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ORDER OF THE MICHIGAN SUPREME COURT DENYING APPLICATION FOR LEAVE TO APPEAL (OCTOBER 30, 2018)

MICHIGAN SUPREME COURT
LANSING, MICHIGAN

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v.

LLOYD GENE BEAM,

Defendant-Appellant.

SC: 157432
COA: 339818
Wayne CC: 88-001546-FC

Before: Stephen J. MARKMAN, Chief Justice, Brian K. ZAHRA, Bridget M. MCCORMACK, David F. VIVIANO, Richard H. BERNSTEIN, Kurtis T. WILDER, Elizabeth T. CLEMENT, Justices.

On order of the Court, the application for leave to appeal the January 25, 2018 order of the Court of Appeals is considered, and it is DENIED, because the defendant has failed to meet the burden of establishing entitlement to relief under MCR 6.508(D).

ORDER OF THE COURT OF APPEALS OF MICHIGAN (JANUARY 25, 2018)

COURT OF APPEALS
STATE OF MICHIGAN

PEOPLE OF MI,

v.

LLOYD GENE BEAM,

Docket No. 339818

LC No. 88-001546-01-FC

Before: Michael J. TALBOT, Presiding Judge, Michael J. RIORDAN, and Thomas C. CAMERON, Judges.

The Court orders that the delayed application for leave to appeal is DENIED because defendant has failed to establish that the trial court erred in denying the motion for relief from judgment.

The motion to waive fees is GRANTED, and fees are WAIVED for this case only.

/s/ Michael J. Talbot
Presiding Judge

OPINION AND ORDER DENYING DEFENDANT'S MOTION FOR RELIEF FROM JUDGMENT (FEBRUARY 27, 2017)

STATE OF MICHIGAN, THIRD CIRCUIT COURT
CRIMINAL DIVISION

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

v.

LLOYD GENE BEAM,

Defendant.

Case No. 88-01546

Before: Hon. Lawrence S. TALON, Circuit Court Judge.

For the following reasons enumerated herein, defendant's motion for relief from judgment is denied.

Following a jury trial, defendant, Lloyd Beam, was found guilty of one count of first-degree murder, MCL 750.316 and two counts of assault with intent to murder, MCL 750.83, and one count of felony-firearm, MCL 750.227b. Defendant was sentenced to life imprisonment for the murder conviction, concurrent prison terms of 30 to 50 years imprisonment for the assault convictions and two years' imprisonment for the firearm conviction.

On November 17, 1993, the Michigan Court of Appeals affirmed defendant's conviction and sentence. On October 18, 1994 the Michigan Supreme Court denied defendant's delayed application for leave to appeal. Defendant now files a motion for relief from judgment pursuant to MCR 6.500, et seq. The Prosecution has not filed a response.

In order to advance an allegation in a Motion for Relief from Judgment that could have been made in a prior appeal or motion, defendant must demonstrate "good cause" for failure to raise the grounds on appeal and actual prejudice resulting from the alleged irregularities that support the claim of relief, pursuant to MCR 6.508(D)(3)(b). The cause and prejudice standards are based on precedent from the United States Supreme Court.[1] A court may not grant relief, if the defendant alleges grounds for relief, other than jurisdictional defects, which could have been raised on appeal from the conviction of the sentence or in a prior motion for relief from judgment; unless defendant demonstrates good cause for the failure to previously raise the grounds and actual prejudice from the alleged irregularities that support the claim.[2]

The federal courts have recognized certain claims, which are sufficient for establishing good cause. Government interference, the inability to obtain a factual basis for the claim, and ineffective assistance of appel-

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1 *Wainwright v Sykes*, 433 U.S. 72; 97 S. Ct 2497; 53 L.Ed.2d 594 (1977)

2 MCR. 6.508(D)(3); *People v. Brown*, 196, Mich. App. 153; 492 N.W .2d 770 (1992), *People v. Watroba*, 193 Mich. App. 124; 483 N.W.2d 441 (1992)

late counsel, are all sufficient, if adequately supported, to satisfy the good cause prong.

Specifically, defendant alleges 1) ineffective assistance of trial counsel, 2) trial court abuse of discretion, 3) newly discovered evidence, and 4) miscarriage of justice exception—newly discovered evidence.

Trial Court Abuse of Discretion

The issue regarding trial court abuse of discretion has previously been raised and decided by the Michigan Court of Appeals. The law is quite clear that an appellate court's decision regarding a particular issue is binding on courts of equal or subordinate jurisdiction during subsequent proceedings in the same case.[3] Further, under MCR 6.508(D)(2), a defendant is not entitled to relief if his motion "alleges grounds for relief which were decided against the defendant in a prior appeal or proceeding under this subchapter, unless the defendant establishes that a retroactive change in law has undermined the prior decision."

Here, defendant does argue that a retroactive change in law exists pursuant to *People v Stevens*, 498 Mich. 162, 170-71, 869 N.W.2d 233, 242 (2015). *Stevens* establishes a new rule of criminal procedure. However, newly promulgated rules of criminal procedure do not apply retroactively to cases on collateral review,[4] and Michigan law has regularly declined to apply new rules of criminal procedure to cases in which a defendant's conviction has become final.[5] As such,

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[3] *People v. Peters*, 205 Mich. App. 312, 316 (1994).

[4] *Dorchy v. Jones*, 398 F.3d 783 (2005)

[5] *People v. Maxson*, 482 Mich. 385 (2008)

this Court is precluded from review of this issue and defendant is not entitled to relief from judgment based upon a claim of trial court abuse of discretion.

Ineffective Assistance of Trial Counsel

Defendant next claims that he was denied the effective assistance of counsel where counsel failed to object to the introduction of defendant's pre-arrest silence.

The United States and Michigan Constitutions guarantee the right to effective assistance of counsel.[6] For a defendant to establish a claim that he was denied his state or federal constitutional right to the effective assistance of counsel, he must show that his attorney's representation fell below an objective standard of reasonableness and that this was so prejudicial to him that he was denied a fair trial.[7] As for deficient performance, a defendant must overcome the strong presumption that his counsel's action constituted sound trial strategy under the circumstances.[8] As for prejudice, a defendant must demonstrate "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different."[9]

Because strategy is a tactical decision on the part of counsel, this Court will indulge a strong pre-

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[6] U.S. Const, Am. VI; Const. 1963, art. 1, § 20

[7] *Strickland v. Washington*, 466 U.S. 668, 687; 104 S. Ct 2052; 80 L.Ed.2d 674 (1984); *People v. Pickens*, 446 Mich. 298, 303; 521 N.W.2d 797 (1994).

[8] *People v. Mitchell*, 454 Mich. 145, 156; 560 N.W.2d 600 (1997).

[9] *Id.* at 167.

sumption that counsel's conduct falls within the wide range of reasonable professional assistance. These standards require no special amplification in order to define counsel's duty to investigate.[10]

Ineffective assistance of counsel can take the form of a failure to call witnesses or present other evidence, only, if, the failure deprives the defendant of a substantial defense.[11] A defense is substantial, if it might have made a difference in the outcome of the trial.[12] Decisions regarding what evidence to present and whether to call or question witnesses are presumed to be matters of trial strategy.[13] This Court will not substitute its judgment for that of counsel regarding matters of trial strategy, nor will it assess counsel's competence with the benefit of hindsight.[14] In order to overcome the presumption of sound trial strategy, a defendant must show that his counsel's failure to prepare for trial resulted in counsel's ignorance of, and hence failure to present valuable evidence that would have substantially benefited the defendant.[15] The rule that a defendant is entitled to effective assistance of counsel does not mean the defendant is entitled to the effective assistance of counsel to the extent that he is assured of a successful defense and

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[10] *Strickland v. Washington*, 466 U.S. 668; 104 S. Ct. 2052; 80 L. Ed.2d 674 (1984).

[11] *People v. Hoyt*, 185 Mich. App. 531 (1990); *People v. Julian*, 171 Mich. App. 153, 158-159 (1988).

[12] *People v. Kelly*, 186 Mich. App. 524 (1990).

[13] *Mitchell*, *supra* at 163.

[14] *People v. Barnett*, 163 Mich. App. 331 (1987).

[15] *People v. Caballero*, 184 Mich. App. 636 1990).

acquittal.[16] Finally, in making the testimonial record necessary to support a claim of ineffective assistance of counsel, the testimony of trial counsel is essential.[17] The absence of such testimony limits this Court's review to what is contained in the record.[18]

In this case, defendant has failed to overcome the heavy burden of proving that he received ineffective assistance of counsel. The record does not demonstrate that defense counsel's performance was unreasonable and his trial strategy and determinations will not be substituted with the judgment of this Court. This Court finds that defense counsel performed competently in his representation of defendant at his trial. Therefore, defendant's claims are found to be without merit.

Newly Discovered Evidence

Defendant alleges the existence of newly discovered evidence, in the form of recently received affidavits from witnesses Simone Penn and Rose Mary Robinson. Defendant proffers that this evidence serves as a basis of an evidentiary hearing, evidence of defendant's actual innocence and constitutes grounds for reversal and new trial.

Michigan's Supreme Court has determined for a new trial to be granted on the basis of newly discovered evidence, a defendant must show that: (1) "the evidence itself, not merely its materiality, was newly discovered;" (2) "the newly discovered evidence was not cumulative;" (3) "the party could not, using reasonable diligence, have

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16 *People v. Bohn*, 49 Mich. App. 244 (1973).

17 *Mitchell*, *supra* at 168

18 *People v. Darden*, 230 Mich. App. 597 (1998).

discovered and produced the evidence at trial;" and (4) the new evidence makes a different result probable on retrial. *People v. Cress*, 468 Mich. 678, 692 (2003). Moreover, *People v. Grissom*, 492 Mich. 296, (2012) held there must be an exculpatory connection between newly discovered evidence and significantly important trial evidence to satisfy the *Cress* test.[19]

It is equally well established that "motions for a new trial on the ground of newly-discovered evidence are looked upon with disfavor, and the cases where this court has held that there was an abuse of discretion in denying a motion based on such grounds are few and far between."[20] The rationales underlying such disfavor are premised on both "the principle of finality" and "the policy of the law . . . to require of parties care, diligence, and vigilance in securing and presenting evidence."[21] Specifically: in fairness to both parties and the overall justice system, the law requires that parties secure evidence and prepare for trial with the full understanding that, absent unusual circumstances, the trial will be the one and only opportunity to present their case. It is the obligation of the parties to undertake all reasonable efforts to marshal all the relevant evidence for that trial. Evidence will not ordinarily be allowed in installments.[22]

People v. Cress sets forth the showing a defendant must make in order to satisfy the exception to this rule and struck a balance between upholding the

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19 *People v. Grissom*, *supra* at 312-13.

20 *People v. Rao*, 491 Mich. 271 (2012).

21 *Id.*

22 *Id.*

finality of judgments and unsettling judgments in the unusual case in which justice under the law requires a new tria1.[23]

In this case, whether defendant is entitled to a new trial on the basis of his proffered evidence is governed by *Cress*, and specifically his case is resolved by applying the interrelated first and third parts of the *Cress* test, which require that defendant demonstrate that the evidence is "newly discovered" and that he could not, using reasonable diligence, have discovered and produced the evidence at trial.[24] However, after a review of the submitted evidence and applying the *Cress* test, this Court finds that the affidavits will not satisfy the four part test for newly discovered evidence as set forth above and defendant has not carried his burden of satisfying this test and thus is not entitled to a new trial.

The presented affidavits are not of such a nature as to render a different result on re-trial, as there was other significant testimony proffered against the defendant, as well as other independent indicia and material evidence that was sufficient to prove the guilt of the defendant.

Based on the foregoing, this Court does not find that the submitted affidavits satisfy the definition of newly discovered evidence or supports the defendant's claim. As such, this Court finds that the allegations and evidence presented in this motion are insufficient to warrant an evidentiary hearing, new trial or relief from judgment.

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[23] *Id.*

[24] *Cress*, *supra* at 692

Miscarriage of Justice Exception—Newly Discovered Evidence, Actual Innocence

Defendant next argues actual innocence and that he can show that it is more likely than not that no reasonable juror would have convicted him in light of the new evidence. However, defendant cannot succeed on this claim based on the analysis previously presented in this opinion regarding the issue of newly discovered evidence. As such, defendant's claim is without merit.

Defendant has not shown "good cause" under MCR 6.508(D)(3), nor has he proven actual prejudice. Therefore, for all the aforementioned reasons stated, defendant's motion for relief from judgment is hereby DENIED.

Lawrence S. Talon
Circuit Court Judge

Dated: Feb 27, 2017

ORDER OF THE MICHIGAN SUPREME COURT (OCTOBER 18, 1994)

MICHIGAN SUPREME COURT
LANSING, MICHIGAN

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v.

LLOYD GENE BEAM,

Defendant-Appellant.

SC: 98582
COA: 111109
LC: 88-001546

Before: Michael F. CAVANAGH Chief Justice, Charles L. LEVIN, James H. BRICKLEY, Patricia J. BOYLE, Dorothy Comstock RILEY, Robert P. GRIFFIN, Conrad L. MALLETT, JR., Associate Justices.

On order of the Court, the delayed application for leave to appeal is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

Boyle, J., not participating.

OPINION OF THE COURT OF APPEALS OF MICHIGAN (NOVEMBER 17, 1993)

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v.

LLOYD GENE BEAM,

Defendant-Appellant.

No. 111109

LC No. 88-1546

Before: Clifford TAYLOR, P.J., Thomas J. BRENNAN and Lynda L. HEATHSCOTT,* JJ.

PER CURIAM.

Defendant was convicted by jury of one count of first-degree murder, MCL 750.316; MSA 28.548, two counts of assault with intent to murder, MCL 750.83; MSA 28.278, and one count of felony-firearm, MCL 750.277b; MSA 28.424(2). He appeals by right raising a multitude of claims, none of which merits reversal of his convictions.

* Circuit Judge, sitting on the Court of Appeals by assignment.

All of the convictions arise from shootings that occurred in April 1987 at a drug house located in Detroit. The theory of the defense was that defendant was merely present on the evening in question; he denied any actual involvement in the shootings. Defendant was granted a new trial following post-conviction proceedings of the first trial, and the appeal now before us concerns convictions resulting from a second trial.

The trial court's limiting of defense counsel's cross-examination of witness McAdory was not an abuse of discretion. Evidence of McAdory's prior convictions was not admissible because the convictions did not involve dishonesty, false statement, or theft. MRE 609(a); *People v. Allen*, 429 Mich. 558, 605-608; 420 N.W.2d 499 (1988), amended 429 Mich. 1216 (1988), *reh den sub nom People v. Pedrin*, 430 Mich. 1201 (1988). Further, evidence of McAdory's drug convictions could not properly be used to show his bias or motivation to fabricate because the convictions are unrelated to the case under scrutiny. *People v. Yarbrough*, 183 Mich. App 163, 165; 454 N.W.2d 419 (1990). We specifically note that the trial court gave defense counsel plenty of latitude by allowing McAdory to be questioned about any bargain he may have made involving the unrelated criminal charges in exchange for his testimony in this case. Accordingly, the trial court did not prevent defendant trying to show the witness's bias or motive to fabricate.

We disagree with defendant's characterization of the trial court's conduct, and see no instance of improper questions or comments. Compare *People v. Conyers*, 194 Mich. App. 395, 404-405; 487 N.W.2d 787 (1992).

We also disagree that the fleeting reference to defendant's mugshot as the means by which defendant was identified warrants a new trial. This testimony was not the subject of a defense objection below, and we see no manifest injustice that will result from our refusing to consider the issue further. *People v. Spearman*, 195 Mich. App. 434, 445-446; 491 N.W.2d 606 (1992), lv den 441 Mich. 927 (1993).

Defendant objects for the first time on appeal to the jury's communication with court deputies. These communications appear to have encompassed housekeeping matters only; no prejudice to defendant occurred. In any event, defendant took no exception to the arrangement below and so has not properly preserved the issue. *People v. France*, 436 Mich. 138, 144, 162; 461 N.W.2d 621 (1990).

The prosecutor's argument to the jury concerning his burden of proof did not deny defendant a fair trial. *People v. Wilson*, 196 Mich. App. 604, 609-610; 493 N.W.2d 471 (1992), lv den 442 Mich. 851 (1993).

Defendant also takes issue with the prosecutor's elicitation of a court reporter's testimony concerning the accuracy of the transcript of defendant's first trial on these charges. He characterizes the reporter's testimony, elicited by the prosecutor in response to defendant's contention that the transcript of the first trial was inaccurate, as improper rebuttal on a collateral matter. We disagree. This rebuttal testimony was introduced to disprove defendant's testimony by directly impeaching it, and so was within the trial court's discretion to admit. *People v. Kelly*, 423 Mich. 261, 281; 378 N.W.2d 365 (1985); *People v. Bettistea*, 173 Mich. App. 106, 126; 434 N.W.2d 138 (1989), lv den 437 Mich.

868 (1990), *cert den* ___US ___; 111 S. Ct 1595; 113 L.Ed.2d 658 (1991).

Defendant also claims that he was deprived of the effective assistance of counsel through a series of mistakes which could not be explained by a sound trial strategy. However, with the exception of the res gestae witness issue that is addressed below, mention of these alleged mistakes was not made at the *Ginther*[1] hearing, for which purpose this matter was remanded by this Court. We have nevertheless reviewed the mistakes defendant claims his attorney made, and conclude that they were either not mistakes or else derived from sound, albeit unsuccessful, trial strategy. We do not second-guess counsel on such matters. *People v. McFadden*, 159 Mich. App. 796, 800; 407 N.W.2d 78 (1987), lv den 429 Mich. 853 (1987). Counsel was not ineffective. *People v. Tommolino*, 187 Mich. App. 14, 17; 466 N.W.2d 315 (1991), lv den 439 Mich. 897 (1991).

Finally, defendant claims that he was denied a fair trial because the prosecutor failed to produce or inform defense counsel of the name and existence of critical *res gestae* witnesses, and also contends that his attorney was ineffective because he failed to pursue the matter. We disagree. Based on the record before us, the trial court properly concluded that the prosecutor fulfilled his duty with regard to "Cynthia" and the man in the brown coat. *People v. Lawton*, 196 Mich. App. 341, 349-350; 492 N.W.2d 927 (1992), lv den 442 Mich. 927 (1993). We will not second-guess counsel's decision not to pursue these witnesses, a decision that was valid in light of the defense presented.

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1 *People v. Ginther*, 390 Mich. 436; 212 N.W.2d 922 (1973).

Affirmed.

/s/ Clifford W. Taylor

/s/ Thomas J. Brennan

/s/ Lynda L. Heathscott

TRIAL TRANSCRIPT, VOLUME II, EXCERPTS (OCTOBER 14, 1988)

STATE OF MICHIGAN, IN THE RECORDER'S COURT OF THE CITY OF DETROIT

PEOPLE OF THE STATE OF MICHIGAN,

v.

LLOYD GENE BEAM,

Defendant.

Case No. 88-01546

Jury Trial Volume II

Before: Honorable Terrance K. BOYLE, Judge of the Recorder's Court of the City of Detroit.

[October 14, 1988 Transcript, p. 220]
Witness Officer Peter Gernand

Q. Did anywhere in the house you recover any spent shotgun rounds?

A. No, sir.

Q. Anywhere in the house—And by spent rounds I'm indicating shells that have already been fired.

A. That's correct.

Q. And did you find any spent rounds anywhere in the house for a 22 rifle?

A. No, sir.

MR. DONALDSON: No further questions.

THE COURT: Mr. Rice?

MR. RICE: I was just looking, your Honor.

RECROSS EXAMINATION BY MR. RICE:

Q. Now, in the basement, isn't it true that you found some drug paraphernalia in addition to the blood that you spoke about in the basement? Would you look at your report on page two, the last paragraph?

A. Yes, sir, it was found in the basement.

Q. Okay. And where was this blood—this narcotic paraphernalia found in the basement?

A. On the table.

Q. Was that close to that chair that we're—

A. Just west of the chair.

Q. And the blood was right there also?

A. It was on the chair cushion on the floor there.

MR. RICE: I have no further questions of this witness, your Honor.

MR. DONALDSON: I have no further questions.

THE COURT: I just have a couple. Do you have Defense 18?

Is that the item you've referred to as the copper jacket?

THE WITNESS: Yes, sir.

THE COURT: Okay. What exactly is that?

THE WITNESS: Some bullets are made out of lead and some are made out of lead with a copper outer coating, real thin layer of coat. That is the copper from the outer part of the bullet that separates from the lead when it's fired. Some are covered all the way with copper jacket. Some are half copper jacket and half lead depending on the type of ammunition you buy.

THE COURT: Did you recover what I would call slugs, that is the projectiles from a bullet?

THE WITNESS: That is part of a projectile from a bullet.

THE COURT: Okay. I see. It is part of the slug itself?

THE WITNESS: Yes, sir. It's just separated from the lead part.

THE COURT: Okay. Give that back to you. Just so the Jury understands, let me say something. If I say anything wrong, you correct me, okay?

THE WITNESS: Okay, sir.

THE COURT: If we distinguish between three types of weapons, a fully automatic, a semi-automatic and let's say a revolver, and that's my purpose, and secondly so the Jury understands what the make up of any live round is, let me start by saying the live round for my purposes consists of a projectile part, what we would call a slug, which lay people commonly call a bullet. Maybe I guess professional people do as well.

THE WITNESS: Yes, sir.

THE COURT: Okay. It also consists of a cartridge casing in which the explosive materials are that

once the pin strikes it causes that projectile to go out of the weapon, is that correct?

THE WITNESS: Yes, sir.

THE COURT: Okay. If you were then to have a revolver, if you pulled the trigger and fired the projectile outside, the shell casing spent would stay inside the gun, correct?

THE WITNESS: Yes, sir.

THE COURT: Okay. If you then had an automatic weapon, whether semi-automatic or fully automatic, when you fired the projectile out of the gun the shell casing ejects from the weapon itself?

THE WITNESS: Yes, sir.

THE COURT: Okay. The only difference then between that exhibit that you've described as nine millimeter semi-automatic is that if it were fully automatic, if you depress the trigger it would continue to fire rapidly?

THE WITNESS: That's correct.

THE COURT: In other words, you pull the trigger once and if you kept your finger on the trigger if it carries 26 bullets, 26 bullets would be fired out of the gun?

THE WITNESS: That's correct.

THE COURT: A semi-automatic would allow you to pull the trigger and one shot would come out, but as rapidly as you could pull the trigger shots would continue to come out?

THE WITNESS: That's correct.

THE COURT: Okay. Now, one final question. On that semi-automatic pistol or firearm, you indicated there were 25 live rounds in the magazine and one live round in the chamber?

THE WITNESS: That's correct.

THE COURT: Does the magazine hold 26?

THE WITNESS: You could put 25 in, it's marked as 25. It's marked and it's pretty well packed tight, and usually they put one in the gun, they load this up, this rack, and they put another one back in here so they have a total of 25 here plus one in the gun.

THE COURT: You're saying when you found that gun, that gun was fully loaded?

THE WITNESS: Yes, sir.

THE COURT: And it would appear not to have been fired?

THE WITNESS: That's correct.

THE COURT: Okay. Second question. Was that gun operable if you know?

MR. DONALDSON: Your Honor—

MR. RICE: There's a witness that's gonna testify—

THE COURT: Oh, okay.

MR. RICE: —about that.

THE COURT: Okay. Good. Then I don't have to ask you that question. I think that's all I have.

MR. RICE: Your Honor, one thing that I would like to correct is that on a fully automatic weapon,

there's a squeezing operation in the back of the weapon—I just happen to be a gun dealer.

THE COURT: Okay.

MR. RICE: There would be a squeezing operation that slides in in the back that you'd have to squeeze along with the trigger—

THE COURT: Okay.

MR. RICE: —before it would be fully automatic.

THE COURT: Okay.

MR. DONALDSON: I have no objection to that.

THE COURT: All right, fine. We just did it to make sure you understood the terms that were being used. Okay. And you agree with everything?

THE WITNESS: Yes, sir.

THE COURT: Okay. Good. I have nothing further. Do you have anything further of the witness?

MR. DONALDSON: No, your Honor.

MR. RICE: I don't.

THE COURT: Okay. You're excused. Thank you very much for being here.

(Witness excused.)

MR. DONALDSON: Call his partner, Officer Mark.

PAUL MARK sworn by the Court,
was examined and testified as follows:

[. . .]

TRIAL TRANSCRIPT, VOLUME III, EXCERPTS (OCTOBER 17, 1988)

STATE OF MICHIGAN, IN THE RECORDER'S COURT OF THE CITY OF DETROIT

PEOPLE OF THE STATE OF MICHIGAN,

v.

LLOYD GENE BEAM,

Defendant.

Case No. 88-01546

Jury Trial Volume III

Before: Honorable Terrance K. BOYLE, Judge of the Recorder's Court of the City of Detroit.

[October 17, 1988 Transcript, p. 347]
Witness Julie Glenn

A. No.

Q. You can have a seat again, ma'am.

Did you see anybody besides John Frazier, Mennen Hollonquest and Michael McAdory at that home at the time of the shooting?

A. No.

Q. All right. You heard the voice of Richie Rich?

A. Yes.

Q. All right. Did you have any conversation with Mr. Frazier as far as what had occurred to him on that date?

A. When I came—

MR. RICE: I'm going to object.

Q. (By Mr. Donaldson, continuing): Just answer the question. Did you have a conversation?

A. Yes.

Q. All right. Emotionally how was he at that point? Was he excited or—

MR. RICE: I'm going to object, the leading form of the questions, your Honor, "emotionally how was he", and let her testify.

THE COURT: Okay.

MR. DONALDSON: I'll rephrase the question.

THE COURT: Go ahead.

Q. (By Mr. Donaldson, continuing): Could you describe his emotional state at that point in time?

A. Well, he wasn't really upset, but he said he was bleeding, he had been shot and, you know, told me to come calling the police. He wasn't hollering or all excited or anything.

Q. All right. And did he indicate to you how he sustained those injuries?

MR. RICE: I'm going to object, your Honor. That would be hearsay.

THE COURT: You gonna need to do a little more with your foundation.

MR. DONALDSON: Very well, your Honor.

Q. (By Mr. Donaldson, continuing): Mr. Frazier was bleeding on or about his person?

A. Yes.

Q. Okay. And he indicated that he needed help?

A. Yes.

Q. And he indicated that he needed you to call the police to get him some help?

A. Yes.

Q. And you indeed went to get him the help?

A. Yes.

Q. Because he couldn't do it himself—

MR. RICE: My Lord, your Honor—Excuse me. When are you gonna get on the witness stand?

THE COURT: No, but she's already testified to that. He's summarizing what she had already testified to.

I'm gonna save some time. When Mr. Frazier went downstairs, he had not been injured in any way?

THE WITNESS: No.

THE COURT: When he came upstairs, about how much time had elapsed between the time of your hearing shots and your seeing him upstairs?

THE WITNESS: About two minutes.

THE COURT: About two minutes. When you first saw him he was bleeding?

THE WITNESS: Yes.

THE COURT: Okay. Now, I'm gonna allow it. I mean, I'm gonna rule that—

So the Jury understands, ordinarily you've heard throughout this thing, we don't like attorneys leading witnesses, you know, because when you lead witnesses you're trying to tell witnesses more or less what you expect them to testify to, and we don't want to have that. We just want to hear what the witness actually saw or heard.

There's another rule that says you really shouldn't have hearsay testimony. So we're not really too interested in what she heard Johnny Frazier say because that ordinarily would be hearsay. We're interested only in hearing from Mr. Frazier what he actually saw or heard, which I trust we'll do later in the trial.

But there is an exception to that, and if a person makes an excited utterance, if a person is under such a state of startling event where they're very excited and they don't have time to fabricate, they don't have time to even think about what they're saying, they're more or less reporting what they see, then that's an exception.

So I'm gonna allow the witness to testify as to what Mr. Frazier told her under these circumstances.

MR. RICE: Your Honor, let the record reflect my objection.

THE COURT: Yeah, of course. Go ahead, Mr. Donaldson.

Q. (By Mr. Donaldson, continuing): What if anything did he say relative to his being shot?

A. He said, "Come call the police, I been shot". And so I asked him, "Who shot you?" He said, "Peanut and Richie Rich".

Q. All right. Had you ever seen Peanut or Mr. Lloyd Beam over at that Hazlett address on a prior date?

A. Yes.

Q. And about how long before the April 3rd date was that if you remember?

A. About a week, between a week and a week and a half.

[. . .]

[October 17, 1988 Transcript, p. 448]
Witness John Frazier

A. I guess so. I don't know what him and Mike was talking about. All I can testify to is what we was talking about.

Q. Well, do you know if they talked that day?

A. I don't know.

MR. RICE: I don't believe I have any further questions of this witness.

MR. DONALDSON: I have no redirect, your Honor.

THE COURT: I just have a couple questions. Mr. Frazier, you have a little bit of difficulty with speech—

THE WITNESS: Yes, sir.

THE COURT: —in responding to questions.

THE WITNESS: Yes.

THE COURT: Did you have that before you were shot or is that a result of having been shot?

THE WITNESS: I had it way before I got shot.

THE COURT: Okay.

THE WITNESS: Since I was three years old.

THE COURT: Okay. You don't have any problem however understanding the questions, it's just a problem with getting the speech together to respond?

THE WITNESS: Yes, sir.

THE COURT: Okay. You're saying that you never sold dope out of the house?

THE WITNESS: Yes, sir, I never sold any out there.

THE COURT: You say Michael McAdory did?

THE WITNESS: Selling it for someone.

THE COURT: Selling it for someone else. Mark?

THE WITNESS: Yes.

THE COURT: Okay. What about Hollonquest, was he selling for Mark too?

THE WITNESS: He wasn't selling for Mark.

THE COURT: Was he selling it at all?

THE WITNESS: I don't think so.

THE COURT: Okay. You're saying to the best of your knowledge Michael McAdory was selling out of your own residence there. Do you rent that place?

THE WITNESS: We was buying, me and my mother was buying it.

THE COURT: Who?

THE WITNESS: Me and my mother was buying it.

THE COURT: You and your mother were buying it, but she didn't stay there?

THE WITNESS: No, sir.

THE COURT: You stayed there?

THE WITNESS: Yes, sir.

THE COURT: Okay. So to the best of your knowledge, Michael McAdory was the only person selling out of the house and he was selling for this person named Mark?

THE WITNESS: Yes, sir.

THE COURT: And what you received for that was you got occasional free dope?

THE WITNESS: Yes.

THE COURT: Okay. The traffic primarily door traffic; in other words, people come to the side door?

THE WITNESS: Yes, sir.

THE COURT: Okay. And you're saying on prior occasions Richie Rich had sold out of the house as well?

THE WITNESS: Yes, sir.

THE COURT: Same arrangement; I mean, for money or for dope?

THE WITNESS: Same arrangement. Sometimes it was just once in a while, that's all.

THE COURT: But you'd get a little free dope out of it?

THE WITNESS: Yes.

THE COURT: So we understand exactly what you're saying now, I'm not talking about the night of the shooting itself on April 3rd, but I'm talking about the one and a half, two weeks before that when there was an incident between the Beams and Michael McAdory.

THE WITNESS: Yes, sir.

THE COURT: Okay. As far as you were concerned, and I want your sense of it, as far as you were concerned, you're telling us you didn't think you were in difficulty with the Beams, that it was only Michael McAdory that was in difficulty?

THE WITNESS: Not even Mike. It supposed to have been Mark, because before he shot me I asked him why, you know. He said y'all shot up my mama house. Mike didn't have nothing to do with it, I didn't have nothing to could with it, and Quest didn't either. It was Mark and them, you know.

THE COURT: So you're saying—

THE WITNESS: We got shot for nothing.

THE COURT: Okay. You're saying you think that there was something going on between the Beams and Mark?

THE WITNESS: Right.

THE COURT: Who actually was the supplier for the dope that was sold?

THE WITNESS: Yes, sir.

THE COURT: Okay. But did you overhear either one of the Beams tell Mr. McAdory that they were coming back within two weeks and that he'd better be gone or he'd have his mickeys shot or shot off?

THE WITNESS: I didn't hear that personally.

THE COURT: Okay. Well, somebody brought over you said—I mean, somebody brought Mr. Hollonquest a 32 revolver and somebody brought over a semi-automatic nine . . .

[. . .]

. . . selling dope there at the house, isn't it true that Mr. Hollonquest was selling mixed jive for a guy named June Bug?

A. I wouldn't know; it's possible.

Q. You do know that mixed jive was sold there in that house, didn't you?

A. Yeah.

Q. And you're saying—

A. But it wasn't—I said possibly could have been doing it.

Q. You're saying that you don't know whether he was or he wasn't?

A. Yes.

Q. But somebody was selling mixed jive in that house, isn't that right?

A. I wouldn't know.

Q. Did you know a person that they called June Bug?

A. Yes, I know a person they call 'em.

Q. And he was a dope man, wasn't he, the person they call June Bug was a dope man, wasn't he?

A. Yeah, he was.

Q. And he was bringing dope to that house, wasn't he?

A. He used to bring dope. He wasn't bringing no dope there to my house.

MR. RICE: I have no further questions.

MR. DONALDSON: I have nothing further.

THE COURT: Yeah, I think I'm gonna keep my mouth shut too. We don't want to get into a whole history of transactions here, it'll take us even further afield.

I want to thank you very much, Mr. Frazier, for being here. We're going to recess now—Wait just a second. Eddie, you can have him wait right there in the audience.

I have another matter that I have to take care of at 9:00 o'clock in the morning, so I think you should be here at about 9:25 and we'll get started about 9:30. Okay? Have a good night's rest.

Oh, again, let me caution you, don't talk about this case to anybody, don't let anybody talk about it in your presence. Okay? And we'll see you tomorrow morning at 9:30.

(Jury excused at 4:45.)

Unless I hear some objection from somebody, the bench warrant on Mr. Frazier is gonna be dismissed.

MR. DONALDSON: I have no objection.

MR. RICE: I don't have any objection. I didn't request it in the first place.

THE COURT: I know you didn't.

You're free, Mr. Frazier, to go, and I'm sorry for the inconvenience in bringing you down. It may have been a misunderstanding, but we just wanted to make sure . . .

TRIAL TRANSCRIPT, VOLUME IV, EXCERPTS (OCTOBER 18, 1988)

STATE OF MICHIGAN, IN THE RECORDER'S COURT OF THE CITY OF DETROIT

PEOPLE OF THE STATE OF MICHIGAN,

v.

LLOYD GENE BEAM,

Defendant.

Case No. 88-01546

Jury Trial Volume IV

Before: Honorable Terrance K. BOYLE, Judge of the Recorder's Court of the City of Detroit.

[October 18, 1988 Transcript, p.477]
Witness Officer James Metiva

A. That's correct.

Q. Where was that injury if you recall?

A. The right shoulder.

Q. You see any other apparent injury?

A. No, I didn't.

Q. Did you proceed into the home itself?

A. Yes.

Q. And what if anything did you observe in the home?

A. Two other males lying on the floor.

Q. Did you later determine the identity of those persons?

A. Yes.

Q. And was one of those persons Mennen Hollonquest?

A. He was.

Q. And where was he situated, where was he on the floor?

A. Mr. Hollonquest was in the living room, his head was facing north, feet south, and he had a—lying in a pool of blood coming from his head.

Q. Would you please approach the diagram, Officer? Now, that's People's Exhibit Number 1. Does that fairly and accurately depict the floor plan of the first floor of the Hazlett address?

A. Yes, sir.

Q. And where was it that you first saw Mr. Frazier?

A. This being the back door, I entered here, he was at the steps here.

[. . .]

REDIRECT EXAMINATION BY MR. DONALDSON:

Q. You indicated you went next door to call homicide?

A. Yes, sir.

Q. And is it the responding officer's duty to investigate homicides upon arriving at the scene?

A. Initially, yes.

Q. But what is the purpose in calling the homicide unit?

A. To handle the rest of the investigation. We do not handle it from a precinct level.

MR. DONALDSON: I have no further questions, your Honor.

MR. RICE: No further questions.

THE COURT: Before I ask the witness—I only have one question. Before I ask that, has there been any testimony from any of the evidence techs with respect to the actual physical dimensions of that first floor?

MR. DONALDSON: No, your Honor.

MR. RICE: No, it's not drawn to scale.

THE COURT: Yeah, I understand. And that's—I didn't think we had that.

Let me ask you this question, and answer it only if you really have a—First of all, let me ask you a question about yourself. Do you think that you have fairly good judgment about spacial distances?

THE WITNESS: Yes.

THE COURT: Okay. Do you have enough of an independent recollection of that particular house on Hazlett that you still recall about what the dimensions of particularly the living room was?

THE WITNESS: An estimate?

THE COURT: Yeah, estimate.

THE WITNESS: Maybe.

THE COURT: Like say take from—You can see where that diagram has a division between the living room and the dining room?

THE WITNESS: Yes.

THE COURT: So from the spot right in the middle there—In other words, if we just took the width dimension, what I'm saying is the east/west dimension of the living room itself, about how far would that be?

THE WITNESS: Approximately 12 by 16.

THE COURT: Twelve by sixteen for the entire room, entire living room?

THE WITNESS: Roughly.

THE COURT: Okay. And so the Jury can get some idea about what that is, if you looked at that wall and then you told me—you tell me when to stop when you think I've gone the east/west dimension of that living room to 12 feet.

THE WITNESS: Right about there.

THE COURT: Okay. So from about where I am to that wall is about the width of that room?

THE WITNESS: Yeah.

THE COURT: And the length of that room would be about a third longer than that?

THE WITNESS: Uh-huh.

THE COURT: Okay. Second question is, you know where Mennen Hollonquest was found, where his body was found?

THE WITNESS: Yes, sir.

THE COURT: Okay. And where his head was. You also know where the slug was found or seen?

THE WITNESS: When I saw it, yeah. I came back.

THE COURT: I understand. But assuming it was in the same place when you came back, how far was that slug from Mennen Hollonquest's head?

THE WITNESS: Maybe eight inches.

THE COURT: Okay. Again, just to get the dimensions of the room, and I'm going to the diagram now, we're saying from here to here is roughly about 12 feet and from here to here is roughly about 16 feet, so a six foot man literally if he were laying this way would take up about half of the space?

THE WITNESS: Uh-huh.

THE COURT: Okay.

THE WITNESS: Right.

THE COURT: All right. That's all I have.

MR. RICE: Yeah, but your Honor, the testimony isn't that way. The testimony is that the head was laying approximately here and the feet were down here.

THE COURT: No, I understand. But I want to give the Jury an idea of dimensions, that's all, and that would be correct. If the diagram were to scale, which it's not, I mean you'd really see about this kind of length and proportionately about this kind of length for a human body. Okay?

Anything further from the attorneys?

MR. DONALDSON: No, your Honor.

MR. RICE: I do.

RECROSS EXAMINATION BY MR. RICE:

Q. Was there an Officer Herlotha Fields at the scene while you were there?

A. There was a scout ten-one at the scene, he helped us preserve the witnesses. I don't remember if he was working that unit or not.

Q. Were you the first unit there or—

A. We were the first one there.

Q. And how long after you got there was it that the other unit got there?

[. . .]

TRIAL TRANSCRIPT, VOLUME V EXCERPTS (OCTOBER 19, 1988)

STATE OF MICHIGAN, IN THE RECORDER'S COURT OF THE CITY OF DETROIT

PEOPLE OF THE STATE OF MICHIGAN,

v.

LLOYD GENE BEAM,

Defendant.

Case No. 88-01546

Jury Trial Volume V

Before: Honorable Terrance K. BOYLE, Judge of the Recorder's Court of the City of Detroit.

[October 19, 1988 Transcript, p. 596]
Witness Michael McAdory

A. During his active drug business.

Q. You never sold any drugs, period, is that right?

A. That's right.

Q. Okay. And you never have, is that right?

A. That's right.

Q. Okay. And the only thing that you've ever done as far as you know was looked out for that drug house, and when this incident occurred you were

through with the dope business and stopped, isn't that correct?

A. No, sir.

Q. What do you mean by that? You didn't stop?

A. I hadn't sold any drugs, but I had been around drug activity after the shooting of me and Johnny Frazier.

Q. So you didn't really learn a lesson by getting shot over that dope house, you continued to remain around drug activity, is that right?

MR. DONALDSON: I would say that's a bit argumentative, your Honor.

THE COURT: Well, I think I'll sustain it.

MR. RICE: Well, I'll rephrase it.

THE COURT: Okay.

MR. RICE: Thank you.

Q. (By Mr. Rice, continuing): Now, you just testified that you were around drug activities after you got shot and got out of the hospital, is that right?

A. Yes, sir.

Q. Okay. Now, when this incident occurred you were supposed to be in school, isn't that right, sir?

A. Yes, sir.

Q. As a matter of fact, you turned 17 just a few weeks after the shooting occurred while you were still in the hospital, isn't that right?

A. I was home from the hospital when I turned 17.

Q. You turned 17 on April the 22nd, 1987, isn't that right?

A. That's right, sir.

Q. Okay. And you were supposed to be in school but you were over the dope house watching out the window, is that right?

A. Yes, sir.

Q. Now, you say that you continued after getting shot to be around drug activity?

MR. DONALDSON: Your Honor, I'm going to object at this point in time. I don't understand whether it's relevant or not that this particular defendant did or did not continue to be involved in the drug trade after this particular incident. It's clear what Counsel's trying to do is just paint him as a bad person as opposed to trying to enlighten the Jury as far as what occurred on the date in question, and I'd ask that the Court instruct him to cease this line of questioning.

MR. RICE: Well, your Honor—

THE COURT: Wait, wait, all right. Go ahead, Mr. Rice.

MR. RICE: I'm just simply dealing with his credibility.

THE COURT: Yeah, I know what you're doing. But I think it's gone about as far, Mr. Rice—I mean, Mr. Donaldson didn't object except for the bench conference in terms of the area and I allowed you full sway and the witness has responded to it and I think that's about as much as you can get out. I'm not telling you—restricting your cross, but I think you have pretty much what you were after, don't you?

MR. RICE: Well, your Honor, we've got his denial that first he says that he was selling drugs for Frazier and then he changes that after he realizes what the—

THE COURT: No, the witness consistently has said as a specific fact he never sold drugs if you talk about the act of selling drugs, but he admits complicity in being paid as a look out in drug transactions, and he told 'ya after the time of the shooting in this case he has indeed again been around drug activity but he has not personally sold drugs. Now, he's been consistent with respect to that. Now, what more do you want from him? He admits that after the incident he's been around drug activity.

MR. RICE: Well, your Honor, if we could show that that's false, then I think that we should be able to bring that out before the Jury. We have evidence to show that that's false.

THE COURT: No, you don't.

MR. RICE: What—Your Honor, could we approach the bench?

THE COURT: Sure. Tell you what, we'll go into chambers. You stay right where you are. Hopefully we'll be back in two or three minutes.

(Discussion in chambers.)

I'm gonna have to ask the Jury to step into the Jury Room for a second. Hopefully it'll be about two minutes. But I have to ask you to leave.

(Jury excused at 12:02.)

The record should reflect we had an in-chambers discussion, and I think probably—Well, I'll just state the summary of it and then I'll let the attorneys say whatever they wish. The summary of it really is the position of the Prosecutor is a motion in limine was made—Let's state the facts again.

The facts are this witness has been convicted on two drug cases for which he received a term of probation.

[. . .]

TRIAL TRANSCRIPT, VOLUME VI, EXCERPTS (OCTOBER 20, 1988)

STATE OF MICHIGAN, IN THE RECORDER'S COURT OF THE CITY OF DETROIT

PEOPLE OF THE STATE OF MICHIGAN,

v.

LLOYD GENE BEAM,

Defendant.

Case No. 88-01546

Jury Trial Volume VI

Before: Honorable Terrance K. BOYLE, Judge of the Recorder's Court of the City of Detroit.

[October 20, 1988 Transcript, p. 702]
Witness John Frazier

A. I don't know her whole name.

Q. We never heard anything about—

A. I don't know her whole name.

Q. You never told the Prosecutor—

A. They planned to kill is in cold blood anyway.

Q. You never told the Prosecutor this, did you?

A. I just found it out.

Q. You just found it out?

A. Yeah.

MR. RICE: I have no further questions.

MR. DONALDSON: I have nothing further, your Honor.

TEE COURT: I guess just with some trepidation I want to ask one question.

Mr. Frazier, you indicated that on a prior incident before the day of the shooting that they came over, they robbed Michael McAdory, they took a 12 gauge shotgun, they also took a 22 rifle?

THE WITNESS: Uh-huh, they took a 30-30 carbine.

THE COURT: Oh, 30-30 carbine?

THE WITNESS: Yes, sir.

THE COURT: Okay. So it was not—They did not take the rifle that was the exhibit here in Court? You remember there was an exhibit here in Court, a 22 rifle that was sound by the police—Oh, there it is, that rifle there.

THE WITNESS: Yes, sir. That rifle was still under my mattress.

THE COURT: Under your mattress.

THE WITNESS: Then they took the other thing.

REDIRECT EXAMINATION BY MR. RICE, CONTINUING:

Q. When you testified before, you never said anything about them taking a 30-30?

A. Yes, I did. I said I was sleep on the couch.

Q. Did you testify—

A. And when they took us upstairs.

Q. Excuse me—

A. It's in the paper.

Q. It is?

A. Somewhere.

Q. I want you to show it to me then. Okay. Your testimony starts on page three.

A. It started when he dropped the object on the floor to give me a signal.

Q. Just a moment, there's no question on the floor. You seem awfully anxious to testify.

A. No, that's when it began.

Q. Well, I want you to show me where in your testimony, anywhere in your testimony that you said anything about anybody taking a 30-30 rifle from your house.

(Pause.)

A. You right, it don't say that.

Q. Beg your pardon?

A. You right, it don't say that.

Q. Maybe it's in that statement that you wrote out in your own handwriting. Would you look at that and see if you see it in there?

A. It's not in there.

Q. It's not in there either?

A. No.

Q. And neither in that transcript or this statement, is it?

A. No, no, I didn't see it.

MR. RICE: I have no further questions.

THE COURT: Mr. Donaldson?

RECROSS EXAMINATION BY MR. DONALDSON:

Q. I'm gonna ask you to look at page 17 of your transcript, the transcript of your testimony at the prior trial, and read through that page. I have a couple questions about that.

A. Seventeen?

Q. Yeah.

(Pause.)

THE COURT: No, maybe we can clean it up this way, unless there's some disagreement.

MR. DONALDSON: Well, I'm gonna ask him what he was referring to there. That's the purpose of—

THE COURT: Okay. Go ahead.

MR. DONALDSON: That's all. One way or the other, that's why I'm gonna ask him the question. One of those times when a lawyer's gonna ask a question he doesn't have any idea what the answer is.

MR. RICE: It's called fishing expedition.

Q. (By Mr. Donaldson, continuing): In that transcript, you indicated to Defense Counsel in your cross examination that it was right after the object was dropped to the floor, is that right?

A. Yes, sir.

Q. Okay. Page 17, doesn't that refer to that time frame?

A. Are you referring to when Mike got robbed?

Q. When the item got dropped to the floor, yes.

A. Yes, sir.

Q. Okay. And is that what page 17 that I just showed you is talking about?

A. Yes, sir.

Q. Okay. When you say somebody has a gun in that, the other guy came in with a gun, are you talking about a handgun or what are you talking about?

MR. RICE: I'm going to object to this, your Honor.

THE WITNESS: We talking about the 357.

THE COURT: No, I'll allow it.

Q. (By Mr. Donaldson, continuing): And he gave the answer that I wasn't sure which it was, whether he was talking about the carbine or the 357. You talking about a handgun?

A. Right.

MR. RICE: Wait a minute, excuse me, wait. What are you saying? I was talking with the Judge and you were intervening. What did you say?

MR. DONALDSON: What did I say?

MR. RICE: Yeah, I wanna know—He's around here saying that this man said something about a carbine and there's nothing in this transcript that says that.

THE COURT: He didn't say that. He said you made a reference to a gun, what was the gun being referenced to, a revolver or a long gun, and the witness said a 357 handgun.

MR. RICE: All right.

MR. DONALDSON: I was just clarifying for my own edification or understanding of what the testimony was.

All right. I have no further questions, your Honor.

MR. RICE: No further questions.

THE COURT: Okay. I just have one. In your testimony here in Court when you were on the stand previously, you did indicate that on that occasion when Mr. McAdory was robbed that they asked you where the carbine was, they asked where the carbine was, and your response was that it was on the couch downstairs. Is that what you said?

THE WITNESS: I just couldn't find it in the paper, so—

THE COURT: But that was your testimony when you were here previously?

THE WITNESS: Yes, it was, that's what I thought.

THE COURT: And they removed that carbine from the house on that occasion?

THE WITNESS: Right.

THE COURT: Okay.

REDIRECT EXAMINATION BY MR. RICE:

Q. Don't leave now. Did you say anything wherein you testified before about being asked where the carbine was?

A. I wasn't asked. He asked me where it was at.

Q. The question is, when you testified on June the 15th, 1988, did you say anything about being asked by anyone where a carbine was?

[. . .]

TRIAL TRANSCRIPT, VOLUME VII, EXCERPTS (OCTOBER 21, 1988)

STATE OF MICHIGAN, IN THE RECORDER'S COURT OF THE CITY OF DETROIT

PEOPLE OF THE STATE OF MICHIGAN,

v.

LLOYD GENE BEAM,

Defendant.

Case No. 88-01546

Jury Trial Volume VII

Before: Honorable Terrance K. BOYLE, Judge of the Recorder's Court of the City of Detroit.

[October 21, 1988 Transcript, p. 848]
Speaker, Judge Terrance Boyle

> . . . has had to rule on motions or objections by Counsel. I must do so in accordance with the law and the rulings do not reflect any personal opinion about the facts in the case. Such rulings are not evidence and you must not give any weight either to the rulings or to the number of rulings.
>
> Neither my comments nor my instructions are evidence and they should not be taken as any indication of the Court's opinion as to how you should determine the facts. If you have come to believe during the course of the trial that the

Court is telling you how to decide this case, then you must disregard that opinion. You are the sole judges of the facts and you alone have the solemn duty and obligation to decide this case based exclusively on the evidence presented in this case.

Any statements or arguments of the attorneys are not evidence but are only intended to assist you in understanding the evidence and the theory of each party. The questions which attorneys ask witnesses are not themselves evidence. It is the answers of witnesses which provide evidence.

You should disregard anything said by an attorney which is not supported by the evidence or by your own general knowledge and experience. However, you should use your own general knowledge and experience in judging . . .

[. . .]