complete all that have been presented to you.

I'm not going to tell you what order or how to go about that process, but it's my suggestion just go ahead and take the Counts One through Six where they are and go ahead and go through them that way.

We are going to have a little bit of a strange way that we are handling the regular jurors and the alternate jurors. And I do want to explain that to you.

All of the jurors are going to be sequestered. You know what that is. You're going to be under the guidance of Linda and other people who have been sworn as bailiffs. And I know there are a few of them because we are going to have the alternate jurors

in a separate place from the regular jurors. So the alternate jurors are going to be under the direction of a bailiff and the regular jurors will be under the direction of a bailiff.

You're going to deliberate. You're going to deliberate now. I don't want you at this point in time to leave the room. But you check with Linda how you're going to do that.

I know we have some smokers and Linda will deal with that.

We are going to stay here until 5:30 tonight. And then after 5:30, if you have not reached a verdict on all counts, then you're going to go under Linda's direction and with the sheriff's office and you're going to go to a hotel and have dinner and stay there for the night. And she will give you the rules and regulations dealing with sequestration.

At that point in time, the alternate jurors will be back with the regular jurors just for the purpose of having dinner, what have you.

Obviously, once you are out of this courthouse, nobody is to have any deliberations one way or another. You can't deliberate with yourselves and obviously you can't deliberate with any alternate jurors. The alternate jurors are not to ask any

questions about deliberations and regular jurors are not to discuss the deliberations with the alternate jurors.

You're just going to be physically together for purposes of having dinner.

You are not to have any contact with anybody. If somebody tries to have contact with you about your deliberations other than what you're there for, dinner and hotel, make sure you let Linda know. It's very important that you keep that separation. You all can socialize amongst yourselves. It's perfectly fine.

Linda is going to let you watch appropriate television and if you want to read or do anything else you want to do.

The alternate jurors are going to be, as I said, someplace else, not with the regular jurors.

Just tell the alternate jurors a little bit about what happens if in fact for some reason a regular juror cannot complete the deliberation process. I'm not talking about the deliberation process with this. I'm saying if there is a verdict in this part, then you have to come down, come back for the second stage. If somebody can't go to the second stage, that means an alternate juror could step in. That alternate juror would have to be responsible to accept the verdict of

the other jurors. And I will get to that at the point in time that happens and I'll make sure I discuss that with the alternate jurors in the presence of everybody. But that's kind of the way it would work.

I'm going to get to you the instructions that I have given to you in writing. I've got some editing I have to do. So it's going to be a while.

My suggestion is when the twelve jurors go back there that you select a foreperson, somebody to help guide the deliberation process. After you've selected a foreperson, you're going to be able to commence your deliberations any way you so desire with the understanding that you are a collective body of twelve people. If somebody is not physically in the jury room, if somebody is in the restroom, for some reason if they are not there, then you are to stop your deliberations until everybody is back. When everybody is physically present, go ahead again and conduct your deliberations any way you so desire.

Now, our twelve jurors -- among the twelve jurors, is anybody not able to deliberate at this point in time and be with us, for that matter for the rest of the week?

Okay. Let me ask the attorneys: Any additions, corrections, deletions to the charge?

MR. LOWE: No, Your Honor.

MR. YOUNG: No, Your Honor.

THE COURT: Okay. It appears the instructions are in order.

Linda, as I said, is going to go ahead and take you back, the twelve jurors.

The four alternate jurors, why don't you just step out in the hallway. We will have a way to get them to where they are going.

I want to thank you very much. This is a great imposition to ask of you. Summons to come on down and join us for a couple weeks and all of a sudden take you away from your family, stick you in the hotel -- good food. I assure you tonight you will have a good dinner -- but it's a great imposition and I deeply appreciate you being willing to do this.

Obviously, it's an important matter. A lot of the stuff we do down here is important but this is a greater imposition than most of the two weeks. So on behalf of all of us, I do want to thank you from the bottom of my heart.

Okay. Go ahead and step back in there. We will get the exhibits to you and the verdict forms.

I'm sorry, just be seated. I'm sorry, that's my fault. I don't have the verdict forms here.

But you've got six counts that you're dealing with.

On Count Number One, you got a guilty, not guilty of aggravated murder.

Then if you find guilty of aggravated murder then with respect to the aggravated murder, you've got the three specifications: Going to be guilty, not guilty of the specifications. And you kind of step through those. And it will be very clearly stepping through it. Before you can answer any specification or anything "was, was not," you'll see alternatives. Before you get to any of the alternatives, before you can answer those in the affirmative, "was" as opposed to "was not", before you can answer that in the alternativ that must be proven to you beyond a reasonable doubt. But you will see, the specifications spell out which specification it is. So you're going to go through that.

On Count Two of the charge of kidnapping, you have three verdict forms to consider. One is a verdict form, guilty of kidnapping as he stands charged in Count Two. There is a not guilty of kidnapping as he stands charge in Count Two but guilty of a lesser included offense of abduction. And then there is not guilty of kidnapping, not guilty of any lesser included offenses.

So those are the three verdict forms with respect to Count Two.

Counts Three, Four, Five and Six all have just guilty and not guilty of the offenses that are charged. And you'll see that. So you have to be unanimous on all of the things that you signed with respect to all the counts and all the specifications. So I do want to spell out the verdict forms with you.

Linda will get those back to you as soon as possible. I want to make sure the attorneys see them before I give them to you. So that will be a few minutes.

Go ahead and step back in there. Select a foreperson. We will get the stuff to you as soon as possible.

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Thereupon, at 3:20 o'clock, p.m., the jury retired and proceeded to deliberate upon the case.

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MR. YOUNG: Your Honor, we request that the copy of the chart that you showed to the jury be entered into the record just for appellate review.

THE COURT: By the way, just for purposes of the record, though, we have agreed in advance that that chart was an accurate statement to be shown to the jury

but not go back to the jury.

At this point in time, is that accurate statement.

MR. YOUNG: That is accurate.

MR. LOWE: Yes, Your Honor.

THE COURT: Let's go look at the verdict forms.

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Thereupon, the further deliberation of this cause was adjourned until 9:00 o'clock a.m., September 23, 2003.

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Tuesday Morning Session,
September 23, 2003.

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Thereupon, the jury resumed its deliberations upon the case pursuant to adjournment.

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Thereupon, a luncheon recess was taken until 1:30 o'clock p.m., of the same day, to wit, September 23, 2003.

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Tuesday Afternoon Session,
September 23, 2003.

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THE COURT: Go ahead and bring him out.

At 12:00 o'clock, p.m., the jury announced that it had arrived at a verdict.

After returning from lunch, the jury thereupon returned into the jury box with its written verdict and the following proceedings were had in open court:

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THE COURT: Go ahead and hand the verdict forms to Linda if you would.

Everybody please be seated.

Okay. Linda, please read the verdicts.

THE BAILIFF: "We, the jury, being duly impaneled and sworn do find the defendant, James Conway, III, guilty of aggravated murder as he stands charged in Count One of the indictment."

"We, the jury, being duly impaneled and sworn, further find that the aggravated murder was committed for the purpose of escaping detection, apprehension, trial or punishment for another offense committed by the offender; that being felonious assault."

"We, the jury, being duly impaneled and sworn further find that the aggravated murder was committed while the offender or somebody he was in complicity with was committing kidnapping, and either the defendant was the principal offender -- the defendant was the principal offender."

"We, the jury, being duly impaneled and sworn further find that the aggravated murder was committed with purposes to prevent the victim's testimony in any criminal proceeding to which the victim was or would have been a witness."

"We, the jury, being duly impaneled and sworn do find the defendant, James Conway, III, guilty of kidnapping as he stands charged in Count Two of the indictment."

"We, the jury, being duly impaneled and sworn do find the defendant, James Conway, III, guilty of possessing criminal tools, pickax, as he stands charged in Count Three of the indictment."

"We, the jury, being duly impaneled and sworn do find the defendant, James Conway, III, guilty of abuse of a corpse as he stands charged in Count Four of the indictment."

"We, the jury, being duly impaneled and sworn do find the defendant, James Conway, III, guilty of obstructing justice as he stands charged in Count Five of the indictment."

"We, the jury, being duly impaneled and sworn do find the defendant, James Conway, III, guilty of tampering with evidence as he stands charged in Count Six of the indictment."

THE COURT: All right. I assume you want the jury polled?

MR. YOUNG: That is correct, Your Honor.

THE COURT: This is a normal procedure. What we do, we go through each juror on an individual basis. I will ask you if this is your verdict. If this is your verdict, you say yes; if this is not your verdict, you say no.

Ms. Haliburton, is this your verdict?

JUROR NO. 1: Yes.

THE COURT: Ms. Harper.

JUROR NO. 2: Yes.

THE COURT: Ms. Terry.

JUROR NO. 3: Yes.

THE COURT: Ms. Thomas.

JUROR NO. 4: Yes.

THE COURT: Ms. Fahringer.

JUROR NO. 5: Yes.

THE COURT: Mr. Margraff.

JUROR NO. 6: Yes.

THE COURT: Mr. Williams.

JUROR NO. 7: Yes.

THE COURT: Ms. Blackburn.

JUROR NO. 8: Yes.

THE COURT: Mr. McKelvey.

JUROR NO. 9: Yes.

THE COURT: Mr. Fromm.

JUROR NO. 10: Ms.

THE COURT: I'm sorry. Alba.

JUROR NO. 10: Yes.

THE COURT: There was a judge down here named Alba Whiteside. So I apologize.

Ms. Fromm, is this your verdict?

JUROR NO. 10: Yes.

THE COURT: Ms. Moore.

JUROR NO. 11: Yes.

THE COURT: And Mr. Purifoy.

JUROR NO. 12: Yes.

THE COURT: Okay. As I told you, at this point we are going to have a second proceedings and we are going to start that tomorrow. Give you the afternoon off today.

We are going to start tomorrow. It's my understanding that the next proceedings will last probably a day of testimony. So we will probably be going through -- all through tomorrow.

I do not anticipate though that you will be starting your deliberations tomorrow. So you do not have to bring stuff with you tomorrow.

I will not have you start deliberating -- if you finish up tomorrow, I won't have you start deliberating until Thursday.

Obviously there's TV camera here. There will be something on television, probably on the radio and also in The Dispatch. So please very, very important you keep the admonition in mind and do not read anything and do not attempt to have anybody read it to you or have any conversation with anybody that might have read or seen anything about the case.

Continue to keep an open mind. Don't discuss your verdict with any family or friends. I'll see you back up here tomorrow morning at 9:00 o'clock.

THE COURT: Thank you.

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Thereupon, the jury was retired from the courtroom and the following proceedings were had out of the presence and hearing of the jury:

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THE COURT: All right. Please be seated.

MR. YOUNG: May I put something on the record, Your Honor?

Just very briefly when the verdict was read there's currently six deputies surrounding my client and I believe a seventh in the courtroom.

THE COURT: All right.

Okay. What I will do, I've talked to the attorneys a little bit about the schedule and that schedule will start at 9:00 o'clock.

As I said, I do not anticipate because of what you've told me that the jury will be getting the case tomorrow, but we will plan on that happening Thursday.

If you can, make sure all witnesses are present and available.

I do want to go over with counsel the question I did received from the jury. I will share that with you after we are finished here.

Okay. Is there anything else?

MR. LOWE: No, Your Honor.

MR. YOUNG: No, Your Honor.

MS. MENASHE: No, Your Honor.

THE COURT: Okay. Thank you. If you want to look at the verdict forms I will have them.

SPECTATORS: We love you, Jim.

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Thereupon, at 2:10 p.m., the alternate jurors resumed their places in the jury box.

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THE COURT: Good afternoon. This is a screwy procedure, and I apologize for that.

The Legislature has given us no great guidance how this is to be done other than to say this is the way we've got to do it. You are not permitted to be a part of deliberation process just because you're not on the regular jury. Normally, when we have alternate jurors as soon as the jury goes back to begin deliberation, the alternate jurors are gone; but because this is a two-stage process we are to hold onto the alternate jurors. If the alternates are to step into

the second stage, they are bound to enter into the othe proceedings. So we have a procedure to hold onto the jurors.

Well, there is going to be a second proceedings in this case. The jury has found the defendant guilty of all the charges, the aggravated murder, the defendant has been found guilty of three of the specifications dealing with the aggravated murder. That now requires a mitigation hearing, a sentencing hearing.

And that is going to start tomorrow. And it's my anticipation that that sentencing hearing is going to last a day, day's evidence.

And it's also my understanding, and I've told the regular jurors, that I will not have the jury deliberate tomorrow because then you have to be sequestered again. I told them not to plan on deliberating tomorrow but we will be deliberating Thursday.

It appears I'm not probably going to need four alternate jurors and I probably won't know that until tomorrow morning.

I know Mr. Fry, your wife is having surgery. Is that Monday?

ALTERNATE JUROR FRY: The 29th, yes, sir.

THE COURT: Which is Monday. I don't anticipate that the jury, if you would step in, the jury will still be deliberating through Monday because I think there's only going to be one more day of testimony and that should be completed tomorrow. And Thursday the jury should have the case. And there is no reason to be concerned about the surgery unless you're personally concerned about it at this point.

ALTERNATE JUROR FRY: I understand.

THE COURT: But I'm going to ask you just one question I do have to ask you, ask you individually. Who's Ms. Hampton.

ALTERNATE JUROR HAMPTON: That's me.

THE COURT: Now that you've found that the jury has found the defendant guilty of all of the charges, and in particular, found the defendant guilty of aggravated murder with three specifications, if you are -- if you take the place of a regular juror and become a regular juror you will be bound by that verdict and you'll have to go in there and say, okay, I know he's been found guilty and I'm going to accept that. I'm bound by it and now here's my job could you do that if asked to step in?

ALTERNATE JUROR HAMPTON: Yes, I could.

THE COURT: Okay. Ms. Olney, same question

to you. You would be bound by the verdict. If, in fact, you would become a regular juror, can you accept that responsibility and be bound by the verdict?

ALTERNATE JUROR OLNEY: Yes.

THE COURT: Mr. Fry, same question to you. Could you be bound by the verdict if you were asked to step in?

ALTERNATE JUROR FRY: Yes, sir.

THE COURT: And, Ms. King, same question to you.

ALTERNATE JUROR KING: Yes, I could.

THE COURT: Okay. I'm going to thank you and I'm going to release you. You can go ahead and go home this evening.

Again, do not watch any news broadcast. The cameras were here. Do not read anything about the case. Don't watch anything. Don't listen to anything. Don't let anybody talk about the case. Don't have any deliberations with any family and friends and continue to keep an open mind.

And we will see you back where you were this morning downstairs in the jury commissioners office at 9:00 o'clock.

Thank you.

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Thereupon, the jury was retired from the courtroom and the following proceedings were had out of the presence and hearing of the jury:

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THE COURT: Any additions, corrections deletions to that?

MR. YOUNG: No, Your Honor.

MS. MENASHE: No, Your Honor.

MS. PRICHARD: No, Your Honor.

MR. LOWE: Just if we can deal with the question, Your Honor, the jurors' question. We can deal with that now.

THE COURT: I'll just paraphrase it. Carla has the question. I'll let you look at it specifically.

Just before noon, one of the jurors, the foreperson asked a question which we do have in writing and that question referred to specification number two. In particular, the question was: We have answered the first two parts of specification number two -- and basically the answer to those in the affirmative. In answering those in the affirmative, do we have to answer question number three? And question number three assumes that he is not the principal offender. And I answered the question, no, you do not have to answer the third choice you have.

I did not share that with counsel because I considered that more of a procedural matter. Obviously, it would give away what appears to be the verdict and I did not advise anybody as to what that question was and I answered it and gave it back.

I did share that information with the attorneys after the fact, after the verdict has been read.

So I did want to put that on the record.

Thank you all.

MS. MENASHE: Your Honor, could we put on the record -- and I know you've just stated this -- we did not object or have an opportunity to object because we did not know essentially the court was answering a question. That's why there is no objection.

THE COURT: Absolutely. You had no choice to object because I didn't share that with you. I normally do share questions with you but I thought this was the type of matter, considering it would give away the verdict. Under certain circumstances, I didn't think it was appropriate to share it with anybody.

MR. LOWE: Your Honor, I would put on the record, because of security concerns and other things going on and sharing that and having people know what the verdict was would have been a problem.

THE COURT: Absolutely. I didn't want anybody to know what the verdict was. And I assumed -- and I don't feel that I could have gagged. Or maybe I could have. I didn't want to gag the attorneys with respect to that.

And obviously if I shared that, everybody could have known and we could -- we've had some security problems here already and that is definitely one of the reasons I did not do that.

MS. PRICHARD: Thank you, Judge.

MR. YOUNG: Thank you.

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Thereupon, the second phase of this cause was adjourned until 9:00 o'clock a.m., September 24, 2004.

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