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# VIRGINIA:

*In the Supreme Court of Virginia held at the Supreme Court building in the City of Richmond on Thursday the 13th day of February, 2020.*

Present: All the Justices

Lester B. Lynch, Appellant,

against Record No. 190048
Circuit Court No. CL17-583

Beth Cabell, Warden,
Sussex II State Prison, Appellee.

Upon an appeal from a judgment rendered by the Circuit Court of the City of Norfolk.

Lester B. Lynch ("Lynch") appeals from a judgment of the Circuit Court of the City of Norfolk ("circuit court") that denied his petition for a writ of habeas corpus alleging a violation of the prosecution's requirement to disclose potentially exculpatory information as set by *Brady v. Maryland*, 373 U.S. 83 (1963). Upon consideration of the record, briefs, and argument of counsel, the Court is of opinion that the judgment of the circuit court should be affirmed.

## I. Facts and Procedural Background

In his habeas petition, Lynch asserted that the Commonwealth violated *Brady* when it suppressed the pre-trial video statements of Ronald Scott, Tamika Reid, and Kenneth Parker (collectively, "the statements") in which the three witnesses implicated Lynch in a June 2001 home invasion, robbery, and murder. Lynch's first two jury trials ended as mistrials in October 2002 and March 2003 due to the failure of the juries to reach a unanimous decision. Lynch was later convicted of first-degree murder, burglary, robbery, and three counts of using a firearm in the commission of a felony in a May 2003 jury trial. George Anderson represented Lynch throughout his trials. Lynch's direct appeals and his first habeas petition were unsuccessful.

In 2016, Lynch filed a motion for preservation of evidence. He later received a June 2001 Norfolk police evidence voucher listing recorded statements from Reid, Parker, and Scott. He was also notified that the recordings had been destroyed in 2015. Lynch filed the present

petition for a writ of habeas corpus in 2017, asserting a *Brady* violation by the Commonwealth for suppressing the three recorded statements prior to trial. To prove that he had not received the statements, Lynch relied on a discovery letter from the Commonwealth that contained a summary of the statement by Reid. The summary provided that

> [w]hen [Reid] was interviewed the night the crime occurred, he initially identified two of the assailants as Gregory Williams . . . and his brother, Christopher Williams . . . . He stated he got a good look at Gregory Williams, and assumed that his brother, Christopher, was also present. It was later proven that Christopher Williams could not have been present. He also described a third assailant who was light-skinned. The victim was shown several photo lineups, and selected the photographs of Gregory Williams and Lester Lynch out of those separate lineups.

Lynch also relied on the fact that the discovery letter did not list the statements.

Lynch non-suited the habeas petition in June 2017 and refiled in November 2017. Lynch attached an affidavit from Anderson that stated he had "reviewed [his] entire file [and] read all available transcripts." Anderson "state[d] unequivocally that the Commonwealth never advised [him] of the existence of tape recorded statements." The Warden moved to dismiss Lynch's petition as time-barred and without merit.

Lynch filed a second affidavit from Anderson prior to an evidentiary hearing in the circuit court. At this time, the Commonwealth had located and provided Lynch with copies of the transcribed statements. In his second affidavit, Anderson stated that he had reviewed the statements and could "unequivocally" state he had received none of the information they contained from the Commonwealth during Lynch's trials.

During the evidentiary hearing on the present habeas application, Anderson testified that he had not received the statements or the recordings during Lynch's criminal trial. He testified that he would have used inconsistencies in the transcripts when cross-examining the three witnesses to undermine their identifications of Lynch. Anderson stated that he would likely recall the statements if he had them at trial and would have used them because one witness identified someone else as the shooter. However, he also testified that he could not recall any specifics of Lynch's trial except for the fact that Lynch was tried three times, that Detective Ford had been involved in the case, and that Lynch was serving a 68-year sentence.

Anderson further testified that he "remember[ed] receiving some statements" but he could not "recall specifically which transcripts from witnesses" he received. Anderson could not remember any of the witnesses' names, yet testified that he knew "specifically" that he did not receive any recorded statements or transcripts from them. Anderson stated that he could not "say that [he] didn't receive the information that was in those statements from another source." Anderson could not recall the statements, the names of the witnesses, or the information from the statements, and he admitted that he could not find his file from representing Lynch.

The circuit court ordered the parties to file post-hearing briefs in lieu of closing argument. The final order states that the Warden filed a post-hearing brief and that Lynch had replied. The order does not mention Lynch's August 31, 2018 post-hearing brief.* The court held that Lynch had "clearly" satisfied the prejudice element of a *Brady* claim, but had failed to prove that the Commonwealth suppressed the statements. The court noted that Anderson's supplemental affidavit stated:

> I have had the opportunity to review the transcripts in their entirety. With respect to the transcripts pertaining to Kenneth Lee Parker, Tamika Reid, and Ronald Scott, I unequivocally state that none of the information contained in said transcripts was ever produced to me during the course of my representation of [Lynch] during three separate jury trials.

The court then held:

> With regard to this specific claim in his affidavit, Mr. Anderson was cross-examined by the Assistant Attorney General at the evidentiary hearing on August 2, 2018. Mr. Anderson was also questioned by the [c]ourt regarding this specific claim that he did not receive the aforementioned transcripts. In both instances, Mr. Anderson, under oath, testified that he did receive transcripts of recorded statements of some witnesses at trial but he could not

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* Lynch assigns error to the circuit court's failure to consider his initial post-hearing brief based on the fact that the circuit court did not list it among the things it considered in making its ruling. Lynch seems to imply that had the circuit court considered the brief, its ruling would have been different. There is simply no evidence to support an assertion that the circuit court did not consider the evidence. *Yarborough v. Commonwealth*, 217 Va. 971, 978 (1977) ("Absent clear evidence to the contrary in the record, the judgment of a [circuit] court comes to us on appeal with a presumption that the law was correctly applied to all the facts."). It is unlikely the circuit court neglected to read a brief it ordered the parties to file and far more likely that the failure of the trial court to mention it by name in the order was a mere oversight. In light of our ruling, we need not address this argument further.

> locate his file prior to preparing the affidavit to determine whether he had copies of the transcribed police statements of the witnesses in question. He further testified that he did not recall receiving the police statements from the Commonwealth, but he could not be sure the he did NOT receive them. On further questioning by the [c]ourt, Mr. Anderson confirmed that he could not recall whether he received this specific evidence from the Commonwealth. The Attorney General's Post Hearing Brief argues that this is in direct contradiction to the Commonwealth's discovery letter from the file and Mr. Anderson's own affidavit of July 11, 2018. The [c]ourt agrees.

The circuit court denied the petition for a writ of habeas corpus. This appeal followed.

## II. Analysis

Lynch claims that his Fourteenth Amendment rights, and his corresponding rights under the Constitution of Virginia, were violated by the Commonwealth's failure to disclose exculpatory information as required by *Brady*. Under the *Brady* rule, the Commonwealth's suppression of evidence favorable to the accused and material to either guilt or punishment, violates due process. *Brady*, 373 U.S. at 87.

> There are three components of a violation of the rule of disclosure first enunciated in *Brady*: a) The evidence not disclosed to the accused "must be favorable to the accused, either because it is exculpatory," or because it may be used for impeachment; b) the evidence not disclosed must have been withheld by the Commonwealth either willfully or inadvertently; and c) the accused must have been prejudiced.

*Workman v. Commonwealth*, 272 Va. 633, 644-45 (2006) (quoting *Strickler v. Greene*, 527 U.S. 263, 281–82 (1999)).

Lynch had the burden of proof to establish "each of these three components to prevail on [his] *Brady* claim." *Commonwealth v. Tuma*, 285 Va. 629, 635 (2013) (citing *Skinner v. Switzer*, 562 U.S. 521, 536 (2011)). "[W]e give deference to the circuit court's factual findings and consider those findings binding upon this Court unless they are plainly wrong or without evidence to support them." *Lenz v. Warden of Sussex I State Prison*, 267 Va. 318, 327 (2004).

The evidence Lynch provided during the evidentiary hearing only showed that the recordings and/or statements were not included in a discovery letter from the Commonwealth and were not referenced specifically during trial. The evidence did not support Lynch's argument that the Commonwealth suppressed the statements from Anderson and Lynch.

Anderson could not recall any specific information from Lynch's criminal trial, yet testified that he must not have received the statements from Reid, Scott, and Parker because he did not use them in cross-examination. He stated in an affidavit that he reviewed his "entire file" from Lynch's trial, yet later testified during the evidentiary hearing that he was unable to locate the file. As the circuit court found, "Anderson, under oath, testified that he did receive transcripts of recorded statements of some witnesses at trial but he could not locate his file prior to preparing the affidavit to determine whether he had copies of the transcribed police statements of the witnesses in question." The court further stated that Anderson "did not recall receiving the police statements from the Commonwealth, but he could not be sure the he did NOT receive them." Finally, the court found that "Anderson[] repeatedly stated that he could not recall whether or not he received the statements of Tamika Reid, Ronald Scott, and Kenneth Parker."

Based on the record before the Court, the circuit court's judgment was not plainly wrong or without evidence to support it. The evidence was inconclusive to show that Anderson did not receive the statements or did not know the information contained in them. The circuit court was not plainly wrong in finding that Lynch failed to prove a *Brady* violation because he did not show "that the Commonwealth suppressed the statements at issue or that [Anderson] did not even receive the statements." Accordingly, we affirm the judgment of the circuit court.

This order shall be certified to the Circuit Court of the City of Norfolk.

A Copy,

Teste:

Clerk

**VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NORFOLK**

**LESTER B. LYNCH, #1162173**

**Petitioner,**

**v.** **Docket No.: CL17-583**

**BETH CABELL, WARDEN, SUSSEX II STATE PRISON**

**Respondent.**

**ORDER**

THIS CAUSE comes before the Court on Petitioner's Writ of Habeas Corpus. An evidentiary hearing was held on August 2, 2018. Respondent filed a post hearing brief on September 17, 2018 and Petitioner filed a reply brief on September 21, 2018. For the reasons that follow, the Court denies Petitioner's Writ of Habeas Corpus.

The issue presented is whether the Commonwealth violated Petitioner's rights under the Fourteenth Amendment and Article I, Section 11 of the Constitution of Virginia in failing to provide *Brady* evidence. Specifically, Petitioner asserts that the Commonwealth failed to disclose material transcribed witness statements of Ronald Scott, Tamika Reid, and Kenneth Parker.

*Brady v. Maryland* establishes that "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of good faith or bad faith of the prosecution." 373 U.S. 83, 87 (1963). The Supreme Court has since held that "the duty to disclose such evidence is applicable even though there has been no request by the accused." *United States v. Aqurs*, 427 U.S. 97, 107 (1976). In order to prove a *Brady* violation, the Petitioner carries the burden of proving three elements: (1) the evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching, (2) that evidence must have been suppressed by the State, either willfully or inadvertently; and (3) the defendant must be prejudiced. *Strickler v. Greene*, 527 U.S. 263, 281-82 (1999).

In the present case, the Court was presented with a habeas petition which emphatically stated that Petitioner's original trial counsel, George Anderson, Esq., was not provided with police interview transcripts of Kenneth Lee Parker, Tamika Reid, and Ronald Scott prior to the trial, in which he received a 68 year prison sentence. Clearly, under these circumstances, the Petitioner has satisfied the third element of *Brady* in that he was clearly prejudiced. However, the evidence before the Court focuses most directly on the second element in Brady - whether the evidence was *suppressed by the state*.

In support of his suppression argument, Petitioner presented an affidavit by Mr. Anderson, which emphatically states:

"I have had the opportunity to review the transcripts in their entirety. With respect to the transcripts pertaining to Kenneth Lee Parker, Tamika Reid, and Ronald Scott, I unequivocally state that none of the information contained in said transcripts was ever produced to me during the course of my representation of the Petitioner during three separate jury trials." *Supplemental Affidavit of George A. Anderson Jr., July 11, 2018.*

With regard to this specific claim in his affidavit, Mr. Anderson was cross-examined by the Assistant Attorney General at the evidentiary hearing on August 2, 2018. Mr. Anderson was also questioned by the Court regarding this specific claim that he did not receive the aforementioned transcripts. In both instances, Mr. Anderson, under oath, testified that he did receive transcripts of recorded statements of some witnesses at trial but he could not locate his file prior to preparing the affidavit to determine whether he had copies of the transcribed police statements of the witnesses in question. He further testified that he did not recall receiving the police statements from the Commonwealth, but he could not be sure the he did NOT receive them. On further questioning by the Court, Mr. Anderson confirmed that he could not recall whether he received this specific evidence from the Commonwealth. The Attorney General's Post Hearing Brief argues that this is in direct contradiction to the Commonwealth's discovery letter from the file and Mr. Anderson's own affidavit of July 11, 2018.[1] The Court agrees.

Therefore, the Court finds that Petitioner has failed to show that the evidence was suppressed by the State. At the evidentiary hearing on August 2, 2018, Petitioner's trial counsel, George Anderson, repeatedly stated that he could not recall whether or not he received the statements of Tamika Reid, Ronald Scott, and Kenneth Parker. As stated above, the Petitioner has the burden of proving all three elements of *Brady* violation. Because Petitioner has not shown that the Commonwealth suppressed the statements at issue or that Defense counsel did not even receive the statements, the Petitioner has failed to prove that a *Brady* violation occurred.

Accordingly, the Court **DENIES** Petitioner's Writ of Habeas Corpus.

**Date: October 11, 2018**

**JOSEPH A. MIGLIOZZI, Jr.,**
**Judge**

[1] The Commonwealth's discovery letter stated: "When the victim [Ronald Scott] was interviewed the night the crime occurred, he initially identified two of the assailants as Gregory Williams (he knew him as "Tyree" or "Tyreek") and his brother Christopher Williams (who he knew as "Christopher" or "Q"). He stated he got a good look at Gregory Williams, and assumed his brother, Christopher, was also present. It was later proven that Christopher Williams could not have been present. He also described a third assailant who was light skinned. The victim was shown several photo lineups and selected photographs of Gregory Williams and Lester Lynch out of those lineups."

FELONY TRIAL ORDER - JURY TRIAL - DAY FOUR

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

Federal Information Processing
Standards Code: 710

Hearing Date: **October 7, 2002** Court Reporter: - **L. Boyle**
Judge: **CHARLES D. GRIFFITH, JR.** Court Clerk: - **WHD/tar**

COMMONWEALTH

vs.

**LESTER BERNARD LYNCH, JR.**, DEFENDANT

This case came before the Court for trial of the defendant, who appeared in person with his attorney, **George Anderson.** The Commonwealth was represented by **John R. Doyle, III**, or his designee.

The defendant stands indicted for the following offenses:

| CASE NUMBER | OFFENSE DESCRIPTION AND INDICATOR (F/M) | | OFFENSE DATE | VA. CODE SECTION |
|---|---|---|---|---|
| CR01003499-00 | **FIRST DEGREE MURDER** | F | 6/9/01 | 18.2-32 |
| CR01003499-01 | **USE OF A FIREARM IN COMMISSION OF A FELONY** | F | 6/9/01 | 18.2-53.1 |
| CR01003499-02 | **STATUTORY BURGLARY** | F | 6/9/01 | 18.2-90 |
| CR01003499-03 | **USE OF A FIREARM IN COMMISSION OF A FELONY** | F | 6/9/01 | 18.2-53.1 |
| CR01003499-04 | **ROBBERY** | F | 6/9/01 | 18.2-58 |
| CR01003499-05 | **USE OF A FIREARM IN COMMISSION OF A FELONY** | F | 6/9/01 | 18.2-53.1 |

The Court **reconvened** at **9:00 a.m.** and the jury continued with their deliberations. They subsequently returned their verdict in open court in the Foreman, **Ina Deloatch** stated to the Court that the jury is unable to reach a unanimous decision on any of the indictments. A **MISTRIAL** was declared.

Thereupon the defendant, by counsel, moved the Court for bond, for reasons stated to the record, which motion having been fully heard and determined by the Court is **denied.**

This matter is set for a jury trial on the **2nd day of December 2002,** to which time all parties are to return.

The defendant was remanded to jail.

The Court certifies that the defendant was at all times personally present with his attorney.

Office of
ALBERT TEICH, JR.
Clerk of the
Circuit Court
Norfolk, Virginia

October 17, 2002 ENTER: C. D. Griffith, Jr.
DATE CHARLES D. GRIFFITH, JR. JUDGE

**DEFENDANT IDENTIFICATION:**
**LESTER BERNARD LYNCH, JR., DEFENDANT**
SSN: 226-13-4662 DOB: 1/9/77 Sex: **MALE**

Office of
ALBERT TEICH, JR.
Clerk of the
Circuit Court
Norfolk, Virginia

## FELONY TRIAL ORDER - JURY TRIAL - DAY FIVE

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

Federal Information Processing
Standards Code: 710

Hearing Date: **March 24, 2003** Court Reporter: - **L. Boyle**
Judge: **MARC JACOBSON** Court Clerk: - **HMC/tar**

COMMONWEALTH

vs.

**LESTER BERNARD LYNCH, JR.**, DEFENDANT

This case came before the Court for trial of the defendant, who appeared in person with his attorney, **George Anderson**. The Commonwealth was represented by **John R. Doyle, III**, or his designee.

The defendant stands indicted for the following offenses:

| CASE NUMBER | OFFENSE DESCRIPTION AND INDICATOR (F/M) | | OFFENSE DATE | VA. CODE SECTION |
|---|---|---|---|---|
| CR01003499-00 | FIRST DEGREE MURDER | F | 6/9/01 | 18.2-32 |
| CR01003499-01 | USE OF A FIREARM IN COMMISSION OF A FELONY | F | 6/9/01 | 18.2-53.1 |
| CR01003499-02 | STATUTORY BURGLARY | F | 6/9/01 | 18.2-90 |
| CR01003499-03 | USE OF A FIREARM IN COMMISSION OF A FELONY | F | 6/9/01 | 18.2-53.1 |
| CR01003499-04 | ROBBERY | F | 6/9/01 | 18.2-58 |
| CR01003499-05 | USE OF A FIREARM IN COMMISSION OF A FELONY | F | 6/9/01 | 18.2-53.1 |

The Court **reconvened** at 9:00 a.m., and the jury continues to deliberate. They subsequently returned their verdict in open court in the Foreman, **John Vast-Binder** stated to the Court that the jury is unable to reach a unanimous decision on any of the indictments and the Court declares a **MISTRIAL**. The jury was dismissed.

Thereupon the defendant, by counsel, moved the Court to set bond, for reasons stated to the record, which motion having been fully heard and determined by the Court is **denied**.

This matter is continued until the **28th day of April 2003**, to which time all parties are to return.

The defendant was remanded to jail.

The Court certifies that the defendant was at all times personally present with his attorney.

Office of
ALBERT TEICH, JR.
Clerk of the
Circuit Court
Norfolk, Virginia

EXHIBIT
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B

3/26/07
DATE

ENTER: _____
MARC JACOBSON, JUDGE

DEFENDANT IDENTIFICATION:
LESTER BERNARD LYNCH, JR., DEFENDANT
SSN: 226-13-4662 DOB: 1/9/77 Sex: MALE

Office of
ALBERT TEICH, JR.
Clerk of the
Circuit Court
Norfolk, Virginia

FELONY TRIAL ORDER - JURY TRIAL - DAY ONE

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

Federal Information Processing
Standards Code: 710

Hearing Date: **April 29, 2003** Court Reporter: - **S. Feehery**
Judge: **CHARLES E. POSTON** Court Clerk: - **MQS/tar**

COMMONWEALTH

vs.

**LESTER BERNARD LYNCH, JR.**, DEFENDANT

This case came before the Court for trial of the defendant, who appeared in person with his attorney, **George Anderson.** The Commonwealth was represented by **John R. Doyle, III**, or his designee.

The defendant stands indicted for the following offenses:

| CASE NUMBER | OFFENSE DESCRIPTION AND INDICATOR (F/M) | | OFFENSE DATE | VA. CODE SECTION |
|---|---|---|---|---|
| **CR01003499-12** | **FIRST DEGREE MURDER** | **F** | **6/9/01** | **18.2-32** |
| **CR01003499-13** | **USE OF A FIREARM IN COMMISSION OF A FELONY** | **F** | **6/9/01** | **18.2-53.1** |
| **CR01003499-14** | **STATUTORY BURGLARY** | **F** | **6/9/01** | **18.2-90** |
| **CR01003499-15** | **USE OF A FIREARM IN COMMISSION OF A FELONY** | **F** | **6/9/01** | **18.2-53.1** |
| **CR01003499-16** | **ROBBERY** | **F** | **6/9/01** | **18.2-58** |
| **CR01003499-17** | **USE OF A FIREARM IN COMMISSION OF A FELONY** | **F** | **6/9/01** | **18.2-53.1** |

Thereupon the defendant was arraigned and after private consultation with his attorney, plead **not guilty** to **First Degree Murder as charged in Indictment #1, Use of a Firearm in Commission of a Felony as charged in Indictments #2, #4 and #6, Statutory Burglary as charged in Indictment #3 and Robbery as charged in Indictment #5**, which pleas were tendered by the defendant, in person. After being advised by the Court of his right to trial either by jury or by the Court, and after consultation with counsel, the defendant did not waive his right to trial by jury. The Court then impaneled twenty qualified jurors, free from exception for the trial of the defendant. The Attorney for the Commonwealth and the attorney for the defendant each alternately exercised their rights to strike the names of four veniremen from the panel, as provided by law, and the remaining twelve jurors, constituting the jury for the trial of the defendant, were duly sworn/alternate seated.

After opening statements, the Court and jury commenced hearing the evidence presented by the Commonwealth, and having

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heard part of the aforesaid evidence, the Court **adjourned** at 4:15 **p.m.** until the 30th **day of April 2003**, to which time all parties are to return.

The defendant was remanded to jail.

The Court certifies that the defendant was at all times personally present with his attorney.

7/9/03
DATE

ENTER: _____
**CHARLES E. POSTON, JUDGE**

**DEFENDANT IDENTIFICATION:**
**LESTER BERNARD LYNCH, JR., DEFENDANT**
SSN: **226-13-4662** DOB: 1/9/77 Sex: **MALE**

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Clerk of the
Circuit Court
Norfolk, Virginia

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# SENTENCING ORDER

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

FEDERAL INFORMATION PROCESSING STANDARDS CODE: 710

Hearing Date: **December 12, 2003** Court Reporter: - **S. Feehery**
Judge: **CHARLES E. POSTON** Court Clerk: - **HMH/tar**

COMMONWEALTH OF VIRGINIA

v.

**LESTER BERNARD LYNCH, JR.**, DEFENDANT

This case came before the Court for sentencing of the defendant, who appeared in person with his attorney, **George Anderson**. The Commonwealth was represented by **John R. Doyle, III**, or his designee.

On **May 1, 2003** the defendant was found guilty by jury of the following offense(s):

| CASE NUMBER | OFFENSE DESCRIPTION AND INDICATOR (F/M) | | OFFENSE DATE | VA. CODE SECTION |
|---|---|---|---|---|
| **CR01003499-12** | **FIRST DEGREE MURDER** | **F** | **6/9/01** | **18.2-32** |
| **CR01003499-13** | **USE OF A FIREARM IN COMMISSION OF A FELONY** | **F** | **6/9/01** | **18.2-53.1** |
| **CR01003499-14** | **STATUTORY BURGLARY** | **F** | **6/9/01** | **18.2-90** |
| **CR01003499-15** | **USE OF A FIREARM IN COMMISSION OF A FELONY** | **F** | **6/9/01** | **18.2-53.1** |
| **CR01003499-16** | **ROBBERY** | **F** | **6/9/01** | **18.2-58** |
| **CR01003499-17** | **USE OF A FIREARM IN COMMISSION OF A FELONY** | **F** | **6/9/01** | **18.2-53.1** |

The presentence report was considered and is ordered filed as a part of the record in this case in accordance with the provisions of Code Section 19.2-299.

Pursuant to the provisions of Code Section 19.2-298.01, the Court has considered and reviewed the applicable discretionary sentencing guidelines and the guidelines worksheets. The sentencing guidelines worksheets and the written explanation of any departure from the guidelines are ordered filed as a part of the record in this case.

Before pronouncing the sentence, the Court inquired if the defendant desired to make a statement and if the defendant desired to advance any reason why judgment should not be pronounced.

Office of
ALBERT TEICH, JR.
Clerk of the
Circuit Court
Norfolk, Virginia

MDL-ASTR.ORD

The Court upholds the jury recommendation and **SENTENCES** the defendant to:

Incarceration with the **Virginia Department of Corrections** for the term of: **30 years** for **Indictment #1**, **5 years** for **Indictment #2**, **20 years** for **Indictment #3**, **3 years** for **Indictment #4**, **5 years** for **Indictment #5** and **5 years** for **Indictment #6**. The total sentence imposed is **68 years**.

These sentences shall run **consecutively** with all other sentences.

**Post-release supervision.** The defendant shall be subject to a period of post-release supervision of **6 months**.

**Costs.** As a condition of probation, the defendant shall pay fines/or court costs of **$8,172.00 by December 12, 2003**, and judgment be entered therein.

**Credit for time served.** The defendant shall be given credit for time spent in confinement while awaiting trial pursuant to Code Section 53.1-187.

The defendant, by counsel, advised the Court that the defendant desires to appeal the judgment rendered, and accordingly the Court suspends execution of the sentence for a period of **30 days**, until the said appeal is acted upon.

And the Court appoints a designee from the **Office of the Public Defender**, an able and competent attorney-at-law to represent the defendant in said appeal.

1/5/04
DATE

ENTER: _____
CHARLES E. POSTON, JUDGE

**DEFENDANT IDENTIFICATION:**
**LESTER BERNARD LYNCH, JR., DEFENDANT**
SSN: **226-13-4662** DOB: **1/9/77** Sex: **MALE**

**SENTENCING SUMMARY:**
TOTAL SENTENCE IMPOSED: **68 YEARS**
TOTAL SENTENCE SUSPENDED: **NONE**

Office of
ALBERT TEICH, JR.
Clerk of the
Circuit Court
Norfolk, Virginia

MDL-ASTR.ORD

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LESTER BERNARD LYNCH, JR. v. COMMONWEALTH OF VIRGINIA

Record No. 0107-04-1

COURT OF APPEALS OF VIRGINIA

*46 Va. App. 342; 617 S.E.2d 399; 2005 Va. App. LEXIS 310*

August 16, 2005, Decided

**SUBSEQUENT HISTORY:** Affirmed by *Lynch v. Commonwealth, 2006 Va. LEXIS 68 (Va., June 8, 2006)*

**PRIOR HISTORY:** [***1] FROM THE CIRCUIT COURT OF THE CITY OF NORFOLK. Charles E. Poston, Judge.

**COUNSEL:** L. Steven Emmert (Sykes, Bourdon, Ahern & Levy, P. C., on briefs), for appellant.

Paul C. Galanides, Assistant Attorney General (Jerry W. Kilgore, Attorney General, on brief), for appellee.

**JUDGES:** Present: Judges Benton, Humphreys and Clements. Benton, J., dissenting.

**OPINION BY:** ROBERT J. HUMPHREYS

**OPINION**

[**400] [*345] OPINION BY

JUDGE ROBERT J. HUMPHREYS

Appellant Lester B. Lynch ("Lynch") appeals his convictions, following a jury trial, for first-degree murder, statutory burglary, robbery, and three counts of using a firearm in the commission of a felony. On appeal, Lynch contends that the trial court erroneously admitted an out-of-court statement under the adoptive admission exception to the hearsay rule. For the reasons that follow, we disagree, and affirm his convictions.

I. BACKGROUND

Under familiar principles of appellate review, we examine the evidence in the light most favorable to the Commonwealth, granting to it all reasonable inferences fairly deducible therefrom. *Gonzales v. Commonwealth, 45 Va. App. 375, 378, 611 S.E. 2d 616, 617 (2005)* (en banc). So viewed, the evidence in this case establishes [***2] the following.

On June 9, 2001, Belinda Scott was shot and killed inside her home by Lynch, "Tyreke" Williams, and a third, unidentified man. After the shooting, Lynch and Tyreke "burst" into a bedroom occupied by Belinda's son, Ronald, and his friend, Tamika Reid. The third man remained outside the bedroom door. Tyreke told Ronald to "get on his knees," pointed a gun [*346] at him, and told Tamika "not to move." Tyreke then repeatedly hit Ronald on the head with the gun and took some money out of Ronald's pockets, while Lynch removed heroin and money from a table in the room. The third man eventually told Tyreke and Lynch, "Let's get [**401] out of here." The three men then "ran out of the house."

Earlier that afternoon, Kenneth Parker was "hanging out" at Tyreke's house with Christopher, Tyreke's brother. Kenneth saw Lynch drive up to the house in a black Acura. Tyreke was in the passenger seat. Lynch got out of the car to talk to Christopher, and Tyreke went across the street to get a gun. After he returned, Tyreke agreed to give Kenneth a ride home. Kenneth then got into the Acura with Lynch, Tyreke, and the unidentified third man. However, when Kenneth said that he needed to cross the Campostella [***3] Bridge, Lynch told him that they were going on a "sting," and they needed to "take care of [that] first." Thus, Kenneth got out of the car, and Lynch told him that they would return in about thirty minutes.

When the three men returned to Tyreke's house, Kenneth noticed that Tyreke was wearing a different shirt and had small bloodstains on his clothing. Tyreke carried something into his house wrapped [illegible] he had been wearing before the murder.

EXHIBIT
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lowed. After entering the house, Tyreke went directly to an upstairs bathroom, and Kenneth sat in the upstairs den. Lynch did not enter the house immediately, but remained in the driveway speaking to the third man, who was "looking down at the ground like something was really bothering him."

When Tyreke left the bathroom, he knocked on Christopher's door and told him that "they had just shot a woman." Kenneth joined the conversation and asked Tyreke, "man, what you done got yourself into? You-all done shot a woman?" Tyreke responded, "yeah." Kenneth asked, "where was you-all at?" Tyreke responded, "we went to Little Ronald's house . . . to go get him." Kenneth then asked, "why would you-all go in and try to do something [***4] and rob him or whatever [*347] when he cool with everybody?" Tyreke then said that he "don't care who I get" because "my light's due, my rent due, my girl getting ready to leave," and he was "going to get put out."

As Kenneth, Christopher, and Tyreke were discussing whether the "skinny lady" who had been shot was Ronald's mother or sister, Kenneth heard someone climbing the stairs. As Lynch reached the top of the stairs, he asked Tyreke "why he was telling [Kenneth and Christopher] what they had just done." Although Tyreke told Lynch that Kenneth was "cool" and would not tell anyone, Kenneth said he would have "nothing to do with it," and left the house. Kenneth called Ronald's cellular phone and spoke with Tamika, who was still hysterical over the events she had just witnessed.

On September 5, 2001, a grand jury indicted Lynch for "feloniously [] killing and murdering Belinda Scott," in violation of *Code §§ 18.2-32* and *18.2-10*, "using, attempting to use, or displaying a firearm while committing . . . murder," in violation of *Code § 18.2-53.1*, "breaking and entering in the nighttime while armed with a deadly [***5] weapon, the dwelling house of Belinda Scott, with intent to commit robbery," in violation of *Code § 18.2-90*, "using, attempting to use, or displaying a firearm while committing . . . armed burglary," in violation of *Code § 18.2-53.1*, "robbing Ronald Scott of U.S. currency, having some value," in violation of *Code § 18.2-58*, and, "using, attempting to use, or displaying a firearm while committing . . . robbery," in violation of *Code § 18.2-53.1*.

Before Kenneth testified at trial, the Commonwealth informed the court that it intended to introduce the statement, "Why you telling them what we just did?" under the adoptive admission exception to the hearsay rule. The parties "argued the matter in chambers," and, based on the Commonwealth's proffer, the court ruled that the statement was admissible.

The jury found Lynch guilty of all six counts as charged in the indictments, and the court sentenced Lynch, in accordance with the jury's recommendation, to thirty years for first-degree [*348] murder, twenty years for statutory burglary, five years for robbery, five years for use of a firearm [***6] while committing murder, five years for use of a firearm while committing robbery, and three years for use of a firearm while committing burglary. The court set the sentences to run consecutively, [**402] resulting in a total active sentence of sixty-eight years in prison. Lynch appeals.

## II. ANALYSIS

On appeal, Lynch contends that the trial court erroneously admitted the statement, "Why you telling them what we just did?" coupled with the substance of the preceding conversation between Kenneth, Tyreke, and Christopher, under the adoptive admission exception to the hearsay rule, reasoning that the evidence was insufficient to demonstrate that Lynch had overheard enough of the conversation to understand what was being discussed. For the reasons that follow, we disagree.

### A.

"The admissibility of evidence is within the broad discretion of the trial court, and a ruling will not be disturbed on appeal in the absence of an abuse of discretion. '" *Gonzales, 45 Va. App. at 380, 611 S.E. 2d at 618* (quoting *Blain v. Commonwealth, 7 Va. App. 10, 16, 371 S.E. 2d 838, 842, 5 Va. Law Rep. 356 (1988)*). "However, 'by definition, when the trial court makes an error of law, an abuse of discretion [***7] occurs. '" Id. (quoting *Bass v. Commonwealth, 31 Va. App. 373, 382, 523 S.E. 2d 534, 539 (2000)*).

Hearsay evidence is inadmissible unless it falls within one of the recognized exceptions to the hearsay rule. *Clay v. Commonwealth, 33 Va. App. 96, 104, 531 S.E. 2d 623, 626-27 (2000)* (en banc); see also *West v. Commonwealth, 12 Va. App. 906, 909, 407 S.E. 2d 22, 23, 8 Va. Law Rep. 160 (1991)*. And, if the admissibility of a hearsay statement is conditioned upon a finding of certain predicate facts, the party seeking to admit the hearsay evidence must prove, by a preponderance of the evidence, each of those qualifying factors. See *Rabeiro v. Commonwealth, 10 Va. App. 61, 64-65, 389 S.E. 2d 731, 733, 6 Va. Law Rep. 1762 (1990)* ("On factual [*349] issues relating to the admissibility of evidence, the burden of persuasion is proof by a preponderance of the evidence."); see also *Doe v. Thomas, 227 Va. 466, 472, 318 S.E. 2d 382, 386 (1984)* (noting that the party seeking to have a hearsay declaration admitted "must clearly show" that the evidence falls within an exception to the hearsay rule); *Neal v. Commonwealth, 15 Va. App. 416, 420-21, 425 S.E. 2d 521, 524, 9 Va. Law Rep. 614 (1992)*

[***8] ("The party seeking to rely upon an exception to the hearsay rule has the burden of establishing admissibility."). [1] These "antecedent facts" must be "determined by the court, and not by the jury." *Mullins v. Commonwealth, 113 Va. 787, 791, 75 S.E. 193, 195-96 (1912)* (internal quotations omitted); see also *Rabeiro, 10 Va. App. at 64, 389 S.E. 2d at 732* ("The factual determinations which are necessary predicates to rulings on the admissibility of evidence and the purposes for which it is admitted are for the trial judge and not the jury.").

1 Lynch, however, argues that the "clearly show" language from *Doe* implies that the proponent of a hearsay statement must prove, by clear and convincing evidence, each of the elements needed for application of an exception to the hearsay rule. Neither this Court nor the Virginia Supreme Court has ever applied a clear and convincing standard of proof where the proponent of a statement seeks to admit that evidence under an exception to the hearsay rule. Rather, we interpret the "clearly show" language as merely restating the general proposition that the proponent of a hearsay statement has the burden of proving its admissibility, including proving, by a preponderance of the evidence, each of the facts necessary to support application of the appropriate hearsay exception.

[***9] When deciding whether the proponent of the hearsay statement has sustained his burden of proving the necessary predicate facts, "the trial court, acting as a fact finder, must evaluate the credibility of the witnesses, resolve the conflicts in their testimony and weigh the evidence as a whole." *Albert v. Commonwealth, 2 Va. App. 734, 738, 347 S.E. 2d 534, 536, 3 Va. Law Rep. 297 (1986)*. Thus, the trial court's determination that these factual prerequisites have been met "'is to be given the same weight by the appellate court as is accorded the finding of fact by a jury.'" Id. (quoting *Witt v. Commonwealth, 215 Va. 670, 674, 212 S.E. 2d 293, 296-97 (1975)*); see also *Rabeiro, 10 Va. App. at 64, 389 S.E. 2d at 733*.

[*350] Accordingly, when reviewing a trial court's decision to admit a statement under an exception to the hearsay rule, this [**403] Court must first decide whether the evidence supports the trial court's conclusion that the proponent of the statement established each of the factual prerequisites for application of the designated hearsay exception. If those factual findings are plainly wrong or without evidence to support them, we will reverse the trial [***10] court because it abused its discretion, as a matter of law, in determining that the hearsay exception applied. See *Norfolk & Western Ry. Co. v. Puryear, 250 Va. 559, 563, 463 S.E. 2d 442, 444 (1995)* ("A trial court has no discretion to admit clearly inadmissible evidence because admissibility of evidence depends not upon the discretion of the court but upon sound legal principles." (internal quotations omitted)). If the trial court's factual findings are supported by the evidence, this Court must then determine whether the trial court abused its discretion by admitting the otherwise admissible hearsay statement. See, e.g., *Clay, 33 Va. App. at 107, 531 S.E. 2d at 628* (after determining that the challenged statement fell within the state of mind exception to the hearsay rule, noting that "we must now determine whether . . . the trial court abused its discretion in judging" that "the prejudicial effect of such evidence outweighed its probative value").

Under the circumstances of this case, we hold that the trial court did not clearly err in holding that the Commonwealth carried its burden of proving the required antecedent facts for application [***11] of the adoptive admission exception to the hearsay rule. And, because Lynch has not advanced any other argument in support of his contention that the trial court erred, we hold that the court did not abuse its discretion by admitting the statement into evidence.

B.

One of the established exceptions to the hearsay rule permits the introduction of an out-of-court statement that qualifies as an "adoptive admission." An adoptive admission may [*351] occur either "expressly (*e.g.*, by oral or written statements of the party) or impliedly (*e.g.*, by conduct of the party)." Charles E. Friend, The Law of Evidence in Virginia § 18-49(c) (6th ed. 2003); see also *United States v. Robinson, 275 F.3d 371, 383 (4th Cir. 2001)* ("A party may manifest adoption of a statement in any number of ways, including [through] words, conduct, or silence."); *29A Am. Jur. 2d Evid. § 797* (2004) ("Adoption or acquiescence may be manifested in any appropriate manner," including when the party "expressly agrees to or concurs in an oral statement made by another," "hears the statement and later on essentially repeats it," "utters an acceptance or builds upon [***12] the assertions of another," "replies by way of rebuttal to some specific points raised by another, but ignores further points which he or she has heard the other make," or "reads and signs a written statement prepared by another.").

The Commonwealth contends that the adoptive admission in this case is analogous to an adoptive admission by silence. In Virginia, it is well established that "an admission by silence is . . . a form of adoptive admission." Friend, supra, at § 18-49(e). [2] However, the "very distinct requirements" [3] [**404] needed to establish admissibility of an adoptive admission [*352] by silence are not directly applicable in the context of other

forms of adoptive admissions. See id. That is, the specific antecedent factors that must be proven to admit an adoptive admission by silence stem from the "uncertainty which attends interpreting a person's silence as an implied admission of the statement made." *29A Am. Jur. 2d Evid. § 799* (2004). When an individual is not silent but, instead, affirmatively responds to a statement, those same concerns are not implicated.

2 As noted by the Virginia Supreme Court,

> when a statement tending to incriminate one accused of committing a crime is made in his presence and hearing and such statement is not denied, contradicted, or objected to by him, both the statement and the fact of his failure to deny are admissible in a criminal proceeding against him, as evidence of his acquiescence in its truth.

*James v. Commonwealth, 192 Va. 713, 718, 66 S.E. 2d 513, 516 (1951)*; see also *Tillman v. Commonwealth, 185 Va. 46, 56, 37 S.E. 2d 768, 773 (1946)* ("It is well settled that statements made in the presence and hearing of another, to which he does not reply, are admissible against him as tacit admissions of their truth or accuracy, when such statements are made under circumstances naturally calling for reply if their truth is not intended to be admitted."). "This principle rests upon that universal rule of human conduct which prompts one to repel an unfounded imputation or claim." *Tillman, 185 Va. at 56, 37 S.E. 2d at 773*; see also *Sanders v. Newsome, 179 Va. 582, 592, 19 S.E. 2d 883, 887 (1942)*.

[***13]

3 If a party seeks to prove an adoptive admission by silence, the proponent of the statement must establish the following factual conditions: (1) the statement must have been heard by the party alleged to have acquiesced in the statement, (2) the party must have understood that "he was being accused of complicity in a crime," (3) "the circumstances under which the statement was made must have been such as would afford him an opportunity to deny or object," and (4) "the statement must have been such, and made under such circumstances, as would naturally call for a reply." *Owens v. Commonwealth, 186 Va. 689, 699, 43 S.E. 2d 895, 899 (1947)* (internal quotations omitted); accord *Dowden v. Commonwealth, 260 Va. 459, 469, 536 S.E. 2d 437, 442 (2000)*; *Baughan v. Commonwealth, 206 Va. 28, 32, 141 S.E. 2d 750, 752 (1965)*; *Strohecker v. Commonwealth, 23 Va. App. 242, 252, 475 S.E. 2d 844, 849 (1996)*. Overall, the "essential inquiry in each case is whether," under the totality of the circumstances, "a reasonable person would have denied" the statement. *Knick v. Commonwealth, 15 Va. App. 103, 107, 421 S.E. 2d 479, 481, 9 Va. Law Rep. 342 (1992)*; see also *Weinbender v. Commonwealth, 12 Va. App. 323, 325, 398 S.E. 2d 106, 107, 7 Va. Law Rep. 1028 (1990)*.

[***14] Thus, if the individual alleged to have adopted a statement manifests his assent to a statement by some form of conduct other than silence, the inquiry changes slightly. Under those circumstances, the trial court need only determine whether, in light of the resulting verbal or non-verbal response, "' there are sufficient foundational facts from which the jury could infer that the defendant heard, understood, and acquiesced in the statement. "' *Robinson, 275 F.3d at 383* (quoting *United States v. Jinadu, 98 F.3d 239, 244 (6th Cir. 1996)*).

C.

On appeal, Lynch argues that the statement, "Why you telling them what we just did?," coupled with the other parties' statements discussing the murder, does not fall [*353] within the adoptive admission exception to the hearsay rule because there is no evidence that Lynch overheard the entire conversation between Kenneth, Christopher, and Tyreke. At the outset, however, we must clarify that this case does not involve an adoptive admission by silence. The evidence does not show that, while Kenneth, Christopher, and Tyreke were discussing the murder, Lynch approached the conversation and remained silent. Rather, he joined [***15] the conversation and affirmatively stated, "Why you telling them what we just did?" Thus, this is not a case where the individual alleged to have adopted a statement "failed to reply" to a direct or indirect accusation of wrongdoing. [4] Rather than requesting introduction of a statement and Lynch's resulting *silence*, the Commonwealth sought to introduce a statement and Lynch's resulting *verbal response*. As a result, the four factors set forth in *Owens* are not directly applicable under the circumstances of this case.

4 "For the adoptive admission exception to apply, a direct accusation is not needed." *Strohecker, 23 Va. App. at 254, 475 S.E. 2d at 850.*

We must determine, rather, whether the Commonwealth presented sufficient foundational evidence from which the trial court could infer that Lynch heard, under-

stood, and agreed with the substance of the conversation between Kenneth, Christopher, and Tyreke. Under the circumstances of this case, we hold that the trial court could reasonably [***16] have inferred that Lynch heard enough of the conversation to know that the other men were discussing the murder, understood that he had been implicated in that murder, and, by his verbal statement, manifested his agreement with the fact that he had been involved in the murder.

First, the Commonwealth presented sufficient evidence from which it could be inferred that Lynch overheard at least a portion of the conversation between Kenneth, Christopher, and Tyreke. Although Lynch was outside when the conversation began, Kenneth testified that, while they were discussing the "skinny woman," he heard Lynch coming up the stairs. Lynch then entered the conversation and asked, "Why you [*354] telling them what we just did?" This conversation occurred in Tyreke's home, immediately after he and Lynch returned from the crime scene. Considering the context, time, and location of the discussion, the trial court could reasonably have inferred that Lynch heard enough of the conversation to [**405] understand that the other men were talking about the murder in which he had just participated. See *Weinbender v. Commonwealth, 12 Va. App. 323, 326, 398 S.E. 2d 106, 108, 7 Va. Law Rep. 1028 (1990)* (affirming admission [***17] of hearsay statement where "the trial judge could have inferred that the defendant heard the statement"); *Stumpf v. Commonwealth, 8 Va. App. 200, 206, 379 S.E. 2d 480, 484, 5 Va. Law Rep. 2524 (1989)* ("The record shows that [the declarant's] statements . . . were made with the knowledge and consent of [the defendant], who, *by reasonable inference*, was with [the declarant] when she made them."); see also *United States v. Tedder, 801 F.2d 1437, 1451 (4th Cir. 1986)* (where jury heard "conflicting testimony about the conditions under which [an accomplice] made his incriminating statements," including testimony that the defendant "was within earshot" but about "ten feet away," "the jury was entitled to conclude that [the defendant] heard and adopted [the accomplice's] account"); *State v. Thompson, 332 N.C. 204, 420 S.E. 2d 395, 402 (N. C. 1992)* (rejecting argument that the "person making the statement [must] be in the physical presence of the defendant, concluding instead that "the proper focus is on the defendant's ability to hear and understand the statement being made").

Second, the trial court could reasonably have inferred that Lynch [***18] understood not only the nature of the conversation, but also the fact that he had been implicated in the shooting. Specifically, Lynch entered the conversation and immediately asked, "Why you telling them what *we* just did?" Considering Lynch's use of the word "we," the trial court could reasonably have concluded that Lynch understood not only that the murder was being discussed, but that he, too, had been fingered as a participant in the crime.

Third, the trial court could reasonably have inferred that Lynch's statement, "Why you telling them what we just did?," [*355] was sufficient to indicate his agreement that he had been involved in the murder. Again, Lynch's use of the word "we" is telling. Rather than stating, "Why you telling them what *you* just did," Lynch asked, "Why you telling them what *we* just did?" Ordinarily, an individual accused of murder would take reasonable steps to deny his participation in that murder. Here, however, Lynch did not merely fail to deny his participation in the shooting - he, by his own words, affirmatively implicated himself. Thus, the trial court could reasonably have concluded that Lynch's statement was sufficient to indicate his agreement [***19] that he had been involved in the murder. See, e.g., *Robinson, 275 F.2d at 383* (affirming trial court's admission of a conversation between the defendants where the parties discussed a murder they had just committed, noting that, "had either [party] disagreed with a statement by the other, he would have made his disagreement known"); see also *United States v. Handy, 668 F.2d 407, 408 (8th Cir. 1982)* (holding that defendant's interjection, "Yes, we did," during co-conspirator's discussion of an attempted murder was an adoptive admission); cf. *Clemmer v. Commonwealth, 208 Va. 661, 665, 159 S.E. 2d 664, 667 (1968)* (holding that, where an officer asked the defendant "about his drinking," and the defendant responded that it "wasn't any of [the officer's] business what he had been drinking," this statement was "not such that one can infer from it a tacit admission by defendant that he had been drinking, or was under the influence of alcohol," reasoning that the defendant's "answer that it was none of the trooper's business what he had been drinking can be interpreted as an insolent answer to an officer of the law, but it cannot [***20] be construed as a tacit admission that defendant had been drinking alcohol or was under the influence of alcohol").

Finally, we note that any residual doubt as to whether Lynch agreed that he had participated in the murder went to the weight of the evidence, not its admissibility. See *Thompson, 420 S.E. 2d at 403* ("A response which is not the equivalent of a denial may indicate acquiescence and be considered by the jury for what it is worth."); see also *United States v.* [*356] *Tocco, 135 F.3d 116, 128-29 (2d Cir. 1998)* (holding that defendant's nod when witness told him that defendant's accomplice was talking about their involvement in an arson constituted an adoptive admission, reasoning that the statement was "exactly the type of statement that an innocent person, under these circumstances, [**406] would normally

deny," but that the meaning of the nod was "ultimately a question for the jury to assess").

III. CONCLUSION

For these reasons, we hold that the trial court did not err in admitting Lynch's statement and the substance of the preceding conversation under the adoptive admission exception to the hearsay rule. Accordingly, we affirm his convictions. [***21]

Affirmed.

**DISSENT BY:** Benton

**DISSENT**

Benton, J., dissenting.

"As a general rule, hearsay evidence is incompetent and inadmissible." *Neal v. Commonwealth, 15 Va. App. 416, 420, 425 S.E. 2d 521, 524, 9 Va. Law Rep. 614 (1992)*. Furthermore, a codefendant's out-of-court statement implicating a defendant in a crime is a category of hearsay that is presumptively and inherently unreliable. *Lilly v. Virginia, 527 U.S. 116, 131, 144 L. Ed. 2d 117, 119 S. Ct. 1887 (1999)*. In view of these principles, "[a] party who relies upon an exception to an exclusionary rule of evidence bears the burden of establishing admissibility." *Doe v. Thomas, 227 Va. 466, 472, 318 S.E. 2d 382, 386 (1984)*.

At a pretrial hearing, the trial judge considered Kenneth Parker's testimony as proffered. Parker testified that Gregory Williams, Lester B. Lynch, and a "younger fellow" arrived at Williams's brother's residence in the evening. Williams exited the car and rang the doorbell. After Williams's brother came downstairs and opened the door, Williams and his brother went upstairs followed by Parker. Lynch was outside the building talking to the "younger fellow."

Based on Parker's proffered [***22] testimony, the trial judge ruled that statements Williams made to his brother and Parker [*357] inside the residence the day the killing occurred were admissible. In pertinent part, Parker's testimony established the following:

> A. When I followed [Williams] upstairs, I went to the den. He went to his brother's room.
>
> Q. So you weren't in the hallway then; is that correct?
>
> A. Not at that time. I didn't go into the hallway until [Williams's] brother . . . came out of the room. And when he came out of the room, I went to the bathroom. When I went to the bathroom, I overheard [Williams] telling [his brother] what had happened.
>
> Q. So this conversation took place in the bedroom?
>
> A. No, it took place in the hallway. His brother came into the hallway because his girlfriend was in the room. She was going into labor.
>
> Q. At this time [Williams] tells his brother what has happened; is that correct?
>
> A. The little young boy downstairs is trigger happy.
>
> Q. My question is he told his brother what had happened?
>
> A. Yeah.
>
> Q. At that point you don't see Mr. Lynch, do you?
>
> A. No, not at that time. He didn't come up the stairs right then. [***23] He didn't come up the stairs until ....
>
> He didn't come up the stairs --like when I got in the conversation like after I overheard [Williams], what he was telling his brother, that's when I got in the conversation, and that's when [Lynch] came up the stairs.
>
> Q. In fact, you've testified before you don't know what he heard, do you?
>
> A. What who heard?
>
> Q. [Lynch].
>
> A. I can't hear for him. You know what I am saying? Only thing I can do is tell you what [Lynch] said. As far as what he heard, them his ears. I can't tell you exactly what he heard. Only thing I know is [Lynch] asked [Williams] [*358] why was he telling [Williams's brother] what they had just done.
>
> * * * * * * *
>
> A. Yeah. I mean, I didn't put the exact point of time, whether he came when

[Williams] was talking or whether he came when I was talking. I didn't say that in my testimony at [Williams's] trial. I'm telling you [Lynch] came upstairs when we [**407] was talking and he asked [Williams] why was he telling us that. At what point what he heard or whether I was talking or whether [Williams] was talking, I don't know. You know what I am saying? You're asking me to tell [***24] you something that I don't know.

Q. Did he ever say what that was?

A. What what was?

Q. You said, why are you telling him what we just done? Did he ever say what that was that they had just done?

A. No, but [Williams] responded back to him and said, this my brother, and [Parker] is cool. He ain't going to say nothing. Eventually he was talking about what he was telling us about.

Q. So you assume that, right?

A. Yeah. Well, I am assuming.

The trial judge ruled "that the matter will be an adoptive admission." Over Lynch's hearsay objection, Parker later testified at trial as follows:

Q. What starts to happen when you get upstairs?

A. When I got in the den area, [Williams] had went to the bathroom. He came out and knocked on his brother's door, and he starts talking to his brother. He was telling him about what they had just done. So I was in the den area. I could hear basically what they were saying.

Q. Did you have any problem hearing anything that was being said?

A. No. And I heard [Williams] say that they had just shot a woman. So when I heard the part that they had just shot [*359] a woman, that's what really, really, [***25] you know, gripped my attention.

So I came out of the den, and I was like, man, what you done got yourself into? You-all done shot a woman? And [Williams] was like, yeah. So I was like, where was you-all at? He was like, we went to [Ronald Scott's] house. . . .

He said we went to go get [Scott]. And I was like, why would you-all go in and try to do something and rob him or whatever when he cool with everybody? You know, he hang out with us. And [Williams] was like, man, I'm going to get put out. My light's due, my rent due, my girl getting ready to leave and I don't care who I get.

So I said, well, who was the lady that you-all shot? So he was like, it was a skinny lady. I said, that man's mom is, you know, skinny. And he was like, no, it won't his mom. It probably was his sister. I said, what difference does it make if it was his sister or his mom, you know? And at that time [Lynch] was coming up the stairs.

On cross-examination, Parker repeats that Lynch is outside of the residence when Parker, Williams, and Williams's brother entered it.

Q. And you get upstairs --

A. Right.

Q. --and there is a conversation that goes on. [Williams] goes into the [***26] bathroom. You go into the den. Then [Williams] and his brother engage in a conversation.

A. Correct.

Q. At that time [Williams] tells him that they've just killed a woman?

A. Yeah. He said --these words is his exact words. He said, "That young kid downstairs leaning on the car is trigger happy." And [Williams's] brother was like, what you talking about?" And [Williams] like, "Man, he just shot a lady."

Q. And at that point, the person that you're describing as Lester Lynch is not in the house, is he?

[*360] A. No. He didn't come up until --

* * * * * * *

Q. And then at some point while you're talking to [Williams], the person comes upstairs and says, "Why are you telling him what we just done?"

A. Not the person. Him. The gentleman right there, Mr. Lester Lynch. He came up the stairs and asked him, he said, "Why are you telling them what we just done?"

Q. Did he ever say why you telling them why we went to kill someone?

A. No. He didn't say nothing about that. He asked him --

Q. Did he ever --

A. [Williams] had already told us that someone had got killed. And [Lynch] [**408] walked up and asked him why was he telling us what [***27] they had just done.

Q. But you said [Williams] told his brother we had been on a sting, right? Isn't that what you said?

A. Yes.

Q. And you said --

A. And [Williams] told them what happened.

Q. Didn't you just say a sting could be anything?

A. Like a sting is slang for robbing or you can go steal something to get away with it. I got away with that sting. You could rob somebody. You could plan to rob somebody and say I'm going on a sting tonight, you know. You don't know. It could be stealing radios out cars, anything. A sting is going to do something wrong, period.

Q. So he never said it was killing anyone?

A. [Williams] said they had shot someone. He said they just shot --

Q. But that's what you're saying that [Williams] said?

A. Yeah. [Williams] said they had just killed somebody.

The Commonwealth, which was the party '" seeking to have hearsay declarations of a witness admitted as an exception to the general rule[,] must clearly show that [the hearsay declarations] [*361] are within the exception. '" Id. (citation omitted). I would hold that the Commonwealth failed to meet its burden and that the trial judge erroneously [***28] admitted Parker's recitation of Williams's statements as "an adoptive admission" by Lynch. When a statement is offered as an adoptive admission, a primary inquiry the trial judge must make is "whether there are sufficient foundational facts from which the jury could infer that the defendant heard, understood, and acquiesced in the statement." *United States v. Jinadu, 98 F.3d 239, 244 (6th Cir. 1996)*. To satisfy this exception to the hearsay rule, the evidence must prove the "statement tending to incriminate one accused of committing a crime is made in his presence and hearing." *James v. Commonwealth, 192 Va. 713, 718, 66 S.E. 2d 513, 516 (1951)*.

Simply put, the Commonwealth's evidence did not prove the predicate facts necessary to invoke the hearsay exception. See *Sapp v. Commonwealth, 263 Va. 415, 424, 559 S.E. 2d 645, 650 (2002)* (holding that the proponent of evidence, which is claimed to fall within an exception to the hearsay rule, has the burden "to lay a proper predicate for its introduction"); *United States v. Robinson, 275 F.3d 371, 383 (4th Cir. 2001)* (noting that under the federal rules a primary determination [***29] is "whether there are sufficient foundational facts from which the jury could infer that the defendant heard, understood, and acquiesced in the statement"). Both case law and commonsense dictate that for a defendant to have adopted an admission as his own "foundational facts" must first establish that the defendant heard and understood the statement.

No evidence proved Williams made his statement in Lynch's "presence and hearing." *James, 192 Va. at 718, 66 S.E. 2d at 516*. Indeed, the evidence established just the opposite: that Lynch was not in the presence of the three men when Williams spoke about the killing. Parker testified he was in the bathroom when Williams first mentioned the killing to his brother. By Parker's own testimony, he joined the conversation only after he emerged from the bathroom in the den, and he was aware Lynch had not then entered the residence: "he [Lynch] didn't come up the stairs." Obviously, Lynch could [*362] not have adopted the statement as his own if he never heard it. It is simply speculation to say at what point, if at all, Lynch adopted any of Williams's comments. Yet, the jury was allowed to attribute to Lynch all

of Williams's statements. [***30] In view of the evidence, it is just as likely that Lynch was motivated to speak merely because he detected a heated argument as he ascended the stairs. For these reasons, I would hold that the evidence failed to prove that Lynch heard Williams's conversation and that, therefore, the trial judge erred in admitting into evidence Williams's statements about the killing.

I would further hold that the admission of the hearsay evidence was not harmless. This inadmissible evidence was so prejudicial [**409] to Lynch that we cannot reasonably conclude that it did not affect the verdict.

> "If one cannot say, with fair assurance, after pondering all that happened without stripping the erroneous action from the whole, that the judgment was not substantially swayed by the error, it is impossible to conclude that substantial rights were not affected. . . . If so, or if one is left in grave doubt, the conviction cannot stand."

*Clay v. Commonwealth, 262 Va. 253, 260, 546 S.E. 2d 728, 732 (2001)* (quoting *Kotteakos v. United States, 328 U.S. 750, 764-65, 90 L. Ed. 1557, 66 S. Ct. 1239 (1946)).* Applying this test, the United States Supreme Court has held that "the principle [***31] of Kotteakos [means] that when an error's natural effect is to prejudice substantial rights and the court is in grave doubt about the harmlessness of that error, the error must be treated as if it had a 'substantial and injurious effect' on the verdict." *O'Neal v. McAninch, 513 U.S. 432, 444, 130 L. Ed. 2d 947, 115 S. Ct. 992 (1995).* "The inquiry cannot be merely whether there was enough to support the result, apart from the phase affected by the error. It is rather, even so, whether the error itself had substantial influence. If so, or if one is left in grave doubt, the conviction cannot stand." *Kotteakos, 328 U.S. at 765.* Consistent with these principles, the Supreme Court of Virginia has held that even if "the other evidence amply supports the . . . [*363] verdicts, [error is not harmless when] the disputed [evidence] may well have affected the . . . decision." *Cartera v. Commonwealth, 219 Va. 516, 519, 248 S.E. 2d 784, 786 (1978).* In short, our "harmless error analysis . . . [is not] simply a sufficiency of the evidence analysis." *Hooker v. Commonwealth, 14 Va. App. 454, 458, 418 S.E. 2d 343, 345, 8 Va. Law Rep. 2979 (1992).*

The inadmissible [***32] evidence had such a substantial influence that we cannot reasonably conclude that it did not affect the verdict. The jury was asked to make a critical credibility determination whether to believe Lynch's alibi witnesses, who placed him somewhere else during the killing, or to believe Scott, Reid, and Parker, whose testimony placed Lynch at the house where the woman was killed. The inadmissible hearsay evidence served to impermissibly buttress the credibility of the Commonwealth's witnesses because the evidence identifying Lynch as being present at the killings was problematic and was marred by a number of inconsistencies.

For example, Reid, who was present in the house when the killing occurred, testified that the man who entered the room with Williams wore a mask. After the killing, she could not identify Lynch from photographs. She only later identified him when she saw him in court as the defendant. Scott, on the other hand, was in the same room as Reid but testified that the man did not wear a mask. He did not initially identify the man as Lynch but did so at trial.

Significantly, the record indicates that shortly after the killing, Scott identified Parker, not Lynch as one of [***33] the persons who entered the residence when his mother was killed. He admitted at trial that he first told police that Williams, Williams's brother, and Parker may have been the ones who robbed him. This identification was significant because Scott and Parker knew each other quite well. Scott also knew Williams. The jury may not have believed this curious change in Scott's memory and identification had they not learned about Lynch's "adopted" confession that Parker related at trial.

[*364] Scott also testified that Parker twice had visited him at his mother's house earlier that day. The first time, Parker purchased heroin. He later returned to the house and demanded a return of his money, accusing Scott of selling bad heroin. Scott testified that during both occasions Williams, whom he knew, and Lynch, whom he had not previously met, were in a car waiting for Parker. Conversely, in his testimony, Parker never acknowledged his earlier presence at Scott's mother's house or that he knew Scott had a large amount of money and heroin in the house.

Significantly too, Parker's testimony conflicted with Scott's testimony about Lynch's whereabouts during the day. Whereas Scott testified that Lynch [***34] was waiting for Parker in the car when Parker purchased heroin, Parker testified that he first saw Lynch with [**410] Williams in the early evening and that he accompanied them in the car for just one block because Lynch and Williams had someplace else to go. Parker testified that he next saw Williams and Lynch when they

returned to Williams's brother's residence with a "younger fellow" whom he did not identify. At that time, Williams went upstairs and made his statement about the shooting.

The Commonwealth's use of Parker's testimony to tie Lynch to Williams's statement effectively shifted the focus from Scott's earlier statement to the police that Parker, whom he knew, was indeed the unmasked man in the house during the shooting. When Scott's trial testimony identified Lynch, Parker buttressed Scott's identification by relating Lynch's "adopted" confession. With this change, the jury likely saw Parker as an observer, not a participant. It is, therefore, reasonable to assume that in weighing the evidence the jury gave substantial weight to Parker's testimony relating the confession of Williams and implicating Lynch as being present at the killing. A confession of a perpetrator implicating [***35] the presence of a codefendant at the scene of a crime is inherently prejudicial.

> Clearly, where the principal direct evidence against the accused is the testimony of an accomplice, the credibility of that witness will be a significant factor in the jury's determination [*365] of the accused's level of culpability. [The Supreme Court has] consistently held that this credibility determination rests with the jury and is not subject to challenge on appeal merely because the testimony is self-serving, results from a favorable plea arrangement, or because the witness is himself a felon. However, here the issue is not the credibility of the witness, but rather the potential for harm caused by the erroneous admission of evidence which tends to support the jury's credibility determination. In that context we must presume that such evidence had the potential to influence the jury into accepting the properly admitted evidence as more credible and, thus, to taint the jury's determination of the facts.

*Lilly v. Commonwealth, 258 Va. 548, 553, 523 S.E. 2d 208, 210 (1999).*

I would hold that it does not plainly appear that the error did not substantially and injuriously affect [***36] the verdict. The evidence, if successful in achieving its purpose, clearly would have affected the verdict. See *Norfolk Ry. & Light Co. v. Corletto, 100 Va. 355, 360, 41 S.E. 740, 742 (1902)* (holding that "it is . . . well settled that if a . . . mistake of the court appears in the record it must be presumed that it affected the verdict of the jury, and is therefore ground for which the judgment must be reversed, unless it plainly appears from the whole record that the error did not affect, and could not have affected, their verdict").

For these reasons, I would reverse the convictions and remand for a new trial.

Positive
As of: December 17, 2016 12:08 PM EST

# Lynch v. Commonwealth

Supreme Court of Virginia

June 8, 2006, Decided

Record No. 052079

**Reporter**
272 Va. 204 *; 630 S.E.2d 482 **; 2006 Va. LEXIS 68 ***

LESTER BERNARD LYNCH, JR. v. COMMONWEALTH OF VIRGINIA

**Prior History:** [***1] FROM THE COURT OF APPEALS OF VIRGINIA.

*Lynch v. Commonwealth, 46 Va. App. 342, 617 S.E.2d 399, 2005 Va. App. LEXIS 310 (2005)*

**Disposition:** Affirmed.

## Core Terms

admissible, conversation, stairs, hearsay rule exception, adoptive admission, preponderance, predicate, proffer, words

## Case Summary

**Procedural Posture**
Defendant appealed from a judgment of the Court of Appeals, Virginia, which court had affirmed his convictions for murder, armed robbery, and related crimes and denied a rehearing en banc. Defendant argued that the appellate court had erred in ruling that the testimony of a prosecution witness was admissible because the prosecution had shown, by a preponderance of the evidence, that the adoptive admission hearsay exception applied.

**Overview**
Defendant and one accomplice visited a third party, and the accomplice stood at the top of the stairs, telling the third party what he and defendant had done. Defendant came into the home and up the stairs, asking the accomplice why he told what they had done. The accomplice and the third party did not testify at trial, but the statement of the accomplice implicating defendant was admitted as an adoptive admission against him. On review, the court rejected his claim that the "clear and convincing" standard of proof applied, ruling instead that when a party relied on a exception to the hearsay rule to admit evidence, the applicable burden of proof was a "preponderance of the evidence." Thus, the trial court did not err in admitting the statement of the accomplice. The rule, the court explained, was based on the theory that the natural reaction of someone hearing an untrue statement accusing him of committing a crime was to deny it. Defendant, however, did not deny the statement. The court also concluded that under the facts, defendant had heard enough of the statement to have understood it. His words and conduct supplied the predicate facts for the admission of the statement.

**Outcome**
The court affirmed the appellate court's judgment.

## LexisNexis® Headnotes

Criminal Law & Procedure > Juries & Jurors > Province of Court & Jury > Factual Issues

Criminal Law & Procedure > Juries & Jurors > Province of Court & Jury > Legal Issues

Criminal Law & Procedure > Juries & Jurors > Province of Court & Jury > Weight of Evidence

Evidence > ... > Hearsay > Exceptions > General Overview

Evidence > Burdens of Proof > Preponderance of Evidence

***HN1*** A party relying upon an exception to the hearsay rule for the admissibility of evidence bears the burden of persuading the court that the evidence falls within the exception. The standard of proof to meet that burden is by a preponderance of the evidence, not by the higher "clear and convincing" standard. Factual questions must usually be resolved to determine whether [illegible] of the evidence has carried that burden.

Patrick Genova

antecedent or predicate facts are to be determined by the trial court alone. If the court admits the evidence, the credibility of the witnesses and the weight of the evidence are to be determined by the jury.

Criminal Law & Procedure > Trials > Burdens of Proof > General Overview

Evidence > ... > Hearsay > Exceptions > General Overview

*HN2* One seeking to have hearsay declarations of a witness admitted as an exception to the general rule must clearly show that they are within the exception. A party who relies upon an exception to an exclusionary rule of evidence bears the burden of establishing admissibility.

Evidence > ... > Exemptions > Statements by Party Opponents > Adopted Statements

*HN3* The general rule that when a statement accusing one of the commission of an offense is made in his presence and hearing and is not denied or contradicted by him, both the statement and the fact of his failure to deny are admissible in a criminal proceeding against him, as evidence of his acquiescence in its truth, is based on the theory that the natural reaction of one accused of a crime is to deny the accusation if it is unjust or untrue. The accusation and his silence thereunder to be admissible must, however, have been under such circumstances as would naturally call for a reply or denial and such as would afford a favorable opportunity for denial. The hearsay character of the incriminating statement made to the accused would render it inadmissible, except for the fact that the statement is not offered in evidence as proof of a fact asserted but as a predicate to the showing of the reaction of the accused thereto.

Criminal Law & Procedure > Trials > Burdens of Proof > Prosecution

Evidence > ... > Exemptions > Statements by Party Opponents > Adopted Statements

Evidence > Burdens of Proof > Preponderance of Evidence

*HN4* Most of the adoptive admissions that the Supreme Court of Virginia has considered have been characterized as tacit admissions or admissions by silence. In such cases, the Commonwealth of Virginia has the burden of establishing, by a preponderance of the evidence, the predicate facts that (1) the defendant must have heard the incriminating statements, (2) he must have understood that they accused him of complicity in a crime, (3) the circumstances afforded him a fair opportunity to deny or object, and (4) the circumstances would naturally call for a reply.

Criminal Law & Procedure > Trials > Burdens of Proof > Prosecution

Evidence > ... > Exemptions > Statements by Party Opponents > Adopted Statements

*HN5* A statement may become admissible under the adoptive admission exception to the hearsay rule upon a showing of its tacit adoption by a party, as well as by more overt demonstrations of adoption. A party may manifest adoption of a statement made by another in any number of ways, including words, conduct, or silence. In some cases, the defendant's words or conduct may supply most, if not all, of the predicate facts that the Commonwealth of Virginia must prove to bring the evidence within the adoptive admission exception.

**Counsel:** L. Steven Emmert (Sykes, Bourdon, Ahern & Levy, on briefs), for appellant.

Rosemary V. Bourne, Assistant Attorney General (Robert F. McDonnell, Attorney General, on brief), for appellee.

**Judges:** OPINION BY SENIOR JUSTICE CHARLES S. RUSSELL.

**Opinion by:** CHARLES S. RUSSELL

## Opinion

**[**483] [*206]** Present: Hassell, C.J., Lacy, Koontz, Kinser, Lemons, and Agee, JJ., and Russell, S.J.

OPINION BY SENIOR JUSTICE CHARLES S. RUSSELL.

Lester Bernard Lynch, Jr., was convicted by a jury in the Circuit Court of the City of Norfolk of first-degree murder, armed robbery, burglary and three firearms offenses. He was sentenced to a total of 68 years confinement. The Court of Appeals affirmed the convictions, *Lynch v. Commonwealth, 46 Va. App. 342, 617 S.E.2d 399 (2005)*, and denied a petition for rehearing en banc. We awarded Lynch an appeal. There are two assignments of error: (1) that the Court of Appeals erred in ruling that certain testimony was admissible against Lynch as an adoptive admission, and (2) that the Court of Appeals erred in ruling that a litigant

offering evidence under an exception to the hearsay rule has the burden of showing that the exception applies by a preponderance of the evidence, rather than by clear and convincing evidence.

*Facts*

Under familiar principles of appellate review, the facts will be stated [***2] in the light most favorable to the Commonwealth, the prevailing party at trial. On June 9, 2001, Ronald Scott and Tamika Reid were visiting Scott's mother, Belinda Scott, in her home. Three men entered the house and struck Ronald Scott repeatedly with a gun, robbed him, shot Belinda Scott in the face, fatally, and stole other items from the house before leaving. The surviving witnesses, Ronald Scott and Tamika Reid, both identified the defendant, Lynch, as one of the three perpetrators. Scott also identified Gregory Williams as another of the trio, but neither could identify the third man.

At trial, the court heard the testimony of Kenneth Parker out of the presence of the jury by agreement of counsel. Parker's evidence was proffered by the Commonwealth to lay a foundation for an adoptive admission. At the conclusion of the proffer, the court ruled that Parker's testimony would be admitted under an exception to the hearsay rule. Because this appeal concerns only that ruling, we will confine our consideration of the evidence to the pertinent parts of Parker's proffered testimony on which the ruling was based.

[*207] Parker testified that he was visiting Christopher Williams, Gregory's brother, [***3] on the day of the crimes. Parker was standing at the head of the stairs in Christopher's house, engaged in a conversation with Christopher, who was standing in his bedroom door. Gregory Williams had recently arrived and was also present. Gregory was telling Christopher what had just happened at the Scott house. Parker, who knew Ronald Scott and his mother, entered the conversation. Gregory said that "they had just come from off a sting at Little Ronald's house" and that there was "another little young guy downstairs standing at the car" who was "trigger happy" and had "shot a woman." While Gregory was telling what had happened at the Scott house, Lynch came up the stairs and said, "why is you telling them what we just done?"

On cross-examination, Parker elaborated. He testified that he did not know exactly when Lynch entered the house and began overhearing the conversation, but "he might have been standing at the bottom of the stairs listening to us the whole time." In any event, the conversation had lasted long enough to go into some detail. Parker, after hearing about the murder, said to Gregory, "you know, that was probably that man's mama." Gregory replied, "no, it was a skinny [***4] lady." Parker said that Ronald Scott's mother was "skinny." Gregory said, "probably was his sister." Parker testified that he then said, "his sister and them don't even stay there. His mama stay there. You all probably hurt that man's mama, you know what I am saying? As I was saying that to him, [Lynch] was coming up the stairs . . . . I am quite sure he was hearing everything." It was at that point that Lynch asked Gregory "why was he telling us that . . . what we just done." At the conclusion of the proffer, the trial court overruled Lynch's hearsay objection and found that Parker's testimony [**484] showed that Lynch had heard the statements that incriminated him, fully understood them, had a full opportunity to deny them, but instead acquiesced in them. The court admitted the evidence and Parker's testimony before the jury was substantially the same as the proffer. Neither Gregory Williams nor Christopher Williams testified at the trial.

*Analysis*

***HN1*** A party relying upon an exception to the hearsay rule for the admissibility of evidence bears the burden of persuading the [*208] court that the evidence falls within the exception. * We have consistently held that the standard of proof to meet [***5] that burden is by a preponderance of the evidence, not by the higher "clear and convincing" standard. *Bloom v. Commonwealth, 262 Va. 814, 821, 554 S.E.2d 84, 87 (2001)*; *Witt v.*

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* Lynch contends that the standard of proof required to place evidence within the hearsay exception is "clear and convincing," not a simple preponderance. Lynch argues that we established such a standard in *Doe v. Thomas, 227 Va. 466, 318 S.E.2d 382 (1984)*, where we quoted from a Texas Supreme Court decision, *Skillern and Sons, Inc. v. Rosen, 359 S.W.2d 298, 301, 5 Tex. Sup. Ct. J. 538 (Tex. 1962)*, as follows: ***HN2*** "One seeking to have hearsay declarations of a witness admitted as an exception to the general rule must clearly show that they are within the exception." We referenced the Texas case, not to establish a standard of proof for admissibility, but to illustrate that "[a] party who relies upon an exception to an exclusionary rule of evidence bears the burden of establishing admissibility." *Doe, 227 Va. at 472, 318 S.E.2d at 386*. Nothing we said in Doe stands for the proposition that the standard of proof required to establish the underlying facts necessary to admit a statement under an exception to the hearsay rule is other than proof by a preponderance.

Commonwealth, 215 Va. 670, 674, 212 S.E.2d 293, 296 (1975). Factual questions must usually be resolved to determine whether the proponent of the evidence has carried that burden, and those antecedent or predicate facts are to be determined by the trial court alone. If the court admits the evidence, the credibility of the witnesses and the weight of the evidence are to be determined by the jury. Bloom, 262 Va. at 821, 554 S.E.2d at 87; Mullins v. Commonwealth, 113 Va. 787, 791, 75 S.E. 193, 195-96, (1912). Therefore, Lynch's second assignment of error is not well taken.

[***6] We now turn to the legal correctness of the trial court's decision to admit the statements of Gregory Williams. In Knight v. Commonwealth, 196 Va. 433, 83 S.E.2d 738 (1954), we said:

> HN3 The general rule that when a statement accusing one of the commission of an offense is made in his presence and hearing and is not denied or contradicted by him, both the statement and the fact of his failure to deny are admissible in a criminal proceeding against him, as evidence of his acquiescence in its truth, is based on the theory that the natural reaction of one accused of a crime is to deny the accusation if it is unjust or untrue. The accusation and his silence thereunder to be admissible must, however, have been under such circumstances as would naturally call for a reply or denial, and such as would afford a favorable opportunity for denial. . . . The hearsay character of the incriminating statement made to the accused would render it inadmissible, except for the fact that the statement [*209] is not offered in evidence as proof of a fact asserted but as a predicate to the showing of the reaction of the accused thereto.

Id. at 436, 83 S.E.2d at 740 [***7] (internal quotation marks omitted).

HN4 Most of the adoptive admissions that we have considered have been characterized as tacit admissions, or admissions by silence. In such cases, the Commonwealth has the burden of establishing, by a preponderance of the evidence, the predicate facts that (1) the defendant must have heard the incriminating statements, (2) he must have understood that they accused him of complicity in a crime, (3) the circumstances afforded him a fair opportunity to deny or object, and (4) the circumstances would naturally call for a reply. Owens v. Commonwealth, 186 Va. 689, 699, 43 S.E.2d 895, 899 (1947). See Welch v. Commonwealth, 271 Va. 558, 564-65, 628 S.E.2d 340, 343 (2006).

HN5 A statement may become admissible under the adoptive admission exception to the hearsay rule upon a showing of its tacit adoption by a party, as well as by more overt demonstrations of adoption. A party [**485] may manifest adoption of a statement made by another in any number of ways, including words, conduct, or silence. United States v. Robinson, 275 F.3d 371, 383 (4th Cir. 2001). In some cases, the defendant's words or conduct may supply most, [***8] if not all, of the predicate facts that the Commonwealth must prove to bring the evidence within the adoptive admission exception. See, e.g., United States v. Jinadu, 98 F.3d 239, 244 (6th Cir. 1996).

*Conclusion*

The trial court and the Court of Appeals determined that this is such a case, and we agree. Although, as Lynch points out, the Commonwealth's evidence places him outside the house when the conversation began among the three men at the head of the stairs, that fact is immaterial in the light of Lynch's subsequent words and conduct. Although we do not know the exact point at which he began to overhear their conversation, he obviously heard enough of it to propel him into the house and up the stairs to confront them. As he was coming up the stairs, Parker was remonstrating with Gregory Williams by saying: "You all probably hurt that man's mama." Lynch's reaction was immediate. Instead of denying that statement, or any of the preceding conversation, he upbraided Gregory for revealing "what we just done." His words: "Why [are] you telling [*210] them" clearly indicate that he had heard and understood the full import of Gregory's statements. Lynch's words [***9] and conduct thus supplied all of the predicate facts required by Owens to render Gregory's statements admissible under the adoptive admission exception to the hearsay rule.

Accordingly, we will affirm the judgment of the Court of Appeals.

Affirmed.

End of Document

*VIRGINIA:*

**IN THE CIRCUIT COURT FOR THE CITY OF NORFOLK**

**LESTER B. LYNCH, #1162173**

**Petitioner,**

**Case No.: CL 17000583-00**

**TRACY RAY, WARDEN,**
**SUSSEX II STATE PRISON**

**Respondent**

**ORDER**

THIS DAY came the Petitioner, Lester B. Lynch, by counsel, for Petitioner's request for a non-suit pursuant to Section 8.01-380 of the Code of Virginia, 1950.

UPON CONSIDERATION WHEREOF, it appearing that the Petitioner has not taken any prior non-suits against respondent, Tracy Ray, Warden, Sussex II State Prison, it is ORDERED that the Petitioner's Writ of Habeas Corpus be, and it hereby is, non-suited.

Enter this 6 day of June, 2017.

Judge

I ASK FOR THIS:

Edward A. Fiorella, Jr.
***Fraim & Fiorella, P.C.***
Town Point Center
150 Boush Street, Suite 600
Norfolk VA 23510

1

Pet-1
AG-1
atty-1
6-7-17

Rosemary V. Bourne
***Senior Assistant Attorney General***
Office of the Attorney General
202 N. 9th St.
Richmond, VA 23219

**VIRGINIA:**

**IN THE CIRCUIT COURT FOR THE CITY OF NORFOLK**

**LESTER B. LYNCH, JR,**

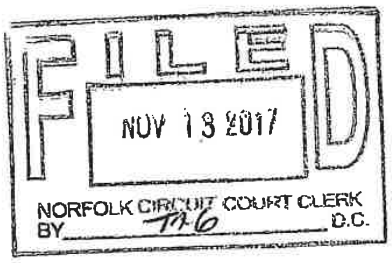
**Petitioner,**

**Case No. CL17000583-00**

**V.**

**TRACY RAY,**
**WARDEN OF SUSSEX II STATE PRISON**

**Respondent.**




**SERVE:** **Rosemary V. Bourne**
**Senior Assistant Attorney General**
**Office of the Attorney General**
**202 N. 9th St.**
**Richmond, VA 23219**

## PETITION FOR WRIT OF *HABEAS CORPUS*

**NOW COMES** the petitioner, LESTER B. LYNCH, JR., and moves this court for a writ of *habeas corpus* pursuant to Virginia Code § 8.01-654 *et seq.* to remedy his unlawful detention, and as grounds for such states as follows:

## I. JURISDICTION

1. Petitioner previously filed a Writ of Habeas Corpus. That Petition was non-suited with an Order being entered by the Honorable Judge Joseph Migliozzi on June 06, 2017. The non-suit Order is attached as "Exhibit A."
2. Petitioner has refiled this Petition within the time frame permitted by this Court's non-suit Order of June 06, 2017 and Va. Code § 8.01-380.
3. Petitioner is currently incarcerated at Sussex II State Prison, 24427 Musselwhite Drive, Waverly, VA 23891.

## II. PROCEDURAL HISTORY

4. Petitioner was charged with First Degree Murder, Burglary, Robbery and three counts of the Use of the Firearm in the Commission of a Felony in the Circuit Court for the City of Norfolk arising out of an incident which occurred on June 9, 2001.
5. Petitioner pled not guilty to all charges.
6. A four-day trial was held from October 2, 2002 through October 7, 2002. At the close of trial the jury was unable to make a unanimous decision on any of the indictments. The Court declared a mistrial. A copy of the October 7, 2002 Trial Order is attached hereto as "Exhibit B."
7. A second trial was held from March 18, 2003 through March 24, 2003. At the close of the trial the jury was unable to make a unanimous decision on any of the indictments. The Court declared a mistrial. A copy of the March 24, 2003 Trial Order is attached hereto as "Exhibit C."
8. A third trial was held from April 29, 2003 through May 1, 2003. At the close of the trial the jury found the Petitioner guilty of all charges. A copy of the May 1, 2003 Trial Order is attached hereto as "Exhibit D."
9. On January 5, 2004, this Court sentenced the Petitioner to 68 years of incarceration. A copy of the January 5, 2004 Sentencing Order is attached hereto as "Exhibit E."
10. Petitioner was represented for all three trials by George Anderson, Esq., 5900 East Virginia Beach Blvd., Suite 416, Norfolk, Virginia 23502.
11. Petitioner filed a Notice of Appeal on January 9, 2004. At that time, the petitioner argued that the trial court erred in admitting the hearsay evidence of the prosecution's witness Kenneth Parker.

12. The Court of Appeals of Virginia issued a written opinion on August 16, 2005, affirming the Petitioners convictions, finding that the trial court did not abuse its discretion in admitting hearsay statements into evidence. The opinion was published as *Lester Bernard Lynch, Jr. v. Commonwealth*, 46 Va. App. 342, Record No. 0107-04-01 (2005). A copy of the opinion is attached hereto as "Exhibit F."

13. Petitioner appealed the decision to the Virginia Supreme Court. The Virginia Supreme Court affirmed the Petitioners convictions on June 8, 2006, in a published opinion, *Lester Bernard Lynch, Jr. v. Commonwealth*, 227 Va. 204, Record No. 052079 (2006). A copy of the opinion is attached hereto as "Exhibit G."

14. Petitioner was represented on appeal by Steven Emmert of Sykes, Bourdon, Ahern & Levy P.C., 281 Independence Boulevard, Virginia Beach, Virginia 23462.

15. Petitioner filed a Petition for Writ of *Habeas Corpus*, *pro se*, in this Court on June 7, 2007. At that time, Petitioner argued that his detention was unlawful because of (1) the trial court's error in allowing the entry of hearsay statements of Kenneth Parker; (2) inadequate investigation by police; and (3) ineffective assistance of counsel. A copy of the June 7, 2007 *Habeas* Petition is attached hereto as "Exhibit H."

16. The June 7, 2007 *Habeas* Petition was dismissed by this Court on September 10, 2007.

17. Petitioner subsequently filed a Motion for Storage and Preservation of Tangible Evidence pursuant to Virginia Code § 19.2-270.4:1 on March 15, 2016. This Court appointed the undersigned counsel to represent the Petitioner for that Motion. This Court also instructed counsel to investigate any other motions or causes of action the Petitioner may have the right to pursue.

18. Upon review of the Petitioner's case history, Counsel submits the present Petition for Writ

of *Habeas Corpus.*

## III. FACTS RELEVANT TO CURRENT *HABEAS* PETITION

19. Petitioner incorporates, affirms, and realleges the contentions contained in paragraphs 1 through 14 above.

20. On June 9, 2001, three men entered the home of Belinda Scott. One of the men shot and killed Ms. Scott. Two of the men then entered the bedroom of Ms. Scott's son, Ronald Scott. Ronald and his friend, Tamika Reid, were in the room.

21. Upon entering the room the two men threatened Ronald and Tamika with a gun. The men then stole money and heroine from the room and fled the scene.

22. Petitioner avers that disgraced Norfolk Detective Robert Glenn Ford first contacted him regarding the shooting made subject matter of his conviction before Petitioner became a suspect in the crimes. Ford asked for Petitioner's cooperation as a witness against Kenneth Parker and another unknown suspect. Petitioner told Ford that he was unable to assist in that he had no knowledge of the shooting nor who may have been involved. It was at that time Petitioner then became a "suspect" in the eyes of law enforcement.

23. Detective Ford is currently serving a 12.5 year federal sentence for extortion and lying to the FBI regarding his illegal activities during criminal investigations while employed as a Detective with the Norfolk Police Department. At this time, Petitioner is unaware what, if any, involvement Ford had with the making of the tapes in question.

24. At all three trials, the prosecution relied solely on the testimony of witnesses Ronald Scott, Tamika Reid, and Kenneth Parker. There was a complete and utter lack of physical evidence linking the Petitioner to the crime despite an extensive police investigation.

There was no DNA or fingerprints found at the crime scene or in Petitioner's car or clothing. The police never recovered the murder weapon.

25. Ronald Scott first informed police that he believed that the three individuals who committed the crime were Gregory Williams, Christopher Williams, and Kenneth Parker. Mr. Scott initially said that he could not see the perpetrator's face. Mr. Scott subsequently told officers that the Petitioner committed the crime. Mr. Scott's testimony is highly unreliable.

26. Tamika Reid identified the Petitioner as a suspect. Ms. Reid, however, gave conflicting testimony to police, first saying that the Petitioner was wearing a wool mask, then saying that he wore a woman's stocking over his face. Ms. Reid's testimony is highly unreliable.

27. Kenneth Parker testified at trial that following the incident Gregory Williams told him that "they had just shot a woman." He further testified that when the Petitioner overheard the conversation he asked Gregory Williams, "why he was telling [Mr. Parker] what they had just done." Kenneth Parker was initially a suspect in the crime and his testimony is highly unreliable.

28. Upon information and belief, all three witnesses were incarcerated at the time of their testimony against the Petitioner.

29. In response to Petitioner's Motion for Storage and Preservation of Tangible Evidence, the Commonwealth produced a number of evidence vouchers from the Norfolk Police. Among those vouchers was one dated June 22, 2001, which included recorded statements of Ronald Scott, Tamika Reid, and Kenneth Parker. The evidence voucher is attached hereto as "Exhibit I."

30. The Norfolk Police Department initially told the Commonwealth that the tapes were

destroyed on July 9, 2015. See correspondence from Officer K. Ferebee attached hereto as "Exhibit J." The Department's records indicate, however, that the taped statements were destroyed on October 10, 2007, while the Petitioner's original habeas was still on appeal. See "Inter Department Correspondence" attached hereto as "Exhibit K."

31. These statements were not provided to the Petitioner or his trial counsel, George A. Anderson, Jr. The first time that the Petitioner was made aware of said statements was following the Commonwealth's response to his Motion for Storage and Preservation of Tangible Evidence, filed on or about October 4, 2016.

32. Petitioner's trial counsel filed a Motion for Discovery and Inspection and a Motion for Exculpatory Evidence on August 16, 2001. The Motion for Exculpatory Evidence clearly requests any and all exculpatory evidence in accordance with *Brady v. Maryland*, 373 U.S. 83 (1963). Copies of the Motions are attached hereto as "Exhibit L."

33. Mr. Anderson has signed an Affidavit which is attached herewith as "Exhibit M." Mr. Anderson states under oath that the evidence contained in the destroyed tape was material and, that failure to produce this evidence constitutes prejudice *per se* to his client.

34. The Commonwealth produced a number of discovery items to Petitioner's trial counsel on September 27, 2001. The recorded witness statements were not provided or identified in discovery. The Commonwealth noted, however, that:

> When the victim was interviewed the night the crime occurred, he initially identified two of the assailants as Gregory Williams...and his brother, Christopher Williams.... He stated he got a good look at Gregory Williams, and assumed that his brother, Christopher, was also present. It was later proven that Christopher Williams could not have been present. He also described a third assailant who was light-skinned. The victim was shown several photo lineups, and selected the photographs of Gregory Williams and Lester Lynch out of those separate lineups.

A copy of the Discovery Letter is attached hereto as "Exhibit N."

35. Despite the Commonwealth's knowledge of the inconsistent statements from all three witnesses, it failed to produce or identify recorded statements of said witnesses.

## IV. ARGUMENT

### I. The Commonwealth violated the Petitioner's rights under the Fourteenth Amendment and Article 1, Section 11 of the Constitution of Virginia in failing to provide *Brady* evidence.

36. The Fourteenth Amendment to the United States Constitution states, in pertinent part, that "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law."

37. Article 1, Section 11 of the Constitution of Virginia provides, in pertinent part, that "no person shall be deprived of his life, liberty, or property without due process of law."

38. "[T]he suppression by the prosecution of evidence favorable to an accused...violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." *Brady v. Maryland*, 373 U.S. 83, 87 (1963). The duty to disclose also applies to any impeachment evidence. *United States v. Bagley*, 473 U.S. 667 (1985).

39. "[T]he duty to disclose [exculpatory and impeachment evidence] is applicable even though there has been no request by the accused." *Strickler v. Greene*, 527 U.S. 263, 280 (1999) (citing *United States v. Agurs*, 427 U.S. 97, (1976)

40. Evidence is material if, "there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *Id.* (citing *United States v. Bagley*, 473 U.S. 667, 676 (1985)).

41. In the current case, the Petitioner was tried three times, with two of the trials resulting in a

mistrial. The prosecution's case relied exclusively on the testimony of witnesses Ronald Scott, Tamika Reid, and Kenneth Parker.

42. The prosecution was aware, as evidenced by its Discovery Letter, that the testimony of said witnesses was inconsistent. The prosecution was further aware that Kenneth Parker was originally a suspect for the crimes. Despite these facts, the prosecution, over the course of three separate trials, never produced the recorded statements of the witnesses.

43. These statements undoubtedly contained exculpatory and/or impeachment evidence which, had they been produced, would have resulted in the Petitioner being found innocent of all charges.

44. The prosecution's failure to produce *Brady* evidence was a violation of the Petitioner's Fourteenth Amendment and Virginia Constitution Article 1, Section 11 Due Process Rights.

45. The Commonwealth's destruction of such *Brady* evidence has further prejudiced the Petitioner's ability to prove his innocence in violation of his Fourteenth Amendment and Virginia Constitution Article 1, Section 11 Due Process Rights.

**II. The Petitioner's Petition is timely under Virginia law.**

46. Virginia Code § 8.01-654(A)(2) states that "[a] habeas corpus petition attacking a criminal conviction or sentence...shall be filed within two years from the date of final judgment in the trial court or within one year from either final disposition of the direct appeal in state court or the time for filing such appeal has expired, whichever is later." [1]

47. The Virginia Supreme Court holds, however, that "in a claim for habeas corpus relief based on a Brady violation, the failure to disclose exculpatory evidence qualifies as obstruction by the defendant that prevents the filing of the claim for purposes of Code § 8.01-229(D)."

[1] Original Petition was non-suited on June 06, 2017. This Petition was filed in the time frame allowed by Va. Code § 8.01-380.

*Hicks v. Dir., Dep't of Corr.*, 289 Va. 288, 298 (2015).

48. Virginia Code § 8.01-229(D) states that "[w]hen the filing of an action is obstructed by a defendant's (i) filing a petition in bankruptcy or filing a petition for an extension or arrangement under the United States Bankruptcy Act or (ii) using any other direct or indirect means to obstruct the filing of an action, then the time that such obstruction has continued shall not be counted as any part of the period within which the action must be brought."
49. In the current case, the prosecution did not disclose *Brady* evidence until on or about October 6, 2016. Pursuant to Virginia Code § 8.01-229(D) the Statute of Limitations did not begin to run until that time. Therefore, the current petition is timely.

WHEREFORE, the undersigned Petitioner, by counsel moves this Court to grant his Petition for a Writ of *Habeas Corpus*, to grant an evidentiary hearing on the matters alleged herein, set aside the sentence imposed on him, and grant any further relief as the Court may deem just and proper.

LESTER B. LYNCH, JR.

Lester B. Lynch Jr.
Pro-Se Petitioner

*VIRGINIA:*
**IN THE CIRCUIT COURT FOR THE CITY OF NORFOLK**

**LESTER B. LYNCH, #1162173**
**Petitioner,**

**TRACY RAY, WARDEN,**
**SUSSEX II STATE PRISON**

**Respondent**

**AFFIDAVIT OF GEORGE L. ANDERSON, JR.**

THIS DAY in the City of Norfolk, Virginia, George L. Anderson, Jr. personally appeared before me, a Notary Public in and for the City of Norfolk, in the Commonwealth of Virginia, and made oath that;

1. I graduated from Howard University in 1983 and am currently a licensed attorney practicing criminal law in the Commonwealth of Virginia for the past 34 years.

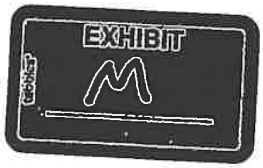
2. I was appointed by this Court to represent Mr. Lester B. Lynch through trial in Norfolk Circuit Court on charges of First Degree Murder, three (3) counts of Use of Firearm in Commission of Felony, Statutory Burglary, and Robbery.

3. Mr. Lynch stood trial on three occasions: October 2-7, 2002, resulting in a hung jury; March 17-24, 2003, resulting in 2nd hung jury; and April 28-May 01, 2003, resulting in his conviction on the charges of First Degree Murder, 3 counts of Firearm in Commission of Felony, Statutory Burglary, and Robbery.

4. Mr. Lynch was subsequently sentenced to an active term of incarceration of 68 years. He is currently serving his time at Sussex II State Prison.

5. The record reflects that Mr. Lynch's conviction was affirmed on appeal.





6. At the request of his appointed counsel in this Petition, I have reviewed my entire file, read all available transcripts from the record. Following my review of the record, I state unequivocally that the Commonwealth never advised me of the existence of tape recorded statements of Kenneth Parker, Tamika Reid, and Ronald Scott; nor was I ever provided transcripts of said recordings.

7. I learned for the first time of the existence of these recorded statements when contacted by Mr. Lynch's counsel about this Petition.

8. The material on the tape recording would be material in every aspect in that forensic evidence played no part in linking Mr. Lynch to the crimes charged. The Commonwealth's entire case rested upon the credibility of these cooperating witnesses; Kenneth Parker, Tamika Reid, and Ronald Scott.

9. Based upon my 34 years of experience in trying criminal cases and, having this case mistried on two separate occasions, I can unequivocally state that the recorded statements contained material evidence and were exculpatory given the particular circumstances in this case, when considering the number of inconsistent statements these witnesses made during the course of three separate trials, that each witness was incarcerated at the time the statements were made and, where forensic evidence played no part in implicating this defendant in the crimes charged.

10. At no time during the prosecution of Mr. Lynch was I ever informed, nor was any evidence regarding these statements made available to me. I consider these tapes to be material to Mr. Lynch's defense given that at least one witness identified someone other than Mr. Lynch as the perpetrator.

11. Furthermore, the Commonwealth's failure to produce these tapes to the defense constitutes per se prejudice, in my opinion.

12. I have been advised that the tapes have been destroyed without ever producing them or making their content known to defense counsel.

STATE OF VIRGINIA
CITY OF NORFOLK to-wit:

SUBSCRIBED and SWORN to before me this 5th day of October, 2017 by George L. Anderson, Jr.

Notary Public

My Commission Expires: 1-31-2019

JACQUELINE R. SWITZER
Notary Public
Commonwealth of Virginia
211566
My Commission Expires Jan 31, 2019

*VIRGINIA:*
IN THE CIRCUIT COURT FOR THE CITY OF NORFOLK

LESTER B. LYNCH, #1162173
Petitioner,

Case No.: CL17000583-00

TRACY RAY, WARDEN,
SUSSEX II STATE PRISON

Respondent

SUPPLEMENTAL AFFIDAVIT OF GEORGE A. ANDERSON, JR.

THIS DAY in the City of Norfolk, Virginia, George A. Anderson, Jr. personally appeared before me, a Notary Public in and for the City of Norfolk, in the Commonwealth of Virginia, and made oath that;

1. I hereby reaffirm and reassert each and every paragraph numbered 1-12 of my previously submitted Affidavit dated October 05, 2017.

2. Since signing my previous Affidavit, I have been advised that the transcripts in question were located and produced by the Commonwealth. I have had the opportunity to review the transcripts in their entirety. With respect to each of the transcripts pertaining to Kenneth Lee Parker, Tamika Reid, and Ronald Scott, I unequivocally state that none of the information contained in said transcripts was ever produced to me during the course of my representation of the Petitioner during three separate jury trials.

3. Following my review of these transcripts I now unequivocally state under oath, that the content of each transcript contains exculpatory evidence which is material in nature, and which unequivocally establishes that:

a. The evidence is favorable to Mr. Lynch;



EXHIBIT
J
485

b. This evidence was suppressed by the Commonwealth, either willfully or inadvertently;

c. That the content of these transcripts made it likely that there is a reasonable probability that if the evidence had been disclosed that the results of the trials would have been different.

4. I further state that neither Mr. Parker, Ms. Reid, nor Mr. Scott knew the defendant prior to the events upon which the indictments were entered and, I further state that there was no forensic evidence linking Mr. Lynch to these crimes other than the testimony of these three individuals.

5. Furthermore, the first time I learned that Detective Glenn Ford, a discredited former police officer and a convicted felon, was involved in the arrest and prosecution of this case, was when I read the transcript taken by him. The fact that this officer was involved at all in obtaining these statements is further evidence of taint and prejudice warranting the granting of this Petition.

6. It has always been my sincere belief, both during my representation of Mr. Lynch and even more so now, that he is not guilty of the charged crimes. I join in his request for the granting of the Petition and ordering a new trial, given the totality of these circumstances.

GEORGE A. ANDERSON, JR.

STATE OF VIRGINIA
CITY OF NORFOLK to-wit:

SUBSCRIBED and SWORN to before me this 11th day of July, 2018 by George A. Anderson, Jr.

Notary Public

My Commission Expires: 1-31-2019

JACQUELINE R. SWITZER
Notary Public
Commonwealth of Virginia
211588
My Commission Expires Jan 31, 2019

Commonwealth's Attorney
John R. Doyle, III

Chief Deputy
Commonwealth's Attorney
George E. Schaefer

Deputies:
Marjorie A. Arrington
Valerie H. Bowen
S. Clark Daugherty
Philip G. Evans, II
Gregory Underwood

# COMMONWEALTH OF VIRGINIA

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Kelly M. Summers
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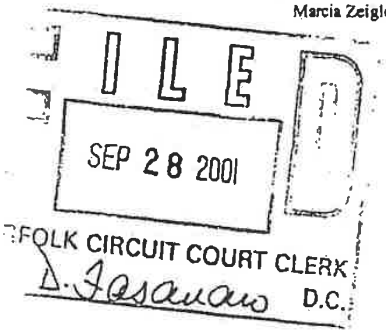
Janet L. Westbrook
Marcia Zeigler

September 27, 2001




George A. Anderson, Jr., Esq.
Norfolk Circuit Court Box #99
Norfolk, VA
HAND DELIVERED

Re: Commonwealth v. Lester Lynch
Docket No. CR01-00~~2074~~ 3499

Dear George:

Please find enclosed the following items of discovery:

1. Excerpts from Inv. B.A. Huffmans' notes concerning photo identification of defendants by victim, oral statements made by co-defendant, and circumstances of defendant's arrest (p. 16, 19-22, 25);
2. Inv. E.L. Martin's Notes, FCS #00975-01 (2 pages);
3. Physical Evid. Collection Report #B/0875-01;
4. Inv. Martin's crime scene diagram;
5. Certificate of Analysis (Firearms) #T01-6102 dated July 16, 2001;
6. Certificate of Analysis (GSR) #T01-6102 dated Aug. 23, 2001;
7. Certificate of Analysis (Forensic Biology) #T01-6102 dated Aug. 31, 2001;
8. Pre-Hospital Patient Care Report (4 pages) dated 6-9-01;
9. Autopsy #T-267-01 (with Toxicology report);
10. Medical Examiner's Evidence Receipt - Autopsy #T-267-01;
11. Search Consent Form dated 6-19-01 for 1991 Acura;
12. Miranda Waiver Form for defendant dated 6-13-01;
13. Miranda Waiver Form for co-defendant dated 6-19-01;
14. Request For Lab Exam T-6102 Sub. 2;
15. P&E Voucher No.'s E-004267, E-004268, E-004269, D-41245;
16. Vehicle Tow/Impound Record 1991 Acura;
17. Forensic Investigation Reports (5) #0975-01, #A0975-01; #B0975-01, #C0975-01, #D0975-01;

18. Request for Latent Print Exam #LP-0450-01;
19. Photo lineup of Christopher Williams;
20. Photo lineup of Gregory Williams; and
21. Photo lineup of Lester Lynch;

I also have photographs of the crime scene, please let me know if and when you would like to see them.

When the victim was interviewed the night the crime occurred, he initially identified two of the assailants as Gregory Williams (he knew him as "Tyree" or "Tyreek") and his brother, Christopher Williams (who he knew as "Christopher" or "Q"). He stated he got a good look at Gregory Williams, and assumed that his brother, Christopher, was also present. It was later proven that Christopher Williams could not have been present. He also described a third assailant who was light-skinned. The victim was shown several photo lineups, and selected the photographs of Gregory Williams and Lester Lynch out of those separate lineups.

If you have any questions about the materials listed above, or if you would like to further discuss the case, please feel free to call me.

Sincerely yours,

Sherrie S. Capotosto
Assistant Commonwealth's Attorney

encl.
cc: Norfolk Circuit Court Criminal Clerk (without attachments)

# COMMONWEALTH of VIRGINIA

*Office of the Attorney General*

Mark R. Herring
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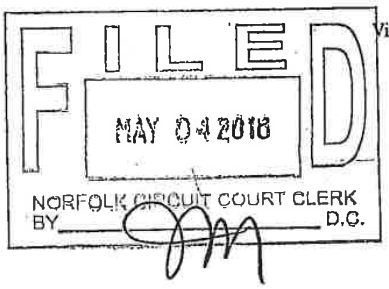
May 1, 2018




Edward Fiorella, Jr.
**Fraim & Fiorella, PC**
Town Point Center
150 Boush Street, Suite 601
Norfolk, Virginia 23510
Direct Telephone: (757)227-5916
Fax: (757) 227-5901

**Re:** **Lester B. Lynch v. Stacy Ray, Warden Sussex II State Prison**
**Case No.: CL17000583-00-01**

Dear Mr. Fiorella:

The police located transcripts from the interviews in 2001 that are the subject of your habeas petition, though the tapes, as you know, have been destroyed. I am attaching those transcripts for your review and use at the upcoming habeas hearing. I am sending them via email with hard copies in the mail.

Very truly yours,

Rosemary V. Bourne
Senior Assistant Attorney General
Criminal Litigation Section

CC: w/out enclosure
The Honorable George E. Schaefer, Clerk

6/11/01

TAPED STATEMENT OF RONALD SCOTT IN REFERENCE TO THE HOMICIDE OF BELINDA SCOTT THAT OCCURRED ON JUNE THE 9TH, 2001 AT APPROXIMATELY 2145 HOURS AT 3331 LENS AVENUE IN THE CITY OF NORFOLK.

BY INVESTIGATOR HUFFMAN:

Q. Can you please state your full name.

A. Ronald Antonio Scott.

Q. What is your birth date?

A. January the 27th, 1974.

Q. Your Social Security number?

A. 229-04-6204.

Q. Where do you live?

A. I live at 3331 Lens Avenue.

Q. Directing your attention to June the 9th at approximately 9:30 p.m. to 9:45 p.m., can you tell me where you were and what you remember happening?

A. I was at home in the bedroom.

Q. You were in the back bedroom of your house at 3331 Lens Avenue?

A. Yes, sir.

Q. Was there anybody in that room with you?
A. Yes, sir, a young lady named Tamika Reid.
Q. Was there anybody else at home?
A. Yes, sir, my mother and my son.
Q. What is your mother's name?
A. Belinda Scott.
Q. Does she have a nickname that people call her?
A. Yes, sir, Plump.
Q. Plump?
A. Yes, sir, Plump.
Q. When you were in the back bedroom with Tamika, there came a point where you had fallen asleep, but something woke you up; is that correct?
A. Yes, sir.
Q. Describe to me what you heard that woke you up.
A. All right. My mother telling me -- calling my name, "Ronald."
Q. How far away was she, or where do you think she was?
A. She was in the hallway.
Q. You were in the back bedroom, and your door was closed?
A. My door was closed, and I thought I was dreaming at first, and Tamika grabbed me and -- tapped me and said, "Your mother is calling you," and the next thing you know,

the last time I heard my mama call my name, she didn't even get my whole name out, and that's when I noticed something was wrong.

Q. And at that point, you were getting up and going towards your door?

A. Towards my door, and as soon as I unlocked the door about to pull on the door, the door kicked open.

Q. And when the door kicked open, did you hear any other loud noise, or was that the only noise you heard?

A. That was the only loud noise I heard.

Q. When the door first opened, what did you see?

A. I seen a red guy.

Q. A red skinned guy?

A. A red skinned guy.

Q. Did he have anything covering part of his face?

A. He had something covering the forehead and around the bottom of his lip.

Q. What did you see next?

A. I seen Tyreek.

Q. You clearly saw Tyreek?

A. I clearly seen Tyreek. It was like Tyreek didn't have nothing covering his face at all.

Q. Did he have something over part of his head?

A. The only thing he had was a bandanna on his forehead, and he had something on the bottom, the very

bottom of his chin like a cowboy -- like an old cowboy picture, you know how the cowboys had a handkerchief hanging from the chin, and that's all he had.

Q. And you got a clear look at his face?

A. I got a look so clear that I almost screamed his name out.

Q. And that was the person that you know as Tyreek?

A. As Tyreek, Q's brother.

Q. Earlier I showed you a set of photos, and I asked you if you could recognize anybody from this set of photos. Could you pick anybody out?

A. Yeah. I recognized the person in the top row, Number Three.

Q. The top row, this third picture, the picture all the way on the right-hand side?

A. Yes, sir.

Q. And that's the person you know as Tyreek?

A. As Tyreek.

Q. And that's the person that came into your room on the night of this incident?

A. Yes, sir.

Q. Let the record reflect that he has identified Gregory Williams, ID Number 620925, as being Tyreek. After you saw Tyreek and the red skinned guy, did you see anybody else?

A. I seen a young -- you could say between -- dark skinned guy. He was at the door.

Q. Tyreek and the red skinned guy were in front of the dark skinned guy?

A. Only thing I know is about the red skinned guy. He had golds in his mouth.

Q. You say he had golds in his mouth?

A. Yeah, like he had golds in his mouth.

Q. Okay. What did Tyreek and the red skinned guy do?

A. They beat the shit out of me. Excuse my language, but they beat me. They pistol whipped me.

Q. Tyreek had a pistol?

A. Yes, sir.

Q. Could you describe the pistol?

A. It was chrome, and the bottom of it -- the makeshift of it was black where you grip it at.

Q. The handle was black?

A. A two tone pistol, chrome on top. The part you pull back is chrome. It's an automatic pistol, and the bottom was black, two tone.

Q. And Tyreek hit you with that gun?

A. Yes, sir.

Q. How many times do you think he hit you with the gun?

A. I'd say Tyreek hit me four times.

Q. Now, the red skinned guy that was next to Tyreek, did he also hit you?

A. He beat the shit out of me.

Q. Did you see a gun in his hand?

A. Yes, sir. That's what he was hitting me with, a gun. He beat me. He beat me. He was hitting me, and the guy said, "Marquis, let's get the hell out of here."

Q. Who said that?

A. The dark skinned guy.

Q. The dark skinned guy in the back said something like, "Marquis, let's get out of here?"

A. Yes, sir.

Q. Did the dark skinned guy ever come all the way in the room and assault you, too?

A. No, sir. The dark skinned guy never laid a hand on me.

Q. After the dark skinned guy said, "Let's get out of here," what happened?

A. They left. They flew.

Q. At some point, Tyreek while he was hitting you, did he ever go searching on you for anything?

A. Yes, sir. He went straight into my pockets, and he had blood on his hand, because he left blood -- he left blood stains around my pockets.

Q. Did he take anything from your pockets?

A. Yes, sir.

Q. What exactly did he take to the best of your knowledge?

A. He took money, and I can say -- I can only account for only $400.00 of the money that I had in my pocket, because I had other money, but I didn't never count it because the way I made the money.

Q. The $400.00 you're sure of, where was that money?

A. That's from my mama. Mama's rent money. Every time mama get her check, she always give me $400.00 off for rent for to give to the rent man.

Q. And you might have had some more money in your pocket from doing what?

A. Dealing.

Q. And you're just not sure how much that was?

A. Not sure. I didn't never count it.

Q. Did they take anything else from you?

A. Yes, sir. They took some drugs.

Q. How much drugs did they take?

A. They took 14 real caps, and they took about I'd say approximately 80 fake caps.

Q. So 14 caps of heroin that were in your room?

A. That was real, and 80 some caps that KP left there that I knew was bullshit.

Q. KP had brought over some fake heroin earlier in

the day?

A. Earlier in the day, and I knew it was bullshit.

Q. Did the red skinned guy take any of this or was it just Tyreek?

A. The red skinned guy, they were searching me at the same time, and the red skinned guy, I can't really say that he took anything out of my pocket, but I know they took the drugs, because I know he snatched the table cloth off the table and the drugs flew on the floor, and he started picking them up off the floor.

Q. So the red skinned guy grabbed the drugs off the table, and they fell on the floor, and then he picked them up?

A. Yes, sir.

Q. Did the dark skinned guy take anything?

A. The dark skinned guy stayed in the hallway.

Q. And then the three of them just left?

A. They fled when the dark skinned guy called out a name, "Marquis, let's get the hell out of here."

Q. After they left, did you walk out into the hall?

A. Yes, sir. I walked out in the hall, and I seen my mama laid flat out on her stomach.

Q. Did you roll her over to see what was wrong?

A. Yes, sir, I tried to hold her face, and that's when I noticed a big something like something a bulge right

under her eye.

Q. A big bulge like a clot or something on her eye?

A. Yes, sir.

Q. Did Tamika -- did anybody ever touch Tamika or was she assaulted that you know?

A. They had me pointing one way, and they had her pointed in another way.

Q. What did Tamika do?

A. Well, to tell the truth, honestly, my attention was never on Tamika. The only thing I was thinking about at that time was my mom.

Q. Did Tamika leave at some point?

A. Yeah. She had to leave at some point, but I didn't see her leave.

Q. Okay. You've given us a taped statement a couple of days ago on the night of this incident; is that correct?

A. Yes, sir.

Q. And in that taped statement, some of the things you said are different, slightly different, from what you're telling me now; is that correct?

A. Yes, sir.

Q. Tell me why this statement is different from the first statement?

A. Because, well, the person I seen Tyreek clearly, so I automatically put faces on the other two guys.

Q. So you clearly saw Tyreek, but you assume that it was two other guys that you knew that were with Tyreek?

A. Yes, sir.

Q. Who were the other guys that you assumed would be with Tyreek?

A. Q and KP.

Q. And Q is Tyreek's brother?

A. Yes, sir. Don't see one without the other.

Q. On this event, how many people total did you actually see come up to your room?

A. Three.

Q. It was only three people that came in towards your room?

A. It was only three. It was only three.

Q. And you're sure that Tyreek was one of them, and the other two people, do you think you could identify them?

A. Yes, sir. I can identify them.

Q. But you're positive Tyreek or Gregory Williams was one of the ones?

A. Yes, sir.

Q. Is there anything you'd like to add to this statement?

A. No, not right now. I'm still feeling very emotional about my mother.

Q. Has this been a true statement to the best of your

knowledge and belief?

A. Yes, sir.

STATEMENT ENDS AT 2315 HOURS.

_____
RONALD SCOTT

_____
DATE/TIME

WITNESSED BY:

_____
B.A. HUFFMAN, INVESTIGATOR

_____
DATE/TIME

HOMICIDE SECTION
DETECTIVE DIVISION
06/12/01-KPJ-TAPE
(RSCOTT2)

THE FOLLOWING WILL BE THE TAPED STATEMENT OF RONALD SCOTT AS GIVEN TO INVESTIGATORS B.A. HUFFMAN AND V.H. POWELL ON JUNE THE 10TH, 2001, BEGINNING AT 0230 HOURS, IN REFERENCE TO THE ROBBERY AND MALICIOUS WOUNDING THAT OCCURRED AT 3331 LENS AVENUE AT APPROXIMATELY 2145 HOURS IN THE CITY OF NORFOLK.

BY INVESTIGATOR HUFFMAN:

Q. Can you please state your full name.

A. Ronald Antonio Scott.

Q. Speak clearly for me. Say your name for me again.

A. Ronald Antonio Scott.

Q. What's your birth date?

A. January 27th, 1974.

Q. Your Social Security number?

A. 229-04-6204.

Q. What's your current address?

A. 3331 Lens Avenue.

Q. Is that a house or an apartment?

A. It's a house.

Q. Who do you reside there with?

A. My mother and my son.

Q. What's your mother's name?

A. Miss Belinda Scott.

Q. She resides at 3331 Lens Avenue with you; is that correct?

A. Yes, sir.

Q. Is there a phone number there?

A. Not on all the time.

Q. Directing your attention to last night at approximately 9:30 to 9:45 p.m., could you tell me where you were and what you were doing?

A. The following night, 9:30?

Q. No, just when this incident occurred.

A. Oh, I was in the bed sleeping.

Q. Was anybody there with you?

A. Yes, Tomiko Reid, a friend of mine.

Q. And you were back in the back bedroom with Tamika sleeping?

A. Yes, sir.

Q. Was there anybody else in the house that you know of?

A. My son.

Q. Was your mother in the house?

A. Yes, sir.

Q. Was there something that occurred that caused you to wake up?

A. Yes, sir, I heard my mother screaming, calling out

my name.

Q. After you heard the screaming, what did -- that just startled you. What actually woke you up to where you felt something was wrong?

A. The door kicked open, automatic.

Q. After the door came open, did you continue to hear your mother scream?

A. The screaming stopped.

Q. What did you see when you actually woke up and had a chance to open your eyes up?

A. I seen three guys in the room, and I seen another covering their back, and I seen somebody just kept peeking, wasn't trying to come into the room, come into the room, and I could see a handgun in his hand, but I wasn't trying to see his face, but I could hear his voice, and I almost would be able to say he called out his name.

Q. And this was the person that was in the background? There were three guys in front of him?

A. Yes.

Q. When the four of them -- three of them led the way into the room, one stayed in the background, did they have anything in their hands?

A. All of them had handguns.

Q. Describe to me the two people that were in the front that had handguns and what they were wearing.

A. They was brown skinned, and they was wearing little half scarves tied around their forehead and like around the chin.

Q. Did you recognize any of these individuals?

A. Recognized the first two I looked at.

Q. How did you recognize them?

A. I see them almost every other day, and I know their voice, they voice they got like an accent in their voice.

Q. All right. So these two in the front you definitely recognized. What did they do?

A. They was beating me with handguns. One of them had a chrome handgun, and you could tell the handle was black because he put the chrome part in his hand and hit me with the handle, and then he put the handle back in his hand and slammed me with the chrome part, and the other one had a black handgun.

Q. These two individuals both were hitting you with the handgun?

A. Yes, sir.

Q. Did they say anything to you?

A. They kept asking me where the money at or where the drugs at or where the money at, where the drugs at.

Q. Did anybody else say anything?

A. The guy in the background he kept saying, "Where

the money at? Where the handguns," and all this. I said, "What is you talking about," you know what I'm saying, "What are you talking about?"

Q. The two guys in the front that were demanding the money and hitting you with the guns, you said you immediately recognized both of them even though they had bandannas over their face?

A. I recognized them, and they're brothers.

Q. You think that they're brothers?

A. Yeah.

Q. Earlier I showed you a photo line up. I show it to you again. Do you recognize anybody in that photo line up?

A. I recognize a few people, but I see the person that was hitting -- one of the persons that was hitting me in the head with the gun.

Q. You're pointing at Photo Number Four, the first one in the bottom row; is that correct?

A. Yes, sir.

Q. Who is that?

A. That's Q, call him Q, but his real name is Christopher. I can't think of his last name.

Q. But you know him as Q?

A. Q.

Q. And he was one of the individuals with the

bandanna on his face striking you with the handgun?

A. Yes, sir. He was he was (inaudible), and the way he was handling the handgun, you could see it.

Q. How many times did he strike you with the handgun?

A. It would have been so many times I just stopped counting.

Q. Did he take anything from you?

A. He searched me, but his brother was the one that actually went in my pockets, Q could have went in my pocket, too, but his brother is the one that actually went in my pocket, because when he went in my pocket he actually kind of like stood me up, you know, and I'm looking at his eyes the whole time, and I want to say his name so bad, but I know if I say his name, I'm dead.

Q. Did they ever take anything other than money from you?

A. Yeah. They took some -- a little small package of dope.

Q. What kind of dope?

A. Heroin.

Q. Who took the dope?

A. Q took the dope.

Q. What was -- the guy that was standing in the background, you stated you heard his voice, and you recognized his voice; is that correct?

A. Kenny Parker.
Q. I show you a second photo line up.
A. Yes, sir.
Q. And ask you if you identified anybody in that photo line up.
A. Yes, sir, on the bottom row, the second picture.
Q. And that's the person you know as KP or Kenny Parker?
A. Kenny Parker.
Q. And did you recognized his voice when he talked to you and his walk when he walked away from you; is that correct?
A. Yes, sir, and earlier he came to my house two times earlier that day, and he kept getting mad because my mother kept telling him she's not going to wake me up, and he kept getting mad.
Q. So he came to your house earlier that day a couple of times trying to get to you for what reason?
A. Thinking that I had some drugs. He kept saying that he was ill and stuff, and that he was going to end up doing something that he don't want to do, and he said -- I didn't think he was ever talking about me, because I know I don't have nothing --
Q. Let the record reflect that the first photo line up Mr. Scott identified Christopher Williams, ID Number

655231 as being the person he knows as Q that struck him and participated in robbing him, and in the second photo line up, Mr. Scott identified Kenneth Lee Parker, ID Number 173076 as the individual he heard and saw in the background when he was being struck repeatedly.

After -- about how many times were you struck?

A. Sir, I counted up until about six times. After that I stopped counting, and I just started defending myself.

Q. Where was the girl Tamika at while this was taking place?

A. At first Tamika was in the bed, and the next thing I know Tamika was on the floor.

Q. Did she just roll over and get on the floor for her own safety?

A. No. It looked like she was trying to make her sit there, but -- sit down, but at the same time, somebody gave her some assistance to the floor. I mean --

Q. Somebody threw her to the floor from the bed?

A. Yes, sir.

Q. After these individuals repeatedly struck you, there came a point where they walked out of the room?

A. There came a point where I heard a voice, and the they said (inaudible), and they called her name, and then they said, "Let's go, man. Let's go."

Q. What name did they call?
A. Marquis.
Q. They said, "Marquis, let's go"?
A. Yeah.
Q. And --
A. And I looked at that as though they're trying to cover up Tyree's name.
Q. After they walked out, did you hear anymore noise from your mother or any noise as they left?
A. No more noises, (inaudible) that's what made me run out of the room.
Q. Did you ever hear any gunshots?
A. No, I didn't hear no gunshots.
Q. One of the two individuals that was in the front, you identified one as being Q and you said the other one you believe to be Q's brother. What do you think his name is?
A. Tyree.
Q. What did Tyree actually do?
A. Tyree changed -- him and Q came straight to me and started beating me with pistols, and at the same time they was going in my pockets.
Q. So Tyree actually went through your pockets along with Q?
A. Yes, sir.
Q. Did Tyree actually take anything from you?

A. Yes, sir.
Q. What did he take?
A. He took $800.00.
Q. $800.00 in cash?
A. In cash.
Q. Did he take anything else?
A. Not that I recall. I know Q did. Q took the dope package, and he sniffed it, and he passed it to his brother, and his brother had it, too.
Q. So Q and Tyree both took a hit off the heroin that they stole from you?
A. Yes, sir.
Q. After these individuals left and went out through the hallway and out the door, did there come a point where you found your mother?
A. I found my mother in the hallway.
Q. What condition was your mother in when you found her?
A. She wasn't moving.
Q. Did she have any noticeable wounds that you saw?
A. I could see like a big thing on her eye, and her eye was swelled, and I seen a big clot of blood on the rug and that right there shook me up to this state of mind.
Q. Did your mother say anything to you?
A. My mama was trying to say something, and all that

just stopped.

Q. Was there a point when Tamika left the house?

A. I can't really recall because I was trying to hear what my mama was saying, and she kept saying -- she was trying to tell me something.

Q. Didn't you state earlier that Tamika actually said she was going to try to go get help?

A. Tamika went to the door, and she was calling, "Somebody call the police," but I don't think she actually" (inaudible).

Q. When you first woke up after hearing your mother and somebody was coming in your door, you saw a total of how many people come in your door standing just outside your door?

A. I seen three. As they came, one of them posted up, two came straight to me, and then I could see a shadow in the hallway.

Q. So there was a total of four people, the two you've identified as one as Q, which is Christopher Williams, the one that you think is his brother?

A. Tyree.

Q. One you think is his brother by the name of Tyree. Those were the two that were actually striking you?

A. Yes, sir.

Q. And the third individual that was in the room you

believe to be a person by the name of Maurice or Marquis?

A. Marquis.

Q. What did he do?

A. Marquis held the gun on me the whole time.

Q. Did he ever strike you?

A. No, sir. All he kept saying was -- I kept asking him about my mama, and they started saying my mama -- saying your mammie or your mom -- your mammie in the hallway. Your mammie in the hallway still laying down still, your mammie.

Q. How long have you known Q or Christopher Williams?

A. I've known him through his baby's mama Rashawn.

Q. How long have you known him?

A. Two years.

Q. How long have you known Kenneth Parker or KP?

A. Two years.

Q. How long have you known Q's brother, the one you think to be Q's brother Tyree?

A. A year now.

Q. How long have you known or have you ever known the gentleman that you called Marquis or Maurice?

A. I don't know him.

Q. Had you ever seen him before tonight?

A. Yes, sir. I've seen his face before somewhere. I'm trying to place him.

Q. But you're not as sure of him as you are the other

three?

A. Right.

Q. Where do you know these three individuals are from, where else? What other address have you seen them at or been with them at?

A. 211 W. 27th Street, Apartment Three.

Q. Have you ever known them to go to any of the other apartments in that same building?

A. Yeah. They used to sell drugs in the back.

Q. Do you know which apartment that is?

A. Apartment One.

Q. What apartment do you think they stay in?

A. They stay in Apartment Two, and they sell drugs in Apartment Three.

Q. Of 211 W. 27th Street?

A. Yes, sir, but the police kept kicking that in.

Q. You stated earlier that there was a total of $800.00 taken out of your pocket?

A. Yes, sir.

Q. How much of the money belonged to you?

A. About $200.00.

Q. The other $600.00, who did that belong to?

A. My mother, my mother, and she had -- that's why I say $800.00 and some change. She actually had $630.00.

Q. And that money was for what?

A. Her rent money and cigarette money. She let me give her like $5.00 at a time.

Q. Did your mom know any of these individuals that you recognized tonight?

A. Yes, sir. She knows KP, Q and his brother because she's been telling KP stop coming over there. She said Ronald is asleep every day.

Q. How long has your mom known KP?

A. I really can't say but for the two years that I've been home I can say for two years, but I know she's been knowing him a little longer than that, because my mama said KP trying to get her a drug habit.

Q. So KP used to provide your mom with narcotics?

A. Yes, tried to put drugs on her all the time.

Q. Is there anything else you'd like to add to this statement?

A. KP was mad at my mother because my mother told him he can't come over there no more, you know what I'm saying, and the last time he left, he said something to my mama, and my mama said, "Ronald, if I had of heard what he said, I would have came to you."

Q. Has this been a true statement to the best of your knowledge and belief?

A. Sir, this is true, sir, to the bottom of my heart, this is my heart.

STATEMENT ENDS AT 0255 HOURS.

_____
RONALD SCOTT

_____
DATE/TIME

WITNESSED BY:

_____
B.A. HUFFMAN, INVESTIGATOR

_____
DATE/TIME

HOMICIDE SECTION
DETECTIVE DIVISION
06/11/01-KPJ-TAPE
(RSCOTT)

THE FOLLOWING WILL BE THE TAPED STATEMENT OF TAMIKA LAVELLE REID AS GIVEN TO INVESTIGATOR B.A. HUFFMAN ON JUNE THE 16TH, 2001, STARTING AT 0213 HOURS IN REFERENCE TO THE HOMICIDE OF BELINDA SCOTT THAT OCCURRED ON JUNE THE 9TH, 2001 AT APPROXIMATELY 2145 HOURS AT 3331 LENS AVENUE IN THE CITY OF NORFOLK.

BY INVESTIGATOR HUFFMAN:

Q. Could you state your full name.

A. Tamika Lavelle Reid.

Q. What's your date of birth?

A. 07/24/75.

Q. Your Social Security number?

A. 224-13-3688.

Q. Where are you currently living at?

A. 3106 Lead Street.

Q. Is there a phone number there?

A. 622-5043.

Q. Who are you living there with?

A. My auntie and my grandmother, Jo Anna Banks and Carolyn Banks.

Q. Directing your attention to this past Saturday evening, which would have been June the 9th at about 2130 or

9:30 p.m., could you tell me where you were at?

A. It happened exactly at 9:30. I was at the address on Lens Street -- Avenue.

Q. Who lives there?

A. Miss Plump.

Q. Do you know who else lives there with her?

A. Her son Ronald, Tony.

Q. That's fine. At about 9:30, what happened?

A. She knocked on the room door and said that a guy named Du-wop was for him, but before anybody -- we heard a firecracker sound and a room door kicked in, and they was robbing him.

Q. All right. Did you recognize any of these individuals?

A. Yes, I did.

Q. Did you know who they were right then and there?

A. No, I didn't. He did.

Q. You think Ronald did?

A. He said he did.

Q. After they kicked in the door, what actually happened?

A. They kicked in the door and said, "Give it up. Give it up." They was beating him.

Q. Did you see any weapons?

A. Yes, I did.

Q. What type of a weapon?
A. A black gun.
Q. Who had the black gun?
A. The tall light skinned one with the cornrows.
Q. Did he have it the whole time?
A. He took it from another suspect.
Q. So there were three people that came in that room; is that correct?
A. Yes, it was.
Q. And there was a light skinned suspect, and then there was two brown skinned suspects, one a little older than the other; is that correct?
A. Yes, it is.
Q. The light skinned suspect you say actually took the gun from the younger brown skinned suspect?
A. Yes. Yes.
Q. What did he do with the gun after he took it?
A. Hit Ronald Scott with the gun.
Q. Were the other two suspects also hitting Ronald?
A. Yes, sir.
Q. Did you hear them say anything specifically?
A. "Give it up." Give it up. Give it up."
Q. Did they do anything to you?
A. They just told me to lay back -- the light skinned one pointed the gun towards me and told me to lay back on

the bed.

Q. Earlier I showed you a photo line up and asked you if you could identify any of these people as being involved in the assault on Ronald and the murder of Belinda Scott. Could you pick anybody out of this line up?

A. Yes, I can.

Q. Which one did you pick out?

A. Number Four.

Q. And Number Four is the light skinned subject?

A. Yes.

Q. And you saw him take the gun from the younger brown skinned suspect?

A. Yes.

Q. And you actually saw him hitting Ronald with the gun?

A. Yes. He held the gun towards his head. He pointed the gun towards his head and told him if he didn't give up everything, he was going to be laying there like the lady was that they had just shot.

Q. Let the record show that she's picked out Photo Number Four, which is Lester Bernard Lynch, Jr. After they were beating Ronald, did you see them take anything?

A. Yes, I did.

Q. Who took what?

A. The light skinned one with the gun -- with the

cornrows, he took that -- some heroin that was off the table and the $24.00 that was on the table for my cab fare.

Q. So there was cash and a quantity of heroin sitting on the table that he took?

A. Yes, it was.

Q. Did you see anybody else take anything?

A. No.

Q. Did you hear any of these three suspects say anything else?

A. Well, the light skinned one with the cornrows, the one that had the gun, he called out the one -- the guy that he called -- well, the guy that shot Miss Plump, he called her name. He called his name.

Q. So the light skinned one that you just picked out in the photo line up actually said a name?

A. Yeah. Yes.

Q. But you don't remember what name he said?

A. It was something that began with a W, a nickname. It was a nickname.

Q. Okay. After this light skinned one took the dope and the money, what did the three suspects do?

A. Well, one was like pacing through the house, and then everything got quiet, and everybody was gone, and that's when we found Miss Plump by the door.

Q. Okay. Before all this happened, you said you

heard -- or Miss Plump actually woke y'all up before anybody was at the house or was somebody already at the house?

A. Somebody -- well, the three suspects had came to the house, and they asked for Ronald Scott, and she came back to the room, and we was in there asleep. She came to the room and said it was 9:30 at night, you know what I'm saying. It was time for everybody to get up, and somebody named Du-whop wanted him.

Q. Did she say what Du-wop wanted?

A. She knew what Du-whop wanted.

Q. What was that?

A. Some heroin.

Q. So Miss Plump knew that there was heroin being dealt in the house?

A. Yes.

Q. Did you observe Miss Plump actually using any heroin?

A. Yes.

Q. Did you observe Ronald using any heroin?

A. Yes.

Q. After the three suspects left and you said it got quiet, what happened next?

A. We -- well, Ronald was saying, "Mom, mom," because she was laying on the floor, and he was asking me to -- he was likes conversating with his mama, but I was so scared I

ran out the front door to the neighbor across the street, and I asked them to call 911.

Q. What did you do next?

A. Well, I know I shouldn't have did it, but I was just scared. I just left. I ran.

Q. You just ran away?

A. No shoes on. I didn't have no shoes on, nothing. I just ran.

Q. Did you put anything on your head when you left?

A. Yes, my blonde wig.

Q. After you left and got away, did you have some of Ronald's property with you?

A. Yes, I did.

Q. What was that?

A. Cell phone.

Q. Did anybody call you on that cell phone?

A. Yes, they did.

Q. About how long after this happened did somebody call you?

A. Three minutes later.

Q. Three minutes after this happened somebody called?

A. Yes.

Q. And who called you about three minutes after this had happened -- after you had run out of the house?

A. The guy named KP.

Q. How long had you waited in the house before you had run out?

A. Like two, three minutes.

Q. So it was two, three minutes, and then another couple minutes after that, so a total of maybe five minutes had gone by from the time you heard the firecracker?

A. I was already in the room. I heard the firecracker before they came in the room.

Q. Right, and about how long after you heard the firecracker did you run out of the house and you get a phone a call?

A. That was like -- they stayed in there like five minutes in the room.

Q. When KP called you on the phone, what did he say?

A. Well, he was like -- well, he was asking where was Ronald, and I was like somebody need to go check on him, because his mama had just been shot. He was like the niggers -- well, that's what he said -- the niggers just -- he said, "I can't believe these niggers just did this." He was like the guy that brought me over there earlier -- I said, "I remember you came earlier," and he was like, "You saw me?" And I was like, "Yeah, I saw you." He was like, "What did I have on?"

And I described the thing he had on. He was like, "That same fucking nigger that brought me around there is

the same one that did it. If I got to take the stand, I'll take the stand," because he said, "That's fucked up. Who got shot?" I said, "Mrs. Plump." He was like, "What? What?"

Q. So at that point, it didn't seem to you that he knew who had been shot?

A. No. He didn't. He said, "Who was the skinny lady that got shot?"

Q. And he was calling Ronald's cell phone, and you happened to have it; is that right?

A. Yes.

Q. Did you have anymore conversations with KP after this?

A. Yes.

Q. When?

A. Like 1:30 that morning, then again like 2:30 that morning. Then again 6:00 o'clock that morning.

Q. Did he say anything else to you about the guys that had come and told them that they had done something wrong?

A. Besides that he know who had did it, and he wanted to talk to Ronald so he could let him know who had did it.

Q. Which guy did you actually see take some of the dope that was on the table?

A. Number Four.

Q. The light skinned guy that you picked out in the

line up?

A. With the cornrows, yes.

Q. And how much dope do you think it was?

A. A hundred and some dollars worth of capsules.

Q. A hundred and some dollars worth?

A. Yes, yes.

Q. When these three subjects first came into the back room where you and Ronald were, you stated that one subject actually took the gun from one of the others?

A. Yes, I did.

Q. The light skinned subject actually took the gun away from one of the other two guys?

A. Number Four.

Q. He took the gun away from one of the other two darker skinned guys?

A. Yes, he did.

Q. Was it the -- do you know if it was the older or the younger of the two darker skinned?

A. The younger.

Q. So the younger dark skinned guy -- the younger darker skinned guy had the gun when they first came into that room?

A. Yes, he did, and Number Four took the gun from him and called him trigger happy.

Q. Is there anything else you would like to add to

this statement?

A. I just wish their ass go to jail.

Q. Has this been a true statement to the best of your knowledge and belief?

A. Yes, it is.

THIS STATEMENT ENDS AT 0230 HOURS.

_____
TAMIKA L. REID

_____
DATE/TIME

WITNESSED BY:

_____
B.A. HUFFMAN, INVESTIGATOR

_____
DATE/TIME

HOMICIDE SECTION
DETECTIVE DIVISION
06/18/01-KPJ-TAPE
(TREID)

THE FOLLOWING WILL BE THE TAPED STATEMENT OF KENNETH LEE PARKER AS GIVEN TO INVESTIGATORS B.A. HUFFMAN AN R.G. FORD ON 06/12/01 BEGINNING AT 1627 HOURS IN REFERENCE TO THE HOMICIDE OF BELINDA SCOTT THAT OCCURRED ON JUNE THE 9TH, 2001 AT APPROXIMATELY 2145 HOURS.

BY INVESTIGATOR HUFFMAN:

Q. Could you state your full name.

A. Kenneth Lee Parker.

Q. What is your date of birth?

A. 02/01/65.

Q. February first, 1965?

A. Yes.

Q. What's your current address?

A. 529 W. 29th Street, Apartment 101.

Q. What's your Social Security number?

A. 229-02-9312.

Q. Do you have a phone number at your apartment?

A. Yes.

Q. Tell me please.

A. 623-6605.

Q. Directing your attention to this past Saturday

evening in reference to the homicide of Belinda Scott, could you tell me in your own words what you know about this offense?

A. Yes. About 10:30, 11:00 o'clock, I went to little Ronald's house, and I bought me two caps of dope.

BY INVESTIGATOR FORD:

Q. Was that in the morning?

A. Yeah, in the morning, because I was feeling ill, and so I went there and bought the dope, spoke with his mom, spoke with him, and then I left.

Then later on around 12:30, 1:00 o'clock, I started feeling bad again. This time, I went there, and I purchased $50.00 worth, but this time the dope was raw. It wasn't cut. So I got my girl to drop me off at a guy named Q's house.

BY INVESTIGATOR HUFFMAN:

Q. Where is that at?

A. It's at 27th and Omohundro. All right. When I got to Q's house, Q was there. His girlfriend was there. His brother Tyreek was there, his uncle, and that was about it.

Anyway, Tyreek and them had woke up when I came to the door, and he had said that he was feeling bad, too, so

the $50.00 worth of heroin I had purchased, I shared it with him, and he is like, you know, it was good, and he asked me -- he was like, "Do Little Ron got it like that?" And I was like, "Yeah, he doing it" you know, "He can get it," and he was like, "Well, damn, I got to get me a couple of grams of that later on."

So --

Q. When you say Little Ron, you're referring to the victim and the son?

A. Yeah, Little Ron.

Q. Who lives over on Lens Avenue?

A. Yes.

BY INVESTIGATOR FORD:

Q. After he said he had to get him a couple of grams of that later on, did he make another comment?

A. Well, yeah, he said, "Damn, he could stand a stick up, can't he?" You know, but I just looked at it as a joke or something, and then -- so after we did the heroin, I left and went to a gambling house until about 7:30, around 7:30, 8:00 o'clock, and I got dropped off back on 27th Street around that time, and when I came up, I saw my cousin Arthur, Little Ron's cousin Fat Daddy and this girl named Missy out there, and I was out there talking to them when Tyreek came up and came across the street to a guy -- I

can't recall his name -- the guy named Sam's house, and --

BY INVESTIGATOR HUFFMAN:

Q. When you saw Tyreek come up, did he come up in a vehicle or --

A. Yes. He came in a vehicle. He came in a brown Legend, nice and clean one.

Q. Was anybody else with him?

A. Yes. It was two more guys with him. It was a light skinned guy with cornrows in his head. He was driving. It was a dark skinned younger guy sitting in the back seat.

So after they pulled up, Tyreek came across the street to a guy named Sam's house. He went in, and a few minutes later, he came out, and he was pushing something that appeared to be a gun down in his waist, and so I was like, "Dag, boy, what you got, a beef or some trouble or something," and, you know, me and my cousin and all of us laughed, and he was like, "No. No. It ain't nothing like that. I'm all right. I'm all right."

So he got it down in his waist like he wanted it and walked back across the street. So when he walked back across the street, I went over there, and I was like I needed a ride for to go back out Berkley to a gambling house, and Tyreek was like, "Come on."

So I got in the car. They went around, and then the driver was like, "Where is Berkley," so I was like it was across the Campostella Bridge, so he was like, "No. No. No. We ain't going that way. We can't take him there."

So Tyreek was like, "Well, go ahead, get back out, K, and we'll just" -- you know what I'm saying, "I'll give you a ride out there or whatever," and then he dropped me back off, you know, like a minute or two -- however long it took to go around the block. So they left.

When they left, I stood out there with my cousin Arthur and Fat Daddy and the girl Missy, so like 30 minutes later, Fat Daddy and my cousin Arthur, they left and went into the house, and the girl -- that left me and the girl Missy, so she told me to come on.

We went around the side of the house to a car that wasn't working. We got inside the car, and she took a little crack pipe out and started smoking some crack, and then that was it, so then we got out of the car, and I came back in the front, and like 30 minutes to an hour later, Tyreek and them pulled back up.

So when they pulled back up --

Q. Were these still the same three people?

A. Yes, it was the same three. The same guy with the cornrows was driving. They was --

Q. Same car?

A. Yeah, same car, same seating arrangements and everything.

Q. What were the seating arrangements?

A. The guy with the cornrows was driving. Tyreek was riding in the shotgun passenger side, and the younger dude was riding in the back seat. So Tyreek got out of the car. The light skinned guy got out of the car, and the dark skinned younger guy got out of the car, folded his arms, leaned against the car and was looking down at the ground as if something was really really bothering him.

So by this time, Tyreek had walked up to the house and rung the doorbell. Minutes later, Q -- seconds later, Q came to the door.

Q. Who is Q to Tyreek?

A. That's his brother.

Q. Do you know his real name?

A. Quail, I guess. That's what they called him. I don't know his real name, Q, Quail. That's what I know him as. Seconds later, Q came to the door, and the light skinned guy with the cornrows greeted him. He was like, "How you doing? I ain't seen you in a long time," and, you know, "It's been a long time since we saw each other," and they came out, shook hands, hugged and everything. By this time, Tyreek had got up the stairs, so everybody else went upstairs, you know.

BY INVESTIGATOR FORD:

Q. Did Tyreek have anything in his hands?

A. Yes. Tyreek had a shirt, and he had something wrapped up in it, and when I walked over on the porch, I was like, "What's that," and he says it was the burner.

Q. When he said that's a burner, what did that mean to you?

A. It's a gun. So --

BY INVESTIGATOR HUFFMAN:

Q. Was it wrapped -- what kind of a shirt was it wrapped up in?

A. It was like a little pinkish reddish shirt.

Q. Is that a shirt that he had on earlier?

A. Yeah. He had the shirt on earlier, and when he came back, he had it off, and he had something wrapped in it, and he had another shirt, I guess the shirt he had under that shirt on, anyway.

BY INVESTIGATOR FORD:

Q. Go ahead. What happened next?

A. Any way, after then he went upstairs, and all of us went upstairs.

BY INVESTIGATOR HUFFMAN:

Q. Who is all of us?

A. Me, Q, Tyreek, at that time was upstairs, and then seconds later, the guy with the cornrows came up, and then -- so Tyreek went to knock on the door to get Q. Q came out, and he was like, "Guess what just happened?" And Q was like --

BY INVESTIGATOR FORD:

Q. When you went upstairs, Q went back in the bedroom with his girlfriend; right?

A. Yeah.

Q. That's why Tyreek had to go to the door?

A. Yeah. He went to go knock on the door to tell his brother Q to come here, so when Q came out of the room, he was like, "Guess what happened?" He said, "That little dark skinned dude down there trigger happy," and then Q was like, "What?" He was like, "He just shot a lady."

And then -- so when I heard he had shot a lady, that's when I spoke up, and I said, "He shot a lady? What lady?" And he was like, "We just went on a sting, and the lady got to wrestling with him at the door, so he was trying to get in, so he just shot her."

I was like, "He shot her?" I said, "Where was y'all at?" He said, "We went to Little Ron's house." I was

like, "Why did y'all go to Little Ron's house? Little Ron is cool with everybody," and he was like, "Man, I'm broke. My girl about to leave me. I don't got no money, man, and I needed to do something quick for to get on my feet."

Q. What did sting mean to you?

A. Go on a robbery or go steal something or something like that. That's a sting. You go take what don't belong to you.

Q. Okay. Go ahead.

A. So after then, he was -- like I was saying, he was broke, needed some money. His girl was about to leave him, and he had to do something. Well, -- and so right after I heard that, it was -- they had went to Little Ron's house, and that it was his mother that the little young guy had shot, I immediately left out the door, but before I left out the door, I had seen that Tyreek did -- he had some blood on his hands, you know.

Q. When Tyreek said he shot a woman at Little Ron's house, did you make any comments about who the woman was?

A. Yeah. I said that was his mother, and Tyreek said, "No, it won't his mama. It was a skinny lady," and I said, "His mother is skinny. That was his mother."

Q. What did he tell you actually happened at the door?

A. He told me when the young dude shot him --

Q. Who knocked on the door? Who did the robbery?

A. He said the young dude -- he didn't say exactly who knocked on the door. He said, "When we went there, knocked on the door, asked for Little Ron, she opened the door and said that he was asleep. The little young dude tried to grab the door and tussle with her to get the door opened, and while they were tussling, the young dude took the gun and shot her."

BY INVESTIGATOR HUFFMAN:

Q. This is the young dark skinned?

A. The young dark skinned one. Then Tyreek said as they was going in, that she fell on him. That's how he got the blood on his hands.

BY INVESTIGATOR FORD:

Q. Did you see what Tyreek did with the gun?

A. No. Immediately after I heard that it was Little Ron's mama that they had did that to, I made my way out the door to try to go and call Little Ron.

Q. Can you describe the gun that Tyreek had?

A. It was black.

Q. That's all you know about it?

A. Yeah. That's all I know.

BY INVESTIGATOR HUFFMAN:

Q. Did you see the other two guys with a gun at any point?

A. No. I didn't see neither one of them with a gun at any point.

BY INVESTIGATOR FORD:

Q. Earlier you looked at a photo line up; is that correct?

A. Yes.

Q. And you identified photo number --

A. Three --

BY INVESTIGATOR HUFFMAN:

Q. Top right corner?

A. Yeah.

Q. Who is that?

A. That's Q's brother Tyreek.

Q. Tyreek, that's the person you know as Tyreek?

A. Yes.

Q. That's the person that told his brother Q in front of you that they did the robbery, the sting, and the lady got shot?

A. Exactly.

Q. Let the record reflect he's identified Gregory

Williams, ID Number 629925 as Tyreek.

BY INVESTIGATOR FORD:

Q. Did there come a time later on in the evening that you go back and talk to Q?

A. Yes. After I heard that she had been shot, they said that she was at the hospital, so about like 3:30, 4:00 o'clock, we went to the hospital.

BY INVESTIGATOR HUFFMAN:

Q. Who is we?

A. Me and another guy named -- known as Fonz, and I don't know his real name, but he was the guy that was giving me a ride, and we went to the hospital, and they didn't -- we went up on the third floor, and they stopped us right there where the doctor had talked to us and told us that she had passed.

Immediately after they told us that she had passed, I had been trying to call Little Ron all that day. Well, he didn't have his phone. Some girl had his phone and said that he was at the POC being questioned about what had happened, so I went back to 27th Street to Q's house, and I told Q that she was dead, and that his brother had killed Plum, and that I was going to testify to what I had heard his brother say.

BY INVESTIGATOR HUFFMAN:

Q. When you say Plum, that's Belinda Scott?

A. Yes. That's Belinda Scott.

BY INVESTIGATOR FORD:

Q. About what time was that?

A. It was like 4:00 o'clock in the morning.

Q. Did you -- what did he -- was Q's girlfriend still there at the time?

A. No. Q was standing in the doorway when I pulled up with his girlfriend's daughter, and before I could really tell him what had happened, he was explaining to me that his girl just had went in labor, and that she had just had his little baby boy.

Q. Were you upset?

A. Yes. I was crying at the time, and I was calling Q to the car, and when he got to the car, he was asking me what had happened, and, you know, I explained to him that it was Plum that his brother was talking about earlier that day that he had shot, and that she was dead, and when I told him that she was dead, he started to cry himself, and he jumped out of the car, went and shut his door to his house, grabbed the little girl and ran up the street.

BY INVESTIGATOR FORD:

Q. Did you see anyone else in the car when you got in the car to the leave?

A. No, I did not.

Q. How far did you ride in the car with them?

A. With what?

Q. With the three of them. When you got into the brown car, they were going to give you a ride?

A. They were in the driveway at Q's house. When I got in -- when Tyreek told me to come on that they was going to give me a ride, they backed out of the driveway on 27th Street. They pulled all the way down to the light at the end of the block, and that's when the guy that was driving with the cornrows asked me where was Berkley, and I told him it was across the Campostella Bridge, and he told me that he couldn't go that far because they was about to go do something, so --

Q. Have you ever seen the guy with the cornrows before, the light skinned guy?

A. I've never seen him before in my life.

Q. Have you ever seen the little dark black skinned guy that you've described?

A. I've never seen him before in my life.

Q. How long have you known Tyreek?

A. About five months.

Q. Did you ever get to talk Ronald Scott?

A. Yea. I talked to Ronald Scott like the -- okay, she died what, 4:00 o'clock that morning. I think it was like 12:00, 1:00 o'clock that evening, he finally answered the phone, but the whole time I had been calling, some girl was answering the phone, but I did get in contact with him the next day.

BY INVESTIGATOR HUFFMAN:

Q. When you talked to the girl on the phone, did she tell you anything specific about what had happened?

A. Yes. She said, "KP, I heard a shot go off at the door. They ran back here and was hitting Little Ron in his head, asking him where was the dope," and she said, "I thought that they were going to kill me and Little Ron, but they seemed to be too nervous being that they had already shot someone at the front door".

Q. Did she say that she got a look at him?

A. She said she seen all three of them. In fact, she said that the light skinned one with the cornrows was the only one who had a mask on his face.

Q. The other two individuals, supposedly their face was not covered?

A. Exactly.

Q. Did she indicate that she knew any of them?

A. No, no. She didn't say that she knew any of them.

Q. But she thought she might be able to recognize them?

A. Yeah. She said she could recognize them.

BY INVESTIGATOR FORD:

Q. When you saw Tyreek and you heard him saying this at the house, did he say at any time that they had beat Little Ron?

A. No. They didn't say that at the house.

Q. They just said that the little guy had shot the lady at the house?

A. Yeah, and they just had came from off a sting.

BY INVESTIGATOR HUFFMAN:

Q. The red skinned guy was present when some of this was being said?

A. Yeah. He walked up, and he asked Tyreek, "Why is he sitting there telling us what they just done?"

Q. Is there anything else you can think of you'd like to add to this statement?

A. No, not really.

Q. Has this been a true statement to the best of your knowledge and belief?

A. True, true as it can get.

Q. Was this statement given freely by you without any threats or promises?

A. True and voluntary.

STATEMENT ENDS AT 1645 HOURS.

_____
KENNETH PARKER

_____
DATE/TIME

WITNESSED BY:

_____
B.A. HUFFMAN, INVESTIGATOR

_____
DATE/TIME

_____
R.G. FORD, INVESTIGATOR

_____
DATE/TIME

HOMICIDE SECTION
DETECTIVE DIVISION
06/13/01-KPJ-TAPE
(KPARKER)

V I R G I N I A:

IN THE CIRCUIT COURT FOR THE CITY OF NORFOLK

FILED
NOV 15 2002
NORFOLK CIRCUIT COURT CLERK
BY D.C.

COMMONWEALTH OF VIRGINIA,

Plaintiff,

vs.

LESTER BERNARD LYNCH,

Defendant.

COPY

VOLUME I

TRANSCRIPT OF TRIAL PROCEEDINGS

Norfolk, Virginia

October 2, 2002

Before: THE HONORABLE CHARLES D. GRIFFITH, JR.
and a Jury.

Appearances:

OFFICE OF THE COMMONWEALTH ATTORNEY
By: RONALD BATLINER, ESQUIRE
Counsel for the Plaintiff

ROBINSON, NEELEY & ANDERSON
By: GEORGE A. ANDERSON, JR., ESQUIRE
Counsel for the Defendant

# I N D E X


| WITNESSES FOR THE PLAINTIFF: | DIRECT | CROSS | REDIRECT | RECROSS |
|---|---|---|---|---|
| RONALD SCOTT | 25 | 55 | 79 | |
| ELIZABETH KINNISON, M.D. | 81 | 86 | | |
| KENNY PARKER | 87 | 101 | | |
| TAVISHA MOYE | 123 | 125 | | |
| MARY WILLIAMS | 126 | 128 | | |


# E X H I B I T S


| NO. | DESCRIPTION | RECEIVED |
|---|---|---|
| ON BEHALF OF THE PLAINTIFF: | | |
| 22 | Photograph | 33 |
| 10 | Photograph | 33 |
| 9 | Photograph | 33 |
| 8 | Photograph | 33 |
| 7 | Photograph | 34 |
| 6 | Photograph | 34 |
| 5 | Photograph | 34 |
| 4 | Photograph | 34 |
| 3 | Photograph | 34 |
| 2 | Sketch of apartment | 34 |
| 1 | Photograph | 34 |
| 14 | Photograph | 34 |
| 16 | Photograph | 34 |
| 15 | Photograph | 34 |
| 11 | Photograph | 34 |
| 12 | Photograph | 34 |
| 13 | Photograph | 35 |
| 23 | Bag containing shorts and belt | 85 |
| 20 | Autopsy Report | 85 |
| 21 | Toxicology Report | 89 |
| 17 | Photograph | 99 |
| 18 | Photograph | 99 |
| 19 | Photograph | |

TRANSCRIPT OF TRIAL PROCEEDINGS

* * *

(Thereupon, the jury panel entered the courtroom, was sworn, voir dire commenced, a jury was selected and thereafter sworn to serve in the above-entitled trial.)

* * *

THE CLERK: Mr. Lynch, if I could have you please stand and face the jury. Members of the jury, look upon the defendant and harken unto his cause. He stands indicted as follows: Indictment 1, Count 1, Virginia in the Circuit Court of the City of Norfolk, indictment for first degree murder. On September 5, 2001 the Grand Jury charged that on or about June 9, 2001 in the city of Norfolk, Lester Bernard Lynch, Jr. feloniously did kill and murder Belinda Scott.

Indictment 2, Count 1, he stands indicted as follows: Virginia in the Circuit Court of the City of Norfolk, indictment for use of a firearm in commission of a felony. On September 5, 2001 the Grand Jury charged that on or about June 9, 2001 in the city of Norfolk, Lester Bernard Lynch, Jr. did use, attempt to use, or display a firearm while committing a felony; to wit, the murder of Belinda Scott.

Indictment 3, Count 1, he stands indicted as follows: Virginia in the Circuit Court of the City of

Norfolk, indictment for statutory burglary. On September 5, 2001 the Grand Jury charged that on or about June 9, 2001 in the city of Norfolk, Lester Bernard Lynch, Jr. did break and enter in the nighttime while armed with a deadly weapon the dwelling house of Belinda Scott with the intent to commit robbery.

Indictment 4, Count 1, he stands indicted as follows: Virginia in the Circuit Court of the City of Norfolk, indictment for use of a firearm in commission of a felony. On September 5, 2001, the Grand Jury charged that on or about June 9, 2001 in the city of Norfolk, Lester Bernard Lynch, Jr., did use, attempt to use, or display a firearm while committing a felony; to wit, armed burglary.

Indictment 5, Count 1, he stands indicted as follows: Virginia in the Circuit Court of the City of Norfolk, indictment for robbery. On September 5, 2001, the Grand Jury charged that on or about June 9, 2001 in the city of Norfolk, Lester Bernard Lynch, Jr. did rob Ronald Scott of U.S. currency having some value.

Indictment 6, Count 1, he stands indicted as follows: Virginia in the Circuit Court of the City of Norfolk, indictment for use of a firearm in commission of a felony. On September 5, 2001, the Grand Jury charged that on or about June 9, 2001 in the city of Norfolk,

Lester Bernard Lynch, Jr. did use, attempt to use or display a firearm while committing a felony; to wit, the robbery of Ronald Scott.

Upon these indictments, he has been arraigned, and upon his arraignment, he has pled not guilty. And for his trial, he has placed himself upon the country which country you are. Your charge, therefore, is to inquire whether he be guilty as charged in the indictments or not guilty.

If you find the defendant guilty, you shall say so and fix his punishment as prescribed by law. If you find the defendant not guilty, you shall say so and no more. Harken unto the evidence.

Do you want me to swear the witnesses that are here?

THE COURT: Yes.

THE CLERK: Could I have all witnesses that are here to testify, please stand and raise your right hand.

MR. BATLINER: There are some in the hallway.

THE SHERIFF: I'll get them.

(Thereupon, all witnesses were first duly sworn.)

THE COURT: I am assuming there is a motion to separate witnesses, correct?

MR. ANDERSON: That is correct, Your Honor.

THE COURT: The witnesses who are in the courtroom right now, I'm going to instruct you that you are going to have to remain outside of the courtroom until after you have been called to testify and excused as a witness. I understand this case may take more than two days to try. I will say this: Unless your attorney, who has you here, excuses you for some reason, you need to be here.

If the attorney who brought you here for some reason doesn't think you're needed, and they want to excuse you, I don't have a problem with that. But if they don't, then you need to be here, and you will need to follow all the recesses and things that everybody else does.

We are getting ready to take a lunch break right now until 2 o'clock. You all can step into the hallway. You all can go about your business, and go to lunch. Thank you.

Ladies and gentlemen, thank you again for being here. I did want to mention one thing to Mr. Gleason. I made a determination that your request to be excused was not sufficient, but I didn't say anything about it because I didn't know, maybe you might have gotten struck and it would have worked out.

But I want you to know I can't just ignore you. I considered it. I didn't think it was a good enough reason to excuse you. I hope it works out. I don't think anybody else that's left on the panel who gave a reason got picked. So sometimes it does work out. You're the only person who remained.

We're going to take a one-hour lunch break. Deputy Cratt will be giving you your juror badges as you walk out of the courtroom. When you come back, we will assemble, and we will start with opening statements and hearing evidence through the afternoon.

When you come back into the courtroom, you're not required to do this, but if you come back into the courtroom and you go into the jury room, the first person, I want you to close the door and keep the door closed so while you are in there as jurors, you don't accidentally overhear conversations that might be taking place out here in the courtroom.

Once you are in there and in and out of here, if you want to leave personal belongings in there, they are safe in there. There is only one way in and one way out. You all will always be in there together. So if you want to, you can. You don't have to.

Also, if you come back from lunch and you've got a coke or something like that that you want to have

with you, I allow that. I try not to make this too overly formal. I promise you there are times where I draw the line, but other than that, I want you to be comfortable. I want you to do your jobs.

The lawyers understand the way we run things. We try to have a fairly relaxed, but, you know, proper decorum, treat people with respect. We are here to get the truth, find out what the facts are, and it's easier if we relax a little bit. So with that, we're going to recess for lunch, and we're going to wait for you all to depart before we break.

(Thereupon, a luncheon recess was had at 1 o'clock.)

(Thereupon, the jury entered the courtroom at 2:10 p.m. and the following proceedings were had.)

THE COURT: Mr. Batliner.

MR. BATLINER: Thank you, Judge. Good afternoon, ladies and gentlemen.

THE JURORS: Good afternoon.

MR. BATLINER: As the judge has told you, this is a case that involves the first degree murder of Belinda Scott. It involves the armed burglary of her house and the robbery of her son, Ronald Scott. And in each of those charges, a gun was used to accomplish the deed.

Back on June 9 of 2001, Ronald Scott was at his mother's house at 3331 Lens Avenue in the city of Norfolk. His mother, Belinda Scott, was there. So was his young child and so was another woman by the name of Tamika Reid.

It's the bottom floor of a duplex there, and I'm going to show you a sketch, rough sketch of the bottom of the duplex. Ronald Scott and Tamika were in the back bedroom back here. Essentially, it's a duplex, and you come in here off the street and then there is the entrance into the bottom floor of the duplex.

Ronald's young son was laying on the couch here asleep. At about 9:30, 9:45, three men came to the door. We'll know from the testimony that you will hear, that Belinda Scott came to the door here, then she came back, walked back through the house to the back bedroom and told Tamika and Ronald, who were laying on the bed here, that someone was there to see Ronald.

Tamika is going to tell you that Ronald was asleep. He was groggy, and she was telling him to get up. As she is telling him to get up, she hears a firecracker noise from the front of the house. Ronald gets up. He starts to put his shorts on. About the

time he gets his shorts on, the door opens up. Two men come into the room. A third one stays back pretty much out of sight.

When they come into the room, the men have a gun. Ronald is beat with the gun. You see the knots. You see the opening in the top of his head there. They take money that's in his pocket, and they take money and drugs that were on the dresser.

They are threatening them with the gun. Eventually they leave. Tamika is very frightened. Ronald is scared himself. They wait a little while, and when they come out, they find Belinda Scott, Ronald's mother, laying dead right there, killed by a .25 caliber gunshot wound underneath the left eye.

Now, you've heard me tell you that when they robbed, one of the things they took were drugs. Ronald Scott is going to tell you about what happened the evening before. The evening before he had been out and he had gone to a bootlegger's house. That's a person who sells alcohol when they are not supposed to.

He was gambling, and he is going to tell you quite candidly he was selling heroin, that in the course of that evening, he had sold heroin and he had somewhere between six and $800 in his pocket. He's not sure because he was gambling at the same time, winning

a little, losing a little. And at the same time he hooked up with Tamika. Tamika and Ronald came back to his mom's house and essentially slept the day away in that back bedroom.

Ronald has a prior record for drug convictions, not a terribly big surprise when you're talking about somebody who is telling you he is selling drugs then, but he has got possession with intent for cocaine, possession with intent for heroin, a possession of heroin and shooting from and into an occupied vehicle. So he has five prior felony convictions.

Tamika, who he hooked up with, where they spent the day in the back bedroom, she is going to tell you that from the first time she saw a photo lineup, that's the man who was back there involved in this. He was one of the individuals who was back there with the gun threatening them, beating Ronald Scott. He is one of the people who came into the bedroom after she heard the firecracker noise which we know is the gunshot wound that kills Belinda Scott.

Ronald Scott, when he was questioned shortly after, he identified one of the individuals as Gregory Williams. He also said that Gregory Williams' brother, he thought, was involved, and he thought a fellow by

the name of Kenny Parker might be involved. And he is going to tell you that that was wrong, that he shouldn't have done that because he was trying to solve the crime by people he thought might know something about it. But he is also going to tell you that that man was one of the men that came in that room.

And you're going to hear from Kenny Parker. Kenny Parker was over at Gregory Williams' and Gregory Williams' brother's house over at 211 West 27th Street in the city of Norfolk, and he saw this defendant Gregory Williams, and another young fellow that he doesn't know in a car, and he was trying to get a ride because he was trying to get a ride to go over across the Campostella Bridge, and he wanted to go to the bootlegger, too. He wanted to do a little gambling.

At first they agreed to give him a ride, and then they said, no, there is something we have got to take care of, and they wouldn't give him the ride. And then a little bit later they all arrived back to the same house. This, again, was on June 9, 2001.

Ladies and gentlemen, after you hear all the evidence, the Commonwealth believes that you will find Lester Lynch guilty of first degree murder, armed robbery, the robbery of Ronald Scott, and using a gun in each one of those events. Thank you.

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THE COURT: Mr. Anderson.

MR. ANDERSON: Good afternoon. Well, I don't have no fancy diagram to show you and even if I did, I probably wouldn't know how to operate it. So you will just have to listen to me talk.

In that vein, let me tell you, I know that sometimes when I get excited, I talk fast. So if someone can't understand what I am saying or if I am not talking loud enough for you, raise your hand and I'll try to speak louder and make sure that you understand exactly what I am saying.

This is a case that a significant part of the case the Commonwealth and I will agree on. For example, there will be no dispute that Ms. Scott was murdered. There will be no dispute that she was murdered in the city of Norfolk. There will be no dispute from us that Mr. Scott was robbed. There will be no dispute from us that Mr. Scott was a drug dealer.

The dispute will come in when they try to pin this charge on an innocent man, my client. Let's review or let's preview what we anticipate the evidence will show. We can talk about all the medical exams and all of those diagrams, but this case is going to come down to a case of credibility. This is going to come down to a case of whether you believe the

Commonwealth's witnesses or whether you are going to believe the witnesses that I am going to have to come and testify for you and provide an alibi for the defendant.

Now, the first witness that the Commonwealth has indicated they wanted to talk about was Ronald Scott who, by the Commonwealth's own admission and who by Mr. Scott's own admission, is a drug dealer and, in fact, was a drug dealer on that day.

What Mr. Scott is going to tell you, as the Commonwealth has indicated, that the day before that he was out selling drugs. Later that evening, he and Tamika came home, came to his house, his mother's house, bringing drugs into his mother's house, that he came in knowing that his mother and child were there, that he went into the back bedroom with Tamika Reid, and there they spent most of the day.

Now, in all candor, I think Mr. Scott is trying to tell the truth. I think the problem is Mr. Scott just doesn't know what the truth is. And I say that because, as the Commonwealth has indicated, Mr. Scott gave the police information that the police later say, no, that's not true. And he said Mr. Scott indicated that he had made assumptions.

Ladies and gentlemen, I suspect what

Mr. Scott has done, again, is to make an assumption that because Mr. Lynch knows and has hung around with Gregory Williams, that he is assuming that Mr. Lynch was present on the day of this incident.

Now, when you look at the credibility of the witnesses, there will be several things that you will need to judge it by. You need to see whether the witnesses tell consistent stories and whether they even make inconsistent statements or they may have consistent stories with each other and whether they have consistent statements of their own statements.

Now, Mr. Scott is going to tell you that the first person to come into the room was Gregory Williams. Another witness, Tamika Reid, is going to tell you that the first person who came into the room was Lester Lynch.

Mr. Scott is going to tell you that the person holding the gun was Gregory Williams, and he knows Gregory Williams. He has had prior dealings with Gregory Williams. Ms. Reid is going to tell you that the person holding the gun was Lester Lynch.

Mr. Scott is going to tell you that Kenny Parker also known as K.P. came to his house and bought an 8-Ball. Mr. Parker is going to tell you, no, I went to his house two times, and the first time I bought a

20 piece and the next time I bought $50 worth.

Now, Mr. Scott is going to tell you something I find very incredible, that Mr. Parker bought the 8-Ball from him, came back a couple of hours later and asked for a refund on the drugs, and Mr. Scott gave him a refund on his drugs.

Mr. Parker, another witness, again, you have to judge credibility. Already as I have said to you, he is going to make some statements that are inconsistent with Mr. Scott. But then some of the other things you have to ask is what is his motivation for making the statements that he has made?

Mr. Scott is going to testify that he knows Kenny Parker, that Kenny Parker has been to his house, had dinner at his house. Mr. Parker is going to testify or tell you that on the day of the incident, on the evening of the incident, that he was at Mr. Scott's house at 10 o'clock in the morning and 1 o'clock in the afternoon.

But Mr. Scott is going to tell you that about three hours before this incident took place, that he saw -- that Mr. Parker came over with a Gregory Williams, and then if he testifies consistently with what he said in the past, he is going to say it looked like Gregory Williams' brother and a light skinned

person in the car. He never says Lester Lynch. See, he doesn't know Lester Lynch. Ronald Scott does not know Lester Lynch. He has never called Lester Lynch by his name, never seen him. I don't know whether he has ever seen him before, but there is no indication he knew him prior to this date.

Shortly after this incident, Mr. Parker is going to tell you that he was over at someone's house; he heard some information, and then he began to make phone calls to Ronald Scott's cell phone because he had heard that a lady had been killed.

Now, you will never hear him say I called the police. He never called the police. He said he kept trying to reach Ronald Scott. And finally on the third phone call, somebody said to him Ronald is down at police headquarters.

But he doesn't go down to police headquarters and tell the police I heard something; you might want to check this out. You know why? Because he knows that he is a suspect. Mr. Parker is a player and everybody in the neighborhood knows he is a player. They know what he does. He has a criminal record also. He was there buying drugs and he is going to tell you he uses drugs. And in fact, he is going to tell you he was using them that day.

So Mr. Parker doesn't bother to disclose anything to the police. In fact, the police have to stop him on a traffic ticket, and at that point he tells them, well, he knows Gregory Williams, then he knows a light skinned guy and a dark skinned guy were in the car. But, again, he never calls this defendant by his name or by his nickname, and he has a nickname that everybody around there would have known him by.

So you have to be suspicious of Mr. Scott, Kenny Parker, and then you have to be suspicious of quote, unquote, the Commonwealth's star witness. You remember, I just told you that you look at people's statements of whether they are consistent or inconsistent with other witnesses. You have to also see whether their statements are consistent or inconsistent with their own statements.

Fortunately for this defendant, Ms. Reid has been subjected to questioning on several different occasions and as the occasions change, so does her testimony.

I notice several of you have note pads. Even if you don't take these down, keep these things in your mind. Listen for the inconsistencies that you heard from Ms. Reid.

First of all, I think all of us will agree

that there is a difference between beige and black. Well, one time she is going to tell you that the mask that the defendant came in with, he had a mask that was beige. The next time she testifies, she says the mask was black. One time she says when the defendant comes in, that he has something covering from his forehead down to his nose. The first time when she testifies, she says it goes up to his lip.

At one time she is going to testify that I don't use drugs, wasn't using any drugs that day. Even though there is marijuana and heroin right there on the table, she says I wasn't using drugs that day. The next time she testifies I was smoking marijuana that day.

She is going to tell you that the defendant, one time she is going to say that there were three people in the room. Another time she is going to say that there are two people in the room. One time she is going to tell you she is in court one time and the co-defendant is there and she is able to identify the co-defendant.

The next time there is a hearing, the co-defendant is not sitting in the courtroom and she said I couldn't identify anyone but the defendant who happens to have been the only person who was sitting in

court that day. Then the next time she testifies again, the co-defendant is in court that day and she is able to identify him again that day.

The police officer who interviewed Ms. Scott will tell you that she made an identification from a photo. But he told her do not look at -- he said, don't focus on the complexion and the hair because some of those things change depending upon the weather and depending upon how they are cut. She is going to tell you, I know it's him and I am sure it's him. Why? Because of his red complexion and because of his corn rolls, his hair and his complexion, the very thing that the police officer told her not to focus on.

You know why she really thinks she made the identification? Because the police officer told her she picked the right person. The police weren't there so how will they tell her she picked the right person?

They are going to tell you she picked the person that was consistent with the person they were looking for. That's why she thinks she had the right person, and even to this day she is going to testify from that stand that's the right person because in her mind she really does believe that she has the right person.

If the case were to stop right there, if that

was all the evidence that was put in, you would acquit. You should acquit the defendant because, remember, he comes in with his coat of innocence and he maintains that coat of innocence until and unless the Commonwealth removes it. I will submit to you that evidence will not be enough to remove it.

But fortunately for the defendant, this incident occurred on June 9. And for any of you who like basketball, that was the night that Philly played the Lakers in the finals for the series in 2001. That's significant because that was the night that the defendant remembers.

In addition for any of you boxing fans, the day before was the day that the Ali/Fraiser daughters fought. Someone made a tape and so the defendant happened to have been making his way to their house in order to watch the fight.

You're going to hear the defendant's -- there are going to be several witnesses. One will be his sister. She is going to testify that earlier during the day at about the same time that Mr. Scott is saying that K.P. and Gregory and the light skinned guy came to his house, at that same time she is going to testify that she and her brother and their children were out swimming.

You will also hear the testimony of a cousin. She is going to testify that later that day the defendant, probably about 6:00 or 7:00 or right around that time, came over to visit her at her house. When he came there, her boyfriend, Gregory Williams, the co-defendant was there. She knows that the defendant took Gregory Williams back to Norfolk. That's significant because that's 6 or 7 o'clock in the afternoon when in fact Mr. Scott has testified that's about the time that K.P. and Gregory and the light skinned guy and the dark skinned guy came back to his house.

She is going to testify that she later on in that evening called over to a friend's house where she reached another cousin. As she was talking to that cousin and this is about 9 o'clock in the afternoon, that as she is talking to that cousin, Nu Nu as she calls him, a Lester Lynch comes in and she asked the cousin is Gregory with him, her boyfriend? She says, no. She calls him Tyreke. No, he is not.

She then speaks to Lester out in Virginia Beach. This cousin or friend stays out in Virginia Beach. So you're going to see there is no way that he could have been in Norfolk and in Virginia Beach at the same time.

You will hear evidence that Lester did go over to Norfolk that day. He did take Gregory Williams to Norfolk that day, that he left and went back to Virginia Beach. While in route to Virginia Beach, he receives a phone call from his mother. His mother asked him where is he? She is going to testify that she had had that call and he told her that he was on his way to Virginia Beach. He was going to Shawn's house, also known as Velma Figueroa.

Ms. Figueroa is going to testify that yes, he did come in. They had dinner, and they got high. She will then testify she asked him to go over to the store to get a cigar so they could smoke a little bit more.

In the meantime, they receive a call from one of her cousins who happened to live right across -- not from her cousin. They received a phone call from Lester's cousin. He had called Lester on his cell phone asking Lester, when are you going to come to Virginia Beach, when in fact Lester was already in Virginia Beach. He happened to be across the street. So the cousin asked him, will you bring me a comb so that I can have my hair braided.

Lester then leaves, goes over, gives his cousin Ronald also known as Pooh the comb, stays there for a while, goes back to Ms. Figueroa's house, comes

back over later on, they watch the fight, and they go out.

You will also hear testimony from another cousin who will testify that she opened the door for him. It was right around 9 o'clock. So those witnesses will be the witnesses who will provide you with the alibi for Mr. Lynch. And when you balance the testimony of those witnesses against the testimony that you're going to hear from the Commonwealth's witnesses, I know you're going to do the right thing and return a verdict of not guilty for this defendant.

THE COURT: All right, Mr. Batliner.

MR. BATLINER: Ronald Scott. He will need to be sworn, Judge.

THE COURT: I don't know if I specifically said this. I try to take my breaks between an hour and 15 and an hour and 30 minutes at a time. In other words, we'll go for about an hour and 15 to an hour and 30 minutes, and we'll take a break unless we have already taken a break. Do we have enough pens to go around? I don't know if jurors walk off with those or the lawyers walk off with those. I am not making accusations. I usually have enough out here but somehow or another there is never enough.

MR. BATLINER: Judge, just as a logistical

matter, we have premarked exhibits. They may not be exactly in the right order as they come in. I think most of them are premarked.

THE COURT: This is Mr. Scott. Mr. Scott, raise your right hand, please.

RONALD SCOTT,

called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BATLINER:

Q. Would you state your name for the Court, please?

A. Ronald Antonio Scott.

Q. Mr. Scott, let's just start off, you have a prior felony record; is that correct?

A. Yes, sir.

Q. You have been previously convicted of five felonies?

A. Yes, sir.

Q. Possession of cocaine with intent?

THE COURT: Mr. Batliner, I'm sorry.

BY MR. BATLINER:

Q. Mr. Scott, you have been previously

convicted of possession of heroin with intent, possession of cocaine with intent, possession of heroin and shooting from an occupied vehicle and shooting into an occupied vehicle; is that correct?

A. Yes, sir.

Q. What I want to do is I want to direct your attention back to June of 2001. You remember June 9?

A. Yes.

Q. You remember the day before that on June 8?

A. Yes, sir.

Q. Would you tell the ladies and gentlemen of the jury what you were doing on June 8, the day before the 9th?

A. June the 8th I was riding around selling drugs.

Q. What kind of drugs were you selling?

A. Heroin. Then I stopped at a bootlegger spot.

Q. Tell me what a bootlegger is.

A. It's a place that sells liquor. You can gamble and you can drink. If you drink, you know, basically...

Q. Did you go to the bootlegger?

A. Yes.
Q. Did you drink?
A. No, I don't drink.
Q. Did you gamble?
A. I gambled.
Q. Did you sell heroin there?
A. Yes.
Q. How much heroin did you sell?
A. I sold like $800 worth of heroin.
Q. Then you were gambling at the same time?
A. Yes, sir.
Q. So how much money do you think you had during the course of the evening?
A. Probably about $800, something like that.
Q. While you were there, did you hook up with anybody?
A. Yes, I hooked up with this girl named Tamika Reid.
Q. How long did you stay at the bootlegger's?
A. About two to three hours.
Q. What happened with you and Tamika after you decided to leave the bootlegger's?
A. We left, went to my house.
Q. What is your house? What is the address?

A. 3331 Lens Avenue.
Q. Is that where your mother lived?
A. Yes, sir.
Q. That's Belinda Scott, right?
A. Yes, sir.
Q. Who else lived there with her?
A. My son and me.
Q. What is his name? I'm sorry?
A. My son, Ronald Williams.
Q. How old is he?
A. Ten.
Q. When you got to the house, what did you and Tamika do? First, was she with you?
A. Yes.
Q. She came to the house?
A. Yes, she came there with me.
Q. What did you do once you got to the house?
A. We ate, watched TV.
Q. Where did you end up?
A. In the bedroom.
Q. Where is that located in your -- your house or your mother's house?
A. My mother's house. In the back of house.
Q. In the back?

A. Yes.

Q. How long did you stay back there?

A. I ended up staying back there until like the next day, next night.

Q. Then something happened on the 9th; is that right?

A. Yes, sir.

Q. Tell me what happened.

A. Well, I was sleep and Tamika was shoving me, waking me up, telling me my mother was calling me, right. So I got up and I was putting my clothes on, and when I got to the door, I was turning the doorknob and at the same time somebody was at the other side of the door turning it. So the door ended up coming open like a little shove. There was Gregory Williams.

Q. Does he have a nickname?

A. Yes, Tyreke.

Q. You saw him?

A. Yes, I saw him. He had the gun. He was telling me back up, get on my knees. At the same time this other guy came in.

Q. What did the other guy look like?

A. Light skinned guy.

Q. What happened when he came in?

A. He basically had Tamika hostage. He

basically had Tamika, you know. They came in. They told Tamika to back up, get on the bed, don't move "B". I was on my knees, and they was asking where the heroin and the dope was. They say they wanted the money and the dope. I was pointing to the table, and that's when the guy right there grabbed the tablecloth and snatched it off the table, the money. It was like $25 on the table and the dope went everywhere, and he started picking it up.

I guess it wasn't enough because that's when they started hitting me in my head and stuff. One of them was pistol-whipping me. I didn't see if he had a gun or not, so I am not going to say he had a gun, but he was hitting me in my head, though. I know Gregory had a gun because Gregory was right in front of me.

Q. Did they look anywhere else for money?

A. Yes, they looked in my pockets.

Q. What did you have on?

A. I had on some brown shorts.

Q. Now, you nodded your head and you said that's when this fellow and you nodded. Do you see one of the people in the courtroom here today?

A. Yes, light skinned guy sitting beside the lawyer right there with the black suit on.

Q. Would you point him out, please?

A. Right there.

MR. BATLINER: Let the record reflect he identified the defendant.

THE COURT: The record will so reflect.

THE WITNESS: With the plats in his head.

BY MR. BATLINER:

Q. So they started beating you in the head?

A. Yes.

Q. How many times do you think you were struck in the head?

A. It was more than three times.

Q. What happened after you were hit in the head?

A. At the same time this guy came back there and I didn't get a good look at him. He peaked his head in the door. He was like, man, let's get the "F" out of here, you know, and that's when Gregory hit me one last time, and they ran out the house.

Q. What did you do after they ran out?

A. Well, I calmed myself down, waited for like anywhere from between three to five minutes, and then I eased my way into the outer house, and I seen my son on the couch and the door was still ajar, and my instinct was to look for my mom but at the same time I wanted to secure the house. So before I even can close the door, I seen my mother in the hallway laying on the floor.

So when I went out there to her, she was just on the floor like mumbling. I was like, mom, turn over a little bit. She had like a big blood cloth right under her eye. At the same time, I don't even know that she had been shot. I thought somebody knocked her out or something, you know, because I didn't hear no gunshot. So I didn't even know she had been shot.

Q. Could she communicate with you at all?

A. She was just mumbling. She was like in shock, delirious.

Q. What happened then?

A. I stayed there. That's when I heard a little noise behind me. Tamika was behind me. I told her get some help, you know. She ran past me. You know, she ran out the house.

Q. Do you know where she went? Did you see?

A. I didn't see her go no where. I didn't see her, like what location she went to, but I had an idea where she went at across the street to the neighbor's house. I didn't see her go there, though.

Q. Let me show you some pictures.

THE COURT: Have you already seen these, Mr. Anderson?

MR. ANDERSON: Yes, Your Honor.

THE COURT: You have any objection to them coming in?

MR. ANDERSON: No, Your Honor.

THE COURT: Can I go ahead and just mark them? Members of the jury, some of the exhibits that are being presented in this case have been used in another hearing. They have already been received by another judge. I am going to receive them with my initials next to them for purposes of this trial.

Unless you see on the margins CDG -- actually, you won't get it. I want you to understand when you see another judge's initials, these were used in another hearing not related to today. You don't have to be concerned with that.

I will receive Commonwealth's Exhibits 22, 10, 9, 8, 7, 6, 5, 4, 3, 1, 2, 14, 16, 15, 11, 12 and 13.

(Photograph marked as Commonwealth's Exhibit No. 22 in Evidence.)

(Photograph marked as Commonwealth's Exhibit No. 10 in Evidence.)

(Photograph marked as Commonwealth's Exhibit No. 9 in Evidence.)

(Photograph marked as Commonwealth's Exhibit No. 8 in Evidence.)

(Photograph marked as Commonwealth's Exhibit No. 7 in Evidence.)
(Photograph marked as Commonwealth's Exhibit No. 6 in Evidence.)
(Photograph marked as Commonwealth's Exhibit No. 5 in Evidence.)
(Photograph marked as Commonwealth's Exhibit No. 4 in Evidence.)
(Photograph marked as Commonwealth's Exhibit No. 3 in Evidence.)
(Sketch of apartment marked as Commonwealth's Exhibit No. 2 in Evidence.)
(Photograph marked as Commonwealth's Exhibit No. 1 in Evidence.)
(Photograph marked as Commonwealth's Exhibit No. 14 in Evidence.)
(Photograph marked as Commonwealth's Exhibit No. 16 in Evidence.)
(Photograph marked as Commonwealth's Exhibit No. 15 in Evidence.)
(Photograph marked as Commonwealth's Exhibit No. 11 in Evidence.)
(Photograph marked as Commonwealth's Exhibit No. 12 in Evidence.)
(Photograph marked as Commonwealth's Exhibit

No. 13 in Evidence.)

MR. BATLINER: We can go ahead and get these marked, too, Judge.

THE COURT: Commonwealth Exhibit 23 will be received without objection.

(Bag containing shorts and belt marked as Commonwealth Exhibit No. 23 in Evidence.)

BY MR. BATLINER:

Q. Mr. Scott, you recognize that?

A. Yes, that's the front door to the house.

Q. That's the front door to your mom's?

A. Yes.

Q. And that's?

A. 3331 Lens Avenue.

Q. Located in the city of Norfolk?

A. Yes, in the Lafayette area.

THE COURT: What exhibit number was that?

MR. BATLINER: Number 1, Judge. I will publish them.

BY MR. BATLINER:

Q. I'm now going to show you what has been received as Commonwealth Exhibit Number 5. Do you recognize that?

A. Yes.

Q. What is that?

A. That's the living room.

Q. Is that also at the same location?

A. Yes, same location.

Q. Now, I don't know if I asked you before. Where was your son in the house when the people came in, if you know?

A. On the couch out there, the one that's visible.

Q. Point to it, please.

A. He was right there when I came in the house, but that night he was right here on this couch.

Q. When you came in, on this crouch?

A. When I came in the house, he was on that couch when I got there on June 8. But on the 9th of the incident he was on that couch.

Q. Just so it's clear, when you're talking about you came in on June 8, he was on the couch that's at the bottom left on Commonwealth Exhibit 5, on the couch that seems to have a white cover with flowers on it; is that correct?

A. Yes.

Q. Then when you saw him when you came out of the bedroom on the 9th --

A. He was to the wall when I come out. I come out this way.

Q. He was on a different couch?

A. Right. He was like on this one that way.

Q. On this couch?

A. Yes, because the couch right there was empty.

Q. You're talking about the blue couch you can just see the arm of?

A. You can see the arm of.

Q. That's on the bottom right-hand corner of Commonwealth Exhibit Number 5?

A. Yes.

Q. I am going to show you what's been previously received as Commonwealth Exhibit 6. What is that?

A. That's the kitchen.

Q. There is a door in the center of the picture. Where does that go?

A. The one right here comes from the living room to the kitchen and this one right here goes to the back bedroom where I was at.

Q. So through that door is the bedroom where you were?

A. Yes.

Q. What we're looking at is coming from?

A. The living room.

Q. The previous picture we've talked about?

A. Yes, the living room.

Q. I want to show you what's been previously marked as Commonwealth Exhibit Number 8. What's that?

A. That's the bedroom I was in.

Q. That's your bedroom?

A. Yes.

Q. Where is the bed? If you can point it out for the ladies and gentlemen.

A. Right there with all the clothes on it.

Q. Now, when did all the clothes get on the bed?

A. When they came in.

Q. When who came in?

A. The guy right there and Gregory Williams.

Q. Tell me how they got on the bed.

A. They throw them. They dumped the clothes basket on it.

Q. You're pointing to the clothes basket that is in the picture?

A. It's right there.

Q. That was full of clothes?

A. Yes.

Q. Did they dump it on anybody, or did they just dump it on the bed?

A. On the bed, on the floor.

MR. BATLINER: That was Commonwealth Exhibit Number 8.

THE COURT: All right.

BY MR. BATLINER:

Q. I am going to show you what's been previously accepted as Commonwealth Exhibit Number 9. What's that?

A. Another picture of the bedroom.

Q. Tell me what that shows.

A. It shows the TV. It shows the table where the drugs was on, the table they snatched the tablecloth off of.

Q. You're pointing?

A. Right here.

Q. To the bottom lower right corner of the photograph?

A. Yes.

Q. That's the table that now it has nothing on it?

A. Nothing on it.

Q. What did it have on it?

A. It had a tablecloth on it. It had a clothes basket, and it had some drugs on it. It was like $25 on it that I had gave to Tamika. She had put it on the

table.

Q. So you had some cash, and what kind of drugs were on the table?

A. Heroin.

Q. How much heroin was on the table?

A. It was like 20, $1,200 worth of capsules.

Q. You said capsules?

A. Yes, capsules.

Q. Is that how heroin is packaged when you sell it?

A. Yes.

Q. I am going to show you what's been previously received as Commonwealth Exhibit Number 10. What is that?

A. That's another view of the bedroom taken from the outside area, but it's the bedroom.

Q. What do you see in this picture?

A. You see the clothes that I was telling you that they threw on the floor right there, and you see the tablecloth that was on the table right here.

Q. Is that the same table here in this picture on the left-hand side of the photograph that you had previously indicated in the previous photo?

A. Yes.

Q. You say there is a tablecloth that was on

top of it. Where is that?

A. That's right there.

Q. I'm looking at it. It's white and looks like --

A. Yes, it has like little flowers on it.

Q. Purple flowers. Is that accurate? You tell me.

A. Yes, that's accurate.

Q. Where had that been previous to the people coming into the room?

A. What this area is?

Q. Yes.

A. This is the bedroom, coming into the room, coming into the bedroom.

Q. What is this on the floor here? There are some small items on the floor?

A. They knocked a pack of cookies over.

Q. Where were the cookies?

A. The cookies was on the table, too.

Q. I'm going to show you what's been previously marked as Commonwealth Exhibit Number 4. Where is that?

A. That's out in the hallway coming from the outer house into the inside house. That's another door coming in facing this way that goes upstairs.

Q. So these steps lead up to another living area?

A. Yes, where my brother stay at.

Q. Then this is the door to what, the outside?

A. The outside.

Q. Where is the door to where you live?

A. You got to go through here, go through the living room, and go through the kitchen, back.

Q. Back to the bedroom?

A. Back to the bedroom.

Q. But the door to the duplex that you lived in, that part is here?

A. Yes, comes right from there.

MR. ANDERSON: Your Honor, what exhibit was that?

MR. BATLINER: Number 4.

BY MR. BATLINER:

Q. I show you what's Commonwealth Exhibit Number 3. Where is that?

A. That's the porch.

Q. Is that outside?

A. Yes, outside the front porch.

Q. I am also going to show you Commonwealth Exhibit Number 7. Where is that in the house?

A. That's coming from out the hallway and to the living room. If you go to this side, that's the bedroom.

Q. So this door goes where?

A. That's the hallway door that goes to the outside. You go outside, go to the hallway. The steps right there you can come in, coming into the living room.

Q. When you came out and said you found your mother, where was your mother?

A. Right in this hallway right here.

Q. Outside that door?

A. Yes.

MR. BATLINER: That was Commonwealth Exhibit Number 7 that he was pointing to, Judge.

BY MR. BATLINER:

Q. Mr. Scott, I'm going to show you a sketch. Can you see that?

A. Yes, I can see it.

Q. I give you a laser pointer. Push that button there. You see the little red dot? I've got it pointed down here. You can point it up on the screen. Do you recognize that sketch?

A. Yes.

Q. Show me where the front door to your -- what you were calling the porch area. Where is that?

A. It's like right here.

Q. Where is the door that comes into sort of the living area where your mother lived and where you lived? How do you get in there?

A. Right here.

Q. Where was your mother when you found your mother? When you came out, where did you see her? Where was she laying at?

A. She was laying in the hallway. The steps are right here. The hallway got to be right by the steps.

Q. Where is the door that goes into your area?

A. To my area, back here.

Q. That's the bedroom, right?

A. Yes.

Q. That's where you and Tamika were?

A. Yes.

Q. All right. Now, as it's labeled there, you see the room called living room. Does that match up with what we have the picture of that you described as the living room?

A. Yes, right here.

Q. So the area that says living room on that sketch is consistent with what is Commonwealth Exhibit Number 5; is that right?

A. Yes.

Q. Which couch was your son on when you came out from after you had been pistol-whipped?

A. It was right here, this couch right here.

Q. He was on that couch there?

A. Yeah.

Q. Now, the kitchen area, is that also consistent with the photograph that we had which is Commonwealth Exhibit Number 6?

A. Yeah.

Q. Where is the kitchen area? Point up there.

A. (Pointing.)

Q. Right there?

A. Right there.

Q. The pictures that you pointed to regarding your bedroom, they are consistent with that back bedroom you have already put the pointer on?

A. Yes.

Q. Those would be Commonwealth Exhibit 10; is that correct, 10, 9?

A. Yeah.

Q. Eight; is that right?

A. Yeah.

Q. Now, you said you had on some shorts that

evening?

A. Yes, some brown shorts. Well, you can say tan, rather.

Q. Tan?

A. Yeah.

Q. I show you what's been previously received into evidence as Commonwealth Exhibit Number 23. It's a pair of shorts, a belt?

MR. BATLINER: And I believe there are some test tubes from DNA work that we have a stipulation later for, Judge.

BY MR. BATLINER:

Q. These are the shorts that you had on that evening?

A. Yes, sir.

Q. With that?

A. That's the belt.

Q. Let me show you a photograph, show you a series of photographs, then I am going to put them up on the display, but I want to make sure you recognize them first. You recognize those three photos?

A. Yes. Those are photographs of me with my shorts on.

MR. BATLINER: For the record, Judge, those are Commonwealth Exhibits 14, 15 and 16.

THE COURT: Okay.

BY MR. BATLINER:

Q. Do you recognize those photos?

A. Yeah.

Q. What's that?

A. That's me with my head bruised up.

MR. BATLINER: Those are going to be Commonwealth Exhibits 11, 12 and 13.

BY MR. BATLINER:

Q. Let me first show you Commonwealth Exhibit 14. What is that?

A. That's me with my shorts on.

Q. What is that you see? Is there something by the pocket there? What is that?

A. Talking about where, right here?

Q. No.

A. Right here?

Q. Right over there, right up from that.

A. That's a blood stain.

MR. ANDERSON: I'm sorry, what did he say?

MR. BATLINER: Blood stain.

BY MR. BATLINER:

Q. That's the left front pocket?

A. Yeah.

Q. I show you Commonwealth Exhibit Number

15. What is that?

A. That's me with my shorts on and on the back pocket another blood stain there.

Q. On the back pocket?

A. The back pocket.

Q. I show you Commonwealth's 16. What does that show?

A. Me. A picture of me with a blood stain on the lower part of the shorts.

Q. When were these pictures taken?

A. Downtown.

Q. The same evening?

A. Yeah, same night.

Q. I'm going to show you what's Commonwealth Exhibit Number 11. What's that?

A. That's me.

Q. You had hair then?

A. Yes, I had hair then.

Q. What does it show?

A. My head bruised up right here.

Q. These photos, were they taken again that same evening?

A. Yes, that same night.

Q. I am going to show you what is Commonwealth Exhibit Number 12. What does that show?

A. Me with my eye swelling up.

Q. I'm going to show you Commonwealth's 13.

A. That's my head, busted in the head right here.

Q. Is that where it bled?

A. Yeah.

Q. Now, just to make sure it's real clear, where was it when you were being beaten in the head to get the injuries that are shown in these pictures? Where were you on that diagram?

A. Right here, about right there.

Q. About right there?

A. Yes.

Q. Between the bed and the dresser?

A. Uh-huh.

Q. You said you were kneeling down when that happened?

A. Yes, I was kneeling down.

Q. Ronald, let's back up just a little bit. On the day of the 9th, not the evening but during the day, did you come into contact with somebody by the name of Kenny Parker that day?

A. Yeah.

Q. Tell the Judge and the ladies and gentlemen of the jury when you came into contact with

Kenny Parker that day.

A. He kept calling my phone, but I wasn't answering so he popped up at the house, and my mother came and woke me up. So I got up. You know, we went -- we were in the bedroom first talking and he was asking me trying to get an 8-Ball of heroin which is three and a half grams of raw heroin. It's like wholesale.

So I was like yeah, I got it, you know. But I didn't want to do it because I didn't want to do nothing at the house. He was like he really needed it and all that, right? So I went and did it for him. He told me he didn't have but $500. So I went on and did it for him for 500.

He left and he come back again. When he came back, he had put it in capsules and it was like $1,100 worth of capsules. He was telling me that he didn't want it, told me it wasn't the same thing that I usually have. I was like, it's the same thing that you been buying.

And I looked at it. I seen that it wasn't the same thing. Mine is white. He didn't bring me back the same thing that I sold him. I didn't feel like arguing with him. I was tired, and it wasn't the place because I didn't want my mother to know what we was doing. She was in the living room with my son.

So I went in my pocket and give him the money back and took the stuff back. And he asked me was I mad. I was like, no, I ain't mad. We had a few words and he left. Then about a few hours later, that's when this thing happened, the incident happened.

Q. Now, when the incident happened -- after it happened, you had told the police who you thought was involved in it afterwards. Or who did you tell the police was involved in it afterwards?

A. I told them Gregory Williams which was Tyreke. I didn't know him by Gregory Williams. I just know him by Tyreke. I told them Kenny Parker. I told them Christopher Williams, and I told them another guy because, you know, that's the same guys I kept seeing coming to the house. They came to my house two times. I seen them in the car.

Q. Which of those guys was really there?

A. The guy right there, Gregory Williams, and another guy. I couldn't get a look at him, but the other guy, they came to the house earlier, but they wasn't there during the incident. I don't know who was in the car, you know.

Q. Why did you tell the police about Kenny Parker and Christopher Williams? Why did you tell them

that?

A. I was telling them everybody that, you know, basically that kept coming to my house. They came to the house back to back, kept coming to my house, you know. And I felt it was right. I was just trying to tell them everything, you know.

Q. Did you finally tell the police that wasn't Kenny?

A. Yes. I went back down there the following day and told them everything what happened. And that same night I was trying to get to the hospital. They wouldn't let me go to the hospital to see my mother because my mother wasn't even pronounced dead, wasn't even dead yet, and they wouldn't let me go to the hospital.

So I just, you know, just telling them, you know, things trying to hope they hurry up and let me go to the hospital. So when they did end up letting me go to the hospital, by the time I could get down there, she was pronounced dead.

I went down there the next day and went through some pictures, and I basically, you know, pointed the guys out because I knew who it was. I seen who did it. I told them who did it, who was there, who was not there. You know, I basically just cleared everything up.

Q. Who was there?

A. The guy right there, Gregory Williams, and I couldn't see the other guy.

Q. You don't know who the third guy was?

A. No, I couldn't see him. I got a look at him, but I didn't get a very good look at him to basically say that's him, but I seen that guy right there.

Q. So the third guy you didn't see well enough to say you could identify him?

A. He stayed out in the outer house. He only ran back there to tell them to get away. He said, man, let's get the hell out of here. That's basically all he did. He stuck his head in there for that brief second, but I knew he was at the door before he stuck his head in there. I felt his presence, but I didn't get a good look at him.

Q. We had talked. You said that there was money that was taken off the dresser?

A. Yes.

Q. There were some capsules of heroin taken off the dresser?

A. Yes.

Q. Was there anything in your shorts?

A. Yes, there was money in my shorts.

Q. Why did you give up any of that stuff?

It sounds silly.

A. He had a gun to my face. He was already beating me in my head, and I didn't -- at this point I didn't hear no gunshots so far, so I didn't know they already done harm somebody. I didn't want nobody to get harmed for my wrongdoing. Tamika was right there. I was trying to look out for her, her well being, and I wasn't trying to get killed myself. I knew my son was in the house, so I was just like, you know, telling myself give it to them, you know.

These guys going to come in here with a gun and stuff. I didn't need it that day. So I give it to them. I was complying with everything they asked for, you know.

Q. Ronald, you have any doubt in your mind this man was in your bedroom?

A. I am sure definitely one hundred percent positive. I went downtown and picked him out myself personally.

MR. BATLINER: Answer any questions defense counsel may have.

THE COURT: Mr. Anderson, are you going to be a while?

MR. ANDERSON: Probably a little bit, Your Honor.

THE COURT: I am going to go ahead and take a short recess, ladies and gentlemen. It's 3:20. We've been at it a little over an hour now. Maybe 10, 15 minutes.

(Short recess taken at 3:21 p.m.)

THE COURT: Bring the jury out.

(Thereupon, the jury entered the courtroom at 3:48 p.m.)

THE COURT: Ladies and gentlemen, I apologize for taking so long. We have a monthly meeting for all the judges that was set today. We had this jury trial, and I had something I presented to the other judges. I went down there and did that, and it took me a little longer than I expected, so I apologize. Mr. Anderson.

CROSS-EXAMINATION

BY MR. ANDERSON:

Q. Good afternoon, Mr. Scott.

A. Good afternoon.

Q. First, let me offer my condolences on the death of your mom.

A. Thank you.

Q. Mr. Scott, you said something at the end that has me a little bit curious. You indicated that you picked the defendant out of a mug shot the next day?

A. Yeah, I believe it was the next day, yeah.

Q. Now, you also testified that you changed your story. You told the police that you had changed your story the next day?

A. Yeah, went down there and told the truth.

Q. That was the next day?

A. Yeah, as far back as I can remember. I believe it was the next day.

Q. Isn't it a fact that the investigators approached you and told you that they had done some investigation, and they discovered that the information that you gave them was not correct, that Kenny Parker and Christopher Williams had alibis, and that's when you changed your mind?

A. They called me on my cell phone and told me to come down there.

Q. So you didn't voluntarily go down there. It was only after they contacted you with that information that you went down and changed your story; isn't that correct?

A. Yes.

Q. So it's not like you just changed your mind.

A. Yes, I changed my mind, too.

Q. After they convinced you?

A. No, it wasn't that. It was like I told you, my mother wasn't dead at that time, you know. It was like the death of my mom and what I was about to do was I was about to get myself into something I had no business getting into.

MR. ANDERSON: Your Honor, that's beyond my question.

THE COURT: I think he has a right to try to explain what he did and why he did it. You can follow up.

THE WITNESS: I never went to the police for nothing in my life, you know. I always took care of things on my own and at that point it was going in that direction, you know. And I just hopefully -- you know, I am glad that I changed my mind and did what I did.

BY MR. ANDERSON:

Q. On the 8th, you were out selling drugs?

A. Yes, I was selling drugs.

Q. And were you alone when you were selling the drugs?

A. No, I had somebody with me.

Q. Did that person go to the bootlegger place?

A. Yes, he went with me.

Q. Now, did you know Tamika Reid before that

night?

A. Yes, I knew her. I hadn't seen her in like -- I haven't seen her in like about eight years, man, because I just came home from doing six years.

Q. You didn't know her last name?

A. Yes, I know her last name.

Q. You knew her last name that night?

A. Yeah, because we always call her by that. Her name always went together, Tamika Reid. We never just called her Tamika.

Q. You don't remember telling the police officer you didn't know her last name?

A. No, I don't remember that.

Q. You all weren't boyfriend and girlfriend?

A. No.

Q. What time did you go to the bootlegger place?

A. I am not going to be accurate, but I could say it was probably about between 11:30 and 12 p.m.

THE COURT: Just so we're clear, when you say between 11:30 and 12:00 p.m. ...

THE WITNESS: Midnight.

BY MR. ANDERSON:

Q. What time did you leave the club?

A. Anywhere between 2:00 and 3:00.

Q. When you left, who went with you?

A. It was me, Dee Dee and Tamika.

Q. Dee Dee is?

A. That's the guy that was driving that was with me all day that day.

Q. He took you directly to your mother's house?

A. Yeah. I think we stopped and got some cigarettes, but after that we went straight to my mother's house.

Q. When you arrived at your mother's house on -- that was early in the morning of the 9th?

A. Yeah.

Q. Besides your mother and your son, was anyone else there?

A. Not downstairs.

Q. You don't recall any of your mother's other grandchildren laying in a pile on the floor?

A. No.

Q. If they had been there, you would have seen them?

A. Well, not really.

Q. This house is fairly small, isn't it?

A. I mean, there have been times I came home and they was there and I didn't even know they was there

until that morning.

Q. My question is, your house is fairly small?

A. No, that house is big, man.

Q. You come into the hallway -- I mean, you come into the house, and there is a living room and there is a kitchen, and then there is the bedroom, correct?

A. See, I just walk straight through.

Q. You saw your son on the couch?

A. Yes, I seen my son on the couch.

Q. You saw your mom?

A. Yeah.

Q. On the other couch?

A. Yeah.

Q. So that's early in the morning of the 9th?

A. Yeah.

Q. It's 3 o'clock in the morning. You all get something to eat?

A. Yeah.

Q. Then you go in the back and you have sex and then you go to sleep?

A. Yeah.

Q. You were fairly --

A. I watched TV.

Q. You watched TV?

A. Yeah.

Q. Would it be fair to say you are a fairly sound sleeper?

A. Huh?

Q. Would it be fair to say that you are a sound sleeper?

A. No, not really. It depends on how much sleep I been getting.

Q. Now, whenever you woke up that day, did you wake up on your own or did Tamika wake you?

A. She woke me up about twice, and other than that, I was waking up like on my own.

Q. Do you recall leaving that room that day?

A. Yeah, I had left the room.

Q. How many times?

A. Right before Kenny came, I had left like once before then because my mama came and called me in the hallway, and she was asking me for some money. Other than that, the second time I left was when Kenny came to --

Q. What time was it that Kenny came the first time?

A. I told you I was waking up out of sleep so it's going to be hard for me to put a time. If I was to

tell you a time, I would be lying because I don't know the time.

Q. I don't want you to do that.

A. All right.

Q. And he was calling you on your cell phone?

A. Yeah, he was calling me on my cell phone. I wasn't answering the phone, though.

Q. Is Kenny one of your regular customers?

A. I wouldn't call him a customer.

Q. Have you sold to him more than once?

A. I sold to him before, but I wouldn't call him a customer, though.

Q. But he made the statement, this is not like the stuff you regularly give me?

A. Yeah.

Q. But he was lying about that, wasn't he?

A. Yeah.

Q. How well do you know Kenny?

A. I know him well. He's just like me, he like to gamble.

Q. Was he dealing drugs also?

A. Yeah.

Q. Now, you said you thought something was about to go down. Was that because Kenny has a

reputation of robbing drug dealers?

A. No. It's the people that he brought to the house.

Q. Did you know any of the people that he brought to the house?

A. I knew Tyreke.

Q. Now, did you ever go out to the car?

A. No, I didn't go out to the car. My mother was having a fit because of Kenny about how come every time he come over there, how come he got to bring different people with him every time, because my mom don't like people coming to her house, period.

Q. So you never went to the car?

A. I went out there to see who did they bring and when I seen, it made me mad because I don't mess with no people like that. My son to hear that and my mom to know that, for them to know that, I ain't having that.

Q. The people in the car never came to the house?

A. No, they didn't come to the house both times.

Q. In fact, earlier you thought that it was Christopher Williams that was out in the car that day, didn't you?

A. Yeah.

Q. You don't know of your own personal knowledge that it was Christopher Williams in that car, do you?

A. Christopher Williams?

Q. Yes.

A. Just from me going out there to see who was in the car, I seen Tyreke. I seen him and Kenny was in the house. He was in the car at this time. It was another guy in the car, and I just, you know, that's the other brother. I assumed that's the other brother. It looked like what appears to be Chris that was in the car at the time.

Q. You are in the hallway, and you're looking outside?

A. Uh-huh. I was right there.

Q. Is the car parked on your side of the street or on the other side of the street?

A. It's parked on the other side of the street at this time.

Q. Who is driving the car?

A. Tyreke.

Q. What seat is this person in?

A. He is in the passenger seat at this time.

Q. He is in the passenger seat?

A. At this time, yeah, he is in the passenger

seat. And one time, the second time, I had went out there, wasn't nobody in the passenger seat the second time they came to the house. When he came to change the stuff back, when he came to get his money back, Kenny, there was nobody in the passenger seat.

Q. Who was in the car at that time?

A. They was in the back seat, him and somebody else in the back seat. Tyreke was in the driver's seat and the passenger seat was empty.

Q. Do you remember what kind of car it was?

A. No, I couldn't even really tell you what kind of car it was, man.

Q. What color was it?

A. I couldn't even go back on the color like that. I wasn't really paying much attention to the car. I was paying attention to the occupants in the car trying to really see who was in the car.

Q. The first time you saw somebody, you had to look past Tyreke also known as Gregory Williams to see the defendant?

A. Yeah.

Q. The person you thought was the defendant, it was a light skinned person, though, correct?

A. Yeah.

Q. That person was sitting in the car; is

that correct?

A. Yeah, he was sitting in the car.

Q. You couldn't tell how tall he was?

A. Nah. I couldn't tell how tall he was by him sitting in the car from the distance I was at. I only could tell who was in the car.

Q. Couldn't tell how much he weighed?

A. Nah.

Q. Did you know the defendant before that day?

A. Nah, I don't know that man.

Q. Would it be fair to say this was a very emotional time for you?

A. When?

Q. When your mom was killed?

A. Yeah. I mean, anybody mama get killed...

Q. Would it be fair to say you wanted somebody to pay for it?

A. Nah, man, because in that case I would have just went -- I mean, anybody fall for it? That's crazy. I, me myself, I don't like putting nobody in jail. I am on the other side of the law for real, but basically now I am changing my life around. But at this point, at that time frame, I was rebellious. When it come to jail, man, you know, I just did six years in prison. I wasn't

sending nobody there, especially not somebody for something they didn't do.

Q. My question to you is, isn't it a fact you wanted somebody to pay for this crime?

A. No, man. I wanted to take care of it myself at this time. I wanted to take care of it. That's the truth. You know, anybody have that same feeling come across their conscience, you know, it was a conscious thought. I wanted to take care of it. That's how I was feeling.

Q. Do you recall the people who came to the house, whether they had a mask or anything on?

A. He ain't had no mask on, man. He just had, you know, just a cover over his mouth. That's all. It wasn't no mask or nothing.

Q. Do you recall what color it was?

A. Nah, man. Like I told you, he was basically just really paying more attention to Tamika, trying to keep Tamika in place, you know. He only came over when Gregory start hitting me in my head. That's when he joined Gregory and started hitting me in my head. Then I seen him again when he snatched the tablecloth off the table.

But basically, you know, me and him didn't have too many words in that room. He was just trying

to make sure Tamika didn't do nothing. Tamika could tell you more about him than I can because he was basically dealing with Tamika.

Q. Did any of the people have gloves on?

A. I wasn't watching their hands, man. I was just watching -- I kept my eye on the gun hoping it didn't go off, you know.

Q. But you're looking at the gun. Was the gun in his hand?

A. Why, yeah, the gun was in his hand. He wasn't holding the gun with his feet.

Q. You don't recall seeing any gloves at that time?

A. Nah, not really, man.

Q. You saw someone snatch something off the table?

A. Yes. He snatched it off the table.

Q. You saw him picking up some drugs?

A. Yes, off the floor.

Q. Did you recall seeing any gloves on his hands, on that person's hands at that time?

A. Nah.

Q. Now, didn't, in fact, you tell the police initially there were four people in the house?

A. Well, speaking, yeah, one time I did say

four people. I didn't say in the bedroom, though.

Q. But, in fact, there were not four people in the house?

A. Nah.

Q. You weren't sure how many people were in the house?

A. There were three people. I only seen three.

Q. So on Friday evening, you're out selling drugs. You go to the club or the bootlegger's house. You weren't drinking anything?

A. Nah, man, I don't remember drinking. I ain't never drank. I had a taste of beer a long time ago and never went back, man. That ain't never been my thing, man, drinking.

Q. Was Tamika with you the whole time?

A. Not the whole time I was in the house. I was gambling. I ain't see her till I went into this other room. I seen her on the couch. I was surprised to see her because I didn't see her in a long time and we kicked it off. - TL pg 154 - 19me

Q. You buy her a drink?

A. Did I buy her a drink?

Q. Yes.

A. I probably did. I don't recall. I probably did, though. I don't know. I don't think so.

Q. You give her any drugs?

A. Nah.

Q. When you all got back to your house, did you give her any drugs?

A. Nah, man. I don't remember. I don't give, nah. She don't do no heroin. She wasn't doing heroin.

Q. You hadn't seen her in eight years prior to this time, though?

A. Believe me, man, if she would have did heroin, it would have been known, you know. That's something you got to have.

Q. Now, you get to the house that night. You stay in the bed most of the day. You're not sure what time K.P. came to the house, but you know he kept calling; is that right?

A. Yeah. His number was all in my phone.

Q. Did you get a phone bill?

A. Did I get a phone bill?

Q. Yes, showing the number.

A. Nah. I had gotten hooked up that month, man. So I haven't seen none of my bills from then on.

Q. Did you tell the investigator about him, that he kept calling you?

Question to investigator who got phone

A. Yeah.

Q. The number that he called and the time

would have been on that phone bill, wouldn't it?

A. I just knew he was calling by the voice mail.

Q. So he was leaving a message and then you would play the message. You didn't recognize the number that was coming up on your cell phone?

A. After I heard that cell phone, the same number kept coming up.

Q. Even though you said you didn't want to, you still told him you can go ahead and score some drugs for him?

A. Yeah, give it to him.

Q. He came over and he picked up the drugs. How long was he gone after he came and bought the drugs?

A. He was just gone enough time to go and package it up, came straight back. I was surprised to see him again that quick. I know he didn't want no more.

Q. But now you testified earlier that he came back three hours before the incident?

A. Yeah. I estimated three hours.

Q. If you had to estimate, how much time had elapsed between the time you gave him the drugs and the time he came back?

A. About two hours probably, two and a half at

the most.

Q. You actually gave him a refund for the drugs?

A. Yeah, because, you know, I didn't want him to get loud, right, because I didn't want my mother or my son to know what I was doing. It wasn't the place to take care of that anyway. I was wrong for even doing it right there.

So I gave him his money back, but at the same time I was indicating to him I was going to see him in the street; I was going to see him in the street. I couldn't handle it now, couldn't do nothing now about it. So I gave him the money back.

I was like, you got it, go ahead, just go. He was still trying to explain to me, no man, you know, I won't take nothing from you or nothing like that.

Q. So the first person that came into the door was Gregory; is that correct?

A. Yeah, it was Gregory. He was right on Gregory's heels.

Q. You got on your knees?

A. Yes. Yeah, I got on my knees.

Q. You were facing the door at that time and watching Gregory with the gun?

A. Yeah.

Q. So you really weren't paying a lot of attention to what the other dude was doing?

A. He walked right past me, went to Tamika.

Q. You didn't have very long to observe that person, did you?

A. Yeah, man, because he kept on coming back in my face, even came back in my face too close. He started hitting me in the top of my head.

Q. Did you give the police a description of the person who came in?

A. Yeah.

Q. What was the description?

A. Of him?

Q. The description. What description did you give the police of the person who was in your house that evening?

A. I told him a light skinned guy that came to the house.

Q. Did you tell him --

A. With Gregory.

Q. I'm sorry.

A. I told him a light skinned guy that came to the house with Gregory.

Q. Did you tell him there was anything

distinctive about his eyes?

A. About his eyes?

Q. Yeah.

A. Nah.

Q. Did you tell them there was anything distinctive about his nose?

A. No.

Q. Did you tell them he had any type of tattoo?

A. Nah.

Q. Did you give them a height?

A. No, I don't remember giving a height. Only thing I remember doing was telling them he appeared to have some gold front in his mouth.

Q. He had gold front in his mouth?

A. Yeah, like he had gold front in his mouth.

Q. You told the police that?

A. I told them that. You know, the kind you can pull it out and put in.

Q. After that time, the first time you saw this defendant in person or you saw the defendant was when you saw him over in the court, in another court, sitting in another room to the side, right?

A. The first time what? I saw him?

Q. Yes. You recall the first time?

A. I saw him when he came into my bedroom.

Q. After that day, the next time that you saw him.

A. I couldn't see him, man. I couldn't see him. I couldn't see him, couldn't see him. The lawyer was in the way.

Q. Just a second. You told Tyreke -- not Tyreke, Ms. Reid to go get some help; is that correct?

A. Yeah.

Q. She had your cell phone?

A. Yeah.

Q. Is there any reason that you didn't simply dial 911 with your cell phone?

A. I was telling her, you know, call somebody, you know, but she ran out the house. I think she just panicked.

Q. Your son was in the house; is that correct?

A. Yeah.

Q. When you went to the living room, was your son still sleeping?

A. I never went back to the living room. When I walked past him, he was still sleeping. I ain't seen my son again after that till the officer brought him out there to me. I was right there with my mom the whole

time. I never left.

Q. So Ms. Reid never gave you your son?

A. Huh?

Q. Ms. Reid never woke your son up and gave him to you before she left the house?

A. No, man, I don't remember her giving me my son. She ran. She ran out the house. I never really looked back behind me. I told you the next time I seen my son, he was with the officer.

Q. Is your testimony that when you first were questioned by the officer, you were telling them anything because you just wanted to hurry up and get out of there?

A. I was trying to get downtown.

THE COURT: Let him finish his question. Go ahead.

BY MR. ANDERSON:

Q. Is it your testimony that you were telling the officer anything because you just wanted to get away from there? Whether it was true or not, you were telling them that?

A. Well, I was trying to get to the hospital, but I wasn't telling them just anything as far as like trying to implicate somebody like that. I was just telling them people who been to my house that day. I was

telling them everything, but I just wasn't telling them everything in the right format as it happened.

Q. Is it fair to say that K.P. knew that you had drugs and money?

A. Well, K.P. always know I had drugs and money.

Q. Is that why you thought he might have been the person who was involved?

A. Only thing I was going by was K.P. been in my house two times earlier that day and I really can't put K.P. on the spot like that, man, because I done had a whole lot of money around K.P. K.P. could have done took a lot of money from me. K.P. ain't never took nothing from me.

Q. Prior to that, you didn't know this defendant before June 9; is that correct?

A. No, man, I didn't know that man.

Q. And the time that you did see him, the time that you saw somebody in the house, there was a gun in your face; isn't that correct?

A. Yes.

Q. It was a very frightening situation, wasn't it?

A. Yeah, it was frightening, but by the same time, I was trying to gain some type of control of the

situation.

Q. At that point in time, you were more concerned whether that gun was going to go off as opposed to try to get somebody's description, isn't it?

A. I mean, I didn't want them to panic or nothing but at the same time I was taking in descriptions because like I said, I was going to take care of that myself personally.

Q. Do you recall what that person had on?

A. Nah, man. I was just looking at the face, man. I can't really go back now and tell you what that man had on 16 months ago. I am not going to try to do that.

Q. You said you were taking in the description?

A. Yes, him.

Q. But you don't recall what the eyes looked like. You don't recall what the nose looked like. Was there anything distinctive about his mouth? You said there might have been gold?

A. Gold front in his mouth.

MR. ANDERSON: That's all I have, Your Honor.

THE COURT: Mr. Batliner, any redirect?

REDIRECT EXAMINATION

BY MR. BATLINER:

Q. You had indicated in response to defense counsel's question about a mask and you pulled your shirt up a little bit. Is that what you said?

A. Yeah.

Q. Where was there coverage?

A. Where there was coverage?

Q. What part was covered?

A. Like this.

MR. BATLINER: If the record would reflect he pulled his shirt up so it's covering his mouth up to his nose. Is that accurate?

THE COURT: I think he actually put the collar of the T-shirt on his nose.

MR. BATLINER: That is correct. That's all the questions I have.

THE COURT: Any recross?

MR. ANDERSON: No, Your Honor.

THE COURT: Do any members of the jury have any questions they'd like to pose to Mr. Scott? No.

THE JURORS: No.

THE COURT: All right. Are you going to need Mr. Scott again?

MR. BATLINER: Not today, Judge.

THE COURT: All right, Mr. Scott is excused.

MR. BATLINER: Dr. Kinnison. Judge, it may be a good time to do three of our stipulations. Dr. Kinnison will need to be sworn.

THE COURT: Raise your right hand.

(Thereupon, the witness was first duly sworn.)

THE COURT: Members of the jury, the parties have reached -- at least at this time they have submitted to me four stipulations. I'm marking those received. Mr. Batliner is going to read them to you.

I mentioned in the preliminary instructions the evidence you can consider is the testimony, exhibits and stipulations. There is one distinction between a stipulation and other evidence. Testimony, you have to judge credibility. You determine whether you believe it or not. Other evidence, you have to judge it and determine how much weight you want to give to it. A stipulation you have to accept it as true. You must accept it as true.

MR. BATLINER: I am going to read three of them now, and the fourth one, I think it will make more sense later. The parties stipulate that the stains on the left front pocket and the right rear pocket of the shorts worn by Ronald Scott on June 9, 2001 were tested by Amy Jo Townley of the state laboratory. The test

indicated the presence of blood. A DNA analysis was done and the stains matched the DNA of Belinda Scott. The analysis revealed no other source of DNA material other than the blood of Belinda Scott. DNA technology is unable to determine how blood is deposited on the shorts.

We also stipulate on June 9, 2001 Investigator R. J. Douros of the Norfolk Police Department Forensic Division attempted to recover fingerprints from 3331 Lens Avenue in the city of Norfolk. Investigator R. J. Douros did not recover any fingerprints from 3331 Lens Avenue on June 9, 2001.

Finally, the parties stipulate that the deceased in this case is Belinda Scott, no question about the identity.

DR. ELIZABETH KINNISON,

called as a witness, having been previously sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BATLINER:

Q. Could you state your name for the jury, please?

A. My name is Elizabeth Kinnison,

K-i-n-n-i-s-o-n.

Q. How are you employed?

A. I am an Assistant Chief Medical Examiner for the Commonwealth of Virginia.

Q. So you're a medical doctor; is that correct?

A. Yes.

Q. Would you tell the ladies and gentlemen first what you do as an assistant chief medical examiner?

A. I am a forensic pathologist which is a doctor that examines dead bodies.

Q. Can you go through very briefly the training that you have gone through in order to hold that position?

A. I received an M.D. degree from the University of Texas Medical Branch. I trained for five years in anatomical and clinical pathology at the Medical College of Virginia in Richmond, Virginia. I did a year and a half fellowship in forensic pathology at the Office of the Chief Medical Examiner in Richmond, Virginia, and I have been employed as the Assistant Chief Medical Examiner in the Tidewater district since May of 1996.

Q. Have you previously qualified as an expert witness in other courts around the state of

Virginia?

A. Yes.

MR. BATLINER: Any questions as to qualification?

MR. ANDERSON: No questions.

THE COURT: Members of the jury, you all may receive Dr. Kinnison's testimony as an expert in the field of forensic pathology.

BY MR. BATLINER:

Q. Dr. Kinnison, did you have an opportunity to perform an autopsy on I believe it was June 11 of 2001 on Belinda Scott?

A. Yes, I did.

Q. Would you review with us what your findings were as a result of performing that autopsy?

A. I found that she had a single gunshot wound to her left lower eyelid. There was evidence of soot around the wound which indicates that the gun was touching the skin when the gun was discharged or fired.

The bullet went in, fractured the base of the skull, went into the brain, then skimmed over the top of the brain. I recovered a bullet from the brain so there was no exit wound.

Q. Explain to us how you make the conclusion about finding the soot. Why is that remarkable? What

does that tell you?

A. Well, in this case, the entrance wound had some little tears, and when a gun is discharged, in addition to a bullet coming out, gunpowder comes out and gases. When a gun is pressed up against the skin, especially on the head, the gases will get in underneath the skin and tear it a little bit.

And also when a gun is discharged at contact or touching the skin, the soot will be deposited either on the skin or down in the wound. If the gun is held a few inches away up to about two to three feet away, the gunpowder, instead of being sooty, the gunpowder will actually create these little pinpoint marks around the wound called stippling, and there was no stippling in this case. Beyond two to three feet away, I don't see any stippling or soot on the skin.

Q. So based on what you saw, you can surmise it was a contact wound?

A. Yes.

Q. Seems like a silly question, but the cause of death then was the gunshot wound to the head?

A. Yes.

Q. Doctor, I'm going to show you what has been previously marked as Commonwealth's Exhibits 20

and 21. Can you take a look at those and see if you recognize those?

A. Exhibit 20 is a copy of the autopsy report on Belinda Scott. Exhibit 21 is a copy of the Certificate of Analysis on Belinda Scott.

MR. BATLINER: I move those into evidence.

THE COURT: Any objection, Mr. Anderson?

MR. ANDERSON: No objection.

THE COURT: Commonwealth's 20 and 21 had been received.

(Autopsy Report marked as Commonwealth Exhibit No. 20 in Evidence.)

(Toxicology Report marked as Commonwealth Exhibit No. 21 in Evidence.)

BY MR. BATLINER:

Q. Doctor, as part of the autopsy, you have a diagram; is that correct?

A. Yes.

Q. I'm going to show you -- what is that? Is this the diagram you had in this autopsy?

A. This is from page four of the autopsy report.

Q. What is that illustrating?

A. I indicated just below on her left lower eyelid where the entrance wound is where I've marked the

hatches across her eyes, that was because she had bruising and swelling as a result of the gunshot wound to the head.

MR. BATLINER: For the record, Judge, that was page four of what is now Commonwealth Exhibit Number 20.

Answer any questions defense counsel may have.

MR. ANDERSON: Just one.

CROSS-EXAMINATION

BY MR. ANDERSON:

Q. Dr. Kinnison, hello.

A. Hello.

Q. You have no evidence that this defendant had anything to do with or was responsible for that wound to Ms. Scott, do you?

A. I don't know who fired the gun.

MR. ANDERSON: Thank you. That's all I have.

THE COURT: Any members of the jury have any questions for Dr. Kinnison? All right. Thank you, Dr. Kinnison. You're excused.

MR. BATLINER: Again, Judge, I'll read the last stipulation. "The parties stipulate that the bullet recovered from Belinda Scott during the autopsy by Dr. Kinnison was analyzed by John G. Ward, Sr. of the state laboratory. Mr. Ward determined that it was

a .25 caliber auto full metal jacket bullet. No comparison was made to any firearm as no firearm was recovered."

THE COURT: Next witness.

MR. BATLINER: Judge, we call Kenny Parker. It may take them a moment to get him.

THE COURT: If you all want to take a stretch break before this next witness is brought in, you may. Are you Kenny Parker?

THE WITNESS: Yes.

THE COURT: Raise your right hand.

KENNY PARKER,

called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BATLINER:

Q. Would you state your name for the Court, please?

A. Kenneth Parker.

Q. Do you also go by K.P.?

A. Yeah.

Q. Kenny, I'm going to direct your attention back to June 9 of 2001. You remember that day?

A. Yeah.

THE COURT: Excuse me one second. You're going to need to answer with a verbal answer because the court reporter has to take down your answers. So speak up and say yes or no.

THE WITNESS: Yes.

BY MR. BATLINER:

Q. Let's start on that day. Did you have some contact with Ronald Scott?

A. Yes, I did.

Q. Did you also have some contact with an individual by the name of Gregory Williams?

A. Yes.

Q. Let's start off. Tell me what contact you had with Ronald Scott that day.

A. I had went to his house. He is a good friend of mine, him and his mom. I go over there regular and visit, sit down and talk, eat, whatever, you know.

Q. So did you go over there that day?

A. Yeah.

Q. Did you go over and get some heroin from him?

A. Yeah. I didn't get it from him. He went and got it for me. Jaime Left him

Q. Tell me what he got for you.

A. He got like two $10 bags.

Q. When you came over that time, did you come by yourself?

A. Uh-huh.

Q. Tell me about the contact you had with Gregory Williams. Where was that at?

A. At his brother's house.

Q. Do you know where that's at?

A. At 27th and Omohundro.

Q. I am going to show you a picture previously marked Commonwealth Number 17. Is that the house?

A. Yes, that's the house.

Q. That's the house?

A. Yes.

MR. BATLINER: I'll introduce that.

THE COURT: Any objection, Mr. Anderson?

MR. ANDERSON: No objection.

THE COURT: Commonwealth Exhibit 17 will be received.

(Photograph marked as Commonwealth Exhibit No. 17 in Evidence.)

BY MR. BATLINER:

Q. 27th and Omohundro, is that what you said, in the city of Norfolk?

A. Yeah.

Q. Tell me when you were over there, what happened?

A. We was all standing out there, and it was like just about to get dark. I had just came from over Berkley side, and that guy right there and Mr. Williams and another guy pulled up at the house.

Q. You said that guy right there. Do you see one of the people here in the courtroom?

A. Yeah.

Q. Where is he?

A. Right there.

MR. BATLINER: If the record will reflect he has identified the defendant.

THE COURT: The record will so reflect.

THE WITNESS: When they got out, he went up on the porch and he was hugging Gregory brother like they knew each other, you know what I am saying, real good or whatever, like they hadn't seen each other in a little while.

BY MR. BATLINER:

Q. Did you know this fellow?

A. No. Gregory went across the street to another house, right. He was over there and when he came out, he was pushing something down in his pants that

appeared to be, you know, a gun or something.

MR. ANDERSON: Objection, Your Honor, unless he knows what it is.

THE COURT: Sustained.

BY MR. BATLINER:

Q. What was the motion that he made?

A. Was pushing something down in his pants.

Q. Down the front of his pants, the back of his pants, where?

A. In the front part of his pants.

Q. Can you stand up and actually demonstrate? If you can, show the ladies and gentlemen. I just don't want there to be any confusion about what he was doing.

A. He was pushing something down his pant like this in his waist.

Q. That was Gregory Williams?

A. Yeah.

Q. Does he go by another name, too?

A. Tyreke.

Q. So you see him coming with that, pushing something down his pants. What happens then?

A. He came across the street where we was at and we was like what's wrong with you, man? What, you got some beef or something? He was like, nah.

MR. ANDERSON: Objection, Your Honor, hearsay.

THE COURT: I am going to sustain that objection.

BY MR. BATLINER:

Q. When this conversation was going on, where was the defendant?

A. He stayed across the street where we was at.

Q. Based on what happened, did you do anything with him, with either Tyreke or this defendant?

A. I asked Tyreke to give me a ride to Berkley, and he told me to come on. So when I got in the car, I got in the back seat of the car with a little dark skinned fellow.

Q. Did you know who he was?

A. I didn't know him neither. Only one I really knew was Tyreke because his brother stay right there, and we go over there, you know, like every day, just hang out over there.

So when I get in the car, we was going this way down 27th Street, and there is a red light at the corner. And he asked Tyreke, he was like, nah. He said, where is Berkley at? I said, across Campostella Bridge. He was like, nah, nah, we ain't going that

way. We got something we trying to take care of. So Tyreke was like, we'll be back in about 30 minutes or whatever. When we get back, I'll try to get you a ride over there then. So they came back around to the house and they dropped me back off. So like 30 minutes --

Q. Let me make sure it's clear. Back to the house. You're talking about back to the house. We've got up here the one on 27th and Omohundro?

A. Yes. So like 30 minutes to an hour later, you know, we was still standing out there, and then the car pulled back up. And when the car pulled up, Tyreke got out the car. He had a different shirt on. The shirt that he had on, he had it off, and he had something wrapped up in it.

So when he walk up on the porch, I was like, what's that, man? What you got? He was like, that's the burner.

MR. ANDERSON: Objection, Your Honor.

THE COURT: I am going to sustain that.

THE WITNESS: He had something wrapped up in his shirt.

BY MR. BATLINER:

Q. Had something in his shirt?

A. Yes, in the shirt that he had on, had like a

little bit of blood on it. He had a little blood on his hands, you know what I am saying? So the little dark skinned one that was in the car in the back seat, when I had got in there, he got out the car. He was leaning on the car. He had his arms folded, and he was just looking down at the ground like, you know, something was really bothering him, you know what I am saying? So I went up stairs with Tyreke and Tyreke knocked on his brother's door, and started telling him.

Q. When you went up and you followed -- did you follow Tyreke up to his brother's door?

A. Yeah. When he knocked on the door and they opened the door, he went up. I went in after him.

Q. When you were there, did you hear a conversation that occurred between the two of them?

A. Yes, I did.

Q. Then as that conversation was going on, did you hear the defendant say something?

A. Yes.

Q. What did you hear the defendant say?

A. He was like, why you telling them what we just done?

MR. ANDERSON: Objection, Your Honor.

THE COURT: What's the objection? He is saying the defendant made the statement.

MR. ANDERSON: The defendant, not Tyreke.

THE COURT: He is saying the defendant said this.

MR. ANDERSON: Okay.

MR. BATLINER: Now, Judge, under adopted admission, I want to ask him exactly what Tyreke said, and I believe that's admissible when I lay the foundation.

THE COURT: I understand. Why don't you all approach.

(Side bar off-the-record.)

THE COURT: Members of the jury, we just had a bench conference where the parties argued an objection, but we knew it was going to take a little bit of time. We didn't want to voice all the back and forth in front of you and have to make you leave the room.

Mr. Anderson objects. I am overruling his objection. Later, he will put his objection on the record outside of your presence and Mr. Batliner is going to continue. Go ahead.

BY MR. BATLINER:

Q. K.P., right before the defendant said why are you telling him our business, what was being said by Tyreke?

A. Tyreke had came upstairs, and he knocked on his brother's door. We was sitting in the den, and he told his brother, he was like, that young dude downstairs trigger happy. So his brother was like, what you mean trigger happy? He was like, he just shot a lady.

So his brother is like, he just shot a lady? He said, yeah, we just come off a sting and he shot the lady. He trigger happy. So I overheard them and I came out there. And I was like, Tyreke, what you mean he shot a lady? Where you all was at? He was like, we went round Little Ron house to get him, you know what I am saying? I was like, man, why you go get him? He all right with everybody. He was like, man, I'm broke. My girl about to leave me. I'm about to get put out. I don't care who I get, you know what I am saying? He was like, the little young guy, he shot a lady.

I said, you know, that probably was that man's mama. He was like, nah, it was a skinny lady. I was like, a skinny lady? I say, his mama skinny. He said, nah, probably was his sister. I said, his sister and them don't even stay there. His mom stay there. You all probably hurt that man mom, you know what I am saying?

As I was saying that to him, he was coming

up the stairs, and he overheard, you know what I am saying, Tyreke telling us about it.

MR. ANDERSON: Objection as to what the witness overheard. He can say he saw him come upstairs, but he can't say what he heard.

THE COURT: I am going to sustain the objection. You saw him coming up the stairs. Go ahead.

THE WITNESS: When he came upstairs, he asked Tyreke why was he telling them what we had just done. Tyreke was like, this is my brother; he ain't going to say nothing. This is K.P, he cool. I say, I ain't got nothing to do with it, you know what I am saying?

So at that point in time, I eased down the stairs, ran up the street to my man's phone and called Little Ronald on his cell phone because I know his cell phone by heart.

BY MR. BATLINER:

Q. What happened when you called on the cell phone? Who answered?

A. This girl kept answering it.

Q. It wasn't Ronald?

A. No, it wasn't Ronald.

Q. You call Ronald Scott Little Ronald; is that right?

A. Yeah.

Q. Now, you said you got into the car with them at one point?

A. Yeah.

Q. You saw them come back in the car; is that right?

A. Uh-huh.

Q. I am going to show you two photographs. You recognize those?

A. Yes. That's the car right there.

Q. What did you say? I don't know if they heard you.

A. I said that's the car.

Q. How do you know that that's the car?

A. I mean, if it ain't the car, it's the same make and model of the car because the car was like that brown and it had the gold trim in it, and it was an Acura Legend.

Q. I am going to put them up --

MR. BATLINER: First, I am going to ask Commonwealth 18 and 19 be admitted.

THE COURT: Any objection, Mr. Anderson, to these photographs being admitted?

MR. ANDERSON: No, Your Honor.

THE COURT: They will be received

Commonwealth Exhibits 18 and 19.

(Photograph marked as Commonwealth Exhibit No. 18 in Evidence.)

(Photograph marked as Commonwealth Exhibit No. 19 in Evidence.)

BY MR. BATLINER:

Q. You had mentioned some gold trim. Would you point out the gold trim that you're talking about? This is a laser pointer and point like that. Can you do that? Push that little button right there.

A. Right there?

MR. ANDERSON: Your Honor, I'm sorry, I didn't hear the comment. What's the question?

MR. BATLINER: I was asking him to point out the gold trim that he had referred to when he was testifying.

THE WITNESS: That's the gold trim right there, and there is some in the back on the Acura letters is all gold back there, too.

BY MR. BATLINER:

Q. Had you noticed anything else about the car before, anything else distinctive?

A. I know that it was clean, no scars, no dents, and it had the factory rims on it, and it ain't had no rims that you buy from the store. They just had --

everything was factory on it.

Q. Is that what you're talking about that's in that picture are the factory rims?

A. Yeah.

MR. BATLINER: Just for the record, Judge, that was Commonwealth Exhibit 19 that he was pointing at, and the gold area he was pointing at for the trim was in the grill area of the vehicle.

BY MR. BATLINER:

Q. I'm going to now show you Commonwealth's 18. That's the rear of the car?

A. Yeah, gold letters.

Q. Gold. Where is the gold on this one?

A. Right there, right there, right there, right there.

Q. K.P., you have previously been convicted of felonies; is that correct?

A. Yes.

Q. You were convicted of two moral turpitude misdemeanors meaning for stealing, right?

A. Yeah.

Q. That was a receiving stolen goods misdemeanor in '83?

A. Yes.

Q. A larceny misdemeanor in '87?

A. Correct.

Q. Then you got a possession of stolen property felony in '87?

A. Yes.

Q. Then three charges of burglary in 1988; is that correct?

A. Yes.

Q. K.P, any doubt in your mind that this was the fellow that was in the car with you when you wanted to ride over across Campostella Bridge?

A. No, ain't no doubt that's him.

Q. Any doubt that's the fellow that came up behind you as they were talking about what had happened and said why are you telling them our business?

A. That's him.

MR. BATLINER: Answer any questions defense may have.

CROSS-EXAMINATION

BY MR. ANDERSON:

Q. Mr. Parker, what time was the first time you had contact with Ms. Scott on the 9th?

A. The first time?

Q. Yes.

A. I think about 10 o'clock in the morning.

Q. How did that contact come about?

A. I went to his house.

Q. Did you call before you went?

A. Nah. I don't have to call because the man like my family. His mom is like my mom.

Q. Had you called and left any messages on his voice mail or anything like that before you went over?

A. Not that I recall.

Q. You say it was about 10 o'clock in the morning?

A. Yeah.

Q. How did you get to his house?

A. I caught a ride from a friend.

Q. What was that friend's name?

A. He is a dude named Vince. I just gave him a couple dollars to drop me off round there.

Q. So you didn't go round there with Tyreke?

A. Nah, not this day. I been round there with him before on several occasions, but not that day, I didn't go round there with him.

Q. So you were never there. You were never there with Tyreke that day?

A. No, not that day.

Q. When you got there the first time, what were you purchasing? What drug were you purchasing?

A. I wasn't purchasing nothing. I sent him to do something for me.

Q. What did you send him to do for you?

A. At the time I had a little habit, heroin habit, and I sent him to go get me some because I was kind of ill.

Q. He did in fact go and get you something?

A. Yeah.

Q. So he left the house?

A. Yeah.

Q. How long did he stay gone?

A. About 10 or 15 minutes.

Q. During that time, where were you?

A. In there with his mother.

Q. Anybody else there?

A. Nah, not at that time. There was some people that stayed upstairs, but I think that was his brother and all them. They was in and out.

Q. So what time did you leave?

A. As soon as he came back with that, I left.

Q. Who got high?

A. What?

Q. Who got high? You said "we." Who is "we?"

A. I don't know who else got high. I know I

did when he brought it back.

Q. Did you do anything with Ronald?

A. Uh-uh. He brought that back to me. I left, and I came back about 1 o'clock again.

Q. You came by at 1:00 again because you needed to re-up?

A. Something like that.

Q. How much did you purchase at that time?

A. I spent about $50.

Q. Did he leave to go get that or did he have that at home?

A. He left.

Q. He left again?

A. Uh-huh.

Q. How long did you stay in the house at that time?

A. I stayed a little decent time that time because I had my girlfriend with me and her and his mom, they real tight, and they was talking. There were some more people on the porch, think it might have been his sister or somebody else was out there.

Q. It was your girlfriend, you know, was there talking to his mother; is that right?

A. Yeah, no doubt because I left with her. When I left his house, that's who I left with.

Q. So your girlfriend took you over at that time?

A. Yeah.

Q. I think you said you purchased $50. Did you use it at that time?

A. Yeah, I used some of it.

Q. That was about what time when you left?

A. That was like about 12:30, close to 1 o'clock, something like that. It was in the evening time, I know that.

THE COURT: When you say 12:30, 1 o'clock evening, what do you mean, dark?

THE WITNESS: Around lunchtime.

MR. ANDERSON: Thank you, Judge.

BY MR. ANDERSON:

Q. Where did you go after you left Mr. Scott's house?

A. I went round to 27th Street.

Q. How long did you stay there?

A. I stayed there for a minute. That's where, you know, everybody hang at.

Q. I don't mean to confuse you or anything, but did you go over to Berkley before then?

A. Nah. I went there, and then I went to Berkley.

Q. Well, what time did you go to Berkley?

A. After I left there.

Q. When you're saying there --

A. It was daytime. It was past lunchtime. I don't recall exact times because it wasn't anything special for me to keep up with the time.

Q. But you left Mr. Scott's house?

A. And I went to 27th Street.

Q. Then you left and went to Berkley?

A. Yes, exactly.

Q. How long did you stay in Berkley?

A. Till it got around about just getting dark. What was it, in the summertime? You know what time it gets dark, just about dark. Because I know when they pulled up, it was still kind of light, and when they left and came back, it wasn't like 30 minutes to an hour and it was dark. So whatever time that is in that month or whatever, if it was summertime.

Q. You don't know the time. You know it was not yet dark?

A. It was not yet dark. When I went to Berkley, it was not dark.

Q. How many times did you go to Berkley that day?

A. I went once and was trying to get back over

there.

Q. Now, had you seen Gregory Williams at all that day?

A. Yeah. When I went to 27th Street, he was there.

Q. Was that during the day or in the afternoon?

A. That was during the day around about lunchtime.

Q. At lunchtime Gregory Williams was there?

A. Yeah, he was there.

Q. The light skinned person, was he there with him at that time?

A. Nah, I didn't see him until later on that evening after I had came from Berkley.

Q. You were high that day, weren't you?

A. Nah. The stuff they got out there don't get you high. It just get you well. You just be sick and you get well. It wasn't getting high.

Q. You had used it twice that day but you weren't high?

A. No. You get sick. You get sick.

Q. Just before dark, you say you saw somebody, a light skinned guy come over and go up on the porch and talk to Christopher?

A. I don't know if that's his name. We call him Q.

Q. Gregory Williams went someplace else at that time?

A. Across the street.

Q. That light skinned person, was there anything distinctive about the way he looked?

A. He had corn rolls in his head at the time. All of them was going straight to the back.

Q. Anything distinctive about his eyes?

A. Nah. I ain't looking at the man like that. I ain't gay or nothing. I ain't looking like that.

Q. My question is, is there anything distinctive?

A. He had corn rolls. He walked up and he gave Q five, and he hugged them like they hadn't seen him in a long time. Other than that, the color of his eyes, I don't know because I wasn't trying to look at him like that.

Q. You weren't trying to look at him like that. So you didn't pay a lot of attention to him?

A. Yeah. I paid enough attention to him that I can remember him right now.

Q. Had you ever seen him before that day?

A. Never in my life I ain't never seen him.

Q. This is before dark?
A. Yeah, this is before they left.
Q. Did you have a conversation with him?
A. Not with him. I don't know him.
Q. As I understand, it was just a whole bunch out there talking, right?
A. Yeah, my family members, my cousin, a female that I know, Ms. Scott's nephew, people like that.
Q. So you get in the car with them?
A. Yeah.
Q. Who was driving at that time?
A. He was driving.
Q. A half hour later when the car came back, who was driving?
A. He was.
Q. At that point -- let me make sure I understand this. Gregory goes upstairs?
A. He come on the porch and ring the bell, and as he is standing on the porch, I walked up to him because he had something holding in his shirt. The shirt he left with, he didn't come back with it on. He came back with something wrapped up in it.
Q. He went upstairs?
A. Yeah.
Q. The light skinned guy and the dark

skinned guy, they stayed downstairs?

A. Yeah. The little dark skinned dude had his arms folded like this. He was leaning on the car. He was looking down.

Q. But the light skinned guy was downstairs also?

A. Yeah.

Q. Then Gregory goes upstairs?

A. Exactly.

Q. And he has this conversation with his brother?

A. Right.

Q. At that point, the only people present are -- tell me who was present at that time. You?

A. His girl.

Q. I'm sorry. Were you present at that time?

A. When the conversation initially started between him and his brother, I was in another room, but they was talking loud enough for me to hear it. That's what made me get up and get in the conversation.

Q. So the defendant -- I mean, the light skinned person is still downstairs at that point?

A. Exactly.

Q. At the tail end of the conversation, the

light skinned person comes upstairs?

A. Comes upstairs, and he asking why is he discussing what they just done.

Q. But the part about the young boy being trigger happy and they pulled a sting, he had already told his brother about that when the person came upstairs?

A. I ain't for sure. I don't know how much of it he heard because, you see, when you come up the stairs, you got to come up the stairs, then you up on the second floor. You could stand right on them stairs and don't even nobody can know you there.

So I can't sit here and tell you how much of the conversation he heard or how much he didn't hear. Only thing I can tell you is that the man came up there and asked him why was he telling us about it.

Q. Ms. Scott was like a mother to you; is that right?

A. Exactly.

Q. You had received information that she had been shot?

A. Right.

Q. You knew who had likely shot her; is that correct?

A. Exactly.

Q. So the first thing you did was call the policeman, right?

A. No. I called his cell phone to find out was it his mother that got shot because Tyreke was saying it was a skinny lady and it wasn't his mother. And Tyreke knows his mother. Tyreke know his mother just like I know his mother. So when he said it wasn't her, I was calling to find out who was it.

Q. How does Tyreke -- this sounds like she is almost like a second mother to you. Tyreke and her had that same type of relationship?

A. No, they didn't have that same type of relationship but Tyreke been over there enough times. He done been in Ronald's presence enough times. His mother, she would come on 27th Street too sometimes. So everybody knew her. She was a good lady to everybody, not just me, to a lot of other people, too.

Q. Once you found out it was Ronald's mother that had been shot, you never bothered to tell the policeman, did you?

A. Say that again.

Q. Once you found out that it was Ronald's mother that had been shot, you never bothered to tell the police, did you?

A. I went to Ronald's house the next morning,

and Ronald wasn't there, and I talked to his little brother, and he cried on my shoulder, and I cried on his shoulder.

Q. My question is, you never called the police?

A. I never meant to get this involved in it.

THE COURT: So the answer to the question is no?

THE WITNESS: Yes, no.

THE COURT: Go ahead.

BY MR. ANDERSON:

Q. In fact, you became involved because a couple days later the police picked you up, didn't they?

A. Yeah, because what I told Little Ronald. He went to the police and told them what I told him. Once I did get in touch with Little Ronald, I told him everything that they said, and Little Ronald was like, my mama dead; she gone; she ain't here no more; you got to go down there and tell the police what you know. And I was like, man, I ain't trying to get involved with no police. I am just telling you because you my stick man, man. He was like, well, man, you got to do this for me, man. This is my mama. She gone, whatever.

Like three days later the police stopped me

on the traffic violation and they gave me a ticket for driving with no license, and they told me that somebody wanted to talk to me down at the POC.

When I got down there, Little Ronald was down there and some of his other family members was down there. And I didn't want to get involved as far as telling the police nothing or whatever, and you know, that man like a brother to me. And I looked at it, had it been my mama, I would want him to do the same thing. I don't feel like I am doing nothing wrong. So I went on and told the police what I knew.

Q. So would it surprise you if I told you the police officer said they stopped you on July 10, the very next day?

A. I don't know exactly what day they stopped me.

Q. It was not three or four days, but they stopped you the very next day?

A. Well, I don't know. I can't recall.

Q. When the police first stopped you, you were a suspect, weren't you? They asked you?

A. They ain't treated me like no suspect. They asked me a lot of questions, though, you know. I guess they trying to figure out how I knew about it.

Q. They didn't ask you to provide them with

an alibi for where you were that day?

A. Oh, yeah, they asked me all of that.

Q. When you were standing out on the corner, it was, you say, your cousin and some other family members and Ms. Scott's nephew?

A. Exactly.

Q. Where was the defendant when all of those people were out there? Where was this light skinned person when they were standing out in front of the house?

A. I can't tell you where that man was at. Only time I can tell you where he was at is when they pulled up and when they left and when they came back. I can tell you about those three times; when they first pulled up, when they left, and when they came back. Other than that, I can't tell you nothing else where he was at.

Q. When he first pulled up, were you standing there talking to the group of people there?

A. Yeah.

Q. Did he walk past you or did he walk past that group?

A. He got out the car and walked on the porch and grabbed Tyreke's brother Q, gave him five, hugged him like they hadn't seen each other in a long time.

Q. My question is, did he walk past the

whole group of people at that time?

A. He may have walked. I mean, I ain't paying no attention. There was a lot of people out there. I am quite sure he had to walk by somebody, you know what I am saying? It wasn't no particular reason for me to pay too much attention to them when they first pulled up and look at him and see who he walking by because it wasn't nothing, you know, for me to look at him about that like that.

When they came back talking about they had killed somebody, you know, and seemed like somebody mom that I know, yeah, I was paying attention. That's putting me on point. Other than that, I can't tell you who he walked by, where he was standing at, when he first got there and all that.

Q. Did you ever give the police a description of the person, the light skinned person, that was in the car?

A. Yeah. I pointed him out in a photo lineup.

Q. But prior to identifying him in the photo lineup, did you ever give them a description of the person?

A. Yeah.

Q. What description did you give?

A. A light skinned guy with corn rolls.

Q. Did you talk about any gold teeth that might have been in his mouth?

A. I ain't in the man mouth like that. He didn't grab me and hug me and greet me when he came up, you know what I am saying? I am not looking in the man's mouth like that. It was no reason for me to look in his mouth like that.

Q. What's the closest you ever got to him?

A. When he came upstairs and asked Tyreke why was he telling us about it.

Q. How close were you at that time?

A. And then when I got in the back seat of the car and got in the back seat with another dude, he was driving. I ain't see nothing but probably maybe the side of him or the back of his head at that time.

THE COURT: Mr. Parker, let's go back to the question. He asked you when the man you've identified as the defendant came upstairs after Gregory Williams made the statement he made -- you said he made, how close were you to the defendant?

THE WITNESS: He walked right up where we was at. It was like three of us standing right here talking. He walked right up and asked him why was he discussing what they just done.

THE COURT: So within a couple of feet?

THE WITNESS: Yes.

THE COURT: Go ahead.

BY MR. ANDERSON:

Q. Were you facing him at that time when he made that statement?

A. When he made that comment like that, I looked up. I looked up, but my main objective at that time was to get up out that house and go and call Little Ronald.

Q. You didn't reach Little Ron that night, did you?

A. No. Some girl kept answering his phone saying he was at POC.

Q. Do you remember the name of that girl?

A. She said -- man. Her name is right on the tip of my tongue. Tamika.

Q. Tamika Reid?

A. Huh?

Q. Would it be Tamika Reid?

A. I don't know her last name. I know it's something like that.

THE COURT: You were just leaning down and talking and really sounded like you were thinking out loud. I don't know if the jury could hear you say the name that you thought it was.

THE WITNESS: A girl named Tamika.

THE COURT: All right.

BY MR. ANDERSON:

Q. There is no question in your mind that you didn't go over to Ronald Scott's house on July 9 with Gregory Williams and the light skinned person?

A. No, sir.

MR. ANDERSON: That's all the questions I have.

THE COURT: Any redirect?

MR. BATLINER: No redirect, Judge.

THE COURT: Any questions from any members of the jury.?

THE JUROR: I sort of have one question.

THE COURT: Anybody has a question, write it down. I told you to write it down. Don't be shy about it. Nobody has asked a question yet up to this point.

MR. ANDERSON: You have two of them now.

THE COURT: If you all would like to approach, I'll share with you the questions, Counsel.

(Sidebar off-the-record.)

THE COURT: These questions, I am going to ask you these questions that the jurors have posed, but I am going to phrase them just a little bit different because I want to make sure you understand if you know

the answer. I'm not sure, based on what you've said, that you know. Do you know what kind of car the defendant owns, if any?

THE WITNESS: I don't know if he owns it or not. I know he was driving an Acura Legend that night.

THE COURT: Now, that Acura Legend that you have talked about and that you have identified in the photograph, do you know who that car belongs to?

THE WITNESS: Nah.

THE COURT: You've indicated you know Gregory Williams?

THE WITNESS: Right.

THE COURT: How well do you know Gregory Williams?

THE WITNESS: I have been knowing Gregory Williams for about five months.

THE COURT: Five months since or before this offense?

THE WITNESS: Before this offense.

THE COURT: And how about Ronald Scott?

THE WITNESS: I been knowing Ronald Scott for some years.

THE COURT: Can you answer this question? Do you know if Gregory Williams knew how close you were to Ronald Scott?

THE WITNESS: Of course. He used to see us together all the time.

THE COURT: Any follow-up questions, Counsel?

CONTINUED CROSS-EXAMINATION

BY MR. ANDERSON:

Q. You said you were close to Ronald Scott. Was that while Ronald Scott was in prison?

A. What you mean while he was in prison?

Q. He testified he told us he had just gotten out from doing a six year bit.

A. Yes.

Q. That's during the time you all were close?

A. I knew him before then when we used to stay out Young's Parkway back in the days and when he got out of prison. We always been cool.

Q. But was Gregory Williams around at that time?

A. Nah. I say I just been knowing him for like five months prior to this event happening right here. It's like he just come down from Jersey or something. His brother Q was in the military, right. He used to go with a female that everybody in the neighborhood knew, right. So their house was like, you know, everybody could go over there and just sit down and talk, eat, do whatever, you

know, look at the game. It was like a little spot everybody can just chill at. So being that he from the military, I think from what I understand, his brother came down from Jersey or something to be down here with him because he was living down here.

Q. Living with who?

A. Q. Tyreke and Q is brothers from what I understand.

Q. So you were closer friends with Q than you were with Tyreke?

A. I knew Q longer than I knew Tyreke.

Q. Tyreke, he floated in because his brother was here?

A. Exactly.

Q. So did you ever take him to Ronald Scott's house?

A. Yes, I been there a couple of times with him, and I just told you that.

Q. Couple of times?

A. Yeah. I mean, Mr. Scott know him.

THE COURT: Mr. Batliner?

MR. BATLINER: No follow-up.

THE COURT: May Mr. Parker be excused?

MR. BATLINER: Yes, Judge.

THE COURT: Mr. Parker, you're excused.

Members of the jury, I just questioned Mr. Batliner while he was up here. He tells me that he may have one or two witnesses, believe it or not, that he can finish by 5:30. So we're going to go ahead and use the time.

MR. BATLINER: Tavisha Moye.

TAVISHA MOYE,

having been called as a witness, was first duly sworn and testified as follows:

DIRECT EXAMINATION

BY MR. BATLINER:

Q. Would you tell the ladies and gentlemen of the jury your name?

A. Tavisha Moye.

Q. Tavisha, I'm going to direct your attention back to June 9 of 2001. You remember that day?

A. Uh-huh.

Q. Where were you living?

THE COURT: Excuse me one second. You need to answer in a yes or no way if you're going to answer yes or no because uh-huh looks like an uh-uh sometimes on the record.

BY MR. BATLINER:

Q. Where were you living at that time?

A. 3331 Lens Avenue.

Q. Were you living in the upstairs part of it?

A. Yes, sir.

Q. That evening, did something out of the ordinary happen?

A. Well, not really.

Q. What did you hear?

A. Oh, I just heard a gunshot. Well, I didn't know it was a gunshot, sounded like a firecracker, little thumping.

Q. A little what? I'm sorry.

A. Little thumping, and I saw the fire truck in front of the house. That's how I knew something happened.

Q. A fire truck came?

A. Yes.

Q. What did you do when the fire truck came?

A. I came downstairs.

Q. What did you see?

A. Ms. Belinda laying in the hallway.

Q. Is that Belinda Scott?

A. Yeah.

Q. What did you see with her laying in the

hallway? Were there people there?

A. The paramedics, yes.

Q. That was out in that foyer area in your building?

A. Yes, the common hallway.

Q. By the steps?

A. Yes.

Q. What time do you think it was that this happened when you heard the firecracker noise as best you know?

A. It was about -- I can't really say because I was watching a movie that came on at 8:00, and it wasn't gone off yet so I'm thinking it happened about 9:00, 9:30 or something like that.

Q. So you were watching a movie that had begun at 8 o'clock on television?

A. Yes.

Q. Was it light or dark outside?

A. It was dark.

MR. BATLINER: Answer any questions defense counsel may have.

THE COURT: Mr. Anderson.

CROSS-EXAMINATION

BY MR. ANDERSON:

Q. Ms. Moye, did you ever see this defendant

that day?

A. I ain't never seen him before in my life.

MR. ANDERSON: That's all the questions I have.

THE COURT: Any questions from any members of the jury? May Ms. Moye be excused?

MR. BATLINER: She may.

THE COURT: Ms. Moye, you're excused. You can go on about your business. Thank you very much.

MR. BATLINER: Mary Williams.

THE COURT: Was she sworn this morning?

MR. BATLINER: She was.

MARY WILLIAMS

called as a witness, having been previously sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BATLINER:

Q. Would you tell the ladies and gentlemen of the jury your name?

A. Mary Williams.

Q. Ms. Williams, I am going to direct your attention back to June 9 of 2001. Do you remember that day?

A. Yes.

Q. Where were you living at?

A. 3331 Lens Avenue, Apartment 2.

Q. Was that upstairs in that building?

A. That is upstairs.

Q. On that evening, did you hear something while you were there?

A. A gunshot.

Q. Tell the ladies and gentlemen what you heard and what you did after you heard it.

A. I just heard a gunshot and didn't really pay attention because it sounded like it was outside.

Q. Did you ever come downstairs?

A. Once the paramedics people were there.

Q. What did you see when you came down?

A. I started down the steps and Belinda Scott was laying in the hallway, but the police wouldn't let me come down. He sent us back upstairs.

Q. Do you remember about what time it was when you heard the gunshot?

A. Not exactly sure of the correct time, but it was after 9:00.

MR. BATLINER: Answer any questions defense counsel or the Court might have.

THE COURT: Mr. Anderson.

CROSS-EXAMINATION

BY MR. ANDERSON:

Q. Ms. Williams, you said the gunshot sounded like it was outside?

A. Yes.

Q. Did you look outside?

A. No.

Q. Did you ever see this defendant there that evening?

A. No.

Q. Have you ever seen him in that neighborhood?

A. No.

MR. ANDERSON: That's all I have.

THE COURT: Any members of the jury have any questions for Ms. Williams? May Ms. Williams be excused?

MR. BATLINER: She may.

THE COURT: All right, Ms. Williams, thank you very much. You're excused. You can go on about your business.

MR. BATLINER: I regret to tell the Court I don't think I have any more witnesses I can squeeze in, in seven minutes.

THE COURT: All right. Members of the jury,

then, we're going to recess for the day. I am going to ask you, anybody who has been taking notes, to leave your note pads on the jury table. The bailiff will keep those tonight, put it back there tomorrow morning. I assume you will be able to find your pad by your handwriting unless you want to write your name on it.

Remember what I said about not discussing the case amongst yourselves or with anybody else. Don't attempt to go to the scene or anything like that. Again, I haven't seen anybody from the media here today so I am not really expecting any coverage, but be mindful of that.

If you pick up the newspaper in the morning or have the news on tonight or anything like that, if something comes on, walk out of the room. Don't pay attention to it. Wear your badges to and from the building.

I'm going to adjourn until 9:30 tomorrow morning. That gives you all a little bit of a later start, but it also lets you get in here after the traffic.

THE JUROR: Do we come straight up here?

THE COURT: Yes. That's what I was going to say. When you come in, come straight into the courtroom. Go right into the room. Again, the first

person in, shut the door, and I hope we get started as close to 9:30 as possible. Okay? All right. Have a good evening.

THE JUROR: How early can we be here because by 9:30 the parking lot has been full?

THE COURT: You can be here earlier. You all want to start earlier?

THE JUROR: No. I have to go to work.

THE COURT: Anybody who has notes, leave the note with the bailiff.

(Thereupon, the jury left the courtroom at 5:25 p.m.)

THE COURT: Mr. Anderson, why don't you go ahead and put your objection to the adoptive statement on the record.

MR. ANDERSON: In the matter of the Commonwealth versus Lester Lynch, earlier in the proceedings the Commonwealth approached the bench to have the statement of Gregory Williams to be introduced against the defendant as an adopted admission.

It's my position I objected to that statement being admitted. In order for it to be an adopted admission, it would appear that the Commonwealth would have to show, one, that the defendant was present at the time that the statement was made and, two, that he

understood the context of the statement and/or knew what was being said.

After the witness testified, I became even more convinced that I was correct because the witness testified that this was a statement that appeared to have been made when the defendant -- I mean, not the defendant, the declarant and his brother were in the room, and the witness testified that he was in an adjacent room.

He later said that he saw the defendant or the light skinned person coming up the steps, and the light skinned person then said, why are you telling what our business is. So the first part of the test is we don't know whether the person was present. It doesn't appear that he was present when the statement was being made.

It appeared a statement was made. At some point the light skinned person came up. It doesn't appear that he was present when the statement was being made. Secondly, we don't know what he means by telling him our business. So there is no evidence to show that he in fact knew what the statement was and understood it. For those reasons, I respectfully ask the Court to ask the jury to disregard that statement that's been previously introduced.

THE COURT: All right. Well, the test for an adoptive admission is whether or not a person is in a similar situation would have felt called upon to deny the statements effecting them in the event that they did not intend to express some acquiescence by failing to do so.

In this particular case, this according to this witness, of course the jury can decide whether to believe the witness. That's not the question. The question is simply the admissibility. But according to the witness' statement, Mr. Parker, this defendant did more than simply acquiesce and remain silent. He actually said something that specifically related back to the statement that helps the Court conclude that the statements that set up the defendant's statements were in fact heard by him. Because had he not heard those statements, there would have been no context whatsoever for him to have said what Mr. Parker testified that the defendant said which was words to the effect of why are you telling them about what we've done.

And that also shows that he understood the statements that were made, and that the subject matter must have been within his knowledge, otherwise there is no context for him to have made that statement.

According to the way the witness described

it, the physical, emotional position of the defendant at the time indicated that he was in full control. He heard and as he described, he himself, Mr. Parker testified that he wasn't physically right next to Mr. Williams initially but was in the house and was able to, within the house, hear enough that caused him to go get closer.

And this defendant, according to his testimony, was in a similar situation so that he came up the stairs ultimately to confront Mr. Williams. And within that context and the statement that he ultimately makes according to Mr. Parker, it's clear to me that he heard the statement made by Mr. Williams, was in a position to hear it, understood what it was about and did more than just simply acquiesce and actually challenged why are you talking about what we had done.

In that context, I think it clearly fits within what the Supreme Court allows for an adopted admission. So your objection is noted. All right, anything else today gentlemen? 5:30 on the nose.

MR. BATLINER: Nothing else from the Commonwealth.

THE COURT: See you all tomorrow morning.

(Thereupon, the proceedings adjourned at 5:30 p.m.)

V I R G I N I A:

IN THE CIRCUIT COURT FOR THE CITY OF NORFOLK

COMMONWEALTH OF VIRGINIA,

Plaintiff,

vs.

LESTER BERNARD LYNCH,

Defendant.

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VOLUME II

TRANSCRIPT OF TRIAL PROCEEDINGS

Norfolk, Virginia

October 3, 2002

Before: THE HONORABLE CHARLES D. GRIFFITH, JR. and a Jury.

Appearances:

OFFICE OF THE COMMONWEALTH ATTORNEY
By: RONALD BATLINER, ESQUIRE
Counsel for the Plaintiff

ROBINSON, NEELEY & ANDERSON
By: GEORGE A. ANDERSON, JR., ESQUIRE
Counsel for the Defendant

# I N D E X


| WITNESSES FOR THE PLAINTIFF: | DIRECT | CROSS | REDIRECT | RECROSS |
|---|---|---|---|---|
| TAMIKA REID | 141 | 153 | 182 | |
| ROBERT L. REVELL | 190 | 192 | 196 | |
| INV. E.L. MARTIN | 197 | 210 | 214 | 215 |
| INV. BRAD HUFFMAN | 216 | 226 | 235 | |
| INV. ROBERT G. FORD | 239 | 243 | | |
| KIMBERLY PALMER | 255 | 259 | | |
| VELMA FIGUEROA | 261 | 272 | | |
| GLORA LYNCH | 274 | 276 | 279 | 279 |
| LaTANYA PALMER | 280 | 283 | 288 | 288 |


# E X H I B I T S


| NO. | DESCRIPTION | RECEIVED |
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| ON BEHALF OF THE PLAINTIFF: | | |
| 5A | Photo Lineup | 222 |

TRANSCRIPT OF TRIAL PROCEEDINGS

MR. BATLINER: Good morning, Judge. We have one issue.

MR. ANDERSON: Two. The defendant has advised me that this is an arm band that identifies him as an inmate.

THE SHERIFF: You might have to put that jacket on. He can't take it off.

THE COURT: How did you tell? I can't tell what that is.

MR. BATLINER: I wouldn't mind if it's covered myself, Judge, because I had a jury where afterwards, after the jury hung, we talked to jurors and they thought it was a hospital band and thought that the defendant was diabetic and that was some form of sympathy for the defendant. So I don't mind if it's either removed or covered.

THE COURT: They can't take it off. What do you want to do, Mr. Anderson?

MR. ANDERSON: Let's see the jacket.

MR. BATLINER: I didn't realize that was an issue. The other issue, Judge, I think we can do while he gets the jacket. When we talked this morning, I guess we were in the courtroom, Mr. Anderson came in

and told me that one of the jurors was speaking to one of the witnesses. I walked out. The juror is Mr. Walker.

MR. ANDERSON: Yes.

MR. BATLINER: He did not have his badge on. I immediately walked out, called my witness over to me so he would separate from him, and I just said to him, you can't talk to a juror. The witness said, we weren't talking about the case. And I didn't want to do anything else because I didn't want to violate any other requirements of the court. But I did want to separate them, so that's why I pulled him immediately over to get it done.

At least I want to bring it to the Court's attention. I don't necessarily know what the remedy needs to be, but it certainly needs to be on the record what occurred and what anybody's position is.

THE COURT: Mr. Anderson, what would you like me to do?

MR. ANDERSON: Your Honor, at a minimum, I would ask the Court to admonish the jurors to remind them again to keep their badges on and remind them to come into the courtroom and go directly to the room.

Based on what Mr. Batliner told me, he spoke to the witness, and he indicated they were talking but

they weren't talking about the case.

MR. BATLINER: I didn't inquire what they were talking about. If we want to bring him in and put him on the stand and ask him what they were talking about, I thought that was a better procedure when everybody was present than for me to conduct that inquiry. I was trying to stop the contact as quickly as possible.

THE COURT: Mr. Anderson, do you want me to talk to the witness or do you want me to talk to the juror or you want me to remind the jurors as to the importance of keeping their badges on?

MR. ANDERSON: I would like you to talk to the witness first, then remind the jury as a group.

THE COURT: Bring that witness in.

MR. BATLINER: This is Mr. Revell. He was sworn yesterday.

THE COURT: What is your last name, sir?

MR. REVELL: Revell.

THE COURT: Do you want to sit without the jacket on today?

THE DEFENDANT: Yes, sir.

THE COURT: Go ahead and cut it off.

Mr. Revell, I understand that this morning you were observed in a conversation with a person who

turns out is a juror. Mr. Batliner, I understand, spoke to you and stopped the communication but did not ask you what you all were talking about. And just as a matter of safeguard, we're trying to make sure you all weren't talking about the case.

Can you tell me what happened, how you came to have this conversation with the juror, and did you even know he was a juror, and what was the conversation about?

MR. REVELL: No, I didn't. I had been sitting there. As a matter of fact, I was the first one sitting out there this morning. This man came up and he got ready to go in. He said, well, they haven't started yet. Then he sat beside me and he asked me how was I doing, and I asked him how was he doing. By that time, he came out and called him.

THE COURT: That was the extent of your conversation?

MR. REVELL: That was it.

THE COURT: Mr. Anderson, you satisfied?

MR. ANDERSON: Yes, sir.

THE COURT: Do you not want me to talk to the juror to confirm that?

MR. ANDERSON: No, Your Honor.

THE COURT: All right, Mr. Revell, thank you

very much. You can step back outside.

MR. BATLINER: That's consistent with what I had seen. The juror actually came up the elevator with me. When I got here, I actually said, you probably need to go to the back, but he didn't, and he did not have his badge on, and Mr. Revell was already seated.

He was seated at one of the two chairs farthest. If you look at the wall, basically it would line up with the right most corner of your courtroom from your angle.

MR. ANDERSON: I think, just as a reminder, Your Honor, reminder to the whole jury so he won't feel singled out.

THE COURT: That's what I wanted to be sure about. You guys ready to go?

MR. BATLINER: I didn't want it to be an issue that lingered out and thought we should deal with it.

(Thereupon, the jury entered the courtroom at 9:45 a.m.)

THE COURT: Good morning. How are you all doing?

THE JURORS: Good morning.

THE COURT: Mr. Batliner.

MR. BATLINER: Tamika Reid, Judge.

THE COURT: Ms. Reid, were you sworn yesterday?

MS. REID: Yes.

THE COURT: You can have a seat right there.

TAMIKA REID

called as a witness, having been previously sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BATLINER:

Q. Would you tell the ladies and gentlemen of the jury your name?

A. Tamika Reid.

Q. Tamika, I'm going to direct your attention to June 9 of 2001. You remember that day?

A. Yes.

Q. Do you remember the day before that?

A. Yes.

Q. On the day before that, did you come into contact with a fellow by the name of Ronald Scott?

A. Yes.

Q. Would you tell the ladies and gentlemen of the jury where you came into contact with him?

A. At a bootlegger house on Fenner Street.

Q. Did you all leave together?
A. Yes.
Q. Where did you go?
A. To his mother's house on Lens Avenue.
Q. Do you remember about what time you got there?
A. About 3:00, 4:00.
Q. In the morning?
A. Yes.
Q. So in the very early morning of the 9th?
A. Yes.
Q. Where did you go once you got to the house?
A. I sat in the living room first and was talking to his mother then into the bedroom.
Q. Where is the bedroom in that house?
A. All the way back in the back of the house.
Q. Who was in the bedroom with you?
A. Ronald Scott.
Q. That evening, did something happen in that room?
A. Later on that night.
Q. Yes. What happened?
A. The room door got kicked in. Three guys beat Ronald and --

Q. Let's back up a little bit. Before the room door opened up, what happened? What happened, and what did you hear?

A. His mother came to the door to wake him up to let him know somebody want him at the door.

Q. Had that happened earlier in the day, too?

A. Yes.

Q. Let's talk about this one. The mom came to the door?

A. Yes.

Q. What happened when she came to the door?

A. She told him that somebody by the name of Doowhop had wanted him. He told me he didn't know no Doowhop. So as he was getting up, I heard a firecracker sound. He was putting on his same shorts and the room door kicked in.

Q. Let me back you up just a little bit. You said you heard a firecracker noise?

A. Yes.

Q. Where was that in relation to his mom coming to the door and saying Doowhop was there to see him?

A. When who?

Q. Was that before, after? When was the

firecracker noise?

A. That was after she came to the door.

Q. How much after?

A. Say like a minute or two, yeah.

Q. Did Ronald get right up when you were telling him that Doowhop wanted him?

A. Uh-huh.

Q. What was he doing?

A. Bending down pulling up his shorts.

Q. Tan shorts? Those look like the shorts?

A. Yes.

MR. BATLINER: I'm showing her Commonwealth Exhibit 14, Judge.

THE WITNESS: Yes.

BY MR. BATLINER:

Q. So he is bending down to put on his shorts, and what happens with the door?

A. The room door gets kicked in.

Q. What happens when the door is kicked in?

A. I seen a gun hit Ronald and some other hands behind him hitting him, just hitting him. He was just sitting on the floor. He was hitting him.

Q. Where were you?

A. Sitting on the bed.

Q. Now, what happened with regard to you

while you were in the room?

A. I was just sitting there with the pillow. I tried to move once. They told me get back on the bed.

Q. Who told you to get back on the bed?

A. The young man right here.

Q. You pointed over to the side of the courtroom. Do you see one of the people who was in that room that night?

A. Yes.

Q. In the courtroom?

A. Yes.

Q. Where is he?

A. Right there in the white shirt.

MR. BATLINER: Judge, if the record would reflect she has identified the defendant.

THE COURT: All right.

BY MR. BATLINER:

Q. What did he say to you?

A. Told me to get back on the bed.

Q. Did you get back on the bed?

A. Yes.

Q. Where had you tried to go?

A. I don't know. I was just trying to get out of there.

Q. Were you afraid?

A. Yes.

Q. What happened after you were told to get back on the bed? What did you see?

A. Them tearing up the room, asking him where it's at, where it's at, clothes basket being thrown on me.

Q. The clothes basket?

A. Yes.

Q. And it was thrown where?

A. At me.

Q. I'm going to show you what's previously been marked as Commonwealth -- received as Commonwealth Exhibit Number 8. Do you recognize that?

A. Yes.

Q. What is that?

A. That's the clothes basket right there.

Q. First, what room is this depicted here or shown?

A. The room that we was in that got kicked in.

Q. So that bedroom?

A. Yes.

Q. Now, you pointed to the clothes basket?

A. Yes, right there.

Q. Where were you? Can you point to where you were in this picture?

A. Leaning back to the wall right there. I had

that pillow on me.

Q. You pointed to a pillow on here?

A. Right there.

Q. How did you have the pillow?

A. Like this, over me like this.

Q. Covering you up?

A. Just like this.

Q. What's all this other stuff on the bed? Was that there before?

A. No, that was stuff that was in the clothes basket.

Q. You have to speak up a little bit so they can hear you.

A. That was the things that was in the clothes basket.

Q. Tamika, when they threw the clothes basket at you, what else was going on?

A. It was them hitting him.

Q. Were they saying anything?

A. Asking him where the stuff was at, whatever they was looking for.

Q. Who did you see beating on Ronald?

A. Him, Gregory Williams, and there was somebody else.

Q. Did you see the third person?

A. No.

Q. Where was he?

A. I just seen his arms coming behind Gregory hitting Ronald.

Q. How did it end?

A. The room just got cleared, Ronald crawling to the living room calling for his mama.

Q. What did you do?

A. Jumped up and ran between the refrigerator and the washing machine.

Q. Why did you go there?

A. I was scared.

Q. You tried to hide?

A. (Nodding in the affirmative.)

Q. What did you do? How long did you stay there?

A. He crawled in the living room. When I heard him say I need an ambulance for my mama, I came out. He say, go call an ambulance for his mama.

Q. Did you have a phone?

A. I had a phone.

Q. Whose phone was it?

A. Ronald Scott's.

Q. Was it a cellular phone or a portable phone or what was it?

A. Yes.

Q. What?

A. I got a call.

Q. Was it a man?

A. A man.

Q. Who were they looking for?

A. Ronald Scott.

Q. Let's back up just a little bit. Earlier in the day you said that his mom had come to the door previously. You remember that?

A. Yes.

Q. Tell us about what else had happened during the day. Who had come by and what contact had there been?

A. I remember a guy, Kenny Parker, coming over earlier that day. He seemed mad when he left, though. He did. He wanted Ronald to give him a lookout or something, and he didn't. He got to arguing. Ronald came in the room. He slammed the door, and I didn't pay him no mind.

Q. Where were they at when they were talking?

A. In the kitchen.

Q. You were where?

A. In the bedroom. The kitchen and the bedroom right there.

A. Yes, a cell phone.

Q. What did you do?

A. I just ran out the door.

Q. Where did you go?

A. Across the street.

Q. What happened when you got across the street?

A. I asked the man could they call 911.

Q. Then what did you do?

A. I stood there for a minute. I ran back in.

Q. Ran back in where?

A. To the house. He was talking to his mama. I ran back out and asked the man which is the closest way toward Robert's Park, and he pointed that way, and I ran.

Q. It's going to seem like a silly question. What color was your hair that night?

A. I had on a blond wig.

Q. Then did you go off to Robert's Park, towards Robert's Park?

A. I ran down the boulevard, and I seen somebody I knew, and I got in the car with them, and I called my grandmother. I was telling my grandma what had just happened.

Q. Did anything happen with that phone later on?

Q. On that occasion, had his mother come back to the room that time, too?

A. She came in the room previous times. He was still sleep, but I was letting her in the room.

Q. So when Ronald would be asleep, you would let her in?

A. Every time she knocked, I got up and opened up the door.

Q. Who else did you know was in the house other than his mom and Ronald Scott?

A. His son, Little Ronald.

Q. How old is Little Ronald?

A. I think he is six.

Q. Let's go back to when they came into the house. You went running out pretty much right after it had happened, right, running over to get the fellow across the street to call 911?

A. Oh, as soon as he told me, I came from behind the refrigerator, came from between the refrigerator. He asked me twice, and then I ran out the door.

Q. When you went outside, was it daytime, nighttime?

A. Nighttime.

Q. You know about what time it was?

A. About 10:00. I don't know. I know Comic View was on because that's what I was looking at.

Q. Tamika, you've been previously convicted of a felony before; is that right, back in '95, a burglary charge?

A. Yes.

Q. And you had one misdemeanor larceny also back in '95; is that right?

A. Yes.

Q. Tamika, any doubt in your mind this is the fellow that came in the room?

A. That is him.

Q. Any doubt that's the fellow that threw the clothes basket on you?

A. He is not.

Q. He is not. Who did that?

A. Gregory Williams.

Q. Did you see him punch people? Did you see him hit people?

A. Uh-huh.

Q. Who did he hit?

A. Ronald Scott.

Q. Any doubt in your mind?

A. I am sure.

MR. BATLINER: Answer any questions defense

counsel might have.

THE COURT: Mr. Anderson.

CROSS-EXAMINATION

BY MR. ANDERSON:

Q. Good morning, Ms. Reid.

A. Good morning.

Q. Now, you met Ronald Scott on the 8th of July. The first time you came in contact with him was not the 9th?

THE COURT: You've been saying June, right?

MR. ANDERSON: Yes, sir.

THE COURT: The indictment says June. A couple of times you said July. I think you've been misspeaking.

MR. ANDERSON: That's correct, Your Honor.

THE COURT: I didn't say anything yesterday, but you did it again, so I thought I'd stop you right there. It is June?

MR. ANDERSON: It is June.

BY MR. ANDERSON:

Q. The first time you came in contact with Mr. Scott was on June the 8th?

A. I have been seeing him all during June. You talking about the specific night it happened or the first time I seen him, I mean, at the selling party?

V. R. p. 69 line 19

Q. Thank you. That wasn't a very good question. Let me ask you both times and get the answer to both of them. When was the first time you met Mr. Scott?

A. That Friday night.

Q. When was the first time you met him completely? Not that evening of the incident. When was the first time you met him?

A. Well, I've been knowing him all my life.

Q. And you saw him on June 8; is that correct?

A. 8th, 9th, uh-huh.

Q. Prior to that time, when was the last time you had seen him?

A. When he asked me to go call 911.

Q. Prior to the 8th, prior to the date that you saw him at the bootlegger's spot, when had you seen him before then?

A. I seen him the 7th of June. — R.S P. 69

Q. You all weren't boyfriend and girlfriend, were you?

A. No, just friends.

Q. Now, you saw him on the 8th. What time did you first come in contact with him?

A. That was about, I'd say, about 10:00 or

11:00, 11 o'clock.

THE COURT: Excuse me. Can you all hear Ms. Reid?

THE JURORS: A little bit.

THE COURT: Ms. Reid, if you can speak up a little bit louder. Try to talk loud enough so that the gentleman on the far end could hear you, okay? If you talk loud enough for him, I am assuming everybody else in between can hear you.

THE WITNESS: About 10:00 or 11:00, 11 o'clock.

BY MR. ANDERSON:

Q. That was on, you say, Fenner Street?

A. Yes.

Q. That's a bootlegger spot; is that correct?

A. Yes.

Q. In addition to alcohol, were drugs also being sold there?

A. Yes.

Q. You were using marijuana that evening?

A. Yes.

Q. I asked you that question earlier and you said you hadn't been using marijuana; is that correct?

A. Uh-uh. I never denied using marijuana.

Q. You never denied using marijuana at an earlier hearing?

A. Uh-uh.

Q. Do you recall me questioning you at a hearing in this court when there was a female attorney?

A. I denied I was using marijuana?

Q. Yes.

A. Every time you asked me, I told you I had used marijuana.

Q. My question is, were you using marijuana at that time? I asked you were you using marijuana that night.

A. When I was at the selling party?

Q. That night. I asked you had you used it that night. Do you remember saying no?

A. I don't remember saying that.

Q. Let me find it. Let me go to your transcript.

MR. ANDERSON: This was a motion to suppress, page 26 line 23.

BY MR. ANDERSON:

Q. Tamika, I am going to show you this. Do you recall testifying at an earlier hearing where there was a female prosecutor at that time? Not in general district, in this court.

Let me show you a transcript that's dated February 21, 2002 in the matter of the Commonwealth versus Lester Lynch, on page 26 beginning at line 19 and going through line 23.

A. You asked me did I?

Q. Let me just let you read it because maybe that will refresh your memory.

A. I did say that.

Q. Does this refresh your memory?

A. I know I had used it earlier that day, that night before I went to Watergate.

Q. Are you finished?

A. Go ahead.

Q. But when you testified at the earlier hearing, you said you didn't use any marijuana that night, didn't you?

A. That's what it says, yes.

Q. So you were using marijuana that night?

A. Yes.

Q. You left -- you're calling it The Watergate?

A. Yes.

Q. That's the street name for the club?

A. Yes.

Q. You went back to Ronald's mother's house?

A. No. I left Watergate and went to Fenner Street. From Fenner Street we went to Ronald's mother's house.

Q. Where did you meet Ronald, at Watergate or at Fenner Street?

A. Fenner Street.

Q. What time was that?

A. About 10:30, 11 o'clock when I met him.

Q. You stayed there from 10:00 or 11:00. Do you recall what time you left that morning?

A. I'd say about 3:00 or 4:00.

Q. About 3:00 or 4:00. You were just partying during that time?

A. Uh-huh.

Q. Now, when you got to Ronald's mother's house, who was present?

A. His mother, her grand kids. She had the grand kids in the living room. She was woke.

Q. How many grandchildren were there?

A. I'd say about five. They stayed over that night. They was gone that evening. Their mother had came and got half of them that evening.

Q. Do you recall testifying earlier there were four grand kids there?

A. Uh-uh. I don't even -- there was a lot of

kids on that floor. She got more than four grand kids.

Q. This is the transcript from the last trial, page 116.

A. Probably said a possible four.

Q. Page 116 line 15. Ms. Reid, do you recall testifying at the trial of Gregory Williams?

A. Yes.

Q. I am going to show you an excerpt from the proceedings of that transcript, Commonwealth versus Gregory Williams on July 23 to the 24th of this year. On page 116, if you would read lines 13 through 17. Does that refresh your memory?

A. Oh, I said I think I seen like four.

Q. So you went in. You talked to his mother for a little while. Ronald was with you?

A. He was in the room.

Q. He went into the room?

A. Yeah.

Q. But the two of you came into the room together -- came into the house together?

A. Yes.

Q. How did you all get from the hotel -- not the hotel, from Fenner Street to the mother's house?

A. Some guy he knew gave us a ride.

Q. You got there about 3:00 or 4:00 in the

morning?

A. Right.

Q. During the day, the next day, the 9th, later on that day, how many times did you get up?

A. About five or six times. I was using the bathroom, getting something to drink, smoking a cigarette.

Q. Did you ever leave the house?

A. No.

Q. When you would get up, you would go into the living room or into the kitchen?

A. Uh-huh.

Q. You saw his son there at that time?

A. Yes.

Q. Now, there came a point in time that you said that someone by the name of Kenny Parker came over?

A. Yes.

Q. Do you recall what time Mr. Parker came over?

A. That was about, I'd say, about 5:00 or 6:00 in the evening.

Q. Now, during the day, Mr. Scott was basically just sleeping?

A. Yes.

Q. Normally he would wake up when you woke

him up?

A. Yes.

Q. Did he ever just wake up on his own?

A. To use the bathroom.

Q. But he was sleeping pretty hard, pretty soundly that day?

A. Uh-huh.

THE COURT: Is that a yes?

THE WITNESS: Yes.

THE COURT: Keep your voice up, please.

BY MR. ANDERSON:

Q. Now, earlier during the day, do you recall -- so the mom came in at about 6:00, 7:00 or 6:00 you said, right?

A. The mama?

Q. The mom. His mother knocked on the door about 5:00 or 6:00 to wake him up to tell him Kenny Parker was there?

A. Yes. It was around 5:00 or 6:00 when Kenny Parker came.

Q. I didn't want to put words in your mouth, but I thought that's what you just said.

A. Not when the mama came. When Kenny came, he ~~was out there talking to her because he~~ know Ms. Plump -- well, Ms. Belinda Scott. He was out there. They were

conversating (sic) for a while. Then she came and knocked. It was around about 5:00 or 6:00, but they was out there a little while before she came and woke him up for him because I heard them out there talking.

Q. If you can remember, how many times did his mom come and knock on the door and tell him somebody wanted him?

A. Just twice, Kenny Parker and Doowhop.

Q. Do you ever recall Mr. Scott leaving the room or leaving the house?

A. Well, I don't know. When she was in the living room, by me being in the room, but every time I came out to get some water or use the bathroom, she was in the living room. So I don't know if she left the house.

Q. I'm sorry. Maybe you didn't understand my question. I said, do you recall Ronald Scott leaving the house?

A. Uh-uh.

Q. Do you even recall him going out on the porch?

A. No.

Q. Now, during the day, you were basically just in the room with Mr. Scott. You all would get out of the bed sometimes?

A. What?

Q. During the day from 3 o'clock in the morning until about 5 o'clock the next evening, you all were basically just in the room other than times when you would go to the bathroom or he would go to the bathroom. So you all were always there together?

A. Not when we went to the bathroom.

Q. I don't mean when you all went to the bathroom together. I mean, you went to the bathroom sometimes. He went to the bathroom sometimes. Other than those times, you all would be basically --

A. In the room, yes.

Q. -- in the room together. And it was clear that the purpose for going there was to have sex?

A. No, not really.

Q. That just happened?

A. Yeah.

Q. So between 5:00 and the time of this incident, did anyone else come to the house?

A. You talking about from the time of K.P.?

Q. From the time that K.P. left until somebody --

A. She only came back when somebody named Doowhop came.

Q. Did you all leave the room any times after that?

A. I probably used the bathroom or something.

Q. Ronald's son was coming in and out during that time?

A. When K.P. was there, yeah, but when she knocked at the door for Doowhop, he was on the chair sleep.

Q. Now, you said that when Kenny Parker left, it appears that there was some dispute between K.P. and Ronald?

A. They had a little couple of words.

Q. Did K.P. appear to be angry with Ronald?

A. He wanted him a lookout. I guess he was mad.

Q. You have to help me out. What's a lookout?

A. I guess he wanted more than he supposed -- well, than what he expected to get. I don't know. They was in the kitchen. I just heard, but I know it was something got to do with some drugs. I knew that.

Q. Do you recall K.P. being there like 10 o'clock in the morning to buy drugs?

A. No, I wouldn't say.

Q. Do you recall him coming about 1 o'clock or 12 o'clock in the afternoon to buy some drugs?

A. Uh-uh.

Q. Do you ever recall a time that K.P. came there with a girl?

A. Uh-uh.

Q. Do you recall --

THE COURT: Is that a no?

THE WITNESS: Yes. I'm sorry.

BY MR. ANDERSON:

Q. So you don't recall K.P. coming there with a girl and the girlfriend talking to Ronald Scott's mother?

A. I wasn't in there during all that. I wasn't in there. I only remember when he came at 5:00, about 5:00 or 6:00. I remember that because that's when the little confrontation, the arguing was.

Q. Now, you said you were watching Comic View?

A. Yes.

Q. Do you know what time Comic View comes on? That's the Comic View that's on BET?

A. Yes.

Q. The predominantly black station?

A. Yes.

Q. Do you know what time that comes on?

A. What time?

Q. I am asking you, do you know what time

that comes on?

A. Uh-uh. I know some come on -- they come on about 9:00 or 10:00, something like that, 9:30 or 10:00, something like that.

Q. Now, at some point the mother came, knocked on the door, said Doowhop wanted Ronald?

A. Yes.

Q. Ronald said, I don't know any Doowhop?

A. I would hit him like that. I say, your mama say somebody named Doowhop wants you at the door. He looked up at me. He say, I ain't know nobody name Doowhop. I said, you better go get the door. He got up. He was bending down to put on the shorts. I heard the sound. The room door kicked in. They was beating him up.

Q. You keep saying the room door was kicked in. Was the room door kicked in and somebody came in?

A. No, because the room door was locked. They didn't open it and do like that. It was kicked in.

Q. So if Ronald testified that he was at the door --

A. He was by the door.

THE COURT: Hold up. Let him ask the question.

BY MR. ANDERSON:

Q. If Ronald testifies he was at the door

and somebody was at the other side and they pushed the door in, he would be wrong?

A. I don't know what he saw. I know what I saw.

Q. But you all were in the same room?

A. Yes. I can't say what he seen.

Q. At the same time?

A. I can only tell you what I saw.

Q. After the door opened, who is the first person you saw come into the room?

A. That man right there.

Q. So if Ronald would say that Gregory Williams was the first person in the room, he would be wrong?

A. I don't know what Ronald can tell you. All I can tell you is what I can tell you.

Q. Who was holding the gun?

A. He was.

Q. So if Ronald would say that Gregory Williams was holding the gun, he would be wrong?

A. I don't know. I can't say what he saw.

Q. How many guns did you see?

A. I saw one and that's the one I was focused on, that one I seen. The first gun I seen, that's who I was looking at the whole time besides when they threw the

clothes basket at me. I looked at him when he threw it at me. I went back to him.

Q. So you weren't focusing on him the whole time?

A. I took my eyes off him to look at the man that threw the clothes basket, but my eyes was mainly on him.

Q. Prior to this day, prior to the date of the incident, did you know this defendant?

A. I don't know that man from Adam.

Q. How long did this whole thing take?

A. I don't know, sir.

Q. After, at some point the people left; is that correct?

A. Yes.

Q. And you hid in the house for just a little while?

A. Not a little while.

Q. You went between the washing machine, I think you testified?

A. I went between the washing machine and the refrigerator. He was crawling through the house. I guess he spotted his mama because he hollered and told me to go call 911.

Q. You had his cell phone?

A. Yes.

Q. But you didn't call. You didn't use the cell phone to call 911?

A. I was nervous. I grabbed the phone, then I ran out the door.

Q. And you had every right to be, but you were really afraid, right?

A. Yes.

Q. You weren't thinking quite clearly?

A. I know I ran down the street with no shoes on.

MR. BATLINER: Judge, can we approach?

(Sidebar off-the-record.)

BY MR. ANDERSON:

Q. Tamika, I think I had just finished asking you about you were afraid and you said you ran down the street without any shoes on. Now, you indicated that you had Ronald's phone. Do you recall his cell phone ringing during the day while you were in the room?

A. It was in the living room on the charger.

Q. It was in the living room on the charger?

A. Yes.

Q. Is that where you retrieved it from when Ronald told you to call 911?

A. When I came from the washing machine and the refrigerator, when I ran in, he said, the phone. He said, go call 911. I seen the phone on the charger. I just grabbed it. Then I stood over him while he was talking to his mama. I'm just shaking. He talking to her and that's when the second time he asked me to go call 911, and I just ran out the door.

Q. Did you wake his son up at that time?

A. No.

Q. Did you ever wake his son up?

A. Uh-huh. Oh, yes, I did. Yes, I did. I woke him up. Ronald grabbed him. I came in. I woke him up, and I ran back out the door. He was there. He was still in the house with Ronald, but he was woke. He was woke. I did grab him off the chair.

Q. So you grabbed his son off the chair and you gave him to his dad?

A. Yeah, and I ran out the door.

Q. This was on the evening of the 9th; is that correct?

A. Yes.

Q. Did you ever come back that evening to talk to the police?

A. No.

Q. In fact, the next time you talked -- the

first time you talked to the police, they had to find you?

A. No, I called. I called them.

Q. But had they in fact called your grandmother?

A. Yes.

Q. They told your grandmother they wanted to talk to you?

A. Yes.

Q. So you didn't go around and go down there to speak to the police?

A. No, because she didn't tell me to tell until some days later, but I had already -- she was the first person I called after it happened. So she already knew, but then I didn't talk to her like for a couple of days. And then when I finally called her, she told me that they had needed to talk to me.

Q. But you knew somebody had gotten killed that night?

A. Yes.

Q. Somebody had gotten shot. You didn't know whether they had gotten killed?

A. Yes.

Q. By that time, did you know Ms. Belinda had died?

A. No. I didn't find out till the next morning.

Q. You didn't know on the 9th, but you found out the 10th that Ms. Belinda had died?

A. Yes.

Q. You didn't bother to go and tell the police about what you had seen and what you had heard, did you?

A. When I got to my sister house, I did not come outside. I know they didn't have nobody. I did not come outside. I didn't come outside.

Q. Now, when you talked to the policeman, did you give them a description of the person?

A. Yes.

Q. What description did you give them?

A. Light skinned, corn rolls, and I said something. I said something. I said something about his eyes.

Q. You said light skinned, corn rolls?

A. Yes.

Q. Then you said something else, and I didn't hear you.

A. About his eyes.

Q. What did you say about his eyes?

A. I don't remember the exact words I said, but

I said they was like either a brownish or something. I said something. I just knew I said his kind of eyes, they were weird. I don't know if they pretty. I don't know. I don't know.

Q. Did you say there was anything distinctive about his nose?

A. Not that I recall.

Q. Any tattoos?

A. No.

Q. About his height?

A. No.

Q. His weight?

A. No.

Q. Do you recall seeing a gold plate in his mouth?

A. I remember seeing the little thing he had covered right here.

Q. No, no. I'm not asking you about the mask. I am going to ask you about that in a second. But in his mouth, do you remember if he had a gold front?

A. I don't know.

Q. I didn't hear you.

A. I don't. I don't remember. I don't know. Not that I recall. I don't know.

Q. You and Ronald would have had the same opportunity to observe him while he was in the room, the person who was doing this?

A. That boy woke up to a butt whipping. I don't know what he liable to saw. That boy woke up to a beating. That's what he woke up to.

Q. My question is, you both were about in the same area in the room?

A. Uh-huh.

THE COURT: I think she has answered that question. She can't say what he saw.

BY MR. ANDERSON:

Q. At some point in time, the police showed you a photographic lineup; is that correct?

A. Yes.

Q. There was one picture in there that was a little bit lighter than the rest of the pictures, wasn't there?

A. Lighter? What you mean?

Q. The photographs, there were six pictures there, and when you testified earlier, you testified that this one might have been a little lighter than the rest of them. Do you recall that?

A. If you say I said it. I don't know. I know every night I go to sleep I see that boy face. Can't

nobody tell me what I saw. I know what I saw. I didn't just pick him because he was the lightest one up there. I picked him because I seen him.

Q. Now, let's go back to this mask that you were talking about. Now, at one time you testify --

A. I said it was black. I remember you telling me I said that.

Q. So one time you said it was black. The next time you said it was beige, didn't you?

A. It was beige.

Q. But your story has changed?

A. You say I said black.

Q. No, I don't want it to be what I said.

A. You said the last time here I said it was black.

Q. Now, once before you said that it covered just the lip?

A. Just right here, yeah.

Q. But when we had another hearing, you said it covered from his head down to his nose?

A. He had all this covered. I said that? Now, that is crazy.

MR. ANDERSON: Motion to suppress page 14.

THE WITNESS: I know you all got one saying I said from right here to here.

THE COURT: Ms. Reid, hold on one second. Just respond to the questions.

MR. ANDERSON: Starting on page 13.

BY MR. ANDERSON:

Q. Ms. Reid, again, I'm going to show you a transcript from the case of the Commonwealth versus Lester Lynch, again, dated February 21 of this year. And I'm going to ask you to start reading where this question was posed by the Commonwealth attorney: And did he have any part of his face covered at all? Your response, yes. From where?

MR. BATLINER: If she can have an opportunity to read it, I think that's the appropriate way.

BY MR. ANDERSON:

Q. So does this --

A. I showed from here to here.

Q. Wait a minute. Does this refresh your memory?

THE COURT: Mr. Anderson, may I see the transcript?

MR. ANDERSON: Yes, Your Honor.

THE WITNESS: I don't remember saying that. I always said from there to there.

THE COURT: Ms. Reid. Show her the transcript. She can try to explain what it was she was

saying.

THE WITNESS: I don't remember that, but it says I said it.

BY MR. ANDERSON:

Q. It said that you said from the forehead down to the nose?

A. I don't remember that.

THE COURT: Let me see this. Counsel approach.

(Sidebar off-the-record.)

THE COURT: All right, Mr. Anderson, you can continue.

BY MR. ANDERSON:

Q. I think I made the point. I want to make sure we understand it. At one time you said it was at the nose, but you didn't remember saying it, but it was recorded in the transcript you said from here to here?

A. I said it.

Q. From here to here, the eyes would have been covered; is that correct?

A. I guess so. Yeah, if it's coming down like that, but I don't remember.

THE COURT: What? Say what you mean.

THE WITNESS: I don't remember saying it was from there to there until I just seen it in the book.

THE COURT: Go ahead, Mr. Anderson.

BY MR. ANDERSON:

Q. Now, Ms. Reid, do you remember when we were in the general district court and the defendant was standing there, there was another lawyer and there was a co-defendant, Gregory Williams? Do you remember at that time identifying the defendant and Gregory Williams the first time we went to court in the general district court? Do you remember that?

THE COURT: Is this at the preliminary hearing?

MR. ANDERSON: This is at a preliminary hearing.

THE COURT: Do you remember testifying at a preliminary hearing in this case?

THE WITNESS: Yes.

THE COURT: Go ahead.

BY MR. ANDERSON:

Q. Do you remember identifying Gregory Williams at that time?

A. When I say he threw the clothes basket at me? I don't know.

THE COURT: Do you remember identifying Gregory Williams at the preliminary hearing as being one of the people involved in this?

THE WITNESS: I think so. I don't know.

BY MR. ANDERSON:

Q. And Gregory Williams was in court that day. Do you recall that?

A. Yes.

Q. Do you recall at another hearing only the defendant and myself were sitting at the table? Do you recall that hearing? It was in February of this year. There was another female prosecutor. Do you recall that hearing?

A. I remember.

Q. Do you remember that?

A. I remember. I don't remember that day. It seems blurry.

THE COURT: Ms. Reid, how many times have you testified involving these facts?

THE WITNESS: With him?

THE COURT: Just at all, talking about these facts, this event. How many times have you testified, ever?

THE WITNESS: About four or five, something like that.

THE COURT: Go ahead, Mr. Anderson. I think the point is she is going to have a hard time remembering which one you are talking about. You are

going to have to take her right to it because there are enough times she can't remember each and every date.

BY MR. ANDERSON:

Q. Do you recall testifying in court one day when he had on an orange suit?

A. Yes.

Q. You remember that day?

A. Yes.

Q. It was just him and I in the courtroom. The co-defendant was not in court that day. Do you recall that?

A. Uh-huh.

Q. At that time the question was posed to you and you said you couldn't identify Gregory Williams; is that right?

A. Not at the precinct I didn't. That's the only time I didn't identify him was when I was at the precinct. I identified him, and there were some more pictures. He asked me do I see anybody else. ~~I say I~~ couldn't. That was at the precinct when I was talking to the detective.

Q. No. In court. Let me refresh your memory again, page 34. Again, I'm going to show you the transcript for the Commonwealth versus Lester Lynch, February 21, 2002, page 34 starting question

number -- line number 11 and going to 20. You said you couldn't identify other people in the room, right?

A. I couldn't identify? That's what I said.

MR. BATLINER: Judge, I am not even sure it's inconsistent. I think she could identify at the photo lineup with the photo.

THE COURT: Let me see the transcript. All right, continue. The jurors are going to have to weigh this along with all the other evidence.

BY MR. ANDERSON:

Q. So at that time you said you couldn't identify and then in the trial, later on in the trial of Gregory Williams, you said you could identify?

A. I couldn't identify who?

Q. Gregory Williams. Later on at a trial when the question was asked, when Mr. Williams was sitting in the courtroom, you could identify him, didn't you?

A. I just said, that's the man who threw the clothes basket at me, yes.

MR. ANDERSON: That's all I have, Your Honor.

THE COURT: Any redirect?

MR. BATLINER: Just very briefly, Judge.

REDIRECT EXAMINATION

BY MR. BATLINER:

Q. You went down to the police station and you looked at photo lineups, right?

A. Yes.

Q. When you went through the photo lineup, you identified Mr. Lynch from a photo lineup?

A. Yes.

Q. But you weren't able to identify Gregory Williams from a photo lineup; is that correct?

A. Yes.

Q. You weren't able to identify whoever the third person was?

A. No.

Q. Why couldn't you identify anybody out of those photo lineups?

A. It was the time he wasn't coming in the room.

THE COURT: I am sorry. I couldn't hear you, so I don't know. Can you repeat the answer to that question?

THE WITNESS: He never let me see his face. He stood behind.

BY MR. BATLINER:

Q. The third one?

A. Yes, he stood behind.

Q. When you looked at the photo lineups of Gregory Williams in it, you weren't sure enough to pick somebody out?

A. No.

Q. But you were sure to pick out Lester Lynch when you looked at that photo lineup?

A. Yes, no doubt.

Q. Now, you had mentioned that you knew there was a conversation about some drugs. Were there drugs in the room where you were with Ronald?

A. A little, yes, on the little table in the room.

Q. On the little table in the room?

A. Uh-huh.

Q. I show you what's been previously marked and received as Commonwealth Number 10. Where is that?

A. Right here.

Q. You're pointing to a spot on the upper left sort of midway on the left-hand side of the photo?

A. It was right here.

Q. Well, did the table look like that?

THE COURT: Excuse me.

MR. ANDERSON: Judge, this is beyond the scope of my cross. I didn't ask about anything about

drugs in the room.

MR. BATLINER: He asked about drugs and the conversation about the drugs.

THE COURT: I think you did question her about what they were there for, what they were asking about and the drugs. I think he is allowed to go back and develop it further. So I am going to overrule your objection. Go ahead.

BY MR. BATLINER:

Q. Show me the table again.

A. Right here.

MR. BATLINER: If the record would reflect it's on the left-hand side of Commonwealth Exhibit Number 10 about halfway up.

BY MR. BATLINER:

Q. Did the table look like that when you were in the room before the people came in?

A. Uh-uh.

Q. What was different?

A. It was some drugs and a little bit of money up there.

Q. What happened to the drugs and the money?

A. They took it.

MR. BATLINER: I don't have any further questions at this time, Judge.

THE COURT: Any recross?

MR. ANDERSON: No, Your Honor.

THE COURT: Do any members of the jury have any questions for Ms. Reid? If you would just write them down, please. Counsel, if you all would like to approach so you can read these.

(Sidebar off-the-record.)

THE COURT: All right, Ms. Reid, answer these questions to the jury, okay? They are questions. I am just going to ask them. Other than the television being on in the room when this event happened that you have described, was there any other light on in the room?

THE WITNESS: In the back part of the room. The room we was in?

THE COURT: Right.

THE WITNESS: That light probably was on.

THE COURT: I'm sorry. The TV was on, right?

THE WITNESS: Yes.

THE COURT: Was there any other light on in the room, in the bedroom, where this occurred?

THE WITNESS: It could have been the room light in the room.

THE COURT: Are you sure or are you just saying it might have been?

THE WITNESS: It was on.

THE COURT: Ronald Scott's son was in the house when this happened?

THE WITNESS: Yes.

THE COURT: You've testified he was asleep when you went back out there, right?

THE WITNESS: He was laying down, yeah.

THE COURT: And that he was asleep?

THE WITNESS: He was asleep.

THE COURT: You woke him up?

THE WITNESS: Yes.

THE COURT: The question that the juror asked is, how come he didn't wake up? I don't think she can answer that question. All she can testify is that he was asleep. She can't tell why somebody didn't wake up. So I am not going to ask that.

Now, you've indicated that the defendant had a gun?

THE WITNESS: Yes.

THE COURT: Was that the only gun you saw?

THE WITNESS: That I saw.

THE COURT: So you didn't see whether or not anybody else in the room had a gun?

THE WITNESS: No.

THE COURT: Can you say whether or not the

defendant held you and Mr. Scott at bay with the same gun?

THE WITNESS: Huh?

THE COURT: Was the defendant focusing the gun on you and Mr. Scott as well?

THE WITNESS: They was hitting him. It only turned to me once, only once. I was scooting off the bed. I didn't know where I was going. I was scooting, and he turned around and told me lay on the bed.

THE COURT: Did you know Gregory Williams before June 9, the day this happened?

THE WITNESS: No.

THE COURT: Is it possible Ronald Scott could have left that room that you were in with him on June 9, 2001 other than going to the bathroom without you knowing about it?

THE WITNESS: No.

THE COURT: All right. And one of the jurors wasn't sure that they heard you correctly or they actually heard what your answers were to these questions that were asked. Who did you say threw the basket of clothes at you?

THE WITNESS: Gregory Williams.

THE COURT: And who was it you said had the gun?

THE WITNESS: Lester Lynch.

THE COURT: All right. Then one other question, and I am going to have to ask the juror who wrote it to let me get a little clarification. The juror is asking the question, where is Gregory Williams? Who asked that question? Are you saying right now?

THE JUROR: Yes.

THE COURT: Right now?

THE JUROR: Right now.

THE COURT: She can't answer that question. Okay. Any follow-up, Counsel?

MR. ANDERSON: No, Your Honor.

THE COURT: Okay. Thank you very much. May Ms. Reid be excused?

MR. BATLINER: She may, Judge.

THE COURT: Ms. Reid, you can be excused. You can go on about your business.

MR. BATLINER: Mr. Revell.

THE COURT: Let's take a short break.

(Short recess taken.)

THE COURT: Counsel, Mr. Parsons, the jury who provided this note to us that we've read during the recess, we're concluding that he wrote the question about Ms. Reid, did she know why the young boy did not

wake up. He seemed to be concerned about it, and I don't want to make an issue out of it, but I also don't want to ignore it and have him worrying about it.

I am wondering if maybe it might not be a good idea so we don't ask it in front of all of the jurors, to bring him out first, tell him we have his note, we understand, see if there is anything else and then bring the rest of the jurors out to make sure there is something else not there agitating him. All right?

MR. ANDERSON: Yes, Judge.

THE COURT: Bring Mr. Parsons out first. Mr. Parsons?

THE JUROR: Yes.

THE COURT: We are bringing you out here alone to make sure if there is anything we have to say, that it doesn't confuse any of the other jurors. I take it you wrote the question to Ms. Reid about does she know why the young boy didn't wake up?

THE JUROR: Right, while all this stuff was going on.

THE COURT: You have written another note to us that we've read, the attorneys and I, basically explaining why you were asking.

THE JUROR: Right.

THE COURT: Is there more to it than that? I think we understand that's why you asked it. She can't answer that question. She can't say why he didn't wake up. He was asleep. That's a question, something for you to consider. Is that all?

THE JUROR: I was concerned while all this was taking place.

THE COURT: That's going to be one of the things you all decide when you go along. Your question is a legitimate question. She just can't answer it. You can bring the rest of the jurors out.

(Thereupon, the jury entered the courtroom.)

THE COURT: You were sworn in yesterday; is that correct?

THE WITNESS: Yes, sir.

THE COURT: All right, Mr. Batliner.

ROBERT LEE REVELL,

called as a witness, having been previously sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BATLINER:

Q. Tell the jurors your name, please.

A. My name is Robert Lee Revell.

Q. Mr. Revell, I'm going to direct your attention back to June 9 of 2001. You remember that day?

A. Yes, sir.

Q. At some point in the evening on that day, did a woman come to your door?

A. Yes, sir.

Q. Tell the ladies and gentlemen of the jury what happened when she came to the door.

A. Well, I and my wife was sitting in the living room and the doorbell rung, and it was this lady, Tamika. As a matter of fact, she just left out.

Q. Just left the courtroom?

A. Just left the courtroom.

Q. Okay.

A. She asked me, would I call the paramedics because a lady across the street had been shot.

Q. What did you do?

A. I called.

Q. Where do you live at or where did you live then? I guess that's more important.

A. Right across at 3326 Lens Avenue, 31 years.

Q. That's right across?

A. Directly across the street, 3330 and 3336.

Q. What did you do after you had called --

who did you call?

A. The paramedics.

Q. What did you do after that?

A. I think I sit back down. I remember I sit back down and then she came back again, rung the doorbell again, asked me did we call. I said, yes, we called the paramedics. By that time, she was getting ready to walk out. They was coming up.

Q. Was there anything unusual about her hair that evening?

A. Yes. Well, her hair was, you know, standing up on her head. But when she came the first time, she had, you know -- when she came the first time, her hair was standing up on her head. When she came back the second time, she had on a blond wig.

MR. BATLINER: Answer any questions defense counsel or the Court may have, Mr. Revell.

CROSS-EXAMINATION

BY MR. ANDERSON:

Q. Mr. Revell, you say you live on Lens?

A. Yes, sir.

Q. What's the address again?

A. 3326 Lens Avenue.

Q. In relationship to Ms. Scott's house, where was that, Belinda Scott's house?

A. Directly across the street from where I live.

Q. Ms. Reid came to your house twice that evening?

A. Twice, yes.

Q. Did you happen to look outside at the time she was calling or the first time she came to your house?

A. Come with that again.

Q. What time did you get home that evening?

A. I don't remember what time it was. It was dark. You know, I can't say exactly what time it was.

Q. Immediately before she came over, had you been outside or anything?

A. Oh, yes. I had just drove up in the yard, and when I walked in the house five minutes later, maybe four or five minutes, she came and rung the doorbell.

Q. When you drove up in your yard, did you happen to notice anyone outside?

A. Yes, sir.

Q. Do you recall seeing this person outside?

A. No, I don't know this man. There were three gentlemen standing by the telegram post between Ms. Scott's house, between 3331 and 3335 when I pulled in my yard. And I went in the house, and I told my wife that

it was three guys standing across the street. That was unusual, you know. So I walked back out and these three guys was walking up the street. Then, like I say, about four or five minutes later, this lady rung the doorbell, and said, call the paramedics, the lady had been shot.

Q. So you drive up?

A. Uh-huh.

Q. You see these three men out there?

A. Right.

Q. You can't say he was one of those people?

A. No. I just know it was just three men. I ain't going to tell you no lie. I didn't see no faces. I just saw three men standing there.

Q. Did you see any cars outside?

A. No, no cars.

Q. You didn't see a car across the street in front?

A. No.

Q. Was there a car parked in front of your house?

A. No.

Q. No car parked in front?

A. No cars was out there, period.

Q. So you see these three people walk away?

A. When I came back out, they was walking

towards Columbo, Columbo and Lens.

Q. Then three or four minutes later -- wait a minute. You went in the house. How long did you stay in the house?

A. Okay. I put it this way. I drove up. I can't say exactly what time it was. I drove up, pulled in my driveway. I went into the house. I told my wife, I say, it's three guys. See, like I been living around there 31 years. I told my wife there are three guys out there standing across the street between the two houses.

So I came back out, you know, because I figured something wasn't right. I wasn't sure. But when I walked back out, the three guys was walking towards Columbo. Then I went back in the house. That's when the doorbell rung and it was this girl, this lady.

Q. How much time passed from the time that you walked back in the house to the time the doorbell rang?

A. Maybe about five minutes, about four or five minutes.

Q. Did you still see those three guys at that time?

A. At what time?

Q. After the doorbell rang.

A. Oh, after the doorbell rung I called the paramedics. I didn't see the guys anymore.

MR. ANDERSON: That's all I have, Your Honor.

THE COURT: Any redirect?

REDIRECT EXAMINATION

BY MR. BATLINER:

Q. Was it dark outside at the time you came home?

A. Yes.

Q. So this entire time it was nighttime?

A. It was nighttime, right.

MR. BATLINER: Nothing further, Judge.

THE COURT: Any recross?

MR. ANDERSON: No.

THE COURT: Any questions from any members of the jury?

THE JURORS: No.

THE COURT: These three guys, they didn't leave in a car? They walked away?

THE WITNESS: They walked away. Wasn't no car in sight.

THE COURT: This is Robert Revell?

THE WITNESS: Mr. Revell.

THE COURT: Is Mr. Revell excused?

MR. BATLINER: He may.

THE COURT: You are excused, Mr. Revell. You can go about your business. Thank you.

MR. BATLINER: Investigator Martin.

THE COURT: Investigator Martin, were you sworn in yesterday?

THE WITNESS: Yes, sir.

THE COURT: Have a seat.

INVESTIGATOR E.L. MARTIN,

called as a witness, having been previously sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BATLINER:

Q. Would you tell the ladies and gentlemen of the jury your name?

A. I am investigator E.L. Martin of the Norfolk Police Department.

Q. What part of the police department do you work in?

A. Detective Division, Forensic Unit.

Q. Tell me what that means.

A. Basically, I am called to certain scenes to evaluate scenes from a physical evidence standpoint, to look for evidence or potential evidence, to record and

document this evidence for further scientific testimony and courtroom testimony.

Q. Were you called out to 3331 Lens Avenue back on June 9 of this year -- of 2001?

A. 2001, yes, sir.

Q. Tell me what you did when you got there.

A. When I arrived at 3331 Lens Avenue in the city of Norfolk, there were several police in the area. There was an uniformed officer standing on the front porch. I spoke with Investigator Huffman of the Homicide Squad.

Investigator Huffman and I walked through the house looking at different items in the house as he was relating to me what they knew up to that particular point of the investigation.

I made several notes, general information notes, as I walked through and then I began my investigation after that.

Q. Tell me about your investigation. What did you do?

A. After I had done my original walk-through of the house making general observation notes, I began taking 35-millimeter photographs of the known scene, things that I thought might be evidence or potential evidence in the case. After I had taken my 35-millimeter photographs, I

was recognizing things I was going to collect as evidence or potential evidence at the same time. I began a field diagram for a crime scene sketch of basically out of the house and areas where evidence was located where I was going to collect it.

Q. Investigator, I'm going to show you what has been previously received as Commonwealth Exhibit Number 2. Can you tell me what that is?

A. It's a scaled down version of my crime scene diagram.

Q. You prepared this diagram?

A. Yes, sir, the original, yes, sir.

Q. Can you kind of walk us through it and tell us what you found and where you found it?

A. Lens Avenue would be over here, the 3300 block. This represents the steps and the front porch which are on the outside of the house. There was a pillow, a large pillow and a pillow laying here. There was a long telephone cord. It was not attached to a telephone. It was just laying on the porch.

There were red stains in this area on the porch. There were red stains just inside in the vestibule area, on the carpet, more red stains here, if I can hold this still. There was a lounge chair right here that was tipped over. This hallway was

dark, and there was no lightbulb in the overhead ceiling.

The door leads from the hallway into the rest of the downstairs part. This door was only leading into the living room. This was a front bedroom area. Going through from the living room into the kitchen area, there was a door that was opened that led to a bathroom.

The kitchen area is represented here, and there was another doorway that led -- it was a step down and this is like a utility area, had a refrigerator and washer/dryer, and this was a side door that led to the outside that was shut and secured.

There was a step up and this is like a utility storage unit area. There was a step up to this bedroom in the back, and the door was slightly ajar when I first saw it. Inside the bedroom, it appeared to be, you know, basically in disarray versus being nice and neat.

Q. I am going to show you, Investigator Martin, what's been previously received as Commonwealth Exhibit 22. Is that a blowup of one of the photographs you took?

A. Yes, sir. This is an enlargement of one of

the red stained areas in the hallway right in here close to the overturned chair.

Q. Is that chair depicted there on your diagram?

A. Yes, sir, right here.

Q. I'm going to show you what has been previously received as Commonwealth Exhibit Number 4. Let me first show this to the jury.

I didn't ask you, Officer, but if you can tell, what is this here in the photograph? I'm pointing to the left-hand upper side of the photograph.

A. That's part of the chair that was overturned, sir. Is that what you're referring to?

Q. This blue area right here on the upper left part.

A. That's the bottom of the chair.

Q. Where it's turned up?

A. Yes, sir, turned over.

Q. Let's go back to that one which is Commonwealth Exhibit 4.

A. Commonwealth Exhibit 4 is an enlarged diagram -- or sorry, a large blowup of a photograph I took. This was in the hallway facing from the living room part, from this area going towards the front door, this area on the front thing being the front door which is the

same as here.

Q. Now, on the floor in that photograph, what's on the floor there, if you can tell?

A. This area and here is where the blue sofa or the blue chair is turned over. There is a red stain on the carpet here, red stains on the carpet here, and it's hard to see, but there is also right up on the threshold or close to the threshold, there are more red stains on the carpet.

Q. Investigator, I should have asked you this, too, on Commonwealth 22. There appears to be around that red stain, there appear to be some pieces of paper and a bag. Do you know what those are?

A. I believe when I looked at those, those were discarded from the paramedics, equipment that they had used to tear off to get equipment out. It appeared to be medical type paperwork.

MR. BATLINER: For the record, Judge, that was on Commonwealth Exhibit Number 22.

BY MR. BATLINER:

Q. A tad out of sequence but Commonwealth Exhibit Number 1, what is that?

A. Commonwealth's Exhibit 1 is an enlarged blowup of a 35-millimeter I took showing the front of 3331 Lens Avenue showing the front porch and the front door

area which is represented, the front porch area here and the front door area there.

Q. This is Commonwealth's Exhibit Number 3. What is that one?

A. Commonwealth Exhibit 3 is a photograph or enlargement of a photograph I took showing the outside of the house on the porch, showing the telephone cord that was here, and a pillow represented. The corner of the pillow is up here, and the telephone cord here showing the door was open, another pillow behind the door which is indicated here on the diagram, and just basically the way the front porch looked as I arrived.

Q. I'm going to show you Commonwealth's Number 5. What is that one?

A. Commonwealth Exhibit 5 is also an enlargement of a 35-millimeter photograph I took. This is taken in the living room area, basically standing in this area right in here in the living room, and it's showing the layout of the living room in this area right in here.

Q. Commonwealth's Number 6, what does that one show?

A. Commonwealth Exhibit 6 is also an enlargement of a 35-millimeter photograph I took, and that's showing going to the back of the house from the doorway leading from the living room into the kitchen.

Approximately from here going, and the photograph is shooting back into this direction towards the back of the house.

Q. So that doorway is the one that you were--

A. The doorway here.

Q. You're indicating in the center of what is Commonwealth Exhibit Number 6?

A. Would be this doorway looking here.

MR. BATLINER: On the diagram, he is indicating with the laser pointer almost where the numeral 11 appears on the left side of the diagram.

BY MR. BATLINER:

Q. I show you Commonwealth Number 7. What does that one show?

A. That's also an enlargement of a 35-millimeter photograph I took inside the house of 3331 Lens Avenue. That was taken from the living room towards the front door of the downstairs apartment and also shows a partial doorway of the front bedroom.

The photograph was taken approximately in this area in the living room going to the right of the diagram showing a partial doorway into the front bedroom and also this doorway and leading into the hallway. It was taken from about here going towards

the right on the diagram.

Q. Which one is the one going out?

A. On this diagram, the door on the right, right side of the photograph is the one that leads --

Q. Which was passing you which would be on the left as you're looking; is that correct?

A. From where I took the photograph, looking at this photograph, the door on the right would be leading to the hallway going to outside, and the doorway on the left of this photograph is going into the front bedroom.

Q. I'm going to show you what has previously been received as Commonwealth Exhibit Number 8.

A. That's also an enlargement of a photograph I took. This was taken in the back bedroom of the house. This is the bed area with articles on the bed. I was standing approximately here taking the photograph to the left. That's just an overall mid range type photograph.

Q. I show you Commonwealth Exhibit Number 10.

A. Commonwealth Exhibit 10, this is taken from the utility area at the doorway leading into the back bedroom. This is the way I first saw the door and the back bedroom. It was taken from approximately here, what I refer to as the utility area, showing the door to the back bedroom and what could be seen in the bedroom with

the opening of the door.

Q. It appears to be a table on the left-hand side here of your photograph?

A. Yes, sir.

Q. Is that visible in your diagram?

A. Yes, sir, it's right here in the back bedroom toward the top of the diagram.

Q. I show you Commonwealth Exhibit Number 9. What is that?

A. That's also an enlargement of a 35-millimeter I took in the back bedroom that is facing the doorway to the bedroom. I was standing approximately in the back bedroom in what would be the upper left side of the bedroom with the photograph showing information to the right going towards the rest of the house, towards the front of the house.

Q. Investigator, did you make note of anything on your diagram of any items that you observed when you went through the house?

A. I noted on the right-hand side the evidence that I noted to be collected in the middle part of the diagram is general information of the scene itself. The left portion of the diagram are measurements of the evidence, and the bottom lower left would be a legend describing certain things within the diagram.

Q. What I understood you to note -- what items of potential evidence did you note?

A. Excuse me?

Q. What items of potential evidence did you note?

A. In the back bedroom is a brown plastic bag with undetermined powder which was item number one -- let's see. I can't read that too good. Which would be right here, item number one in the back bedroom.

Item number two is a brown plastic bag with also some undetermined powder in it, and that was to the left of number one which would be the third one on the left of this diagram labeled two.

The third item was a gold colored crucifix that was laying on the floor in what I refer to as the utility area in front of this closet storage area.

Item number four was a red stain swab and controls that were taken from the front porch area here. Number five is a section of carpet with red stains and suspected partial shoe impression on it that was taken inside the threshold area about midway. It's at the doorway.

Item number six was also a red stain swab I collected from the carpet here in the vestibule.

Item number seven was a plastic film

canister, a round empty canister with a gray lid which was in the back bedroom next to -- it would be to the right-hand side of items one and two. It would be the one on the far right there.

And item number eight were broken cookie crumbs that were on the floor. Also in the back bedroom in front or on top of items one and two is indicated with an eight on the floor there.

Q. Were you also asked to take some photographs back at the Police Operations Center in this case?

A. Yes, sir.

Q. First, I am going to show you what is Commonwealth's 11, 12 and 13, Investigator, and see if you recognize this.

A. Commonwealth's Exhibits 11, 12 and 13 are all 35-millimeter photographs that I took in the Police Operations Center in interview room C of apparent contusions to a man named Ronald Scott.

Q. When were they taken?

A. Those were taken on the 10th of June between 2:16 in the morning and 2:24 in the morning after I had returned from the crime scene.

Q. So in the early morning hours?

A. Yes, sir, because it was after midnight. It

switched to a new day, but I was still at the homicide scene until after midnight, so that's why the change in date.

Q. I'm going to also show you what is Commonwealth's Exhibit 14, 15 and 1. Take a look at those and tell me if you recognize those.

A. These are also 35-millimeter photographs that I took in the Police Operations Center in the interview room C in the detective division. These are also of Mr. Ronald Scott showing tan or whitish color shorts that had red stains on them on the front and the back and the side of the shorts.

Q. Were these taken at the same time those other photographs were taken we talked about earlier?

A. Yes, sir.

Q. Finally, Investigator, I'm going to show you what is Commonwealth's Numbers 18 and 19. Do you recognize those photographs?

A. Commonwealth's Exhibits 18 and 19 are photographs I took of a 1991 Acura Legend, North Carolina license plate 11194660. This is taken at 975 Goff Street in the city of Norfolk which is our police impound yard.

I went there on June 20, arrived there at 12:30 in the afternoon to take just exterior shots of this vehicle.

MR. BATLINER: Thank you, Investigator. Answer any questions defense counsel may have for you.

THE WITNESS: Yes, sir.

CROSS-EXAMINATION

BY MR. ANDERSON:

Q. Investigator, you indicated that you took a photograph or did you say you took a shoe impression from the front door? Did I misunderstand you?

A. I didn't say that, no, sir.

Q. You said there was an impression of a shoe print?

A. I said it was a red stain and it looked to be a partial shoe impression made of red stain on the carpet.

Q. Were you able to determine what type of shoe or who had worn that shoe or anything?

A. I didn't recover that particular piece of evidence, sir.

Q. In your collection of the evidence, you weren't able to say that this defendant was ever at that residence?

A. Not from the evidence I collected, no.

MR. ANDERSON: That's all the questions I have.

THE COURT: Do any members of the jury have

any questions for Investigator Martin?

THE JURORS: Yes.

(Sidebar off-the-record.)

THE COURT: Mr. Martin, if you can answer these questions. I am not sure that you have the knowledge, but if you can, answer them.

Would you put the diagram on the thing for a second?

MR. BATLINER: Absolutely, Judge.

THE COURT: I am talking about the door to the bedroom in the far back corner of your diagram as you look at the screen.

THE WITNESS: Yes, sir.

THE COURT: Did your investigation reveal whether or not that door was damaged in any way?

THE WITNESS: It was not.

THE COURT: And do you know who owned or owns the Acura car that you identified in the photograph you took?

THE WITNESS: No, sir, I do not.

THE COURT: Did you attempt to lift any fingerprints from the residence?

THE WITNESS: A latent exam was conducted but not by me.

THE COURT: Not by you?

THE WITNESS: Yes, sir.

THE COURT: When you entered into that back bedroom, was there a light on?

THE WITNESS: I made reference on my notes that the door from the utility room into the back bedroom was open and the light was on in the back bedroom.

THE COURT: Do you know how the light got turned on or was it on when you walked in?

THE WITNESS: It was on when I first arrived, sir.

THE COURT: Counsel, any follow-up questions, Mr. Anderson?

CONTINUED CROSS-EXAMINATION

BY MR. ANDERSON:

Q. You weren't the first one on the scene? You weren't the first one that went into the bedroom, were you?

A. I didn't see anybody else in it prior to me going in. Investigator Huffman and myself walked through together.

Q. But when you got there, you said there were some officers there already?

A. On the outside perimeter of the house and one at the front door.

Q. So there were police who were already there, and was Mr. Scott still at the house?

A. No, sir.

Q. Was a young boy there when you arrived?

A. No, sir. Nobody was in the house when I arrived. When I went into the house, there was nobody else in the house.

Q. What time did you first arrive at the house?

A. I arrived at the house at 22:12 which is 10:12 p.m. on the 9th of June.

Q. Do you know who gave the young boy to Mr. Scott, what officer gave him the boy?

A. The only ones that were there when I arrived were police and paramedics -- no, just police. I didn't see any civilians at the house.

Q. But there were police who had gotten there before you went there? They had gone into the house before you got there?

A. I don't know if they did or not, sir. They were on the outside protecting the outside perimeter of the house. There was one police officer at the front door on the front porch. I don't have any personal knowledge of who went into the house prior to my arrival.

Q. But there were other officers there when

you did arrive?

A. At the scene, yes, sir.

MR. ANDERSON: Thank you.

REDIRECT EXAMINATION

BY MR. BATLINER:

Q. What is policy as to what's supposed to happen when they know you're coming?

MR. ANDERSON: I'll object to what's policy. He can only testify to what happened that evening.

THE COURT: Well, no, I think he can tell the jury what their practices are. That's part of what his job is. Go ahead.

BY MR. BATLINER:

Q. What are the standard practices?

A. A standard practice on a situation where someone has been injured, paramedics and the fire department would render whatever aid they could do at the scene. If they have to take the victim from the scene, they do that for life-saving purposes.

After the paramedics or firemen leave, the house is secured by police from the outside perimeter. It may be also standard practice that maybe one officer, usually a canine officer, may go through the building to search for other victims or possible other people in the house at that time. Once the building

is cleared, no one else enters the house until homicide or forensic arrive on the scene.

MR. BATLINER: Thank you, officer.

THE COURT: Mr. Anderson, any follow-up on that point?

RECROSS EXAMINATION

BY MR. ANDERSON:

Q. So you say it is policy for somebody to go through the house to make sure there aren't other people in the house?

A. That's possible, yes, sir.

MR. ANDERSON: Thank you.

THE COURT: All right. May Investigator Martin be excused?

MR. BATLINER: He may, Judge.

THE COURT: Thank you, Investigator Martin. You are excused. You may go on about your business.

MR. BATLINER: Investigator Huffman.

THE COURT: Were you sworn yesterday, Investigator Huffman?

THE WITNESS: Yes.

THE COURT: Have a seat.

INVESTIGATOR BRAD HUFFMAN,

called as a witness, having been previously sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BATLINER:

Q. Would you tell the ladies and gentlemen of the jury your name?

A. Investigator Brad Huffman.

Q. How are you employed?

A. With the City of Norfolk Police Department, the Detective Division.

Q. Was it your case, the homicide that occurred on June 9, 2001 at 3331 Lens Avenue where Belinda Scott was killed?

A. Yes.

Q. Would you tell the ladies and gentlemen of the jury how you first became involved in the case?

A. I was working that evening. At approximately 9:45 p.m, a call went out over the radio broadcasting about a possible gunshot victim. Myself and other investigators headed to 3331 Lens Avenue, and I arrived there at approximately 10:05 p.m.

Q. What did you find when you first got there?

A. When I first arrived, paramedics had already taken the victim away. The victim's son, Ronald Scott, was present, being spoken to by another investigator. I did a cursory look at the scene itself, and it appeared to be a single family dwelling, but there was a front porch with a little bit of red stain on it.

As soon as you go in the front door, it's like a split foyer with a stairway to the left leading to the upstairs, and to the right of the stairway was a little hallway that led directly to the downstairs dwelling. So it was actually at least a two-occupant dwelling.

Inside that foyer area to the right of the steps was a large pool of blood and an overturned chair that appeared to be where some sort of confrontation had occurred.

Q. Investigator, I am going to show you Commonwealth Exhibit 4. What does that show?

A. That's that foyer area that I mentioned directly to the right of the steps, and that would be the front door in the back of the picture. So you would be looking out from inside the apartment from this direction.

Q. On here where is -- can you see the pool of blood that you mentioned?

A. It appears that there is some blood splatter

directly beside the chair and then a larger pool of blood next to the steps.

Q. I show you Commonwealth's Number 22. What does that one show?

A. That's the larger pool of blood which is next to that chair inside the foyer area.

Q. What did you do then?

A. I actually waited for Investigator Martin, and we did a cursory look around the remainder of the scene and advised Investigator Martin of what I would like done at the scene as far as processing for physical evidence and pictures and things of that nature.

Q. So you waited for Investigator Martin to walk through the rest of it?

A. Yeah. We walked through most of it together so it wasn't disturbed more than once. We proceeded to -- I had briefly spoken with somebody out in front and proceeded to the back bedroom where the further incident had occurred to examine that part of the scene.

Q. What did you discover when you got back there?

A. That part of the house -- there is a back bedroom, kind of secluded back bedroom, all the way at the end of the hallway through a couple rooms before you got to that back bedroom.

It appeared that there had been some sort of a scuffle in there. There were things knocked about on the floor, and there did appear to be some narcotic paraphernalia in the room.

Q. What narcotic paraphernalia did you believe was in the room?

A. I believe there was some plastic baggy, stuff that actually we did take and voucher, and Investigator Martin did voucher those items.

Q. Did you test any of those items?

A. Those items were never tested for actual content.

Q. Why not?

A. It wasn't significant to what we were pursuing.

Q. What did you do after you walked back and saw the scene in the back?

A. Basically, at that point we didn't stay at the scene very long. We took Ronald Scott and his son down to the Police Operations Center, left the forensic unit to continue their processing of the scene and wanted to begin speaking with any and all witnesses that were present.

Q. Where were Mr. Scott and his son when you arrived?

A. When I first arrived, Mr. Scott was in front of the house. He had already been -- either he had already walked out or had already been taken out of the house and was out in front speaking with an investigator.

When I made it up to the front door, I actually could see the young, I guess, grandson was actually still inside on the couch in the living room. You could see it from the front door, and he was basically being awakened. I imagine he had slept through everything.

Q. Which couch are we talking about, if you can look at the diagram?

A. That couch right there. He was right at this end where he had basically a direct line of sight. So he was right in here being basically awakened off that couch.

Q. Then you took him and Mr. Scott where?

A. To the Police Operations Center.

Q. You spoke with them there?

A. Yes, sir.

Q. Did you order some photographs be taken then?

A. Yes, we did have forensic respond back into the Police Operations Center to take some photos of Mr. Scott and his clothing as well as his person.

MR. BATLINER: Judge, I am just going to have him verify these. I am not going to display them again. I think the jury has seen them enough.

BY MR. BATLINER:

Q. I am going to show you Commonwealth 14, 15 and 16. What is that?

A. Those are the photographs taken in my presence actually of Mr. Scott and the clothing he was wearing.

Q. Why did you want those photographs taken?

A. Because there appeared to be a red stain on his pocket area that was significant at that time.

Q. I am going to show you Commonwealth's 11, 12 and 13. Did you ask for those photographs to be taken as well?

A. Yes. Those are actual photographs taken of Ronald Scott and the injuries he sustained from being pistol-whipped.

Q. These were taken the same day?

A. Same exact time.

Q. That would have been several hours after you took him to the POC?

A. We departed the scene at approximately, I believe it was about 11:00 p.m. That's when we actually departed the scene. Actually, at 11:00 p.m. was when we

were back at the Police Operations Center and began speaking with Ronald Scott. So it was approximately less than an hour from the time I got to the scene and was back at the office speaking with Mr. Scott.

Q. During your investigation, did you develop information that you could determine a photo lineup could be put together?

A. Yes.

MR. BATLINER: Judge, may I see the Court's file?

THE COURT: Any objection to this, Mr. Anderson?

MR. ANDERSON: No, Your Honor.

THE COURT: It will be received as Commonwealth Exhibit 5.

MR. BATLINER: Actually 5A.

THE COURT: 5A.

(Photo Lineup marked as Commonwealth Exhibit No. 5A in Evidence.)

BY MR. BATLINER:

Q. Detective, I'm going to show you a document. Tell me what that is.

A. This is a photo array that I put together in reference to this defendant.

Q. Meaning which defendant?

A. Lester Lynch.

Q. You see Mr. Lynch present in court today?

A. Yes, sir.

Q. Where is he?

A. Sitting to the right of Counsel Anderson.

Q. Subsequently, did you get to show that -- did you show that to Tamika Reid?

A. Yes, I did.

Q. Do you remember when you did that?

A. It was several days later when Ms. Reid was present in the office. It was June 16, so a week after the incident that I was called at home that Ms. Reid was down at the office, and I showed her the photo lineup on the morning of June 16 at approximately 1:10 in the morning.

Q. How was it presented to her?

A. In this manner. I basically took the whole folder in front of her and said, I'm going to show you a set of photos that may or may not include somebody that may or may not have been involved in this. And generally our instruction would be people's appearances can change through their hair or whatever. So pay closer attention to their actual facial features and just review and look at all the photos. Take your time and only tell me if this is somebody you're sure of.

Q. What was her reaction when you showed it to her?

A. Ms. Reid immediately picked out photo number 4 and stated that's the light skinned guy.

Q. Who is photo number 4?

A. Photo number 4 is Lester Bernard Lynch.

Q. Now, you also had talked to Ronald Scott. That's how you found out about Tamika Reid; is that right?

A. That's correct.

Q. And he had originally indicated that there were other people that were involved in this; is that right?

A. That's correct.

Q. When did he tell you something different?

A. The first night he alluded that he believed he knew all the people involved and even at that time he gave a description including a description of somebody that he didn't know. He initially stated there were four people that he believed came in the house. He gave three nicknames and one person that he didn't know, but he gave a description of the fourth person, and it wasn't until the next day, I believe, when he was back in the office when he somewhat changed the scenario.

Q. At some point did you show him a lineup?

A. Yes.

Q. Same one?

A. Yes, the same one.

Q. When was that and what was his reaction?

A. On June 14 at 16:40 hours, 4:40 p.m, Mr. Scott was back at the Police Operations Center. And the photo lineup, including the photo of Lester Lynch, was shown to Ronald Scott.

Q. What was his reaction when he was shown the photo lineup?

A. He also immediately picked out photo number four and said, that's the light skinned guy that's definitely the guy that struck me in the head on June 9.

MR. BATLINER: Judge, can we approach one moment?

THE COURT: Yes.

(Sidebar off-the-record.)

BY MR. BATLINER:

Q. Detective, at the same time that you were working on Lester Lynch, did you develop sufficient information that you had Gregory Williams arrested on the same charges?

A. Yes. Gregory Williams had already been placed in custody.

MR. BATLINER: Detective, answer any

questions defense counsel or the Court may have.

CROSS-EXAMINATION

BY MR. ANDERSON:

Q. Investigator Huffman, when you arrived at the house, there were other policemen already there?

A. Yes, sir.

Q. Do you know whether anyone had gone through the house to make sure that there was not more than one victim?

A. I'm sure they did, but I don't know who exactly might have gone in.

Q. So lights were on in the house when you came in?

A. Some of it was well lit; some of it wasn't. But some of the lights were on, yes.

Q. When you first went into the bedroom the lights were on?

A. In the back bedroom?

Q. Yes.

A. When I first went in there, yes.

Q. The son was still sleeping when you walked in?

A. He wasn't sleeping. It appeared that he was being awakened. He was actually being held by the hand by another investigator as if he was being pulled off the

couch awakened at that point.

Q. His father was already outside?

A. His father was outside when I was there, yes.

Q. When you first spoke to Ronald Scott, he could only give you the name of Tamika. He didn't know Ms. Reid's last name; is that correct?

A. That's correct.

Q. You indicated that he gave you three nicknames. What were those nicknames?

A. He gave the nicknames of Q, Tyree or Tyreke, and possibly K.P.

Q. Q, Tyreke?

A. Tyree or Tyreke. He said both.

Q. K.P.?

A. Yes, sir.

Q. He said there was another person?

A. And he described a fourth person.

Q. Now, did your investigation lead you to find out who Q was?

A. Yes.

Q. And Q is?

A. Christopher Williams.

Q. Was Mr. Williams arrested on these charges?

A. Christopher Williams was at one point arrested on the charge of malicious wounding.

Q. Tyreke?

A. Was later identified as Gregory Williams, Christopher's brother.

Q. K.P. was Kenny Parker?

A. That's correct.

Q. In fact, Kenny Parker was stopped shortly afterwards?

A. Some time the next day I believe he was stopped.

Q. At some point prior to the 14th, you had discovered -- Gregory Williams was arrested, wasn't he?

A. Yes. I will check the exact day of when he was arrested, but I think it was prior to the 14th.

Q. Was there evidence -- do you know what day it was?

MR. ANDERSON: Your Honor, I don't know if any of the jurors might need a break.

THE COURT: How you all doing over there? You all right? The next break we take is going to be lunch. I'm just trying to finish this witness.

THE WITNESS: Yes, it was on the 12th that Gregory Williams was in custody.

BY MR. ANDERSON:

Q. Prior to that time, had it been determined that Gregory Williams had a friend named Lester Lynch?

A. Not until after he was in custody.

Q. After he was in custody, it was determined that he had a friend named Mr. Lynch?

A. That's correct.

Q. At that time you didn't have a photograph of Mr. Lynch in Norfolk's police files, did you?

A. When his name first came up?

Q. Yes.

A. No. He was on our system, but no photo was available from Norfolk.

Q. So you didn't show a photo to Mr. Scott the next day on the 10th?

A. No, not at that point. It wasn't until I already stated when we actually had his photo and showed Mr. Scott the photo lineup.

Q. Did you arrest Mr. Parker?

A. Mr. Parker on the day after when he was picked up on a traffic violation, he was brought down to our office to speak to us, but he was never arrested for anything involved in this case, no.

Q. At that time, Mr. Scott was not in

custody either, was he?

A. No.

Q. When Mr. Parker was stopped on the 10th, clearly you questioned him about this offense?

A. Yes. We asked him if he had any knowledge about this.

Q. Even before your investigation started, Ronald Scott indicated that he knew Gregory Williams; is that right?

A. He knew Christopher Williams better, but he knew Gregory Williams as Tyreke. He didn't know his real name. He just knew it was Christopher's brother. Actually, he didn't even know Christopher's last name at that point, but he had an address.

Q. So we know that Ronald Scott knew, at least knew of Gregory and was closer and knew Christopher a little bit better?

A. That's the way I understood it, yes.

Q. So Kenny Parker is released on the 10th or the 11th? It was in response to traffic summonses?

A. Excuse me?

Q. He is released because he simply had traffic summonses. You didn't arrest him?

A. Right. We spoke with him at length, and we released him on the traffic summons, that's correct.

Q. But did you indicate to him he was at least a suspect, that someone had identified him as being a possible suspect in this?

A. Yes, sir.

Q. Gregory Williams, when you spoke to Gregory Williams, he did tell you he had a friend? He told you about Lester Lynch?

A. Gregory didn't tell us about Lester Lynch.

Q. Chris?

A. It was actually Gregory's girlfriend who told us about Lester Lynch, who gave us the name of Lester Lynch, that he had been a friend of Gregory's and had been hanging out with him.

Q. Did she have a photograph of Lester Lynch?

A. No. She merely provided us the name and then we got the photograph from the Virginia Beach Police Department.

Q. Then once you got that photograph, you showed it to Mr. Scott and later to Ms. --

A. Reid.

Q. Reid?

A. Yes, sir.

Q. Prior to Mr. Scott looking at the photograph, did he give you any description of the

person that had been in the room that evening?

A. Yes, he did.

Q. Did you take notes of that description?

A. Yes, sir, I did.

Q. Would you read the notes that he gave? I mean, would you read the description he gave?

A. He described the third individual as a very light skinned or reddish skin male about the same height as Q and his brother but a little bit heavier with a lot of facial hair, but he wasn't certain it was an full beard or unshaven, but he did believe he could recognize this individual.

Q. Did he say anything about a gold front in the person's mouth?

A. I didn't state it at that time, no.

Q. Before you showed the photographs to Ms. Reid, did she give you a description of the person who was in that room?

A. I believe she did, but let me refresh, sir. I did speak with her prior to showing the photo lineup, but I don't have whether she gave exact descriptions of the three or four individuals. She did say that there were three, though, not four.

Q. So you're saying she might have given you a description, you just don't have it?

A. That's correct. I am sure I asked her for a description, but I don't recall exactly what she said.

Q. The description that Mr. Scott gave, that was light skinned?

A. Light or reddish skin black male, approximately the same height as Christopher and Gregory Williams, Q and Tyreke, a little bit heavier with an unshaven or possible beard.

Q. Did you have the height and weight of Christopher?

A. He had given how tall he thought they were, and that was what he was basing his description of the fourth defendant on at that point.

Q. But in fact, when you showed him the photos, you didn't show him a full body shot, did you?

A. Didn't have one.

Q. You simply showed him a facial shot, the light skinned part?

A. That's correct.

Q. We're not sure what description Ms. Reid gave you; is that correct?

A. Not right off, no.

Q. Now, after Ms. Reid had had an opportunity to take a look at the pictures and picked out someone, in fact you told her she picked out the

right one, didn't you?

A. I don't recall if I did. I may have.

Q. Just a second. I have a transcript that might refresh your memory.

A. Okay.

Q. Give me just a second to find it. I am old and feeble.

THE COURT: You are not old and feeble yet, not compared to my age.

BY MR. ANDERSON:

Q. Officer, showing you the transcript from a hearing held on February 21, 2002, Commonwealth versus Lester Lynch on page 67 lines 14 through 19.

A. Yes, sir.

Q. Now, both Christopher Williams and K.P. were suspects on June 10; is that correct?

A. Yeah, as of June 9 through part of June the 10th, that's correct.

Q. But you went out and talked to some people, and they gave you an alibi and suddenly they were no longer suspects?

A. That's correct.

Q. Did you ever check out any of Mr. Lynch's alibi witnesses?

A. We didn't know who his alibi witnesses were.

MR. ANDERSON: Your Honor, that's all the questions I would have at this time.

THE COURT: Any redirect, Mr. Batliner?

REDIRECT EXAMINATION

BY MR. BATLINER:

Q. You never got any calls from anybody saying they were an alibi witness for Lester Lynch, did you?

A. No.

Q. When you got a chance to just review the transcript a minute ago, by your recollection, what did you tell Ms. Reid after she had picked out the photograph?

A. In refreshing, I said that we had already identified him by other means but that she had indeed picked out the person that we expected her to pick out.

MR. BATLINER: That's it.

THE COURT: Any recross?

MR. ANDERSON: No, Your Honor.

THE COURT: Do any members of the jury have any questions for Investigator Huffman? All right.

(Sidebar off-the-record.)

THE COURT: One of the questions is, was the gun used retrieved? And I direct the jury to the stipulation that's been entered into evidence that

states that no comparison was made to any firearm as no firearm was recovered. That's accepted as a fact proven.

One of the questions or a pair of the questions relates to collection of fingerprints. Were there fingerprints taken from a tablecloth that was mentioned during the course of the trial? And I refer the jury to the stipulation that's been entered: On June 9, 2001, Investigator R. J. Douros with the Norfolk Police Forensic Division attempted to recover fingerprints from 3331 Lens Avenue in the city of Norfolk. Investigator R.J. Douros did not recover any fingerprints from 3331 Lens Avenue on June 9, 2001. That's a subject of a stipulation.

Investigator Huffman, if you need to refer to your notes, please do so, but do you have information as to the height of either of the Williams brothers that you have referred to, the actual height, not based upon what somebody has estimated but based upon the fact that you have information as to what their actual height is?

THE WITNESS: I don't have that information within my folder, no.

THE COURT: How about the height of Mr. Lynch, do you have that in your folder?

THE WITNESS: No. That's the PISTOL sheets that we generally shred once the case -- once they are all ready for court.

THE COURT: Just so the jury is not confused, the PISTOL sheet, you are not talking about a sheet that refers to anybody's possession of a weapon. It's an acronym for a computer system you have?

THE WITNESS: That's correct. That's the Norfolk computer system.

THE COURT: You don't have anything in there in your file that shows any defendant information?

THE WITNESS: I might have it on another piece, hold on. Yes, on our detention sheet.

THE COURT: Do you have any information with respect to either of the Williams brothers' actual height?

THE WITNESS: Give me a minute to find those.

THE COURT: Yes, sir.

THE WITNESS: Christopher Williams, five foot eight; Gregory Williams, five foot nine.

THE COURT: And Mr. Lynch?

THE WITNESS: Mr. Lynch, five foot ten.

THE COURT: How tall are you?

THE WITNESS: Five-eleven.

THE COURT: And members of the jury,

Investigator Huffman has referenced that he obtained a photograph from another police department. The kind of photograph it is is unimportant for your consideration. All that matters is that he obtained a photograph and used it for a photographic array, and where it came from is of no importance. It has nothing to do with this case. All right. Any follow-up questions as a result of those questions?

MR. BATLINER: None from the Commonwealth, Judge.

THE COURT: May Investigator Huffman be excused?

MR. ANDERSON: He may.

THE COURT: All right. You can step down. The reason I asked him his height is just in case you are not sure, you will be able to compare five-eleven to five-nine; five-eight so you can get a sense as he steps off the witness stand.

MR. BATLINER: Investigator Ford.

THE COURT: Let me ask you a question. How long is this going to be?

MR. BATLINER: I don't believe it would be very long, Judge, and it would be appropriate. He will be the last witness for the Commonwealth.

THE COURT: He will be your last witness.

Will he be less than 25 minutes?

MR. BATLINER: I believe so.

THE COURT: Can you all handle less than 25 minutes so we can finish the Commonwealth's case before lunch?

THE JURORS: Yes.

THE COURT: Were you sworn in yesterday, Investigator Ford?

THE WITNESS: No.

INVESTIGATOR ROBERT G. FORD,

having been called as a witness, was first duly sworn and testified as follows:

DIRECT EXAMINATION

BY MR. BATLINER:

Q. Would you state your name for the ladies and gentlemen of the jury?

A. Robert G. Ford.

Q. How are you employed, sir?

A. Norfolk Police Department Homicide Squad.

Q. Were you assisting in the investigation of a homicide that occurred at 3331 Lens Avenue in the city of Norfolk?

A. Yes, sir, I was.

Q. Back on June 9 of 2001?

A. Yes, sir. I didn't get involved until June 11.

Q. At some point in your assistance with the investigation, did you come into contact with a vehicle?

A. Yes, sir, I did.

Q. I am going to show you two photographs previously received into evidence as Commonwealth's 18 and 19. Is that the vehicle you came into contact with?

A. Yes, sir, it is.

Q. Tell me the circumstances how you came into contact with it.

A. Lester Lynch seated at that table right there came into the Police Operations Center.

MR. BATLINER: Let the record reflect he has identified the defendant.

THE COURT: All right.

THE WITNESS: As I went up and got him -- we have to walk up front, get him, escort him back. I brought him back, put him in an interview room. Shortly after that, I got a phone call from up in the main section. They told me that there was some trouble.

MR. ANDERSON: Objection to hearsay, Your Honor.

THE COURT: What's the purpose of the hearsay, Mr. Batliner?

MR. BATLINER: It's to determine what he did next with regard to the vehicle.

THE COURT: Members of the jury, I know you've all heard people talk about hearsay. Hearsay, it's kind of a complex legal animal, but it's really not that complicated.

Hearsay is a statement that somebody has made outside of court that's trying to be offered in court for some reason. It's not admissible if the reason it's being offered in court is to prove that that statement made out of court was a true statement. But it is admissible under some circumstances. For example, to establish what somebody did next after hearing that information.

It doesn't mean that the statement was true but it explains the conduct of the person that heard the statement, and that's the only reason this is being offered, not for the truth of the matter. So I am going to allow him to say it for that purpose only. Go ahead.

THE WITNESS: I got a phone call. The police

stated there were a couple of women in the lobby who had come in with Mr. Lynch that were involved in an argument almost into an altercation, a fight.

So I went back up front. One lady identified herself as his sister. The other lady identified herself as a girlfriend, and they were in a very heated argument over the car.

BY MR. BATLINER:

Q. Was that the car that was in the photographs?

A. Yes, sir. I asked where the car was. I was told it was outside. I went outside. I saw the vehicle, and at that time I took the vehicle into police custody, had it towed to our compound to be processed.

Q. Did you try and run the registration on the tag?

A. It was a 30-day tag from North Carolina, temporary registration.

Q. Came back to the dealer?

A. I don't recall -- yes, sir, some dealer.

MR. BATLINER: Answer any questions defense counsel or the Court may have.

THE COURT: Mr. Anderson.

CROSS-EXAMINATION

BY MR. ANDERSON:

Q. You said you had the car processed. What does that mean?

A. I had it towed so our forensic unit can go in and do fingerprints, try to recover any items of evidentiary value.

Q. Were any fingerprints recovered?

A. I'd have to look at the sheet, sir. I don't see that sheet in here, so I really can't answer that.

Q. But that's a significant fact. If you had it, it would be something you would keep?

A. I'm sorry?

Q. That's significant. If you had prints, you would probably have kept it?

A. If we had got prints, we would have put them into AFIS or tried to identify them in every way we could, and I don't have a print sheet in here.

Q. Did you ever publish a picture of the defendant on Crime Line or anything of that sort?

A. There is a wanted poster in here, sir, and I believe it was on Crime Line. I think it was also on television on the regular news channels.

Q. Of this defendant?

A. I believe so, but I'm not positive on that.

MR. ANDERSON: That's all I have, Your Honor.

THE COURT: Mr. Batliner.

MR. BATLINER: Nothing further, Judge.

THE COURT: Any members of the jury have any questions for Investigator Ford? Yes? No? May Investigator Ford be excused?

MR. BATLINER: Yes.

THE COURT: You're excused, Investigator Ford.

MR. BATLINER: Commonwealth rests, Judge.

THE COURT: Members of the jury, we're going to excuse you for lunch right now. Generally at this stage of the trial there are some other matters we have to take up. Because of that, I'm going to give you an hour and 20 minutes for lunch, a little bit longer. Hopefully, we'll be done. I'm doing that so that at least to the extent you have to wait a little while, you don't have to spend the whole time waiting inside there.

I'd like you to be back here by 2 o'clock. If you would, please, take your notes back into the jury room. Leave them on the table. We're going to wait for you to leave.

I will remind you to wear your juror identification badges on the outside of your clothing

whenever you are in the building. And if you have lost it or you can't find it, please say something to the bailiff so that we can make sure that everybody has one.

Be cautious yourselves about having any casual conversations in the hall with people because you don't necessarily know who may or may not be a witness, and I don't want you to -- you are a juror. You're still in the community. You just can't not speak to people, but be cautious about it, especially out here in the hallway.

If you see somebody and you maybe strike up a conversation, remember, that they are a potential witness. We don't know and you need to help us out a little bit. Okay? I appreciate that. Thank you.

(Thereupon, the jury left the courtroom at 12:42 p.m.)

MR. BATLINER: Judge, as one of the jurors walked out, they picked up a piece of paper. It's a repeat of the same question. I will give it to the Court so there is no issue.

THE COURT: Apparently, it was something that was just dropped?

MR. BATLINER: Correct. As the juror walked out, he saw it on the floor and stuck it on my table.

It probably came off my table.

THE COURT: I'm going to throw it away.

MR. BATLINER: Judge, one other issue. At some point Mr. Anderson called for a stretch break in the middle of one of his examinations. I think the reason he did, the juror on the right corner again looked as if he was dozing off.

MR. ANDERSON: That's correct, Your Honor. In fact, I think the person sitting beside him nudged him.

THE COURT: Do you all have any position on that at this point?

MR. BATLINER: I would have no objection for him being stricken from the main jurors -- I think he is one of the main pool jurors -- and being replaced by an alternate.

MR. ANDERSON: I have no objection.

THE COURT: The question is, do I just release him at the end of the trial rather than make an issue of it? My thought is to do that.

MR. BATLINER: I am in agreement with that.

THE COURT: For now I am going to let him stay on the panel. When the case is over, he will be one of the persons who I excuse if you both are in agreement. That way, we don't make any issue of it.

The jurors might ask themselves why, what happened.

MR. BATLINER: I am in complete agreement with that.

THE COURT: Mr. Anderson, do you have any problem with that procedure?

MR. ANDERSON: No, Your Honor.

THE COURT: You want to make your motion now?

MR. ANDERSON: Your Honor, I am going to make a motion to strike, but it's really a perfunctory motion in all candor. I believe at this point the Commonwealth at least put on enough evidence to survive a motion to strike, but I make the motion just to protect the record.

THE COURT: I appreciate your candor in that, and I think you're right. You have been around the system long enough to know the purpose of a motion to strike is to really challenge where there may be weaknesses or lacking of specific information.

And in this particular case, there has been testimony that touch on the elements of the offense that do identify Mr. Lynch, and they have at least established a prima facie case. So I would deny your motion to strike. I appreciate your candor in that regard.

Now, let me ask you this: I know you don't

have to, but I think you're planning on it. How long do you think the case that you intend to put on will take?

MR. ANDERSON: Two hours.

THE COURT: The only reason I am asking is because I am trying to tell the clerk's office whether they should continue my Friday docket or whether or not I think we're going to be far enough along maybe the jury is going to be deliberating tomorrow.

MR. ANDERSON: Realistic, Your Honor, I have six witnesses, maybe seven, and I don't anticipate it will take them very long to testify. I don't know Mr. Batliner's style in terms of cross examining them, but it's just going to be his alibi. If I had to guess, I would say it would be two hours tops.

THE COURT: Okay.

MR. ANDERSON: They are going to be short. They're basically just going to place him someplace.

THE COURT: Do you know whether the defendant is or is not going to testify yet?

MR. ANDERSON: We don't know at this point, Your Honor.

THE COURT: That's fine. I am asking just for time purposes.

MR. ANDERSON: Your Honor, if I might make a

suggestion, I would suggest, I think definitely we will be finished and we will be finished closing arguments by early tomorrow morning if you start your criminal docket after 11:00.

THE COURT: That's what I am thinking.

MR. ANDERSON: And I happen to be on your criminal docket tomorrow.

THE COURT: That's really all I am trying to find out. We'll recess until 2 o'clock. One other thing, have you all exchanged jury instructions yet?

MR. BATLINER: We have looked at each other's sometime back when it was last scheduled. We can do that again.

THE COURT: I'd like you to at least exchange and review those for at least a part of the time during lunch so that you all are as far along as where you think you may be on that question.

(Thereupon, a luncheon recess was had at 12:49 p.m. after which the following proceedings were had at 2:00 p.m.)

MR. BATLINER: Good afternoon. One issue for the Court, Judge, that I have made Mr. Anderson aware, I did not know what the triggering events were in his alibi until yesterday meaning what was it that made it so people would remember.

If the Court will remember, he opened up and said that luckily for the defendant he was a basketball fan and the Philadelphia/LA series game was played on the evening of the 9th. That did not occur.

I am going to ask the Court to take judicial notice of it. I can go through the law with that, but I have a copy of the Virginian Pilot on the 9th which shows that a game was played the evening before and on the 10th which talks about game three upcoming.

And I also have a printout from CNN Sports Illustrated, the web site which has the dates of the games. The first game in that series was on June 6. The second was on June the 8th, and the third was on June 10. In addition to that, off the same web site, the reports of the individual games for every game in the series.

THE COURT: All right.

MR. ANDERSON: Obviously, Your Honor, I don't think that even becomes relevant unless and until a witness testifies about something on the 9th as my opening statement is not evidence so there has been no evidence of.

MR. BATLINER: I agree, but to the extent -- but the procedure is if I want you to hold something in judicial notice, I have to tell him, and I have to give

it to you and then I have to, if he wants to refute it, he has to have an opportunity to do that.

MR. ANDERSON: That was just the first part.

MR. BATLINER: That's why I have to do it now instead of in the middle of a witness.

THE COURT: Go ahead, Mr. Anderson.

MR. ANDERSON: The second part is I don't know that that is information that the Court can take judicial notice of. Obviously, he just gave it to me today. In fact, when I came back in, he told me that he had checked on this information. But it would appear to me that judicial notice is something that's taken within the body of everyone would know it.

It would appear to me this is just coming out of the Virginian Pilot or maybe somebody who is real interested in sports. This doesn't appear this is something that's common knowledge that everyone would know.

THE COURT: You don't think everyone would know when the Lakers and the Sixers were playing?

MR. ANDERSON: You and I would know.

MR. BATLINER: It's not even that it's reliable sources. You can go to reliable sources.

THE COURT: I think all Mr. Batliner is doing now, he is raising the fact that he's going to attempt

to do it if necessary, and he is putting you on notice. I am going to reserve judgment on whether or not this is the kind of thing I should or shouldn't take judicial notice depending on whether or not it becomes an issue.

Of course, he can ask the witnesses the questions to set it up so, and I do believe that the law is pretty clear that I can take judicial notice of things that are regularly reported in daily periodicals such as newspapers which would include things like the weather, sports scores, television listings, those kind of things that are regularly listed information in periodicals.

And I think I can take judicial notice of that. But again, we don't have to reach this actual question of admissibility until we get there and we find out whether or not that even becomes part of your defense. But Mr. Batliner has done at least what he has to do as a preliminary to at least put you on notice.

MR. BATLINER: I am allowed to ask the questions, especially in light of the opening on it, to any of his witnesses, what they were watching.

THE COURT: You know, I am not going to make a predetermined ruling on what kind of questions you

can ask on cross, but cross is pretty wide open depending upon the questions that are asked on direct.

MR. ANDERSON: On direct, I don't think he can ask any questions based on my opening statement. I might have stuck --

THE COURT: The thing is, I mean, I don't know how it's going to go, so I can't say. But if you put witnesses on the witness stand who are going to say the defendant was with somebody on a particular date and time and the particular date and time that's important is the 9th of June of the year 2001, Mr. Batliner is going to ask him, well, how do you remember that? They are going to have to give their answer. There is nothing that stops him from cross-examination.

Well, does it have anything to do with the playoff series between the Sixers and the Lakers? He can ask them that. They can say, no, it doesn't. If they say, no, it doesn't, well then he doesn't really have a right to contradict them on it. If they say, yes, it does, then it does.

So I mean, I think it's just a question of how does it come out? How does it develop? All he is doing now is following the first part of the rule which is to let you know that he's checked it out. I mean,

you did mention it, but you're right, it's only opening. It's not evidence yet. So we'll wait and see what happens. Okay. We're ready?

MR. BATLINER: We're ready.

MR. ANDERSON: My first witness, we'll call Kimberly Palmer.

(Thereupon, the jury entered the courtroom.)

THE COURT: Did everybody get their pencil sharpened?

THE JURORS: No.

THE SHERIFF: I gave them pens.

THE COURT: Great. I hope you all had a nice lunch. Ms. Palmer, were you sworn in at the beginning of the trial yesterday?

THE WITNESS: Yesterday?

THE COURT: Yes, ma'am.

THE WITNESS: Yes.

THE COURT: All right, Mr. Anderson.

KIMBERLY PALMER

called as a witness, having been previously sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ANDERSON:

Q. State your name for the Court.

A. Kimberly Palmer.

Q. Ms. Palmer, do you know the defendant, here?

A. Yes.

Q. How do you know the defendant?

A. He is my cousin.

Q. Are you employed?

A. Yes.

Q. Where are you employed?

A. General Electric.

Q. Ms. Palmer, taking your attention back to last year June the 9th, do you recall seeing the defendant?

A. Yes.

Q. Can you tell the jury what time you first remember seeing your cousin?

A. I remember seeing my cousin, it was in the summertime. It was just before dark. I don't remember

the exact time, but he was at my house.

Q. Where is your house?

A. It was at Lake Edwards at the time out in Virginia Beach.

Q. Was there anyone else -- do you have a boyfriend?

A. Yes, had, yes.

Q. You had a boyfriend?

A. Yes.

Q. What was your boyfriend's name?

A. Gregory Williams.

Q. Was Gregory Williams at your house at that time?

A. Yes. He was there all day before my cousin had got there.

Q. He was there before your cousin got there?

A. Right, yes.

Q. Did there come a point in time that they left?

A. Yes. They left -- I don't know exactly what time they left, but it was before dark when he had left my house, but approximately around 7:30, I think, around that time they had left the house.

Q. Did anyone indicate where they were

going?

A. He was going to take Gregory to his brother Christopher's house to go change clothes because Gregory had spent the night at my house, and he didn't have clothes there so he was going to take him back over there to go change his clothes.

Q. So Gregory was at your house on that next day?

A. Yes.

Q. Did you have an occasion to talk to Mr. Lynch later on that day?

A. Yes, I had talked to him later on that day. I don't remember the time. It was around -- I'm pretty sure it was around a little after 9:00, around 9:00, a little after 9:00. I had talked to him. He was over my cousin friend's house.

MR. BATLINER: Judge, hearsay of any other conversation.

THE COURT: So far she hasn't said anything about what he said, but you would not be permitted to tell the jury what he said to you in this conversation.

THE WITNESS: Okay.

BY MR. ANDERSON:

Q. You had a conversation with him later on?

A. Yes.

Q. Did you ask him any questions?

A. Yes, I did.

Q. What questions did you ask him?

A. I asked him was Gregory with him at the time. He said, no, he was still at his brother's house.

THE COURT: All right, members of the jury, that was offered to prove the truth of the matter. You must disregard that. You cannot consider that statement. I instructed the witness not to respond and give information that other people gave her.

Now, when I tell juries this, I have to explain this to you. How do you disregard something you've heard? How do you forget it? Here is how you do it.

During the course of your deliberations, if anybody brings up, well, what about the fact that she said he said such and such? You have to just say, no, that cannot be factored into our decision-making process as if it didn't occur. Go ahead.

MR. ANDERSON: Your Honor, actually, I don't think that was used, the fact, to show the truth of the matter. I think it was offered to show what was said. She doesn't know whether Gregory Williams was at his brother's house or not.

THE COURT: The only way to test it would be

to question the person who actually said it, and that person is not on the witness stand, and that's why it's offered for the truth of the matter, and that's why it's not allowed, and it is offered for that because the jury could draw that conclusion. So you're instructed to disregard it. You're not allowed to tell what other people said in this conversation, only what you said.

BY MR. ANDERSON:

Q. But you did have a conversation with him. You don't know the exact time, but it was about 9:00?

A. Yes.

MR. ANDERSON: Answer any questions that the Commonwealth or the Court may have.

CROSS-EXAMINATION

BY MR. BATLINER:

Q. Ms. Palmer, you're his cousin?

A. Yes.

Q. Gregory Williams was over at your house and then they left together?

A. Yes.

Q. How is it that you remember that it's June 9?

A. How do I remember?

Q. Yes, that it was June 9 of 2001 over a

year ago?

A. I remember because that's during that weekend -- I'm thinking that's when Gregory Williams had turned himself in during that weekend during that time.

Q. Do you recognize that car?

A. Yes.

Q. Whose car is it?

A. It looks like my cousin's car.

Q. Which cousin?

A. Lester.

Q. Is he in the courtroom?

A. Yes.

Q. Where is he?

A. Right there.

Q. Commonwealth Exhibits 18 and 19, that looks like Lester's car?

A. Yes.

MR. BATLINER: No further questions, Judge.

THE COURT: Any redirect?

MR. ANDERSON: No redirect, Your Honor.

THE COURT: Any questions from any members of the jury? All right. May Ms. Palmer be excused?

MR. ANDERSON: Yes, Your Honor.

THE COURT: All right, Ms. Palmer, you are excused. You can go about your business or stay in the

courtroom.

MR. ANDERSON: Velma Figueroa.

THE COURT: Say that again.

MR. ANDERSON: Figueroa. I'll just call her Shawn.

THE COURT: What is your name?

THE WITNESS: Velma Figueroa.

THE COURT: How do you spell your last name?

THE WITNESS: F-i-g-u-e-r-o-a.

THE COURT: Were you sworn in yesterday?

THE WITNESS: Yes, sir.

THE COURT: You can have a seat right there. Thank you. Mr. Anderson.

VELMA FIGUEROA,

called as a witness, having been previously sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ANDERSON:

Q. State your name for the court reporter, please.

A. Excuse me?

Q. State your name for the court reporter.

A. Velma Tashawn Figueroa.

Q. Ms. Figueroa, do you know the defendant here?

A. Yes.

Q. And who is he?

A. Nu Nu, Lester Lynch.

Q. You all are friends?

A. Best friends.

Q. Turning your attention to June 9 of last year, did you see this defendant?

A. Yes, I did.

Q. Do you recall what time you saw the defendant?

A. I talked to him all day that day, and he came over like a little before 8:00 that night.

Q. Was he alone when he came over?

A. Yes.

Q. Can you tell the jury what you did once he came over?

A. Well, I was cooking, and we smoked and had us a few drinks and was watching TV.

Q. Excuse me?

A. We were sitting down watching TV, smoking and drinking.

Q. Where do you live?

A. Where did I live?

Q. Yes.

A. At that time it was 1112 Rembrandt Court.

Q. Did there come a point in time that he left the house?

A. He left and that was to carry his cousin Pooh a comb, one of my combs.

Q. Did he come back?

A. Yes.

Q. Did he go anyplace else?

A. He went to the store to get me a blunt and a beer.

Q. From the time that he got there -- what time did he finally leave that evening?

A. He left about like 11:00, around 11:00.

Q. Did you ever leave your house?

A. Uh-huh.

Q. What time did you leave?

A. I left like late that night about -- it was like about -- I don't remember the exact time, but it was like right around like midnight because I was going across the street around the corner to this other guy, a mutual friend me and him have.

Q. Why is it that you remember this day?

A. I remember every day because my kids is on schedule, so I remember. I look at the clock all the time

because all my kids is on schedules; lunch, breaks, snacks, naps, anything.

Q. Why is it that you remember?

A. Why do I remember?

Q. June the 9th.

A. Oh, because we went over Morris' house and watch the Ali and Frasier fight. I remember that night because of that, because there was a fight. It was a tape. He had taped the fight and everybody had went over there to watch the fight.

Q. There is no doubt in your mind he was at your house that day, that evening?

A. Yes, he was at my house all the time.

Q. I am not talking about all the time. I am talking about June the 9th.

A. Yes.

Q. Was he at your house on June 9?

A. Yes.

MR. ANDERSON: Answer any questions that the Commonwealth has for you or the jury might have.

CROSS-EXAMINATION

BY MR. BATLINER:

Q. He is your best friend. Is that what you said?

A. Yes, sir.

Q. How long have you known him?

A. It's been a couple of years. It's been over four.

Q. So you spent a lot of time together?

A. Yeah. We're friends. Yeah.

Q. On this day, you said you were watching TV. What were you watching on TV when you were at your house?

A. I can't recall.

Q. You don't recall?

A. I can't recall really, no.

Q. Then you said you left somewhere. You went somewhere else to watch a fight?

A. We went over like it's like two minutes from my house where I was staying at at that time. It's like two minutes. The guy, he's like you can walk right through a path and you're at his house.

Q. So when you got over there, were you watching the fight the whole time or did you watch anything else that night?

A. It was on a tape and the way his lines run in his house, whatever is on the downstairs TV is upstairs. He had taped the fight so everybody wanted to see the fight.

Q. Now, when you said that he came over and

you were smoking, what had you been smoking?

A. I was smoking some marijuana.

Q. What did you call him, Nu Nu?

A. I call him Nu Nu.

Q. Did he smoke any marijuana, too?

A. Yeah. Everybody was smoking.

Q. Who is everybody?

A. It's a few people that was over there, JP. It was a lot of people over there. There were some people over there I didn't even know.

Q. Everybody was smoking?

A. Uh-huh.

Q. Drinking?

A. Yes.

Q. What were you drinking?

A. Me, I just had a couple of beers.

Q. Did you see what Nu Nu was drinking?

A. He just had beers.

Q. Do you remember what you were doing on June the 11th of last year?

A. Last year? Yes.

Q. What were you doing on the 11th?

A. I was home with my kids.

Q. What were you doing on July the 18th of last year?

A. I'm home every day. I'm a full-time mother. I'm home every day and plus I have Lupus.

Q. So you know what you were doing on July 18 of last year?

A. I stay home. I don't go no where, sir. I am a homebody.

Q. Does that mean that you believe you were home because you don't go places?

A. No. I am telling you I was home. I don't go no where. If you call me any time of the day, I'm home. I like watching TV, eating, and sitting home. That's it.

Q. How many people -- now, when you were smoking and drinking, where was that at? Was that at the place with the fight or was that at your house?

A. Both.

Q. Both?

A. Uh-huh.

Q. So there was marijuana both at your house before you went over to the fight and then afterwards?

A. Yes.

Q. Then you said you sent him out to the store to get blunts and beer?

A. Yeah, to bring back.

Q. What's the blunt for?

A. To roll up the weed.

Q. Weed, again, more marijuana?

A. Yes.

Q. How many marijuana blunts did you smoke that night?

A. I had two at my house and one over Morris' house.

Q. How many beers did you have?

A. I had one at my house, and I had one over there, and there was a Steel Reserve.

Q. How many?

A. That's the only beer I drink.

Q. How many marijuana cigarettes did you see Nu Nu smoke?

A. He smoked the two with me and he smoked one with me at Morris' house because it's basically like -- it's not just one person that smokes on there. It goes around in a circle.

Q. Right, because it's a big old blunt cigarette that you filled up?

A. Yes.

Q. So it's not a tiny little marijuana cigarette. It's a big marijuana cigarette. It's like a blunt like a cigar size and everybody, you just pass it. You were hollowing it out and stuffing it full of

marijuana, right?

A. Correct.

Q. Not the first time you done this with your best friend, right?

A. No, it's not the first time.

MR. BATLINER: I have no further questions.

MR. ANDERSON: I have no redirect, Your Honor.

THE COURT: Any questions from any members of the jury? I want to make sure of something. You said he was with you all day long?

THE WITNESS: No, he was not with me all day long. I said I talked to him. We both talked on the telephone a lot.

THE COURT: When was he with you?

THE WITNESS: He came to my house about 8 o'clock, a little bit before 8:00.

THE COURT: Then you left with him?

THE WITNESS: No. I stayed at the house. I didn't go over to Morris' house until later, after I straightened up my house and got my house together.

THE COURT: But you did go over there?

THE WITNESS: Yes.

THE COURT: What time did he leave your house?

THE WITNESS: It had to be about -- because I went over there like not too long after he went because I called a girl over my house to keep my kids while I went over there. So it's about -- it was like 11:00, late. It was late like.

THE COURT: When you left your house?

THE WITNESS: Yes.

THE COURT: He was at your house from 8:00 to 11:00?

THE WITNESS: Yes, he was there.

THE COURT: You left when?

THE WITNESS: I left like around midnight to go over there just to do that and watch TV.

THE COURT: Now, that's a little bit out of your daily practice, right?

THE WITNESS: It's right there.

THE COURT: But you said you don't ever leave your house.

THE WITNESS: No, but it was right there to go smoke. I didn't have no money, being honest, Judge. I wanted to finish smoking.

THE COURT: But that day you left your house?

THE WITNESS: I didn't have money so I went over there and smoked so I could get high.

THE COURT: That day you left your house?

THE WITNESS: Right. So it's two minutes.

THE COURT: Mr. Batliner asked what you did on July 18. You told us you remembered this day pretty well. Tell us what you did on July 18.

THE WITNESS: July 18, I basically just got up, got my kids dressed, sat in the house, cooked.

MR. ANDERSON: Your Honor, may we approach?

(Sidebar off-the-record.)

THE COURT: Are you able to give the jury the same detail of July 18 as Mr. Batliner asked you as you can for June 9, 2001?

THE WITNESS: I get up and can tell you like I did this morning. I get up and I take my pain pills. Again, like I say, I have Lupus. I get up and take my pain pills, get my kids dressed. I sit up and lay in the bed and watch TV all day, then I get up and cook, make them lunch, make them snacks, make them dinner, sit right back down, and sit there.

I just mainly went out that night because I wanted to smoke and I didn't have the money to go purchase it. So I went over there where I could smoke.

THE COURT: Any follow-up questions, counsel, as a result of any questions I've asked?

CONTINUED RECROSS EXAMINATION

BY MR. BATLINER:

Q. The pain pills you just mentioned, you take those in the morning?

A. I take them all day long.

Q. All day long?

A. Yes, I do.

Q. So that day you were taking them as well with the marijuana. You were taking your pain pills, too; is that correct?

A. When I smoke, yes.

Q. What was the address -- I was checking my notes and I didn't see it -- where you told the defense where you lived?

A. It was 1112 Rembrandt Court. I used to be married and that's where me and him had resided.

Q. Rembrandt Court?

A. Rembrandt Court.

Q. What city is that in?

A. It's in Virginia Beach.

MR. BATLINER: Thank you.

REDIRECT EXAMINATION

BY MR. ANDERSON:

Q. The Judge asked you was he at your house from 8:00 to 11:00. Were there some times that he left

during that time?

A. He only left one time and that was to carry the comb to Pooh and to go to the Getty Mart that's like right up the street from my house and got me a beer and a blunt.

Q. How long was he gone?

A. It only take up like five minutes to get there, like five, not even five to get there, and when you're in a car...

MR. ANDERSON: That's all I have, Your Honor.

THE COURT: All right. May she be excused?

MR. ANDERSON: Yes, she may.

THE COURT: You're excused, ma'am. You can go on about your business.

MR. ANDERSON: I need to see if this one witness has shown up yet. Gloria Lynch.

THE COURT: Ms. Lynch, were you sworn in yesterday?

THE WITNESS: Yes, sir.

THE COURT: You may sit right there.

GLORIA LYNCH,

called as a witness, having been previously sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ANDERSON:

Q. State your name for the Court, please.

A. Gloria Lynch.

Q. Ms. Lynch, you know the defendant?

A. Yes, sir. He is my son.

Q. Ms. Lynch, do you recall June the 9th of last year?

A. Yes, sir.

Q. Did you see your son that day?

A. No, I didn't see him. I spoke to him on the phone.

Q. What times did you talk to him on the phone that day?

A. Somewhere between -- let me see. I got off work at 3:15. He called me the first time around, I'd say around 4:00, 4:30, and then he called me around 6:00, and I called him back later on that evening around 7:30, quarter to 8:00.

Q. Did you talk to him anymore?

A. After that, later on that night, yes.

Q. About what time was that?

A. Around 10:00, 11:00, 10:30, 11:00, around that time. I called my daughter. I was just checking on them, make sure they're all right.

Q. How is it that you recall those phone calls?

A. How do I recall them?

Q. Yes.

A. Because he kept calling me. I mean, well, he kept calling me because he wanted some money, and I told him when I talked to him the first time that I would call him back.

Q. Was that on a regular phone or on a cell phone?

A. Cell phone.

Q. Was there a cell phone bill?

A. Yes.

Q. Whose name was that cell phone in?

A. My name.

Q. Did you get a copy of that bill?

A. Do I have a copy?

Q. Yes.

A. Not here. I have a copy, but I don't have one here.

Q. Did you see those dates on the phone

bill?

A. Yes.

Q. The times that you received the calls from him were at what time?

A. It was a little after I got off work and got home, so between 4:00 and 6:00 when he called me. He called me a lot of times between 4:00 and 6:00 at the time. And then when I finally talked to him, it was around, I'd say around 6:00, 6:30, and I told him I would give him a call back. Then when I called him back, he was on his way to Virginia Beach and that was around 7:30, something to 8:00.

Q. You called him back?

A. Uh-huh.

Q. At what time?

A. It was after 7:00 going on 8 o'clock.

Q. He was in route to Virginia Beach?

A. Uh-huh.

MR. ANDERSON: Answer any questions the Court or the Commonwealth may have.

CROSS-EXAMINATION

BY MR. BATLINER:

Q. You don't have the cellular bill?

A. No, not on me, no. I just recently moved. I looked for it, but I have a lot of stuff packed away,

and I just don't know which box to look in.

Q. So it's packed away in a box and you're just not sure which box it's in?

A. No, because I checked today, so, no, sir.

Q. Something that you thought maybe that they'd want and you didn't find it?

A. Sir?

Q. You thought maybe something that they, your defense attorney, would want and you couldn't find it?

A. Not today, no. I had a copy before and since I moved, I put it somewhere, but I can't recall where.

Q. How do you remember June 9, the day? Was there anything about the day that made you remember June the 9th?

A. Yeah, because I spoke to my daughter earlier that day, and she said they were going to the pool together.

Q. Going to Pooh's? Going to whose?

A. A pool, to the pool.

Q. Oh, pool?

A. Yes, sir.

Q. That was something that was unusual?

A. And I mean, all the times that he kept

calling me.

Q. Was it unusual for him to call you that many times?

A. He just kept calling. He knows I answer my phone, so he wanted to know why I didn't answer my phone. And I called him and told him I left my phone in the car and I was at the pizza place.

Q. Your son calls you other days, doesn't he?

A. Yes, he does.

Q. So I mean, that's not unusual that your son calls you?

A. No. I mean, he called me a lot of times. He just kept calling and calling and calling. He doesn't do that all the time because I usually answer.

Q. So it's just the phone calls that make you remember the day more than anything else, not an event or anything like that?

A. No, sir. I mean --

Q. Lester is your son, right?

A. Yes, sir.

MR. BATLINER: I don't have anything further.

THE COURT: Any redirect?

MR. ANDERSON: Yes.

REDIRECT EXAMINATION

BY MR. ANDERSON:

Q. Prior to Lester -- do you know when he was arrested?

A. Do I know when he was arrested?

Q. Yes.

A. The date?

Q. Yes.

A. I can't recall the date, no.

MR. ANDERSON: That's all I have, Your Honor.

THE COURT: Recross?

RECROSS EXAMINATION

BY MR. BATLINER:

Q. You don't remember the date that he was arrested for murder and robbery and armed burglary?

A. No, sir.

MR. BATLINER: I have nothing further.

THE COURT: Any members of the jury have any questions for Ms. Lynch?

THE JURORS: No.

THE COURT: May she be excused?

MR. ANDERSON: Yes, Your Honor.

THE COURT: Ms. Lynch, you're excused. You can go on about your business or stay in the courtroom, whichever you want.

MR. ANDERSON: LaTanya Palmer.

THE COURT: Ms. Palmer, were you sworn in yesterday?

MR. ANDERSON: Yes, Your Honor.

THE COURT: She was. You were sworn in yesterday?

THE WITNESS: Yes.

THE COURT: You can have a seat right there, ma'am.

LATANYA PALMER,

called as a witness, having been previously sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ANDERSON:

Q. State your name for the Court, please.

A. It's LaTanya Palmer.

Q. Ms. Palmer, do you know the defendant?

A. Yes.

Q. How do you know the defendant?

A. Because he is my cousin.

Q. Are you employed?

A. Am I employed?

Q. Yes.

A. Yes.

Q. Where are you employed?

A. USA Discounters as a collector.

Q. Turning your attention to July -- I'm sorry, I'm saying it again -- June 9 of last year, did you see the defendant?

A. Yes.

Q. Where did you see him?

A. Over at my friend Morris' house where we always go.

Q. Is there anything particular about that day that caused you to remember that date?

A. Well, there was a lot of people over there. Morris always have get-togethers, and that's where all of us go. And that night I'm talking to my cousin Kimberly on my phone, on my cell phone, and it was around, I guess it was after 8:00 because, you know, in the summertime it really gets dark late.

And I know it was after 8:00 because when I opened the door -- he had ring the doorbell. He either ring the doorbell or knocked on the door. All I know, I answered the door. I was on the cell phone talking to Kim because Kim was asking me is Tyreke and Nu Nu over there. And I said, well, Nu Nu is right here.

Q. Nu Nu?

A. Nu Nu is Lester. I said, Nu Nu is right here, I said, but Tyreke is not here. She said, let me speak to him, because she was looking for Tyreke because that was her boyfriend. So I gave the cellular phone to Nu Nu, and he was talking to Kim. We went back to playing cards. There were a lot of people over there.

Q. But you say you go over there all the time. Was there anything unusual that happened that night? Was there anything special going on that night there?

A. Well, everybody was just over there watching television. I think there was a game that Morris had taped because a lot of times Morris tapes games, basketball games. He tapes, you know, the fight. He always tapes that and everyone goes over there to watch that. But I remember that well. I just remember that day. I remember -- I mean, you can't forget going over Morris house, what you do over there. We go over there to play cards, and that was on a Saturday. We go over there on the weekends all the time.

Q. But how do you know it was that Saturday and not the Saturday before or the Saturday after?

A. Well, the next day -- it was either the next day or the day after, they were saying something about he

was on the news, he and a few other people, he and Tyreke were on the news. And I remember we were discussing, me and my cousin Pooh, which is Ronald Palmer also, Pooh, it was Kim, Nada, we were just discussing how could they, you know, have him when he was over there with us just two days or the day before? I think it was on a Sunday. It was either that Sunday or that Monday that I was talking about it, and it was on a Saturday when everyone was over at the house.

MR. ANDERSON: Answer any questions that the Commonwealth or the jury might have.

CROSS-EXAMINATION

BY MR. BATLINER:

Q. Ms. Palmer, you're his cousin?

A. Yes.

Q. How are you exactly related?

A. Well, his aunt is married to my uncle.

Q. You were over at Morris' house?

A. Uh-huh.

Q. What was on, do you remember?

A. No, because I don't watch. See, the guys watch the games like the fights and basketball. Me and my girlfriends, we just sit there and play cards. And a few other guys play cards. And I remember that well because he was in the kitchen on the phone talking to Kim along

with Pooh -- well, Ronald Palmer, and they were discussing -- they were talking to each other, and we were playing cards.

Q. Well, the kitchen, was that where he was smoking marijuana blunts?

A. No. At Morris house?

Q. Yes.

A. He wasn't smoking right then.

Q. He didn't smoke while he was at Morris'?

A. No, he didn't smoke right then. He came in. I answered the door because I was on the phone. I was on the phone talking to Kim because I called Kim on my cell phone while we were playing cards, and she asked me was Nu Nu and Tyreke over there.

Q. Was he smoking the marijuana cigarette then?

A. No.

Q. When did he smoke the marijuana cigarette or blunt?

A. I didn't see him smoke a blunt. I think he smoked the blunt -- they probably did it upstairs, but I didn't see anybody smoking.

Q. You didn't know anybody was smoking marijuana at Morris'?

A. Well, everybody smoked, you know, weed but

at that moment in time he just came in the house. He had just got in the house.

Q. So everybody is over there smoking marijuana having a good time?

A. Some of the girls do not smoke. They just play cards.

Q. How about you?

A. What about me?

Q. Did you smoke?

A. No.

Q. Did you drink?

A. Yes, I drink, but I don't smoke.

Q. What were you drinking that evening?

A. What was I drinking? Probably, I don't know, Budweiser, E&J.

Q. Based on your conversation, of course, you ended up -- you called and talked to Detective Huffman and told him you had this information, didn't you?

A. No, no one asked for me.

Q. Well, you had information that you thought potentially could clear your cousin. You didn't call the police and give them that information?

A. No, because I figured --

Q. Did you call the police?

A. I figured he wasn't going to get convicted for whatever because it wasn't true.

Q. Did you call the prosecutor's office and give us that information?

A. No, I didn't know anything about any prosecutor.

Q. So you didn't call the police to tell them. So you basically just sat on this information until today; is that right?

A. No. Well, a lot of people knew where he was. He was right there with us. Everyone talked about that.

Q. Everybody has talked about what you're going to talk about here today, right?

A. What do you mean everybody talked about?

Q. The folks that you have --

A. Back then?

Q. No. I mean before today, have you talked about what you were going to say today?

A. Oh, no.

Q. You have not?

A. No. See, when they called me yesterday, I completely forgot about us coming here today.

Q. You never discussed this with anybody?

A. Well, Kim, yeah. I discussed it, like I

said, that Monday or that Sunday. But are you saying since last year have we discussed it?

Q. Yes.

A. Oh, yes. It comes back up because we are saying he is in jail for something he didn't do. So it comes back up.

Q. So the folks that are coming in to testify, you sat around and talked to them basically about you testifying; is that right?

A. No. We didn't discuss about us testifying. We just discussed -- we really discussed about him being the wrong person.

Q. Yet you still never called the police and told them this information, and you never called the prosecutor's office and gave them that information?

A. Well, he was out, even though they had him on television.

Q. Ma'am, if you would answer my question. Did you ever call the police?

A. No.

Q. Did you ever call the prosecutor's office?

A. No. I don't know anything about calling the prosecutor's office.

Q. So you never shared this information?

A. I don't think anybody does that, really, when something happens like that.

THE COURT: Ms. Palmer, respond to the questions, please.

THE WITNESS: No.

BY MR. BATLINER:

Q. So you never told anybody in authority about this information?

A. No, because I didn't know it was going to get to this extreme. I thought he was going to be cleared.

MR. BATLINER: I have no more questions of her.

THE COURT: Any redirect?

MR. ANDERSON: Yes.

REDIRECT EXAMINATION

BY MR. ANDERSON:

Q. You didn't call the prosecutor, but at some point you did contact my office, didn't you?

A. Yeah, I told you.

MR. ANDERSON: Thank you.

THE COURT: Any recross?

RECROSS EXAMINATION

BY MR. BATLINER:

Q. Who gave you Mr. Anderson's number to

call?

A. My Aunt Jean right there.

Q. Do you know where she got it from?

A. No. She just said we needed to call him.

THE COURT: Any re-redirect?

MR. ANDERSON: No, Your Honor.

THE COURT: Any members of the jury have any questions for Ms. Palmer? May she be excused?

MR. ANDERSON: Yes, Your Honor.

THE COURT: All right, Ms. Palmer, you're excused. You can go on about your business or remain in the courtroom.

MR. ANDERSON: Your Honor, can we take just a short break, please?

THE COURT: Sure. Members of the jury, we'll take a very brief recess.

(Short recess taken.)

THE COURT: Are you waiting for somebody?

MR. ANDERSON: No, Your Honor. Actually, I just wanted to put it on the record I have discussed with my client --

THE COURT: Mr. Anderson, do you want to have an opportunity to talk to him privately?

MR. ANDERSON: Thank you, Your Honor.

THE COURT: Let's take another recess.

(Short recess taken.)

THE COURT: Mr. Anderson.

MR. ANDERSON: Yes, Your Honor. Before the jury comes out, I want to put on the record that I have advised the defendant of his right to testify or not, and after some consultation, I think he has decided that he will not testify.

THE COURT: All right. Is that correct, Mr. Lynch?

THE DEFENDANT: Yes.

THE COURT: You decided you do not want to testify?

THE DEFENDANT: No.

THE COURT: Is that right?

THE DEFENDANT: Yes.

THE COURT: Are you going to put on any rebuttal evidence?

MR. BATLINER: I am not, Judge.

THE COURT: Then what I'd like you to do, there are a couple of notes sitting on those chairs. Bailiff, would you take those and hand this to the jurors that are back there? Tell the jurors when they come out to leave all their notes back on the jury table and bring their personal belongings with them because we are going to go ahead and excuse them for

the afternoon. Before you go back, take all the notes and take them back so they will have them back there.

MR. ANDERSON: Do I need to rest in the presence of the jury?

THE COURT: Once you have done so, then I will excuse them for the day till 9 o'clock.

MR. BATLINER: We need to start at 9 o'clock to get you to where you need to be. I know the one fellow wanted 9:30 because of his night job.

(Thereupon, the jury entered the courtroom.)

THE COURT: All right, Mr. Anderson.

MR. ANDERSON: Yes, Your Honor. The defense has decided to rest.

THE COURT: All right. Members of the jury, at this time all of the evidence that is going to be presented has been presented. The parties have both rested.

At this stage of a trial, we have to meet and discuss the legal instructions that have to be given to the jury. Normally, that takes about an hour for us to do that.

So I could send you back in the jury room and let you wait for an hour and then have about an hour or so for closing arguments, which is the last thing that has to happen before you begin your deliberations which

means that you would basically be going back into the jury room right about the time that I am going to be sending you home. That just doesn't flow real well, so what I am going to do is I'm going to let you go early today. We're going to do all our work this afternoon, come back tomorrow morning.

I'd like to start by 9 o'clock. I'd like to start by 9:00 in the morning. I'd like you all to be here on time. The lawyers will be here on time. They would like to give you their closing argument first thing in the morning, shouldn't about take more than an hour, then you can begin your deliberations, and you can be fresh in the morning and have however much time you need.

All right. I just remind you, do not go to the scene. Do not discuss the case with anybody. Do not discuss the case among yourselves. Wear your juror identification badges to and from the building so people will know who you are. I appreciate your attentiveness and patience throughout the course of the trial thus far, and we'll excuse you for now.

(Thereupon, the jury left the courtroom at 3:15 p.m.)

THE COURT: All right, counsel, what I want to do on the jury instructions is I'd like you guys to

review your instructions, and what I want you to do is once you have discussed it, I want you to let me know, and I want to have two stacks. One stack is going to be all the instructions you agree on. The other stack will be all the instructions that you don't agree on, and we'll talk about those from that point forward.

I think it's a whole lot easier if you guys work out the ones you know are going to come in or need to come in before I get in the middle of it. Do you want your client to be present during the discussions over jury instructions?

MR. ANDERSON: Yes, Your Honor.

THE COURT: I am going to let the bailiff put him in lockup while you all have your discussions as counsel. Once you're ready to discuss it, we'll come back here in open court with your client present and do that. We'll recess. You all talk about it. Let me know when you're ready.

(Short recess taken.)

THE COURT: We'll adjourn until tomorrow morning at 9:00 a.m.)

(Thereupon, the proceedings were adjourned.)

V I R G I N I A:

IN THE CIRCUIT COURT FOR THE CITY OF NORFOLK

COMMONWEALTH OF VIRGINIA,

Plaintiff,

vs.

LESTER BERNARD LYNCH,

Defendant.

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VOLUME III

TRANSCRIPT OF TRIAL PROCEEDINGS

Norfolk, Virginia

October 4, 2002

Before: THE HONORABLE CHARLES D. GRIFFITH, JR. and a Jury.

Appearances:

OFFICE OF THE COMMONWEALTH ATTORNEY
By: RONALD BATLINER, ESQUIRE
Counsel for the Plaintiff

ROBINSON, NEELEY & ANDERSON
By: GEORGE A. ANDERSON, JR., ESQUIRE
Counsel for the Defendant

TRANSCRIPT OF TRIAL PROCEEDINGS

MR. BATLINER: Good morning, Judge. Do you want us to put on the record about excusing the one juror?

THE COURT: Yes.

MR. BATLINER: The Commonwealth and the defense are in agreement. I believe it's Webb.

THE SHERIFF: Yes, that's correct.

MR. BATLINER: Mr. Webb came forward, I think, to the bailiff and indicated he had some knowledge that he should have disclosed probably at the beginning. Since he was an alternate on our list, we are in agreement for him to be dismissed.

THE COURT: Is that correct, Mr. Anderson?

MR. ANDERSON: That's correct, Your Honor. There is also another juror I think we are going to excuse today, Mr. Walker.

THE COURT: You noticed he was dosing throughout the trial. We are in agreement with them. I am going to go ahead and excuse them as soon as we bring them out. Other than that, you guys are ready?

MR. ANDERSON: There is one other question I have. I think it was the photo exhibit the Commonwealth mentioned to me yesterday we might have to

do some repair work on.

MR. BATLINER: It probably should be stapled, Judge, in an abundance of caution on the edge so they can't flip it up.

THE COURT: Okay. That's fine. Do this, Wendy, staple and then wrap the edges with tape so nobody is tempted to open it up. Other than that, you guys are ready?

MR. BATLINER: Yes, sir, Judge.

THE COURT: Mr. Anderson, do you want to renew your motion to strike some of the evidence?

MR. ANDERSON: Yes, Your Honor. At this time I will put on the record at this point we feel that based on the evidence that was produced by the defendant witnesses; i.e., defendant was someplace else at this time, it's our position it's a case of mistaken identity and that the defendant should be given -- that this charge should be dismissed against him as the witness has shown an alibi showing it was impossible for him to have been where the killing took place and at the same time be in Virginia Beach. At this time we respectfully submit the charge should be dismissed.

THE COURT: There are fact questions presented. You certainly have presented evidence the jury can conclude he was not present at the time the

offenses occurred, but there are facts that he was present, and that's what the jury's job is. So I am going to deny it at this time.

Dave, ask Mr. Walker and Mr. Webb to bring their personal belongings and any notes that they have taken.

MR. BATLINER: I am showing, Judge, what we have done with the photos.

THE COURT: Excuse me?

MR. BATLINER: I am showing him what we've done.

(Thereupon, the jury entered the courtroom at 9:12 a.m.)

THE COURT: All right. Good morning, ladies and gentlemen.

THE JURORS: Good morning.

THE COURT: We are ready for the attorneys to give you their closing arguments. Before that happens, I give you final instructions of law. But also since we now know that we've got a full panel of 12 here for the day, that we need the full panel of 12 to be here, I'm not going to make the two jurors who I am going to excuse stay any longer, and that's Mr. Walker and Mr. Webb. You all are both excused.

I think you've given your notes that you may

have taken to the bailiff. I want you to know how much we appreciate your participation in the trial. It's essential that we have a larger group because you just never know. Experience tells us that sometimes things happen and it's better to have too many until you get to the deliberations stage and have to excuse somebody than to have the exact amount and lose one person and have everybody's time wasted because we have to start all over again.

So Mr. Walker and Mr. Webb, you both are excused. Thank you very much for your time. Dave, I'm going to excuse this jury panel from further appearance. So please make sure Stephanie knows Mr. Walker and Mr. Webb are on that list also.

Now, I'm going to read the instructions of law that apply to the case, ladies and gentlemen. The attorneys may make reference to them throughout their closing arguments. I have to read these to you, but also because this is the first time you will be hearing some of these principles, I want you to know that these instructions will go back with you to the jury room, so it won't be the only time you will get a chance to look at them. When you're back there deliberating, you will have them to review.

You are the judges of the facts, the

credibility of the witnesses, and the weight of the evidence. You may consider the appearance and manner of the witnesses on the stand, their intelligence, their opportunity for knowing the truth and for having observed the things about which they testified, their interest in the outcome of the case, their bias and, if any have been shown, their prior inconsistent statements or whether they have knowingly testified untruthfully as to any material fact in the case.

You may not arbitrarily disregard believable testimony of a witness. However, after you have considered all the evidence in the case, then you may accept or discard all or part of the testimony of a witness as you think proper.

You are entitled to use your common sense in judging any testimony. From these things and all the other circumstances of the case, you may determine which witnesses are more believable and weigh their testimony accordingly.

The defendant is presumed to be innocent. You should not assume the defendant is guilty because he has been indicted and is on trial. The presumption of innocence, this presumption of innocence, remains with the defendant throughout the trial and is enough to require you to find the defendant not guilty unless

and until the Commonwealth proves each and every element of the offenses beyond a reasonable doubt. This does not require proof beyond all possible doubt nor is the Commonwealth required to disprove every conceivable circumstance of innocence. However, suspicion or probability of guilt is not enough for a conviction. There is no burden on the defendant to produce any evidence.

A reasonable doubt is a doubt based on your sound judgment after a full and impartial consideration of all the evidence in the case.

The defendant does not have to testify. An exercise of this right cannot be considered by you.

If you believe from the evidence that a witness previously made a statement inconsistent with his or her testimony of this trial, the only purpose for which that statement may be considered by you is its bearing on the witness' credibility. It is not evidence that what the witness previously said is true.

A principal in the first degree is the person who actually commits the crime. A principal in the second degree is a person who is present, aiding and abetting by helping in some way in the commission of the crime. Presence and consent alone are not sufficient to constitute aiding and abetting. It must

be shown that the defendant intended his words, gestures, signals or actions to in some way encourage, advise or urge or in some way help the person committing the crime to commit it.

A principal in the second degree is liable for the same punishment as the person who actually committed the crime.

If there is concert of action with the resulting crime one of its incidental probable consequences, then whether such crime was originally contemplated or not, all who participate in any way in bringing it about are equally answerable and bound by the acts of every other person connected with the consummation of such resulting crime.

One who does not hold or possess a firearm during the commission of a felony may nevertheless be convicted as a principal in the second degree of use of a firearm in the commission of a felony where he acted in concert with the gunman.

The defendant is charged with the crime of first degree murder. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime: One, that the defendant or someone acting in concert with the defendant killed Belinda Scott; and two, that the killing was malicious;

and three, that the killing was, (a) willful, deliberate and premeditated or, (b) occurred during the commission of a robbery or attempted robbery.

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the offense as charged, that is, one, two and three (a) or one, two and three (b), then you shall find the defendant guilty of first degree murder but you shall not fix his punishment until you have returned a verdict and received further evidence and instruction from the court.

If you find from the evidence that the Commonwealth has proven beyond a reasonable doubt each of the first two elements of the offenses charged but you do not find beyond a reasonable doubt that the killing was either willful, deliberate and premeditated or committed during the commission of robbery or attempted robbery, then you shall find the defendant guilty of second degree murder but you shall not fix his punishment until you have returned your verdict and received further evidence and instruction from the court.

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more elements of the above offenses, then you shall find the

defendant not guilty. The defendant is charged with the crime of using a firearm while committing or attempting to commit the murder of Belinda Scott.

The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime: One, that the defendant or someone acting in concert with the defendant used a firearm; and two, that the use was while committing or attempting to commit the murder of Belinda Scott.

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the offenses charged, then you shall find the defendant guilty of the offense but shall not fix his punishment until you have returned your verdict and received further evidence and instruction from the court.

If you find the Commonwealth has failed to prove beyond a reasonable doubt either or both of the elements of the offense, then you shall find the defendant not guilty.

Willful, deliberate and premeditated means a specific intent to kill adopted at some time before the killing but which need not exist for any particular length of time.

In deciding whether premeditation and

deliberation exist, you may consider the brutality of the attack, whether more than one blow was struck, the disparity in size, strength and numbers between the defendants and the victim, the defendant's lack of remorse and his efforts to avoid detection.

Malice is that state of mind which results in the intentional doing of a wrongful act to another without legal excuse or justification at a time when the mind of the actor is under the control of reason. Malice may result from any unlawful or unjustifiable motive including anger, hatred or revenge. Malice may be inferred from any deliberate, willful and cruel act against another however sudden.

You may infer malice from the deliberate use of a deadly weapon unless from all the evidence you have a reasonable doubt as to whether malice existed. A deadly weapon is any object or instrument that is likely to cause death or great bodily injury because of the manner and under the circumstances in which it is used.

Once the Commonwealth has proved there was an unlawful killing, then you are entitled to infer that there was malice and that the act was murder in the second degree unless from all the evidence you have a reasonable doubt as to whether malice existed.

To prove the charge of murder, the Commonwealth does not have to prove a motive for the killing. The presence or absence of a motive may be considered in arriving at your verdict.

The defendant is charged with the crime of armed burglary. The Commonwealth must prove beyond a reasonable doubt the following elements of that crime: One, that the defendant or someone acting in concert with the defendant without permission in the nighttime entered a dwelling house; and two, that he did so with the intent to commit robbery; and three, that at the time of the entry, the defendant or someone acting in concert with the defendant was armed with a deadly weapon.

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt all three of the above elements of the offense as charged, then you shall find the defendant guilty of armed burglary, but you shall not fix his punishment until your verdict has been returned and further evidence has been heard by you.

If you find that the Commonwealth has proved beyond a reasonable doubt each of the first two elements of the offense but you find that the Commonwealth has failed to prove beyond a reasonable

doubt that the defendant or someone acting in concert with the defendant was armed with a deadly weapon, then you shall find the defendant guilty of burglary but shall not fix his punishment until your verdict has been returned and further evidence has been heard by you.

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both of the first two elements and you find that the Commonwealth has failed to prove beyond a reasonable doubt that the defendant or someone acting in concert with the defendant was armed with a deadly weapon, then you shall find the defendant not guilty.

A dwelling house is a residential building or structure regularly used for sleeping. If a building's occupants are absent, as long as they intend to return to it later, the building remains a dwelling house.

Entering occurs whenever any part of a person's body comes within the premises. The defendant is charged with the crime of using a firearm while committing or attempting to commit armed burglary. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime: One, that the defendant or someone acting in concert with the defendant used a firearm; and two, that the use was

while committing or attempting to commit armed burglary.

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the offenses charged, then you shall find the defendant guilty of the offense but shall not fix his punishment until you have returned your verdict and received further evidence and instructions from the court.

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both of the elements of the offense, then you shall find the defendant not guilty.

The defendant is charged with the crime of robbery. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime: One, that the defendant intended to steal; and two, that U.S. currency and personal property was taken; and three, that the taking was from Ronald Scott; and four, that the taking was against the will of the owner or possessor; and five, that the taking was accomplished by threat of violation to the person or the threat of serious bodily harm.

Counsel, I am going to make a correction here in element number two. It reads, and personal

property. It's that U.S. currency and/or personal property was taken. It doesn't have to be both. It can be either one or the other.

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the offenses charged, then you shall find the defendant guilty but not fix his punishment until your verdict has been returned and you have received further evidence and instruction by the court.

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the offense, then you shall find the defendant not guilty.

The defendant is charged with the crime of using a firearm while committing or attempting to commit robbery of Ronald Scott. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime: One, that the defendant or someone acting in concert with the defendant used a firearm; and two, that the use was while committing or attempting to commit robbery of Ronald Scott.

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the offenses charged, then you

shall find the defendant guilty of the offense but shall not fix his punishment until you have returned your verdict and received further evidence and instruction from the court.

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both of the elements of the offense, then you shall find the defendant not guilty.

The defendant relies upon the defense that he was not present at the time and place the alleged offenses were committed. If after consideration of all the evidence you have a reasonable doubt that the defendant was present at the time and place the alleged offenses were committed, you shall find him not guilty. You may consider proof of the witness' prior conviction of a felony as effecting his or her credibility, but it does not render him or her incompetent to testify.

Now, counsel will give closing statements. Mr. Batliner goes first, and he also has a right to rebuttal because he carries the burden of proof. After that, I will have some final instructions, and I am going to review some verdict forms for you to return your verdict on. Mr. Batliner.

MR. BATLINER: Thank you, Judge. Ladies and gentlemen, on June 9 of 2001, Lester Lynch, Gregory

Williams and a third person had a plan to do a sting at the house of Ronald Scott. They wanted to commit a robbery. They wanted to take Ronald Scott's money. They wanted to take his drugs, but what they took ultimately was much more valuable than either the money or the drugs. What they took was the life of his mother, Belinda Scott.

How do we know how things unfold? You heard from Kenny Parker who, prior to anything happening, was over at this house at 27th and Omohundro in Norfolk. Kenny wanted to get a ride, and he was pretty candid with you where he wanted to go. He wanted to go to the bootlegger's. He wanted to go gambling, but he wanted a ride.

His buddy Gregory Williams said, no problem, we'll give you a ride. And they get in this car, his car, driven by him. Gregory Williams is in the front seat. They get ready to go, and he says, where are we taking you? And Kenny says, I got to go across the Campostella Bridge. Nah, we can't go across Campostella Bridge. We got something we got to do. So they put him out.

But we know what the something is they got to do because what happens next is they end up at 3331 Lens Avenue in the city of Norfolk. What happens when

they get to Lens Avenue? They go up to the door. We know Tamika and Ronald are in the back. They are in this back bedroom back here. They are back here in this back bedroom.

They come up the porch, come to the door, and then what happens that we know is that Belinda Scott comes back to the back and knocks on the door. And Tamika says she says, Doowhop is here to see you. And Ronald Scott says, I don't know no Doowhop. So they gave her a name that wasn't a name that anybody would know.

She comes back, and how do we know she comes back? We're going to show she comes back because we're going to find her body right here, right in this hallway, right here before she goes into the house, where she wouldn't let them in until her son was going to come out.

Tamika hears the firecracking noise from back in the back bedroom. Ms. Moye, Ms. Williams upstairs hear the gunshot. And Belinda Scott lies here dying a foot or so from her front door. After she's gone, the impediment to getting inside, they pretty much got her out of the way, so now they come through.

You've seen the pictures of the living room. They come through the living room, come through the

kitchen, come through the door. Whether they kick the door in, whether they force the door in, they come in.

And what happens when they get in? I believe Tamika said he woke up to a beatin (sic). Might have been some vulgarity with it, but it was a beatin. There is no doubt he woke up to a beatin.

You will have the pictures back in the jury room. You will have all the exhibits which you can see on his face there, you can see the red marks there. You can see the swelling here, marks here, here and a gash opened up on top of his head from being beat with the gun.

Ronald told you Gregory Williams did the beating. Gregory Williams went in his pockets. Tamika told you he paid attention to her. He put a gun on her and said, don't you move, when she tried to get up. Because she is scared, she wanted to get out of there. Don't you move. Then they were tearing the room apart.

She told you they threw a clothes basket on her with clothes in it. When the police come, sure enough, there is a clothes basket, and there is all the clothes laying on the bed just like she said. Ripped the tablecloth off the table. You can see it a little bit in that picture where my thumb is, but you can see it really good in this picture.

There is the table, stripped clean, pretty much every other dresser had stuff on it, stripped clean on the floor where he pointed out. There is what was on top of it. What's one of those kind of things that tell you a little bit more? Look at the cookies on the floor that are crunched up, pulled off, stepped on.

And they go into his shorts. Unfortunately, sometimes it doesn't show up as good here, but you'll have the pictures, a little blood right there. How do we know it's blood? There was a stipulation entered into that it came back blood. The DNA matched Belinda Scott. By the back pocket, blood right there, DNA matches Belinda Scott.

I'll point it out to you again later, but if you remember, K.P. said that when he saw them come back, he saw a little bit of what he thought was blood on Gregory Williams' hands.

Tamika, she told you she paid the most attention to Lester because he was the one that was paying attention to her. He is the one who put the gun on her. He is the one who told her to stay put when she was covering up with the pillow after she had tried to move. But I don't think there is any doubt in anybody's mind that she was afraid. She didn't want to

be there where the gun was. Even after they left, where did she go? She told you she went in here and she hid beside the refrigerator right there, in that area right there.

How afraid was she? When they come out and Ronald Scott discovers his mother and he tells her to go call somebody, she is so afraid she has got a cell phone in her hand and she runs across the street to get somebody else to call.

Ronald Scott, he also identified the defendant. Mr. Scott, I think you can tell from what he had said on the witness stand, I think he said, I have never ever gone to the police for nothing. Yes, I never went to the police for nothing. I am on the other side of the law. He told you pretty candidly he was dealing drugs the night before, that he had dope in the room, told you he wouldn't pick somebody out and send them to prison because he just got out of prison.

And despite what he did at the very beginning when he told the police everybody had been to the house, remember one of the people he said was there was the light skinned man, the light skinned man. And then he picked him out of a photo lineup. He told you today that's the guy. Tamika told you that's the guy. Tamika told you she sees his face every night.

After the beating, after they go in his pockets and take his money, take the money and the drugs that are on the dresser, they leave. And where do they go? They come back here and they come back in that car. Kenny Parker is still there because he didn't get his ride over to the bootlegger, so he's still hanging out there.

And when they come up, he says the young boy is standing by the car with his head down like that. I mean, he made the motion for you. They go inside. Inside the house, Gregory Williams starts telling his brother, said we went on a sting, just done a sting and the young boy had an itchy trigger finger, killed a lady, shot a lady.

Then they started talking about who it was, that it was Little Ronald's house, and they started disputing whether it was his mother or his sister. K.P. says, why are you messing with Little Ronald? Little Ronald is good. Little Ronald doesn't do anything. Gregory says, I need the money.

As this conversation is going on, who pipes up and says something? Lester Lynch says something. Why are you telling what we just done? Why are you telling other people that we went and shot a lady, that we went and robbed them?

Ladies and gentlemen, you have a bunch of jury instructions, and as the Judge has said, you get them back in the jury room which is really good because I don't think I'd write them all down and be able to do all that. So I'm going to try and go through a couple of them with you and try and help you through some of it.

There are some that we tend, us lawyers, tend to call them finding instructions because they tell you what you have to find in order for somebody to be found guilty, and I am going to kind of go through those with you.

The first one is going to be instruction number eight. This is the Judge's instruction, and basically at the top of every one he has got the number. Number eight is the one for first degree murder. And the first thing you have to find is that the defendant or somebody acted in concert with the defendant killed Belinda Scott.

I submit to you the evidence is overwhelming that this defendant went in with Gregory Williams and the other third boy, the boy that they said had the itchy trigger finger, and she wouldn't let them in, and they shot her.

That the killing was malicious. There is

another instruction that tells you a little bit about malice. It says you can infer malice from the deliberate use of a deadly weapon unless from all the evidence you have a reasonable doubt as to whether malice existed.

A deadly weapon is an object or instrument which is likely to cause death or great bodily injury because of the manner and under the circumstances in which it's used. Not a big stretch that a gun is a deadly weapon.

In this case, I remind you about how that gun was used. You heard from the medical examiner. While Belinda Scott is out in that hallway, she got a contact, contact gunshot wound under her left eye, contact, touching right under the left eye, not accidental. It's putting it in the face right up under the eye and pulling the trigger. And the .25 caliber bullet was recovered from her brain. So malice, certainly you have malice.

Then for the third element you can choose either one of two which is either that it was willful, deliberate or premeditated or that it occurred during the commission of a robbery. You have both. You certainly have it in the commission of a robbery. They were there to do a sting. They were there to commit

the robbery from the very outset. That's why they came. You can infer from what Kenny Parker told you about seeing something stuffed down in the pants when you now hear later that there was a gun there. They were getting prepared.

In deciding whether premeditation or deliberation exists, you can consider the brutality of the attack. Sticking it right underneath the eye. Willful, deliberate and premeditated means that you have the specific intent to kill adopted some time before the killing and need not exist for any particular length of time.

You can premeditate in a second. You make the decision that you're going to pull the trigger. And that's what he did, what the fellows that went in there with him did, acting together to further their plan to take the money and take the drugs.

Also, with the murder there is the charge of using a firearm while committing or attempting to commit the murder of Belinda Scott. For that one, you have to find that the defendant or someone acting with him used a firearm. Certainly we have use of a firearm when we have a murder victim with a gunshot wound and a bullet recovered, and it was used while committing or attempting to commit the murder of Belinda Scott. It

was certainly used, unfortunately, in this instance to end her life.

Instruction number 16 is the one for armed burglary. That is, that the defendant or someone acting in concert with the defendant, again, him or Gregory Williams or the young boy, without permission in the nighttime entered a dwelling house. Very telling that she is dead right here before the threshold of her house, not letting them in, out in that hallway.

There's a blood stain there and a blood stain there. We know it was nighttime. Probably four or five people told you that it was dark outside. Mr. Revell told you it was dark when he got home before anything had ever happened. I think everybody told you it was around 9 o'clock, 9:45, between 9:00 and 9:45 when it happened. So nighttime is established for you.

And you know it's a dwelling house because you know that they were sleeping in the back. You know the son was sleeping on the couch, and you know mom was in the house. I don't know why the son didn't wake up. I guess you have to search your common experiences with young children. And for me, it's teenage boys. My son could probably sleep through a hurricane and not wake

up, but I don't know why. Maybe it's just a blessing that he didn't wake up.

That they came in with the intent to commit robbery. Very little doubt that they came in. What they intended to do, they basically, as soon as she was laying there dying in the front, they immediately went into the back, went into the door and started beating Ronald Scott in the head.

And that at the time of the entry, the defendant or someone acting in concert with the defendant was armed with a deadly weapon. And again, you know that because they had just used it right before they walked across the threshold.

He is also charged with using a firearm during that burglary. Again, what you have to find is that they were committing or attempting to commit that burglary and that one of them had a gun. For the robbery -- by the way, that was instruction 19 about the gun, that one.

The robbery is instruction number 20. We have to prove that the defendant intended to steal. We got something to do. And what they had to do was go commit a robbery. They were intending to steal his money and his drugs. That U.S. currency or personal property was taken. He told you he had money in his

pocket. There was money on the dresser. There were drugs on the dresser. So property was taken, and it was taken from Ronald Scott, taken out of the pockets of his shorts leaving behind his mother's blood.

That it was against the will or owner. Hard to see any difficulty with that one when you're getting beat in the head in order to make you surrender your possessions. And it was accomplished by threats of violence to the person or threat of seriously violent harm. There were threats. And not only were there threats in this case, there were actual beatings.

And then you also have instruction 21, the use of the firearm with that charge. If they used a gun in the commission of a robbery -- and in this case they had the gun. They used the gun to basically get acquiescence from them. And not only that, they beat him in the head with it. They used it as a threat and then also as a club.

Ladies and gentlemen, you've listened very attentively to all the evidence as the trial has gone on. And on behalf of the Commonwealth of Virginia, I'm going to ask you to find this man guilty of murder in the first degree, robbery, armed burglary and using a gun in the commission of each of those offenses. Thank you.

THE COURT: Mr. Anderson.

MR. ANDERSON: Good morning, ladies and gentlemen of the jury. A couple days ago we started this trial. I told you that there was not going to be a lot of dispute about a significant amount of the evidence.

We are not disputing that Belinda Scott was killed. We're not disputing that someone came to the house and robbed Ronald Scott. We're not disputing that there was a burglary of the house. We don't know anything about the guns, but for our purposes, we're not even disputing that.

What we're suggesting to you is, this is a case of mistaken identity, plain and simple. This is a case of mistaken identity.

Now, the Court is going to give you some instructions, but I'm going to just briefly highlight a couple before we get started. The first instruction is an instruction that the judge read to you. The first one was about the credibility of the witness, and that's what this case boils down to, the credibility of the witnesses, whether you believe the Commonwealth's witnesses or whether you believe the alibi that was provided for you by the defense, even though he didn't have an obligation to produce any evidence, whether you

believe his evidence.

This instruction will tell you that there are things that you should consider in determining the credibility of the witness. One of the first things it tells you or one of the things it tells you about is any prior inconsistent statements, and I am going to submit to you there were prior inconsistent statements, and I'm going to point them out to you.

Whether there is any bias, whether the person had any interest in the outcome of the case, those are things that you should keep in mind when you're considering the evidence that was presented to you. And I submit to you that after you have applied that test to the testimony of the witnesses, you will decide that the credibility falls on the side of the defense witnesses.

I almost feel embarrassed to say it, but sometimes we have to be reminded that the defendant is presumed to be innocent. When we walked into this courtroom before the first witness was called on Wednesday, you should have thought in your mind that the defendant was innocent. If you didn't think that, you should have raised your hand and left because you had to know at that time he was innocent, and that presumption stayed with him from that point on.

It is only after you have heard all of the evidence that you will now be able to even possibly consider deciding that he is guilty. I submit to you that after a review of all of the evidence, you're going to have to come back and say I have a reasonable doubt. Not that it was suspicious or probable, but I have a feeling of guilty beyond a reasonable doubt that this in fact is the person who was there and participated in those events. And if you have that reasonable doubt, I think you have no choice but to dismiss the charges against him.

You will also recall that when you were sitting back there and we were going through voir dire or voir dire, whatever you want to call it, I asked you if the defendant didn't testify whether you would hold it against him. Each of you said no. Obviously, the defendant did not testify. You made a promise at that time, and the defendant and the Commonwealth and I would expect that you would keep that promise.

Again, the fact that the statement, inconsistent statements, are so important that that instruction is given to you again, and it tells you the prior inconsistent statements can be used to affect the credibility of a witness.

There is also an instruction, I think it

might be the last instruction that you have. It deals with the prior felony convictions of a witness. It says that, too, can affect their credibility.

When you think back, you think of which witnesses testified and which witnesses had felony convictions. I submit to you that all three witnesses, the ID witnesses, had felony convictions. None of the defendant's witnesses had a prior felony conviction.

Now, the Commonwealth is going to get to go again. So everything I say to you, everything I need to say to you, I am going to have to say it now. So if I take a little bit longer than he did, please bear with me. Okay?

Let's go through this case. When I first received this case and the first time we were in court, you have to understand that when a person is charged with a felony or crime that he can receive more than 12 months, he gets to have one hearing before we get over here.

The first time we were in court and Ms. Reid testified, I left court thinking that she was lying, that she was just a liar.

MR. BATLINER: Judge.

THE COURT: Excuse me one second. Mr. Anderson, I don't think you can, in closing

argument, give that personal of an account as to what you think. It's not your opinion. You can talk about the evidence and what it means in this case, but members of the jury, you should discard that statement by Mr. Anderson. I don't think he intended anything by it, but he really shouldn't do that. Go ahead.

MR. ANDERSON: When we left court, it was my impression --

THE COURT: Mr. Anderson, you just can't really talk about the preliminary hearing. You use impeachment material. There is an instruction as to what the jury can use that impeachment material for in determining credibility. What happened there and your impressions of it, you cannot relate that in this court. That's not evidence and you can't testify as an attorney.

MR. ANDERSON: Yes, Your Honor. Based on the description that we have when Ms. Reid testified this time, the description that she gave was not the description that she had given the first time. So you have to ask yourself, why was there a difference in that description?

When you look at all of the evidence, there are certain things that happen that cause her to make her identification. Her identification was not made

based on what happened in that room on June 9. I submit that she was in that room. I believe her when she said that she was out -- I believe the evidence is correct, that she and Mr. Scott were out the night before, that she came in early in the morning with Mr. Scott, and I believe that she did spend the day with Mr. Scott.

What happened that night, clearly I think somebody did come in there, but I don't think the evidence will show that this was the person who committed this crime. The evidence will show that she later picked him out as the person. But remember when she picked him out? She didn't pick him out that night. It was a week later.

I submit to you that she picked him out after taking a look at what's been previously marked as Commonwealth Exhibit 5A. When you look at this picture, when you look at this collection of pictures, I suggest to you or submit to you that there is one person on this page whose complexion is much lighter than the other five people. I submit that she remembered that there was a light skinned person who was in that room, but she did not remember any other details of that person.

Light skinned and corn rolls. She didn't say

there was anything distinctive about his nose, anything distinctive about his eyes. Ironically enough, she didn't say there was anything distinctive about his mouth, but Ronald Scott said he had a gold front. At least he told us from the jury stand he had a gold front.

When he talked to Investigator Huffman, apparently he didn't tell Investigator Huffman. Investigator Huffman didn't put that in his notes.

I submit to you that the defendant's picture was shown on Crime Line. How do I know that? Because the Commonwealth's witness told us, yeah, it was on Crime Line, almost as a throw off and on regular TV also. This man's picture was on TV. Not only on Crime Line but on regular TV. So when she sees this photograph in this collection of pictures a week later, it's too easy for her to be able to pick out this picture.

I submit to you her identification, her mistaken identification, is based not on what she saw in that room that night but what she saw on TV and what she saw once she saw these collections of pictures.

I submit to you that that one witness had a number of prior inconsistent statements. You watched me go back and forth to the stand showing her her prior

inconsistent statements, and sometimes she said, oh, I didn't say that; oh, I didn't say that. I would show it to her. She would reluctantly admit, well, maybe I did, but she was very lucky. There were things that should have been obvious to her that she shouldn't have been able to or that she shouldn't have forgotten.

She might have been afraid so she might not have recalled everything that happened in that room that day, but she should have recalled how many children were in the house when she came in. If she testified that there are four one time, it shouldn't be five the next time. And ironically enough, that's inconsistent with what Mr. Scott said, that it was only his mom and his son there. So there are inconsistencies or contradictions all over the place.

Then she testifies that he had a mask covering his mouth. Of course, I showed her another statement when she said, no, it covered his eyes. Well, then she denied that she said that. But of course she had to deny saying that. What did she tell you? How could she identify him? By his eyes. If, in fact, there was something covering his eyes, then she couldn't be able to say I can identify him by his eyes. So she had to change that testimony. Fortunately, it had been previously recorded, and I was able to show it

to her, and she had to admit that she said it.

I think anybody can tell the difference between beige and black. At one time it was black. The next time it was beige. She needed, again, to be able to change the color. You can't see through black, but maybe you can see through beige. These are inconsistent statements.

She was able to identify the co-defendant at one time. The next time she was not able to identify him, then she was able to identify him again. What is unique about those identifications? Each time she was able to identify the co-defendant, the co-defendant was physically in the courtroom. When the defendant was not physically there, she couldn't identify him.

I submit to you if we had had someone else light skinned sitting over at that chair, she would have identified that as being the person because, just by the process of elimination, she would have presumed it was that person that was sitting over there.

So when we look at the credibility of Ms. Reid, it's shot. I don't think she meant any harm by it. The evidence is she simply is mistaken in her identity. She was frightened. She wants to bring some closure to this. She says she sees a face all the time. She wants to bring some closure. She just sees

the wrong face. The person who in fact participated in this crime is still out there, and it's not the defendant, and we're asking you not to make a mistake as she's made a mistake.

And obviously we know her credibility can also be affected because by her own admission. And the Commonwealth did a very good job. That's one of the things they teach you in law school, if something bad is going to come out, you bring it out. He pointed out early, you know, she had a felony conviction. The last instruction I am going to tell you about tells you that you can use that in judging the credibility of a witness.

Now, the next witness, next or another witness who made the identification is Ronald Scott. Now, Ronald Scott testified to you that he was very emotional. Ronald Scott testified to you that he was so struck, he just wanted to get to the hospital, that he just told the police whatever. He told them whatever was on his mind because he wanted to get to the hospital to see his mother, and that's reasonable. Your mom has just been shot. You would expect that that's what he would want to do.

But then he leads you to believe that the next day on his own he just went down and volunteered

and said I made a mistake, that's not what happened. But during my cross-examination, you discover that the police had called him and then when he went back, he told you that he made an identification of the defendant the next day.

Remember his records. He said, I made an identification of him the next day. But we know that's impossible because when Investigator Huffman took the stand, he testified he didn't have a photo of the defendant the next day. So we know he couldn't have made his identification the next day.

Now, I suspect that the Commonwealth is going to tell you that, no, it wasn't the next day; he was mistaken. But he was very specific. He said it was the next day. It just didn't happen that way.

Mr. Scott also was very specific and said -- well, actually he wasn't specific. He started out and then I think as he started squirming, he realized his identification was changing. He felt he needed to have something more distinctive in his description and he placed a gold front in the defendant's mouth. No other witness has ever said anything about a gold front, and the officer never showed a picture with a gold front.

Look at the description that Mr. Scott gave. It was so bland or bla that it could account for any

number of light skinned black males who is the height of the co-defendant and the weight of the co-defendant in the city of Norfolk. He doesn't say they are five-eight and they are five-nine respectively. He doesn't say how much they weigh. He just says their height and their weight.

Now, when Investigator Huffman took the stand, he went through his notes and he had those heights and weights, but those weren't descriptions that Ronald Scott gave. He said it was a light skinned black male. That could have been almost anyone. And when the Investigator Huffman gave photos, these photos aren't full pictures showing somebody five-eight and five-nine or whatever their weights are respectively. These are just facial shots.

So we have to presume that his identification is based on the description that he gave the policeman, and that's not what we see in this photo. He made an identification, and obviously on a date that he identified the defendant, the defendant is the only one sitting at the table. Obviously, it's going to be the defendant who he is going to identify.

Ronald Scott, we also know, wants to bring some closure to this affair. He said he is very emotional and you can infer it's reasonable that he

would feel bad that he was dealing drugs, that he was dealing drugs out of his mother's house, and as a result of him dealing drugs out of his mother's house, that she was killed.

In fact, I think he said he was going to take care of matters himself. I don't know what he meant by that, but he was going to take care of matters himself. But he had a personal -- he has a bias. He has a real interest in the outcome of this case. He wants somebody, someone to pay for this crime.

Now, it appears that at some point Mr. Scott and Mr. Parker talked about this case. I think it was -- and it's your recollection of the facts that's important, not mine, but I don't know whether it was Mr. Parker who said that Mr. Scott told him to go talk to the policeman or whether it was Mr. Scott who said he met Kenny Parker and told him to go talk to the policeman.

Now, you have to believe and common sense will tell you these two men knew each other. Now, if you are to believe Kenny Parker, Kenny Parker knows Gregory Williams. If you are to believe Kenny Parker, he saw Kenny Parker -- I mean, he saw Gregory Williams earlier that day. He is not sure of the time, but he is sure he saw him that day. And he saw him in the

presence of the defendant.

Shockingly enough, ladies and gentlemen, I am going to concede that he did see Lester Lynch with Gregory Williams earlier that day, probably about the time that he saw Lester Lynch dropping Gregory Williams off at Gregory Williams' brother house over on 27th and Omohundro. He did see him. But, he didn't see him again. Kenny Parker didn't see him again.

Now, Kenny Parker testifies that he got in the car, got in the back seat of the car. We asked Investigator Ford, were there any fingerprints in the car? No, he didn't find anything with Kenny Parker's fingerprints in the car.

Interestingly enough, do you recall when the Commonwealth first put the picture of Kenny Parker on the stand? He asked, is this the car? He said, if it is or it looks like it is. If it's not, it sure looks like it is. He wasn't sure. But then when the Commonwealth asked him again, he was like, yeah, that's the car. He had to be evasive because he didn't know if his fingerprints were going to be in the car or not.

I submit to you that Kenny Parker has a real interest in this case. And that real interest is Ronald Scott, his friend, had told the police that Kenny Parker was one of the persons who was in his

house that night. The very next day, the police talked to Kenny Parker. Now, I don't think it's a stretch of the imagination. You can use your common sense. When Kenny Parker is being questioned and he is told that you're a suspect in this matter, that he's also told that Gregory Williams is a suspect in this matter and there was a light skinned person who was in the car, that Kenny Parker thought back to who did I see Gregory Williams with earlier that day? Logic would have dictated to me and it has been mystifying to me from the beginning, if Kenny Parker saw the defendant speaking to Gregory Williams' brother, I can understand why Gregory Williams is not here, but where is the brother? If they went back into the house after this robbery was supposed to have taken place, when they went back into the house and they talked to the brother, surely the brother could have came here today and said, yes, I was there, Gregory came back and talked to me and Lester came up the steps.

You know, the brother would have every incentive to clear it up because we know that he was arrested for this offense and charges were later -- well, not this offense, but he was arrested for malicious wounding and the charges were later dismissed against him. But those are the same charges that arose

out of the same incident.

I submit to you that Kenny Parker's story is not credible. It's not credible because first of all, we know that he, too, is a convicted felon. His story is not credible because -- well, we have to look at the conflicts in his story and Mr. Scott's story, if we're going to believe Mr. Scott.

Kenny Parker is saying that I just went over one time and I got $20 worth. That's 10 o'clock in the morning. Then I go over again at 1 o'clock to get $50 worth.

Now, ironically enough, later on that evening he needs a ride. But the first time he goes over, he gives Vince a couple of dollars to take him over. When he goes over at 12:00, he gets his girlfriend to take him over.

Well, that's inconsistent with what Mr. Scott has said. Mr. Scott is saying he came over to buy an 8-Ball. So we know one of the two is not telling the truth. If they are not telling the truth about those things, what else is he not telling us the truth about?

I submit to you he is saying that he was using drugs that day, using that much drugs. I don't know how much $20 worth is. I don't know how much $50 worth is. But even that, you have to consider that

affecting his memory of what happened or what he recalled that day.

I submit to you that those are the eyewitnesses. All of the credibility is shot. Or you have to look at it, and when you're thinking about we're talking about denying someone of their freedom for a day or hour or however long, that credibility is not the type that warrants us believing them in denying someone of their freedom.

Let's talk about the other witnesses. What did they add to the case? Actually, they were all very pleasant and very kind, but you notice I didn't ask them any questions because based on everything that each of them said, you would have no choice but to acquit the defendant.

You had Ms. Moye and Ms. Williams both living in the neighborhood. They heard a firecracker sound, but when I asked them did they see this defendant there, what did they all say? No.

Mr. Revell lived across the street. He testified that Tamika Reid came over to his house several times, but he can't tell you that the defendant was there. The only thing he can tell you is that there were three people standing there on the street. Is the defendant one of those people? He says, no, I

can't tell you that he is. So based on that testimony, that evidence, again, you would have to dismiss these charges against this defendant.

Then we have the testimony of the investigators. Investigator or Officer Martin simply collected evidence. There is nothing there that would suggest to you that this defendant is implicated at all. In fact, I would suggest to you the lack of evidence would prove that he was not there.

You recall, I specifically asked Ronald Scott whether the defendant or the person had gloves on. He couldn't be sure. He couldn't be sure, but there is no evidence that anyone had gloves on. You would have thought in that house and everything that was touched, that the defendant's fingerprints would have been recovered some place.

There was no gun ever produced or recovered. Now, I know they are going to argue to you, well, we couldn't find a gun. We looked. We didn't find these people until some days later. But Kenny Parker remembered, saw the gun, if you are to believe Kenny Parker, the evening of. So there is no physical evidence.

The officer testified -- again, it's not my recollection of the facts that's important; it's yours.

But I thought the officer testified there was a blood stain or print at the front door that never came back, nothing, and, you know, it didn't, never suggested that this defendant was there. So we will look at the evidence of the Commonwealth in its entirety.

I submit to you that when you judge the credibility of the witnesses, when you look at it, it appears that they testified as to what they believed happened. But there is a reasonable explanation as to why they were all mistaken in their identification.

I would submit to you the first and only time that Kenny Parker has ever identified this defendant was sitting in court, and there are only two of us sitting at the table. I am definitely not light skinned, so it had to be him.

There is no indication that he ever, Kenny Parker, ever made an identification prior to that time. Ronald Scott's identification out of court was a photograph, but he said it was done the day before when, in fact, we know he didn't have it. And again, I point out the fact it was a light skinned person, and there is only one light skinned person here.

Then we go to -- even if we stop there, if I stop right there, there should be, there has to be a reasonable doubt as to whether this defendant was

present at the time this offense was committed. But even beyond that, the defendant produced evidence that shows conclusively that he was someplace else at the time of this event.

Now, the first person who testified was his cousin Kim. Kim, who was the girlfriend of Gregory Williams at the time of this incident, testified clearly that he was at her house and that he left to go to Norfolk to drop Gregory Williams off at his brother's house. So clearly Lester was with Gregory that day. He was with him even up until that evening, that he then dropped him off.

But Kim also testified that later on that evening while she was on the phone with her cousin LaTanya, LaTanya was in Virginia Beach at Morris' house, that Gregory came in -- not Gregory, Lester came in and she spoke to him. What time was that? It was right around 9 o'clock. How does she remember? She said, I know I remember the date because it was when a couple of days later Gregory got arrested. So she knew when her boyfriend was arrested. So at 9 o'clock Lester is in Virginia Beach.

Who is the next witness that we have? Velma Figueroa. She is a good friend of the defendant. In fact, she says the best friend. She testified that he

came to her house and it was around 8 o'clock. They watched TV. They cooked, and they got high.

Now, I know the Commonwealth is going to make a big to-do about the fact that they got high. But if she wanted to lie to you, no one else was there. She could have simply told you we just sat around and we watched TV. But she was very candid. She said he came there, and she testified that he only left for a few minutes.

What happened? She said there was a phone call. Based on that phone call, he left the house, and when he left the house, she wanted to get high some more. So she told him to go to a store and get a blunt. And then he went to that place and he came back. Then she will tell you that she later on went over to that same house that LaTanya was over, and they watched a fight.

Now, there was no evidence to rebut this. The night before she indicated that the Ali/Fraiser fight had been taped, and they were watching the tape of the fight at that house. Nothing contradicts that.

Now, the next witness, who do we have? We had Ms. Lynch. I understand Ms. Lynch was a little bit nervous. That's her son sitting up on the stand. Of course she would be nervous. She remembers that day,

not because she remembers it, but she remembers it because she had a copy of the phone bill.

Would there have been a better course of action to keep that phone bill somewhere that she would always be able to refer to it? Yes. But remember, this is an offense that happened on June 9 of last year, not this year. This is more than a year ago. In retrospect, it would have been a better thing to do to make a copy of it and to keep it with her at all times. But she didn't.

You know, she didn't lie to you because the question I asked her, and to be perfectly honest, I was surprised at the answer I received. I asked her if she remembered the date that her son was arrested. She said, no. She could have made up something, oh, yes, it was terrible. We had to go dragging and screaming, but she didn't. She was very candid about it. Again, a witness who is credible who testified to you that she was talking to her son. She talked to him at some point that afternoon and he was in route to Virginia Beach.

And then we have the last witness, the witness who definitely puts Lester in Virginia Beach at 9 o'clock. See, the rest of the people -- I'm sorry. Kim and Ms. Lynch only talked to him on the telephone,

but LaTanya Palmer physically opened the door for Lester right around 9 o'clock at about the same time that Kim calls. Clearly she places him there at 9 o'clock or right around 9 o'clock, and he doesn't leave until late that evening.

So we know that Lester is in Virginia Beach for the rest of the evening until at least 11:30 when Ms. Figueroa goes over to the house to watch the fight also. It appears that he has been in the presence of people, of someone from at least 8:00 until 11:30. This offense occurred sometime around 9:00, 9:30, something to 10:00. We don't know exactly what time it occurred, but it takes place during that span of time Lester was in Virginia Beach.

Ladies and gentlemen of the jury, when you look at the evidence in its entirety, I think you will have -- there will be a number of exhibits that you will take back with you, and you should pay attention to all of the exhibits. But I suggest to you that this is going to come down to a case of credibility. And when you balance the credibility of the witnesses that the defense has produced versus that of the Commonwealth, the issue of credibility will fall on the side of the defendant, and you will have no choice but to acquit him.

There were four children, there were two children. There was, no, Gregory had the gun; Lester had the gun. There was, no, Lester came in first; that Gregory came in first. Cases of mistaken identity happen all the time. Think back to your own personal experiences. How many times have you walked up on someone thinking that you thought you knew the person only to recognize when you got ready to say something, oh, that's not the person.

Ladies and gentlemen, the defendant thanks you for your time and your patience. It appears you were very attentive the whole time we were going through this trial, and I'm sure that after you have had an opportunity to review all of the evidence, you will realize that the people who identified this defendant simply made a mistake. Cases of mistaken identity happen all the time.

And if I could share a story with you -- Your Honor, may I share just a story with them?

THE COURT: Well, you're asking me ahead of time. I don't know. We'll try it. You want to try it out on me first?

MR. ANDERSON: No, Your Honor. I was just being facetious.

THE COURT: I don't know what you're going to

say.

MR. ANDERSON: Back in 1970, a young man was working at a used car lot. He was washing cars. He was a good student, honor roll student, and he was standing there washing cars and a policeman drove up, asked the young man a couple of questions. The young man answered the questions, not a problem. Low and behold, the policeman arrested him, charged him with armed robbery, attempted murder.

MR. BATLINER: Judge, may we approach?

(Sidebar off-the-record.)

THE COURT: Members of the jury, I should have had Mr. Anderson try that story out on me ahead of time. He can't relate that story and you can't relate what happened in some other case or other time or place to this. You're supposed to decide the case based upon the evidence that's been presented in this courtroom, and that's all.

MR. ANDERSON: Ladies and gentlemen, I would suggest to you that based on the evidence in this case, it's a case of mistaken identity. And after you've gone back and reviewed the evidence, I'm sure that you will conclude it was a case of mistaken identity. And not only did the Commonwealth not prove beyond a reasonable doubt -- and you have to remember that. It

has to be proven beyond a reasonable doubt. Not a mere suspicion. Not a probability, yeah, this is suspicious; it could have happened, but guilt beyond a reasonable doubt.

So not only did the Commonwealth not prove beyond a reasonable doubt that the defendant was present that day, the defense has in fact proved that he was someplace else. And that instruction that tells you about his alibi will suggest to you that you can and should dismiss these charges against him.

MR. BATLINER: Let's talk for a minute about the alibi. You will recall that the four alibi witnesses are two cousins, the mother and the best friend. And what I find interesting today is that they concede that he took Gregory Williams back to Norfolk during the time frame.

So even if you don't believe there is bias because they are family members and they don't want to see anything bad happened to their loved one or their best friend, if they were off by an hour at a party where they are smoking marijuana blunt cigarettes and drinking alcohol and playing cards, if they are off by an hour, there is plenty of time for him to do what he did.

Even among themselves they don't necessarily

agree because one says he leaves at like 7:30 and he gets somewhere at 8:00, and another one says he gets somewhere at 9:00. You saw Ronald, K.P., Tamika. Use your common sense. People smoking marijuana don't necessarily always keep the best track of what time their watch says.

I would also submit to you that he puts it in a good light, but there is no phone bill to tell you the day. There was no distinctive event to tie it to the day. They watched something on tape, not something that had happened, so it wasn't like you could say that that's when it occurred. There is nothing to tie it in. And the other thing they said about Morris' house is they party there all the time.

Two cousins, your mom, your best friend. Could they make a mistake so that they didn't have to see you go to prison because you killed somebody? What does your common sense tell you?

Let's talk about other things. Mr. Anderson wants to say it's mistaken identity. If it is, boy were there a lot of coincidences. There is the coincidence that the cousin, who obviously wasn't trying to help me out says, yeah, that looks like his car. And it looks like his car, Kenny says. Why does it look like the car? Well, you see this gold trim

right here, see these wheels, these factory wheels? See how clean it is? What a coincidence that Kenny picks out exactly the same car that his cousin says is his car. What a coincidence. I guess it's just bad luck.

I guess it's bad luck that the guy that he's with has blood on his hands that K.P. says and there happens to be blood that matches the murder victim on the shorts that Ronald Scott goes to the Police Operations Center right afterwards and his shorts are taken off him and the DNA tested to be his mom's blood. Just bad luck.

What the defense would like for you to do is to look at everybody individually and say, oh, you look at this one witness, he is terrible. Look at this other witness, they are terrible. If you look at them one at a time, it's all bad. You can't do that, and you know that.

But I also tell you that I want you to think about the inconsistencies. For example, the one he talked about with the children, she said five grand kids and the statement that he used to impeach her was I think I seen like four. Then about covering his eyes doesn't even really make sense. You couldn't see, be able to see.

But let's also talk about that he wanted to say that she'd pick somebody out no matter what, just pick them out to have this done. If you remember, when she looked at the photo lineups, she did look at this one and she picked out Mr. Lynch. But she looked at another one with Gregory Williams, and she wasn't sure, and she said she couldn't pick anybody out. If she was trying to basically pick anybody she could, why was she going to be careful on that one? Use your common sense about it. She was picking out who did it.

The three witnesses that he has talked about, I don't think any of you have any doubt they didn't really want to be in this courtroom. It's not probably the most artful phrase, but sometimes it's almost like they had the comfort factor like a whore in church. This isn't their place.

As Ronald Scott said, I've never asked the police to do nothing. And he told you he wasn't going to pick somebody out, put somebody in prison when he had just come from prison unless it was the hangman, and that's what he told you about him.

And what did Tamika tell you? You will have to search your common sense whether a picture on Crime Line would haunt her and your common sense as to whether or not you think those witnesses ever even

watch Crime Line. She says she sees that face every night.

I also get amused when I hear there wasn't anything about him telling exactly what the heights were when we went through the whole process of the detective looking through his notes and determining what the heights were of the people. He said about the height of Christopher Williams and Gregory Williams, and by my notes, one was five-eight, one was five-nine. He is five-ten because I remember we all laughed when the detective said he was five-eleven.

Use your common sense. People sometimes can't tell you that it's six feet from here to the witness box. But they could tell you if you asked, how close were you to this person, they'd say about from here to the witness box from that person.

One day when something happens, they can look at an object and tell you about how far or they can look at a person and say, well, they are as tall as you. Some people are good at it; some people aren't.

I submit to you two inches of difference when he said about as tall as those two, especially when it's really one inch with Gregory Williams, that's pretty good.

And also it was interesting that he said that

Kenny Parker had an interest because he had been picked out. But what I look at for that, and you have to decide whether this rings true for you because your collective common sense makes these decisions. That's the wonderful thing about the jury process.

If K.P. is the one at the door and K.P. has been at the house before, K.P. has had conversations, extensive conversations, with Belinda Scott, you know that from the stand, why would she come back and say Doowhop is here? It's a smoke screen. It's a smoke screen. He wants to hide the terrible acts that he has done.

You have real book ends of violence in this case. At one end she is killed in the doorway and in the back another act of violence right here where they beat him in the head with a gun and take his money and his drugs. What he didn't know is that something much more valuable had already been taken out here. You have to judge their credibility. You have to judge whether or not you think everybody that was in this courtroom was honest with you and told you the truth.

I submit to you that at times when they are under great stress like that, certain things crystallize in a person's mind and they can tell. At the barrel of a gun, a face becomes more distinct and

burns into your mind just like Tamika told you. You search your common sense to determine that.

Ladies and gentlemen, don't let his smoke screen blind your eyes. They thought they were clever. They were clever because they armed themselves for this robbery. They were clever because they didn't leave any fingerprints. They were clever because they picked out a great victim. Let's go rob the drug dealer.

What they weren't quite clever enough was that that price was too big for even people who don't like the justice system to endure. A robbery probably wouldn't have been reported but a murder would.

And then they weren't clever enough not to talk about it. They had been seen and they talked about it afterwards and they got caught. I ask you to find him guilty of first degree murder, robbery, armed burglary and using a gun in each one of those offenses. Thank you, ladies and gentlemen.

THE COURT: All right, members of the jury, this case is important both to the Commonwealth and to the defendant. In order to return a verdict, each of you must agree upon the verdict. Your verdict must be unanimous.

In pursuing this goal, your deliberations should be conducted in a businesslike manner. When you

go into the jury room to begin your deliberations, you should first select a leader. He or she should see to it that the discussion goes forward in a sensible orderly fashion and that each juror has the opportunity to discuss the issues fully and fairly.

During the trial, some of you have chosen to take notes. You may take your notes with you to the jury room and use them during your deliberations if you wish. As I told you at the beginning of the trial, your notes are only intended to be an aid to your memory and should not take precedence over your own independent memory.

Those jurors who have not taken notes should rely on their own memories of the evidence and should not be influenced by the fact that another juror has taken notes since the notes are only for the notetaker's personal use in assisting his or her memory of the evidence.

When you have finished your deliberations, you will leave your notes on the jury table so the bailiff can destroy them. You may not retain your notes after the trial has been concluded.

The attitude and conduct of the jurors at the outset of deliberations are fairly important matters. It is rarely helpful for jurors upon first entering the

jury room to take a straw vote or for any juror to make an emphatic expression of his or her opinion on the case or to walk in the door and announce a determination to stand for a certain verdict.

To do so before all jurors have had an opportunity to consult with one another and exchange views and opinions might allow your sense of pride to prevent you from retreating from an announced position even when shown that your position may be unsound.

You have a duty to consult with one another and to deliberate with a view to reaching an agreement if it can be done without violence to your individual judgment.

Each of you must decide the case for yourself, but only after an impartial consideration of the evidence with your fellow jurors. In the course of deliberation, a juror should not hesitate to reexamine his or her own views and change his or her opinion if convinced it is erroneous.

However, none of you should surrender your honest conviction as to the weight or the evidence solely because of the opinion of your fellow jurors or for the mere purpose of returning a verdict.

We prepared forms for you to return your verdict on. There are six forms. There are six

charges. The simplest thing I can tell you is the foreperson's signature should only be on one place on each form. But I'm just going to review them in a little bit more detail than that.

One verdict form has three signature lines for the foreperson. The first signature line is under the finding we the jury find the defendant guilty of the crime of first degree murder of Belinda Scott, and if that's your verdict on that charge, then that's where the foreperson should sign.

But you also have the alternative to find the defendant guilty of a lesser offense of second degree murder, and that's the second alternative. And if that's your verdict, then that's where you should sign.

In addition, you have the third alternative to find the defendant not guilty of murder of Belinda Scott. On that form, you should find each of the others are similarly situated.

The next is use of firearm during the commission of murder of Belinda Scott. You have the option to find the defendant guilty at the top or find the defendant not guilty. Again, you should only sign the one that reflects your verdict.

The next verdict form reflects the possible findings with respect to the armed burglary. The first

indicates if you find the defendant guilty of armed burglary. The second would be if you don't find the defendant was armed but that there was a burglary, you find the defendant guilty of burglary; or the third, if you find the defendant not guilty.

Likewise, the use of a firearm during the commission of armed burglary. The first reflects the finding of guilty, and the second would reflect the finding of not guilty.

Then you have the robbery charge of Ronald Scott, and you have the alternative to find the defendant guilty or not guilty, one of the two places for the foreperson to sign. And then finally use of a firearm during the commission of a robbery of Ronald Scott. First is to find the defendant guilty and the second is to find the defendant not guilty.

These will go back with you to the jury room. We will also send the various exhibits back with you to the jury room, and I am going to ask you not to actually begin your deliberations.

When I excuse you, you're going to go back in there. I want the lawyers to check, double-check and make sure all of the exhibits that were properly admitted into court are accounted for, and the bailiff will bring those in to you. Once those are in there,

then you can begin the deliberation process.

Now, I mentioned at the beginning of the trial one of my practices is about time and things like that. I know this is not your real job, but it is your job this week. We're doing a job here. Everybody has a role that they have to perform in this system, and you have done your job very well up to now.

You've paid attention. You've stayed awake. You've asked questions. You've done all the things that we expect citizens to do when they serve their role as jurors. Now it's time for you to begin the deliberation process. There is no magic to the time that it takes juries to reach decisions.

You should deliberate with a mind to try to reach a decision as these instructions have given you. But if you can't decide this case by 5:30 today, that's fine. At 5:30 today we're going home for the weekend, and you're going to go on about your lives just like everybody else does, and we'll come back on Monday.

I tell you that because I don't think it's good for jurors to go back into the room thinking what are the time frames? The time frames are what they are. You should take your time and reach a decision. If it's quicker than that, it's quicker than that. There is no magic.

But I also tell you this, it's 10 minutes to 11:00. If it gets between 12:00 and 1 o'clock and you all are back there talking, you may look at each other and say, you know, I think we still got a lot of talking to do, I am hungry, I want to go to lunch. But you all might say, well, you know, we would like to take a shorter lunch break. I tell you this because up to this point I have kind of controlled things in terms of when you go, where you go and that sort of thing.

What I am telling you now is you guys have the control. I'm going to wait to hear from you to tell me what you want to do as far as lunch is concerned. If you tell me you want to take a 30-minute lunch break to go out and get sandwiches and come back in and have a working lunch, that's what we're going to do. You all make that decision. I am not even going to check on you. I will be here. I will be waiting to hear from you, but you all will be the ones to decide when you go to lunch today, if you go to lunch today or whatever you do.

Now, when you go back into the jury room, if you have any questions, you can ask them. But remember what I told you at the beginning of the trial. The reason I let you ask questions during the trial, there are some questions we can't help you with.

For example, sometimes jurors say, well, I'd like to hear somebody's testimony read back, we have the court reporter here, why can't we have it read back. The court reporter's purpose for being here is to report this for events after today, not for the purpose of reading back testimony during the course of your deliberations.

We rely on your collective recollection of the evidence. We don't read back part of anybody's testimony because that would be unfair. It would highlight that portion overall of their testimony. And again we wouldn't read back one witness' testimony because that might highlight that witness' testimony over all the testimony. So we won't read back testimony for you.

But you might have questions about procedure. You might have a question about the law that maybe we haven't explained to you well enough. Those are proper questions, and you can ask them. And if we can, we will answer them. And if we can't, we'll tell you we can't. I even tell you, if I tell you, why I can't. Sometimes I can't even do that.

You wouldn't know that until you ask it. I am not encouraging, I am not discouraging questions. I am simply saying if you have one, write it down. There

is a buzzer on the wall. I would like you to ring it one time.

The bailiff will take the questions. The attorneys and I will review it. We'll determine what, if any, answer can be given to you. We want to help you. There are just some things at this stage of the trial we can't do. All right. If you reach a verdict, you should ring the buzzer twice. We will assemble you at that time and take the verdict in open Court.

If you decide you want to go to lunch, just write out a note what your decision is that you want to do. You want to go, how long you want to go, that kind of thing, and we'll take care of that as well. Just ring the buzzer, and we'll get you taken care of there.

I think that I have covered everything, both the technical and the practical. I am going to ask you to retire to the jury room. As soon as the exhibits have been delivered to you, you will begin your deliberations, and we will wait patiently for you.

(Thereupon, the jury left the courtroom at 10:53 a.m.)

THE COURT: Mr. Anderson, you and Mr. Batliner check the exhibits, make sure all the proper exhibits are there and that you don't disagree with what's going back in the jury room.

(Thereupon, jury deliberations commenced, after which the following proceedings occurred.)

THE COURT: Let's go ahead and bring the jury out for a second.

(Thereupon, the jury entered the courtroom at 5 o'clock.)

THE COURT: All right, Mr. DeLoatch, I have gotten your note, and I discussed it with the attorneys. It is 5 o'clock and you've indicated that at this time you all have not been able to reach a decision. Your note says, "Please recommend what to do next."

I don't want to read more into your note than what the note says on the face of it, so I'm not taking this to mean that you do not think you can reach a decision. And if you're not saying that, if you're not saying that, then I would suggest that given the hour of the day, that we should go home. Is that what you want? Is that what you all are asking me to do is send you home for the weekend?

THE JURORS: Yes.

THE COURT: I wasn't sure if that was that clear from the note. That's why I wanted to bring you out here and ask you. I wasn't going to send you back there. I started seeing heads shaking so I got that

feeling. So you all do want to continue to work?

THE JURORS: Yes.

THE COURT: Somebody has got to decide this case, and right now it's you. So what I am going to go ahead and do, I want you to go back and get your stuff. I want you to leave your notes on the jury table. The bailiff will keep those in his custody over the weekend. Nobody will read them. They are your notes. They will be put back on Monday morning. We will recess until 9:30 Monday morning.

Now, it's always been important but now you're deliberating. This is really important. You all remember what I said earlier about not discussing the case with anybody. Go home. Have your weekend. Relax. You can think about it yourself, but don't share it with anybody else when you come back in on Monday morning. You'll go back to work, and we'll wait for you.

As I told you earlier, there is no magic here. I have been around a long time. I've seen juries deliberate longer than this and reach decisions. So sometimes it just takes a while to work through things and talk about them, and you all seem to be willing to do that which is good.

I don't think I am missing anything else. I

think the bottom line is don't talk about the case. Don't try to get any information about it. I know I've said that over and over again. I resay it because I want to make sure it's impressed upon you how serious that is for the process to work the right way. Okay.

So we'll let you all recess and hope you have a nice weekend. We're going to wait for you all to depart before we recess.

(Thereupon, the jury left the courtroom at 5:05 p.m.)

THE COURT: We'll be in recess till Monday morning at 9:30.

(Thereupon, the proceedings were adjourned.)

V I R G I N I A:

IN THE CIRCUIT COURT FOR THE CITY OF NORFOLK

COMMONWEALTH OF VIRGINIA,

Plaintiff,

vs.

LESTER BERNARD LYNCH,

Defendant.

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VOLUME IV

TRANSCRIPT OF TRIAL PROCEEDINGS

Norfolk, Virginia

October 7, 2002

Before: THE HONORABLE JOSEPH A. LEAFE
and a Jury.

Appearances:

OFFICE OF THE COMMONWEALTH ATTORNEY
By: RONALD BATLINER, ESQUIRE
Counsel for the Plaintiff

ROBINSON, NEELEY & ANDERSON
By: GEORGE A. ANDERSON, JR., ESQUIRE
Counsel for the Defendant

TRANSCRIPT OF TRIAL PROCEEDINGS

THE COURT: Yes, I understand you've seen the note.

MR. BATLINER: What I would ask, Judge, and go ahead and give them the Allen Charge.

MR. ANDERSON: Say it in front of my client.

THE COURT: Given what they've been through, the length of time that they have spent, do you really think they need an Allen Charge, Mr. Batliner?

MR. BATLINER: Judge, I would ask for it. I don't know exactly what the split is and I don't want to know, but considering that they have vested so much, I think they are going to very quickly be able to tell us whether or not it's going to make a difference or not.

THE COURT: I'm not sure I am going to do that, Mr. Batliner, given the circumstances and given the fact that they have deliberated for a day and a half.

MR. BATLINER: Judge, we think they've gone about six hours, six and a half hours.

THE COURT: Where is the Allen Charge?

MR. BATLINER: I think we have to get it out of the book. May I go into his chambers?

THE COURT: Yes, go ahead and do it. Like I say, I'm not sure yet that I am going to do it.

MR. ANDERSON: Your Honor, my position would be similar to yours. I spoke to the Commonwealth attorney earlier. I said, do you really think it would make a difference? However, I would ask the Court to ask the panel and maybe if they heard it coming from a judge, whether if in fact they had some additional time...

THE COURT: I certainly intend to inquire of the jury.

MR. ANDERSON: If not, I don't think it will make any difference because basically they said, give us some more time and they came back today, and they have been in there now two hours.

THE COURT: Hand that up, Mr. Batliner. Let's go ahead and bring the jury in.

(Thereupon, the jury entered the courtroom at 11:25 a.m.)

THE COURT: Good morning, ladies and gentlemen. As you can readily tell, I'm not Judge Griffith who has been presiding over this trial. Unfortunately, Judge Griffith is sick this morning, and I'm Judge Leafe and am here to be with you during the remainder of this trial.

I received a note by your foreperson that said, we the jury cannot come to an unanimous decision. We are deadlocked and have agreed that individuals minds will not be changed. Please advise.

I guess my question to you, while each of you ultimately has to make your individual decisions, that the jury process is necessarily a deliberative process and the need for individual jurors to deliberate with and consider the views of your fellow jurors in terms of coming to those decisions, and it is not my desire nor the desires of the courts to attempt to impose upon members of the jury in any way.

It is my responsibility to ensure that you're carrying out your deliberations, again, with regard to hearing your fellow jury members and reaching your decisions and whether you believe that by deliberating further for some period of time with some additional charge by the Court with regard to your responsibilities in this matter, whether you feel that there is anything that will alter your views in this case? I'm not asking for each of you individually. Which one of the members is the foreperson?

THE FOREPERSON: (Indicates by raising hand.)

THE COURT: You members of the jury believe that further deliberations will be of benefit to you in

seeking to reach an unanimous decision in this case which, of course, is what is required and what is your responsibility?

THE FOREPERSON: As per discussed in the room, no.

THE COURT: The answer is no, that you do not believe that however long the Court lets you or required you to deliberate, that you would be able to reach a verdict in this case?

THE FOREPERSON: No.

THE COURT: Does that appear to be the consensus of all of you? Do any of you -- I see nodding of heads and the Court recognizes and you recognize that you are, again, a jury of 12 individuals, but it will be the responsibility of some other jury on some other day if not you. But you feel that you have all given fair consideration and fair deliberation and what has been expressed by your foreperson is the view of all of you that no further deliberations be required, and I am seeing affirmative nods of heads throughout the jury panel that that is your view. That being the case, the Court is going to at this time discharge you from any further responsibilities as jurors in this case.

And while you were not able to reach a

verdict, the Court recognizes, as does everyone involved, that you have been involved with this trial for some period of time, that your service, while not exactly voluntary service, is something that is an absolutely essential part of our system and our democratic process, and it couldn't work without citizens who come and participate.

So while you were not able to reach a verdict in the case, the Court nonetheless thanks you for your participation, your active involvement in this trial and performing the function that you have performed as jurors.

With that, the Court will now excuse you and you are free to go with no further responsibilities as it relates to this particular trial.

(Thereupon, the jury left the courtroom at 11:31 a.m.)

THE COURT: All right, gentlemen. The Court is satisfied that no further deliberations under the circumstances would have been desirable, and the Court would declare a mistrial, and we'll select a new date.

MR. BATLINER: Judge if it's acceptable to the Court, December 2 and 3rd, perhaps the 4th. In looking at it, we were trying to find a two to three day block.

THE COURT: Subject to what the clerk tells me, that would appear to be okay.

MR. BATLINER: I guess it should go back to Judge Griffith.

MR. ANDERSON: If he has it.

THE CLERK: He doesn't have it. He is in a carryover civil matter that whole week.

MR. ANDERSON: He didn't rule on anybody, so...

MR. BATLINER: I thought it was policy if it hung you had to come back to who tried it before.

MR. ANDERSON: All my concern is, is that the defendant is in custody.

THE COURT: You know, if we can't do it, you can't do it. When does the civil trial start?

THE CLERK: It starts --

THE COURT: The prior week.

THE CLERK: It starts December 2 and goes that whole week.

THE COURT: Well, unless there is some reason, this was not preassigned before, was it?

MR. BATLINER: It was not, no, and obviously the Commonwealth has no objection to any judge in the building hearing the case.

THE COURT: There is no objection on any

one's part I take it?

MR. ANDERSON: No, Your Honor.

THE COURT: With regard to this. All right. Well then let's just put it on that date and things happen to civil cases.

MR. ANDERSON: Exactly.

THE COURT: Can you fill out a continuance order?

MR. ANDERSON: Your Honor, at this time we also request the court reporter provide with us a copy of the transcript of this trial.

THE COURT: Yes.

MR. ANDERSON: Your Honor, I need to let the Commonwealth know in talking with my client he has requested I make a motion for bond for this offense. If I can give the Court just a little bit of a history. The defendant was first arrested -- in fact, he was granted a bond and while on bond, apparently he had an altercation with the person he was dating at the time and was subsequently charged with an assault.

But before the assault, he left the place that the incident occurred and was charged with eluding the police, and he was subsequently convicted of that felony.

Other than that felony, he has no other

felony. And as I recall and I think I have the record right here, I think the Commonwealth was kind enough to provide me with, he has no failure to appear. He has ties to the community.

Prior to this time he had been working. He had been gainfully employed. He is the father of three children. His family is here today. This is his mom. The father had been here on a regular basis, but he is in the hospital now. The wife is not here, but he has ties to the community. He has no failure to appear.

I would respectfully ask the Court to grant him a bond. I think his record is that of petty larceny in Virginia Beach in '95. A concealed weapon in -- let me make sure I have the right one because Commonwealth had given me some that weren't his. They were his father's.

MR. BATLINER: Concealed weapon was in '97. The assault and battery was on May 15, 2001 while he was on bond for this, and the felony eluding charge which occurred also while he was on bond for this before.

MR. ANDERSON: The assault and battery, that was not something that occurred while he was on bond.

MR. BATLINER: You're right. That's correct. Judge. I'm sorry. I misspoke. The felony eluding, he

was on bond.

THE COURT: The felony eluding, he was on bond for that charge?

MR. ANDERSON: Yes, Your Honor.

THE COURT: All right. Anything further, Mr. Anderson?

MR. ANDERSON: Unless the Court wants to hear from his family.

THE COURT: Not particularly.

MR. ANDERSON: No, Your Honor.

THE COURT: But I am not going to cut you off. Mr. Batliner.

MR. BATLINER: Judge, we would oppose bond. One, it's a case where there is a presumption against bond by statute. As a matter of fact, in this case I think you have the proof in the pudding. He was given extraordinary opportunity to be on bond. While he was on bond he committed a new felony offense.

We believe he is a danger to the community. We think he is a bad risk while he is on bond, and this is a situation where he has proved it when he had the opportunity before. So we would ask that there be no bond.

THE COURT: The Court recognizes that the legislature has created a presumption against bond in

cases such as this. And with the prior violation of the bond with the felony eluding charge, the Court deems that the evidence -- the presumption has not been overcome. The record speaks for itself in that respect, and the Court will deny bond, note your exception.

MR. ANDERSON: Thanks, Your Honor.

MR. BATLINER: Thank you, Judge.

(Thereupon, the proceedings were concluded at 11:45 a.m.)

CERTIFICATE OF REPORTER

I, Lois B. Boyle, do hereby certify that I reported verbatim the proceedings in the Circuit Court of the City of Norfolk, in the matter of Commonwealth of Virginia v Lester Bernard Lynch, heard by The Honorable Joseph A. Leafe, Judge of said Court.

I further certify that the foregoing is a true, accurate and complete transcript of said proceedings.

Given under my hand this 15th day of November, 2002 at Newport News, Virginia.

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Lois B. Boyle

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VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF NORFOLK

OS2079

ORIGINAL

COMMONWEALTH OF VIRGINIA,

Plaintiff,

vs.

LESTER BERNARD LYNCH,

Defendant.

NOS. CR01003499-07, 08, 09, 10, 11

APR 14 2003

VOLUME I

TRANSCRIPT OF TRIAL PROCEEDINGS

SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

Norfolk, Virginia

March 18, 2003

Before: THE HONORABLE MARC JACOBSON
and a Jury.

Appearances:

OFFICE OF THE COMMONWEALTH ATTORNEY
By: RONALD BATLINER, ESQUIRE
Counsel for the Plaintiff

ROBINSON, NEELEY & ANDERSON
By: GEORGE A. ANDERSON, JR., ESQUIRE
Counsel for the Defendant

I N D E X


| WITNESSES FOR THE PLAINTIFF: | DIRECT | CROSS | REDIRECT | RECROSS |
|---|---|---|---|---|
| RONALD SCOTT | 4 | 38 | 69 | |
| SCOTT HOWARD | 72 | 74 | | |
| DR. ELIZABETH KINNISON | 75 | 80 | | |
| MARY WILLIAMS | 83 | 85 | | |
| TAVISHA MOYE | 87 | 89 | 90 | 91 |
| ROBERT LEE RIVELL | 92 | 94 | | |
| INV. E.L. MARTIN | 96 | 109 | 111 | 113 |

# E X H I B I T S

| NO. | DESCRIPTION | RECEIVED | MARKED |
|---|---|---|---|
| ON BEHALF OF THE PLAINTIFF: | | | |
| 1 | Photograph | | 10 |
| 2 | Sketch | | 10 |
| 3 | Photograph | | 12 |
| 4 | Photograph | | 13 |
| 5 | Photograph | | 14 |
| 6 | Diagram of Kitchen | | 14 |
| 7 | Photograph | | 15 |
| 8 | Photograph | | 16 |
| 9 | Photograph | | 16 |
| 10 | Photograph | | 16 |
| 11 | Photograph | | 27 |
| 12 | Photograph | | 28 |
| 13 | Photograph | | 29 |
| 14 | Photograph | | 30 |
| 15 | Photograph of Shorts | | 30 |
| 16 | Photograph of Shorts | | 30 |
| 17 | Bag Containing Shorts | | 31 |
| 18 | Autopsy Report | | 79 |
| 19 | Certificate of Analysis | | 79 |
| 20 | Photograph of Hallway | | 101 |
| 21 | Photograph of Automobile | | 112 |
| 22 | Photograph of Automobile | | 112 |

TRANSCRIPT OF PROCEEDINGS

* * *

RONALD A. SCOTT,

having been called as a witness, was first duly sworn and testified as follows:

DIRECT EXAMINATION

BY MR. BATLINER:

Q. Tell the ladies and gentlemen of the jury your name.

A. Ronald Antonio Scott.

Q. Ronald, I need you to speak up a little bit to make sure they can all hear you. Okay?

A. All right.

THE COURT: You may have to lean into the microphone, sir.

THE WITNESS: All right.

BY MR. BATLINER:

Q. Ronald, what was your mother's name?

A. Ms. Belinda Scott.

Q. Belinda?

A. Yes, sir.

MR. BATLINER: Can you hear?

THE JURORS: Yes.

BY MR. BATLINER:

Q. Ronald, I am going to start off. Back in June of 2001, did your mother live at 3331 Lens Avenue in the city of Norfolk?

A. Yes, sir.

Q. Did you stay there with her or where did you stay?

A. I stayed with her.

Q. I am going to direct your attention first back to June 9, 2001. Do you remember that day?

A. Yes, sir.

Q. Let's go back -- well, first, were you at the house that evening on the 9th?

A. Yes, sir.

Q. Who was there at the house?

A. It was me, a girl named Tamika and my mother and my son, and I don't know if my nephew was still there or not.

Q. But the four of them, the four of you; Tamika, your son and your mother were all there for sure?

A. Yes, for sure.

Q. That was pretty much the whole evening?

A. Yes, sir.

Q. Let's go back to the day before. First,

how did you meet Tamika?

A. I met her at this social like place. It's like this bootlegger place in Norview.

Q. Tell me what you mean by a bootlegger. What's a bootlegger place?

A. You go there and gamble and you can drink if you drink, that kind of place.

Q. Well, when we talk about drinking and gambling, we are not talking about like a business that you would normally go to. It's somebody's house?

A. Yes, a house.

Q. So basically illegally selling alcohol to folks cheaper; is that right?

A. Right.

Q. You met Tamika there?

A. Right.

Q. What were you doing there that evening?

A. I was gambling.

Q. Were you doing anything else?

A. I was selling drugs.

Q. What kind of drugs were you selling?

A. Heroin.

Q. How much heroin did you sell that night?

A. I don't know for sure. It could have been somewhere between 6- and $800 worth. I have been selling

all day. I sold it in the house, though. I am not pretty sure.

Q. I want to make sure I understand. You sold in what house?

A. At the bootlegger stop.

Q. Then you were gambling as well?

A. Yes.

Q. What time did you leave there?

A. It could have been between 2:00 and 3:00.

Q. In the morning?

A. In the morning.

Q. So on the morning of the 9th, you left the bootlegger's house, right?

A. Right.

Q. Who was with you when you left?

A. Me and Tamika and my friend Dee Dee.

Q. Where did you go?

A. I went to 3331 Lens Avenue.

Q. What did you do once you got to -- that's the address we talked about as being your mom's?

A. Yes.

Q. What did you do once you got there?

A. I went straight into the back bedroom. I seen my mother, my son, like somebody else was down on the floor, but I'm not pretty sure who it was. It could have

been my nephew.

Q. When you say somebody else, you recall talking?

A. A while.

Q. An adult or a child?

A. A child.

Q. Did anybody go in the back with you?

A. Tamika.

Q. I show you -- take a look at that. Do you recognize what that is?

A. Yes, that's the sketch of the house.

Q. I mean, is it an accurate sketch of the inside of the house?

A. It's about as accurate as you can get. It's all right.

Q. I am going to hand you this. This is a laser pointer? You push that button right there. You see that pointer. Show me the front door, how you come into the house.

A. Got to be there.

Q. What's that right there?

THE COURT: Members of the jury, can you see that?

THE JURORS: Yes.

BY MR. BATLINER:

Q. What is that? Are those steps there?

A. Yes, like a stairway.

Q. Going upstairs to some other apartments?

A. Yes.

Q. And then where is the door going in to where your mother was?

A. Right here.

Q. Right through that hallway?

A. Yeah.

Q. Where was your son when you came in?

A. He was on this couch right here.

Q. That's a couch that you're marking?

A. Yes.

Q. Where was the other child that you saw?

A. Like right here on the floor.

Q. Was there like -- was he just laying on the floor or was there a pile or something?

A. There was like a pile on the floor.

Q. Where did you go with Tamika?

A. I went through here, right here.

Q. It's labeled back bedroom on the sketch. Is that your bedroom?

A. Yes.

Q. Which was your mother's bedroom?

A. Right here.

Q. The one marked front bedroom?

A. Yes.

Q. Let me show you this. I am going to show you a photograph. Do you recognize that?

A. Yes. That's the front door to the house.

MR. BATLINER: Judge, I would ask that be introduced as Commonwealth Exhibit Number 1.

THE COURT: Without objection, Mr. Anderson, sir?

MR. ANDERSON: No objection, Your Honor.

THE COURT: Without objection, the photograph that has been identified by the witness as 3331 Lens Avenue will be Commonwealth Exhibit 1.

(Photograph marked as Commonwealth Exhibit No. 1 in Evidence.)

MR. BATLINER: I would ask, Judge, that the sketch be made Commonwealth Exhibit 2.

THE COURT: Without objection, the sketch identified by the witness being the diagram of the interior of 3331 Lens Avenue, Norfolk, Virginia will be Commonwealth Exhibit 2.

(Sketch Drawing marked as Commonwealth Exhibit No. 2 in Evidence.)

MR. BATLINER: Can I publish it to the jury?

THE COURT: Sheriff, will you publish that to the jury, each of those? All members of the jury able to see that?

THE JURORS: Yes.

THE COURT: Thank you.

BY MR. BATLINER:

Q. Ronald, I'm going to show you --

THE COURT: That was Exhibit 1 that was displayed; is that correct?

MR. BATLINER: It was. That was Exhibit Number 1.

BY MR. BATLINER:

Q. I am going to show you what is another photograph. Do you recognize that?

A. Yes. It's the front porch.

Q. Show me where that is on the diagram.

A. It's like it got to be out here.

Q. Out there?

A. Yes.

MR. BATLINER: Ask that be Commonwealth Exhibit Number 3, Judge.

THE COURT: Without objection, photograph identified by the witness, and that's the front porch; is that correct?

MR. BATLINER: It is, Judge.

THE COURT: Will be Commonwealth Exhibit 3. Do you wish that published?

MR. BATLINER: Yes, sir.

(Photograph marked as Commonwealth Exhibit No. 3 in Evidence.)

THE COURT: Sheriff, please publish that to the jury. All right, you may proceed.

BY MR. BATLINER:

Q. I am going to show you another photograph. What is that?

A. That's the hallway leading to the front door.

Q. Show me where that is.

A. That's right here.

MR. BATLINER: I ask that be introduced as Commonwealth Exhibit Number 4, Judge.

THE COURT: Without objection, the photograph identified by the witness, which is the front door of the steps; is that correct?

MR. BATLINER: That's correct. It's the hallway steps.

THE COURT: These are all 3331 Lens Avenue; is that correct, sir?

THE WITNESS: Yes, sir.

THE COURT: Without objection, Commonwealth

Exhibit 4. Would you like that published?

MR. BATLINER: Yes, sir.

THE COURT: Please publish that to the jury, sheriff.

(Photograph marked as Commonwealth Exhibit No. 4 in Evidence.)

THE COURT: Ladies and gentlemen of the jury, you will have an opportunity to take these exhibits into the jury room with you at the time of your deliberations.

BY MR. BATLINER:

Q. I show you another photograph. What does that show?

A. It's a living room.

Q. Show me on the diagram where that is.

A. Right here.

Q. So this is the photograph of the living room at 3331 Lens Avenue?

A. Yes.

MR. BATLINER: I ask that be Commonwealth Number 5.

THE COURT: Without objection, photograph of the living room of 3331 Lens Avenue will be Commonwealth Exhibit 5.

MR. BATLINER: Judge, I'll go ahead and do

six and they can publish them both together.

THE COURT: All right, sir.

(Photograph marked as Commonwealth Exhibit No. 5 in Evidence.)

BY MR. BATLINER:

Q. I show you this. Do you recognize that?

A. Kitchen.

Q. When you say kitchen, show me on the diagram.

A. It got to be right here.

MR. BATLINER: I ask that be introduced as Commonwealth Exhibit 6, Judge.

THE COURT: Without objection, the diagram of the kitchen will be Commonwealth Exhibit 6.

(Diagram of Kitchen marked as Commonwealth Exhibit No. 6 in Evidence.)

THE COURT: Would you publish these two. If any of the members of the jury are not able to see any of the photographs or anything published before you, please let me know. All right, thank you, Sheriff.

BY MR. BATLINER:

Q. I show you that photograph. Do you recognize that?

A. Yes. It's like coming into the living room from the hallway.

Q. Show me where that is. Right there?
A. Yes.
Q. So this is the door coming into the apartment, into 3331 Lens?
A. Yes.
MR. BATLINER: Ask that be introduced as Commonwealth Number 7.
THE COURT: Without objection, Commonwealth Exhibit 7.
(Photograph marked as Commonwealth Exhibit No. 7 in Evidence.)
BY MR. BATLINER:
Q. I show you this photograph. What is that?
A. That's the bedroom, the back bedroom.
Q. Whose bedroom was that?
A. Mine.
Q. Show me on the diagram where you are talking about.
A. Right here.
MR. BATLINER: Ask this be introduced as Commonwealth number 8.
THE COURT: Without objection, Commonwealth Exhibit Number 8. Sheriff, will you publish this photograph to the jury, please.

(Photograph marked as Commonwealth Exhibit No. 8 in Evidence.)

THE COURT: All right, thank you.

BY MR. BATLINER:

Q. I show you this photograph. Do you recognize that?

A. That's the back bedroom, too.

Q. Just another angle of the back bedroom?

A. Yes.

Q. I am going to show you this photograph. What does that one show?

A. The back bedroom diagonal. Right there.

MR. BATLINER: I would ask these be admitted as Commonwealth 9 and 10, both of the back bedroom.

THE COURT: Those are the bedroom of Mr. Scott?

MR. BATLINER: Yes, sir, Judge, the back bedroom where Mr. Scott was.

THE COURT: Photographs identified by the witness as the back bedroom or the bedroom of Mr. Ronald Scott, each one will be Commonwealth Exhibits 9 and 10 respectively.

(Photograph of Back Bedroom marked as Commonwealth Exhibit No. 9 in Evidence.)

(Photograph of Back Bedroom marked as

Commonwealth Exhibit No. 10 in Evidence.)

THE COURT: All right, thank you sheriff. You may proceed, Mr. Batliner.

BY MR. BATLINER:

Q. All right, Ronald. Let's talk about when you got back to the house with Tamika. Tell me pretty much what happened at the house from that point forward. What did you all do?

A. Went in the back bedroom and I ate, watched a movie, then I was sleep. I was tired, you know, and I slept like right into the next day.

Q. So you came in at about 2:00-something in the morning?

A. Yes.

Q. You eat and then you go to sleep?

A. Right.

Q. So you wake up sometime what, the middle of the day on the 9th?

A. Yes. Well, my mom woke me up twice.

Q. Tell me about how she would wake you up.

A. She come back there and knock on the door and I'd wake up. I tell Tamika open the door. She asked her what she want. Right then and there she called me out the hallway, asked me something else.

Q. So she came and woke you up twice?

A. Yes, about twice.

Q. Tell me about the first time she woke you up. Who was there the first time she woke you up?

A. The first time she came and woke me up, she was just like she asked me what I want from the store. She was going to the store the first time. I think the second time was dealing with how long I was going to sleep. It was dealing with something like that.

Q. At some point did Kenny Parker come by?

A. Yes.

Q. What do you know him by? What is his nickname?

A. K.P. He kept calling my phone all day, right, but I wasn't answering the phone. But one time I woke up, I answered the phone by mistake, and it was him.

Q. What did he want?

A. He wanted something. First he asked me did I have anything, right? I was like, yeah, but I kept telling him I couldn't get to it right then.

Q. He wanted what?

A. He wanted an 8-ball of heroin.

Q. Okay.

A. I kept telling him I couldn't get to it right then, and he kept telling me that he needed it real bad and all that. So I was telling him -- I told him if

he can come get it real quick, I told him where he could come get it from. I went back to sleep. So that's when my mom would call me. She didn't come that time. She was just calling me and tell me that K.P. was out there, and that's when I woke up.

Q. What did you do with K.P.?

A. I went in the kitchen and I sold him -- I closed both doors because couldn't nobody see what we were doing.

MR. ANDERSON: I am sorry. I couldn't understand him.

THE COURT: You have to speak a little more clearly if you would.

THE WITNESS: I closed both doors, the door from the kitchen, and the door from the back bedroom so nobody could see what we was doing, and I sold him an 8-ball of heroin.

BY MR. BATLINER:

Q. How much you sell it to him for?

A. For 500.

Q. What did he do after he bought the 8-ball?

A. He left.

Q. Did you see him again?

A. Yeah, he came back again.

Q. When did he come back?

A. Probably like an hour later or an hour and a half later.

Q. What happened when he came back?

A. He told me that it wasn't right.

Q. What did you do?

A. I told him that I know it was right, but I told him I wouldn't argue with him where I was at at the time, the place I was at, so I gave him his money back.

Q. What do you mean you couldn't argue with him at the place you were at?

A. Because I was at my mom's house. I didn't have no business selling it to him there in the first place, so I went and gave him his money back. I told him I would see him when I get over Park Place.

Q. What do you mean? You'd see him what?

A. I told him I'd see him when I get over Park Place.

Q. What's that mean?

A. That's like the area I know where he be at all the time. I told him I'd seen him when I get out there and we'll talk about it later.

Q. What had you done with the money that you had from the night before?

A. It was all still stuck in my pockets.

Q. What did you do with the heroin that you had or did you have any heroin left over?

A. It probably was like a couple of capsules left over. I think I mostly sold all of it. I had altogether from the day when I first started, I had like $1,200 worth of heroin. I sold everything besides probably like five capsules.

Q. Where did you put them?

A. On the table.

Q. Back in your bedroom?

A. Yes.

Q. Ronald, I'm going to show you the exhibits of your bedroom which were 8, 9 and 10. Take a look and see if you see that table in any of those pictures.

A. Right here, but it had a tablecloth on it right here.

Q. This is Commonwealth Exhibit Number 10?

A. That's not how the table was looking when I put it up there, though.

Q. Can you point at it with the laser pointer?

A. That was on top of the table, the table right there.

Q. You pointed first to something on the

ground. What is that?

A. That's the tablecloth.

Q. That was on the table?

A. That was on top of the table.

Q. But the table is right --

A. Right there, right there.

Q. What was the next thing that happened after? Kenny left. Did something else happen that evening?

A. Yes. In the process when Kenny was there?

Q. After Kenny was gone, right?

A. Yeah, after Kenny was gone something happened. Something happened right before Kenny left, too.

Q. What happened before Kenny left?

A. My mama started raising a fit about him bringing a lot of people to the house.

THE COURT: Sir, you'll have to be a little more slower, please, and a little clearer so everybody can understand you please.

THE WITNESS: My mother started raising a fit about a whole lot of people was at the house, right. So I asked her what she was talking about because I only seen Kenny, right, and Kenny told me that Tyreke--

MR. ANDERSON: Objection to anything that

Kenny said.

THE COURT: Do not say what anybody else, said, sir.

THE WITNESS: Well, so I go out there and see who was out there in the car waiting for him.

BY MR. BATLINER:

Q. Who was in the car waiting for him?

A. It was Lester.

THE COURT: Who?

THE WITNESS: Lester right there, Lester Lynch.

THE COURT: The record will reflect the witness identified the defendant.

THE WITNESS: And it was Tyreke driving, and it was another guy, and I saw at the time I assumed it was his brother, but really right now I can't say it was his brother. Only people that I really seen real good in the car, and that was the driver and the guy that was in the passenger seat.

BY MR. BATLINER:

Q. You know Tyreke's real name?

A. Yes, Gregory Williams.

Q. After you went out to the car, what did you do?

A. I didn't go out all the way to the car. I

just went to like the front porch.

Q. Kenny leave?

A. Yes, Kenny left.

Q. What happened after that?

A. Went back into the back bedroom, and I went back to sleep. And about -- it could have been four to five minutes later, it could have been an hour and 20 minutes later, I was woken up by Tamika telling me my mother wanted me, right. And I can hear my mama screaming my name, right. I wake up, and I put my shorts back on that had my money and stuff in it. And before I could make it to the door, the doorknob was already turning, and I knew it wasn't her, but I was still pulling on the door, and that's when I seen Tyreke and I seen Lester. I seen a shadow, you know, and I didn't see nobody. I seen a shadow. So I don't know.

Q. When you say shadow, you mean a third person?

A. A third person.

Q. Did you ever see that person's face?

A. I never seen that person's face.

Q. So you saw Tyreke and, again, who is Tyreke?

A. Gregory Williams.

Q. Then you saw Lester?

A. I seen Lester.

Q. Is Lester here in the courtroom today?

A. Yes.

Q. Where is he?

A. Lester right there, right beside his lawyer, Mr. Anderson.

THE COURT: The record will reflect the witness identified the defendant, Lester Bernard Lynch, Jr.

BY MR. BATLINER:

Q. You said that the doorknob was turning as you were getting up getting to the door. Tell me what happened.

A. All right. When I opened the door up, it's Tyreke with the gun in his hand telling me give him all the money and the dope, right. He told me back up. So I back up, and I put my hands behind my head, and my knee to the ground, and I show him I wasn't moving or nothing, right, because I didn't want -- I wasn't trying to get shot because at this time I didn't hear no gunshot or nothing. I didn't know my mother was shot at this time. But I was trying to make sure don't nobody get shot. I was trying to make sure he got what he wanted, then get him out the house.

He put me on the ground and stuff. I get on

the ground. He got the gun in my face asking for the money and the dope. Tamika said something. He said, shut up B.

Q. Did he say B or did he say a word?

A. He said a word, bitch.

Q. What was the word?

A. Bitch. So he still talking to me, so I pointed at the table, right, because it was some money already on the table, and it was the drugs that I had got back from K.P. that he brought back that was on the table. It had like five capsules on the table, so I point at the table. So that's when Lester run to the table, snatch the tablecloth off the table, and throw it on the floor, and everything went on the floor. But he picked it up. I guess Tyreke wasn't happy with what I gave him. So he started hitting me in my head, and Lester walked back over to me and started hitting me in my head as well.

Q. Who had the gun?

A. Tyreke had the gun. I never seen the gun in Lester's hand, so I can't say he had a gun or not.

Q. You got struck?

A. I got struck around the head, on top of my head.

Q. I show you first that photograph. Do you recognize that?

A. Yes.
Q. What is that?
A. That's me with bruises around my head.
Q. This is a picture taken of you right afterwards?
A. Yes, right, afterwards.
Q. You see any of your bruises on there?
A. Yeah.
MR. BATLINER: Judge, I am going to ask that be admitted as Commonwealth Number 11.
THE COURT: All right, without objection, the photograph identified by the witness will be Commonwealth Exhibit 11.
(Photograph marked as Commonwealth Exhibit No. 11 in Evidence.)
BY MR. BATLINER:
Q. I show you another photograph. Do you recognize that photograph?
A. Yes. It's a bruise on my eye.
Q. Again, taken right afterwards?
A. Yeah.
Q. Show me where you're talking about, the bruise around your eye.
A. Right here, and bruises around my head but the bruise around my eye didn't come from hitting me.

Q. Where did that come from?

A. When I opened the door, the door was already opened, and the door hit me in my eye. So it looked like somebody kicked the door in, but didn't nobody kick the door in. I was right there. Somebody was just turning the door, and they pushed the door and the door just hit me in my eye.

MR. BATLINER: I am going to ask that be admitted as Commonwealth Exhibit 12.

THE COURT: Without objection, the photograph identified by the witness will be Commonwealth Exhibit 12.

(Photograph marked as Commonwealth Exhibit No. 12 in Evidence.)

BY MR. BATLINER:

Q. I show you another photograph there. What's that?

A. That's me with a bruise on my head.

BY MR. BATLINER:

Q. Again, this was taken right afterwards?

A. Yes, right afterwards.

Q. What is this area right here in the middle?

A. That's a bruise.

Q. Can you point to, for the ladies and

gentlemen, the area you were talking about.

A. Right there.

MR. BATLINER: Ask that be admitted as Commonwealth's Number 13, Judge.

THE COURT: Without objection, Commonwealth 13 is a photo of Mr. Scott's head.

(Photograph marked as Commonwealth Exhibit No. 13 in Evidence.)

BY MR. BATLINER:

Q. I show you that photograph. Do you recognize that?

A. Yes. That's me with my shorts on with some blood on my shorts.

Q. Again, that was taken shortly afterwards?

A. Yeah.

Q. Were they the shorts you had on during when these men came into the room?

A. Yes, sir.

Q. Can you point out where the blood is on there?

A. Right here, like going into the pockets.

THE COURT: You wish that be Commonwealth Exhibit 14?

MR. BATLINER: Yes, sir, Judge.

THE COURT: Without objection, the photograph

identified by the witness being shorts with blood will be Commonwealth Exhibit 14.

(Photograph marked as Commonwealth Exhibit No. 14 in Evidence.)

BY MR. BATLINER:

Q. What is that?

A. That's me with my shorts on with blood in the back pocket.

MR. BATLINER: Judge, if we can admit both of these as 15 and 16.

THE COURT: Without objection, the photos identified by the witness being shorts on his person will be Commonwealth Exhibits 15 and 16.

(Photograph of Shorts marked as Commonwealth Exhibit No. 15 in Evidence.)

(Photograph of Shorts marked as Commonwealth Exhibit No. 16 in Evidence.)

BY MR. BATLINER:

Q. Ronald, I am going to show you Commonwealth Exhibit Number 15. You indicated there was some blood there. Where was the blood?

A. Right here.

Q. I am going to show you what has been previously admitted as Commonwealth Number 16. Where is the blood there?

A. Right here.

Q. I'm going to show you this. Do you recognize these?

A. Yes, they are the shorts I had on.

MR. BATLINER: Judge, if I could admit this as Commonwealth Exhibit 17.

THE COURT: Commonwealth Exhibit 17 is a bag containing shorts.

(Bag Containing Shorts marked as Commonwealth Exhibit No. 17 in Evidence.)

BY MR. BATLINER:

Q. Did someone go into your pockets?

A. Yeah.

Q. Who?

A. Tyreke.

Q. What was in your pockets?

A. All the money that I accumulated the previous day and the night before.

Q. How much money do you think you had?

A. Like I told you before, I was gambling as well as selling heroin. So I'm going to say anywhere between 4- and $800.

Q. No less than 400, though?

A. No less than 400.

Q. Tell me exactly what Lester Lynch did

when he came into the room.

A. When he came in the room, he was right beside Tyreke, right behind him on his heels. First they come towards me. Tyreke got the gun on me right there. Tamika said something. He stepped over towards Tamika.

Q. Who stepped over towards Tamika?

A. Lester, and he stand guard on her while Tyreke stand guard on me, and that's when the answer came up as far as me telling him where the dope and stuff was at. That's when they stepped away and stepped towards the table and snatch the tablecloth off the table and started taking the stuff off the table. Then he picked it up and put it in his pockets. Then Tyreke started hitting me. That's when he stepped back over towards me, and he started hitting me, too. That's when Tyreke stopped and he goes in my pockets, but he was still hitting me, though, when Tyreke was going in my pockets.

Q. What's he hitting you with?

A. I didn't see his hands, so I'm going to have to say his bare hands. And at this time my face was already numb. I wasn't feeling it.

Q. I am going to show you what has previously been admitted as Commonwealth Exhibit Number 8. Can you see that from there?

A. Yes.

Q. What is that here? I am pointing to what would be the lower left corner. What's this?

A. You have to bring it up a little closer.

Q. What is this right here?

A. Oh, all that right there on the bed?

Q. Is that your bed?

A. That's the bed right there.

Q. What is all of this on top of the bed?

A. The clothes that was in the clothes basket.

Q. Was this how the bed was?

A. Nah.

Q. What happened?

A. The basket was on top of the table that I pointed to with the tablecloth on top of it. The basket was up there, too, as well.

Q. That table?

A. Yes, that table right there.

Q. The one that you pointed out in Commonwealth's Exhibit Number 10?

A. Yes, sir.

Q. That's where it was?

A. The basket was on top of the table.

Q. How did the basket get there?

A. He put it there. I told you he snatch the thing off the table and things went flying. He was

searching around as he was looking because he was searching around for stuff because the stuff went everywhere when he snatched the tablecloth off the table.

Q. What happened after they got your money and the heroin off the table?

A. During that time somebody stuck his face in the doorway and said, man, let's get the F out of here, and that's when they stopped doing what they was doing and Tyreke said something and left.

Q. Did you see that person then?

A. Nah. I just seen the flash.

Q. Did they leave?

A. Yes, they left.

Q. What did you do then?

A. I waited about five minutes or so, then I eased out into the outer house because I was trying to -- at this point, what I was trying to do was make sure that the house was locked up. I was trying to secure the house, ease my way out towards the house, and at this time I don't know if anybody was behind me or not. I don't know if Tamika got right behind me or she waited, too.

But as for me, I was stepping out towards the house. And when I got towards the living room, I seen my son appeared to be sleeping on the couch. I didn't know if he was sleeping or not, but he wasn't moving.

So I eased out toward the front door, and just before I could shut the front door, that's when I seen my mother laying on the floor.

Q. Where was she?

A. She was like right beside the steps in the hallway. She was laying parallel with the steps.

Q. So not actually inside the living room?

A. No.

Q. Right outside?

A. Outside in the hallway.

Q. I show you Commonwealth Exhibit Number 4. Is that the area that you're talking about?

A. Yeah.

Q. What did you do once you found your mother?

A. I stood there. I tried to roll her over because I thought somebody probably just knocked her down. I thought she probably was coming in on their way out while they was running out. I said they must have knocked her out or somebody knock the wind out of her. When I rolled her over, I see a big blood clot right under her eye, and that's why I know she been shot right under the eye. And I could tell by the way she was going into a lot of shock. So I just stood there. I couldn't say nothing. I only had one thing on my mind. I was trying

to get to Park Place at that time.

Q. Trying to get what?

A. Trying to get to Park Place, but I couldn't move.

Q. What's Park Place?

A. That's where I know Tyreke brother stay at.

Q. The police come?

A. Yeah, the police came. That's what broke me out of my shock, the police. When I came through, I seen the police standing on top of me.

Q. What did you do when the police came?

A. I did everything they told me to do as far as like stood me up. They brought my son out to me, told me they needed me to go downtown. I basically did everything they told me to do.

Q. Did you talk to them and tell them who was in there?

A. Yeah, as far as what I knew at the time.

Q. You told them Tyreke, right?

A. Yes, I told them Tyreke.

Q. Then you also told them Christopher Williams, and you thought maybe K.P., right?

A. Yeah.

Q. Why did you tell them that?

A. Because K.P. brought all them guys to the

house two times that day already. I was basically telling them, you know, who came to the house because they came two times before that even happened.

Q. Was K.P. there that you know?

A. K.P. wasn't there.

Q. Was Christopher Williams there?

A. Nah, Christopher Williams wasn't there because I didn't see him there, you know, but there was another guy there, and I know for a fact that it wasn't K.P.

Q. Who was there?

A. Lester Lynch and Tyreke was the only two guys that I seen, that my eyes came in contact with their eyes, and I saw them, and I can say a hundred percent they were the only guys I could say was there.

Q. Ronald, you have been convicted of a number of felonies, right, five of them?

A. Yes, sir, all back almost ten years ago.

Q. Possession of heroin with intent, possession of cocaine with intent, possession of heroin and shooting into and from a vehicle; is that right?

A. Yes, sir.

Q. Why did you tell the cops that it was Christopher Williams and K.P.?

A. I was trying to tell them everything that

happened that went on, everything that went on so they could go and talk to everybody that, you know, and see what happened, see what was going on. And I probably implicated K.P. a little too much than what I should have, and I was wrong for that, but K.P. was also wrong for bringing the guys to my house. But everything got straightened out, though.

Q. When did it get straightened out?

A. The next day.

Q. What did you tell them then?

A. I told them who it was, the light skinned guy. They showed me a photo line-up and asked me could I point, could I find the light skinned guy. So I went through all these photos, photos and photos, and I was like, say there, there he go right there.

Q. That was Lester Lynch?

A. I went through a hundred photos.

Q. That was Lester Lynch?

A. It was Lester Lynch.

MR. BATLINER: Answer any questions that defense counsel or the Court may have.

THE COURT: Mr. Anderson.

CROSS-EXAMINATION

BY MR. ANDERSON:

Q. Mr. Scott, you first met Tamika on the

8th of June; is that correct? You first saw her on the 8th -- I'm sorry. When was the first time you saw her? Had you seen her prior to the 8th?

A. Had I seen her prior to that?

Q. Yes.

A. No. The first time I seen her was in the house, the bootlegger spot.

Q. Prior to that time, had you seen her the day before, the week before?

A. Nah. I can't recall now.

Q. So it would have been a long time since you had seen her before?

A. I can't recall. She probably seen me, but I can't say I seen her because I told you I'm everywhere. I'm everywhere. People see me every day. I don't know they see me. So she could have seen me, but I didn't see her.

Q. Now, you were out gambling that day?

A. Yeah.

Q. Selling drugs?

A. Selling drugs.

Q. Did you have your gun with you at that time?

A. I don't carry a gun, man. That's an automatic I can't get rid of.

Q. But you used to carry a gun?

A. At a point years ago. I could say yeah, honestly, I did carry a gun back then.

Q. Now, you stayed at the bootlegger's place. Did you go to the bootlegger's place with Ms. Reid or did you just happen to meet there?

A. I went there with a buddy of mine. We was riding around all that day.

Q. He was selling drugs with you all that day?

A. Yeah, you could say that.

Q. Now, when you got home, that was 2:00 or 3 o'clock in the morning?

A. Yes, between 2:00 and 3:00.

Q. Your mom was sleep?

A. Yeah, she was sleep on the couch.

Q. Your son was sleep where?

A. My son was sleep on the couch.

Q. Today you're testifying that there was somebody sleeping on the floor?

A. It was a pad on the floor, right, and I can't say it was my niece. It had to be my niece or my nephew. It was my little smaller niece.

Q. Do you recall when you were asked that question before and you said there was nobody else

downstairs?

A. Nah, I don't remember saying nobody else. I honestly can say it was somebody there on the floor.

Q. If you said that before, you were mistaken or you didn't say it?

A. If I say I didn't see nobody on the floor at first, I was mistaken, but I can tell you it was somebody there on the floor.

Q. The question was asked of you do you recall a pile on the floor, and you said no.

A. Nah, I don't remember saying nothing about the pile but the pile was on the floor because I had to step across the pile to get to where I was going that day.

Q. So if you said that before, you were mistaken?

A. I don't remember saying that before so you can reflect it back to my attention where I said it.

MR. ANDERSON: Your Honor, may I approach the witness, please?

THE COURT: Yes, sir.

BY MR. ANDERSON:

Q. This question is not intended to embarrass you. You do read and write?

A. Yes, I read and write. That's why I say if you can show me.

Q. I'll ask you to take a look at page 59 of a prior -- of a hearing that was held on October 2 of 2002. And I'll ask you to read from lines 14 to 22.

A. All right. All right. I see it.

Q. Does that refresh your memory?

A. Yes, it refreshes my memory.

Q. So now you do remember saying that there was no pile laying on the floor?

A. Yeah, but there was a pile because I stepped across it.

MR. BATLINER: Judge, it says, you don't you recall any of your mother or grandchildren laying on a pile on the floor?

No.

If they had been there, you would have seen them?

Well, not really, was his response.

THE WITNESS: Yeah.

THE COURT: All right. Next question, please.

BY MR. ANDERSON:

Q. You all go in and you watch TV?

A. Yeah.

Q. Does Tamika go into the bedroom with you or does she stay out and talk to your mom?

A. She go in the bedroom with me, and she did leave out. She leave out the bedroom.

Q. I'm sorry?

A. I said, before I went to sleep, she did leave back out, out the bedroom.

Q. Your purpose for going into the bedroom was to have sex?

A. No. I was tired, man.

Q. So you all didn't have sex that night?

A. We could have.

Q. I'm sorry?

A. I said we could have. We probably did, but I was tired. Basically, that was my purpose for going home. I could have gone to the hotel room and had sex. I was tired.

Q. My question is simply did you have sex that evening?

A. I said yes. I don't remember. We probably did.

Q. Then the next time you woke up was the next morning?

A. Yeah.

Q. Did you ever get up on your own or was it always your mother or someone else waking you up?

A. I probably woke up on my own probably one or

two times, just woke up, went straight back to sleep. I was tired, man. I been running them streets, man, like all that whole week.

Q. So now, you say your phone kept ringing?

A. Yes, my phone kept ringing.

Q. Is that a cell phone?

A. It's a cell phone.

Q. Where was that phone?

A. Like in my pocket. It was in my pocket one time. One time it was on the bed and then another time it was on the table.

Q. The table in that room?

A. Yes, in the room.

Q. It wouldn't have been on the charger in the other room?

A. The charger in the other room?

Q. Yes.

A. No. I had two phones. I had a phone in the other room, too. I mean, I had bought my mom a cell phone.

Q. Which phone was K.P. calling on, the phone on the charger in the other room or the one in your bedroom?

A. Tell you the truth, he could have been calling on both of them because if he call one and don't

answer, the other one will start automatic ring.

Q. The one that was by the charger, is that your mother's telephone or your telephone?

A. Both of them mines. I just upgraded my cell phone, and I just passed the old one down to her because she don't do nothing but sit around the house all day.

Q. Now, you said K.P. came by; is that correct?

A. Yes, sir.

Q. Now, was that in the morning or the afternoon?

A. I tell you, I was breaking coming in and out of sleep at this time so I am going to say afternoon.

Q. When you say afternoon, is that after 12 o'clock?

A. After 12:00.

Q. After 12:00. I know this is a little -- it's going back a little bit. You might not remember.

A. I am trying to get you as close as I can remember.

Q. Do you recall whether you got up at 8:00 or anything like that?

A. I am pretty sure I said that night.

Q. I am talking about the night.

A. During the day?

Q. During the day.

A. I remember eating some cookies and some, yeah -- I didn't eat. I did eat that day, but I didn't fix the food.

Q. You didn't fix the food?

A. I didn't.

Q. Who fixed the food?

A. My mother.

Q. She brought it in the room to you?

A. Yes.

Q. Was that at the time she said she was going to the store or after she had gone to the store?

A. I think this was like before she even went to the store and because I said something about the food, and that's when she said, well, I am about to go to the store. So if there is anything else you want in particular, tell me now.

Q. So this is before noon. This is before noon. This is before K.P. came or after K.P. came?

A. Before K.P. came.

Q. So this is before noon?

A. Yes. It could be right at noon. It could be right at noon, in between like maybe between 12:00 and 1:00 when she came in there with the food.

Q. But K.P. hadn't been there at that time?

A. No, he hadn't been there. He hadn't called. He had called several times. I just kept on pushing end on the phone.

Q. All right. Now, did Tamika get up and leave at any time?

A. You talking about while I was woke?

Q. Yes.

A. Tamika was eating something, too. She kept going out there, going in the refrigerator.

Q. So she kept getting up and going out?

A. Yeah. She went in the freezer about two times, as I recall, because one time she brought back some cookies and asked me did I want some, I told her I didn't eat no sweets.

Q. I'm sorry, you told her you didn't eat any sweets?

A. Yeah, only fruit.

Q. Now, when K.P. came over, you went into the kitchen?

A. Yeah, I went into the kitchen.

Q. Did you all ever go into the bedroom?

A. Who K.P? Yeah, K.P. came in the bedroom one time. I got this thing about me.

Q. My question was, did you and K.P. go into the bedroom?

A. Yeah, we went into the bedroom at first.
Q. You left the bedroom and?
A. Went into the kitchen.
Q. Went into the kitchen. Was anyone else in the kitchen with the two of you?
A. Just me and K.P.
Q. It's at this point that you sold him the drugs?
A. Yeah.
Q. He left?
A. Yeah, he left. I walked him to the front door like I always do.
Q. You walked him to the front door?
A. Yeah.
Q. At that point you saw a car?
A. Yeah. The car was out there.
Q. Which side of the street was the car parked on?
A. The car was on our side of the street.
Q. What?
A. The car was on our side of the street. You can't park on the other side of the street.
Q. Was a car parked on the side of the street that's closest to you?
A. Closest to me, as I remember, yeah.

Q. So if I were to tell you that earlier you testified that the car was on the other side of the street, that would be a mistake?

A. Well, if you say that. It was like how long the event took place? Like I told you, the car came to my house two times that day.

Q. My question is the first time, what side of the street was the car parked on?

A. I mean, I ain't that accurate to remember which one was the first time. I just remember going out there seeing this car. I remember seeing this car two times.

Q. Was the defendant in the car both times?

A. Yes, sir, he was. You want to know where he was at in the car?

Q. We are going to talk about that.

A. All right.

Q. So you're saying you don't remember which side of the street the car was parked on?

A. Only thing I say, man, the car was closest to the house, man. I am going to have to say the first time this is about as right as I can probably get because the only way I remember that because my brother went down to the steps.

Q. You are going to answer my question?

MR. ANDERSON: May I approach?

THE COURT: All right, sir.

BY MR. ANDERSON:

Q. Would you read again on this transcript of October 2?

A. I just turn to the page, man.

Q. Line 16.

A. (Witness reading.)

Q. So does that refresh your memory?

A. What did you ask me? When the car was parked on the side of the street when?

Q. This is the first time.

A. I told you I saw the car out there two times.

Q. So when was it parked on the other side of the street?

A. I am not going to say it was ever parked on the other side of the street. I am telling you where I remember seeing the car parked at to the best of my knowledge dating back to this time.

Q. So when you came out, you stood on the front porch?

A. Yeah. I was just in and out because my brother was coming down the steps, and...

Q. So you didn't go out to the car?

A. No, I didn't walk out to the car.

Q. For the record, you just did a quick motion?

A. It wasn't a quick motion because I had to look back again because it was a comment made about the car. It was like a joke like what the hell they doing in a Acura.

Q. It was an Acura?

A. Yeah, it was an Acura. I was looking back again.

Q. So somebody said what kind of car it was?

A. Yeah.

Q. So you remember what kind of car it was?

A. I told you I just looked back again. I never really like took the car in full detail because my mind wasn't on the car. My mind was on why did he bring them to my house, just crossing my mind.

Q. Somebody said what they doing in a Acura, right?

A. Said, what the hell they doing in a Acura.

Q. Do you recall me asking you the question do you remember what kind of car it was?

A. No, I don't remember you asking me that. What I say?

MR. ANDERSON: Page 65.

BY MR. ANDERSON:

Q. Let me see if this refreshes your memory. Line 10.

A. Yeah, I can tell you the same thing now. I really couldn't tell you.

Q. You couldn't tell me.

A. I can tell you the same thing now. Only thing I can tell you about the statement that was made, my brother was like, what the hell they doing in a Acura. I told you, I looked back, but my mind is on what they doing coming to my house? Why did he bring them to my house?

Q. So now you're telling us that your brother was there at that time?

A. Yeah, my brother came downstairs. I told you that the first time.

Q. You've testified in this case before, haven't you?

A. Yeah, and I said that the first time, that my brother came down there, was on the steps when the car first pulled up. I said something about this before.

Q. You've testified that your brother was there before?

A. Yeah, that he came downstairs. He was on his way to work.

Q. Are you sure you've testified about your

brother being there?

A. He was coming down the stairs as I'm coming in.

Q. You told the policemen about your brother being there?

A. Huh?

Q. You told the policemen about your brother being there?

A. Yeah. He supposed to had been testifying one time about the car. I don't know what happened with that. It was a subpoena he got, but, yeah, my brother seen who was in the car and everything.

Q. When you testified today, you kept saying Lester?

A. Yeah, Lester, Lester, Lester.

Q. Prior to that date, did you know Lester?

A. No, I don't know him by his name. I am just telling you by his name. I always call him that light skinned guy. But I am going to tell you like this, I know him. I could never forget him now. I know him.

Q. You've seen him in court before, haven't you?

A. Not from that, man. I ain't talking about the court.

Q. You seen him from court?

A. This is not about seeing the man in court.
Q. My question is --
A. This is about my mom and who killed my mom.
MR. ANDERSON: Your Honor --
THE COURT: If you would just respond to the question.
THE WITNESS: What's the question, man?
BY MR. ANDERSON:
Q. Now, what's the closest you got to that vehicle?
A. I never even cleared the front porch.
Q. What color was the vehicle?
A. I can't remember the color but I can go back and if I was to see a color -- nah, I ain't going to do that.
Q. Now, from the distance you were, did you notice anything distinctive about that person?
A. About the person or the car?
Q. The person.
A. That was in the car?
Q. How many people were in the car?
A. It was two. It was two, and K.P. wasn't in the car at that time. He was walking toward the car. So that would have made three.
Q. Do you recall if it was a two door or

four door?

A. I can't recall, man. My mind wasn't on the car. My mind was on the people who was in the car. I can tell you all about the people who was in the car.

Q. Did you see that person's face from where you were?

A. Yeah. I seen their face. They was looking right at my face, staring right at my face.

Q. Do you remember any facial hair or anything on the person?

A. Nah. I can't recall no facial hair and all of that. I was just looking at their face, man.

Q. Do you recall whether he had a nose ring, earring, anything like that?

A. No, no earring, no.

Q. What time was that?

A. I can't tell you what time it was.

Q. What time was it when you saw the car the first time?

A. I can't tell you what time because I wasn't looking at no watch every time I got up. I told you I was in and out of sleep.

Q. It was after --

A. I am not going to assume on the time.

Q. Excuse me?

A. I am not going to assume on the time because I don't know what time it was. I don't know what time it was.

Q. But you said you got up between 12:00 and 1:00, and you said it was after that time?

A. That's assuming. I want this thing as clear as possible, get all the assuming out the way. Let's go by what I see and what I didn't see.

Q. So after that time, after K.P. left, you said about an hour to 45 minutes later they came back?

A. They came back again. They came back again.

Q. They came back again?

A. Now, I don't know if it was the first time or the second time, but one time --

Q. Wait a minute. You have answered my question. You said they came back an hour, 45 minutes later?

A. Yeah.

Q. That was because K.P. said that it --

A. Something I give him, it wasn't right which at that time I am thinking that he lying and stuff, but he was right, it wasn't right.

Q. It wasn't right?

A. It wasn't right. I gave him his money back.

Q. Today you're telling the jury that the

stuff wasn't right?

A. Yeah, it wasn't right.

Q. Now, you testified in the past that he was lying, you know your stuff was right?

A. Yeah. I said he was lying, I knew it was right.

Q. But now you're telling them it was right?

A. Yeah, it was right.

Q. In fact, one time you said it wasn't right because it was white?

A. It was white. All of it turn white after you mix it up.

Q. In fact, you and K.P. got into a heated argument that day?

A. Yeah. I mean, as much as I can argue with him in the house.

Q. In fact, your basic premise was?

A. Get him out the house.

Q. We'll take this on the street?

A. I didn't say I will see you on the street and I will do this to you. I said, I'll see you at Park Place. We will finish it there. I am not a violent person.

Q. Your voice wasn't as calm?

A. My voice was calm, very calm. That's my

reason for telling him I'll see him at Park Place. You forgot the setting. All this taking place in my mom's house, man. For one thing, I didn't know what I was doing.

Q. When you left, K.P. didn't think you were upset?

A. I am going to say he couldn't because I didn't show -- I mean, I could be mean, but I am not a violent person. I could be mean, though.

Q. Do you recall him asking you were you mad?

A. Nah. I don't remember that. He probably did. I don't know.

Q. You said he probably did. You really don't remember?

A. I don't remember did he ask me was I mad, but I can remember this, though, I can remember him --

Q. Just answer the questions that I am asking you, okay? So you knew Tyreke also known -- you knew Gregory Williams was known as Tyreke; is that correct?

A. Yeah.

Q. There's no question in your mind he was the first person who came into your house; is that right, into your room?

A. I open the door, and he is the first person I seen.

Q. You opened the door?

A. Yeah. I came and opened it, boom.

Q. It wasn't kicked in?

A. It wasn't kicked in. He just had force on it. It wasn't kicked in. He didn't kick it. If he had kicked it, it would have done more damage to my head and his body wouldn't have been this close to the door, and it was when I opened it is when the door popped open.

Q. You never saw a gun in the light skinned person's hand?

A. I can't say I did.

Q. Do you recall whether the person had on gloves or anything?

A. As far back as I remember, I can't recall. It's almost two years ago.

Q. You testified earlier that the light skinned person was searching around?

A. Yes, he was looking around.

Q. Was he touching things in the room?

A. Yeah, he was touching things, garments.

Q. Garments in the room?

A. Yeah, the garments that came out the basket.

Q. Now, this incident -- and I know you

didn't have a watch and you weren't timing it.

A. Yeah. So I appreciate you don't ask me about the time.

Q. I am going to ask you how long -- how long did it appear that the event lasted when they were in there taking the drugs and the money?

A. I wasn't looking at the watch.

Q. So you have no idea how long its lasted?

A. If I do try to assume how long it took place, all you are going to do is go back and keep asking me how long, am I for sure, and I don't have a watch on at the time. So you time it yourself. That way I can't be wrong.

Q. I wasn't there; you were there. Is that right?

A. I can't tell you.

Q. You told the Commonwealth. You were giving him times, but now I am asking you, suddenly you can't remember?

A. He wasn't taking the time I was giving him and trying to use it against me. Now, if I tell you a time, if I tell you I am assuming --

MR. ANDERSON: Your Honor, would you please? I am not going to argue.

THE COURT: Neither side argue with each

other. Next question, please.
BY MR. ANDERSON:
Q. Now, after the incident, you did go out. You left the room; is that correct?
A. After the incident?
Q. Yes.
A. Which incident are you talking about?
Q. After Gregory had taken -- they had taken the drugs and the money and left.
A. Gregory didn't take any drugs. Lester Lynch took the drugs. Gregory only had the money from out my pockets.
Q. So after the people -- how many people were in there?
A. I told you who I seen, man.
Q. How many people?
A. It was three people in the house but only two I can identify.
Q. Did the other third person ever come into the room?
A. No. He just stuck his head in the room, told them let's get the hell out of here you-all.
Q. After that the three people left; is that right?
A. What you say?

Q. The three people left out the house?

A. Right.

Q. You went back, I think you said, to secure the house?

A. Yeah. I walked out to secure the house. I wanted to lock the door. I didn't want none to come back for nothing, and for me not to even open the door or something like that.

Q. At that point you saw your son sleep?

A. Yeah, appeared to be sleeping. By this time I didn't know if he was sleeping or what.

Q. Next time you saw your son was when the policeman gave you your son?

A. Yes, sir.

Q. So Tamika Reid never gave you your son?

A. I'm going to tell you like this, when I looked up, I told you, if you recall what I said, I told you I was in shock, and when I came out of shock, there was a police right there, and my son was right beside him and Tamika was right behind him. So I can't say who brought him out of the house because I wasn't looking. I told you my whole -- my mind was on my mother in front of me. Her face appeared to be shot.

Q. You said when you saw that, you were trying to get to Park Place?

A. I was trying to get to Park Place, man.

Q. Now, your mom is shot. So it wasn't the hospital you were trying to get to. It was Park Place?

A. I was trying to get to Park Place, man. I already told you somebody called the ambulance and stuff. I was trying to get to Park Place, man. I can't reflect how I was feeling the first three seconds, man. I was trying, to be honest with you, I was trying to get to the guys, man, all right?

Q. Mr. Scott, I understand you have a lot to say, but if you would just try to answer my simple question.

A. Ask a simple question then.

THE COURT: Next question, please.

BY MR. ANDERSON:

Q. Isn't it a fact that you thought K.P. was one of those people who had been involved in this incident; is that correct?

A. Nah, man.

Q. So you didn't think K.P. was one of the people?

A. Nah. I mean, I didn't see K.P. as far as me thinking he had anything to do with it at one time?

Q. I thought --

THE COURT: Let him finish the answer,

please.

THE WITNESS: For me saying was he one of the persons, no, he wasn't one of the persons. Are you asking me did I thought he could have been with that? Yeah, at the time I thought he could have set it up.

BY MR. ANDERSON:

Q. In fact, that's what you told the policeman?

A. What, that it was a setup?

Q. That K.P. was involved in the setup?

A. I assumed it was a setup. It could have been a setup.

Q. After that time -- let me ask you, when was the first time you talked to K.P. after the incident?

A. I didn't talk to K.P., man.

Q. You have not talked to K.P. since the date, since the time you were beat and your mom was killed to today?

A. He called me, man. He called me right before I was arrested on parole violation trying to talk to me, and you don't know me that well. You can't talk to me.

Q. My question was, so you have not talked to him?

A. We said a couple of words and stuff. He just wanted to talk to me. He just wanted to tell me everything what happened, you know, because he said, man, I know everything that happened, man.

Q. When was that?

A. What happened?

Q. When was that conversation?

A. I told him to tell it to the police.

Q. When was that conversation? When did you have that conversation?

A. I can't tell you what day it was, but it was on the phone. This is after I took my phone back from Tamika because Tamika had my phone after the incident happened. She had took my phone home with her, and I had to get my phone back from her. I sent somebody to go get my phone, and he had been calling me day in and day out, and day and night, day in, day out calling me, man. He was leaving voice mails on my phone, man.

Q. Now, you said the very next day the police showed you a picture of -- they showed you a book of more than a hundred pictures?

A. I couldn't say they showed me the picture of him the next day. Now, they told me a picture -- they wanted me to confirm the identification of Tyreke. I did never go through the rest of the pictures until I think it

was like two weeks later, could have been a week later. They had just pull out some more pictures and was going through them. They didn't think I was going to find him, and I didn't think I was going to find him by me going through the pictures. I was like, hey, there you go. This is the guy right here. They say, how sure are you, how positive? I said, I am a hundred percent positive.

Q. You're saying it was a week later or two weeks later?

A. Yeah, just during the picture identification of Lester, yeah, that it could have been like a week later or two weeks later, but I am definitely sure it wasn't the same day or the next day because they called me, and they said they had some more pictures that they would like for me to come down there, and I kept on saying that I couldn't come down at that time. They say, what you mean you couldn't come down here right now? And that's when I dropped everything I was doing, and I went down there.

Q. On the night of the incident, did you give them a description of the light skinned person?

A. I just said a light skinned guy. I told them how he appeared to be. I don't call them corn rolls. I call them chain rolls because his hair wasn't corn rolls. His hair was in plaits, but it was braided into one another so I just called them chain plaits. It wasn't

corn rolled.

Q. Did you tell them there was anything distinctive about his eyes?

A. No. They didn't ask me. I don't think they asked me.

Q. Did you tell them there was anything distinctive about his nose?

A. I don't remember.

Q. You don't remember whether you told them or you didn't tell them?

A. I don't think we ever discussed things like this. They probably asked me have I seen anything. My answer to that was probably nah. It could have been.

Q. Did you tell them about any tattoos that he could have had?

A. I don't think I seen any tattoos on him, man.

Q. Did you tell them anything about his height or his weight?

A. No. He was just taller than me. Well, I said something about the voice that you should find. That is the only thing I said something about. They asked me about the voice.

Q. Do you recall telling them anything distinctive about his mouth?

A. No, just his voice.

Q. Just his voice?

A. Yeah, his vocal.

Q. Did you recall saying whether he had a mask or anything? Do you recall whether the person had a mask or anything?

A. Nah, man. He was clear faced. That's why the whole time I was thinking they was going to kill me because they didn't have nothing on their face.

Q. Do you recall telling the police officer he might have had something covering his mouth?

A. Nah. That was just Tyreke. When I opened the door, Tyreke had his shirt like this, but it eventually slipped down. I can't tell you why he did that or not.

Q. So you're saying that you never said that Lester covered his face; it was only Tyreke?

A. I don't remember saying Lester covering his face. I am just telling you how I seen Lester, man, and if anybody can tell you more about Lester than me, that's Tamika because he was standing guard on Tamika. He was standing in front of her face the whole time.

Q. So Tamika would be the one who remembers Lester?

A. Yes, identify him a hundred percent. I can

tell you --

MR. ANDERSON: That's all the questions I have. Thank you, Mr. Scott.

REDIRECT EXAMINATION

BY MR. BATLINER:

Q. Ronald, I'm going to show you Commonwealth Exhibit Number 10. I am going to ask you to look down here at the bottom. What are these things on the floor here?

A. Those were some cookies Tamika was eating.

Q. Those are all the cookies?

A. Yeah.

Q. Point at them with the pointer so when I put my finger, I'll put it.

A. Right here.

Q. They are the ones that you were referring to?

A. Yeah.

Q. Ronald, any doubt in your mind that Lester Lynch is one of the people who came in the room that night?

A. It was him. It was him, sure, positive.

MR. BATLINER: No further questions.

THE WITNESS: It was him, man.

THE COURT: You may step down, sir. Ladies

and gentlemen of the jury, at this time we are going to take a luncheon recess. I am going to ask that you please return at 2:15. Will that give you folks enough time, 50 minutes?

THE JURORS: Yes.

THE COURT: All right, ladies and gentlemen, will you please return at 2:15. When you return, come to your new home away from home which is this jury room right here. Ladies and gentlemen, do not discuss the case between and among yourselves. Do not conduct any deliberations. Do not go to the scene of the alleged incident. Do not accept any information from any source. Don't discuss anything with anybody including yourselves.

When you return, ladies and gentlemen, please return to this jury room. When you're in the jury room, do not discuss the case between and among yourselves. Do not conduct any deliberations. If any of you have notes, would you please give those to the sheriff and he will take those and place them face down on the table. Do not take any notes with you, please.

All right, do any of you folks have notes? The sheriff will place them in the conference room face down and you can retrieve them. Of course, at any recess, do not discuss the notes and, of course, you

will not take them with you at home.

All right, at this time, Sheriff, if you would -- you will be free to leave. If you would just exit from that door, please, the way you came in. I will see you at 2:15. Wear your badges at all times to identify that you are jurors in courtroom five. Thank you. All right, court will be in recess until 2:15.

(Thereupon, a luncheon recess was had at 1:30 p.m. after which the following proceeding were had at 2:26 p.m.)

THE COURT: Bring the jury out, please.

(Thereupon, the jury entered the courtroom at 2:27 p.m.)

THE COURT: Let the record reflect the jury is present in full at this time. Ladies and gentlemen, we are going to try to be as punctual as we can for breaks and recesses and so on, and we are going to proceed as quickly as we can and hopefully we'll finish at approximately 4:00 or in that area. I think one of the ladies had to leave by then, so we will do our best to get you out as expeditiously as we can. I can't make any guarantees for tomorrow, but I am going to tell you right now we are going to start at 9:00 tomorrow morning, so please be here on time. Okay, thank you. You may proceed.

SCOTT HOWARD,

having been called as a witness, was previously sworn and testified as follows:

DIRECT EXAMINATION

BY MR. BATLINER:

Q. Would you state your name for the ladies and gentlemen of the jury?

A. Scott Howard.

THE COURT: You were previously sworn, sir?

THE WITNESS: Yes, sir.

BY MR. BATLINER:

Q. Mr. Howard, how are you employed?

A. I am a Firefighter Shock Trauma Tech for the City of Norfolk.

Q. I am going to direct your attention back to June 9, 2001. Were you so employed back then?

A. Yes, sir.

Q. Did you have an occasion to respond to a call at 3331 Lens Avenue in the city of Norfolk?

A. Yes, sir, I did.

Q. Do you know what time you got dispatched to go to that call?

A. It was approximately 12:45 or quarter to 10:00.

Q. Quarter to 10:00 at night?

A. Yes, sir.

Q. Tell the ladies and gentlemen of the jury what it is you discovered once you arrived on the scene.

A. Well, we were dispatched for a possible unconscious patient. When we arrived on the scene, we found a 40ish year old female laying face down. When we rolled her over, she was unconscious. She wasn't breathing. We examined her. When we examined her, we found she had a bullet wound right over her right eye.

Q. Then what efforts did you take at that point?

A. We placed her on a monitor. We proceeded to follow our ALS protocols. We began CPR and we began to hook her up to a monitor, started her IV, and pushed the necessary drugs.

Q. Do you remember where she was approximately when you arrived?

A. She was in the hallway.

Q. Then you say she had a gunshot wound to her face?

A. Yes, sir.

Q. One more thing. Was she identified to you by people on the scene as Belinda Scott?

A. Eventually, yes, sir.

MR. BATLINER: Answer any questions defense counsel or the Court may have.

THE COURT: Mr. Anderson, any questions?

CROSS-EXAMINATION

BY MR. ANDERSON:

Q. Mr. Howard, was her son there when you arrived?

A. I'm sorry?

Q. Were any of her family members there when you arrived?

A. At the given time, we really don't know. We got some information from her ID and we went from there.

Q. So that's how you made the body identification, through her ID?

A. Yes, sir.

Q. You have no evidence that this defendant was there, do you?

A. No, sir.

MR. ANDERSON: That's all I have, Your Honor.

THE COURT: All right. May this witness be excused?

MR. BATLINER: He may, Judge.

THE COURT: Mr. Anderson?

MR. ANDERSON: Yes, Your Honor.

THE COURT: Mr. Howard, you may be excused sir. Do not discuss your testimony with any party. Thank you.

MR. BATLINER: Dr. Kinnison.

THE COURT: Doctor, if you will take the witness stand. Would you please raise your right hand. What is your full name, please?

DR. KINNISON: It's Elizabeth Leigh Kinnison.

DR. ELIZABETH L. KINNISON,

having been called as a witness, was first duly sworn and testified as follows:

DIRECT EXAMINATION

BY MR. BATLINER:

Q. You are Dr. Elizabeth Kinnison; is that correct?

A. Yes.

Q. Dr. Kinnison, tell me how you are employed.

A. I am an Assistant Chief Medical Examiner for the Commonwealth of Virginia.

Q. Tell the ladies and gentlemen of the jury some of the training that you underwent in order to hold that position.

A. I received an M.D. degree from the University of Texas Medical Branch. I did five years of anatomical and clinical pathology at the Medical College of Virginia in Richmond, Virginia. And I did a year and a half training in forensic pathology at the Office of the Chief Medical Examiner in Richmond, Virginia.

Q. How long have you actually been active in the field of doing I guess it would be-- what's the technical term?

A. Forensic pathology.

Q. --forensic pathology?

A. Following my training, I joined the office in Norfolk in May of 1996.

Q. Have been employed there ever since?

A. Yes.

MR. BATLINER: Your Honor, I would tender her as an expert.

THE COURT: Any objection?

MR. ANDERSON: No objections, Your Honor.

THE COURT: All right. Dr. Kinnison is qualified as an expert in the field of forensic pathology.

BY MR. BATLINER:

Q. Dr. Kinnison, in the course of your employment, did you have an opportunity to perform an

autopsy on Belinda Scott?

A. Yes, I did.

Q. When did you do that?

A. Referring to my report, on June 11 of 2001.

Q. Would you go over your findings with us and tell us what you found when you first did, I guess, your initial evaluation of the deceased?

A. Are you asking about general findings?

Q. General findings.

A. She was received in a hospital gown. She had some marks of therapy on her.

Q. What do you mean by marks of therapy?

A. Those are things like IV tubes and endotracheal tubes that are placed by the Rescue Squad or the hospital in an attempt to help the person or save their life. She had no clothes on. She had no personal effects.

Q. Did you observe any wounds?

A. Yes.

Q. What wounds did you observe?

A. She had a single gunshot wound. It entered on her left eyelid. It damaged the eye, sort of went from her left to her right upwards and a little bit back damaging the brain, sort of skimmed over the surface of the brain, and I recovered a bullet from the brain, so

there was no exit wound. The wound on her lower eyelid had evidence that the gunshot wound was contact meaning that the gun, when it was fired, was actually touching the skin.

And the reason I say that is because there was some tearing of the wound edges which is typical of a contact gunshot wound because in addition to the bullet coming out, gases come out, and they can sort of tear the skin when the gun is pressed up against the skin.

There was also soot, and the soot is from the burning gunpowder that gets deposited on the skin at contact and at close range.

THE COURT: Can I see counsel for just one moment, please? Go ahead, Mr. Batliner. I'm sorry.

BY MR. BATLINER:

Q. Doctor, I am going to show you two documents and see if you recognize those.

A. This is a copy of the Report of Autopsy and Certificate of Analysis on Belinda Scott.

MR. BATLINER: Judge, I would ask they both be admitted as Commonwealth exhibits, Judge.

THE COURT: No objection, Mr. Anderson?

MR. ANDERSON: No objection, Your Honor.

THE COURT: All right, the Report of Autopsy

dated and signed June 13, 2001 will be Commonwealth Exhibit 18. The Certificate of Analysis FS lab number T01-6102 will be Commonwealth Exhibit 19.

(Report of Autopsy marked as Commonwealth Exhibit No. 18 in Evidence.)

(Certificate of Analysis marked as Commonwealth Exhibit No. 19 in Evidence.)

BY MR. BATLINER:

Q. Doctor, I am going to hand you a laser pointer. It operates there. In the Autopsy Report you prepared, it's sort of a sketch or a diagram using, I guess, preprinted models of the human head and then the body; is that correct?

A. Yes.

Q. I'm going to show you that. Is that the sketch you made in this case?

A. Yes.

Q. Tell me exactly what that depicts.

A. This is a depiction of the gunshot wound on her left lower eyelid, and this shows a little bit of tearing, and this is just some measurements that I took of the wound. Where I've crosshatched through her eyes as a result of the gunshot wound, her eyes became blackened and swollen, and that's because of the gunshot wound not because she had any blows to her face.

Q. Then you have some indication of the marginal -- what is it, soot something? What do you have written there?

A. Right there I have the marginal laceration about three-eighths inch, then there was a little -- I apologize -- inch meaning it was present marginal soot.

Q. Tell me again what the significance of that is.

A. The combination of the lacerations and soot are as a result of the gun touching the skin when the gun was fired.

Q. Then you indicated you recovered a bullet. Where did you recover the bullet?

A. The bullet was recovered from her brain.

Q. After that testimony, it's seems like a silly question, but what did you determine the cause of death to be?

A. She died from a gunshot wound to her head.

MR. BATLINER: Would you answer any questions defense counsel might have.

CROSS-EXAMINATION

BY MR. ANDERSON:

Q. Dr. Kinnison, you have no evidence that this defendant was responsible in any way or caused the death of Ms. Scott, do you?

A. That's correct, I don't know who fired the gun.

MR. ANDERSON: Thank you. That's all I have.

THE COURT: All right. May this witness be excused?

MR. BATLINER: She may, Judge.

THE COURT: Counsel, any objection?

MR. ANDERSON: No.

THE COURT: May this witness be excused?

MR. ANDERSON: Yes.

THE COURT: Doctor, you may be excused.

THE WITNESS: Thank you.

MR. BATLINER: Judge, we have a number of stipulations that we have entered into.

THE COURT: Excuse me just one second, Mr. Batliner.

(Off-the-record discussion was held.)

MR. BATLINER: Judge, we have entered into a number of stipulations, and it will be appropriate to read some of them now.

THE COURT: Ladies and gentlemen of the jury, I indicated there may be stipulations in this case. A stipulation is a statement of fact or of evidence that is agreed upon between the parties. Both sides agree that this would be as reflected in the stipulation, and

in effect they stipulate that this would be the evidence.

So Mr. Batliner is going to read the stipulation to you and that will be the evidence in this case as if the evidence were actually presented to you. Does everyone understand that?

THE JURORS: Yes.

MR. BATLINER: Hopefully it will save you time so you don't have to listen to extra witnesses. The parties stipulate that the deceased in the case is Belinda Scott. The parties stipulate that the bullet recovered from Belinda Scott during the autopsy by Dr. Kinnison was analyzed by John G. Ward, Sr. of the state lab. Mr. Ward determined it was a .25 caliber auto full metal jacket bullet. No comparison was made to any firearm as no firearm was recovered.

The parties stipulate that the stains on the left front and right rear pocket of the shorts worn by Ronald Scott on June 9, 2001 were tested by Amy Joe Townley of the state laboratory. The test indicated the presence of blood. A DNA analysis was done and the stains matched the DNA of Belinda Scott. The analysis revealed no other source of DNA material other than blood of Belinda Scott. DNA technology is unable to determine how blood was deposited on the shorts.

THE COURT: Are those all of the stipulations?

MR. BATLINER: No, sir, Judge. There actually will be two more, but they will be more appropriate to match some other evidence later on.

THE COURT: Ladies and gentlemen, those stipulations are as if someone testified to those facts and that evidence. So that has been given to you as if someone said it and both sides agree that that would be the facts and that would be the evidence with regard to those particular issues and items. All right, thank you.

MR. BATLINER: Mary Williams.

THE COURT: Have you been sworn, ma'am?

MS. WILLIAMS: Yes.

THE COURT: Thank you.

MARY WILLIAMS

called as a witness, having been previously sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BATLINER:

Q. Would you tell the ladies and gentlemen of the jury your name?

A. Mary Williams.

Q. Ms. Williams, I am going to direct your attention back to June 9, 2001. Do you remember back then?

A. Yes.

Q. Do you remember where you were living then?

A. Yes.

Q. Where were you living?

A. 3331 Lens Avenue, Apartment 2.

Q. Where is that in that building?

A. Upstairs.

Q. I am going to direct your attention to the evening on June 9, 2001. Do you recall hearing anything while you were there that evening?

A. A gunshot.

Q. What did you do after you heard the gunshot?

A. Nothing really because it didn't -- it sounded like it was outside and to the front and where I was was like in the middle of the house.

Q. Later did you have occasion to see whether or not any Rescue or anything arrived at the house?

A. Yes. The other young lady that lived upstairs told me that.

THE COURT: You can't say what anybody else said. You have to indicate what you saw. The question is did you see anything?

THE WITNESS: Yes. The paramedics was down in the hallway.

BY MR. BATLINER:

Q. Did you see what they were doing?

A. You couldn't really tell what they were doing because there were so many of them, but they were all in the hallway.

Q. Did you see who they were working on?

A. Not until we were on our way out the house.

Q. Then who were they working on?

A. Belinda Scott.

MR. BATLINER: Answer any questions defense counsel or the Court may have for you, Ms. Williams.

CROSS-EXAMINATION

BY MR. ANDERSON:

Q. Ms. Williams, do you recall what time of day or night this was?

A. After 9 o'clock. I don't know the exact time.

Q. Did you ever see Ms. Scott laying on the floor?

A. She was laying on the floor when we went out

the house.

Q. Did you see blood around her?

A. No, it was too many people.

Q. One last question. You have no evidence that this defendant was at that house that night, do you?

A. No. I've never seen him before.

Q. Thank you. You live upstairs?

A. Yes.

MR. ANDERSON: Thank you.

THE COURT: May Ms. Williams be excused?

MR. BATLINER: She may, Judge.

THE COURT: Mr. Anderson, any objection?

MR. ANDERSON: She may be excused.

THE COURT: Ms. Williams, you may be excused. That means you can leave. Don't discuss your testimony with any person or party. Next witness, please.

MR. BATLINER: Tavisha Moye.

THE COURT: Have you previously been sworn?

MS. MOYE: Have I been previously sworn?

THE COURT: Yesterday.

MS. MOYE: Not today.

THE COURT: Stand and raise your right hand.

TAVISHA MOYE

called as a witness, having been previously sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BATLINER:

Q. Would you tell the ladies and gentlemen of the jury your name?

A. Tavisha Moye.

Q. Ms. Moye, I am going to direct your attention back to June 9, 2001. Do you remember back then?

A. Some.

Q. Do you remember where you were living?

A. Yes, 3331 Lens Avenue.

THE COURT: Ma'am, could you lean just a little further and speak in the microphone, please? Thank you.

THE WITNESS: Lens Avenue, Norfolk, Virginia.

BY MR. BATLINER:

Q. Were you in one of the apartments there?

A. Yes, Apartment 2.

Q. Where is that in the building?

A. That's upstairs.

Q. I am going to direct your attention to

that evening. Did you happen to have the occasion to hear something that evening?

A. Yes.

Q. What did you hear?

A. I heard a couple of gunshots and a car speed off.

Q. What did you do after you heard the gunshots and the car speeding off?

A. Well, the gunshots sounded like it was close, it was close by. It didn't even seem like it was in the house so I backed back from the window and I didn't pay it no mind. I never looked out the window, so I just didn't pay it no mind and kept doing what I was doing, watching TV.

Q. Well, shortly after that, did it come to your attention that the paramedics or somebody had responded to 3331 Lens?

A. Right. As a matter of fact, I didn't know nothing had happened until the fire truck stopped in front of the house because they usually come down our street, but they stopped in front of the house this time. So I ran downstairs, and that's when I seen her laying there in the hallway.

Q. Seen who?

A. Belinda Scott.

Q. And this was in the evening?

A. This was about -- I think it was about 9:00, 9:30 that night.

Q. Dark outside?

A. Yes.

MR. BATLINER: Answer any questions defense counsel or the Court might have for you.

CROSS-EXAMINATION

BY MR. ANDERSON:

Q. Ms. Moye, you said gunshots. Did you hear more than one shot?

A. Yes. It sounded like about two.

Q. Then you said you heard a car speed away?

A. Right.

Q. But you never saw who was in the car?

A. No, I never seen the car or who was in it, nothing.

Q. Now, you said you came down and you saw her. Was anyone around her when you came down to see her or was she just laying there?

A. Hold on. Let me think. I don't want to tell you nothing wrong. Okay, I seen the paramedics around her, and I seen Ronald at the front door, at his front door, not at the door of the house because the door where she was laying at was a common entrance. It's a

hallway where everybody, you know, walk through, but she was facing her front door. Her head was facing her front door, and he was at her front door.

Q. Was there any blood around?

A. I didn't see any.

Q. Ms. Moye, at no point did you see this defendant anywhere at that house, did you?

A. Excuse me?

Q. At no point did you see this defendant at the house?

A. No, I ain't never seen him before in my life.

MR. ANDERSON: Thank you. That's all I have.

REDIRECT EXAMINATION

BY MR. BATLINER:

Q. You said Ronald was there. Who was Ronald?

A. Ronald Scott.

Q. How do you know him?

A. That's my ex-boyfriend's brother. I went with his brother, Tony Scott.

Q. You went with his brother, Tony Scott?

A. Yes.

Q. Was Tony Scott staying with you upstairs?

A. Yes.

MR. BATLINER: Thank you very much.

THE COURT: All right. May this witness be excused?

MR. ANDERSON: I have a question based on that.

RECROSS EXAMINATION

BY MR. ANDERSON:

Q. You were living with Tony Scott on June 9 of last year -- I mean, June 9 of 2001?

A. Yes.

Q. Was he at home at that time?

A. No, he was at work.

Q. He was at work?

A. Yes.

MR. ANDERSON: Thank you.

THE COURT: May this witness be excused?

MR. BATLINER: She may, Judge.

MR. ANDERSON: Yes, Your Honor.

THE COURT: All right, Ms. Moye, you're excused. That means you can go home. Please do not discuss your testimony with any person or party, ma'am. Thank you.

MR. BATLINER: Mr. Rivell.

THE COURT: Have you ever been sworn, sir? Were you sworn this morning?

MR. RIVELL: Yes.

THE COURT: Thank you.

ROBERT LEE RIVELL

called as a witness, having been previously sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BATLINER:

Q. Would you tell the ladies and gentlemen of the jury your name?

A. Robert Lee Rivell.

Q. Mr. Rivell, I am going to direct your attention back to June 9 of 2001, so quite sometime ago. First, can you tell the ladies and gentlemen of the jury where you were living then?

A. 3326 Lens Avenue.

Q. Where is that in relation to 3331 Lens?

A. Directly across the street.

Q. Directing your attention back to that evening on June 9, 2001, did something happen that drew your attention regarding 3331 Lens that evening?

A. Yes, when the young lady came and knocked on my door and asked me to call the paramedics.

Q. Do you remember approximately when that

was?

A. I guess it was after 9:00 or something to 10:00, something like that.

Q. Tell me what she looked like when she came to your door.

A. Oh, she was a black female, standing about 5'9", you know, small figure.

Q. What color was her hair when she came up to your door?

A. I think it was black.

Q. Did you see her again later?

A. Yes, I saw her again later and it was red. She had on a brown wig or red wig.

Q. Some kind of wig?

A. Yes.

Q. Wasn't the same color when you saw her the first time?

A. Right.

Q. Did you call the paramedics and get them out there?

A. Yes.

MR. BATLINER: Answer any questions defense counsel or the Court might have.

CROSS-EXAMINATION

BY MR. ANDERSON:

Q. Mr. Rivell, your home is directly across the street from the home of Ms. Scott?

A. Well, you know, for instance, this is where I live right where I am sitting, and the house is maybe where this man is sitting.

Q. Before this young lady came over to your house, how long had you been home?

A. Maybe about two or three minutes.

Q. When you drove up, did you happen to notice whether anybody was outside or anything like that?

A. Yes. When I drove up, I noticed it was three men standing, you know, between 3331 and 3335.

Q. Did you see any cars outside?

A. No, sir.

Q. Did you see those three people do anything?

A. No. They were just standing there at that time.

Q. Do you know how much time passed between the time that you saw those people standing outside and the time that the young lady ran to your door?

A. Well, I put it to you this way, when I drove

in my driveway, I went into the house and I had told my wife I saw three men standing out there. So I came back out, you know, just to see because I knew that was unusual and the three men was walking, you know, towards Columbo.

Q. Columbo is away from?

A. Right when you walk out of my door it's Columbo Avenue.

Q. Were they on your side of the street?

A. No, they was on the opposite side of the street.

Q. So they were walking away from the Scott's house?

A. Right.

Q. Now, you never saw this defendant out there, did you?

A. No, I didn't see nobody's face. I saw three men.

Q. But you have never seen him there?

A. No, I never seen him before.

MR. ANDERSON: Thank you.

MR. BATLINER: No further questions.

THE COURT: All right, may this witness be excused?

MR. BATLINER: He may, Judge.

THE COURT: Mr. Anderson?

MR. ANDERSON: Yes, Your Honor.

THE COURT: All right, Mr. Rivell, you may be excused, sir. That means you may go home. Please do not discuss your testimony with any person or party. Next witness.

MR. BATLINER: May we approach for just a moment?

THE COURT: Yes, sir.

(Sidebar off-the-record.)

MR. BATLINER: Investigator Martin.

THE COURT: Have you ever been sworn, sir?

INVESTIGATOR MARTIN: Yes, sir.

THE COURT: All right, thank you.

INVESTIGATOR E.L. MARTIN

called as a witness, having been previously sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BATLINER:

Q. Why don't you tell the ladies and gentlemen of the jury your name.

A. I am Investigator E.L. Martin with the Norfolk Police Department.

Q. What assignment do you currently have?

A. Detective Division Forensic Unit.

Q. Investigator Martin, I am going to direct your attention back to June 9, 2001, quite sometime ago. Were you in that division at that time?

A. Yes, sir.

Q. Did you get assigned to go to the scene of 3331 Lens Avenue on the evening of June 9, 2001?

A. Yes, sir.

Q. Tell the ladies and gentlemen of the jury what time you were dispatched and then what time you arrived.

A. I was asked to start responding at 22:05 hours which was five after 10:00 at night, and I arrived at 12 minutes after 10:00.

Q. What did you do when you arrived at the scene?

A. When I arrived at the scene, Investigator Huffman, also with the Norfolk Police Department, was on the scene and he advised me of the basic situations they knew at the time. He and I walked through 3331 Lens Avenue looking for evidence or potential evidence at that time, and he was explaining to me basic things that were known at the time. I took some preliminary notes as I was walking through, just general condition type notes and then I came back out of the building to prepare to do my

forensic work.

Q. Tell me when you say to prepare to do your forensic work, what is it you would do at the scene?

A. When I came back out, I strung banner guard which is a yellow crime scene tape, around the front part of the building to secure that. I took 35-millimeter photographs of the front of the house from the outside, things on the front porch and began to work my way through the first floor of the house taking photographs and making basic observation notes. That was my first step.

Q. Let's go through your observation notes. What did you observe in the house?

A. Referring to my notes, some of the basic observations I made were red stains on the front porch which was on the outside of the house, red stains on the carpet in the hallway just as you would enter the house.

Also as soon as you came in the front door, there was a hallway with stairs to the left. There was an overturned easy chair at the bottom of the stairs.

There were red stains by the door that at the time appeared they had a possible shoe impression on it. As I went through the rest of the house or also in that same area of the hallway from the front door leading to the rest of the house, it was dark. The

lightbulb was missing from the fixture in the ceiling.

The front door and the storm door to the house, the front of the house was open when I got there. I didn't have to open that.

The door leading from the hallway to the living room was open. There was no door leading from the living room to the kitchen area, no door that I saw. A TV in the living room was on with a small light, and also they had a long fish tank that had the lights on in the fish tank. The door leading from the kitchen to the bathroom was open and there was a light on in the bathroom.

The door leading from the kitchen going into what I refer to as the utility area of the house was open and the light in that utility area was off.

There was also another entrance door in that utility area. That was shut and locked. The door leading from the utility room to the back bedroom was open and a light was on in a back bedroom.

I just made a general observation note that the majority of the house appeared to be clean and in order with the exceptions of the area in the front hallway by the front door and the back bedroom. Then I checked doors, entrance doors looking for possible forced entry or what could possibly be forced entry to

the house.

In the house I took some photographs of that particular area. After I finished making these basic observation notes, I began to draw a field sketch or a crime scene sketch, a rough sketch placing certain things that I wanted to collect or have collected as evidence or potential evidence, and I placed that in the sketch.

Q. Did you make a sketch?

A. Yes, sir.

Q. Investigator, I am going to show you what's been previously marked as Commonwealth Exhibit Number 2. Do you recognize that?

A. It appears to be a duplicate and a little bit smaller version of the diagram I drew, yes, sir.

Q. Investigator, I am going to hand you the laser pointer. Why don't we go through your sketch and you tell the ladies and gentlemen of the jury what it is that you marked down as significant when you put your sketch together.

A. This area is the front porch area that I was referring to. It had red stains on it. To the right of that that's not in that picture would be Lens Avenue. So the house would be to the left of Lens Avenue.

This is a screen door and the front door to

the house. This area here, there was a red stain on the carpet that appeared to be an partial shoe impression. There was a red stain on the cement patio here. This is the easy chair, lounge chair I was referring to that was overturned in front of the stairwell. There was also a red stain mark on the carpet here.

Q. Let me stop you for just a second.

A. Yes, sir.

Q. Let me show you a photograph. Do you recognize that?

A. Yes, sir. That's an enlargement of a photograph I took of the red stain in the hall, in the carpet in the hallway.

Q. Do you know which red stain that would be?

A. It would be this stain here.

MR. BATLINER: I ask this be marked as a Commonwealth exhibit.

THE COURT: All right, without objection the photograph, is that the --

MR. BATLINER: Red stain in the hallway.

THE COURT: Photograph of the hallway of 3331 Lens Avenue will be Commonwealth Exhibit 20.

(Photograph of Hallway marked as Commonwealth

Exhibit No. 20 in Evidence.)

THE COURT: You wish that published to the jury?

MR. BATLINER: Yes, sir.

THE COURT: Sheriff, publish that, please.

All right, thank you, Sheriff.

BY MR. BATLINER:

Q. Let me also show you this photograph. Do you recognize that?

A. Yes, sir, that's also an enlargement photograph I took of the front door area from the outside facing 3331 Lens Avenue.

THE COURT: What exhibit number is that?

MR. BATLINER: This is Commonwealth Exhibit Number 1, Judge.

THE COURT: Thank you.

BY MR. BATLINER:

Q. Would you show on your sketch where that would show up on your diagram?

A. This is the front door here. This is the screen door and this is the regular door to the house. The photograph was taken from this area, from the right to the left.

Q. So this door here in the center of Commonwealth's 1 is where?

A. Right here. This door right here.

MR. BATLINER: Can everyone see?

THE JURORS: Yes.

BY MR. BATLINER:

Q. I am going to show you what has previously been admitted as Commonwealth Exhibit Number 3. Do you recognize that?

A. Yes, sir. That's also an outside photograph I took of the porch area showing the front door and red stain on the cement porch.

Q. Where would that be?

A. I was standing approximately in this area photographing downwards towards the front door. This is the outside covered porch.

MR. BATLINER: Commonwealth Exhibit 3.

THE COURT: All right.

BY MR. BATLINER:

Q. I am going to show you what has previously been admitted as Commonwealth's Exhibit Number 4. Do you recognize that one?

A. Yes, sir. That's also an enlargement of a photograph I took. This represents the hallway showing from the interior of the house toward the front door area.

Q. Would you show it on there?

A. Yes. This is what I am referring to as the

hallway area. This photograph is taken from approximately this position, from here going to the right showing the front door and the step area, and also the overturned sofa chair.

Q. In the photograph, at the bottom of the photograph there appear to be things on the ground. Can you tell what those are?

A. Those appear to be medical waste left by the paramedics, wrappers of certain type of medical treatment gear.

Q. I am going to show you what has previously been admitted as Commonwealth Exhibit 5. Do you recognize that?

A. Yes, sir. That's the photograph I took of what I refer to as the living room area. I was standing approximately in this location taking just a general photograph straight up showing this section or the top section of the living room.

Q. I show you what's previously been admitted as Commonwealth Exhibit Number 6.

A. This is also an enlargement of a photograph I took showing an area from the living room going into the kitchen and also showing another doorway in the background.

Q. Where would that be on your sketch?

A. That would be standing approximately in this area with the photograph going to the left showing things in the kitchen and the other doorway to the left here.

Q. In the areas we've talked about now, the living room and the kitchen, did you mark anything of significance in those areas?

A. No, sir, just the photographs.

Q. Did you go into the back bedroom?

A. Yes, sir.

Q. Let me show you first what's been previously admitted as Commonwealth Exhibit Number 8. Do you recognize that?

A. Yes, sir. That's an enlargement of a photograph I took in the back bedroom close to the doorway going into the bedroom straight back to the left. That would be standing in approximately this area in the back bedroom taking a photograph to the left which would be in a western direction showing in this area and the bed area and the part of the wall.

Q. This being the bed that you referred to?

A. Yes, sir.

Q. I am going to show you, do you recognize Commonwealth Exhibit Number 9?

A. Yes, sir. That's also an enlargement of a photograph I took showing the same back bedroom more

toward the western or the middle of the room towards the doorway of the bedroom itself. I am standing approximately in this area showing the photograph going downward slightly on the diagram and to the right.

Q. So these two are almost from different directions?

A. Opposite.

Q. Opposite directions?

A. Yes, sir.

Q. I am going to show you what has been admitted as Commonwealth's 10. Do you recognize that?

A. Yes, sir. That's the doorway as it was when I found it leading to the back bedroom and also different items inside the back bedroom.

Q. What would that angle have been from?

A. I was standing in what I am calling the utility area approximately here showing a partially open door going to the back bedroom and different items and articles on the north part of the bedroom wall area.

Q. You had testified you had looked at some door jams for some damage. I am going to show you what has previously been marked as Commonwealth Exhibit 7 which I believe is the front door; is that correct?

A. Yes, sir. That's an enlargement of a photograph I took showing the front door around the lock

area, the jam area that was leading into the living room from the hallway standing approximately in this area, photographed from the left to the right showing this part of the wall, the door leading from the hallway into the living room and also partially into the front bedroom here.

Q. Now, when you went into the bedroom, did you find items that you thought were worthy of marking on your sketch?

A. Yes, sir.

Q. What did you discover?

A. On a dresser type thing that was covered with a cloth, I found a brown plastic bag with undetermined type of powder in it. There were two of those that I found, what I have listed as item number one and item number two, little brown bags with white powder in them.

And just outside in a utility area was a gold crucifix laying on the floor. And also I found a black canister, film canister and lid that a roll of 35-millimeter film would fit into and you put in there for protection. And also on the floor in this area was a lot of broken food items, appeared to be like Oreo cookies. They were all crushed up. I took a sample of those.

Q. Are they depicted in any of your photographs?

A. None that we have seen here, sir. Yes, sir, actually this one right here you see part of the cookies.

Q. This is in Commonwealth Exhibit 10?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. Where is what you're talking about?

A. On the floor in this area right in here is where what I thought were cookie crumbs, Oreo cookies which would be right here on the diagram.

Q. Once you had made the sketch and done the photographs, did you do anything else at the scene?

A. Another investigator from the forensic unit had arrived on the scene, and I told him what I wanted collected for evidence. I had photographed it, put it in my sketch, measured its locations, and I told him I wanted it collected and certain things I wanted a latent exam on, and I left the scene from there.

Q. Was that Investigator Douros?

A. Yes, sir.

Q. Then did there come a time, I guess the next day, when you were called to take some other photographs?

A. Yes, sir.

Q. I am going to show you Commonwealth Exhibits 11 through 15 and I'll let you look at them collectively.

A. Yes, sir.

Q. You recognize what those are?

A. Yes, sir, items 11 through 15 are photographs that I took in the Detective Division in interview room number C of a Ronald Scott showing lacerations or abrasions to his head and red stains on tan shorts that he was wearing.

Q. Do these accurately depict his appearance at that time?

A. Yes, sir.

MR. BATLINER: Investigator, if you would answer any questions defense counsel or the Court may have.

THE COURT: All right, Mr. Anderson.

CROSS-EXAMINATION

BY MR. ANDERSON:

Q. Investigator Martin, just a few questions. You said that when you walked up, you saw a shoe print in a red stain?

A. What I suspected to be a partial shoe impression in a red stain making the impression, yes, sir.

Q. Were you ever able to determine what shoe made that impression?

A. I myself did not, no, sir.

Q. Do you know if anyone attempted to find out what shoe made that impression?

A. I don't know, sir.

Q. Now, when you walked into -- when you first came into the house, you said the screen door and the front door was open?

A. When I arrived at the scene, yes, sir.

Q. Did you examine the door?

A. Yes, sir.

Q. In fact, you didn't see any evidence there had been any forced entry, no splinters or anything like that there?

A. I didn't see anything that appeared to be fresh damage to the doors or jams.

Q. Now, did you also photograph the door leading to the back bedroom? Did you examine it?

A. Yes, sir.

Q. Isn't it a fact you didn't find any evidence that that door had been freshly damaged?

A. That's correct.

MR. ANDERSON: Your Honor, may I speak to the Commonwealth for one second?

THE COURT: Yes, sir.

(Discussion off-the-record.)

BY MR. ANDERSON:

Q. Investigator Martin, as a part of your investigation, were you requested by some member of the Norfolk Police Department to photograph a vehicle?

A. Yes, sir.

Q. Would that vehicle have been a '91 Legend Acura?

A. Yes, sir.

Q. Did you give a description -- did you give a color of that vehicle?

A. I have on my notes black.

Q. One last question. Investigator Martin, you never saw this defendant at the scene of that crime; is that correct?

A. That's correct, sir.

Q. You have no evidence that he was there, do you?

A. I do not, no, sir.

MR. ANDERSON: That's all I have.

REDIRECT EXAMINATION

BY MR. BATLINER:

Q. The photographs of the car that you took, was that -- you remember who requested that?

A. That was the request of Investigator Huffman.

Q. I am going to show you two photographs. See if you recognize those.

A. Yes, sir. This is the Acura Legend that I went to 975 Goff Street and photographed it at the request of Investigator Huffman.

Q. You were checking that against your records; is that correct, when you were verifying it?

A. Yes, sir.

MR. BATLINER: I would ask these be admitted as Commonwealth exhibits.

THE COURT: All right, the two photographs of the Acura automobile testified to by the witness will be Commonwealth Exhibits 21 and 22 respectively.

(Photograph of Acura Legend marked as Commonwealth Exhibit No. 21 in Evidence.)

(Photograph of Acura Legend marked as Commonwealth Exhibit No. 22 in Evidence.)

MR. BATLINER: Judge, I am going to put up on the projector Commonwealth's 21 and Commonwealth's 22, and I have no further questions for Investigator Martin.

RECROSS EXAMINATION

BY MR. ANDERSON:

Q. Investigator Martin, we have the exterior photographs. Did you photograph anything on the inside of the car?

A. Yes, sir, I did.

Q. Did you recover any fingerprints from the inside of the car?

A. No, sir. I was only asked to photograph the vehicle.

Q. To the best of your knowledge, no fingerprints were recovered then?

A. Not then. I was just asked to do the photographs of a vehicle.

Q. Did anybody ask you to photograph anything that resembled a blood stain or anything like that?

A. I don't recall that, sir.

Q. So you don't have any photographs of any blood stains inside the car?

A. They were taken. I haven't seen any today, sir.

Q. What was taken, the photographs were taken?

A. The photographs were taken of the interior

as well as the exterior of the vehicle.

Q. But to the best of your knowledge, did you recall any blood stains -- like on the house you had a red blood stain on the carpet. Do you recall any red blood stains being in the car?

A. No, sir, I don't recall that.

MR. ANDERSON: Thank you.

THE COURT: All right, you may step down, sir. Do not discuss your testimony with any person or party, sir.

THE WITNESS: Yes, sir.

THE COURT: Thank you.

MR. BATLINER: Judge, I can read another stipulation.

THE COURT: All right. Ladies and gentlemen of the jury, please listen to this stipulation which has the same effect as the previous stipulations that I have indicated to you.

MR. BATLINER: On June 9, 2001 Investigator R.J. Douros of the Norfolk Police Department Forensic Division attempted to recover fingerprints from 3331 Lens Avenue in the city of November. Investigator R.J. Douros did not recover any fingerprints from 3331 Lens Avenue on June 9, 2001.

THE COURT: All right. Ladies and gentlemen

of the jury, at this time we are going to recess for the day, and we are going to commence tomorrow at 9 o'clock and 9 o'clock sharp, please. When you return tomorrow morning, ladies and gentlemen, return to this jury room. Do not go downstairs. They will have some of those good doughnuts for you up here. So return to this jury room. Do not go downstairs.

And when you leave tonight and when you return tomorrow, ladies and gentlemen, at all times do not discuss the case between and among yourselves. Do not conduct any deliberations. Do not go to the scene of the alleged incident. Do not accept any information from any source.

If there is any publicity on this from any source, from the media, immediately tune it out or do not look at it. Do not accept any information in regard to this case from any source. And again, ladies and gentlemen, when you reconvene tomorrow morning at 9 o'clock sharp or before hopefully because I hopefully anticipate we will start at 9 o'clock sharp, do not discuss the case between and among yourselves. Do not conduct any deliberations.

Ladies and gentlemen, if you have the notes and any notes, would you please leave those with the sheriff and he will put those face down on the table,

on the jury table. And with that, ladies and gentlemen, you may leave with the thanks of the Court and we'll see you tomorrow morning.

Court will be in recess until 9 o'clock tomorrow morning. Please everyone be here on time so we can start at 9 o'clock.

MR. BATLINER: Yes, sir.

MR. ANDERSON: Yes.

(Thereupon, the proceeding adjourned at 3:30 p.m.)

V I R G I N I A:

IN THE CIRCUIT COURT FOR THE CITY OF NORFOLK

ORIGINAL

| | |
|---|---|
| COMMONWEALTH OF VIRGINIA,<br><br>Plaintiff,<br><br>vs.<br><br>LESTER BERNARD LYNCH,<br><br>Defendant. | NOS. CR01003499-07, 08, 09, 10, 11 |

EXCERPT

VOLUME II

TRANSCRIPT OF TRIAL PROCEEDINGS

Norfolk, Virginia

March 19, 2003

Before: THE HONORABLE MARC JACOBSON
and a Jury.

Appearances:

OFFICE OF THE COMMONWEALTH ATTORNEY
By: RONALD BATLINER, ESQUIRE
Counsel for the Plaintiff

ROBINSON, NEELEY & ANDERSON
By: GEORGE A. ANDERSON, JR., ESQUIRE
Counsel for the Defendant

I N D E X


| WITNESSES FOR THE PLAINTIFF: | DIRECT | CROSS | REDIRECT | RECROSS |
|---|---|---|---|---|
| KENNETH PARKER (Proffer) | 120 | 125 | | |

EXCERPT TRANSCRIPT OF PROCEEDINGS

* * *

(Proceedings held in conference room.)

THE COURT: Let the record reflect that the defendant, Lester Bernard Lynch, Jr., is present with his attorney, Mr. Anderson. Commonwealth attorney, Mr. Batliner, is also present at this time and Mr. Kenneth Parker -- is that your name, sir?

MR. PARKER: Yes, sir.

THE COURT: -- is also present at this time. Please raise your right hand, sir.

(Thereupon, Kenneth Parker was duly sworn.)

THE COURT: Mr. Batliner and Mr. Anderson, it's my understanding that there is in effect a motion in limine as to a portion of Mr. Parker's testimony; is that correct?

MR. ANDERSON: That's correct, Your Honor. It appears that the Commonwealth intends to try to introduce, I guess it's an admission of Gregory Williams, and it's our position that the statement shouldn't be admitted.

THE COURT: I am going to let the testimony be proffered at this time without prejudice in order that the Court can consider the motion. Any objection, Mr. Anderson?

MR. ANDERSON: No, Your Honor.

THE COURT: Mr. Batliner.

MR. BATLINER: No, sir, Judge.

THE COURT: You may proceed on that basis.

KENNETH PARKER

called as a witness, having been previously sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BATLINER:

Q. State your name for the Court Reporter, please.

A. Kenneth Parker.

Q. Kenny, I am going to direct your attention back to June 9 of 2001. You had come into contact with the defendant on that date; is that correct?

A. Yeah.

Q. Both times over at Gregory Williams' house?

A. His brother's house.

Q. His brother, Christopher Williams' house?

A. Yeah.

Q. On the second time, on the second

occasion when you were there, did there come a time when you had a conversation with Gregory Williams?

A. Yes.

Q. Tell the Judge first where that conversation was in the house.

A. It was like at his brother's bedroom door in the hallway area.

Q. Were you in the hallway?

A. Yeah.

THE COURT: That's Gregory Williams' brother?

THE WITNESS: Yeah.

MR. BATLINER: Christopher Williams.

THE COURT: So is Christopher Williams' hallway adjacent?

MR. BATLINER: Yes, sir. Actually, I have got a picture of the house out in the exhibits if you want to get a better view of what the house looks like.

THE COURT: I think it would be helpful.

MR. BATLINER: You can see the exterior of the house.

THE COURT: Show it to Mr. Anderson first.

BY MR. BATLINER:

Q. Is that Christopher Williams' house?

A. Yes, it's the house. Upstairs.

MR. BATLINER: Judge, I don't know if you

want to mark it for purposes of this or if you want to wait.

THE COURT: Let me see that, please. The Court will view that at this time. No objection, Mr. Anderson?

MR. ANDERSON: No objection, Your Honor. That's just the outside, though, of the house.

THE COURT: That's the outside of the house, that is correct.

MR. BATLINER: That's as good as I can give you in terms of a perspective of it because it was Christopher Williams' house.

THE COURT: All right.

BY MR. BATLINER:

Q. So you were upstairs, in the hallway upstairs. Where in relation to that are the steps going downstairs?

A. It's right there. Okay, as soon as you come up the stairs, it's the bathroom. As soon as you come up the steps, it's a bathroom right there, and there is the hallway, and this is the bedroom leading to other rooms.

BY MR. BATLINER:

Q. So you're right at the top of the steps?

A. Yes, right at the top of the steps.

Q. What was being said to you?

A. Gregory, basically I had overheard him telling his brother what had just happened and so that made me get into the conversation because I know --

THE COURT: I am sorry, you overheard?

THE WITNESS: I overheard Gregory telling his brother what they had just done.

THE COURT: Gregory telling Christopher?

THE WITNESS: Yeah, what had just happened.

BY MR. BATLINER:

Q. So then you started talking to Gregory?

A. Yeah, because I knew Ronald and his mother.

Q. What did Gregory say to you when he was talking to you at the top of the stairs, sir?

A. He said that it was another little young guy downstairs standing at the car. He was like he was trigger happy and that he had shot a woman, and that they had just come from off a sting at Little Ronald's house.

THE COURT: I'm sorry, they had just come off a sting at Little Ronald's house?

THE WITNESS: Yes, Little Ronald's house.

THE COURT: Who said that?

THE WITNESS: Gregory. This is what Gregory is saying.

THE COURT: All right, sir.

BY MR. BATLINER:

Q. Then what happened?

A. While he was -- while Gregory was telling us what had happened at the house, he came up the stairs?

THE COURT: Who is he?

THE WITNESS: Mr. Lester. He came up the stairs and he was like --

THE COURT: When you say Lester, who is that?

THE WITNESS: This guy right here.

THE COURT: Let the record reflect the witness is pointing to the accused, Lester Bernard Lynch, Jr.

THE WITNESS: He came up the stairs, and he was like, why is you telling them what we just done? He is like, this is my brother Gregory, said this is my brother, he ain't going to say nothing. He is like K.P. cool, he ain't going to say nothing. I said, I ain't got nothing to do with it, and I just went on downstairs.

BY MR. BATLINER:

Q. Did you see where Lester had come from?

A. He came from downstairs from the car. The car was parked right up in the driveway.

Q. I mean, when you were having the conversation, did you see where he had come from?

A. He came from downstairs, upstairs to where

we as at.

Q. Then while you're having the conversation, that's when he said why are you telling him what we just done?

A. Yeah.

THE COURT: All right. Anything further?

MR. BATLINER: I think that's the part of the testimony that's in dispute.

THE COURT: Mr. Anderson.

CROSS-EXAMINATION

BY MR. ANDERSON:

Q. Mr. Parker, you saw a light skinned person and a dark skinned person downstairs; is that correct?

A. I didn't see a light skinned person. I saw him downstairs.

THE COURT: When you say him, who are you pointing to?

THE WITNESS: Lester. This guy sitting right here in the corner.

THE COURT: Let the record reflect he is pointing to the accused, Lester Bernard Lynch, Jr.

BY MR. ANDERSON:

Q. They were downstairs; is that correct?

A. At what time? At what point?

Q. You saw a car pull up?

A. At what time, when they came back or when they first came?

Q. When they came back.

A. Yeah.

Q. Gregory goes upstairs; is that correct?

A. Yeah. When they pulled up, he was driving.

THE COURT: Sir, when you say he, you have to indicate.

THE WITNESS: All right. Lester was driving when they pulled up, when they came back up.

BY MR. ANDERSON:

Q. My question to you was, Gregory went upstairs?

A. Yeah.

Q. Is that correct?

A. Right.

Q. The person that you're calling Lester and the dark skinned person stayed downstairs; is that correct?

A. Yeah, until he got the door open because he was like ringing the bell to get the door open.

Q. Then Gregory went upstairs?

A. Right.

Q. You followed upstairs?

A. Right.

Q. The person you are calling Lester and the dark skinned person stayed downstairs; isn't that correct?

A. For a second, yeah.

Q. Now, Gregory then knocked on the door, the bedroom door of his brother; is that correct?

A. Yeah.

Q. And at that time you were sitting in the den?

A. Yeah, when he knocked because his girlfriend was in labor.

Q. Just answer the question. You were sitting in the den?

A. Right.

Q. You were sitting in the den with a number of other people; isn't that correct?

A. I followed Gregory upstairs.

Q. So is now your testimony that you weren't sitting in the den with a number of other people?

A. Yeah. When I followed him upstairs, I went to the den. He went to his brother's room.

Q. So you weren't in the hallway then; is that correct?

A. Not at that time. I didn't go into the

hallway until his brother, Christopher, came out of the room. And when he came out of the room, I went to the bathroom. When I went to the bathroom, I overheard Gregory telling him what had happened.

Q. So this conversation took place in the bedroom?

A. No, it took place in the hallway. His brother came into the hallway because his girlfriend was in the room. She was going into labor.

Q. At this time Gregory tells his brother what has happened; is that correct?

A. The little young boy downstairs is trigger happy.

Q. My question is he told his brother what had happened?

A. Yeah.

Q. At that point you don't see Mr. Lynch, do you?

A. No, not at that time. He didn't come up the stairs right then. He didn't come up the stairs until --

THE COURT: Mr. Anderson, let him finish his answer.

THE WITNESS: He didn't come up the stairs -- like when I got in the conversation like after I overheard him, what he was telling his brother, that's

when I got in the conversation, and that's when he came up the stairs.

BY MR. ANDERSON:

Q. So in fact, when he came up the stairs, Gregory Williams was not talking but in fact you were talking?

A. We all were talking. As far as I am concerned, he might have been standing at the bottom of the stairs listening to us the whole time.

Q. But you have no evidence of that, do you?

A. No, I don't have no evidence. I ain't a detective. I'm saying the way he came up the stairs, he heard something because he asked him why was he telling us.

Q. In fact, you've testified before you don't know what he heard, do you?

A. What who heard?

Q. Lester.

A. I can't hear for him. You know what I am saying? Only thing I can do is tell you what he said. As far as what he heard, them his ears. I can't tell you exactly what he heard. Only thing I know is he asked him why was he telling him what they had just done.

Q. Do you recall earlier testifying that he said -- you said earlier -- Gregory had already

testified, and then you said: I said, you know, that was probably that man's mama. He was like, no, it was a skinny lady. It was like, a skinny lady. I said, his mama skinny. He said, nah, probably was his sister. I said, his sister and them don't even stay there. His mama stay there. You all probably hurt that man's mama, you know what I am saying? As I was saying that to him, he -- you're referring to Lester -- was coming up the stairs. Do you recall that?

A. Yes.

Q. So this is your conversation at that time. This is not Gregory Williams' conversation; isn't that correct?

A. If you sat there and said what we was saying back and forth, if he is coming up the stairs, I am quite sure he was hearing everything.

Q. My question is, was it was your conversation?

A. It was our conversation.

Q. But your testimony at an earlier time, you were saying at that time that's when he came up the steps; is that correct?

A. Yeah. I mean, I didn't put the exact point of time, whether he came when Gregory was talking or whether he came when I was talking. I didn't say that in

my testimony at Gregory's trial. I'm telling you the man came upstairs when we was talking and he asked him why was he telling us that. At what point what he heard or whether I was talking or whether Gregory was talking, I don't know. You know what I am saying? You're asking me to tell you something that I don't know.

Q. Did he ever say what that was?

A. What what was?

Q. You said, why are you telling him what we just done? Did he ever say what that was that they had just done?

A. No, but Gregory responded back to him and said, this my brother, and K.P. is cool. He ain't going to say nothing. Eventually he was talking about what he was telling us about.

Q. So you assume that, right?

A. Yeah. Well, I am assuming.

MR. ANDERSON: That's all I have, Your Honor.

THE COURT: All right.

MR. ANDERSON: That's all I have.

THE COURT: Any further evidence?

MR. BATLINER: No, sir, Judge.

THE COURT: Would you take Mr. Parker back? Thank you, Mr. Parker.

(Mr. Parker left the conference room.)

THE COURT: All right, argument, please. Let the record reflect the defendant is present in person with his attorney, Mr. Anderson. The Commonwealth's attorney, Mr. Batliner, is also present.

MR. BATLINER: Judge, I mean, from the Commonwealth's perspective, I believe it's clear. The proof is in the pudding. He came up. Whether you hear it, the issue, I mean, is pretty much decided when he says why are you telling him what we just done? So I think he is admitting in that statement that he has heard what the conversation was that was going on that preceded it.

So I think you have exactly what you need which is the presence in the hearing of the statement, and certainly to say that you shot somebody is a statement that should have been denied if it's one of those things. I think it fits right within the law and the Commonwealth's position is it is an adoptive admission, and it's very clear that's an adoptive admission.

THE COURT: Mr. Anderson.

MR. ANDERSON: Your Honor, I don't think it can be any clearer it should not be an adopted admission. The first element you have to show is he must have heard the statement. Typically when you look

at these cases, the defendant has taken the stand and testified that he was there and he knew what was going on. In this case, it's completely different. The defendant hasn't taken the stand, hasn't said that he is there. The only person that we have putting him there while that statement is being made is Mr. Parker.

Mr. Parker's testimony is he assumed that he understood what was going on. His statement was that the person was coming up the stairs and after several times of asking him, he assumed that he was coming up the stairs while Mr. Parker is making the statement, not while Gregory Williams is making the statement.

Now, today he says it was going back and forth, but there is no indication that Mr. -- it appears from his testimony that Mr. Williams had already told his brother, and he had begun questioning Mr. Williams about what Mr. Williams had done trying to get details about what Mr. Williams had told his brother. And at that point, the person that he describes as Lester Lynch comes up the stairs. There is no evidence that Mr. Williams was -- I mean, that the person he describe as Mr. Lynch was present at the time that the statement was made. There is no evidence that the person described as Mr. Lynch understood and understood that a crime had been committed.

The only thing that he is saying that the defendant said is why are you telling him what we did? But at no point does Mr. Williams say at the time that the defendant is there, we pulled a sting. That conversation had already happened before the defendant got there.

Mr. Parker just responded, what he said was this is my brother, he won't say anything. This is K.P, he won't say anything. But he never says at the time in the presence of Mr. Lynch we committed a sting. That conversation happened before the person described as Mr. Lynch even arrived.

And for that reason I think the Court has to rule the statement cannot be admitted.

MR. BATLINER: We would disagree, Judge. We believe it's an obvious reference. That's the statement that got him up the steps to say why are you telling him what we done. We believe it is clearly an adoptive admission.

MR. ANDERSON: Your Honor, again, I would suggest -- well then what would be the explanation for K.P. coming up the steps and all the other people coming up the steps? It appears that the person came up the steps because a number of people came up the steps. It appears that the people were just hanging

out there. Your Honor, I would respectively ask the Court, once that bell is rung, once you put that in, we can't un-ring testimony. And unlike the last time when this was heard, we didn't know K.P. was going to say he was the one that was talking at the time, not Gregory Williams. There is no evidence that Gregory Williams was talking when this defendant came.

The only thing that Gregory Williams says in the presence of the defendant, this is my brother, he won't talk. This is K.P, he won't talk.

MR. BATLINER: That's completely illogical, Judge. Why would he say why are you telling him what we just done if that's all that he overheard? That's completely illogical.

MR. ANDERSON: Your Honor, for what we know, they could have just went and got high someplace.

MR. BATLINER: But we know that's not what happened.

MR. ANDERSON: We don't know. We are making assumptions.

THE COURT: All right, gentlemen, I am going to take a few minutes to review the law, and I should be out shortly.

(Thereupon, the following proceedings were held in the courtroom.)

THE COURT: The Court has had an opportunity to hear the evidence in the limine motion relative to a conversation that was had which the Commonwealth seeks to cause to be admitted into evidence as an adoptive admission or an admission by silence, and which conversation the defendant objects to and says should not be admitted as evidence.

The law is clear in Virginia that when a statement is made either to a person within that person's hearing that concern the commission of a crime to which no reply was made by the person allegedly involved or concerned with the crime and no reply is made by such person, that the natural inference is that the imputation is well founded that such person in this case, the accused, Lester Bernard Lynch, Jr, would have contested it or repelled it.

And the evidence in this case is that Mr. Parker was involved in a conversation with others, including allegedly perhaps one other that was involved in the alleged crime when statements were made to the effect that a sting was being undertaken resulting in the death of a person or someone being shot, there being referenced to a person being trigger happy, there was a discussion to this effect and reference was made in effect to the shooting of Belinda Scott. May I see

the file, please, Madam Clerk? And it's certainly clear to this Court that is the incident that's being referred to, and the defendant, Mr. Lynch, according to the testimony, came up the stairs and said in effect -- I may not be quoting verbatim but -- in effect, why are you telling him what we had just done, after a discussion of the sting and the shooting. And further in the conversation, apparently with Mr. Lynch present, there is a reference again, and I stand to be corrected, that one of the persons said K.P. is cool, he won't say anything. And I stand to be correct if that's not basically what was stated.

And there is no evidence that the defendant, Lester Bernard Lynch, Jr., was anything but silent other than that statement that he made of why are you telling him what we had just done.

It's clear to the Court that the statement must have been heard by Mr. Lynch, the person who has claimed to have acquiesced to it, and it is clear to this Court the statement must have been understood by Mr. Lynch and that the subject matter must have been within his knowledge, and there is no evidence of any physical or emotional impediment or any reason that he could not make the denial. And it is clear to this Court that the statement that was made by Mr. Lynch is

indicative of an indication that the conversation which he overheard would call for such denial under the circumstances.

There is nothing in the record that would indicate that the defendant denied or objected to what he had heard which would have caused him to come up and say why are you telling him what we had just done, the statement of Mr. Lynch. And there is no evidence in the record that he didn't have a full opportunity to deny or object to that, to the conversation he was responding to which involved the commission of crimes, and the failure so to do could be considered an acquiescence to the accusations.

And when a statement tending to incriminate one accused of committing a crime made in his presence and hearing, such statement is not denied, contradicted or objected to, both the statement and the fact of the failure to deny are admissible in criminal proceedings as evidence of the acquiescence in its truth.

The Court is going to permit the testimony considering that the totality of the evidence and the testimony, the totality of the circumstances would reasonably lead to an inference as to what had been done criminally and to the failure of the defendant to deny that. Needless to say that that is a jury

question as to the probative value of that and certainly is subject to cross-examination, Mr. Anderson, of Mr. Parker. And as to the probative value and to the inferences, that is subject to the jury's determination.

But the Court is going to permit the evidence to be presented, that is, testimony of Mr. Parker which was the subject of the motion in limine subject to any proper objections as to any other matters other than what I have determined this morning at this time. All right, thank you.

MR. ANDERSON: For the record, note our exception.

THE COURT: All right, sir. Bring the jury out.

MR. BATLINER: Judge, what I am going to do is call Investigator Martin, recall him to do the interior of the car and then we will go to Kenny Parker. The investigator is bouncing between other courtrooms.

THE COURT: Is he available now?

MR. BATLINER: He was right out in the hall so it will only take a moment.

(Thereupon, the jury entered the courtroom at 9:40 a.m.)

THE SHERIFF: Judge, one of the juror's notes that were turned in yesterday are not available today.

THE COURT: What happened to them?

THE SHERIFF: I had them on my desk together this morning, and one of the jurors must have picked them up and I don't know.

THE COURT: None of you took your notes home with you, did you?

THE JURORS: No.

THE SHERIFF: There were three sets of notes that were left with me yesterday.

THE COURT: All right, we'll proceed on. Let the record reflect the jury is present in full at this time. Ladies and gentlemen, I appreciate you being on time. I want to guarantee you we were on time and we started actually before 9:00 to resolve some matters which hopefully will save us time in the long run.

So I apologize for any delay and inconvenience, and we are hoping to start with you at 9:00, but we felt we could take care of matters that would save time in the long run. So thank you for being punctual. It's very much appreciated. All right. At this time, we shall proceed.

MR. BATLINER: Call Investigator Martin.

* * *

CERTIFICATE OF REPORTER

I, Lois B. Boyle, do hereby certify that I reported verbatim the excerpt proceedings in the Circuit Court of the City of Norfolk, in the matter of COMMONWEALTH OF VIRGINIA V LESTER BERNARD LYNCH, heard by The Honorable Marc Jacobson, Judge of said Court.

I further certify that the foregoing is a true, accurate and complete transcript of said proceedings.

Given under my hand this 10th day of February, 2005 at Newport News, Virginia.

_____

Lois B. Boyle

0107.04-1

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RICHMOND, VIRGINIA

IN THE CIRCUIT COURT FOR THE CITY OF NORFOLK

COMMONWEALTH OF VIRGINIA,

Plaintiff,

vs.

LESTER BERNARD LYNCH,

Defendant.

NOS. CR01003499-07, 08, 09, 10, 11

FILED
APR 14 2003

VOLUME III

TRANSCRIPT OF TRIAL PROCEEDINGS

Norfolk, Virginia

March 20, 2003

Before: THE HONORABLE MARC JACOBSON
and a Jury.

Appearances:

OFFICE OF THE COMMONWEALTH ATTORNEY
By: RONALD BATLINER, ESQUIRE
Counsel for the Plaintiff

ROBINSON, NEELEY & ANDERSON
By: GEORGE A. ANDERSON, JR., ESQUIRE
Counsel for the Defendant

TRANSCRIPT OF PROCEEDINGS

THE COURT: Let the record reflect the defendant is present in person with his attorney Mr. Anderson. The Commonwealth attorney, Mr. Batliner, is also present at this time. The Court has previously indicated that the motions to strike by the defendant are denied including the motion that was taken under advisement as to the burglary and related gun charges. Those motions and all motions to dismiss are denied.

Let record also reflect that there are no objections to any of the instructions nor are there any instructions that either counsel wishes to tender and have refused. Correct, gentlemen? Mr. Batliner?

MR. BATLINER: That's correct, Judge.

THE COURT: Mr. Anderson, sir?

MR. ANDERSON: Yes, sir.

THE COURT: Everyone ready to go? Mr. Batliner?

MR. BATLINER: Judge, can I just make sure real quick?

THE COURT: Yes, sir.

Bring the jury out, please.

(Thereupon, the jury entered the courtroom at 9:07 a.m.)

THE COURT: Good morning, ladies and gentlemen.

THE JURORS: Good morning.

THE COURT: Thank you for being punctual as always and you're all in your assigned seats. Thank you very much for being here this morning on time.

Ladies and gentlemen of the jury, as you're aware, of course, both the Commonwealth and the defense have completed their portions of the evidence. We are now at the stage of the trial where the Court will give you the instructions of law that will govern you during your deliberations.

After the instructions of law are given to you, you will hear the closing arguments of counsel. After the closing arguments of counsel, the Court will give you final instructions together with verdict forms, and at that time you will then all proceed to the jury room and commence at that time discussions and deliberations.

You will have the opportunity to take the exhibits into the jury room with you together with these instructions of law that I am giving to you at this time. These are the instructions of law that you are bound by and which should govern you as to the law during your deliberations.

First instruction. You are the judges of the facts, the credibility of the witnesses and the weight of the evidence. You may consider the appearance and manner of the witnesses on the stand, their intelligence, their opportunity for knowing the truth and for having observed the things about which they testified, their interest in the outcome of the case, their bias, and if any have been shown, their prior inconsistent statements or whether they have knowingly testified untruthful as to any material fact in the case.

You may not arbitrarily disregard believable testimony of a witness. However, after you have considered all the evidence in the case, then you may accept or discard all or part of the testimony of a witness as you think proper.

You are entitled to use your common sense in judging any testimony. Of these things and all the other circumstances of the case, you may determine which witnesses are more believable and weigh their testimony accordingly.

Next instruction. The defendant is presumed to be innocent. You should not assume the defendant is guilty because he has been indicted and is on trial. This presumption of innocence remains with the

defendant throughout the trial, and it's enough to require you to find the defendant not guilty unless and until the Commonwealth proves each and every element of the offense beyond a reasonable doubt.

This does not require proof beyond all possible doubt nor is the Commonwealth required to disprove every conceivable circumstance of innocence. However, suspicion or probability of guilt is not enough for a conviction. There's no burden on the defendant to produce any evidence.

Reasonable doubt is a doubt based on your sound judgment after a full and impartial consideration of all the evidence in the case.

Next instruction. If you believe from the evidence that a witness previously made a statement inconsistent with his statement at this trial, the only purpose for which that statement may be considered by you is its bearing on the witness' credibility. It is not evidence that what the witness previously said is true.

Next instruction. You may consider proof of the witness' prior conviction of a felony as effecting his credibility. It does not render him incompetent to testify.

Next instruction. A principal in the first

degree is the person who actually committed the crime. A principal in the second degree is a person who is present, aiding and abetting by helping in some way in the commission of the crime. The presence and consent alone are not sufficient to constitute aiding and abetting. It must be shown that the defendant intended his words, gestures, signals or actions to in some way encourage, advise or urge or in some way help the person committing the crime to commit it. A principal in the second degree is liable for the same punishment as the person who actually committed the crime.

Next instruction. If there is concert of action with the resulting crime, one of its incidental probable consequences then, whether such crime was originally contemplated or not, all who participated in any way in bringing it about are equally answerable and bound by the acts of every other person connected with the consummation of such resulting crime.

Next instruction. One who does not hold or possess a firearm during the commission of a felony may nevertheless be convicted as a principal in the second degree of use of a firearm in the commission of a felony where he acted in concert with the gunman.

Next instruction. The defendant is charged with the crime of first degree murder. The

Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime: (1) That the defendant or someone acting in concert with the defendant killed Belinda Scott. And (2), That the killing was malicious, and (3), That the killing (a) was willful, deliberate and premeditated or (b), occurred during the commission of robbery or attempted robbery.

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the offense as charged, that is, (1), (2) and (3)(a) or (1), (2) and (3)(b), then you shall find the defendant guilty of first degree murder, but you shall not fix his punishment until you have returned your verdict and received further evidence and instruction from the Court.

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the first two elements of the offense as charged but you do not find beyond a reasonable doubt that the killing was either willful, deliberate, and premeditated or committed during the commission of robbery or attempted robbery, then you shall find the defendant guilty of second degree murder, but you shall not fix his punishment until you have returned your

verdict and received further evidence and instruction from the Court.

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more elements of the offense, then you shall find the defendant not guilty.

Next instruction. Willful, deliberate and premeditated means a specific intent to kill adopted at some time before the killing but which need not exist for any particular length of time.

Next instruction. In determining whether premeditation and deliberation exist, you may consider the brutality of the attack, whether more than one blow was struck, the disparity in size, strength, and numbers between the defendant and the victim, the defendants lack of remorse and his efforts to avoid detection.

Next instruction. The defendant is charged with a crime of using a firearm while committing or a attempting to commit the murder of Belinda Scott. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime: One, that the defendant or someone acting in concert with the defendant used a firearm; and two, that the use was while committing or attempting to commit the murder of

Belinda Scott.

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the offense as charged, then you shall find the defendant guilty of the offense but shall not fix his punishment until you have returned your verdict and received further evidence from the court.

If you find the Commonwealth has failed to prove beyond a reasonable doubt either or both of the elements of the offense, then you shall find the defendant not guilty.

Next instruction. Once the Commonwealth has proved there was an unlawful killing, then you are entitled to infer that there was malice and that the act was murder in the second degree, unless from all the evidence you have a reasonable doubt as to whether malice existed.

Next instruction. Malice is that state of mind which results in the intentional doing of a wrongful act to another without legal excuse or just case at the time when the mind of the actor is under the control of reason. Malice may result from any unlawful or unjustifiable motive including anger, hatred, or revenge. Malice may be inferred from any

deliberate, willful and cruel act against another however sudden.

Next instruction. You may infer malice from the deliberate use of a deadly weapon unless from all the evidence you have a reasonable doubt as to whether malice existed. A deadly weapon is any object or instrument that is likely to cause death or great bodily injury because of the manner and under the circumstances in which it is used.

Next instruction. To prove the charge of murder, the Commonwealth does not have to prove a motive for the killing. The presence or absence of a motive may be considered in arriving at your verdict.

Next instruction. The defendant is charged with the crime of armed burglary. The Commonwealth must prove beyond a reasonable doubt the following elements of that crime. One, that the defendant or someone acting in concert with the defendant without permission in the nighttime entered a dwelling house; and two, that he did so with the intent to commit robbery; and three, that at the time of the entry, the defendant or someone acting in concert with the defendant was armed with a deadly weapon.

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt all

three of the elements of the offense charged, then you shall find the defendant guilty of armed burglary, but you shall not fix his punishment until your verdict has been returned and further evidence has been heard by you.

If you find that the Commonwealth has proved beyond a reasonable doubt each of the first two elements of the offense but you find that the Commonwealth has failed to prove beyond a reasonable doubt that the defendant or someone acting in concert with the defendant was armed with a deadly weapon, then you shall find the defendant guilty of burglary but shall not fix his punishment until your verdict has been returned and further evidence has been heard by you.

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both of the first two elements and you find that the Commonwealth has failed to prove beyond a reasonable doubt that the defendant or someone acting in concert with the defendant was armed with a deadly weapon, then you shall find the defendant not guilty.

Next instruction. A dwelling house is a residential building or structure regularly used for sleeping. If a building's occupants are absent, as

long as they intend to return to it later, the building remains a dwelling house.

Next instruction. Entering occurs whenever any part of a person's body comes within the premises.

Next instruction. The defendant is charged with a crime of using a firearm while committing or attempting to commit armed burglary. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime: One, that the defendant or someone acting in concert with the defendant used a firearm; and two, that the use was while committing or attempting to commit armed burglary.

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the offense as charged, then you shall find the defendant guilty of the offense but shall not fix his punishment until you have returned your verdict and received further evidence and instruction from the court.

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both of the elements of the offense, then you shall find the defendant not guilty.

Next instruction. The defendant is charged

with a crime of robbery. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime: One, that the defendant intended to steal; and two, that U.S. currency or personal property was taken; and three, that the taking was from Ronald Scott; and four, that the taking was against the will of the owner or possessor; and five, that the taking was accomplished by threat of violence to the person or the threat of serious bodily harm.

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the offense as charged, then you shall find the defendant guilty but not fix his punishment until your verdict has been returned and you have received further evidence and instruction by the Court.

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the elements of the offense, then you shall find the defendant not guilty.

Next instruction. The defendant is charged with the crime of using a firearm while committing or attempting to commit robbery of Ronald Scott. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime: One, that the

defendant or someone acting in concert with the defendant used a firearm; and two, that the use was while committing or attempting to commit robbery of Ronald Scott.

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the offense as charged, then you shall find the defendant guilty of the offense but shall not fix his punishment until you have returned your verdict and received further evidence and instruction from the court.

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both of the elements of the offense, then you shall find the defendant not guilty.

Next instruction and last instruction. The defendant relies upon the defense that he was not present at the time and place the alleged offense was committed. If after consideration of all of the evidence, you have a reasonable doubt that the defendant was present at the time and place the offense was committed, you will find the defendant not guilty.

Ladies and gentlemen of the jury, those are the instructions of law that will bind you during your deliberations. And as I've indicated, you will have

the opportunity to have these instructions with you in the jury room as you are deliberating. At this time we shall proceed with closing arguments of counsel.

MR. BATLINER: Thank you, Judge.

THE COURT: Yes, sir.

MR. BATLINER: The good news is you get to take them back with you. I saw some people jotting a couple things down, but you actually get to take them back because it's too much for anybody to think you'd be able to write them down as fast as the Judge is reading them.

What I want to do is take a little bit of time with you and kind of go over the case, then I want to go through some specific instructions with you to try and assist you as you go through looking at the case.

As I had told you before, on June 9, 2001 at 3331 Lens Avenue, three men; Gregory Williams, the defendant Lester Lynch, and an unknown individual came in to that house. And they came in there with a purpose. They came there to rob Ronald Scott. They wanted to take his money, and they wanted to take his drugs. What they took was more valuable than either of those. They took the life of his mother, Belinda Scott. They had a plan. They got the tools for their

plan, and they went to execute it.

Let's go through sort of what we know. Kenny Parker was over at Christopher Williams' house beforehand. And Kenny was pretty open with you why he wanted to be there. He wanted to get a ride. He wanted to go to the bootlegger's house. He wasn't going to the store to get a soda. He was going over to gamble and probably score some drugs.

So he wants to get a ride over to Berkley. And they tell him he can have a ride, tell him he can have a ride in this car, and he gets in the car. And when he's asked where do you want to go, which is Berkley, nah, nah, that's too far. We got something to do. So they put Kenny out.

They left out one thing that was important that Kenny said which was before it had happened. Gregory Williams had gone across the street and he saw him putting something down his pants. So those three men leave after they have swung back around and dropped Kenny Parker off.

Now what happens? We know that at 3331 Lens Avenue while that's going on, Tamika Reid and Ronald Scott are in this back bedroom. Belinda Scott is in the front part of the house. During the day, a couple times Belinda has gone back to wake Ronald up and the

time comes again. Tamika tells you that Belinda comes to the door and knocks on the door and says DooWhop is here. Ronald is getting up. He goes, I don't know no DooWhop. And Belinda -- not Belinda, Tamika hears a firecracker noise.

Ms. Moye, Ms. Williams who were upstairs heard a gunshot. And what we know from the evidence is that the firecracker noise is the gunshot that is, as the medical examiner told you, a contact wound right under the left eye. Contact. Muzzle of the gun touching the skin.

So after that firecracker noise, what we know is at the threshold, actually outside in the foyer, these are the steps going up to the apartment of Ms. Williams and Ms. Moye. Out here in this hallway, before you can get into her apartment, Belinda Scott lays dying with her head facing her door, as I believe Ms. Moye told you, laid out right here. Right there. And that is the door to her home.

The men then go by Belinda Scott, go into the house, go through that living room, go through that kitchen and come to the back door, the door of the back bedroom. Ronald Scott at this point is getting his shorts on. The door pops open and he told you it hit him in the face. He said this injury and the other

injuries on the other ones were from being beat in the head. That one right there on the ridge of the eye is from when the door hit him in the face.

They burst in, and using the double tactic of surprise violently, I guess triple violently, surprising and confusing, they come bursting in and say, give it up, give it up, give it up. You bitch, you stay on the bed.

Pulling down -- Ronald wasn't quite as neat a housekeeper as his mother as you've seen from the photos, but pulling off, snatching this off, throwing the clothes basket, pointing the gun, and frankly administering a whipping. I mean, there is where part of his head has been busted open.

So they take the drugs and they take the money that was in Ronald Scott's pocket. And what do we find on the pockets where they went in? Blood. Blood. And whose blood? DNA tells us it's Belinda Scott's blood from when she had been shot out in the hall.

They finish their whipping. They take the drugs. They take the money. They leave. Ronald Scott comes out of his house -- comes out of his room. He finds his mother laying there dying. Detectives told you even later on he is very emotional as you would

expect somebody to be who has just seen their mother laying there dying.

Tamika was scared. Again, exactly what you would think if somebody has had a gun pointed at them, watch somebody come in and just beat the tar of somebody right in front of them. She picks up the cell phone and she is so afraid that what she does is she doesn't even register that when she is asked to call 911, that she has got a phone in her hand, and she runs across the street to Mr. Rivell and asks Mr. Rivell to make the call, and he does.

And then finally we get somebody who can tell you pretty much when things happen. We know the time sequence of what happened before but then the paramedics get the call at 9:45, quarter to 10:00. Because I would venture and your common sense is going to tell you most of those folks couldn't tell you what time it was when any of the stuff was going on.

But the paramedic, his job, part of his job, is to log in when he is going to get the call and when he is going to get to the location. So we know that these events occurred just a little bit before 9:45. Because we know the sequence of how things occurred. And we know what time he got the call to respond.

Tamika runs away after she gets that phone

call done. She comes back, tells Ronald and then she leaves. Then what do we know? Kenny Parker is back over at Christopher Williams' house. Q or Quail -- or Quil I guess it was, Quil. When he sees the car pull up, Gregory goes inside. Lester, the defendant, stays outside with the young boy as he describes him, and the young boy, he says, is standing by the car looking down like this. And they go in the house.

Then upstairs Gregory starts talking to his brother. Kenny gets involved in that conversation. Gregory says, we just came back from a sting from Little Ronald's, who is Ronald Scott. The young boy had an itchy trigger finger, shot a woman.

K.P. says, that's his mama. Says no, it was a skinny lady, not his mama, could have been his sister or somebody. K.P. says, that's his mama. And the defendant walks up and is chastising Gregory, says what are you telling him what we just done? What are you telling him what we just done?

K.P. leaves out. He doesn't go to the police either right away. Your common sense is going to tell you that Tamika really didn't want to go to the police. K.P. doesn't really want to go to the police. But there is a reason that they would come into court. Somebody's mama got killed. K.P. pretty much told you

that. Said, I am going to be labeled a snitch. In my neighborhood that's a bad thing to be labeled, a snitch. But could have been my mama. So I am going to do it.

And then we look at it and sort of amazingly, I mean, they knew Gregory because Gregory is sort of in the neighborhood. Ronald Scott said Tyreke was there. Then he tried to give them the people who might have been there, but then he described even at the outset that there was another person who was the light skinned guy. Didn't know who he was, but the light skinned guy.

Tamika described him, but they didn't know him. They didn't know Lester Lynch. Kind of one of those mysteries. How does Gregory Williams, somebody you know and somebody you never seen before in the neighborhood, how did they get together to do a robbery? Well, we know. Trials are good things. You find out truthful things sneak out sometimes when the defendants don't want it. Couldn't deny that Gregory Williams was Kim Palmer's, his cousin's, boyfriend.

Ahh, what do you know? We got a connection from two groups that would have never gotten together. And then amazingly somebody they don't know, all three, Ronald Scott picks out Lester Lynch. Tamika Reid picks

out Lester Lynch, and Kenny Parker picks out Lester Lynch.

Ladies and gentlemen, Lester Lynch, Gregory Williams and a third man went into that house that night. They went in to rob and they stole the life of Ronald Scott's mother.

Let's go through some of the instructions. You have a bunch of instructions. Some of them are what we sort of call finding instructions. It's what you have to find in order to find somebody guilty. It's what the elements are, so I want to go through some of those with you and just kind of walk you through them.

Like I said, you're going to get them back in the back, but that's what the instructions look like. They are just typed sheets of paper, some with a whole page and some a little bit more. To prove the murder that the defendant or someone acting in concert with the defendant killed Belinda Scott, what does that mean? What does concert of action mean? Basically, the concept to give you a good idea of concert of action --

MR. ANDERSON: Your Honor, may we approach?

THE COURT: All right.

(Side bar off-the-record.)

MR. BATLINER: To give you an idea what concert of action is about, concert of action, the instruction reads: If there is a concert of action with resulting crimes, one of its incidental probable consequences -- meaning it's like this would have happened in the course of that crime -- that whether such crime was originally contemplated or not, all who participate in any way in bringing it about in any way are equally answerable and bound by the acts of every other person connected with the consummation of the resulting crime.

Kind of like in those old west movies when they go to do the bank robbery and they leave the guy outside holding the reins of the horse, he is holding them for the bank robbers and everybody is going to hop on their horses and ride away when they go in and shoot up the bank. As the killer, he is just as guilty for holding the reins. So young boy kills her, he kills her, somebody acting in concert.

Killing was malicious. There is an instruction that tells you with use of a deadly weapon you can infer malice. In this case, I think you can more than infer it. It takes a lot to put a gun to somebody's face and pull the trigger.

And that the killing was willful, no doubt

about that. Deliberate, pulled the trigger. Premeditated. Premeditation can happen in a instant. Premeditation does not mean you have to sit there for hours and hours and decide we are going to kill this person.

Premeditation can be that the person is in the way, just got to get them out of the way. Or for number three, you have two choices. It's either willful, deliberate, or premeditated or you don't have to worry about any of those. It occurred during the commission of a robbery and attempted robbery. And I submit to you that one is clear as day.

Going in for a very specific purpose. Going in to rob. She was in the way. Had to get her out of the way. She was the roadblock.

With every charge of the robbery, the burglary, and the murder, there is a charge of using a firearm while committing or attempting to commit the crime. Again, it's that the defendant or someone acting in concert with the defendant used a firearm or the use was while attempting to kill Belinda Scott. You will have a charge for each one of those.

We know there was a gun because as bad as it was, we knew there was a gun because they removed a .25 caliber bullet from the brain of Belinda Scott. And

she had a contact gunshot wound under her eye.

Charged with armed burglary. That the defendant or someone acting in concert with the defendant without permission in the nighttime entered a dwelling house. That he did so with the intent to commit robbery, and that at the time of the entry, the defendant or someone acting in concert with the defendant was armed with a deadly weapon.

Hard to think of something more when you're trying to deny permission when they have to take your life to enter your home.

No doubt it was nighttime. Three or four witnesses testified it was dark. And no doubt they did it with the intent to commit robbery. And when they came in that house, somebody had a gun. There is a firearm charge just like the other one I showed you for this charge.

The robbery. That the defendant intended to steal, that U.S. currency or personal property was taken, that it was taken from Ronald Scott. The taking was against the will of the owner or possessor, and the taking was accomplished by threat of violence to the person or the threat of serious bodily harm. They came in intending to take the money.

First thing they say when they come in is

give it up. Where is it at? They took the money, took the money on the counter, took the drugs on the counter, took the money in his pocket. And we know they took the money in his pocket because there was blood left on his pocket from where somebody had gone in his pocket.

And against the will of the owner or possessor and by threat of violence. As I say, sometimes pictures are worth a thousand words. Bruise, bruise, bruise, not counting that one because that one is from the door. Busted head.

Ladies and gentlemen, the defendant has been identified from the witness stand by Ronald Scott who had never seen him before that day as the person who came in that room and was involved in that robbery. Tamika Reid who had never seen him before that day identified him as well. Let's talk about Tamika for a minute.

First she identified him from some photos, but if you remember -- and I think this is important. This is not somebody who is out to get anybody, because when she was shown the line-up of Gregory Williams, somebody she had seen before, and she wasn't sure from the photos. She didn't pick him out. She waited to be sure before she would pick. It's not like she just

went, oh, yeah, okay, that one.

When given the opportunity on the other individual, she didn't pick him out until she saw him in person. Tamika pointed him out. And Kenny Parker pointed him out.

Why are you telling them what we just done? He didn't want it to be told that day, and he didn't want it to be told today. But what he done is he was there when they murdered Belinda Scott. He went in and assisted in the robbery and participated in essentially a home invasion into her home while armed.

Ladies and gentlemen, I am going to ask you to find him guilty of the robbery, which is the taking of the money and the drugs that they had planned to do, and the armed burglary, which is taking the security and the peace and dignity of somebody's house away.

And finally, I am going to ask you to find him guilty of taking the most valuable thing of all which was the life of Belinda Scott.

THE COURT: All right, thank you. Mr. Anderson.

MR. ANDERSON: Good morning, ladies and gentlemen of the jury. This is our third day now and pretty soon it will be your case. You will decide what's going to be happening with this. Unlike the

Commonwealth, I only get to talk once, so he will be back up. So anything I say to you, I have to make sure I say it now. So this will be the last time you will have to deal with me for this trial.

So you say why does the Commonwealth get to talk twice? Because the Commonwealth has the burden of proving beyond a reasonable doubt that Lester Lynch committed murder, robbery, and burglary, and the three weapons charges. They have to prove it, what? Beyond a reasonable doubt.

Now, how is the Commonwealth to do that? They have to put on witnesses and evidence, physical evidence. Well, do you recall any physical evidence? By physical evidence, I mean any DNA, any fingerprints, any blood stains. They had some DNA, but whose DNA was it? It was the DNA of Belinda Scott. And where was it found? On the back of her son's shorts.

If you will recall, there was a stipulation, and that stipulation said we don't know how it got there. Isn't it logical to infer that if Ronald Scott went out and saw his mom, he touched her and possibly touched his pants and touched the front of his pants and the back of his pants? That's logical. He is there. He is excited. So there is no DNA evidence other than that evidence.

Fingerprints. Wasn't there a stipulation that the police went there, the forensics went there? They went throughout the house, and they didn't get any fingerprints, and they very well should have. At a minimum, we knew that a basket was tossed. We knew that a tablecloth was snatched. There was a desk there. So clearly there should have been some fingerprints if the defendant was there inside of that house.

There also should have been some fingerprints inside the car. We should have had the fingerprints of either Gregory Williams or more importantly K.P, or Gregory Williams. If they had had the fingerprints, we would have to accept them because the defendant gave Gregory Williams a ride. But there were no fingerprints of K.P. inside the car in the back of the car where he said he sat. So there are no fingerprints.

K.P. said that he saw blood on the hand of Tyreke or Gregory Williams. So shouldn't there have been some blood spots or blood stains in the car someplace? So we have no physical evidence. So we have no physical evidence, nothing physically to tie the defendant to the scene. The only thing that we have, then, would be the testimony.

Now, let's review the testimony of the people that testified. If you will recall, when I first spoke to you, I said to you this is going to be a case of credibility. I said it's going to come down to a matter of credibility. Who do you believe?

This morning the judge read to you some instructions that talked about the credibility of the witnesses. You are going to take those instructions back there with you, and I am going to ask you to pay particular attention to those instructions because they are to guide you in your assessment of the witnesses and their testimony.

One of the things that those instructions will tell you about will be the appearance and the mannerism of the witnesses. Think of the Commonwealth witnesses, the three witnesses who identified this defendant. First of all, we know by their appearances that they all came in in prison garb. They all came in in prison clothing. So we know that at an minimum they are in jail for something. And we know they weren't charged with this crime so we already know by their mere appearance that they are in jail for something.

Then also recall each of those persons when they testified; Ronald Scott, Tamika Reid, and K.P, as long as the Commonwealth was questioning them and they

could just tell the story like they wanted to tell the story, they were fine. They answered his questions easily and moved on to the next question.

But whenever they were subjected to cross-examination, remember they became combative. I don't know; I don't remember; or whatever you say. What is in the paper, you know, that's not important.

Well, ladies and gentlemen, everything about this case is important. We are talking about denying a man his freedom, taking away his freedom. Everything is important. So remember the mannerism and their combative nature, their failure to remember the details.

I often think of a cross-examination as gold being tried in the fire. If you test it, it's going to stay gold, but if it's fool's gold, you will find out when you try it. And when we tested their stories, they didn't match. Their stories just didn't hold true.

Let's start with the witnesses, the first one. Ronald Scott, admittedly Ronald Scott was emotional, and you have to expect that he would be emotional. He is sitting there watching his mother die in his arms. He has just experienced someone hitting him with a gun, and I am telling you we don't dispute

that he was hit with a gun. We didn't even dispute someone took property from him. All that's in dispute is it was not this defendant.

Ronald Scott was emotional, but interestingly enough, what was the thing he said he wanted to do? Where did he say he wanted to go? Did he say he wanted to go to the hospital? No. Where did he want to go? He wanted to go to Park Place.

Now, if your mother has just died, you're sitting there with her, is the first thing that's going to be on your mind revenge, getting someone or is it going to be getting help for your mother?

Now, admittedly he told Tamika to call the police, but he said, I wanted to get to Park Place. Why did he want to get to Park Place as opposed to the hospital? So we know he was emotional. And what did he say when he was confronted by the police? Who did he name? He named K.P. also known as Kenny Parker. He named Q also known as Christopher Williams. He named Tyreke also known as Gregory Williams, and he did say a light skinned person.

But in the final analysis, didn't it turn out that the police decided that it couldn't have been at least two of those people? One of those people was K.P. and one of those people was Christopher Williams

or Q. Why did they decide that? Because they gave them an alibi. Well, as far as you know, the defendant never gave the police an alibi. So they never had a chance to dismiss the charges against him. Those two people gave an alibi.

But Ronald Scott identified them the first day. And interestingly enough, he was very specific about something that led him to believe it was K.P. You remember he said something about the officer testified that he said somebody lingered in the background and he recognized the voice? You recall when I started testing him, I started trying his testimony through the fire and I asked him for specifics? I said, could you tell what his eyes looked like? No. Could you tell what his nose looked like? No. Could you tell about his mouth? No. Did he have any facial hair? He said no, even though he told the officer he did have a lot of facial hair.

But as I was standing there talking, what did he say? I could tell by his voice; I could tell by his voice. But he also told the officer that he could tell it was Kenny Parker's voice. And as it turned out, Kenny Parker was not, according to Mr. Parker and Mr. Scott, not there.

So that's one of the things. He said that he

knew this defendant. He saw this defendant earlier that day. He said that Kenny Parker came to his house and he came to his house with Gregory Williams, somebody else, and this defendant. And he said that that person was sitting in the car. Well, Kenny Parker tells you that he never came to the house with this defendant. In fact, he said he didn't even know this defendant until he saw him over on 27th Street later that day. So we know one of those people can't be right.

The other thing is that he said that you -- remember I asked him about the car? And he has testified before. And on another occasion he said the car was on the other side of the street. This time when he testifies, he said the car is on his side of the street. When I asked him before about the color of the car, he didn't know the color of the car. This time he knew the color of the car, and he even knew the make of the car. He knew it was an Acura. He has never testified to that before.

In fact, if you recall, when I asked Investigator Huffman whether he ever told him it was an Acura, Investigator Huffman said, not that I recall.

He said that his brother also identified the defendant from across the street. When we asked

Investigator Huffman, Investigator Huffman said, not that I recall. So Ronald Scott's testimony was just -- he was emotional, and we can understand that, and not to be believed. Ronald Scott's testimony also was that he sold K.P. an 8 ball, and that K.P. came back later and wanted an exchange.

Now, in the past, he has testified, no, K.P. was lying, that it was not his drugs that he had sold to him. This week when he testifies, his story changes. He said, yeah, K.P. was right. Ladies and gentlemen, Ronald Scott's testimony is just not to be believed.

Then we go to the incident. Let's deal with what happens in the house. Ronald Scott testifies that the first person that comes in the house is Gregory Williams -- I'm sorry, that comes into the room. We don't know who came into the house because he doesn't know.

Who comes into the room was Gregory Williams, a person that he knows. Then he says the defendant comes in. But the most telling thing about Ronald Scott when he took the stand, and I hope you remember when he said on the stand one of the last things that I asked him and the Commonwealth got up and rehabilitated him, but the last thing he said was, well, ask Tamika.

She was the one that he was holding the gun on. He was standing guard over her. She is the one that can tell you a hundred percent.

What does that tell you? What that says to you is I can't be sure. He knew it was a light skinned person. There is no question that he knew it was a light skinned person there. But was there anything distinctive about this defendant that would have caused him to remember? He didn't tell you about a nose ring that he saw in the defendant's nose. In fact, his testimony contradicts Tamika. He said the person didn't have on a mask. Tamika told you he had on a mask. She simply changed the positions of the mask several different times.

Ladies and gentlemen of the jury, Ronald Scott did not see this defendant there that day. And as you recall the alibi, you know he didn't see him there that day because you know he was not there. The next person who identified him was K.P. Kenny Parker is an interesting person. I found him to be an interesting person. This is a person who, by his own admission, was getting high all day.

Now, I know many of the people in this case were smoking all day, but Kenny Parker was the only person who said he was using heroin all day. Not only

did he say he was using it, but he also said Ronald Scott was using it. He says they get high every day. So now what we have is two people who are using heroin who are now identifying the defendant as being the person who is there.

Kenny Parker said he went and he got drugs the first time he went which was in the morning which you will recognize contradicts what Mr. Scott says because Mr. Scott says he didn't come in until the afternoon. But Kenny Parker said he went in the morning, and that he got $20 worth the first time, and he came back later and he got $50 worth.

The other thing that contradicts the testimony is Mr. Scott testified that he really didn't want to do it. He really didn't want to do it, but he recognized he had some in the house. So he finally answered the phone and told K.P. to come on over.

Now, remember K.P. said, I didn't call. I never have to call. I just show up. So K.P. said, I didn't call. I just came over.

Mr. Parker tells you that Mr. Scott had to leave and go and retrieve the drugs. Another contradiction, another contradiction, another evidence that somebody is just not being truthful, Mr. Scott says that K.P. comes over to the house with Gregory

Williams, the defendant, and someone else. Kenny Parker told you that I went over with Vince, and the next time I went over with my girlfriend, that in fact my girlfriend sits there and talks to his mother. Inconsistencies or contradictions in the testimony.

This is the testimony of the Commonwealth's witnesses, not the witnesses that I put before you, but this is the testimony of the Commonwealth's witnesses. This is what they want you to rely on to deny this man his freedom.

Then K.P. says that he leaves. He goes over to Berkley. Then he starts telling you the incident. This is when the Commonwealth is questioning him. He says that he sees a light skinned person, a young guy and Gregory, and they leave. They are about to leave and he gets a ride. He asks for a ride. They go around the block and they drop him off, and then he is still standing there when they come back an hour to a half hour later.

And there were a lot of people who couldn't give times. But one person did give a time and that was K.P. He gave us a range of time. He didn't give a specific time. He said it was between 6:00 and 7:00 when he first saw these people. 6:00 or 7:00. And he said it was between a half an hour to an hour

later when they came back.

Well, let's go to the latest time which is the Commonwealth's best argument. 7 o'clock. If they left at 7 o'clock and stayed gone a half hour, they would have been back at 7:30. If they stayed gone for an hour, it would have been 8 o'clock. That was the time that Mr. Parker gave you, not that I asked for. Because you remember at other times he could not tell me the time. But that time he specifically gave me, so that's 8 o'clock, a full hour before the incident even happened. So if he is saying that they are back a full hour before the incident happened, then you have to question what he says happened in the house.

Now, the story became confused. At first he said they came back and he said Q or Quil came down the steps, and he saw the defendant and Quil hug. On cross-examination he said, oh, no, no, you're right, that's not what happened. That's basic. He is not under any pressure. He doesn't have a gun sticking in his face. He should be able to remember as basic as that.

But then what happens? He goes upstairs. He says Gregory goes upstairs. Where does he say the defendant is? The defendant is still downstairs, he says, with the young boy, and he said the young boy is

standing there, but he says that the light skinned person, the person he is calling the defendant is still downstairs.

Then he says that Gregory is then talking to his brother, Q. He heard something and then he goes over there. Then he says while they are talking, while Q and Gregory are talking, he goes over and he begins to ask a question. And when he asks that question, then he says the person that he described as the defendant comes up the steps.

And he says that that person says, why are you telling him all our business? No evidence that the defendant knew what they were talking about. If in fact one were to believe -- and I'm telling you that's not how it happened, but even if you were to believe that Gregory was telling something about their business, the defendant was with Gregory earlier that day. What business they could have conducted at that time had nothing to do with what happened after 9:00, some time after 9:00 if in fact this was at 8 o'clock when they are having this conversation.

So if Gregory is saying something and the defendant is asking, why are you telling him about our business, it could be any business because Q -- I'm sorry, K.P. is saying the event that he witnessed

happened an hour before the killing took place. So it could not have been the same incident that they were talking about.

Even if you were to believe that the defendant went into the house and went upstairs, now the defendant has already testified he has never been in the house. He never went upstairs. So even based on that, you can't put the defendant there. There is no admission because the timing and the incident just don't match.

The question becomes why did K.P. even become involved in this? K.P. says, in my neighborhood, I don't want to be a snitch. Well, you say that this lady was my friend. Ronald is my best friend. You have information that his mother has been killed and you're going to say you're not going to be a snitch? No. It just didn't happen.

You know, we all know what happened. Ronald, his best friend, thinks that he is the person who set this up. And so he tells the police that day and within a matter of hours, they have him in a photographic line-up. The next day he is picked up. The person who doesn't want to be a snitch becomes a blabbering mouth then because he is now a suspect.

He has had experience with the judicial

system before. He was stopped for driving on a suspended license. That's a summons. You give a person a ticket and tell them appear in court. You don't take them to headquarters and question them for hours unless in fact you think that they are involved in something. So once he recognizes that I am a possible suspect, he needs to deflect the attention away from himself.

And how does he do that? They have already told him that Ronald -- you had to believe that the police have told him you were identified, Gregory Williams was identified, Q was identified, and a light skinned person was identified. You have to believe that the police have already told him that.

Well, K.P. remembers. See, that's what happens when you tell a lie and you mix a little bit of the truth in. It also becomes believable. K.P. remembers the day before I did see Tyreke over at his brother's house, and he was with a light skinned person. But does K.P. ever identify Lester Lynch through a photograph? He tells you that he did.

Do you remember what Detective Huffman said when he came in? He said, I never showed him a photographic line-up. So we know K.P. is lying. K.P. was trying to deflect the attention away from himself

so he has to talk about this light skinned person and he creates a story about this light skinned person. See, he fixed just enough of the truth to make it almost believable except when you test him, when you try him in the fire, his story just doesn't turn to gold. It becomes fool's gold.

Then we say, well, why didn't you go to the police? I am not a snitch; I'm not a snitch. This is your best friend. This is somebody that you have gone to their house. You have eaten with. His story just doesn't hold the truth. He had a motive. He had a bias. He had a reason to lie.

Then the person who testifies next -- not next, but the person who tries to identify the defendant as being a person who was there was Tamika Reid. I will be perfectly candid. One can imagine the trauma or how traumatic it was for Ms. Reid. She has been up most -- until late on the 8th. She comes in on the 9th, and she is at Ronald's house. They are in the back bedroom, and she is sleeping on and off. And then somebody bursts or somebody comes into the bedroom. But we know she didn't get it right. We know she didn't get it right.

Ronald testified that the people opened the door. The police, the forensic experts who went out

there after the incident and examined -- you see, that's what I said, the physical evidence tells it all. The physical evidence says there was no damage done to the door. But what does she say? The door was kicked in. No evidence that the door was kicked in. Something very basic. You should have been able to recall that. But she was excited and that's to be understandable. She was excited.

The Commonwealth says she was so excited that she couldn't even recall that she had a telephone in her hand to call 911. I suspect that she was really in shock. She really didn't know what was going on. She has a phone in her hand, and she doesn't bother to call the police with the cell phone. She goes across the street, comes back and leaves again.

Well, if she was in so much shock that she couldn't recall that incident, she couldn't recall that she had a telephone in her hand, isn't it reasonable to believe that what she recalled at the time of the incident, she could be mistaken? We don't have to guess. We know. How do we know? Ms. Reid has been subjected to several examinations. And as examinations go, so does her testimony.

You ask her a question at one time and you get one answer. You ask her another question another

time and you get another answer. The basic things. Did they have a mask? Yes. What did the mask cover? One time it goes from here, that being the bottom of the chin up to the nose at the top of the lip. You ask her another time where does it go? From the top of the forehead down to the nose. Those are two distinct locations. You cannot mistake those two.

You ask her one time what's the color of the mask? One time it's black. The next time it's beige. I think she said brown this time, but beige and brown are close enough so I can see how she can make that mistake. But the colors change.

I asked her, once she has been asked before what color were his eyes? I don't know. You ask her another time, she is asked again, and she said they are brown. So her testimony changes. You ask her did she use any drugs that day? The first time she says, I don't use drugs. She is subjected to examination at another time. She said, yeah, I used drugs, but I wasn't using them that night. You ask her again and she says, yeah, I was using them that night. And then yesterday again she is like, I use drugs but I wasn't using them that night. Contradictions, inconsistencies in her statement.

The instructions will tell you that is one of

the reasons you have to examine and you have to consider and examine the credibility of the witness.

Now, is there any malice on Ms. Reid's part to identify Mr. Lynch? Does she have any grudge against Mr. Lynch? I don't think so. I don't think there is any evidence that she does. She didn't know him. She didn't know him before that day. She is simply mistaken. She was in a state of panic and a state of shock.

Look at her actions. She has a phone in her hand. She is asked to call the police. She doesn't use that. She runs over to the neighbor's house, asks him to call the police. She runs back and she runs down the street barefooted. Then she tells you somebody picked her up or she got a ride, and she went to a friend's house.

Then she tells you that she stays there for a week or more than a week. She doesn't contact the police. She said she is afraid because nobody has been picked up. Well, how does she know nobody has been picked up if she is not watching the news or she hasn't read the paper? I suggest to you that in fact she does know.

The defendant's picture is put on Crime Line. And how do we know that? Because there is a

stipulation that it was put on Crime Line and on regular TV. Now, you all might have watched TV during that time and don't remember. I surely didn't remember because I didn't have any involvement in it.

But if I were a person who had been a victim of a robbery, you can believe I would be watching things like that to see. But she says she didn't.

You ask Ms. Reid, was there anything distinctive about the defendant or the person, the light skinned person there? She said he was light skinned and had corn rolls. Well, she was eventually shown a photograph, this photograph.

You're going to be able to take this exhibit, this Commonwealth Exhibit 28 back in the back with you. You look at all of these people. Is there one person on this picture who is lighter than everyone else? That picture number four jumps out at you. So she knows that the person that she identifies is supposed to be light skinned and have had corn rolls.

After she identified the person, the policeman tells her she has the right person. Well, how does the policeman know she has the right person? They weren't there. When I asked Detective Huffman that, he says, it's because of other witnesses.

Well, the only other witness that he would

have shown the photograph to was Ronald Scott. And if you will recall, as I said, when Ronald Scott dropped his head and said, well, ask Tamika, she is the one who knows hundred percent, so she picked out someone. She needed to bring closure to this case.

The police officer told her, you picked out the right person. So once she satisfies that I have the right person, when she sees him again in another court in other proceedings, she is sure that that's him and she needs to be sure that that's him because she needs to bring closure to this. But she is simply mistaken.

The witnesses who have identified this defendant have simply mistaken him. Basically what I am saying, this is guilt by association.

Now, there is no dispute that the defendant knows Gregory Williams. There is no dispute that the defendant was with Gregory Williams that day. There is no dispute that the defendant gave Gregory Williams a ride over to Park Place. There is no dispute that the defendant shook Q's hand.

Now, you need to ask yourself, if Gregory Williams made this confession to Q, where is Q? Why isn't he here to testify? If Gregory Williams told his brother that the young boy fired a weapon and killed

someone and if this person was supposed to have come upstairs, why isn't Q here to testify? You could understand if he wasn't going to testify against his brother, but there is no reason for him not to testify that it was Gregory -- that Lester Lynch was there.

In fact, you would ask yourself, K.P. knew that they knew each other. He saw them grab and give each other five and hug. Did he ever bother to go and get the name of that light skinned person that shook his hand from Q and give that name to the Commonwealth? Didn't happen. It didn't happen because it never happened like K.P. said it happened. The defendant was never there, and because he was never there, he knew that Q would not come in here and say that Lester Lynch was there if and when his brother made this confession that he talked about.

Now, so we have Gregory Williams -- I mean, you have Ronald Scott who misidentified the defendant, Tamika Reid who misidentified the defendant. We have Kenny Parker who misidentified the defendant.

Look at the Commonwealth's other witnesses. You had the neighbors. They both, Ms. Williams and Ms. Moye I think their names were, Mr. Rivell across the street, they were all questioned. None of them said they could put on any evidence that this defendant

was a person who was there at the time.

Mr. Rivell testified that he saw three people there but they got in a car and left before Ms. Reid came over. But none of those people put this defendant there. Dr. Kinnison did an examination, asked one basic question. Can you say that this defendant was the person who was there who took part in that crime? She said no.

Investigator Martin collected all the evidence, even told you about a footprint that had a red stain on it. Did he tell you about any red stain that was inside Lester Lynch's car? Never told you about anything like that. No physical evidence. Investigator Martin said, no, can't tell you that he was there, no evidence that he was there.

So if we stop right there, if we were to stop right there, you would have to find that there is a reasonable doubt. You would have to find that there is a reasonable doubt because of the credibility of the witnesses or the lack of credibility of the witnesses, based on their inconsistent statements, based on the fact that they contradict each other.

One of the facts you will use in considering the credibility of the witnesses is the fact that they have been previously convicted of a felony, of a crime

involving moral turpitude, and I recall all of the eyewitnesses had felonies, in fact, a number of felonies. And they had a number of charges involving moral turpitude. So if we stop right there, if I just stopped right here, you would have to say that there is not guilt beyond a reasonable doubt. You might even say it is suspicious. You might even say, well, it could have happened, but it's not guilty beyond a reasonable doubt.

But we took all doubt away. We put on alibis for you. Now, I know the Commonwealth is going to get up here and they are going to tell you, well, these are his family members. And what else do you expect them to say? Well, I guess you are penalized if you choose to associate with your family.

This is the weekend. Who do people typically associate with on the weekend? Their family members. So what happens? Lester Lynch, being a good father, he tells you in the morning that he takes his children and he meets his sister and they go to some place and they take the children swimming in the morning. He is spending time with his family. The incident hasn't happened at that time so there is no reason to criticize that spending time with his family. So he takes them swimming.

Later on that evening he is short of cash. He calls his mom and he asks for some money. She says, I'll talk to you later about it. It's not like he wanted a whole bunch of money. He just wanted five dollars for some gas. Please, five dollars. He doesn't ask for a whole bunch of money, just five dollars.

He then passes his aunt's house. It doesn't appear it was anything planned. He simply dropped past his aunt's house. Once he gets there, Kim and her boyfriend, Gregory Williams or Tyreke, is there. Now, he hasn't seen Tyreke for about six months. He talks to him. They talk for a while and just about 6 o'clock, just about the same time that K.P. says that he saw them come over there, they could be off a few minutes, they leave, he says, from Green Run, and he goes down to Norfolk. He comes to Norfolk. He comes down to 27th Street.

Once he gets there, his testimony is he has never been to this house before. He has never been to this neighborhood. He knows Q, but he has never been to this house before. He sits in the car. He watches Tyreke go across the street. He watched him come back and he goes upstairs. And Tyreke comes back and tells him that he doesn't have any money.

Well, what is Lester waiting for money for? He just gave the man a ride from Virginia Beach to Norfolk. Is it unusual to expect that if you give somebody a ride that they wouldn't give you some gas money? You are already short of money so you give this person a ride, and you say I'll do it but you need to give me some gas money.

He can't get any gas money. He is about to leave, and he sees Q come outside. He hasn't seen him for a while. He gets up and he goes back and he speaks to him. He stops the car and he goes back and he speaks to him. They talk for a little while. He gets in his car and he leaves.

Ironically enough, this is about the same time that K.P. says that he is there. This is about 6:00 or 7 o'clock in the afternoon. He leaves and he goes to Virginia Beach.

You're going to look at the defense exhibit. You're going to see between the time of about 6:44 to like 9:21, there are like 17 calls on here. This is Lester's phone bill. Lester is calling people. He is on the phone calling people at different intervals about 17 times. Now, does that sound like somebody who is in the midst of planning or committing a robbery?

He is on the phone, and we know that, and we

see where he is calling. He is talking to his mother. He is talking to friends. He leaves and he goes to Virginia Beach.

Once he gets to Virginia Beach, he has already talked to his friend. They call each other best friends, not a boyfriend and girlfriend, his friend, Velma Figueroa. He calls her Shawn. He goes to Shawn's house.

Now whatever your position is on the use of marijuana, they get high and they candidly admit they get high. They could have come in here and lied to you. They could have been evasive like the Commonwealth witnesses were, but they said, we got high. They get high.

Shawn is cooking. They receive a phone call. Lester receives a phone call from his cousin Ronald. He has already told Ronald that he is going to be coming to Virginia Beach later on. Ronald is calling him to find out what time he is going to be coming to the Beach.

Well, ironically enough, Lester says I'm already at the Beach. I am at Shawn's house which is right through the path from Morris. So he said, oh, what are you doing? Well, Lester is being selfish and he doesn't tell him that they are getting high. So Ron

allegedly tells him, I'm getting my hair done, and he asks him, could you run me a comb over here? Lester gets up, leaves, gets in his car, drives over to Morris'.

When he walks into the door, his cousin LaTanya is on the phone. She is talking to her cousin Kim. What happens? Kim asks is Gregory or Tyreke with him? And LaTanya says no. And she gives the phone to Lester.

LaTanya is in Virginia Beach. What time was this? Kim testifies this is about 9 o'clock in the afternoon. So we know at about 9:00 Lester is in Virginia Beach. They then talk for, she says, five or ten minutes. He goes. LaTanya gives him the phone and she goes to another part of the house.

I know the Commonwealth is going to tell you we don't know where -- she doesn't know what time he left. No, she doesn't. There were a number of people in the house.

But it appears that she -- he was clearly in the house right around 9:00, between 9:00 and 9:30. Ronald saw him there during that time. He then leaves. He goes back to the Getty Mart, gets some more cigars so they can smoke some more. He goes back to Velma Figueroa's house and then later on they go over to --

they go over to Morris' house.

Now, how do we know the dates? Well, fight fans, we know that on the 8th of June the daughters of Joe Fraiser and Ali fought. Morris taped the fight on the 8th and they saw it on the 9th. So we know the fight didn't take place until the 8th. So it was on the 8th that it was taped and they saw it the next day. They know, everybody knows, that's the event that they saw.

And the Commonwealth is going to tell you, well, Morris records events all the time. But this one event didn't take place until the 8th. And how do we know? Because they said they go over there all the time. They are always over there every Saturday. How do we know that it was not the following Saturday? How do we know it was not the 16th as opposed to the 9th? Because they said the week that Gregory was arrested, before that Saturday, before the next Saturday.

MR. BATLINER: Your Honor, we need to approach.

THE COURT: Court is going to sustain the objection. Let me see you, Mr. Anderson.

(Side bar off-the-record.)

THE COURT: Court is going to order that you disregard the previous statement by Mr. Anderson.

MR. ANDERSON: What we do know is that the defendant was in Virginia Beach at some time after 9:00, and we know he stayed there until some time after 11:00.

Now, taking a look at the phone bill, just based on the question that the Commonwealth asked one of the witnesses yesterday, I know that he is going to make a much to do about the fact that between 9:21 and 9:59 there were no phone calls made. That's a period of about what? 38 minutes. So the Commonwealth would have you to believe -- I don't know what he is going to say, but I suspect what he is going to imply is that was ample time for Lester to leave Virginia Beach, come to Norfolk and commit the offenses.

Now, this is going from Green Run down in Virginia Beach, coming down to Norfolk. That would mean he would have to have time to leave Norfolk, go pick up Gregory Williams over in Park Place, go commit the offense, come back, go upstairs, take part in the conversation, then go back to Virginia Beach. That time line just doesn't fit. When you look at the time line, it just doesn't fit.

I know he is also going to say this phone bill is Lester's phone bill. He could have been anywhere at the time that these calls were made, and

that's true. But there are witnesses who place Lester in Virginia Beach at that time.

Shawn says she sees him about 8 o'clock. LaTanya says she sees him about 9:00. While she was talking to him, Kim talks to him. His cousin Ronald sees him shortly thereafter. Shawn sees him again. Yeah, Shawn sees him again later on that evening and Ronald sees him. He is there in Virginia Beach the whole time.

Now, the defendant didn't have to take the stand and testify, but in fact he did. He answered every question that the Commonwealth gave him. He gave his alibi. Ladies and gentlemen of the jury, that alibi should be sufficient for you to acquit him of this charge.

There is going to be an instruction that basically says -- I am just an interpreter for you -- that if you believe that he was someplace else at the time of this offense, then you have to acquit him.

Ladies and gentlemen, after we put on that evidence, the Commonwealth didn't put on any rebuttal evidence that suggested that he was anyplace else. They didn't question anything about any of his witness' testimony. It came in unrebutted.

Those witnesses save the defendant. None of

them gave an inconsistent statement. They didn't contradict each other -- well, I'm sorry, maybe there was one contradiction. One person thought he stayed in the house the whole time. Somebody else said, no, he was back at my house. But the bottom line, he was in Virginia Beach the whole time.

But there were no inconsistent statements. Maybe some contradictions, and you are to expect a few minor inconsistent statements because nobody is going to remember everything the same. But nothing changed his defense of alibi. None of those people had felony convictions, one of the things that you have to consider when you decide the credibility of a witness.

Ladies and gentlemen of the jury, when we started this, when we started this trial on the 18th, we started out with the presumption that this defendant was innocent. The burden was on the Commonwealth to prove each and every element of that offense. The biggest element they have to prove was that he was there. The people that they produced to place him there cannot be believed. They have a bias.

Ronald Scott wants to bring closure to this. You know Ronald Scott has to feel bad. He says he didn't want to sell drugs in his mother's house but in fact he did sell drugs in his mother's house. As a

result of him selling drugs in his mother's house, his mother was killed. Who killed his mother? We don't know. But he made a mistake in identifying this defendant. We know because he dropped his head. He basically said to you, I can't tell you but Tamika is going to be able to tell you.

Tamika can't tell you because Tamika was probably -- the evidence is that she didn't know what was going on. Her actions were erratic. We have to question her memory. Her emotion, her description changed as she testified.

K.P. should be a non-factor. His time line doesn't jive with how the events occurred at all. His statements as to what happened just don't make any sense. He blatantly told you he made an identification of this defendant from a line-up and that just didn't happen. This is a case of mistaken identity.

How many of you have walked up to a person, thought you knew the person, was just about ready to speak to them when you recognized it was not the right person? This is someone you know on a regular basis.

Now, imagine the trauma that was going on in Tamika Reid's and Ronald Scott's lives at that time and then for them to try to remember. They are trying to but they are simply mistaken in their identification.

We are sorry that Ronald Scott lost his mom, and he will never be able to have that privilege of sharing with her again. But ladies and gentlemen of the jury, do not deprive this man of his freedom based on that evidence. It is not sufficient beyond a reasonable doubt to convict this defendant.

As I said before, if you just listen to their testimony, you might get to maybe a problem. But once you hear the alibi, the unrebutted alibi that has been introduced, you have to acquit this defendant of these charges. We thank you for your time and your patience. And on behalf of the defendant, I thank you for the service you will be serving.

THE COURT: All right. Thank you, sir. Mr. Batliner.

MR. BATLINER: Unrebutted alibi. I put on a day and a half of evidence and it's unrebutted. Every witness that I had basically said he was there, and he is going to tell you it's unrebutted.

Ladies and gentlemen, the alibi, you have an instruction that talks about you judge the credibility of the witnesses. And the great thing about our system is you have common sense. The jury system is essentially founded on the idea that 12 people together in their collective common sense will determine the

truth. And that's what the system works on. And the Commonwealth is glad that the system does work that way.

Mr. Anderson is right. I am going to tell you to look at who it is that provided the alibi. Frankly, I don't believe his mother actually provided an alibi, and we'll go through the phone records because that's really what she brought. But the rest of the alibi is provided by cousins and someone who has described herself as his best friend.

We've been told this is no romantic relationship, but it's a good enough friend that he has a house key to her house and to use it.

Again, defense counsel's words as he was talking about some of our witnesses, you have to look for where the bias is and the reason to lie. And I'll add another one. Why would they be mistaken? Let's talk about the witnesses.

There is nothing that ties that day as to what happened at Morris'. There was no live event that anybody told you that they were watching, no live event. It wasn't as if they were talking about an NBA final game that happened that day and they were watching it live. Everybody said what Morris did is he taped things.

Your collective memory is there is no evidence when that fight occurred. But the evidence is they talked and I don't believe actually any of them said they watched the fight. But there was no evidence when the fight occurred, and it was that there was a tape. If you remember one of his cousins, when I was asking her did she go to the police, did she tell people, she said, no, because we knew he was wanted and we figured it would get cleared up. We know that he turned himself in because that's when the car arrived on the 19th, ten days later.

What that means is June 9th was a Saturday. A week later would have been June the 16th, and he turned himself in on the 19th which would match exactly with what she said. Morris played tapes. There is nothing to tie the date.

Let's take a look at the phone records his mom provided. And I do want to point out to you just like counsel said, when she testified, she gave two phone numbers. One was the defendant's and one was hers. This is the defendant's phone number that she gave. She gave a number of other numbers which were her cell number, her home number, and then Kim Palmer's number.

Her cell number was 724-6963. I have to

apologize. It's kind of hard to read it. Right there, 724-6963. Then again here where it's 7:20. At 7:21 this is the number, and she had put that notation off to the side. That's Kimberly Palmer and that's the number for Kim Palmer. Kim's number shows up twice there and also where she has got it down here which was at 10:27.

Then you have at 7:34 there is mom calling for a minute, calling again at 7:35 for three minutes. At 8:37 there is an incoming call and this is -- that's the number she gave as her home number which is not answered because there is no time by it.

Then at 10:16 there is a call from the home number not answered, then and minute later it is answered but for a minute. And what I told you before about times, in this case the times that you can rely on are probably what's on this bill and the paramedic because he is the one that gives you the time frame of 9:45.

And if you look on there, from 9:21 there was an incoming call that lasted a minute. And then a call at 9:59 for a minute. None of those were any of the numbers that she provided when we talked about it.

So if we are going to talk about bias and a reason to lie, your best friend, your mother and your

cousin don't particularly want to see you go to prison. But I think even more than whether or not they lied or not, I think they are mistaken. They have the wrong Saturday. It was all on tape. There is nothing to tie it to the day, and they want, they desperately, desperately want him to have been there so they can say it. They are desperate for that.

Let's talk about some of the other things that defense counsel talked about. One was he was talking about no physical evidence. What DNA there was was brought in by a stipulation, and it was the DNA of the mother on the shorts.

In the stipulations, you heard that attempts to recover fingerprints were made and were unsuccessful. Frankly, I would submit to you he is a clever criminal. When he talks about the car, we have to again remember we are talking from June the 9th to June 19 when the car arrives. And what did he tell you when he was on the stand about his car? He cleaned his car. Your common sense is going to tell you that if there was any blood in the car from June 9 to June 19, he cleaned it up, especially if it's his pride and joy. Clever, clever criminal.

But his problem always comes back to you can do things just so clever, and if somebody else isn't as

clever as you, you get caught. Why are you telling him what we done? Defense counsel took a long time to try to tell you how every one of the witnesses was misidentifying and saying, oh, there is a reason why it can't be him. What a terrible coincidence, just a terrible, terrible coincidence that three people completely separate who don't know him and he has told you he doesn't know them, doesn't have any kind of quarrel with them, no beef with them whatsoever, what a terrible coincidence that three people just happen to pick you out.

Like Tamika, this is too suggestive and this is why she picks him every time. But it completely ignores when she was shown another photo line-up for Gregory Williams. She didn't just pick somebody out. She was sure. She wasn't just going to pick somebody and put the finger on them when she wasn't sure. She has been sure.

He talks about all the contradictions, but the one contradiction that has never been there is she has never not said it's him.

Ronald Scott. We believe -- I don't know where we were to get that he would just pick him out, but there is no doubt that when it happened, Ronald Scott wanted vengeance. That's why he wanted to go to

Park Place. He wanted vengeance. Don't kid yourself. Not at all. And your common sense is going to have to tell you if that's your reaction when you're laying there with your mother with a gunshot wound to her head, whether your first reaction is whether you want vengeance. But after he calmed down and it took a while, took a day or so, he came in and cleared it up and said this is what I saw. This is who I know. Not who I suspect. This is who I know.

And from the very outset, he said there was a light skinned man that came in. And he picked him out. What a terrible coincidence, same one that Tamika does. They don't know him, never met him. Terrible coincidence he just picks him out. And again, whatever the contradictions were, never has it been contradicted where he picked somebody other than him.

Let's look at Kenny Parker. Again, whatever contradictions, there has never been a contradiction over what he overheard that day. Just got back from a sting at Little Ronald's. He knows who Little Ronald is, but you should think that maybe that's some other business they were doing even though he has referenced the guy's name and what they do. Shot a lady. Young boy had an itchy trigger finger, shot a lady. I submit to you that that couldn't be anything else.

Let's talk about some of the other stuff that K.P. said. It's interesting that K.P. talked about the greeting on the porch that he admitted to. There was a greeting on the porch. Got out of the car, went up on the porch. Good enough friends with Quil to get out of the car when he didn't really want to get out of the car, according to him.

And what else is sort of an interesting thing that K.P. said? You remember I went through this? I went through this sort of laborious process of where everybody was sitting in the car. And the person who was sitting in that seat with Kenny Parker was him. That's what K.P. told you. Then what did he tell you about his brand new car? Nobody else gets to drive. What a terrible coincidence that K.P. would get that right, too. And then K.P. was not contradicted that that's the man that came up and said why you telling him what we done?

There are contradictions. Your common sense will help you sort those out. I submit to you that in a year and nine months when you think back on this trial and that's how long it's been since these events occurred, actually a little longer, you will remember the critical parts of this trial. You may not recognize me or defense counsel or the Judge if you see

us on the street. I venture you won't be able to tell what color suit I wore on the first day or what tie I had on the first day, but you will remember the significant parts of this trial. And that's what the witnesses remember, is the things that are the critical parts of what happened that day.

Like you won't be able to remember exactly what time you broke for lunch on the first day, they can't tell you what time something happened because that wasn't what was significant. What is significant, you even know the motive here.

There is an instruction that says it's not critical that the motive be proved to you in a murder. But you know it. Because over and over again, he was short on cash. A the lot of his conversations was about how he needed money. And what was the motive for going into that house? What did they want? Drugs and money. He wanted money from his mother, wanted money from Gregory Williams, and then took money from Ronald Scott.

Three witnesses have come here and told you of his involvement. Two of them were in the room and one of them overheard him making an admission. Defense counsel thinks maybe we should have brought the brother of another fellow to have him tell you that his brother

confessed to a murder. I am going to leave that to your common sense as to whether the brother would come in and basically give the confession of his brother.

The three people came to that stand, and all three said he was there. He was in the room. And I'm sorry that they came in in prison clothes. But you know what? Bad things happen to family members, the innocent family members of people who have been involved in criminal activity.

They didn't shrink from what they had done. Ronald Scott was very upfront with you about what he had been doing. He was selling heroin. He had sold a bunch the night before, $1,200 worth I think he said, a lot of heroin. Kenny was telling you he was using. And Tamika, Tamika basically picks up a guy she has only known a day or so. But you didn't kill someone's mama.

He went in with Gregory Williams and the young boy with the itchy trigger finger and in order so they could accomplish what they wanted to do, first to steal the money and the drugs, didn't even think about stealing the sanctity of the home by going in that way but then they stole Belinda Scott's life.

Ladies and gentlemen, I ask you to find him guilty of murder in the first degree, burglary, and

armed burglary, and three uses of a gun in the commission of those crimes. Thank you.

THE COURT: Members of the jury, this is an important case, both to the Commonwealth and to the defendant. In order to return a verdict, each of you must agree on the verdict. The verdict must be unanimous. In pursuing this goal, your deliberations should be conducted in a business like manner.

When you go to the jury room to begin your deliberations, you should first select a leader. He or she should see to it that the discussion goes forward in a sensible orderly fashion and that each juror has the opportunity to discuss the issues fully and fairly.

The attitude and conduct of jurors at the outset of deliberations are matters of considerable importance. It is rarely helpful for jurors upon first entering the jury room to take a strong vote or for any juror to make an emphatic expression of his or her opinion on the case or announce a determination to take a stand for a verdict. To do so before all your fellow jurors have had an opportunity to consult with one another and exchange views and opinions might allow your sense of pride to prevent you from retreating from an announced position even when shown that your position may be unsound.

You have a duty to consult with one another and to deliberate with a view to reaching an agreement if it can be done without violation to your individual judgment.

Each of you must decide the case for yourself but only after an impartial consideration of the evidence with all of your fellow jurors. In the course of deliberations, a juror should not hesitate to reexamine his or her own views and change his or her own opinions if convinced it is erroneous.

However, none of you should surrender your honest convictions as to the weight or effect of the evidence solely because of the opinion of your fellow jurors or for the mere purpose of returning a verdict.

During the trial, some of you have chosen to take notes. You may take your notes with you to the jury room and use them during your deliberations if you wish. I again stress to you that written notes are only intended to be an aid to your memory. It should not take precedence over your own independent recollections and your own independent memories.

Those jurors who have not taken notes should rely on their own memories and independent recollections of the evidence and should not be influenced by the fact that another juror has taken

notes since the notes are only for the notetaker's personal use in assisting his or her own memory of the evidence and recollection of the facts.

Ladies and gentlemen, when you have finished your deliberations, again, please leave your notes on the jury table face down so that the bailiff can destroy them. You may not retain the notes after the trial has been concluded.

Again, I advise you, you must rely upon your independent recollections. The fact that one has taken notes which is all right, does not make the notes any more significant nor reliable than your independent recollections or memories.

Ladies and gentlemen, you will have the opportunity to take into the jury room with you the exhibits that have been presented in this case. You also will take into the jury room with you the verdict forms. You also will take in the jury room with you the instructions of law which will govern you during your deliberations.

The verdict forms read as follows: We the jury find the defendant guilty of the crime of first degree murder of Belinda Scott, signed by the foreperson. Or we the jury find the defendant guilty of the crime of second degree murder of Belinda Scott,

signed by the foreperson. Or we the jury find the defendant not guilty.

Second verdict form is: We the jury find the defendant guilty of use of a firearm during the commission of the murder of Belinda Scott, signed by the foreperson. Or we the jury find the defendant not guilty, signed by the foreperson.

The next verdict form is, we the jury find the defendant guilty of the crime of armed burglary of the dwelling house of Belinda Scott, signed by the foreperson. Or we the jury find the defendant guilty of the crime of burglary of the dwelling house of Belinda Scott, signed by the foreperson. Or we the jury find the defendant not guilty, signed by the foreperson.

Next verdict form is: We the jury find the defendant guilty of use of a firearm during the commission of the burglary of the dwelling house of Belinda Scott, signed by the foreperson. Or we the jury find the defendant not guilty, signed by the foreperson. Next verdict form is: We the jury find the defendant guilty of the crime of robbery of Ronald Scott, signed by the foreperson. Or we the jury find the defendant not guilty signed by the foreperson.

And the last verdict form is: We the jury

find the defendant guilty of use of a firearm during the commission of the robbery of Ronald Scott, signed by the foreperson. Or we the jury find the defendant not guilty, signed by the foreperson.

The sheriff will present to you the verdict forms together with the instructions of law and exhibits in this case when you return to the jury room for your deliberations.

Ladies and gentlemen of the jury, you may be as leisurely in your deliberations as the occasion may require and take all the time that you feel necessary.

At this time, I am going to ask that you please retire to the jury room to commence your deliberations. Once all 12 of you are in the jury room together and you have been given the instructions of law and the evidence that has been presented, the exhibits in this case, and the verdict forms, once that is all accomplished, then you may at that time discuss the case between and among yourselves and commence deliberations. So if you would please enter the jury room.

MR. ANDERSON: Judge, may we approach?

THE COURT: Right. I am taking care of that.

MR. BATLINER: You asked us to remind you.

THE COURT: If you would please, all members

of the jury, please return to the jury room at this time. Ms. Ahkey, would you please step over to see me, please, madam?

THE JUROR: Okay.

THE COURT: Court will be in recess at this time.

(Thereupon, the jury commenced deliberations at 11:15 a.m. after which the following proceedings were had at 12:00 p.m.)

THE COURT: Let the record reflect the defendant is present in person with his attorney, Mr. Anderson. Commonwealth's attorney, Mr. Batliner, is present.

I am told, gentlemen, that the jury has requested through the sheriff that they be allowed to use the blackboard, and I have no problem with that. Any objection, Mr. Batliner?

MR. BATLINER: None from the Commonwealth, Your Honor.

THE COURT: Mr. Anderson?

MR. ANDERSON: No, Your Honor.

MR. BATLINER: As a matter of fact, if you want, Judge, I have no objection if you just want to give it to them without even bringing them out.

THE COURT: That's what I propose doing.

That was the query?

THE SHERIFF: Yes, sir.

THE COURT: Without objection either by Mr. Batliner or Mr. Anderson. Is that completely erased?

THE SHERIFF: Yes, it is, both sides.

THE COURT: With some chalk and an eraser there?

THE SHERIFF: There is.

THE COURT: Are you able to do that by yourself?

THE SHERIFF: Yes.

THE COURT: Court will be in recess at this time.

(Short recess taken.)

(Thereupon, the following proceedings were had at 1:00 p.m.)

THE COURT: Let the record reflect the defendant is present in person with his attorney, Mr. Anderson, and the Commonwealth attorney, Mr. Batliner, is also present. Would you get the jury out, please, sir.

(Thereupon, the jury entered the courtroom at 1:05 p.m.)

THE COURT: Let the record reflect the jury

is present in full at this time. Ladies and gentlemen, I don't think you can survive on doughnuts alone, so we are going to have a lunch break at this time for one hour. Is that sufficient time?

THE JURORS: Yes.

THE COURT: If any of you have any notes, would you please leave them in the conference room face down. Do not take notes with you. If you have them in your possession, just give them to the sheriff, and he will place them in the conference room face down.

Ladies and gentlemen of the jury, do not discuss the case between and among yourselves. Do not conduct any deliberations. Do not go to the scene of the incident. Do not accept any information from any source. If there is any media of any sort, do not accept any information from that source.

When you return, ladies and gentlemen, return to the jury room right here. When you return in one hour, please -- unless you want to make it at 2:15. Is 50 minutes enough?

THE JURORS: That's enough.

THE COURT: Is 50 minutes enough?

THE JURORS: Yes.

THE COURT: Return at 2 o'clock, please. Ladies and gentlemen when you return, return to this

jury room. When you return to this jury room, do not discuss the case between and among yourselves. Do not conduct any deliberations until all 12 of you are present at the same time. Okay? Have a pleasant lunch. See you back at 2 o'clock.

Court will be in recess until 2 o'clock.

(Thereupon, a luncheon recess was had at 1:10 after which the following proceedings were had at 2:40 p.m.)

MR. ANDERSON: This is George Anderson, the attorney for Lester Lynch. State your name.

THE DEFENDANT: Lester Bernard Lynch, Jr.

MR. ANDERSON: Mr. Lynch, I was appointed to represent you on a charge of the murder of Belinda Scott, robbery of Ronald Scott, the breaking and entering in the nighttime of the residence of Belinda Scott and three gun charges; is that correct?

THE DEFENDANT: Yes.

MR. ANDERSON: I have told you the Commonwealth has tendered an offer to you. Do you recall what the offer was?

THE DEFENDANT: Yes.

MR. ANDERSON: What was the offer?

THE DEFENDANT: Fifty years, suspend 41.

MR. ANDERSON: Leaving you how many to serve?

THE DEFENDANT: Nine.

MR. ANDERSON: Did you decide to accept or reject that offer?

THE DEFENDANT: Reject.

MR. ANDERSON: Thank you. It should be noted for the record that present also is the Commonwealth attorney, Ron Batliner, at the request of the Commonwealth attorney and defense attorney, and that the judge is not present.

(Thereupon, the court remained in recess during jury deliberations after which the following proceedings were had at 5:00 p.m.)

THE COURT: Let the record reflect the defendant is present in person with his attorney, Mr. Anderson. Commonwealth attorney, Mr. Batliner, is also here. Bring the jury out, please.

(Thereupon, the jury entered the courtroom at 5:00 p.m.)

THE COURT: Let the record reflect the jury is present in full at this time. Ladies and gentlemen of the jury, the Court is going to declare a recess at this time, ask that you please return tomorrow morning at 9 o'clock a.m. to commence again with your deliberations.

Ladies and gentlemen, while at home or at any

place, do not discuss the case between and among yourselves. Do not conduct any deliberations. Do not go to the scene of the event. Do not let anybody discuss the matter with you. Do not accept any information from any source or from any news media if there is any information. Turn it off and do not look at it, please.

When you return tomorrow morning, ladies and gentlemen, return to this room. When you return to this room, please do not undertake any discussions. Do not commence deliberations. Do not discussion the case between and among yourselves until all 12 jurors are present at the same time. Once all 12 jurors are present at 9 o'clock tomorrow morning, then you can resume your deliberations. Have a pleasant evening, ladies and gentlemen. We'll see you tomorrow morning. If you have any notes, please leave your notes here on the table. Court will be in recess until 9 o'clock tomorrow morning.

(Thereupon, the proceedings adjourned at 5:05 p.m.)

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V I R G I N I A:

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IN THE CIRCUIT COURT FOR THE CITY OF NORFOLK

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RICHMOND VIRGINIA

COMMONWEALTH OF VIRGINIA,

Plaintiff,

vs.

LESTER BERNARD LYNCH,

Defendant.

NOS. CR01003499-07, 08, 09, 10, 11

APR 14 2003

VOLUME IV

TRANSCRIPT OF TRIAL PROCEEDINGS

Norfolk, Virginia

March 21, 2003

Before: THE HONORABLE MARC JACOBSON
and a Jury.

Appearances:

OFFICE OF THE COMMONWEALTH ATTORNEY
By: RONALD BATLINER, ESQUIRE
Counsel for the Plaintiff

ROBINSON, NEELEY & ANDERSON
By: GEORGE A. ANDERSON, JR., ESQUIRE
Counsel for the Defendant

TRANSCRIPT OF PROCEEDINGS

THE COURT: Let the record reflect the defendant is present in person with his attorney, Mr. Anderson. Commonwealth's attorney, Mr. Batliner, is also present at this time. The Court has received the following two questions from the jury. One, we would like to have Ronald's testimony regarding who had the gun in the back room. Two, we would like to have Tamika's testimony regarding who had the gun in the back room. Signed by the foreman. The foreman is John Vast-Binder.

Gentlemen, the Court is going to respond to the question that the members of the jury will have to rely upon their memories and independent recollections, that the evidence has been presented, and that will be the source of their information. Any objection, Mr. Batliner?

MR. BATLINER: No, Judge.

THE COURT: Mr. Anderson?

MR. ANDERSON: No, Your Honor.

THE COURT: Bring the jury out, please.

(Thereupon, the jury entered the courtroom at 10:05 a.m.)

THE COURT: Morning, ladies and gentlemen.

Hope you had a pleasant evening.

THE JURORS: Morning, Your Honor.

THE COURT: Thank you for being punctual again. It's very much appreciated. Ladies and gentlemen, the Court has received both of your questions, and the Court would indicate that you will have to rely upon your independent recollections and your memories. The evidence has been presented at this time, and that will be what you have to do is just recall and recollect what the testimony is or information is that you're seeking by virtue of the two questions. All right, thank you very much.

(Thereupon, the jury reconvened their deliberations.)

THE COURT: Bring the jury out, please.

(Thereupon, the jury entered the courtroom at 12:30 p.m.)

THE COURT: Let the record reflect the defendant is present in person with his attorney, Mr. Anderson. The Commonwealth attorney, Mr. Batliner, is also present. Let the record reflect the jury is present in full. Ladies and gentlemen of the jury, it's my understanding you want some lunch?

THE JURORS: Yes.

THE COURT: Good. Go get some lunch and be

back at 1:30. Ladies and gentlemen, before you leave, do not discuss the case between and among yourselves. Do not conduct any deliberations. Do not go to the scene of the incident. Do not let anybody discuss the case with you. Do not accept any information from any source whatsoever.

When you return, ladies and gentlemen, return directly to this jury room. Once you return to the jury room and at all times before and after, once you leave, do not discuss the case between and among yourselves. Do not conduct any deliberations. When all 12 of you and every one of you has returned to the jury room, then you can commence deliberations and, of course, enter into discussions. Have a pleasant lunch and be back no later than 1:30, please.

(Thereupon, the jury left for lunch at 12:33 p.m. after which the following proceedings were had at 2:36 p.m.)

THE COURT: Let the record reflect the defendant is present in person with his attorney, Mr. Anderson. Commonwealth's attorney, Mr. Batliner, is also here. The sheriff has indicated apparently the foreman of the jury has said they are hung. The Court is going to give to them the Allen Charge.

MR. BATLINER: No objection by the

Commonwealth. As a matter of fact, we would have requested it.

MR. ANDERSON: No objection.

THE COURT: And no objection by the defendant. All right, bring the jurors out, please.

(Thereupon, the jury entered the courtroom at 2:37 p.m.)

THE COURT: Let the record reflect the jury is present in full at this time. Mr. Foreman, the Court has been advised that you have indicated that the jury is unable to reach a decision; is that correct?

THE FOREMAN: That's correct.

THE COURT: All right, thank you. Ladies and gentlemen of the jury, as you have been told, your verdict must be unanimous. If you can possibly reach a verdict, it is your duty to do so. You should listen to the views and opinions of your fellow jurors with fairness and candor, and you should give consideration to what they say.

However, you must decide the case for yourself, and you should reach an agreement only if it can be done without sacrificing your individual judgment. During the course of deliberations, each of you, whether the majority or the minority, should not hesitate to reexamine your own views and change your

opinion if you are convinced it was wrong. No juror, however, should give up his or her honest opinion solely because of the opinion of their fellow jurors or for the mere purpose of returning a verdict.

Ladies and gentlemen of the jury, if you can reach a decision without surrendering your conscientious opinion, it is your duty to do so. I would ask that you please return to the jury room and give this matter your further consideration. Thank you.

(Thereupon, the jury left the courtroom and resumed deliberations at 2:39 p.m.)

THE COURT: Court will be in recess at this time.

(The court remained in recess during jury deliberations after which the following proceedings were had.)

THE COURT: Let the record reflect the defendant is present in person with his attorney, Mr. Anderson. Commonwealth's attorney, Mr. Batliner, is also present at this time. Please bring the jury out.

(Thereupon, the jury entered the courtroom at 4:45 p.m.)

THE COURT: Let the record reflect the jury

is present in full at this time. Ladies and gentlemen, as it appears, you're still deliberating. Let the record reflect the Court is going to have to ask that you please return Monday morning at 9 o'clock a.m, Monday morning 9 o'clock a.m. to resume deliberations.

Ladies and gentlemen, do not discuss the case between and among yourselves. Do not conduct any deliberations. Do not go to the scene of the incident. Do not accept any information from any source. Do not accept any information from any news media, television, newspapers or anywhere. If you see anything, don't read it. Don't listen to it.

When you return Monday morning, ladies and gentlemen -- and those will be your marching orders the entire weekend, ladies and gentlemen. When you return Monday morning, please return to this courtroom at 9 o'clock a.m. Again, do not conduct any discussions. Do not conduct any deliberations until all 12 of you are in the jury room altogether at 9 o'clock Monday morning. Have a very pleasant weekend. Thank you. Court will be in recess until 9 o'clock a.m.

(Thereupon, the proceedings were adjourned at 4:47 p.m.)

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V I R G I N I A:

IN THE CIRCUIT COURT FOR THE CITY OF NORFOLK

COMMONWEALTH OF VIRGINIA,

Plaintiff,

vs. NOS. CR01003499-07, 08, 09, 10, 11

LESTER BERNARD LYNCH,

Defendant.

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VOLUME V

TRANSCRIPT OF TRIAL PROCEEDINGS

Norfolk, Virginia

March 24, 2003

Before: THE HONORABLE MARC JACOBSON
and a Jury.

Appearances:

OFFICE OF THE COMMONWEALTH ATTORNEY
By: RONALD BATLINER, ESQUIRE
Counsel for the Plaintiff

ROBINSON, NEELEY & ANDERSON
By: GEORGE A. ANDERSON, JR., ESQUIRE
Counsel for the Defendant

TRANSCRIPT OF PROCEEDINGS

THE COURT: Let the record reflect the defendant is present in person with his attorney, Mr. Anderson. The Commonwealth attorney, Mr. Batliner, is also present at this time. Bring the jury out.

(Thereupon, the jury entered the courtroom at 11:47 a.m.)

THE COURT: Morning, ladies and gentlemen.

THE JURORS: Good morning.

THE COURT: Good morning, ladies and gentlemen. I want to thank you very much for being punctual once again. I think you were a little bit early. I thank you more for that. At least the weather is improving. I hope you had a pleasant weekend.

Ladies and gentlemen, we are going to take a luncheon recess till 1 o'clock. When you return, commence your deliberations at that time. If you have notes, please leave them with the sheriff. He will put them on the table face down.

Ladies and gentlemen, do not discuss the case between and among yourselves. Do not conduct any deliberations. Do not go to the scene of the incident. Do not accept any source. When you return, please

return to this jury room and do not commence any discussions nor any deliberations until all 12 of you are present at the same time. Do have a pleasant lunch. Thank you very much. We'll see you then. Leave your notes with the sheriff if you would, please.

Court will be in recess until 1 o'clock. Thank you.

(Thereupon, a luncheon recess was had at 11:50 a.m. after which deliberations resumed at 1:00 p.m.)

THE COURT: Let the record reflect the defendant is present in person with his attorney, Mr. Anderson. Commonwealth's attorney, Mr. Batliner, is also present at this time. The jury is not present. Counsel, the Court intends to ask the jury, since they have been deliberating for a goodly number of hours if they are making any progress and if any further time will assist them in their deliberations. If not, then the Court will have to make a decision as to whether or not to proceed at this time.

MR. BATLINER: Judge, the Commonwealth's position would be until they say they're hung, not to disturb them. But I guess that's up to the Court.

THE COURT: Bring the jury out, please.

(Thereupon, the jury entered the courtroom at

4:20 p.m.)

THE COURT: All right. Good afternoon, ladies and gentlemen of the jury. I haven't seen you for a while. I hope you had a pleasant lunch. Ladies and gentlemen of the jury, are you making progress in your deliberations?

JURY FOREMAN: I can speak for the group. At this point I cannot say that we are.

THE COURT: Will further time assist in your deliberations?

JURY FOREMAN: Your Honor?

THE COURT: Will further time assist in your deliberations in helping you to reach a verdict?

JURY FOREMAN: The discussion we were having just when we were coming out was that very discussion, and the answer of the consensus of the group is no.

THE COURT: Well, I am going to give you another half hour or so to see if that will assist you, and if not, then we'll proceed accordingly. Again, I have given you the charge as to what your obligation as jurors are. All right, thank you.

(Thereupon, the jury resumed deliberations at 4:23 p.m.)

THE COURT: Ask the jury to come out, please.

(Thereupon, the jury entered the courtroom at

5:00 p.m.)

THE COURT: Let the record reflect the defendant is present in person with his attorney, Mr. Anderson. Commonwealth attorney, Mr. Batliner, is also present at this time. Left the record reflect the jury is present in full at this time. Ladies and gentlemen of the jury, when we last met, I indicated I would give you further time. It's approximately 5 o'clock p.m. Has any progress been made at this time?

JURY FOREMAN: No, Your Honor, not in the last half hour.

THE COURT: Would any further time assist you in your deliberations in attempting to reach a verdict?

JURY FOREMAN: Unfortunately, we do not believe so.

THE COURT: Is that the consensus of the jury?

THE JURORS: Yes, sir.

THE COURT: Is there anyone that disagrees with that? Anyone disagree with that?

THE JURORS: No, sir.

THE COURT: Let the record reflect that no members of the jury disagree with the statement just made. All right. Ladies and gentlemen of the jury,

you have deliberated for many hours. You've been conscientious and diligent. It appears to the Court that the jury is unable to reach a verdict or verdicts after deliberations and after many hours of deliberations, and the Court has been advised that further deliberations would not assist in the process of reaching verdicts.

Accordingly, the Court is going to declare a mistrial at this time. Ladies and gentlemen of the jury, that concludes your services. Any objection to that, Mr. Batliner?

MR. BATLINER: No, sir, Judge.

THE COURT: Mr. Anderson, sir?

MR. ANDERSON: No, Your Honor.

THE COURT: All right. Ladies and gentlemen of the jury, that concludes your services as jurors in this case. I thank you very very much, and I say that very sincerely. You certainly have been conscientious, diligent, punctual, pleasant, and very much appreciated. I don't know if you're up for any more jury service during this time. Are any of you up for any further jury service or are your days numbered as jurors?

THE SHERIFF: They have been excused, Judge.

THE COURT: For the rest of the month?

THE SHERIFF: Yes, sir.

THE COURT: If not, I would have had arrangements made for you to be excused. You have served long and hard. The Court appreciates it very much. Unless you hear to the contrary, you will not be required to serve as jurors any more during this term.

MR. BATLINER: Judge, on behalf of the Commonwealth, we'd like to thank the jurors for their service.

THE COURT: All right, thank you. Ladies and gentlemen, that concludes your service as jurors. The Court thanks you very very much. I see you took your bottle with you so it's not a problem, but you can certainly go back in the jury room and collect your belongings.

Ladies and gentlemen, if any of you have notes, you may not take those with you. You cannot take those with you. If any of you have notes, please return to the jury room and lay them face down on the jury room table. Everyone understand that?

THE JURORS: Yes.

THE COURT: Anyone need any help with parking passes, excuses or anything else we can assist you with? Thank you very much, ladies and gentlemen. That concludes your service as jurors in this case. And

leave your notes again, ladies and gentlemen of the jury.

(Thereupon, the jury left the courtroom at 5:02 p.m.)

THE COURT: Let the record reflect all members of the jury have departed. Commonwealth intend to retry this matter?

MR. BATLINER: Yes, sir, Judge.

THE COURT: All right, let's see if we can get a date.

MR. ANDERSON: Your Honor, if Commonwealth is going to retry it, I would ask that the Court set a bond for the defendant. As the Court may or may not be aware, this case was tried in October of last year that resulted in a hung jury after a day and a half or close to two days of deliberations. This jury deliberated for more than three days or three days, and they were unable to reach a decision.

There is still a presumption that this defendant is innocent of these charges. His record is limited. He has one felony charge, eluding a police officer. He has a misdemeanor of a concealed weapon, an assault, and a petty larceny. So he has three misdemeanor charges and one felony. He has ties to the community.

As the Court is aware, his family has been here the whole week. He has been in this community all of his life. He had been working until just before this offense occurred. In fact, he was working part time at that time. So he has ties to the community.

There is an assault charge on his wife back in 2001, but that's the only evidence of any violence he has other than this charge for which he is presumed to be innocent. This defendant has been in custody for a significant amount of time. I'm not exactly sure just how long he has been in custody, but this is an offense that dates back to 2001. So I would respectively ask the Court to set a reasonable bond for this defendant.

THE COURT: Mr. Batliner, sir.

MR. BATLINER: Judge, we would be opposed to bond. Mr. Anderson has correctly recited his record. He does have a domestic assault conviction and petty larceny. And the felony is eluding police with endangerment which made it a felony. And the interesting thing about that, Judge, is that he did get a bond on this charge at one time, and he committed this felony while he was out on bond on this charge.

These offenses are offenses where there is a presumption against bond and, Judge, frankly in this

case, the proof has sort of been in the pudding. When he was given an opportunity to be released on bond, he went out and committed a new offense for which he was convicted. We would ask the bond be denied.

THE COURT: All right. There is a presumption against bond in cases of this type. The defendant has not overcome the presumption, particularly in light of the fact, is that correct, when the offense occurred, the felony occurred, Mr. Anderson?

MR. ANDERSON: That is correct, Your Honor, but I would simply add the defendant was sentenced on that charge and has in fact served his time on that charge. This was an offense where the defendant used very poor judgment. He had a misdemeanor assault charge, and he decided to leave from the area where the policeman told him to stay, and that's how he ended up with the charge.

But no one was put in danger by that charge, and he has in fact served. He has been sentenced and he has served the time for that charge, Your Honor, and I would respectively suggest to the Court there is no evidence of violence, that he has ties to the community. There is nothing to indicate he will not return, so there is nothing to show flight and nothing

to show danger, and so I would ask the Court to reconsider and give him bond.

THE COURT: The Court does not find that the burden has been overcome, and the presumption has not been overcome by the defendant. The Court is going to deny bond. The defendant is remanded to custody at this time pending a new trial. We have a new date, please, gentlemen?

MR. ANDERSON: I can do it April 21, 22, 23.

THE COURT: It can be before any judge; is that correct? No objection to that, of course, Mr. Batliner, Mr. Anderson?

MR. BATLINER: There is no problem with that, Judge. Unfortunately, on the 22nd I have a special prosecution in Suffolk, and the Court has indicated that on the 23rd there is nothing to be set that will carry over to the 24th because I believe the court is closed for the bench bar conference.

THE COURT: All right. Next date, please.

MR. ANDERSON: The 28th, 29th or maybe I better not use that because I have something else. How about the 5th?

THE COURT: Of May, Mr. Anderson?

MR. ANDERSON: Yes, Your Honor.

MR. BATLINER: Actually, the April dates are

better, the 28th, 29th and 30th.

MR. ANDERSON: I have things on those, but I guess I could move -- no.

THE COURT: Let's go into May, please.

MR. BATLINER: The next week I have a jury that starts on the 5th.

MR. ANDERSON: The 12th?

MR. BATLINER: The court has indicated there is nothing to be set on the 12th that will carry to the 13th or the letter that we received.

MR. ANDERSON: How about the 14th?

MR. BATLINER: That is still the judicial conference. I believe the judicial conference is the 13th and the 14th.

MR. ANDERSON: Your Honor, I'll back up to April 28th. I'll just move those other things.

THE COURT: This matter will be set for trial on April 28 at 9:30 a.m. Defendant is remanded to custody. If there is bond, bond is revoked and cancelled.

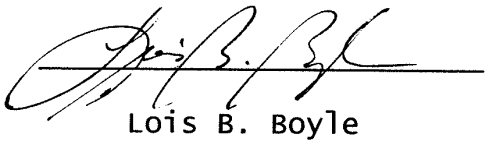
(Thereupon, the proceedings were concluded at 5:10 p.m.)

CERTIFICATE OF REPORTER

I, Lois B. Boyle, do hereby certify that I reported verbatim the proceedings in the Circuit Court of the City of Norfolk, in the matter of Commonwealth of Virginia v Lester Bernard Lynch, Jr., heard by The Honorable Marc Jacobson, Judge of said Court.

I further certify that the foregoing is a true, accurate and complete transcript of said proceedings.

Given under my hand this 14th day of April, 2003 at Newport News, Virginia.



Lois B. Boyle

V I R G I N I A:

IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

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FEB 13 2004
Public Defender's Office
Norfolk, VA

COMMONWEALTH OF VIRGINIA :

vs. :

LESTER B. LYNCH, JR., : CR01003499-12

Defendant. :

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**JURY TRIAL**

VOLUME I

DATE: April 29, 2003

BEFORE: The Honorable Charles E. Poston and a jury

APPEARANCES: RONALD BATLINER, ESQUIRE
Assistant Commonwealth's Attorney
Appearing on Behalf of the
Commonwealth of Virginia.

GEORGE L. ANDERSON, JR., ESQUIRE
Attorney for the Defendant.

REPORTED BY: Susan Feehery, CSR, Court Reporter

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THE COURT: It's my understanding that the defendant's pled not guilty; is that correct?

MR. ANDERSON: That's correct, Your Honor.

THE COURT: Are all the witnesses here?

MR. ANDERSON: My witnesses aren't here, but they're on standby.

THE COURT: Do you know where everybody is?

MR. ANDERSON: I know where everyone is. Thank you, Your Honor.

MR. BATLINER: The critical witnesses, Judge, are in custody and Investigator Martin is here and I know the two others are en route.

THE COURT: Swear the defendant.

THE CLERK: Raise your right hand.

You shall true answers make to such questions as the Court shall now ask of you, so help you God.

THE DEFENDANT: Yes.

EXAMINATION

BY THE COURT:

Q. I understand this is the third time this

case has been tried, so the questions I'm going to ask you are questions you've already been asked.

What is your full name and date of birth?

A. Lester Bernard Lynch, Jr., January 9th, 1977.

Q. What grade did you finish in school?

A. I think I stopped at tenth.

Q. Can you read and write?

A. Yes, sir.

Q. You understand that you are charged with murder, robbery, burglary, and three firearm charges of use of a firearm in the commission of those crimes?

A. Yes, sir.

Q. Have you talked to Mr. Anderson about these offenses?

A. Yes, sir.

Q. Has he told you what the Commonwealth must prove before you can be found guilty?

A. Yes.

Q. Have you talked to him about your defense?

A. Yes, sir.

Q. Have you given him the names of witnesses who could help you?

A. Yes, sir.

Q. Are the witnesses here today, or will be, who you and Mr. Anderson felt could help you?

A. Yes, sir.

Q. Are you entirely satisfied with Mr. Anderson's service to you?

A. Yes, sir.

Q. Do you understand you have a right to be tried by a jury?

A. Yes, sir.

Q. Do you understand you can request to be tried by a judge without a jury?

A. Yes, sir.

Q. And you discussed this choice with Mr. Anderson?

A. Yes, sir.

Q. After talking to him, what did you decide?

A. To be tried by a jury, sir.

Q. Are you ready for trial today?

A. Yes, sir.

Q. Do you understand all the questions I've asked you?

A. Yes, sir.

THE COURT: All right. Have a seat.

THE CLERK: Sir, a jury now to be called will pass between you and the Commonwealth upon your trial now to be had, and if you have a mind to challenge any of them, you must do so as they come to be sworn and you shall be heard.

Mr. Sheriff, will you please bring out the jury panel.

(Roll call of jury panel.)

THE CLERK: Members of the panel, please raise your right hand to be sworn.

(Jury panel sworn.)

THE CLERK: Please be seated.

THE COURT: Good morning, ladies and gentlemen. My name is Charles Poston. I'm the judge who will preside over this trial. Twelve of you will be trying it with me by the time we finish the process.

I'm going to ask you a few questions, and the attorneys may ask you some. The purpose of the questions is to try to do as best as we can in selecting an impartial jury.

The Commonwealth today is represented by

Mr. Ron Batliner, Jr., Assistant Commonwealth's Attorney.

Do any of you know Mr. Batliner?

Have any of you or members of your immediate family been prosecuted by the Commonwealth Attorney's Office in the city of Norfolk?

The defendant in the case today is Mr. Lester Bernard Lynch, Jr.

Would you stand and face the jury panel, please.

Do any of you know Mr. Lynch?

Thank you.

He's represented today by Mr. George L. Anderson, Jr., of the firm Robinson, Neeley and Anderson. Do any of you know Mr. Anderson?

Have any of you or members of your immediate family been represented by Mr. Anderson or the law firm of Robinson, Neeley and Anderson? Thank you.

Now, ladies and gentlemen, this is a criminal case today. The defendant is charged with three offenses. The first is that he is charged with the murder of Belinda Scott. This occurred on June --

MR. ANDERSON: Judge, I think it was more than three offenses.

THE COURT: Excuse me, six. The offense allegedly occurred on June 9th, 2001. Do any of you know

the name of Belinda Scott?

He's also charged with the use of a firearm while committing the murder of Belinda Scott. He's also charged with burglary, armed burglary of the dwelling house of Belinda Scott. All these occurred on the same day, and the use of a firearm in the commission of that burglary.

He's also charged with the robbery of Ronald Scott and use of a firearm in the commission of that robbery.

Do any of you know the name of Ronald Scott?

Ladies and gentlemen, before I go any further with this, I want to dispel one thing that may be going through someone's mind. This jury will not be asked to consider the death penalty. It's not an issue. So that part should be relief from your mind.

Is there any one of you who is not a citizen of the United States?

Is there any of you who is under the age of 18 years?

Is there any one of you who does not reside in the city of Norfolk?

Have any of you served on a jury in the past?

Okay. Here we go. We'll start on the first row. When you answer these questions, respond to a question, please stand up and give your name so the court reporter can hear you.

First row. Ma'am, what is your name?

MS. TURNER: Patricia Turner.

THE COURT: When did you serve on a jury?

MS. TURNER: About five or six years ago.

THE COURT: Was it a criminal or a civil jury?

MS. TURNER: It was traffic.

THE COURT: Did you reach a verdict?

MS. TURNER: Yes.

THE COURT: Thank you, ma'am.

Next juror.

MR. RAMEY: Brent Ramey. It's probably been about ten years since I've served on a jury. I've served on three juries altogether.

THE COURT: Civil or criminal?

MR. RAMEY: Both.

THE COURT: Did you reach verdicts in all of them?

MR. RAMEY: Yes.

THE COURT: Thank you.

MR. JOLLEY: David Jolley, I've never served on a jury.

THE COURT: Okay. If you have not served, you don't have to stand up. Let's go down the first row. The next person that's served on a jury.

Yes, ma'am.

MS. SAVAGE: My name is Arie Savage and it's been about four years since I served on a jury, and it was for traffic.

THE COURT: Did you reach a verdict?

MS. SAVAGE: Yes.

THE COURT: Thank you, ma'am.

Anyone else in the first row? Yes, sir.

MR. BAILEY: My name is Lloyd Bailey. I can't remember exactly what day, but last summer.

THE COURT: Civil or criminal?

MR. BAILEY: It was traffic.

THE COURT: And did you reach a verdict?

MR. BAILEY: Yes.

THE COURT: Thank you. Anyone else on the first row? Yes, sir.

MR. BYRD: Shedrick Byrd. It's been about 15 years ago, civil.

THE COURT: Reach a verdict?

MR. BYRD: Yes.

THE COURT: Anyone else in the first row? Second row? Yes, sir.

MR. EVANS: John Evans. About eleven years ago. It was a criminal case, reached a verdict.

THE COURT: Thank you, sir.

MR. WRIGHT: Richard Wright. It was about 25 years ago. It was a criminal case. Before we actually went in to deliberate, the parties reached an agreement and they settled or whatever.

THE COURT: Next on the second row. Yes, sir.

MR. ALCORN: William Alcorn, civil, Judge. About two years ago. Yes, sir, they reached a verdict.

THE COURT: Thank you. Anyone else?

MR. STILES: Harry Stiles. About five years ago, criminal, and they did reach a verdict.

THE COURT: Thank you, sir.

Anyone else in the second row?

MR. BELL: Raymond Bell. It was about three years ago, criminal. We had a hung jury.

THE COURT: All right. Yes, sir.

MR. FORREST: Steven Forrest. It was about 16 years ago, a criminal case, and we reached a

verdict.

THE COURT: Anybody else on the second row? Third row?

MR. ERRANTE: Steven Errante. It was a civil case about four years ago.

THE COURT: Reach a verdict?

MR. ERRANTE: Yes.

THE COURT: Thank you.

MR. VITASEK: Craig Vitasek. Civil suit about six years ago. They settled before we deliberated.

THE COURT: Anyone else on the third row?

MR. PICKENS: Jimmy Pickens. It was a civil case. They settled.

THE COURT: All right. Thank you, sir. Anyone else in the last row?

MS. WALKER: Helen Walker. It was a criminal case about 15 years ago, and we reached a verdict.

MS. JORDAN: Jeanette Jordan. Last Tuesday when you had your mistrial.

THE COURT: That was not this case.

MS. JORDAN: Yes, sir.

MR. COOPER: Larry Cooper. It was the 15th and 16th of this month, and we reached a verdict.

THE COURT: And the case of the mistrial, it was a civil case and a mistrial was declared before opening statements.

MS. GREGORY: Clarice Gregory. About three years ago, criminal, and we reached a verdict.

THE COURT: Anyone else?

MR. TJADEN: Ralph Tjaden. Approximately eight years ago, criminal case, and we did reach a verdict.

THE COURT: Thank you. Anyone else?

Have any of you or members of your immediate family ever been employed in the law enforcement field: security guard, police officer, sheriff, attorney, whatever?

MR. FREEMAN: Lloyd Freeman. My brother is a detective sergeant with the Detroit police force.

THE COURT: Would that affect your ability to judge this case fairly and impartially?

MR. FREEMAN: I don't think so.

THE COURT: Thank you, sir.

Yes, ma'am.

MS. JORDAN: Jeanette Jordan. Both my brothers serve as deputy sheriffs here in Norfolk.

THE COURT: Would that affect your ability to judge this case fairly and impartially?

MS. JORDAN: No.

MS. PATTERSON: Tara Patterson. My father is a base police officer.

THE COURT: Here in Norfolk?

MS. PATTERSON: Yes.

THE COURT: Would that affect your ability to judge this case fairly and impartially?

MS. PATTERSON: No.

THE COURT: Thank you. Yes, ma'am.

MS. TURNER: Patricia Turner. Both of my nephews are attorneys in Virginia.

THE COURT: Would that affect your ability to judge this case fairly and impartially?

MS. TURNER: No, sir.

THE COURT: Thank you. Anyone else? Have any of you or members of your immediate family ever been the victims of a crime? If you don't want to talk about this, just let me know and we'll inquire later. First row, yes, ma'am.

MS. TURNER: A rape case about 30 years ago.

THE COURT: A member of your family?

MS. TURNER: Yes.

THE COURT: Would that affect your ability to judge this case fairly and impartially?

MS. TURNER: No.

MR. RAMEY: The only thing that comes to mind would be a series of break-ins to vehicles that I own.

THE COURT: How long ago?

MR. RAMEY: Fifteen years maybe.

THE COURT: Would that affect your ability to judge this case fairly and impartially?

MR. RAMEY: No, sir.

MS. SCHWEITZER: Suzanne Schweitzer. My house was broken into.

THE COURT: How long ago?

MS. SCHWEITZER: Probably about 13 years ago.

THE COURT: Would that affect your ability to judge this case fairly and impartially?

MS. SCHWEITZER: No, Your Honor.

THE COURT: Yes, sir.

MR. BENDER: Mark Bender. My car was stolen last summer.

THE COURT: Would that affect your ability to judge this case fairly and impartially?

MR. BENDER: No.

THE COURT: Thank you, sir. First row? Second row? Last row? Yes, ma'am.

MS. KINDLE: Kathleen Kindle. My nephew was killed about 20 years ago.

THE COURT: Would that affect your ability to judge this case fairly and impartially?

MS. KINDLE: No, Your Honor.

THE COURT: Thank you. Yes, sir.

MR. STILES: Harry Stiles. About 15 years ago while I was driving a cab, I was robbed at gunpoint.

THE COURT: Would that affect your ability to judge this case fairly and impartially?

MR. STILES: I don't think so.

THE COURT: Thank you, sir.

Anyone else?

MS. RUTTEN: Diane Rutten and I'd rather not talk about it in public.

THE COURT: Okay. What is your name, ma'am?

MS. RUTTEN: Diane Rutten.

THE COURT: Anyone else? Yes, ma'am.

MS. JORDAN: Jeanette Jordan. I was carjacked in '99.

THE COURT: Would that affect your ability to judge this case fairly and impartially?

MS. JORDAN: No.

THE COURT: Thank you. Yes, sir.

MR. ERRANTE: Steven Errante. My wife, prior to our marriage, was held up in a convenience store approximately, I would say, 21 years ago.

THE COURT: Would that affect your ability to judge this case fairly and impartially?

MR. ERRANTE: No, Your Honor.

THE COURT: Law enforcement officers will testify in this trial. The mere fact that a witness is a law enforcement officer does not entitle his testimony or her testimony to any greater importance or lesser importance than the testimony of any other witness.

Are any of you incapable or unable to evaluate a law enforcement officer's testimony just as objectively and fairly as you would anyone else?

Would any of you treat a law enforcement officer differently than you would any other witness?

Are there any of you who have an interest in the outcome of this case?

Do any of you have any information about these offenses or about the accused from any source except what I've told you here today?

Do any of you believe that you would be unable to enter the jury box with an open mind and wait

until the entire case is presented before presenting a fixed opinion or a conclusion as to the guilt or innocence of the accused?

Just a minute. State your name.

MR. VITASEK: Craig Vitasek. I didn't stand up quick enough before.

THE COURT: Okay. I'll come to you in a few minutes.

Yes, ma'am.

MS. PATTERSON: My name is Tara Patterson.

THE COURT: Okay. We'll come to you in a few minutes.

Anyone else?

Our system of justice presumes that the accused is innocent until proven guilty. Do any of you disagree with that principle of our law?

Are any of you incapable or unable to keep the presence of innocence alive in your mind throughout the trial until the case is given to you for deliberation?

Have any of you expressed or formed any opinion concerning the guilt or innocence of the accused?

Are any of you sensible of any bias or prejudice you may have for or against the Commonwealth?

Are any of you aware of any bias or prejudice you may have for or against the accused?

Do any of you know of anything whatsoever, be it religious, moral, philosophical, any reason that would prevent you from giving a fair and impartial trial to the Commonwealth and to the accused?

Is there any of you who is now a plaintiff or a defendant in any case pending in the Circuit Court of the City of Norfolk?

It is likely that this case will last at least two days. Is there any reason that -- put it this way: Is there any extraordinary, unavoidable reason, totally out of your control, that prevents you from being here at this trial?

Yes, ma'am.

MS. DEBERRY: Demetri DeBerry. I'm supposed to go in May 5th for some testing.

THE COURT: We'll be finished by then.

Ms. Turner, what do you teach?

MS. TURNER: I teach sixth grade math at Blair Middle School.

THE COURT: Mr. Ramey, you're listed as retired. From what occupation did you retire?

MR. RAMEY: Social work.

THE COURT: For the City of Norfolk?

MR. RAMEY: Yes, Your Honor.

THE COURT: Mr. Jolley, what do you supervise?

MR. JOLLEY: I work as a construction foreman for a roofing and siding company.

THE COURT: Ms. Schweitzer, what do you inspect?

MS. SCHWEITZER: I inspect daycare centers and family daycare homes for the Commonwealth of Virginia.

THE COURT: Thank you, ma'am.

Mr. DeBerry, what do you teach? Or Ms. DeBerry, I'm sorry.

MS. DEBERRY: Pre-K.

THE COURT: Mr. Ricks, what is your employment? What do you do?

MR. RICKS: Building supply.

THE COURT: Ms. Savage, what is your employment?

MS. SAVAGE: I'm retired.

THE COURT: What did you retire from?

MS. SAVAGE: From Sentara Leigh Hospital.

THE COURT: What did you do?

MS. SAVAGE: I was a service assistant.

THE COURT: Mr. Bender, you're listed as a pastor. What church?

MR. BENDER: Calvary Presbyterian Church.

THE COURT: Ms. Patterson, you're a nurse. Are you practicing now?

MS. PATTERSON: Yes. I'm employed at American Home. I'm a CNA.

THE COURT: Mr. Bailey, for whom do you work?

MR. BAILEY: Houseman, Courtyard Marriott.

THE COURT: Mr. Byrd, you're listed as retired. From what occupation did you retire?

MR. BYRD: Personnel officer.

THE COURT: For what company?

MR. BYRD: Norfolk Naval Shipyard.

THE COURT: Bogue, is that correct?

MS. BOGUE: Yes.

THE COURT: What do you manage?

MS. BOGUE: Office manager for my husband's company, heating and oil and stove oil.

THE COURT: Thank you, ma'am.

Mr. Stevens, what do you manage?

MR. STEVENS: Sir?

THE COURT: You're listed as a manager. What do you manage?

MR. STEVENS: Engineering manager with Raytheon.

THE COURT: Thank you, sir.

Mr. Adams, what is your employment?

MR. ADAMS: I'm in the financial services industry.

THE COURT: Thank you, sir.

Mr. Wright, what do you drive?

MR. WRIGHT: I drive a shuttle bus between ODU and Norfolk State University.

THE COURT: Thank you, sir.

Ms. Kindle, you're listed as an operator. Where do you work?

MS. KINDLE: I work for GC and I'm a foreman.

THE COURT: Mr. Alcorn, what is your occupation?

MR. ALCORN: I work for Newport News Shipbuilding, service engineer.

THE COURT: Thank you, sir.

Mr. Stiles, for whom do you drive?

MR. STILES: I drive a taxi for Yellow Cab Company, and I'm retired from the Navy.

THE COURT: Thank you, sir.

Ms. Rutten, what do you sell?

MS. RUTTEN: Sales associate for 7-Eleven.

THE COURT: Thank you.

Mr. Bell, what is your occupation?

MR. BELL: I work with the Department of Recreation for the City of Norfolk.

THE COURT: Thank you, sir.

Mr. Forrest, for whom do you work?

MR. FORREST: For the Naval Audit Service.

THE COURT: Thank you, sir.

Mr. Errante, a specialist, what do you specialize in?

MR. ERRANTE: Program specialist for the special ed department for Norfolk City Public Schools.

THE COURT: Thank you, sir.

Mr. Freeman, for whom do you work?

MR. FREEMAN: (Inaudible) systems analyst.

THE COURT: Thank you, sir.

Mr. Vitasek, what do you do? And I think I have a vague memory from --

MR. VITASEK: Yellow Cab taxi driver.

THE COURT: Thank you, sir.

Mr. Pickens, from what occupation did you retire?

MR. PICKENS: City of Norfolk, (inaudible.)

THE COURT: Ms. Austin has the hardest job of all. She's a housekeeper. Is that correct, ma'am?

MS. AUSTIN: That's correct.

THE COURT: Thank you.

Ms. Jordan, what do you do?

MS. JORDAN: I work for military civil service. I rate and rank applications.

THE COURT: Ms. Gregory, you're listed as a specialist. What do you specialize in?

MS. GREGORY: I work at visual arts, City of Norfolk.

THE COURT: Thank you, ma'am.

Mr. Tjaden, is that correct? What do you do, sir?

MR. TJADEN: I'm a retired truck driver.

THE COURT: Thank you.

Does the Commonwealth have further inquiry?

MR. BATLINER: Just a few, Judge.

MS. SAVAGE: Arie Savage. My grandson.

MR. BATLINER: Anybody else in the first row? Second row?

MR. STILES: Eric Stiles. My son was arrested.

MR. BATLINER: Anybody else in the second row?

MS. KINDLE: I was arrested one time, but it was a mistake.

MR. BATLINER: Third row?

MR. VITASEK: Craig Vitasek. My uncle and my father.

MR. BATLINER: Those of you who answered yes --

MR. PICKENS: I was arrested.

THE COURT REPORTER: I'm sorry.

MR. PICKENS: Pickens.

MS. GREGORY: Clarice Gregory, my son was arrested.

MR. BATLINER: Anybody else? For those of you who answered yes, did the fact that a family member or you having been arrested, would that influence your ability to give a fair and impartial trial in this case?

THE JURY PANEL: No.

I'm going to read a list of witnesses, and let me know if you know any of these people. People who may or may not be called during the course of the trial: Ronald Scott, Investigator Mike Loftin, Scott Howard, Dr. Elizabeth Kinnison, Mary Williams, Tavisha Moye, Robert Rivell, Investigator E.L. Martin, Investigator B.A. Huffman, Kenneth Parker, although sometimes called K.P., Investigator R.G. Ford, Tamika Reid, Investigator R.J. Douros, Amy Jo Talmey (phonetic), and John G. Ward.

Does anybody recognize any of those names?

The judge asked you a similar question. I'm going to ask you, are there any panel members who for personal, philosophical, religious, or moral reasons feels it improper to judge other people?

Have you or any member of your immediate family ever been arrested?

MR. BYRD: Shedrick Byrd. My son has been arrested a couple of times.

MS. PATTERSON: Tara Patterson. My brother's been arrested a couple of times.

MS. DEBERRY: Demetri DeBerry. My brother.

MR. RICKS: Cecil Ricks. My brother.

MR. BATLINER: Do you all agree that the law should be applied equally to all persons regardless of race, age, sex, or religion?

THE JURY PANEL: Yes.

MR. BATLINER: Can you accept the legal principle that a person who aids and abets in the commission of a crime can be clearly responsible for that crime? Do you agree with that proposition of law?

THE JURY PANEL: Yes.

MR. BATLINER: I have no further questions, Judge.

THE COURT: Mr. Anderson.

MR. ANDERSON: Good morning. I, too, am going to call a list of witnesses who we expect to call today. I think one of them is here. The rest of them are not here, and we'll see if any of you know these persons: Gloria Lynch, I think she's here. Velma Figueroa, who's also known as Shawn, Ronald Palmer, Kimbery Palmer, and LaTanya Palmer. Any of those names sound familiar to you?

This is a question that's similar to what the judge asked you about police officers. There may be family members of the defendant who might testify. Would the fact that they are family members cause you to judge -- can you sit and judge their testimony fairly

and impartially just as you would any other witness?

The law presumes that the defendant is innocent, and he doesn't have to testify. Some people, not necessarily you, say if he's not guilty, he should testify. Are there any of you who believe that the defendant should always testify in a case? Any of you believe that a defendant should testify?

Those are all the questions that I have, Your Honor.

THE COURT: Thank you. Counsel, join me at the court reporter's table.

(The following discussion was held out of the hearing of the defendant and the jury panel.)

THE COURT: Ms. Diane Rutten, would you come up here, please.

She was concerned about the crime.

THE BAILIFF: Number 19?

THE COURT: How are you? You were the victim of a crime?

MS. RUTTEN: Yes.

THE COURT: What was the situation?

MS. RUTTEN: Rape, domestic. I've been robbed. I've been assaulted.

THE COURT: Thank you. Why don't you go walk through that door and have a seat.

Excused for cause on the Court's motion.

Ms. Kathleen Kindle. I don't know why I wrote your name down. Were you the victim of a crime?

MS. KINDLE: A nephew was killed quite a few years ago, about 20 to 21 years ago.

THE COURT: And you said that would give you some problem, you thought?

MS. KINDLE: Yes.

THE COURT: I think that that's a good reason. Thank you. You can go through that door and have a seat.

For cause.

Mr. Vitasek.

For some reason, he couldn't be objective.

MR. ANDERSON: And then, he stood up again.

THE COURT: As I recall, there was some reason that you could not be objective.

MR. VITASEK: I was assaulted and I've been robbed in the taxicab and I'm kind of reliving those two.

THE COURT: Thank you, sir. Go through

that door and have a seat.

He's removed from the panel as well for cause, although, he is an extra.

Patterson, number 9. Ms. Tara Patterson.

I think you indicated for some reason you might not be able to be objective.

MS. PATTERSON: Yes. I got the news that one of my patients passed away yesterday.

THE COURT: And do you do home care?

MS. PATTERSON: Yes, in-home healthcare. And I'm real attached to the family.

MR. ANDERSON: Was that the person who was a victim of a crime or is it hospice?

MS. PATTERSON: No. She had diabetes and just old age.

THE COURT: And you've been working with her for a long time?

MS. PATTERSON: Yes.

THE COURT: Thank you. Go through the door over there and right through there.

For cause. We have plenty to go. Anybody else you want to talk about for cause?

MR. BATLINER: You have everybody that I had.

MR. ANDERSON: No. Let's just get started.

THE COURT: Start striking.

MR. BATLINER: Do you want an alternate?

MR. ANDERSON: Yes.

(Selection of trial jury.)

THE COURT: Ladies and gentlemen, for those of you who have not been on a jury, the sheriff is going to give Mr. Batliner a list with all your names on it. He's going to strike one name, and it's going to go to Mr. Anderson who will strike a name. And it goes back and forth until we get 12 people on the jury. During that process, if you think they're turning around and staring at you, they really are doing just that. They're trying to figure out as much about you as they can, and the process will take a bit of time.

While they're doing that, I'm going to read the preliminary instructions to the jury.

MR. ANDERSON: Excuse me. The 12 or --

THE COURT: There will be 12 of you ultimately on the jury. We're going to choose 13, one alternate in case something happens in the process.

While they're making the strikes, I'm

going to read the preliminary instructions to the jury. We do not know which of you will be on the jury, so I'd ask that you pay attention to what I say, if all of you would do that.

(The Court instructed the jury panel.)

THE BAILIFF: Ladies and gentlemen, when I call your name, take all your belongings and have a seat in the jury box:

Patricia Turner, Brent Ramey, David Jolley, Suzanne Schweitzer, Demetri DeBerry, Arie Savage, Lloyd Bailey, Machelle Bogue, Charles Stevens, Richard Wright, William Alcorn, Steven Forrest, Magalene Austin.

Your Honor, the jury panel is seated.

THE COURT: Any motions concerning the composition of the jury, Commonwealth?

MR. BATLINER: None, Judge.

THE COURT: Defense?

MR. ANDERSON: None from defense, Your Honor.

THE COURT: Go ahead.

THE CLERK: Members of the jury, please stand and raise your right hand to be sworn.

(Trial jury sworn.)

THE CLERK: Please be seated.

Mr. Lynch, would you please stand and face the jury.

Members of the jury, look upon the defendant and hearken unto his cause. He stands indicted for first-degree murder, statutory burglary, robbery, and three uses of a firearm in the commission of a felony. Upon those indictments he has been arraigned, and upon his arraignment, he has pled not guilty.

And for his trial, he has placed himself upon his country, which country you are. Your charge, therefore, is to inquire whether he be guilty as charged in the indictments or not guilty.

If you find him guilty, you shall say so and fix his punishment as prescribed by law. If you find the defendant not guilty, you shall say so and no more. Hearken unto the evidence.

Please be seated.

Is there anyone outside that needs to be sworn?

All the witnesses to testify, stand and raise your right hand to be sworn.

(Witnesses sworn.)

THE CLERK: Please be seated.

THE COURT: Ladies and gentlemen, if you would retire to the jury room for a moment, the sheriff needs to take your colleagues back downstairs, and we'll begin the case shortly.

(The jury entered the jury room at 10:31 a.m.)

THE COURT: Ladies and gentlemen, I thank you for your attendance today. The sheriff will take you back downstairs to be reassigned or released. I don't know which.

(The jury panel was excused.)

THE COURT: All the witnesses, step into the hallway. We'll call you when your turn comes to testify. Please don't discuss your testimony with anyone until the conclusion of the case.

(Witnesses excluded.)

THE COURT: I was noticing that the last time this was tried there were four written stipulations. Are those going to be entered this time as well?

MR. BATLINER: Yes, Judge.

THE COURT: Do you have them?

MR. BATLINER: I think I have a fresh set.

THE COURT: That's fine.

MR. BATLINER: Except for, I don't know that I have one for Ford's.

THE COURT: Let me see what I have. I have that fingerprints were not recovered.

MR. BATLINER: Right.

THE COURT: DNA test, the identity of the deceased, and the bullet was a .25 caliber.

MR. BATLINER: I think I read that one last time.

THE COURT: What do you want to do?

MR. ANDERSON: There is one additional one.

MR. BATLINER: I can have that typed up if you want to.

THE COURT: It doesn't matter.

MR. ANDERSON: There is one that you didn't read.

MR. BATLINER: That's a fifth one.

THE COURT: All right. Why don't you just give them to me with the instructions as quickly as you can.

MR. BATLINER: Yes, sir.

THE COURT: We'll take about five minutes before we start.

(Recess.)

THE COURT: Are you ready?

MR. ANDERSON: Yes, Judge.

THE COURT: Bring the jury out.

(The jury entered the courtroom at 10:43 a.m.)

THE COURT: Ladies and gentlemen, before we start, just a couple of housekeeping things for you. For your planning purposes, under no circumstance will we stay here past 5:30, period. No matter whether somebody asks to do it or not. We're just not going to do it. If that means cutting an attorney off in mid-sentence or a witness off, that's what I'll do. You don't work past that time, and I'm not going to work you when you're here

either.

I will recess normally between noon and 1:00 for lunch at some convenient time. If you need a break at any time other than that during the course of the trial, let me know and we'll do it.

There are no assigned seats. I guess all of you will stay where you are because people seem to get squatter's rights on these seats when we have juries.

You will notice that there are 13 of you. One of you is an alternate, and that's in case somebody gets sick or something happens and you can't stay for the trial. At the end of the trial, the very last thing before I say go to deliberate, I'll indicate and then excuse the alternate. And I think that's about all the housekeeping stuff that I have to talk about.

Now, Mr. Batliner can begin his opening statement.

MR. BATLINER: Thank you, Judge.

Ladies and gentlemen, Lester Lynch was involved in the murder of Belinda Scott, the robbery of her son, Ronald Scott, and the armed burglary of Belinda Scott's home back on June the 9th, 2001.

What I want to do is tell you about what happened that evening so that when you're listening to

the witnesses and bits of information come out, it makes more sense to you.

This is Belinda Scott's home. This is actually the door. It's a two-story building. This is sort of the downstairs living area, if you will. Upstairs are other apartments where other people live. This is a front porch area, and there is an entryway, steps going up to those other apartments and then here is the doorway to Ms. Scott's home.

This picture is essentially right here looking into that door right there from outside. And then this is the step area right here that I was talking to you about, the entryway.

On June the 9th at about 9:30 or 9:45, Ronald Scott was back in the back bedroom back here. He was there with Tamika Reid. They had hooked up the night -- or I guess in the early morning. This was 9:30 or 9:45 in the evening. They had hooked up in the early morning hours over at a bootlegger's house, somebody that sells liquor by the drink when they're not licensed to do that, a place where there was gambling going on. And Ronald is going to tell you he was selling narcotics over there, too.

He hooks up with Tamika. They come back to his mama's house, and they go back to his bedroom

here, and they're both back here in the bedroom.

During the day, before 9:30, Ronald's mother had come back and woke him up a couple of times. He slept most of the day away back in the back room. Come knock on the door, get him for people to come up.

At about 9:30, 9:45 that evening, Mama comes to the door and knocks on the door and says, Do Wop wants you. Tamika is going to tell you that she tried to wake Ronald up. He starts getting up.

While that's going on, she hears a firecracker noise in the front of the house. Ronald is getting up. He's trying to pull his shorts on, and the door -- they're going to disagree on this -- is either kicked open or pushed open forcefully and two men come into the room.

One of the men has a gun, and they start beating Ronald Scott in the head saying, give it up. You can see the top of Ronald Scott's head. You can see the open area right there where the blood is. Give it up, give it up. They take money because he had money, because he's going to tell you he sold most of the drugs he had, so he had cash. And they took some drugs that had been in the room: Heroin.

They generally throw some things around in the room, throw a clothes basket at Tamika while she's

laying on the bed. You'll see some things on the floor. You're going to see some smashed up cookies on the floor where it looks like they've been pulled off and people have stepped on them.

So they're back there, and they're beating him in the head. And they take the money and the drugs that are back there. Tamika is going to tell you Lester Lynch is one of the people who came in the room. And Lester is one of the people who is back there involved in the beating. Ronald Scott is going to tell you the same thing.

After the beating and after they take the money and the drugs, they run back out of the house. Ronald and Tamika wait a little bit. And when they come out -- Tamika is at first so scared she comes and she hides over here between the appliances that are sort of in the utility room. Then they come out.

Ronald's son is still asleep on this couch right here, and his mother is laying here outside the door of her home in that ante area where she had a single gunshot wound right there under the left eye, a .25 caliber gunshot wound to the eye, contact wound.

To get into the house to do what they needed to do, the men had to get rid of an obstacle, and that obstacle was Belinda Scott. And one of them killed

her as she stood in front of the threshold of her home.

Two men went into the room. There was a third person that neither Ronald Scott nor Tamika is going to be able to tell you who it is. He sort of hung back, hung back. They heard him say, come on, let's go. But they never saw him clear enough. They know there was a third person.

Now, as you might imagine from the lifestyle of Ronald Scott as I've described to you, Belinda Scott's son has a prior record. He's been convicted of drug charges. He's been convicted of possession of heroin with intent, possession of heroin, possession of cocaine with intent, and shooting into and from an occupied vehicle.

Tamika has been convicted of burglary in the past, and one larceny misdemeanor. They're not people who like to come into a courtroom. Was it not for the fact that it was Ronald Scott's mother, I doubt they would ever come into a courtroom.

We also know that on that day Kenny Parker was over at one of the other men's houses. That man is Gregory Williams. Tyreke is his nickname. Both Tamika and Ronald Scott are going to tell you that Gregory was one of people that came in that room and participated in the robbery as well.

Kenny Parker was over at Gregory's house, also in Norfolk, earlier in the day. Kenny was looking for a ride. He wanted to go over to a bootlegger's house because he wanted to gamble. He knew Gregory, and they were going to give him a ride.

He got into the car. And at first they were going to take him to where he wanted to go, but first they had to take care of something, so they had to put him out. They wouldn't take him.

In that car was Tyreke or Gregory Williams. The driver of that car was Lester Lynch. There was a young -- another young fellow in the back. So Kenny doesn't get his ride, but he's there a little bit later when they come back. And when they come back, he hears Gregory talking and he goes to where Gregory is and the defendant is still there. And at one point in the conversation the defendant says, "Why you just telling them what we just done?"

KP has a record. KP has been convicted of receiving stolen goods, three burglaries. He is another person but for the fact that somebody's mama got killed, would probably never be in a courtroom.

They're going to tell you a little bit different versions of events, very traumatic what happened. People come busting in the door, beat on you,

point guns at you. But the bottom line is, ladies and gentlemen, when this case is over, I'm going to ask you to find Lester Lynch guilty of murder, robbery, and armed burglary, and three uses of a gun while he committed those crimes for what they did that day, which was they came to the door intending to do a drug ripoff, a robbery. And when his mama wouldn't let them back, one of them shot her. Put a gun right under her eye and shot her. So she dies in the foyer right outside her home, and they then come back and beat Ronald Scott, scare the daylights out of Tamika Reid and take money and take drugs.

Thank you, ladies and gentlemen.

THE COURT: Mr. Anderson.

MR. ANDERSON: Assumption and association leads to misidentification murder case in Norfolk. Assumption and association leads to misidentification of a murder case in Norfolk. Assumption and association leads to misidentification of a murder case in Norfolk. That would be the appropriate headline in the Virginian-Pilot once this case is over.

Now, ladies and gentlemen, let me explain to you before I start. I'm not going to have a fancy diagram. I'm not going to have a lot of fancy pictures to show you. The only thing I am going to be

able to present to you are the facts that show you that the Commonwealth will not have met its burden to prove beyond a reasonable doubt that this defendant committed these offenses.

There was a judge who used to sit in this courtroom, not necessarily in this same courtroom, but before the first witness was called he would always say to the jury, if I were to ask you now whether the defendant was guilty or innocent, you would all have to vote that he was innocent. Because he comes into this courtroom with a coat of innocence, and he maintains that coat of innocence during the entirety of this trial.

The only way that you can convict this defendant is to believe beyond a reasonable doubt that he has, in fact, committed these offenses. The Commonwealth will not produce evidence to show you that this defendant was the one who committed this offense.

Let me make things very easy for you. We will concede that Ms. Scott was killed. We will concede that she was even killed on June the 9th. We will not, however, concede that this defendant was present.

What we will concede is that this defendant associated with one of the young men who witnesses said were there. We don't know whether that

person was there or not, but we will concede that on June the 9th, that he was in the presence of one of those people.

Let's go back -- the first thing the Commonwealth should be able to show you, physical evidence. You notice that he talked about a lot of witnesses, and the first thing he started to tell -- well, not the first thing, but he told you about all of their records. That should cause you some suspicion already if he's telling you about their records. But ask him where is the physical evidence.

He told you that the people went into the room, and they were tossing garments around. They were touching things in the room. Where are the fingerprints? If enough surfaces in those places were touched, shouldn't there be some physical evidence to tie this defendant to that crime? So the first thing, he's not going to have any fingerprints, no gun, none of that. Physical evidence that you say I can sink my teeth into and say this defendant was there.

The Commonwealth is going to produce a number of witnesses, but I'm only going to focus on three of those witnesses. Because when you listen to the rest of them, I think they are basically telling you what they recall, and it's been consistent.

You're going to hear some other witnesses, those three witnesses that I'm telling you about that I want to discuss with you today, and I would like to say to you that they're going to say this or they're going to say that, but their stories or their testimony has changed on different occasions. So I don't know what version you're going to get today.

But if they testify consistently with what I expect that they will say, this is what we're going to get. The first person that you will probably hear from -- and I'm not saying how the Commonwealth will try his case, so he will probably reverse it and I won't understand it -- will be Ronald Scott. And the Commonwealth has already told you -- what was Ronald Scott doing on the evening before? He was out selling drugs. So we know that Ronald Scott is a drug dealer. We know that Ronald Scott has a record, an extensive record.

Then we're going to hear that Ronald Scott was in his house with a young lady named Tamika Reid. Ronald Scott is going to tell you that he can identify this defendant. He's going to tell you that he saw this defendant earlier today. Now, we concede that Ronald Scott saw a light -- could have seen a light-skinned person earlier that day, but we will not

concede that he saw this defendant.

Ronald Scott is going to testify that -- I don't know whether he's going to tell you that he recalls the time or not, but he's going to testify that the person called KP, or Kenny Parker, came to his house twice that day before the robbery and murder went down.

Kenny Parker is going to tell you, yeah, I came to his house twice that day, but I was not with this person. I was with somebody named Vince one time and my girlfriend another time.

Ronald Scott is going to tell you that he went out on the porch. Tamika Reid says she was in the bedroom with him and she never saw him go out on the porch where he says he saw this defendant.

Ronald Scott is going to tell you at one time that the car was parked on one side of the street. Another time his testimony will be that he was parked on -- the car was parked on this side of the street because you can't park on the other side of the street, an assumption that he's making.

Ronald Scott is going to say -- well, I don't know whether he'll say it today or not, but Ronald Scott will testify that his brother was there, and they commented on the fact that this -- what are they doing in this Acura? Ronald Scott testified at another time he

doesn't know what kind of car that they were driving.

Ronald Scott will testify that KP came past earlier that day after having called him a number of times, and he just popped up. But he's going to testify -- he testified at another time that at one time he picked up his phone, and he told KP to come on over.

Ronald Scott will then testify that he sold KP an eight ball. An eight ball he says costs about five-fifty. He let him have it for 500. Kenny Parker is going to say, I came past two times. One time I bought $20 worth, and the next time I bought $50 worth.

Ronald Scott is going to say that KP left with the drugs, came back an hour, hour and a half later and said that he was not satisfied with the drugs, and he gave him a refund, a refund for the drugs.

Kenny Parker is going to tell you, I never went back to get a refund on the drugs. Ronald Scott is going to tell you at one time, I know it wasn't my drugs because my drugs are white. The next time he'll say, I know they weren't my drugs because my drugs were brown. And then he might even say that he didn't even ask for a refund. Those are going to be some of the inconsistencies.

Then we get to what happened. Ronald Scott will testify to you that he knows someone called

Tyreke, also known as Gregory Williams, the person who was also charged with this offense at the same time as the defendant was, he will testify that he knows him. He will testify that he opened the door and came into -- he was getting up putting his shorts on about to open the door when the door came open. Somebody pushed the door open, turned the knob and pushed the door open.

Tamika Reid is going to tell you that somebody kicked the door open. In fact, Tamika Reid, she'll -- there are even pictures showing that the door was busted up. The police officer is going to tell you they had no pictures to show such damage.

Ronald Scott is going to tell you that the first person in the room was Gregory Williams, also known as Tyreke, somebody that he knows. He is going to tell you that the only person that he saw with a gun in their hand was Gregory Williams, that he didn't see a gun in the light-skinned person's hand, that he remembers being hit on the head. He doesn't remember seeing a gun. He doesn't remember the light-skinned person having gloves. And that's important because he's going to tell you that he saw him picking stuff up off a table, touching garments. He saw him touching things in the room. So surely there should be some physical evidence to tie this defendant to this affair.

Ronald Scott is going to tell you that he made an assumption. Ronald Scott is going to tell you he made an assumption. He made an assumption that there were four people present. When he first spoke to the policeman, he said there were four people present. He didn't know, but he said that there were four. Now, later on, the police confronted him and he conceded, I made an assumption, an assumption that led to a misidentification.

Ronald Scott is going to tell you that at one time he testified that he picked this defendant's picture out of a lineup the next day. The officers are going to tell you, we didn't even have a picture of this defendant in our possession the next day. Now, his testimony could very well have changed since that time, but that's what he said at one time.

Ronald Scott, when questioned one time and asked was there anything distinctive about the defendant, he said he had a gold front in his mouth. When questioned again and asked was there anything distinctive about his mouth, he said no.

Now, Ronald Scott's description will contradict Tamika Reid's description. Now, Ronald Scott is going to tell you Tamika Reid was in shock. I concede that she was in shock. Ronald Scott is going to say that

he's told the policemen that the person had a full beard.

Tamika Reid is going to say he didn't have any facial hair. Tamika Reid is going to say at one time the person that she describes that she's calling Lester Lynch, had a mask that went from the nose down to the bottom of the mouth. The next time when she is testifying at another hearing, she testifies that the mask goes from the forehead down to the lip. Her testimony will have changed.

Tamika Reid will tell you that after she was shown a photo lineup -- at one time she picked out the defendant and the codefendant from a photo lineup, at least that's what she testified to at one time. Later on, she said, no, I never picked out the codefendant in a photo lineup. I simply picked it out in court. But I will show you a transcript where she said she did.

At that time, when she picks out the codefendant and the defendant, she is standing in court and there are two of them in front of her. She picks them both out. Another time a hearing is held and only the defendant is there, and she picks him out. Another hearing is held for the codefendant and he's there, and she picks him out. Another hearing is held and she picks this defendant out. Tamika Reid, if there is someone in front of her, she can always pick them out.

If he's not there, she doesn't pick him out. She says she has the inability to pick him out.

Tamika Reid describes the person as being a light-skinned person. You're going to see a photo lineup. There is going to be one person in that photo lineup who is lighter than the rest of them. That's going to be the defendant.

Once Ms. Reid sees the lineup, and we will concede she picked the defendant out, and afterwards she's told by the policemen that she picked out the right one or she picked out the one that they expected her to pick out.

Now, how do the policemen know who was there if they weren't there? I don't know, but she's reaffirmed at that time that she has picked out the right person. And since that time, she has consistently said this is the defendant. And I suspect today she is going to say this is the defendant. I will point out to you, and the Commonwealth and I will have a stipulation that this defendant's picture was shown on public TV -- not public TV, but on regular TV on Most Wanted. His photo was on the TV prior to the time she picked this picture out. So those would be the inconsistencies.

Then you're going to hear the testimony of Mr. Parker. Mr. Parker is going to tell you that --

before I do Mr. Parker, let's go to another thing about the assumptions.

Mr. Scott, when he talked to the policemen that night, gave the name of Christopher Williams, also known as Quail or Q, who is the brother of Gregory Williams, and he said that he assumed that because Christopher -- I mean, because Gregory Williams was there, that Q or Christopher Williams was there. Christopher Williams was arrested, charged, and the charges were subsequently dismissed, but arrested based on the assumption made by Mr. Scott.

Mr. Scott also gave the name of KP as being one of the people that he thought was there. Now, later on that night, that same night, they had KP's picture in a photo lineup. The next day they picked KP up on a traffic stop. He stays in custody with the police for over ten hours and they release him based on some information that he gave them.

So KP, who's a suspect on the night of the 9th, on the evening of the 10th, now is one of the Commonwealth's primary witnesses against this person. And what's going to be his testimony? His testimony is going to be, I was getting high all day. I was getting high in the morning with Gregory Williams. I went over to Ronald Scott's house twice to score so I can get high.

And later on that evening, I see Gregory Williams, also known as Tyreke, and the defendant.

I asked them for a ride. I get in the car. I get out the car. About half an hour to an hour later, I come back and they go upstairs. And Gregory Williams makes this statement, and the defendant, who is not present at all times, comes up the steps and says, why you telling them what we did.

Ladies and gentlemen, you're going to have the judge -- what motive did KP have? How did he go from being a prime suspect on Saturday night to being a chief cooperating witness the next day? You're going to have the question -- now, I don't know what time he's going to tell you today, but he testified earlier that -- he has testified in the past that this was about 6:00 or 7:00 when he first saw them.

They came back within an hour. That would place it at about eight o'clock or 8:30. Let's even stretch it to nine o'clock. The evidence will be that the same event that he's saying happened, didn't happen until about 9:30, 9:45, at the time that the paramedics were called.

So the Commonwealth will not be able to meet its burden beyond a reasonable doubt to show you that the defendant is guilty of any of the crimes

suggested. So if we were just to stop there, you would have to acquit this defendant. However, we're going to make it much easier for you to utter those words, not guilty. Because we're going to put on evidence for you that will show you that at the time this offense was committed that the defendant was not present.

I said to you earlier that this defendant was in the presence of Gregory Williams. And we're going to have a witness who will testify, it's his cousin, at the time she was dating Gregory Williams.

She is going to testify that at some point that evening, that Gregory Williams was at her house. Actually, I think she said he was at her house all day. But at some point her cousin, Lester, came over, that Lester was giving Gregory Williams a ride back to Norfolk to his brother Q's house. Now, she is not really familiar with where Q lives, but she knows that he went to take him -- Lester went to take Gregory back to Norfolk, that Lester took him over to Norfolk.

Then we're going to be able to pick it up about an hour later, or sometime later that evening at about eight o'clock. Lester has a friend. She is a female. They're not boyfriend and girlfriend. They're just friends. Lester spends a lot of time at her house.

She called Lester on his cell phone.

Lester advised her that he was en route to her house. That's about eight o'clock. That's down in Virginia Beach. That he got there right around eight o'clock. Now, let's be candid. They got there and they smoked some marijuana and they had some drinks. Lester gets a call. He goes over to a friend's house.

On June the 8th, the daughter of Muhammad Ali and Joe Frasier's daughter stage a fight. That was June the 8th. A friend of their's taped the fight on June the 8th. They couldn't be there that day, so the 9th, the next day, they are all going to go over to watch this fight.

Lester goes over. He gets a call. Someone asked him to bring him a comb. He goes over. He gets the -- he takes the comb. He walks into the door, another cousin, LaTanya Palmer is on the phone talking to Kim. Kim questions is her boyfriend with Lester because LaTanya tells him Lester is here. She says no. She gives the phone to Lester.

Now, what happened then, Lester then stays there for a while. He goes to another part of the house. He leaves and he goes back over to Shawn's house. While he's at Shawn's house, they still get high. Then later on, the two of them go back over to the house that they left. The person's name is Morris. That's the

person's house they left.

So Lester will have witnesses. None of them with prior felony convictions or any convictions that will testify that they know it didn't happen the way -- they know Lester was not present. Yes, he was an associate of Gregory Williams, but he was not with Gregory Williams, if in fact, Gregory Williams. Because we don't know if, in fact, Gregory Williams was present at that time.

So the evidence will be that the only thing that the Commonwealth has is an assumption, the assumptions made by Mr. Scott, that there were a number of people there, and we know those assumptions are wrong. And an association with Gregory Williams will be the only evidence they have. And that will not be enough for you to convict this defendant of any of the charges. But when you consider the nonrebuttable evidence of Mr. Lynch's witness, you will have to clearly return a verdict, the only verdict you can and that will be not guilty.

THE COURT: Ladies and gentlemen, at this I have to apologize to you for a moment and ask you to go back to the jury room for just a minute.

(The jury entered the jury room at 11:22 a.m.)

THE COURT: There is an emergency phone call to make to my son.

THE BAILIFF: All rise for the judge, please.

(Recess.)

(The following conversation was held out of the hearing of the Court.)

MR. ANDERSON: State your name for the record, Lester.

THE DEFENDANT: Lester Bernard Lynch, Jr.

MR. ANDERSON: Lester, this is -- I'm just putting this on the record that I've advised you before that the Commonwealth has made an offer to you, and that offer would be that you would plead guilty to one second-degree and one gun charge, and that the defendant -- and that the Court would give him 25 years and suspend all but five years, and this is to put it on the record and advise you of that offer.

THE DEFENDANT: Yes.

MR. ANDERSON: And we're going to put it on the record that you've rejected that offer.

THE DEFENDANT: Yes, I object it.

(Court is in session.)

THE COURT: Bring the jury out, please.

(The jury entered the courtroom at 11:29 a.m.)

MR. BATLINER: Judge, while they're coming out, may we approach?

(Counsel approached the bench and a side-bar conference was held.)

THE COURT: Ladies and gentlemen, before you begin here, I'm going to read two of the instructions that I'll give you again at the end of the case so that you can understand what you're expected to do.

I'm reading for the record, Instructions No. 1 and 2.

Ladies and gentlemen, you are the judges

of the facts, the credibility of the witnesses, and the weight of the evidence. You may consider the appearance and manner of the witnesses on the stand, their intelligence, their opportunity for knowing the truth and for having observed the things about which they testify, their interest in the outcome of the case, their bias, and if any have been shown, their prior inconsistent statements, or whether they have knowingly testified untruthfully as to any material fact in the case.

You may not arbitrarily disregard believable testimony of a witness. However, after you have considered all the evidence in the case, then you may accept or discard all or part of the testimony of a witness that you think proper. You are entitled to use your common sense in judging any testimony. From these things and all the other circumstances in the case, you may determine which witnesses are more believable and weigh their testimony accordingly.

The defendant is presumed to be innocent. You should not assume the defendant is guilty because he has been indicted and is on trial. This presumption of innocence remains with the defendant throughout the trial and is enough to require you to find the defendant not guilty unless and until the Commonwealth proves each and every element of the offense

beyond a reasonable doubt. This does not require proof beyond all possible doubt, nor is the Commonwealth required to disprove every conceivable circumstance of innocence. However, suspicion or probability of guilt is not enough for a conviction.

There is no burden on the defendant to produce any evidence. A reasonable doubt is a doubt based on your sound judgment after a full and impartial consideration of all the evidence in the case.

Call your first witness.

MR. BATLINER: Ronald Scott.

If we could approach, Judge.

(Counsel approached the bench and a side-bar conference was held.)

RONALD SCOTT,

a Witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BATLINER:

Q. State your name for the jury, please.

A. Ronald Antonio Scott.

Q. Ronald, you're obviously in custody, right?

A. Yeah.

Q. You're on a parole violation?

A. Yeah.

Q. I'm going to take you back to June the 9th of 2001. Do you remember that day?

A. Yeah.

Q. So let's start you back the evening before on June the 8th, 2001. What were you doing that evening?

A. Riding around.

Q. Okay. Where did you end up at?

A. At a bootlegger's spot.

Q. Where is the bootlegger's spot?

A. It's in the Norview section of town.

Q. Tell me what a bootlegger is.

A. Just a guy that sells liquor and that's basically it.

Q. When you say a place that does this, we're not talking about a regular business but --

A. No, no.

Q. -- somebody's house?

A. Like a private house.

Q. And you ended up over there?
A. Yeah.
Q. And what did you do over there?
A. Ended up gambling a little bit and running into a friend.
Q. Who was the friend?
A. Tamika Reid.
Q. Now, you were also selling stuff, weren't you?
A. Yeah. I was selling heroin.
Q. How much heroin did you have?
A. Something like $1200 worth.
Q. How much did you sell that evening?
A. Basically everything besides -- besides like twelve things, something like that.
Q. When you say "twelve things," what are you talking about?
A. Like --
Q. Twelve capsules?
A. -- twelve capsules.
Q. Twelve what?
A. Capsules.
Q. Capsules?
A. Yeah.
Q. How did you do gambling?

A. Up and down, like win a little bit and lose a little bit, but basically just stayed afloat.

Q. How much money did you have in your pocket when you left, if you remember?

A. I never counted my money. But if I was to guess, it should have been something like $800.

Q. So when you left, you had $800 and you had some heroin capsules?

A. Yeah, about twelve capsules.

Q. Okay. Who did you leave with?

A. I left with Tamika and my stick man, DD.

Q. Stick man, what does that mean?

A. A friend, a friend of mine.

Q. Where did you go?

A. I went to 3331 Lens Avenue.

Q. Whose house is that?

A. My mother's.

Q. Your mother, that's Belinda Scott?

A. Yes.

Q. Did she have a nickname, too?

A. Plum.

Q. Plum?

A. Yes.

Q. I'm going to show you what's been previously marked as Commonwealth's Exhibit 1. What is

that?

A. That's 3331 Lens Avenue, my mother's house. That's the front.

Q. That's the front of your mother's house?

A. Yeah.

THE COURT: It's been admitted as Commonwealth's Exhibit 1 by agreement.

(Whereupon, Commonwealth's Exhibit No. 1 was marked for identification and received into evidence.)

BY MR. BATLINER:

Q. When you get there, tell me what happened when you got to the house.

A. I went straight to the back.

Q. Who was in the house, do you know?

A. My mother and my son and it could have been my nephew.

Q. Are you sure whether or not there were any other kids there when you got there?

A. No. It was -- it wasn't anybody else, just my mother, my son, and my nephew, nobody else.

Q. Where did you-all go, you and Tamika?

A. Went straight to the back to the

bedroom.

Q. Had your friend, DD, I think you said --

A. He left.

Q. He left?

A. Yeah.

Q. So you-all went to the back bedroom?

A. Yeah.

Q. I'm going to show you -- do you recognize that?

A. Yeah. It's a layout of the house.

Q. I'm going to give you a laser pointer. Push that button there and a little dot comes up.

Show me where the back bedroom is.

A. (Indicating.)

Q. That's where you-all were?

A. Yeah.

Q. Where is the picture that we saw here, the front of the house? Where is that at?

A. That's like -- it got to be out here somewhere.

Q. That's the front of the house?

A. Yeah.

Q. And this area right here, is this sort of like an entryway that you can go up the steps to another set of apartments and in towards your mom's?

A. Yeah.

Q. Is this an accurate layout of your house?

A. Yeah, pretty much accurate as you can get.

MR. BATLINER: I'd ask this be Commonwealth's 2, Judge.

THE COURT: Any objection?

MR. ANDERSON: No, Your Honor.

THE COURT: It will be admitted as Commonwealth's Exhibit No. 2.

(Whereupon, Commonwealth's Exhibit No. 2 was marked for identification and received into evidence.)

THE COURT: Ladies and gentlemen, as exhibits are handed to you, if you'll pass them around, and when you're finished, just have someone put it on the table in front of the box. These exhibits, once you retire to deliberate, will be given to you to take with you during your deliberations.

Would you look at these to see if you have any objection.

MR. BATLINER: I believe he's already

seen them, Judge.

MR. ANDERSON: I don't think that I do, Your Honor. Let me check to be sure.

MR. BATLINER: Judge, while they're passing that around, I'll let the witness familiarize himself with the exhibits if that's all right.

BY MR. BATLINER:

Q. Mr. Scott, have you had an opportunity to look at what has been marked Commonwealth's Exhibits 3 through 10?

A. Yes.

Q. Are they all shots of various places either right outside your home on that porch and foyer or inside the home?

A. Yes, sir.

Q. I'm going to show you what's Commonwealth Exhibit 3. Is that that porch area?

A. Yes, sir.

Q. Is it correct that we're talking about this area right in here?

A. Yeah. Right in that area.

Q. I'm showing you Commonwealth's Exhibit 3. This telephone cord, it appears to be at the bottom of Commonwealth's 3, is that this telephone cord that's

on the sketch here?

A. Could be.

MR. BATLINER: Ask that be admitted, Judge.

THE COURT: Exhibits 3 through 16 are photographs that are admitted without objection.

(Whereupon, Commonwealth's Exhibit Nos. 3 through 16 were marked for identification and received into evidence.)

MR. BATLINER: If I go too fast, stop me and I'll come back. I'm not trying to go fast.

BY MR. BATLINER:

Q. I'm going to show you what is Commonwealth's Exhibit No. 4. Is this that foyer area?

A. Yeah. It's the hallway.

Q. Right in here?

A. Hallway to another apartment.

Q. And point right here. Is this the area we're talking about on the sketch?

A. Yes, sir.

Q. Commonwealth's No. 4. These stairs, these are the stairs that are right here; is that

correct?

A. Yes, sir.

Q. So that is pointing as you would go out, like you were leaving your mom's house --

A. Yes, sir.

Q. -- to the outside of the house; is that correct?

A. Right.

Q. I show you Commonwealth's No. 5.

A. Living room.

Q. Is that this area here?

A. Yes, sir.

Q. Living room?

A. Yes, sir.

Q. All right. And this picture is actually this part of the living room back here; is that correct?

A. Right.

Q. Now, you said your son was in the house that evening. Where was your son?

A. He was on the couch.

Q. Which couch? Is it this one or is it the other that's depicted on this, on the sketch?

A. It's the other one. The one that don't have a table.

Q. If you'd point to it with your laser

pointer you have. That couch down there?

A. Yes, sir.

Q. This is Commonwealth No. 6. What is that area?

A. Kitchen.

Q. Show me that on the --

A. That's going through the door right here.

Q. Into the kitchen area there?

A. Yeah.

Q. I show you Commonwealth's No. 7. Where is that?

A. That's the door leaving out of the living room.

Q. All right.

A. That's the --

Q. Is this the chair? Is this the --

A. This right here.

Q. The chair right there is the one that's inside your house, and that's the door going out?

A. Yeah.

Q. Is this -- where you see this triangle of white, is that the --

A. Steps.

Q. It's the steps going up?

A. Steps going up.

MR. BATLINER: That's Commonwealth's No. 7, Judge.

BY MR. BATLINER:

Q. Let me show you this. What's that picture of?

A. That's the bedroom.

Q. Which bedroom?

A. The back.

Q. Whose bedroom was that?

A. That was my son's bedroom.

Q. Is that where -- is that the bedroom that you and Tamika were in?

A. Yeah.

Q. Looking on -- what is this here, this sort of multicolored -- is this the bed?

A. Yeah.

Q. What is all that stuff on the bed?

A. Stuff that was thrown, clothes and stuff, like sheets and stuff that was thrown from the clothes basket.

Q. Let me show you Commonwealth's No. 9. What is that?

A. Still the bedroom, back bedroom.

Q. This is the bedroom you were in again, just so it's clear?

A. Yeah.

Q. Is that the door leading --

A. Out.

Q. Is that this door here?

A. Yeah.

Q. I'm going to show you Commonwealth's No. 10. Where is that?

A. A picture of the other angle of the bedroom.

Q. That's the bedroom again?

A. Yeah.

Q. Okay. This door that's in the front of this picture here?

A. Door leaving out.

Q. That's the same door again here, right?

A. Yes, sir.

Q. What is this all over the floor here?

A. Stuff that was thrown around.

Q. What are these little things here?

A. Cookies.

Q. Where did they come from?

A. They came from Tamika.

Q. What do you mean they came from Tamika?

Where did she get them?

A. She probably got them from out the refrigerator or my mother probably gave them to her.

Q. Let's go back to the 9th now. You were in the house with Tamika back in the back bedroom?

A. Yes, sir.

Q. What went on during the day?

A. What, during the day part?

Q. Uh-huh.

A. I kept on sleeping off and on.

Q. Was Tamika there the whole time?

A. Yeah, in and out the bedroom.

Q. Did people come over to the house?

A. Yeah.

Q. Who came over?

A. KP, Kenny Parker.

Q. Tell me about when Kenny Parker came over.

A. He came over -- he came over -- first, he called and asked me did I have a -- a certain -- asked me did I have something like -- he wanted three -- three-and-a-half grams of heroin and I told him --

Q. Does that have a street name?

A. Eight ball. I told him I had it, right. I told him where I was at. I won't trying to do it. I

couldn't sell it to him where I was at.

Q. Why couldn't you sell it to him where you were at?

A. Because I was at my mother's house.

Q. And you --

A. And, you know, she -- how she be -- she be like always watching me and stuff, you know. Certain things I can't -- I can't do, you know. But he already knew where I was at, you know. He parked up over there anyway, you know. And, you know, when he came, I ended up selling it to him, you know. He -- I just told him, he only had like five on him, right. I just told him to give me 500, and then he can have it, you know.

Q. How much was -- how much would you usually sell it for?

A. Five-fifty. So we did that, right. So on the process of walking towards this door right here, my mother starts raising a fit about asking him how come every time he come over there that she keeps telling him to stop bringing people to her house all the time. Why you keep bringing people to her house all the time, right. So that made me go walk -- walk towards the outer door and out in the hallway towards the front of the house standing basically -- standing on the front porch for to see who was she talking about.

Q. What did you see?

A. I seen a car.

Q. What kind of car?

A. Well, it's been a long time, but I would have to guess. I'm going to say a black car.

MR. ANDERSON: Object to guessing, Your Honor.

BY MR. BATLINER:

Q. Don't guess.

A. Well, I'm going to say a black car, then, a black car. I'm not sure on the make. It could have been an Acura, between a Acura and a Honda. You know they make it basically the same way. But I'm going to lean on the Acura side. I have had several myself, so I'm going to lean on the Acura side.

Q. So what did you do after you saw the car?

A. You know, basically, I seen him. You know, the same thing my mother said, how come you keep going and sending people to her house, to her house like this? Because I don't live there. You know, I stay basically somewhere totally different from there. I don't even stay there, see what I'm saying. The same thing she asking him. Why he bringing them, so he was

like, man, ain't nobody but Tyreke, you know.

Q. Who is Tyreke?

A. Gregory Williams.

Q. Okay.

A. But you know, I see a person in the car I don't even know, you know, I didn't even -- at this time, I don't even really worrying about that, Tyreke, at this moment, you know. Because I'm basically just focused on -- it's like two people in the car I really don't know, you know. I don't know if it's him or not, but I know it's one person that I really don't know that was in the car, you know.

Q. How close did you get to the car?

A. Well, if I come to the front of the house, about that last bench right there is where the car was parked at almost. That's down -- that's down there, the last bench near accurate, that last bench, that door.

Q. Did you recognize Gregory Williams in the car?

A. Yeah, I seen him. I seen him but he didn't really stand out too much like the person, the person right there, he stood out.

Q. You nodded towards somebody in the courtroom. Point to who you were talking about.

A. Talking about the guy right there.

THE COURT: He's identified the accused.

BY MR. BATLINER:

Q. All right. So what happened after you walked out and you saw the car in the driveway? What did you do?

A. We made a fuss back and forth, me and KP, and he end up eventually leaving and I ended up going to the back bedroom after I calmed my mom down, and I'm laying down again. And they end up coming back.

Q. Who ended up coming back?

A. Kenny Parker.

Q. What did he come back for?

A. Told me the stuff I had sold him, told me that it won't right, right? At this time, I'm like, how it ain't right? And that's what everybody want, you know. And he kept telling me that, well, maybe I got two different kinds and don't even know I got two different kinds, and he told me it happened to him before. You know, I'm telling him, no, I don't think I got two different kinds, you know.

Q. So what did he want?

A. He was trying to get something else. I didn't have nothing else. I just -- I just got mad 'cause I really couldn't talk to him really how I really

wanted to talk to him at this point because I'm in my mother's house. So I give him his money back and told him I see him when I get out Park Place, you know.

Q. Did he leave then?

A. Yeah. He left, you know, and ended up walking to the door again.

Q. And what happened when you walked to the door?

A. Same car.

Q. Same people in it?

A. Same people in it.

Q. Okay. What happened after he left?

A. End up going back to the back bedroom again and laying down. I was -- I was real tired because I had been running the streets for like all -- all week long, doing the same old thing. Really no sleep, so that's basically why I was at my mother's house anyway, you know.

Q. So you were running the streets. We're talking about selling and --

A. Selling and partying and, you know, stuff like that. But I wasn't drinking or nothing like that or I don't get high or nothing. So I just basically wearing my body down, and I was tired, you know. I just didn't want to go home.

Q. So you just said -- do you use the heroin?

A. Do I use the heroin? No. I used to use heroin a long time ago, occasionally, but I don't use heroin. It never -- it didn't never do nothing for me.

Q. So you went back to the back bedroom?

A. Yeah.

Q. What happened next?

A. I say about -- I really can't say when, you know, 'cause I wasn't looking at no clock and I wasn't waiting for this to happen, right, but Tamika kept on buzzing me, and I hear my mom calling my name, you know. So I get up, right, and I put my shorts on, right, and when I get to the door, right, the door was already opening when I get to the door.

And the door kind of hit me a little bit, you know. And once the door opened all the way, I see Gregory Williams. He's the first person I see 'cause I know him, you know. And they rush into the room, right, ain't but two dudes come in the room. It's Gregory and it's the guy right there, you know and --

Q. Again, point to who you're talking about saying "the guy right there."

A. The guy right there. The guy basically next to Mr. Anderson.

THE COURT: He's pointed to the accused.

THE DEFENDANT: So they tell me to get on my knees. And they tell Tamika, like they say, B, don't move.

BY MR. BATLINER:

Q. When you say "B," what do you --

A. Say bitch, excuse my language. That's what they said.

So I'm on my knees. They want -- they talking about some -- they want the money and the dope, you know, but it's some stuff on the table, you know. I point to the table and dude right there goes and snatch the tablecloth off the table, you know, and the stuff go everywhere. Then they pick it up, pick it up. But I guess it won't enough because they started beating me on my head. And Gregory started hitting me in the head with the pistol, you know what I mean.

Q. They had a weapon?

A. Yeah.

Q. What kind of weapon?

A. Man, when somebody got a pistol in your face, you really can't tell what kind it is, right.

Q. It was a gun?

A. It was a gun. I'm going to say it was a

See T. Reid 966 lines 22-25 + 967, 1-3

gun. I ain't trying to get the make, model, all that of the gun. I know they was beating me in my head with the gun, and I'm on my knees. And at this time, I'm hoping they don't kill me, you know, because so far at this point, as far as I know, they haven't hurt nobody yet.

Q. Did you have any -- well, they got the stuff off the floor. Did they get other stuff from you, the money you had in your pockets or the drugs?

A. They got the stuff that KP brought back, and they got some money that was on the table that was for Tamika to get home with. And they got some money out my pocket. Gregory -- Gregory went in my pocket, you know.

Q. Who did you see have a gun?

A. I seen Gregory with the gun.

Q. What did he do with the gun when he came in?

A. He put the gun in my face. That's how he got control of the situation. Without the gun, I mean, I know -- know what I'm saying. I'm not going down without no gun. It took a gun.

Q. I'm going to let you review these before I put them on the projector. If you'd take a look here at 11, 12, and 13. Do you recognize all of those?

A. Yeah. It's pictures of me.

contradictory see T. Reid 1&2 / Ines 13-16

Q. That's you?

A. Yeah.

Q. You've changed hairstyles since then?

A. Yeah. My mother had did my hair.

Q. Tell me what I'm looking at in the picture. What does it show?

A. Well, that's me, and that's where he hit me with the pistol at, the pistol. I can't really tell what the other guy had in his hand, you know. I really won't really watching his hands, so I can't really say if he had a pistol or not.

Q. What is this area right here? What is that?

A. That's a knot.

Q. Where did that come from?

A. I remember the door hit me, too, when I opened the door, right. So I don't know if that came from the door or it came from the pistol. I mean, it hit me so fast, I don't know whether or not it came from the door or it came from the pistol. But that door hit me hard, too, when I opened the door. It wasn't like kicked in. Just that when I opened it, somebody was already opening and it just hit me.

Q. Let me show you Commonwealth's No. 12. Is that that knot you're talking about?

A. Yeah. That's the knot right there.

Q. It shows a little bit more?

A. Yes, sir, right there.

Q. That's Commonwealth's No. 12. This is Commonwealth's 13.

A. Yes, sir. That's from the pistol right there.

Q. Your head was busted open a little bit?

A. Yes, sir. At this time, all that going on, I'm on my knees.

Q. You're down on your knees while they're beating you?

A. On my knees, on my knees submitting, already submitted and everything.

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Q. Take a second and take a look at those. Do you recognize those?

A. Yeah. The shorts that I had put on.

Q. Show you Commonwealth's 14. What's that a photo of?

A. Huh?

Q. That's the shorts you had on?

A. Yes, sir, the shorts I had on. But it wasn't no blood on them before I put the shorts on.

Q. Is there blood on them now?

A. Yeah, there's blood like by all my

pockets, right, where the opening of my pocket is at. And I know it came from when the guy went in my pocket and took my money.

Q. I'm showing you Commonwealth's 15. Is this your shorts again?

A. Yes, sir.

Q. With blood?

A. Blood at the opening.

Q. I'm going to show you Commonwealth's 16, blood on the --

A. Yes, sir.

Q. And just so it's clear, on Commonwealth's 14, the blood is right there; is that correct?

A. Yes, sir.

MR. BATLINER: Judge, I'm going to publish these, because I don't think the ELMO showed it as well as the --

THE COURT: Hand them to him.

THE DEFENDANT: I didn't have no blood on my shorts before I put them shorts on.

MR. BATLINER: Do you have a sticker for the shorts and the belt, Judge?

THE COURT: Any objection to this?

MR. ANDERSON: No, Your Honor.

THE COURT: Paper bag which contains shorts and a belt admitted as Commonwealth's 17 without objection.

(Whereupon, Commonwealth's Exhibit No. 17 was marked for identification and received into evidence.)

BY MR. BATLINER:

Q. Ronald, I'm going to ask you to look in the bag. Do you see what's in there?

A. Yes, sir.

Q. What's in there?

A. Shorts and a belt I had on.

Q. That's the belt you had on in the picture?

A. Yeah, and the shorts.

Q. And these are the shorts?

A. Yes, sir, the shorts.

MR. BATLINER: Ask they be admitted as Commonwealth's 17, Judge.

BY MR. BATLINER:

Q. Okay, Ronald, now, after they were beating you in the head and you were down in the

kneeled-down position, what happened then?

A. Somebody came -- somebody came out. I put -- after they went through my pockets, first, they started to -- they continued to beat me. Somebody stuck their head inside the doorway and said, let's get the hell out of here. And that's when they ran.

Q. You don't know who that person is, do you?

A. No. I can't -- I couldn't really tell you who that person was. And at this time, I been hit in my head continuously, you know.

Q. How many times do you think you were struck in the head?

A. Anywhere between three and five times hard. This on top of the head. And I say about three times around this area.

Q. Did it feel like you were getting hit with a fist or did they have something in the fist?

A. It felt like a hard subject -- a hard object. And it doesn't feel like no fist, you know. And at the time, like one or two times, I did feel like I got hit with a fist, but the majority of the time, it was with a object.

Q. Something hard?

A. Yeah, hard.

Q. What did you do after -- well, when that guy said, let's get out of here, what did they do?

A. All right. They leave. They ran out the house. So I waited, you know. It could have been two minutes, a minute and a half, three minutes, but I waited. And I was trying to secure the house, you know, so I eased to the outer part of the house, you know.

Q. And when you say you eased to the outer part of the house --

A. I mean, I'm moving real slow. I ain't trying to move too fast to get shot, you know. I just, you know, have them surrounding me with the guns so --

Q. So you come out of the back bedroom?

A. I come out of the back bedroom. I'm easing. I'm like, I got my hands on the wall, you know, crouched a bit, you know, until I get like in the outer part of the house. Then I basically just take little footsteps and stuff.

I get to this part, and you know, I'm not really paying attention to what's in this area right here, but my son appeared to be on the couch, right, but the door wide open, you know. I'm trying to get the door closed, you know. That's my main focus at the time, to get the door shut in case they got any thoughts about coming back or anything.

So I got a phone in the house, and at the time Tamika should have had my phone at this time, had my phone.

Q. Where did she get it from?

A. Off the floor.

Q. Was it a regular phone or a --

A. Cell phone, cell phone. So before I even can make contact with the -- with the door, it don't dawn on me that my mother ain't in the house, you know. Because I don't -- I didn't even think -- I wasn't even really -- it wasn't on my mind that something could have happened to her or anything.

But as far as me coming to the door, I see her like laying on her stomach, you know what I mean. So I'm thinking somebody just knocked her out or something 'cause I didn't hear no -- I didn't hear the gunshot. I didn't hear the gunshot. I was sleep for one thing. So I think somebody's knocked out or something. Like I just hoping, hoping that they knocked her out.

So I get to her, right, and I can see part of her face visible, right. There's a big blood clot around -- I done seen it so many times before, I know what it is before I see it. That's why I just passed -- went out. I went out right there. I went out right there.

Q. What do you mean you went out?

A. Before I went out -- I mean, I just -- I mean, that's the last -- my last memory. I must have blacked out. Before I went out, I told Tamika to go get some help and that was it.

Q. Now, then the police came, right?

A. Yeah, the police came.

Q. What did you tell the police?

A. When I went downtown?

Q. Uh-huh.

A. I told the police that some guys came in the house and -- but left the drugs out of it at first, you know. Told them some guys came in the house looking for to rob the house, you know, basically trying to keep the drugs out and stuff.

Q. Did you tell them about Tyreke?

A. Yeah. I told them about Tyreke.

Q. Did you tell them about --

A. Tyreke the only one that I -- know what I'm saying, really I knew, that I had known, that I had a positive. I mean, a make on the person and a name to it.

Q. Did you tell them about this man?

A. Yeah. I told them a light-skinned guy.

Q. You didn't know his name?

A. Didn't know his name.

Q. Had you ever seen him before?

A. I ain't never seen that man before except for the time that he came to the house, two times before. That's the only time I seen him. Other than that, he just popped up. I never seen him before.

Q. Okay. Now, you told them some other people, didn't you, when you were at the police?

A. I told that Kenny -- I told them Kenny Parker could have been the guy that stuck his head through the door. And I told them about Tyreke's brother, Q, because he was in the car one of the times when they came up the first time. You know, I was just basically trying to put everything in, everybody that came to the house.

Q. Why did --

A. They didn't have no reason to come to the house.

Q. Why did you tell them KP and Q?

A. For one reason, these guys don't know how the inside of my house is. Only two people know how the inside of the house is. When you first come in my house, not too many people know there's a bedroom in the back like that, because you got to go through a double door. And you just thinking it's a linen, like a utility room. You would never think it's a bedroom in the back.

Ain't too many people know about that bedroom in the back.

Q. Ultimately, you told the police that KP and Chris weren't there, right?

A. Yeah. I told them they won't there. I told them two people come in the bedroom.

Q. Did you ever change anything about the two people that came in the bedroom?

A. No, no, no. Only two people come in that bedroom. The third person ain't never come to the bedroom. He stayed like basically out. He must have -- I don't know what part of the house he was at. He could have been out there where my mother was at or what, you know. I only seen him -- he only made himself visible to me when he told them, let's get the hell out of here. That's the only time I only seen him. And it was fuzzy then 'cause I was getting beat in the head. So I don't know who that was. Ain't but two people that I can make a hundred percent positive identification who they is.

Q. And who are those two people?

A. That's Gregory Williams for one and that's Mr. Lester Lynch right there. I just now knowing his -- found out what his name is. I didn't even know his name, you know. So I don't even know why he, I mean, come to do me. I don't even know the man. I only seen

him the time when he come to the house and the two times when they pull up in the car. Other than that, I never even seen this brother a day in my life. I never did nothing to him.

Q. Ronald, you have been convicted of some felonies before?

A. Yeah, almost ten years ago.

Q. In '94, right?

A. Yeah.

Q. You got convicted of five different felonies?

A. Yeah.

Q. And they were possession of heroin?

A. Selling heroin.

Q. Shooting at a vehicle -- from a vehicle --

A. Shooting from a vehicle.

Q. Into a vehicle?

A. And shooting into a vehicle.

Q. And then possession of cocaine with intent?

A. Possession --

Q. Possession of heroin with intent, right?

A. Yeah.

Q. You got all those in '94, right?

A. Yeah. All of them at one time. I ain't had no charges since.

Q. Just one more sort of silly question. The address, the 3331 Lens Avenue, that's located here in the city of Norfolk?

A. That's located off Lafayette Boulevard between Lafayette and I forget the other street, but it's on Lens off Lafayette right --

Q. Here in the city of Norfolk, right?

A. Yeah, right in the city.

MR. BATLINER: Answer any questions Mr. Anderson might have for you.

THE COURT: Ladies and gentlemen, it's about 12:20 now. We're going to recess at this point for lunch and ask that you be back at 1:30, and we'll resume with the cross-examination of this witness. Please do not discuss your case with anyone during the lunch recess or remain in the hearing of anyone who may be discussing it.

The sheriff is going to give you some jury badges. Please wear those throughout the day and throughout the trial while you're in the courthouse area.

(The Court recessed for lunch at 12:22 p.m.)

THE COURT: Bring the jury out.

(The jury entered the courtroom at 1:38 p.m.)

THE BAILIFF: Your Honor, the jury is present.

Please be seated.

THE COURT: All right, Mr. Anderson. You may begin your cross-examination.

CROSS-EXAMINATION

BY MR. ANDERSON:

Q. Mr. Scott, just to be clear, on June the 8th, 2001, during the evening hours, you were out selling heroin; is that correct?

A. Yes, sir.

Q. And you were out with --

A. A friend.

Q. A friend. And later on you saw Ms. Reid?

A. Yes, sir.

Q. Now, do you recall what time you met Ms. Reid or came in contact with Ms. Reid?

A. I didn't have a watch on, right, and any type of time I give you would be like a estimate.

Q. At some point you went home; is that correct?

A. Excuse me?

Q. At some point you went to your mother's house? You went to 3331 Lens Avenue in Norfolk?

A. Yes, sir.

Q. Do you recall what time that was?

A. Again, I don't recall the time, but it had to be around -- around 2:30 or 3:00.

Q. It was early in the morning?

A. Yes, sir.

Q. It was after 12:00?

A. Yes, sir.

Q. Now, the Commonwealth asked you who was at home, and you said that it was your mother and your son?

A. Yes, sir.

Q. Now, in the past you've said it was your mother and son and maybe your nephew?

A. Yes, sir.

Q. So you don't know who else was there?

A. My nephew was there.

Q. Now, do you recall -- I know you've

testified in this case on more than one occasion.

A. Yes, sir.

Q. Do you recall on one occasion saying it was just your mother and son?

A. Yes, sir.

Q. So you did say that and now that testimony has changed. Now you're saying it was your mom and your son and your nephew?

A. Yes, sir.

Q. So there was three people there?

A. Three people there and one person was on the floor.

Q. Excuse me?

A. One person was on the floor.

Q. Those were all the people downstairs when you came in?

A. Yeah. That's the only people that was downstairs. This on the day before now.

Q. This is on --

A. The day before the incident. This is on the 8th, not the 9th.

Q. Okay. Well, all right. You may be confused about the time. When you said three o'clock in the morning when you came in, that's the time that I'm talking about.

A. Okay. I'm talking about -- I'm talking about -- not the same -- the day that --

Q. At twelve o'clock, it became the 9th.

A. Yeah. It became the 9th, yeah, all right.

Q. So we're talking about the same time.

A. Okay.

Q. Thanks for clearing that up for me. Basically, the next morning, you were sleeping on and --

A. Yes, sir.

Q. -- off most of the day?

A. Yes, sir.

Q. I think as you explained it, you had been running the streets?

A. Yes, sir.

Q. You were basically tired?

A. Yes, sir.

Q. Now, there did come a time that you did get out of the bed; is that correct?

A. Yeah. On several occasions my mother woke me up.

Q. Now, do you recall the time when you first got up, the first time you got up?

A. I wasn't looking at the time. All I know, it was daylight.

Q. It was daylight?

A. Daylight is all I can tell you, the first time I got up, daylight.

Q. Do you remember -- there is somebody that we call KP, you call KP. His real name is Kenny Parker?

A. Yes, sir.

Q. You recall him coming to your house; is that correct?

A. Yes, sir.

Q. Do you recall what time he came to your house?

A. I know the first time it was daylight.

Q. The first time it was daylight?

A. Yeah.

Q. Would it have been like early in the morning like before -- I know you didn't have a watch, but would it have been in the morning time or the afternoon?

A. If I can get any closer to it, probably have to say afternoon like two o'clock.

Q. It would have been after 12:00. It wouldn't have been like ten o'clock in the morning?

A. Well, I'm not sure 'cause I didn't look at a watch beforehand.

Q. I understand. And prior to coming over, he called you?

A. Yeah, he called.

Q. And how many times did he call?

A. I only answered it one time. I only answered it one time, but he called several times.

Q. He was calling you on your land phone?

A. I was hanging up.

Q. Was he calling you on your land phone or on your cell?

A. Cell phone.

Q. And when he would call, you would basically just -- I think you --

A. Hit end.

Q. You'd hit end?

A. Yeah.

Q. You never bothered to talk to him?

A. Yeah.

Q. You knew what he wanted then? You had an idea of what he wanted?

A. I could say I had an idea what he wanted to discuss. I mean, but I didn't know what he wanted. I didn't know what he wanted.

Q. You didn't know the quantity, but you knew --

A. No. It's -- you know, he don't -- it's not the only time he called me, you know. He always called my phone, different things, and even if he wants money to gamble with. Always something that he wanted.

Q. So you said he just popped up this time?

A. Yeah, he popped up.

Q. Now today you're saying he just popped up; is that correct?

A. Yeah.

Q. Do you recall me asking that question another time when you said you told him to come on over and you'd get it for him?

A. Yeah.

Q. So he didn't pop up? You told him to come on over?

A. Well, I told him to come over, but he wasn't never supposed to had come over to get that, but he just popped up. So when I saw the call --

Q. Yeah, I got that. He would call and you would push end?

A. Yeah.

Q. And one time you answered the phone?

A. Yes, sir.

Q. That's when you told him to come on over?

A. Yeah.

Q. So you expected him to come over at some point?

A. Yeah.

Q. So he didn't just pop up?

A. No. He really didn't just pop up.

Q. All right. And then, when he showed up, where were you in the house?

A. In the bedroom.

Q. How did you become aware that he was at the house?

A. My mother.

Q. Your mother came there?

A. Yes, sir.

Q. Now, your mother knows KP; is that correct?

A. Yeah. He come over there -- he come over there to eat all the time.

Q. So she came back and she told you KP was there?

A. Yeah.

Q. Now, you-all conducted -- you sold him some heroin at that time; is that right?

A. Yeah, just between me and him.

Q. Between --

A. This is like --

Q. Where did that take place, Ronald?

A. In the kitchen.

Q. Did there ever come a point in time you went into your bedroom?

A. Yeah. He came in the bedroom as soon as he came in my house.

Q. Where was Tamika at that time?

A. I think Tamika was sitting in the bed. She could have been sitting in the bed. I don't know if she was leaving out or coming in.

Q. Ronald, if you don't know, don't guess.

A. I don't know. I don't know.

Q. Now, did you and KP get high at that time?

A. No. I don't get high man.

Q. In fact, you said you can't use --

A. I don't know if he got high or not. I don't get high.

Q. You didn't get high with him at that time?

A. No. I didn't get high with him.

Q. You don't get high with him every day?

A. No, man. I don't get high with KP, period.

Q. Now, you conducted your business with him. You gave him, I think it was five -- he wanted -- he only had $500?

A. Yeah. I give him the whole three-and-a-half grams.

Q. You gave him three. You gave him a break; is that right? Because that normally goes for 550?

A. Yeah.

Q. And he took it and left; is that correct?

A. Yeah, he left.

Q. And when he walked out of the house, you're testifying that you went out on the porch?

A. Yeah. I wasn't going to go out the house with him at first until my mother started raising a fit about him bringing -- saying -- asked him why every time he come over there, why he keep bringing all these people to her house all the time. It was the way they parked that made her say this.

Q. I'm sorry?

A. It was the way they parked that made her say this.

Q. The way they park?

A. Yeah, park.

Q. Where did the car park?

A. All right. This time right here. I told you, the first time he came to the house, it was parked on this side of the street.

Q. When you say "this side of the street" --

A. That's right where the house at.

Q. This side that's facing --

A. The same side of the house.

Q. To your house?

A. Yes, sir.

Q. And do you recognize anyone in the car at that time?

A. I recognize Tyreke and --

Q. Also known as Gregory Williams?

A. Yeah, Gregory Williams. And that was the only name that he yelled out, ain't nobody but Tyreke brought me to the house, you know, that I recognized.

Q. So you're saying KP hollered out that Tyreke brought him to the house?

A. Yeah. He said ain't nobody but Tyreke. That's what made me go and witness for myself, and that's when I see Tyreke. Like he said, it was Tyreke.

And I see your client.

And the other guy, I'm not sure if it

was Tyreke's brother or not.

Q. Now, earlier this morning you told the jury it was Q.

A. Yeah, Q, but.

Q. Now, you're saying you're not sure?

A. Yeah. I told you only a hundred percent positive on two people. That's it. And that's Mr. Lester Lynch and Mr. Gregory Williams.

Q. Now, where were the people sitting in the car?

A. It was one person was in the driver's seat.

Q. Who was that?

A. That was Tyreke.

Q. Now, when you say he was at -- when you come out of the house, the car was closest to you. That means you had to look past -- you had to look past the passengers on that side --

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A. Yes, sir.

Q. -- to see Tyreke?

A. Yes, sir.

Q. Is that correct? So Tyreke was in the driver's seat?

A. Yes, sir.

Q. Who else was in the car? Were the

other -- how many other people were in the car?

A. It was three people.

Q. Three people in the car at that time?

A. Yeah. And the passenger door was open.

Q. The passenger open on --

A. Open.

Q. The front passenger?

A. The front passenger door was open.

Q. Four-door or two-door?

A. I'm going to say it was a four-door. I'm going to say it was a four-door, but I don't --

Q. You can't be sure?

A. I don't recall seeing nobody's doors. I only recall seeing the passenger door.

Q. You only recall seeing the passenger door?

A. Yeah, and the driver's side.

Q. And that was on your side?

A. Yes, sir. And the driver's side is pointed towards me. The car was in like an angle so you could pull right there.

Q. Wait a minute. Were they parked on the street or in the driveway?

A. Get a picture of the house and I can show you where they parked at.

Q. Were they parked on the street or in the driveway?

A. In the driveway.

Q. I mean, does the house have a driveway to it?

A. Yes, sir.

Q. Were they parked in the driveway?

A. Yes, sir. That's what started the confusion with my mama raising a fit about him bringing somebody to the house. This is the first time they came to the house.

Q. Do you recall testifying before and you testified --

A. That they parked the other side of the street?

Q. -- they parked across the street?

A. Yeah. The other side of the street.

Q. And you never said anything about the driveway; is that correct?

A. I mean, this is a different time they came to the house.

Q. Okay. Well, the second time, where did they park?

A. On the other side of the street.

Q. And do you recall testifying earlier

that they never parked on the other side of the street?

A. I mean, I testified a whole bunch of times, but I told you they came to the house two times and you never asked me different times where they parked at. You asked me -- the last time you asked me, you said, do you remember them parking on the other side of the street? And I told you, I said, man, they came to my house two times, man. They parked different places both times.

Q. But you never recall saying that they never parked on the other side of the street? And we went through times then, and you --

A. Yeah.

Q. -- said they never parked on the other side of the street. Because you said they can't park on that side of the street because that's -- because you can't park on that side of the street. Do you recall saying that?

A. I remember saying that.

Q. Now, today you testified that it was -- you're not sure what kind of car it was. I'm sorry. Let me not put words in your mouth.

A. I'm going to tell you like this.

Q. Let me just ask you a question. Today do you know what make and model the car was?

A. I only can tell you it was a black car, and I had this car, you know, but --

Q. My question is -- I'm not --

A. I'll tell you, it could have been a --

Q. At this point, can you tell me the make and model of the car?

A. No, sir. It could have been an Acura or a Honda.

Q. Now, do you recall testifying earlier, and you told me you knew that the car was an Acura? Do you recall that?

A. That at the time I knew the car was an Acura?

Q. Yes.

A. I told you -- I didn't tell you that I knew it was an Acura.

Q. You don't recall --

A. See, if I had to tell you --

Q. Let me finish the question, okay, Ronald. You don't recall saying that --

A. Today?

Q. Excuse me?

A. You talking about today?

Q. No. Earlier.

A. Today?

Q. No, not today. I'm sorry. You're right, not today.

A. Do you want to know my exact words?

Q. No. Do you recall --

A. When I was going to work --

Q. And you said at that time you knew it was an Acura because your brother said, what are they doing with an Acura? And you turned around and looked and you saw it was an Acura.

A. Do you want to know my exact words?

Q. Do you recall saying that? I have the --

A. Yes.

Q. Can you read my exact words? then you'll see what I said.

MR. ANDERSON: Page 51, from the transcript on March 18th.

May I approach?

For the record, I'm showing the defendant a transcript that was recorded on March the 18th, of 2003, page 51. And I'm asking him to begin reading at line 6.

THE WITNESS: All right. It was like a joke, like what the hell they doing with a Acura?

It was an Acura?

BY MR. ANDERSON:

Q. That's the question.

A. And my answer was, "Yeah, it was an Acura. I was looking back again.

"So somebody said what kind of car it was?"

And answered, "Yeah.

"So you remember what kind of car it was?

"I told you, I just looked back again. I never really like -- like took the car in full detail because my mind wasn't on the car."

Q. So you don't know whether it was an Acura or not?

A. I told you a Acura or a Honda. All I can tell you, it was black. Now, if I was really up behind the car, I could tell you what model it was.

Q. Now, you said you owned an Acura before; is that right?

A. Yes, sir. That's why I only got to get behind it to see what kind it was.

Q. Now, do you remember testifying prior to that time as saying you don't remember what kind of car?

A. Until I -- I couldn't remember what kind of car it was.

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Q. You don't -- all right. Not in March, but you've testified at another hearing. Do you recall testifying at another hearing? It was in October.

A. Can you tell me what I said? Tell me what I said. I'm going to be truthful with you if I said it or not. Just tell me what I said. I ain't got no reason to lie about nothing.

Q. The transcript dated October 2nd, 2002, on page 65, again, at lines 10 and 11.

A. I can only tell you what it -- you want me to guess what kind of car it was?

Q. Just read what was the question I said.

A. All right. What kind of car it was?

No, I can't even really tell -- tell you what kind of car it was, man.

What color was it?

I couldn't even go back on the color like that. I wasn't really like paying much attention to it.

Q. So in other words, at that time, you couldn't tell the make, model, or the color, but today you're saying that you know it was an Acura or a Honda and --

A. Yeah. It could have been a Acura or Honda. It was black.

Q. After you testified, did you talk to your --

A. I been reliving this every day, man.

Q. After you testified, did you talk to your family members?

A. Do I talk to them?

Q. Yes.

A. No. I get to talk to them this weekend. I didn't even get to see them the last time I came down here.

Q. So your description of the car -- now, you go back to sleep and you go back in the house and you go back to sleep; is that correct?

A. Yes, sir.

Q. That was like the first time; is that right?

A. When they came?

Q. That's the first time they came over?

A. Yes, sir.

Q. And you say KP came over again?

A. Yes, sir.

Q. And I know you don't have a watch on; you don't know what time it was?

A. No. I don't have a watch on.

Q. You just know he -- did he call to tell

you he was coming by this time?

A. No, sir. I don't remember calling, no way.

Q. If he would have been calling, he would have been calling -- he would have been calling your cell phone?

A. I didn't have my phone, man, after this no more.

Q. No, no. My question was, if he would have called you, he would have been calling you on your cell phone?

A. Yes, sir.

Q. Did your mother wake you up at that time?

A. When he came back the second time?

Q. Yes.

A. Yes, sir.

Q. Now --

A. She got to wake me up 'cause I would never know he in the house, and I'm way in the back of the house.

Q. Now, where was Ms. Reid at that time?

A. The second time?

Q. Yes.

A. I don't know. She could have been in

the bedroom.

Q. She hadn't left the house?

A. No. She hadn't left the house. She hadn't left the house.

Q. And he came in and you-all had a discussion about the --

A. Yeah.

Q. About the heroin?

A. Yeah. About the quality of it, and he was telling me about if I had two kinds, you know. It's known to happen before but it's rare.

Q. Now, at one time when he came in, you told him you knew your stuff was right?

A. Yeah.

Q. In fact, you told him the stuff that he had brought you back was not even your stuff; is that correct?

A. I told him it didn't appear to look like my stuff. I never even got a chance to see if it was my stuff or not. He came and took that.

Q. You don't recall saying at one time he --

A. I said it don't look like my stuff.

Q. Because your stuff was white?

A. Yeah. But I never got -- really got a

chance to see was it my stuff or not. Only got the chance to look at it through the bag, 'cause I put it on the table and laid back down. I didn't never even get a chance to even look at it, for real, for real. Only looked at it through the bag. He had all the caps in the bag. He had the bag tied up -- tied up real tight. And I do remember saying -- saying that it don't even look like my stuff.

Q. At one time you said it didn't look like your stuff because --

A. That's why I put it on the table and I told him I would get to him out Park Place because --

Q. You were angry with him?

A. -- I couldn't take care -- I couldn't even argue with him where I was at.

Q. You were angry with him at that time?

A. Yes, sir. I was angry with him.

Q. And he knew you were angry with him?

A. I mean, I don't know if you can tell that or not, man, you know, if he knew I was or not. That's how I feel, man.

Q. He asked you were you mad, didn't he?

A. Yeah, he asked me if I was mad.

Q. You told him no?

A. I told him no.

Q. Now, do you recall at one time you told him it wasn't your stuff because your stuff was brown?

A. My stuff is brown, but when you cut it, you cut anything, it's going to turn white. But --

Q. Okay.

A. I don't know. I don't know if he brought me back my stuff. I don't know if he did bring me my stuff, 'cause I never got the chance to even touch it.

Q. Okay.

A. As far as --

Q. Now, after he left that time, you walked back out on the porch with him again?

A. Yeah. I walked him to the door.

Q. You always walk him to the door?

A. No. No, sir. The only reason I walked him to the door this time 'cause my mama was raising a fit. But he had just sold his car, and he was just getting all types of rides any time he wanted to come borrow some money or anything.

Q. Now, you said you didn't have a chance to look at your stuff but you put it down on --

A. I put it on the table.

Q. On the table?

A. Yes, sir.

Q. And then, at some point you went back to sleep, and later on that evening, do you recall whether it was light or dark outside when the people came to your house?

A. It was dark.

Q. It was dark outside?

A. It was dark. It was dark. I mean, I never looked outside, but it had to have been dark.

Q. Are you making an assumption again?

A. No. It got to be dark, man, because I can just tell by all the times I been through -- you know, getting up, from getting up all through the day because I'm tired. But I'm constantly getting woke up, and as I'm getting woke up, the day is going on.

Q. Now, you say you heard your mama screaming your name?

A. Yeah. I mean, it was like -- I can't really say it was my name. She was just calling me.

Q. But she's screaming your name and you hear her, but Tamika still has to wake you up and tell you Do Wop is there?

A. Yes, sir.

Q. And --

A. And I don't know who Do Wop is.

Q. And somebody is opening the knob --

you're trying to put your shorts on?

A. I got the shorts on.

Q. You had them on?

A. Yeah, walking towards the door.

Q. You got to the door and the door leans back, and you're not sure if it hits you in your face or not?

A. It hit me.

Q. It hit you in your face?

A. It hit me. I thought the door was kicked in, but I wasn't kicked in.

Q. And the person that --

A. Who did I see?

Q. Yeah, the first person you see is --

A. The first person I see is Tyreke.

Q. And you knew Tyreke. You knew of Tyreke?

A. Yeah, I know of Tyreke.

Q. Had you ever sold him drugs before?

A. I've given him drugs before.

Q. You've given him drugs before?

A. Yeah. I gave him drugs before.

Q. So you definitely know him?

A. Yeah, I know him.

Q. And as soon as he comes in, he tells you

to get on the floor?

A. Told me to get on my knees.

Q. And you get on your knees?

A. Yeah.

Q. And he's standing there with a gun?

A. Yes, sir. And then he comes from around Tyreke.

Q. But you're on your knees at that time?

A. Yes, sir. I'm on my knees.

Q. And at some point they start asking you, where is it? Give it up. Give it up.

A. Yeah. They say they want the money and the dope.

Q. Who was saying that?

A. Both of them. But Tyreke, he's more -- he's the more vocal. He's the more demanding, you know. Basically, you know, all he really did was snatched my clothes -- I mean, snatched the tablecloth, snatched it off the table, drugs went everywhere. Picked the drugs up, you know, hit me on my head. But other than that, you know, he wasn't really, you know, really doing anything.

Q. And Tyreke, or the person that you describe as Tyreke, is hitting you with a gun?

A. Yes, sir.

Q. And he's banging you -- I saw in one of the pictures. It looks like a knot in the back of your head?

A. Yes, sir.

Q. So I can take it he hit you pretty hard?

A. There's two people hitting me.

Q. But the other person, the light-skinned person is hitting you. You don't -- I think you testified --

A. Light-skinned person --

Q. -- you don't recall the gun in his hand?

A. He was hitting me, the light-skinned person.

Q. The person -- you didn't see a gun in that person's hand, did you?

A. In the left hand.

Q. In the light-skinned person's that hit you?

A. I'm saying a light-skinned person.

Q. You described to the police as the person as being light-skinned?

A. Yeah. I remember the person. The person is him, yeah, that person. And I know what I be talking about.

Q. The jury will determine that.

A. Okay.

Q. The person that you described as being the light-skinned person?

A. Don't tell me I don't know what I be talking about. Yes, sir.

Q. Okay. That person, you don't recall -- do you recall him touching you on your head; is that correct?

A. Yes, sir.

Q. And you don't recall seeing any gloves on him, do you?

A. To tell you the truth, I wasn't looking for any gloves. I wasn't even looking for this night.

Q. Okay. Do you recall testifying you don't recall any drugs on --

A. I told you -- I told you the only thing I just told you. I don't recall looking for no gloves. Like the same thing I told you truthfully when you asked me did I see a gun in his hand. I told you I can't recall ever seeing a gun in his hand.

Contradictory see T. Reid 62 lines 14-16

Q. You did?

A. I only got the truth.

Q. Do you recall seeing somebody snatching at you -- recall seeing that person snatch the tablecloth, right?

A. Yes, sir.

Q. And you saw his hand?

A. Just like I saw the tablecloth go flying.

Q. And when you saw his hand --

A. Don't forget, I'm on my knees getting bits and pieces of everything.

Q. And you're getting bits and pieces.

A. The number one thing is, I'm really not really trying to even make eye contact with them.

Q. You're not trying to make eye contact.

A. I mean, I'm just getting -- I'm looking. I'm looking. I'm looking. I'm hoping he don't kill me. Hoping he don't kill Tamika. Hoping they just get what they want and leave.

Q. Now, I know the answer to -- you don't know how long this whole thing took place, do you?

A. Sir, I mean, tell you -- the only thing I can tell you, I was glad when it was over.

Q. And you left after they left? You crept out --

A. Yes, sir.

Q. -- to the front of the house?

A. Yes, sir, that's right.

Q. And you saw your son laying on one of

the couches?

A. Yeah. He appeared to be laying on the couch.

Q. Did you see your son first or your mom first? I'm kind of confused on that.

A. My son -- you know, my son.

Q. Then you saw your mom?

A. Yeah. My mom was in the hallway, man. I didn't even -- I couldn't even see through the door, you know, because the hall was like dark. The light won't even on in the hallway.

Q. Now, at some point you asked Tamika to call?

A. Yes, sir, to get help.

Q. And it's fair to say that --

A. She went out the front door.

Q. Yeah. She had your cell phone at that time or --

A. She had to have it then 'cause I ain't seen it then.

Q. You're assuming again that she had it because you got it back later; is that right?

A. I mean, she was calling on my cell phone the whole time I was sleeping. Put it like this --

Q. You answered the question. At some

point the police come; is that correct?

A. Yes, sir. I look up, the police all around me. Because I really couldn't tell you -- I never even realized the police walked past me. I don't even know how they got behind me.

Q. It's fair to say you were in a state of shock?

A. Yes, sir.

Q. It's fair to say Tamika appeared to be in a state of shock?

A. Probably Tamika was more -- she was more in control of herself than me. I put that in the exact words. She was in more control of herself than me.

Q. Do you recall testifying at another time that Tamika was in shock?

A. Sir, I'm going to tell you -- I don't know. I don't remember telling you that. I could of but I don't remember telling you that she was in a state of shock, because I don't know what state her mind is. I can't look at a person and tell when they in shock. I know I was in shock because I know me, it's me. I know what I'm feeling, what I'm going through.

Q. So you sometimes say things and you don't necessarily know what they mean?

A. It could be that, but I don't -- the

only thing I couldn't tell you is when somebody's in shock. I be trying to read somebody's mind, man. I can't do that.

MR. ANDERSON: Hearing held on July 23rd, 24th, 2002, page 16, line 19.

May I approach, Your Honor?

THE COURT: Yes.

BY MR. ANDERSON:

Q. Page 16, line 19. This is on page -- this is a transcript dated July 23rd and 24th, 2002. This is the testimony of Ronald Scott. I think it's on page 16, line 19.

Does it refresh you that Tamika was standing up, and she was shocked?

A. No. That's in the bedroom, too.

Q. Yeah.

A. That was inside the bedroom.

Q. And that's when she was in shock?

A. That's inside the bedroom.

Q. She was in shock inside the bedroom?

A. Yeah. You be shocked if somebody put a gun to you, too.

Q. Okay.

A. But that's inside the bedroom. That's a

period of shock. Now, you talking about the other --

Q. My question is confusing?

A. Over my mother's body?

Q. Oh, okay. She gets out of the bedroom, she's in shock. You're saying you don't know what she was when she was outside?

A. Say somebody come to -- you let somebody come back to your bedroom --

Q. My question -- I think you cleared me up. You're saying if I was asking you about inside the bedroom, you would agree that's what you said, she was in shock, but --

A. I mean if I put a gun --

Q. If --

MR. BATLINER: Actually, Judge, I'm going to have to -- it doesn't say that she was in shock. It says, "Tamika was standing up. She was shocked and he told her, he said, B, get on the bed. Don't move." That's exactly what the transcript says. It doesn't say that she was in shock anywhere.

MR. ANDERSON: In shock, is shocked, okay.

THE WITNESS: I mean, that's why I said shocked.

BY MR. ANDERSON:

Q. Now, the police took you to police headquarters that evening; is that correct?

A. Say what?

Q. On June 9th after the robbery and the killing and the burglary, you left to go to police headquarters. The police somehow transported you to police headquarters; is that correct?

A. Yes, sir.

Q. Isn't it a fact that you gave them the name of Tyreke, Q, Kenny Parker, and a light-skinned person; is that right?

A. Yes, sir.

Q. But you assumed that Kenny Parker and Q were there; is that correct?

A. Yeah.

Q. And at some point the police --

A. I only told them two people came in the bedroom, though.

Q. But you told them that there were other people there; is that correct?

A. Yeah.

Q. And you gave them the names of people who were there?

A. I mean, people that could have been

there. By me, the car --

Q. So --

A. When I see them --

Q. Wait a minute. So you gave them those names; is that correct?

A. Yes, sir.

Q. At some point you retracted that statement; is that correct?

A. Yeah, it got cleared up.

Q. But you only cleared it up after the policemen told you that they didn't believe that they were there; is that correct?

A. No, I couldn't -- I went down there.

Q. You didn't -- they called you and you went down there. You didn't just --

A. I don't know if they called me or not, but I know I went down there by myself. For one thing, I wasn't in the right frame of mind the day before anyway. I know I went back the next day and probably I went back a week straight. It could have been a week straight. I was looking at pictures trying to find the light-skinned guy.

Q. And you picked him out?

A. Yes, sir.

Q. The next day?

A. I don't know if it was the next day or three days later. I'm not pretty sure on that, but I know I was looking at pictures trying to find the light-skinned guy.

Q. So if you testified in the past that you picked this picture out the next day, that would be in error?

A. I'm not sure it's the next day. It could have been the next day or three days later. It could have been the next day. You know, it's so long ago. It could have been the next day or it could have been three days later.

Q. If I asked you and you were sure then, you're not sure now?

A. If I was sure then, being at the time, yes, you asked me the question. But I'm just telling you how I'm answering the question now. It could have been the next day. It could have been two, three days.

Q. Do you recall anything distinctive about the light-skinned person? How did you describe him?

A. All right. This is the way I described him to the police. I said, I told them his hair wasn't like no corn -- no cornrows, go straight back. His hair was like in chains, like it was connected to the next plait. That's what I told them.

Contradiction see T/Es 2 p. 78 11/16/12-18

Q. Did you say --

A. I told them lighter --

Q. Excuse me?

A. I told them he was lighter than me.

Q. Did you tell them there was anything distinctive about his eyes?

A. I'm sure I said -- I know I said brown if I said anything about the eyes. It's just this, man, come on.

Q. Now, just --

A. The only thing --

Q. Just -- do you recall saying there was anything distinctive about his nose?

A. I don't remember saying nothing about his nose, sir.

Q. Do you recall saying whether there was anything distinctive about his mouth?

A. I don't know, sir. But I can tell you this --

Q. Do you ever recall testifying and saying that you recall his mouth because he had gold fronts in it?

A. All right. I remember saying something about some gold fronts.

Q. Did you tell the police about these gold

fronts?

A. I don't know if I told the police about the gold fronts or not. I could have.

Q. Did you -- and I hate to jump back, but I just --

A. No. Gold fronts are right.

Q. Yeah. Now, do you recall -- now, you said in talking about that car and where it was parked, your brother was there?

A. Yeah.

Q. Your brother was the one who made the comment --

A. My brother was on his way going to work.

Q. And you said your brother made a comment --

A. Yeah. He made a comment.

Q. About what?

A. He was referring -- I don't know if he was referring to KP or he was referring to Tyreke. I don't know if my brother know Tyreke.

Q. But your brother made a comment about the --

A. The car, yeah.

Q. -- car? And your brother would have seen the people in the car just as you would have seen

the people. You don't know what your brother saw --

A. My brother was -- yeah.

Q. -- but you saw your brother come down the steps, and you saw him observing people in the car?

A. Yes, sir.

Q. Because he commented on the car?

A. Well, he don't --

Q. He commented on the car?

A. Yes, sir.

Q. Did you tell the police about that?

A. Yes, sir.

Q. To the best of your knowledge, has your brother ever testified in this case about the car or the people in the car?

A. Tell you the truth about my brother, man, my brother turned against me and a lot of my family turned against me after this incident. So I don't know. I know he was all -- I know he was a witness at one time. But to tell you the truth, man, I ain't -- you know, a lot of my family ain't speaking to me because of this incident, and that's the truth. But I supposed to be talking to my sister this week. I don't know if I'm going to be talking to her.

Q. Now, do you recall, did you tell the police that there was anything distinctive about anyone's

voice?

A. The guy's voice that said, man, you-all hurry up. Let's get the hell out of here.

Q. You don't remember telling the policeman when you said there was something distinctive about the light-skinned person's voice?

A. I don't remember. The only thing I know about him, right, it's him right there, is just seeing him.

Q. But before you -- but let me -- I don't want to put words in your mouth. Let me make sure --

A. I just know him, man.

Q. -- exactly what you said.

A. Every time he was talking, they was like talking together and talking over one another.

Q. From the transcript dated March 18th, 2003, page 67. In fact, this is -- I didn't even ask you anything about the voice. I asked you, did you tell me anything about his height and weight, and you said --

A. I said no.

Q. You said no. He was just taller than me. I said something about the voice that you should find. Okay, do you recall saying that now?

A. See, you messed up on that question there. You may need to come back and read that question

again. You done messed me up on that question.

Q. Well, let's let you read it then.

A. You went from one line to another, man.

Q. Let me let you read it then.

A. Mr. Anderson, why not ask me about the thing that happened in the bedroom, man?

Q. I don't want to mess you up. The question I asked you before: Did you tell them anything about his height --

A. I ain't going to --

Q. And --

THE COURT: I'm sorry.

BY MR. ANDERSON:

Q. I'm sorry.

You read it, Ronald.

A. Did you tell them anything about his height and weight?

No. He was just taller than me. That's what you want me to say?

Q. You answered my question, but then keep on. Your answer?

A. When I say something --

Q. Well, what else did you say?

A. About the voice that you should find.

That is the only thing that I said something about.

Q. So you said something about his voice. You said that. I didn't ask you about that. You just took and volunteered that you said something about his voice; is that correct? At least, that's what the transcript says.

A. What's the transcript say? That's what I said.

Q. This morning you testified that KP, who was one of the people who had been in your bedroom, that was one of the reasons that you gave --

A. Yeah. He came in my bedroom.

Q. -- for him being -- for you giving his name; is that right?

A. Yes, sir.

Q. Now, prior to the date of this incident, did you know this defendant?

A. I already told you man.

Q. Just answer the question, Ronald. Did you know the defendant?

A. I only know him from the three times he came to my house.

Q. You knew Tyreke?

A. I knew Tyreke. I'm just finding out things about him now.

THE COURT: Redirect.

REDIRECT EXAMINATION

BY MR. BATLINER:

Q. Ronald, when you came out and found your mother in the hall, did you see outside when you were outside there in the hallway?

A. Talking about outside the door?

Q. Outside the door.

A. No. The door was like still partially open.

Q. Did you go outside or did you stay with your mother?

A. I stayed with my mother. I couldn't even move.

Q. When people came there -- I assume the paramedics came?

A. Yes, sir.

Q. Was it dark outside when you looked out past her?

A. When they took me out, yes, sir. It was right dark.

Q. When you went to the police station that night, that's when they took those pictures of your head

and the pictures of your shorts; is that right?

A. Yes, sir.

Q. Just so it's clear, what I'm talking about are the shorts that are depicted in Commonwealth's 14, 15, and 16. I'll just put 15 up. That picture was taken that -- you were taken to the police station and they were taken shortly after when you were down there?

A. Yes, sir.

Q. So either that evening or the early morning the next day?

A. Yes, sir, two hours later, three hours later. It was that night, though.

Q. And these pictures of your head --

A. Taken the same night.

Q. Taken the same night?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. Let's talk about one of the things you talked about and you got cut off. You were talking about the color of what would have been your stuff, and you said -- you started to say when you cut anything it will turn white?

A. Turn white.

Q. First, tell the ladies and gentlemen

what you're talking about when you say "cut." What does cut mean?

A. The cut is something that you just add to it for to stretch it.

Q. Add to what?

A. Add to the heroin and it won't overpower the heroin, 'cause the heroin is stronger than the cut. It just stretches. And the cut will give it a white look, but the heroin will still overpower the cut.

Q. So you would add something else to the heroin, another kind of powder?

A. Yeah, another kind of powder. It's a powder to stretch it.

Q. And then you'd mix it up, and then that's called cutting it?

A. Yeah, cutting it.

Q. And then you said stretch it. By stretching it, do you mean so you'd have more product to sell?

A. More product to sell, but it don't do nothing to the heroin. It just stretches it and gives a white look.

Q. Now, you also talked about the cell phone, that you didn't see your cell phone after that evening?

A. Yeah. Tamika had my cell phone 'cause she -- every time I looked she had it. She kept on handing it to me every time the phone would ring.

Q. So she had had your cell phone that evening?

A. Yeah. And I had to get it back from her after this incident happened. I got it back -- my cell phone back, like, I think it was like a week later.

Q. And then, you did pick out a picture of the defendant?

A. Yes, sir.

Q. The police showed it to you in a lineup; is that correct?

A. Yes, sir. They showed me six pictures, and I picked one picture. You know, somebody where they don't belong at, like in your house, how could you forget them? How could you forget them, especially doing the things he was doing in my house? That's just something I will probably never forget is his face for the rest of my life.

Q. You talked about that you relived this every day. Have you been going over it trying to think about the details?

A. Yes. Trying to think about the -- trying to get my mind right about the car, 'cause you

know, like I say, I seen the car. The car was black, but not sure if it was a Honda or Acura, right, 'cause they made like -- see this year right here, they make them the same way. They make them the same way. You really can't tell but by the words on the back. Either he got a Honda or he got a Acura.

Q. Let me -- also, you were talking with defense counsel, and that they snatched stuff off the table.

A. Ain't but one person snatched stuff off the table.

Contradictory
See T.(E)2
p.66 lines 22-25
p.67 lines 1-3;
p.76, 13-17

Q. Who snatched the stuff off the table?

A. The guy right there, Lester Lynch. He's the only one that did the snatching.

Q. I'll show you what is Commonwealth's Exhibit No. 10. Take a look at that.

A. Yes, sir.

Q. What does that show?

A. This is the tablecloth that he snatched off the table.

Q. Hold on just a second. Let me get -- point to what it is that you're talking about is the tablecloth.

A. All right. Right here and then you go behind the clothes right here. This is on the table

right there.

Q. You're talking about this?

A. Yeah. This is the shirt right here. This is the tablecloth right here.

Q. And where had that been?

A. It was on top of here, and the clothes basket was on top of that.

Q. On this table right here?

A. Yeah. Right by the -- like the heroin was right here and some money was right there. And I put it right there for Tamika. Well, I didn't put it right there. I give the money to her and she put the money up on the table. He just snatched the whole thing off when I pointed to it. Because he asked for the money and the dope, you know. And I pointed to the table, you know.

Q. So this is the tablecloth that had been on this table right here?

A. Yes, sir.

Q. I want to make sure. Is that correct?

A. Yes, sir.

Q. And this is on Commonwealth's No. 10.

I'm showing you what's Commonwealth No. 9. Is the table in that picture or not?

A. The tablecloth?

Q. Or the table or the tablecloth?

A. Here it go right here.

Q. Let me point to it again because I'm going to -- point to it again.

A. Here.

Q. This is the table right here?

A. Yes, sir.

Q. And the tablecloth that's in this picture had been on that before they came in the room?

A. Yes, sir.

Q. Was there also stuff on that table?

A. Yeah. It was clothes and it was a clothes basket on my table.

Q. I show you Commonwealth's No. 8. Is that the clothes basket?

A. Yes, sir.

Hey, Mr. Batliner, I got some more pictures right, of the bed, right. I want -- I don't want to incriminate myself, right, but I want to show you. When I pointed to the table, what I was really pointing to -- I was trying to show them the drugs, because I was giving him all the drugs, you know. And he snatched the tablecloth off. When he snatched the tablecloth off, he only got what fell -- what KP left and a little money Tamika left. But I was giving him all the drugs. The drugs was in the clothes basket.

Q. The drugs were in the clothes basket?

A. Yes, sir, inside a bag. And I was giving him all the drugs. But instead of him -- telling him where the drugs was at, he just snatched the tablecloth off the table.

Q. Ronald, can you see from there?

A. Yeah.

Q. I want to make sure, so when I deal with the jury up close. This is what you describe as a tablecloth, correct?

A. Yes, sir.

Q. And this is the table?

A. Yes, sir. My shirt right on top of the tablecloth. My shirt is black, yellow, and gray. The tablecloth got like little flowers or something.

Q. Then, in Commonwealth No. 9, this is the table?

A. Yes, sir.

Q. Is that the same shirt?

A. Yes, sir.

Q. You can't quite see the -- can't see the tablecloth?

A. Yeah. You can't see the tablecloth from that angle.

Q. And this one shows the clothes basket?

A. Yes, sir, and the bag.

Q. This bag?

A. Yes, sir.

Q. You show me which bag. I don't want to -- which bag?

A. The bag right there.

Q. And what was in there?

A. All the heroin. All the heroin. That's what I was pointing to when he asked for the money and the dope. I was trying to get them out the house, to get them out the house, 'cause at this point, as far as I know, he hadn't hurt anybody. And I just wanted to just get them out of the house. He wanted drugs, give him the drugs. I'm already wrong for one thing, for selling drugs. Just want to get them out the house, you know. Drugs won't worth nobody's life.

MR. BATLINER: No more redirect, Judge.

MR. ANDERSON: Your Honor, I have a few.

RECROSS-EXAMINATION

BY MR. ANDERSON:

Q. It's clear in your mind that the light-skinned person grabbed that tablecloth; is that correct?

A. Yes, sir.

Q. He snatched it off the table?

A. He snatched it off the table.

Q. Now, you said that you couldn't forget that person that came in your house. You couldn't --

A. I will never forget him, man.

Q. Now, but when you gave a description to the police -- did you ever give a description to the police?

A. I mean, I ain't no artist or nothing. It ain't like I can draw him or something, but I told them it was a light-skinned person. I told them if I see him again, I could point him out.

Q. And today you testified that you said his eyes were brown, but when you testified before, did you say you didn't know whether there was anything distinctive about his eyes?

A. I could have said that.

Q. Today you're saying that they were brown and in the past you could have said there was nothing distinctive?

A. Yeah.

Q. Let me ask you, did the person have on a mask?

A. No, man. It was just him, him and

Tyreke, man.

Q. Do you recall whether the person had any facial hair?

A. I mean, by me thinking back, you know, it was no full beard. He probably had a little side -- you know what I'm saying, little sideburns going right down here. That's it.

Q. Ronald, I don't want to put words -- are you guessing now or are you just --

A. No. Just telling you how I know he didn't have none of this. He didn't have any of this like I got right now, all this. Man, I told you, man, the dude just stuck out, man, like he was just pale, man. I told you that he stuck out. He stuck out in the car. He stuck out in the room, man. The dude pale, man. You don't even see too many dudes, man, that look like that man.

Q. Now, did you recall testifying earlier and saying you don't recall him having any facial hair?

A. I just told you, man, he didn't have none of this, man. Why? You didn't hear me. I just told you that.

Q. But you say he had hair?

A. Yeah. He had a little sideburns. That's it, just stop right here. And that was going with

his plaits.

MR. ANDERSON: That's all I have, Judge.

THE WITNESS: I told you that.

THE COURT: Thank you, sir.

Anyone need a break? All right. We'll take a five or ten-minute recess, however long it takes.

(The jury entered the jury room at 2:37 p.m.)

(Recess.)

THE COURT: Who's the next witness?

MR. ANDERSON: Well, actually, Your Honor, I think Mr. Batliner wanted to talk to you about the witness.

MR. BATLINER: I was going to tell you how I was going to proceed, Judge. I'm going to do the paramedic, the medical examiner, and then I've got three quick citizen witnesses, 'cause I don't want them to have to come back tomorrow. And then I've got the forensics detectives. Then if we get past that, which I don't know that we will, then it would probably be Kenny Parker and then --

THE COURT: Let's go as far as we can go

today.

MR. ANDERSON: Your Honor, this is the question: If we're talking about maybe two hours to go, we know we need to stop at 4:00 to do your thing.

THE COURT: That's not going to take very long.

MR. ANDERSON: If he does Mr. Parker today, that means he will finish his part. He will finish his direct and I'll probably start my cross-examination the next morning. I don't mind if he wants to do it that way.

THE COURT: Let's just see where we go. We'll go as far as we can go.

MR. BATLINER: Just so you know what the plan is, I'm going to try and blow through a lot of the quicker witnesses and get them out of here.

MR. ANDERSON: Your Honor, trust me, the next witnesses will be quick. So if you close your eyes and blink, you'll miss them.

THE COURT: Okay. I'll take your word for it.

MR. BATLINER: I'm not making that promise quite yet.

(The jury entered the courtroom at 3 p.m.)

MR. BATLINER: Judge, I can probably read a stipulation into evidence at this time. That would probably be appropriate.

The parties stipulate that the stain on the left front pocket and the right rear pocket of the shorts worn by Ronald Scott on June 9th, 2001, were tested by Amy Jo Talmey of the state laboratory. The test indicated the presence of blood. The DNA analysis was done and the stains matched the DNA of Belinda Scott.

The analysis revealed no other source of DNA material other than the blood of Belinda Scott. DNA technology is unable to determine how blood was deposited on the shorts.

Contradictory
See Scott
p. 85, l. 15-25 +
p. 86, l. 1-8

THE COURT: Ladies and gentlemen, you may regard that as a fact for you to consider in your deliberations.

Do you want it marked into evidence or just receive it?

MR. ANDERSON: Just receive it.

THE COURT: The stipulation is made a part of the record.

MR. BATLINER: Scott Howard.

Why don't we put it into evidence, Judge? I think that would be better.

THE COURT: All right. I'll mark it then as Commonwealth Exhibit's No. 18.

(Whereupon, Commonwealth's Exhibit No. 18 was marked for identification and received into evidence.)

MR. BATLINER: Judge, Mr. Howard would need to be sworn.

THE COURT: Raise your right hand.

SCOTT HOWARD,

a Witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BATLINER:

Q. Would you tell the ladies and gentlemen your name.

A. Scott Howard.

Q. Mr. Howard, how are you employed?

A. I'm a firefighter/paramedic with the City of Norfolk.

Q. I'm going to direct your attention back to June the 9th of 2001. Did you hold that same position then?

A. Yes, sir.

Q. Did you have an occasion to respond to a call at 3331 Lens Avenue in the city of Norfolk on that day?

A. Yes, sir.

Q. Have you been able to review your records and determine what time you got dispatched to go out on that call?

A. Yes, sir.

Q. What time was it?

A. It was at 2145.

Q. What is that in --

A. 9:45 p.m.

Q. That's when you got dispatched to the call?

A. Yes, sir.

Q. What time did you actually arrive?

A. At 9:48.

Q. Tell me what you saw when you arrived.

A. We were dispatched for a possible

unconscious patient. We saw a black female on the floor laying unconscious. We rolled her over.

From the bystanders, we were told she was hit in the head. She was unconscious. We started following our unconscious protocols.

Q. Did you determine that there was something else wrong with her other than she was unconscious?

A. Once we got her in the back of the unit, we began to palpate her and check out her body, and that's when we noticed the wound. The wound appeared to -- not to be from a blow but appeared to be from a gunshot wound.

Q. Did you attempt to -- you attempted to revive her at the scene?

A. That's correct.

Q. And when you arrived, she was in the hallway right outside the apartment?

A. That's correct.

MR. BATLINER: Answer any questions defense counsel might have for you.

CROSS-EXAMINATION

BY MR. ANDERSON:

Q. Mr. Howard, you said some bystanders, someone told you that she had been hit as opposed to being shot?

A. We were told that she had been hit in the head.

Q. You don't recall who told you that?

A. No.

Q. And were you ever able to determine who the person was who was laying there?

A. Eventually, once we had taken the person to the hospital.

Q. I'd just ask you one question. You have no evidence that this defendant was there or had anything to do with her death, do you?

A. No.

REDIRECT EXAMINATION

BY MR. BATLINER:

Q. The information you received, it was Belinda Scott?

A. Yes.

MR. BATLINER: Nothing further, Judge.

THE COURT: May he be excused?

MR. BATLINER: He may.

THE COURT: Thank you.

MR. ANDERSON: Yes, Your Honor.

THE COURT: Have a good day.

MR. BATLINER: Another quick stipulation, Judge. The parties stipulate the deceased in this case is Belinda Scott, for purposes of the medical examiner, who will be testifying next.

If you would ask Dr. Kinnison in.

THE COURT: Ladies and gentlemen, that stipulation can be considered as a fact in the case. It will be marked as Commonwealth's Exhibit 19.

(Whereupon, Commonwealth's Exhibit No. 19 was marked for identification and received into evidence.)

THE COURT: Raise your right hand, please.

ELIZABETH KINNISON, M.D.,

a Witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BATLINER:

Q. Would you tell the ladies and gentlemen of the jury your name.

A. It's Elizabeth Kinnison, K-i-n-n-i-s-o-n.

Q. How are you employed?

A. I'm assistant chief medical examiner for the Commonwealth of Virginia.

Q. How long have you held that position?

A. Since May of 1996.

Q. Doctor, would you tell the ladies and gentlemen of the jury your educational background as the prelude to holding that position?

A. I received an MD degree from the University of Texas Medical Branch. I trained for five years in anatomical and clinical pathology at the Medical College of Virginia. And I did a year-and-a-half fellowship in the Office of the Chief Medical Examiner in Richmond, Virginia, forensic pathology.

Q. In that position, have you had the occasion to perform numerous autopsies?

A. Yes.

Q. Have you previously qualified as an

expert in the field in courts of the Commonwealth of Virginia?

A. Yes, in forensic pathology.

Q. What courts have you qualified in as an expert?

A. Most of the courts in Southside and on the Peninsula and various courts in the Virginia area.

Q. Have you qualified numerous times in the city of Norfolk?

A. Yes.

MR. BATLINER: Judge, I would tender her as an expert.

MR. ANDERSON: No objection, Your Honor.

THE COURT: The Court recognizes her as an expert in the field of forensic pathology.

Isn't that what I'm supposed to say?

THE WITNESS: Yes, Your Honor.

THE COURT: That's right, isn't it? It's the field of forensic pathology?

THE WITNESS: That's right.

BY MR. BATLINER:

Q. Doctor, did you have an occasion to perform an autopsy on Belinda Scott?

A. Yes, I did.

Q. Tell the ladies and gentlemen of the jury, first, tell them what an autopsy is. What generally what an autopsy is about.

A. An autopsy is an examination of a dead body to determine the cause of the death, which is why a person dies: gunshot wound, stab wound, pneumonia, heart attack.

Q. When you perform an autopsy, do you first do an overall view of the external parts of the body first?

A. Yes. The autopsy is in two parts. On the first day, there is an external examination where I'll look at the outside of the body and then there is an internal examination where I'll look inside the body.

Q. When you performed the autopsy on Ms. Scott, would you tell the ladies and gentlemen of the jury what sort of -- what your observations were based on the autopsy.

A. She had come in unclothed. Came in from the hospital. She had multiple marks of therapy, which were placed by the hospital personnel or the rescue squad personnel. And she didn't have any clothes or personal effects that came with her. She had a single gunshot wound that entered below her left eyelid.

Q. Tell me -- I just want to back up. The

marks of therapy, tell me exactly what you mean by that.

A. Well, marks of therapy are things that the rescue squad or hospital will use to try to resuscitate or revive a person. So that could be a tube to help them breathe, an endotracheal tube or it could be an IV line to help give them fluid or blood or it could be EKG pads. There's various things that it could be that people wil use to try to revive the person.

Q. And you found evidence of that on Ms. Scott?

A. Yes.

Q. Now, let's talk again about -- you said you indicated you saw a gunshot wound; is that correct?

A. Yes.

Q. Where was the gunshot wound? Where was the location?

A. It entered below her left eye and the eyelid.

Q. Were you able to make any determination based on your findings as to what distance it would have been that that gunshot would have been fired from?

A. Well, in this case, the gunshot wound was a contact gunshot wound, meaning that the gun was touching the skin when the gun was fired. And I say that because there was soot from the gun powder actually

deposited on the skin, and then there were also small tears around the entrance wound which occurs from the gases from the gun going in under the skin and sort of blowing it back. Farther away you don't get that tearing because the gases dissipate, so they don't actually tear the skin.

Q. So if the gun had been farther away, would you have seen the soot lines?

A. You can see soot up to maybe a couple three inches away and then it dissipates. And then after that, you'll see something called stippling which is the gunpowder actually striking the surface of the skin. And you'll see these little pinpoint breaks in the skin around the entrance wound.

Q. But the gases would dissipate if it was even two or three inches?

A. Yes.

Q. Doctor, I'm going to show you --

THE COURT: The Report of Autopsy, the Certificate of Analysis, any objection?

MR. ANDERSON: Twenty, Your Honor?

THE COURT: Twenty and twenty-one. The Report of Autopsy No. T-267-01 is Commonwealth's Exhibit 20. The Certificate of Analysis No. T01-6102 is Commonwealth's Exhibit 21.

BY MR. BATLINER:

Q. Doctor, I want to show you two documents. If you could take a moment and review those.

A. These are copies of the Report of Autopsy and Certificate of Analysis on Belinda Scott.

MR. BATLINER: Judge, I'd move to admit these as Commonwealth exhibits.

THE COURT: They're admitted without objection.

(Whereupon, Commonwealth's Exhibit Nos. 20 and 21 were marked for identification and received into evidence.)

BY MR. BATLINER:

Q. As far as your autopsy report, do you make a diagram of the wounds that you find?

A. Yes.

Q. Is this the diagram that you made in the Belinda Scott autopsy regarding the gunshot wound?

A. Yes, page 4 of the autopsy report.

Q. What does it depict there?

A. In this case, on the front of her face, I've drawn where the bullet entered. I've just given some measurements of the size of the entrance wound and

described about the tears around the entrance wound. Mentioned that there was soot. And this is how far the bullet entered from the top of her head and how far it was from the left of her midline.

Q. What are the -- you have hash marks across the eye. Why?

A. As a result of her gunshot wound, she had a black eye, so that's just indicating that she had a bilateral black eye related to the gunshot wound.

Q. When you performed the autopsy, did you recover any bullets as a result of the autopsy?

A. Yes, sir. I recovered one bullet.

Q. Doctor, this almost sounds like a silly question, but what did you determine was the cause of death in this case?

A. She died from a gunshot wound to the head.

MR. BATLINER: Answer any questions defense counsel or the Court might have for you.

CROSS-EXAMINATION

BY MR. ANDERSON:

Q. Dr. Kinnison, you have no evidence that this defendant was the one who caused or had anything to

do with the gunshot wound to Ms. Scott's head, do you?

A. That's correct. I don't know who shot her.

MR. ANDERSON: That's all I have.

THE COURT: Thank you, Doctor. Have a good day.

THE WITNESS: May I be excused?

THE COURT: Yes, ma'am.

MR. BATLINER: Judge, we've another stipulation.

The parties stipulate that the bullet recovered from Belinda Scott during the autopsy by Dr. Kinnison, was analyzed by John G. Ward, Sr., of the state laboratory. Mr. Ward determined that it was a .25-caliber auto full metal jacket bullet. No comparison was made to any firearm, as no firearm was recovered.

THE COURT: Ladies and gentlemen, you may accept that as a fact as well in your deliberations.

That will be introduced as Commonwealth Exhibit 22.

(Whereupon, Commonwealth's Exhibit No. 22 was marked for identification and received into evidence.)

MR. BATLINER: Could we have Mary Williams come in?

MARY WILLIAMS,

a Witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BATLINER:

Q. Would you tell the ladies and gentlemen of the jury your name.

A. Mary Williams.

Q. Ms. Williams, I'm going to direct your attention back to June the 9th of 2001. Do you remember that date?

A. Yes.

Q. Do you remember where you were living then?

A. Yes.

Q. Where were you?

A. 3331 Lens Avenue, Apartment 2.

Q. Is that upstairs or downstairs there?

A. Upstairs.

Q. On the evening of June 9th, do you recall hearing anything while you were home that evening?

A. Yeah, a gunshot.

Q. What did you do after you heard the gunshot?

A. Nothing really, 'cause it sounded like it was in the street.

Q. Later, did you have occasion to see whether paramedics or rescue had arrived to the house?

A. Yes.

Q. And they did arrive?

A. Yes.

Q. Did you come out of your apartment then?

A. Yeah. I came out and started down the steps. I was told to go back upstairs.

Q. Did you ever see who it was that was shot?

A. Yes. 'Cause later, the police brought us out the house, and coming down the stairs, the hallway is right there, and I saw Ms. Scott laying there.

Q. When you say "laying there," laying by the steps?

A. In the hallway, yeah.

Q. Outside of her hallway, okay. Do you remember approximately what time it was?

A. Not the exact time, but I know it was after 9:00, because the nine o'clock movie was on.

Q. Was it dark outside?

A. Yes.

MR. BATLINER: Answer any questions defense counsel or the Court might have for you, Ms. Williams.

CROSS-EXAMINATION

BY MR. ANDERSON:

Q. Ms. Williams, it's clear in your mind it was after 9:00 when this happened?

A. Yeah, it was after 9:00.

Q. Ms. Williams, you have no evidence that this defendant was present at the time that Ms. Scott was injured, do you?

A. No.

Q. Did you ever see him that day?

A. No.

Q. Never?

A. I've never seen him except for being here.

Q. And you live where? What is your address again?

A. 3331 Lens Avenue, Apartment 2.

Q. That's in the same --

A. It's in the same house, same building.

THE COURT: May she be excused?

MR. BATLINER: She may.

THE COURT: Ms. Williams, you may stay or leave as you desire. Thank you very much.

MR. BATLINER: Tavisha Moye.

TAVISHA MOYE,

a Witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BATLINER:

Q. Would you tell the ladies and gentlemen of the jury your name.

A. Tavisha Moye.

Q. Ms. Moye, I'm going to direct your attention back to June the 9th of --

THE COURT: Spell your last name, please. Excuse me.

THE WITNESS: M-o-y-e.

THE COURT: Thank you.

BY MR. BATLINER:

Q. I'm going to direct your attention back to June the 9th, 2001. Do you remember that day?

A. Yeah.

Q. Where were you living back then?

A. 3331 Lens Avenue.

Q. Were you upstairs or downstairs?

A. Down -- I was upstairs.

Q. Did something happen that evening that -- did you hear something that evening while you were at home?

A. Yes. I heard a gunshot and I heard some thumping.

Q. You heard what?

A. I heard a gunshot and I heard some thumping.

Q. Okay. What did you do after you heard that gunshot and thumping?

A. Well, the gunshot, it didn't really sound like a gunshot. It sounded like a firecracker, but it sound close. So I backed away from the window, and I ain't pay it no mind after a while, because I'm used to that. So I ain't pay it no mind. I heard a little

thumping. I just kept on watching TV. I ain't know nothing had happened until the fire truck pulled in front of the house.

Q. What did you do when the fire truck pulled in front of the house?

A. That's when I came out my room and went downstairs.

Q. And what did you see when you came downstairs?

A. I saw Ms. Belinda Scott right in the hallway, and she was surrounded by the paramedics.

Q. Do you remember about what time it was when the fire truck got there?

A. Not exactly. I'd say it was about -- by the time the fire truck got there, it was maybe 9:30. I'm not for sure.

Q. Dark outside?

A. Yes.

Q. Did you see anybody else down there around Ms. Scott other than the paramedics?

A. I seen Ronald Scott.

Q. Did you know Mr. Scott?

A. Yes.

Q. How did you know him?

A. He's my ex-boyfriend's brother.

Q. And was his brother staying with you at that time?

A. Yes. We was living together at the time.

Q. Upstairs?

A. Yes.

MR. BATLINER: Answer any questions defense counsel or the Court might have for you.

CROSS-EXAMINATION

BY MR. ANDERSON:

Q. Is it Moye?

A. Yes.

Q. Did you hear more than one gunshot or just one?

A. I believe it was more than one.

Q. Do you recall whether you heard any cars speed away or anything like that?

A. I think so. I'm not for sure now 'cause it's been a while back, but I believe I heard -- I mean, I know I heard a gunshot, but I think I heard a car speed off, too.

Q. Ms. Moye, you never saw this defendant at the house that day, did you?

A. No, sir.

Q. At that time had you even seen him before?

A. I never seen him before, not even in passing.

MR. ANDERSON: Thank you.

THE COURT: May she be excused?

MR. BATLINER: She may.

THE COURT: Thank you. You may stay or leave as you desire.

MR. BATLINER: Robert Rivell.

THE COURT: Were you sworn earlier, sir?

THE WITNESS: Yes, sir.

ROBERT RIVELL,

a Witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BATLINER:

Q. Would you tell the ladies and gentlemen of the jury your name.

A. My name is Robert Lee Rivell.

Q. How do you spell you last name, sir?

A. R-i-v-e-l-l.

Q. Mr. Rivell, I'm going to direct your attention back to June the 9th of 2001. Do you remember that day?

A. Yes.

Q. Where were you living then?

A. 3326 Lens Avenue.

Q. Where is that in relation to 3331 Lens Avenue?

A. Well, right across the street actually. The driveway at 3331 is like the driveway in my house. Just basically, I'd say across the street.

Q. Across the street?

A. Yes.

Q. So the driveway is kind of -- for that place, is kind of aligned --

A. The driveway is directly across the street from my house, their driveway, and then the house sits right there to the right.

Q. Let's start on June the 9th when you first got home from work. What time did you get home, do you remember?

A. Well, I wasn't coming from work. I'm retired.

Q. When you came home that evening then.

A. Okay.

Q. It's the fantasy of all of ours.

A. When I came home, right? Ask the question again.

Q. When you came home that evening, did you see anybody outside?

A. Oh, yes. When I pulled in my driveway that particular evening, it was three gentlemen standing between 3331 and 3335.

Q. And you pretty much just made note there were three fellows out there; is that right?

A. Yes. It was unusual.

Q. And you didn't see them well enough to be able to identify any of them?

A. No, no.

Q. Now, at some point a little bit later, did something happen? Did somebody come to your house?

A. Well, when I pulled in the driveway, you know, like I said I saw the three gentlemen standing and then I went on in the house, you know. And then I told my wife it was three fellows standing across the street, and then I walked back out.

At this particular time, they was walking around the street, you know, walking on down

towards Columbia. And then I went back in the house and I sit there and I was watching TV, and about maybe two or three minutes later my doorbell rung. And it was a young lady asking me to call the paramedics because a lady had been shot.

Q. What did that lady look like, the lady that came to your door?

A. Well, she was about -- she was about five-nine, real small-featured girl.

Q. Did you then call the paramedics?

A. Yes.

Q. And did you see that lady, the woman that came to your door? Did you see her sometime later on that evening as well?

A. Yeah, yes. When I came back out, she was standing out there and wanted to know what way do you go to get out of here, you know.

Q. And when you saw her the second time, she had on some kind of a wig?

A. She had a blond wig, yeah.

MR. BATLINER: If you would, answer any questions of defense counsel or the Court might have for you, Mr. Rivell.

CROSS-EXAMINATION

BY MR. ANDERSON:

Q. Mr. Rivell, you said when you first drove up, there were three people, three males standing outside?

A. Yes.

Q. On the other side of the street; is that correct?

A. Yes.

Q. At some point you say you saw these people walking down the street. Were they walking in the direction of the house the Scotts live in or away from the house?

A. Okay, like I said, when I drove up, the three gentlemen was standing between 3331 and 3335, between them, you know, which there's a fence there between both houses. Then I went in the house and when I came back out, these three gentleman was walking back towards Columbia.

Q. Now, members of the jury don't know and I don't know, is that the Columbia -- is that away from the Scott's house?

A. Away, walking away.

Q. The street that you were on, you live on

Lens Avenue; is that correct?

A. Yes, sir.

Q. How long you been living on Lens Avenue?

A. Twenty-nine years.

Q. That street goes both ways?

A. Yes.

Q. You can park on both sides of the street?

A. No, you can only park on one side, which is the right side, which is on my side of the street, the right side coming from Lafayette.

Q. So you can only park on your side of the street?

A. Right.

MR. ANDERSON: Thank you. Oh, one final question.

BY MR. ANDERSON:

Q. You say you saw three individuals?

A. Yes, sir.

Q. This defendant is not one of those persons that you saw?

A. I cannot -- I can't identify neither one of the men. I don't -- you know.

Q. So your answer is you never saw this --

A. I never seen him before until I got here.

REDIRECT EXAMINATION

BY MR. BATLINER:

Q. You can't say whether he's one of them or wasn't one of them, is that fair?

A. Right.

THE COURT: May he be excused?

MR. BATLINER: He may, Judge.

THE COURT: You may stay or you may leave. Thank you very much.

THE WITNESS: I think I'll go.

THE COURT: Next witness, please.

MR. BATLINER: Thank you for indulging me, Judge, so I could get those folks out of here.

I would call Investigator Martin.

E.L. MARTIN,

a Witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BATLINER:

Q. Would you tell the ladies and gentlemen of the jury your name.

A. I'm Investigator E.L. Martin with the Norfolk Police Department.

Q. And what is your assignment?

A. I'm assigned to the forensics unit of the Detective Division.

Q. Tell me what you do if you're a detective in the forensics division of the Detective Division.

A. Basically, I'm called to certain types of crime scenes to evaluate crimes from a physical evidence standpoint, to locate evidence or potential evidence, to record and document and collect evidence for scientific testing or courtroom testimony.

Q. Investigator, how long have you been doing this?

A. Forensics?

Q. Uh-huh.

A. Fourteen years.

Q. I'm going to direct your attention back to June 9th of 2001. It's a little ways back now. Were

you -- obviously, you've been doing it that long, but were you in the forensics unit on that occasion?

A. Yes, sir.

Q. Did you get called out to 3331 Lens that day?

A. Yes, sir.

Q. Tell the ladies and gentlemen, first, what time you arrived.

A. I arrived at approximately 2212, which is twelve minutes after ten o'clock at night.

Q. And I assume it was dark outside?

A. Yes, sir.

Q. What did you do when you arrived?

A. When I first arrived, I spoke with Investigator Huffman of the Homicide Division who told me basically what type of scene we have. Investigator Huffman and myself walked through the residence. At that time I was looking for any evidence or potential evidence that I might see on an initial walk-through.

Q. Had the scene been pretty much secured at that point when you got there?

A. Yes, sir. When I first arrived, there was several police units still in this area, and there was a police officer standing on the front porch at the front door guarding the door.

Q. After you had your conversations with Investigator Huffman, what did you start doing at the location?

A. After I had spoken with Investigator Huffman, I strung yellow banner guard or crime scene tape around the front area of the house. I looked in the front yard area, the grassy area around trees, around the front porch for anything that may indicate evidence or potential evidence, and I walked up onto the front porch where I saw some red stains near the front door area.

There was a pillow on the front porch. It was a cement porch. Also, a long extension, a telephone cord extension was laying there. The front door, the storm door and the wooden door were in an open position, propped open when I arrived.

I began to take 35-millimeter photographs of the front of the house, the front porch area, the red stains that were on the floor. Then I began to work my way into the house making basic observation notes and taking 35-millimeter photographs.

Q. After you finished taking the photographs, what did you do next?

A. While I was taking photographs, I was making basic observation notes. And at that time I was locating things that I would consider evidence or

possible potential evidence in the case, and I began to draw a field sketch or a crime scene sketch, a rough sketch at the time, which would give a basic layout of the house and the location of items that I would consider evidence or potential evidence that I was going to collect at a later time.

Q. I'm going to show you what's already been received as Commonwealth's Exhibit 2 and ask if you recognize what that is.

A. Yes, sir. That's a duplicate picture, a Xerox copy of my crime scene sketch that I completed at 3331 Lens.

Q. I should have asked you before. Was there another detective who was also from the forensics unit that was out there that evening?

A. At a later time, yes, sir.

Q. Who was that?

A. Investigator R.J. Douros.

Q. Did you assign him certain things to do or did you divide the work up in a certain --

A. Yes, sir. I assigned him some things to do.

Q. Did you assign him to do the fingerprints?

A. Yes, sir. That's one of the things I

asked him to do.

Q. Investigator, what I'd like to do is to take a few minutes with you, and we've looked at a lot of your handiwork already. I show you what's previously been admitted as Commonwealth's 1. Do you recognize that?

A. Yes, sir. This is a blowup photograph of the 35-millimeter photograph I took of the front residence, the front door area of 3331 Lens Avenue.

Q. I'll show you Commonwealth's 3. Do you recognize that?

A. Commonwealth's evidence 3 is also a blowup diagram or a photograph of the 35 millimeter I took showing the cement, front cement area, the porch area. This area where my finger is pointing is the storm door and front door leading into the front of the house. This is the telephone extension cord that I referred to later or earlier. And then here's a pillow, and there's some red stains in the area of the threshold by the front door.

Q. Looking at what's Commonwealth No. 2, which is up on the board, is that the telephone cord that's depicted on your sketch? Is that the one that's in that photograph?

A. Yes, sir. That's the one that's here.

Q. I'll show you another photograph. Do you recognize that?

A. Yes, sir. This is inside the house in the front hallway as you go into the front door. There was red stains that are on the carpet next to a turned over lounge chair.

Q. Is that that area right there?

A. That's correct, sir.

MR. BATLINER: Judge, I would ask that this be admitted as Commonwealth's 23.

THE COURT: No objection?

MR. ANDERSON: No, Your Honor.

THE COURT: Commonwealth's 23.

(Whereupon, Commonwealth's Exhibit No. 23 was marked for identification and received into evidence.)

BY MR. BATLINER:

Q. Investigator, there appears to be some objects also in the picture, some paper. What are those?

A. Those were things -- medical wrapping paper from paramedical-type or medical services where equipment used to be in them. It's just the paper they came in.

Q. And did you make note of this? I notice you have certain things, you have some initials here. The blood stain that we see here, is that marked specifically in this area here?

A. Yes, sir. That would be number six on the diagram, which is right here. I believe that's six.

Q. That little circle right there?

A. Yes, sir. Yes, sir, right there.

Q. I'm showing you Commonwealth's 4.

A. Commonwealth's Exhibit No. 4 is also an enlargement of a 35-millimeter photograph I took. This is in the hallway with my back towards the living room facing the front door area, this being the front door to the house right here.

Q. So if you look at here, you were standing approximately there?

A. That's correct, facing to the right.

Q. And your picture is going this way?

A. Correct, from left to right.

Q. Can you see the blood stain that is depicted in the last exhibit on here?

A. Yes, sir. It's the -- the red stain is on the carpet in this area here.

Q. Okay.

MR. ANDERSON: Which exhibit was that,

again?

MR. BATLINER: This is Commonwealth No. 4, and it shows the same stain that's depicted in Commonwealth's No. 23.

BY MR. BATLINER:

Q. Investigator, I'm just going to go very quickly through these photos. In Commonwealth's Nos. 5, 6, and 7, are these also enlargements of shots that you took inside the house on that same date?

A. Commonwealth's Exhibit 7 is, yes, sir. Commonwealth's Exhibit 6 is also, and yes, sir, Commonwealth's Exhibit 5 also.

Q. Let's go to Commonwealth's 8. What is that?

A. Commonwealth's Exhibit No. 8 is a photograph I took inside the back bedroom facing the back wall being the back of the house, with my back more or less to the doorway going into the bedroom.

Q. What's Commonwealth's No. 9?

A. Commonwealth's Exhibit 9 is like a reverse view of the last photograph with my back more or less to the back wall of the building, and this photograph is showing the door that leads into the back bedroom.

Q. Show on your sketch where you were standing when you took the photograph.

A. Approximately this area right here. And the photograph goes, again, from this area to the right, from left to right.

Q. Show you Commonwealth's No. 10.

A. Commonwealth's No. 10 is taken from the hallway outside of the back bedroom. The door is showing partially open with a view going into the bedroom.

MR. BATLINER: Judge, I'd ask you to mark these.

THE COURT: No objection?

MR. ANDERSON: No objection.

(Counsel approached the bench and a side-bar conference was held.)

THE COURT: Commonwealth's Exhibit Nos. 24, 25, and 26 are photographs identified and admitted without objection.

(Whereupon, Commonwealth's Exhibit Nos. 24, 25, and 26 were marked for identification and received into evidence.)

BY MR. BATLINER:

Q. I show you Commonwealth's No. 24. What is that?

A. This is a photograph in the back bedroom on the floor between the wall and the bed. And this is depicting some broken cookies that were on the floor.

Q. And you have those indicated on your sketch as well I believe?

A. Yes, sir.

Q. Where were the broken cookies?

A. In the back bedroom, in this area here. They were scattered around on the floor.

Q. I'm going to show you Commonwealth's Nos. 25 and 26. Do you recognize those?

A. Yes, sir. These are Commonwealth's Exhibits 25 and 26 of the door and doorjamb area showing around the doorknob of the bedroom door, the back bedroom door.

Q. That would be a close-up of the door that's depicted in 10 here and the jamb here; is that correct?

A. That's correct, sir.

Q. And that's the door?

A. Yes, sir.

Q. That is Commonwealth's No. 25, and then

that is Commonwealth's 26; is that correct?

A. Yes, sir.

THE COURT: Commonwealth's Exhibit 27 is a photo which appears to have red stains. Admitted without objection.

MR. ANDERSON: Without objection.

THE COURT: Commonwealth's 27.

(Whereupon, Commonwealth's Exhibit No. 27 was marked for identification and received into evidence.)

BY MR. BATLINER:

Q. Take a look at that, and I want to put your sketch back up. Investigator, you've indicated when we've talked about one of the numbers which was number 6, but you had a number of other things that you made note of to the right of your sketch. If you would point those out and let's go through them with the ladies and gentlemen of the jury.

A. Okay. Item No. 5 is a red stain on the carpet area just inside the threshold inside the hallway. It had some type of impression on it which appeared it might have been some type of shoe or boot impression.

Number 4 was actually outside on the

cement patio, red stains that I took swabs of, samples of that.

Q. I show you what is now Commonwealth's No. 27. What is that?

A. Commonwealth's No. 27 is a 35-millimeter photograph I took of the red stain just inside the front door area. It had a possible shoe or boot impression on it.

Q. And it was right here at the threshold right there?

A. Yes, sir.

Q. What other evidence did you take note of?

A. What was collected is Item No. 1, was a brown plastic bag with undetermined white powder on it. That was in the back bedroom. Item No. 2 was a brown plastic bag with undetermined white powder content. That also was in the back bedroom area. Indicated it was on a little table thing here right next to the bed.

Item No. 3 was a gold crucifix without the chain on it. That was laying in this utility area approximately here. Item No. 4 was a red stain swab and control from the porch area. Number 5 was -- we actually removed the carpet, a section of the carpet that had the red stain with the possible shoe or boot impression and

that was cut up and taken, the whole section of carpet.

Number 7 was a black film canister and the lid. That was also in the back area on that same table with the white powder and the envelopes, and number 8 was some of the cookie crumbs that were on the bedroom floor in this area, in the back bedroom.

Q. The table where you had indicated was by the bed, is it depicted in any of these photographs?

A. Yes, sir.

Q. Which one?

A. This one here, Commonwealth's Exhibit 9.

Q. And where would those items that you've talked about, where were they at?

A. The black canister is here and the bags of the powder were over here.

MR. BATLINER: Can everybody see?

BY MR. BATLINER:

Q. After you finished doing your sketch and taking the photographs, was there anything else that you did at the scene?

A. Investigator Douros had arrived, I believe, it was at about one o'clock in the morning, and I advised him what I wanted him to finish up on including the latent fingerprint work and then I left the scene.

Q. Did you later get called back that same -- I guess it would have been the early morning hours of the next day, on June 10th, to take some photographs of an individual at the Police Operations Center?

A. Yes, sir.

Q. I want to show you Commonwealth's 11, 12, and 13.

A. Commonwealth's Exhibit 11, 12, or 13 are 35-millimeter photographs that I took of a Mr. Ronald Scott in the detective bureau at the Police Operations Center at 3661 East Virginia Beach Boulevard in Interview Room C.

Q. If you'd take a look at those. Just so the jury knows what we're talking about, Commonwealth's 11, 12, and 13.

A. These photographs, Commonwealth's Exhibit 14, Exhibit 15, and Exhibit 16 are also 35-millimeter photographs I took in the same interview room of the same person showing red stains on a pair of tan shorts worn by Mr. Ronald Scott.

Q. Again, just so the jury knows what we're talking about, Commonwealth's 14, 15, and Commonwealth's 16.

Investigator, did you also have an

occasion to take some photographs of an automobile?

A. Yes, sir, I did.

Q. And who instructed you to do that?

A. Investigator Huffman of the Homicide Division.

Q. Where were these pictures taken at?

A. At 975 Goff Street, in the city of Norfolk, is where the police vehicle impound yard was.

THE COURT: No objection to these?

MR. ANDERSON: No objection, Your Honor.

THE COURT: Commonwealth's Exhibits 28 through 33 are admitted without objection.

(Whereupon, Commonwealth's Exhibit Nos. 28 through 33 were marked for identification and received into evidence.)

BY MR. BATLINER:

Q. Let me show you these photographs. Are these the photographs that you did indeed take?

A. Yes, sir. Commonwealth's Exhibits 28 through 33 are 35-millimeter photographs that I took of the vehicle at the compound on Goff Street.

MR. BATLINER: Commonwealth's No. 33, Commonwealth's No. 32, Commonwealth's 30, Commonwealth's

29, Commonwealth's 31, Commonwealth's 28.

THE COURT: How much longer do you anticipate your examination?

MR. BATLINER: Not much longer, Judge.

Actually, Investigator, if you would answer any questions defense counsel or the Court might have.

THE COURT: How long will you take?

MR. ANDERSON: Maybe three questions.

THE COURT: Maybe three questions.

CROSS-EXAMINATION

BY MR. ANDERSON:

Q. Investigator Martin, I think on your diagram you said Item 6 was a shoe print or some carpet that you took out of the house?

A. No. It was a red stained cotton swab and samples that was in the hallway.

Q. But there was a shoe print that was in the house; is that correct?

A. Yes, sir.

Q. And you were never able to say that shoe print matched the defendant; is that correct?

A. I did not. No, sir.

Q. To the best of your knowledge, has anyone said it?

A. To the best of my knowledge, I don't know.

Q. Now, the last thing that the Commonwealth showed you were some photographs of the car?

A. Yes, sir.

Q. During that time that you were photographing the car, did you see any blood stains or any red stains inside that car?

A. No, sir.

Q. Now, there was also an exhibit that showed two doorjambs, a door and doorjambs. You have no evidence that that door was kicked open or there was any fresh damage done to that doorjamb, do you?

A. I examined the doorjambs and there did not appear to be any fresh damage to them to me.

MR. ANDERSON: That's all I have, Your Honor.

THE COURT: May he be excused?

MR. BATLINER: Just one question, Judge.

REDIRECT EXAMINATION

BY MR. BATLINER:

Q. The day that you took the pictures of the car was what date?

A. That was June 20th, at the hours between 12:30 in the afternoon and 12:45 in the afternoon.

MR. BATLINER: Nothing further.

THE COURT: May he be excused?

MR. BATLINER: Yes.

THE COURT: Thank you. You may stay or leave as you desire.

THE WITNESS: Thank you, sir.

THE COURT: Ladies and gentlemen, we're going to take a short break. I have a pleasurable duty here for the next five to ten minutes to swear in a new lawyer. If you wish to stay and watch you may, or if you'd like to retire to the jury room, you may do that as well.

Ladies and gentlemen, step in for just a minute and I'll call you back in just a minute.

(The jury entered the jury room at 3:58 p.m.)

(Recess.)

THE COURT: Bring the defendant out.

MR. ANDERSON: And there is another stipulation.

THE COURT: Bring the jury out.

(The jury entered the courtroom at 4:11 p.m.)

MR. BATLINER: Judge, we have one more stipulation I can read into the record. Detective R.G. Ford of the Norfolk Police Department on June 19th, 2001, came into contact with the Acura shown in Commonwealth's Exhibits 28 through 33 that I had just put up on the screen when the defendant turned himself in at the Police Operations Center. No fingerprints were recovered from the car.

Detective Ford would also indicate that a wanted poster had been put on Crime Line and on regular news stations.

THE COURT: Ladies and gentlemen, you may consider that as a fact in your deliberations.

Do you have it typed already?

MR. BATLINER: Judge, I will get it typed so that it conforms to the exhibit numbers.

THE COURT: That will be Commonwealth's

Exhibit 34.

(Whereupon, Commonwealth's Exhibit No. 34 was marked for identification and received into evidence.)

ROBERT J. DOUROS,

a Witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BATLINER:

Q. Could you state your name for the ladies and gentlemen of the jury?

A. Yes. Robert James Douros.

Q. And how are you employed, sir?

A. With the City of Norfolk in the police department.

Q. What section of the police department do you work in?

A. I work in the Second Patrol Division right now.

Q. Back on June the 9th of 2001, where were

you assigned at that time?

A. I was assigned to the Detective Division, forensics unit.

Q. Tell me what you do as a detective assigned to the forensics division.

A. A forensic investigator does a lot of, more or less, different areas of our expertise where we'll go to different crime scenes. Mostly we base all of our work around crime scenes where we'll try to collect evidence from either photographs, from fingerprints, from physical evidence, things like that.

Sometimes we'll do diagrams of the more larger scenes like homicides. But we do rapes, robberies, stolen autos. We do all your large and even mediocre crime scenes like -- some people call stolen cars mediocre, little things like that. So that's a broad base of work we do.

Q. Did you get called out to the crime scene at 3331 Lens Avenue in the city of Norfolk on June the 9th, 2001?

A. I got called on June the 10th just after midnight.

Q. When you responded, was there already another detective from the forensics section there?

A. That's correct, Investigator Martin.

Q. Did he ask you to do a -- to make an effort to recover latent fingerprints?

A. Yes, he did.

Q. Tell the ladies and gentlemen of the jury what the process is for how you would try to find latent fingerprints.

A. Maybe some of you have even seen it, but there is what we call black powder. A surface that we believe has been touched or maybe not, we'll check if it has been touched by a suspect. We'll take a regular fingerprint brush out and get black powder on the tips of the brush and lightly dust over a particular surface to see if we are able to lift up a particular print that may have been left behind by a suspect or an individual.

Q. Are there certain kinds of surfaces that are better to try and recover prints from than others?

A. That is correct.

Q. What kind are best and what kind are worst?

A. Some of the better kind, types of surfaces like your glass surfaces, your smoother surfaces, smoother hard surfaces, are relatively easier than surfaces that are course like, you know, wood or even brick or concrete which really makes it almost impossible to get prints off of.

Q. How about cloth?

A. Cloth is very difficult for the powder-type lift or print.

Q. Did you make efforts to recover latent prints at the scene of 3331 Lens?

A. Yes, sir.

Q. Did you have any success?

A. No, I did not.

Q. Let me ask you a little bit more about fingerprints. You said some surfaces are better than others, like a smooth surface would be better. I mean, this is a relatively smooth surface, if I touch that, will I automatically leave a fingerprint?

A. It's hard to say whether you automatically would or not depending on your body chemistry also. So even though I have touched it, it's possible I wouldn't have left a fingerprint. That's correct.

Q. At least one that you could not recover?

A. Exactly.

MR. BATLINER: Answer questions that defense counsel might have for you, Investigator.

CROSS-EXAMINATION

BY MR. ANDERSON:

Q. You talk about surfaces. Something like a plastic container, it's smooth. You would be likely to recover a print from that?

A. Not necessarily. Like I said, there are different things like environment, the person's chemistry type. You could pick up something and he could pick up something and you could leave a print and him not, but plastic, you know, depending on the coarseness of it, you can, if it's not real coarse.

Q. When you went inside, did you attempt to take a print that was inside the back bedroom?

A. I attempted to take prints off of a doorway in the back bedroom and the front door of the house.

Q. There was a table in there. Did you attempt to take prints on that?

A. No, I did not.

Q. There was a plastic clothes basket. Did you attempt to take prints from that?

A. No, I did not.

MR. ANDERSON: That's all the questions I have.

MR. BATLINER: No redirect.

THE COURT: Thank you.

Ladies and gentlemen, while you were out, we were trying to see where the case is going to go from here on. The next witness is a lengthy witness. If we started today, we'd have to stop in the middle of his testimony. And we'll have to come back tomorrow anyway because there are several other witnesses. We're going to break now.

We expect the evidence will be finished tomorrow about noon, about lunchtime. We would expect the case to be in your hands for deliberation shortly after lunch tomorrow. So once it gets in your hands, I don't know how long it will take. But I think from our part, we'll have finished by shortly after lunch tomorrow. So that's the best plan I can give you, the best estimate of what will happen. I can't estimate what you're going to do and you can't either.

We're going to leave now, and I'd ask you not to discuss the case with anyone during the recess including other jurors. Please do not do any independent investigation. Please do not remain in the hearing of others. I have no indication that this case is being reported in the media, but if it happens to be and you see it coming on TV, turn it off. Don't watch it.

All right. Thank you very much. I'll see you tomorrow morning. We'll start at nine o'clock

and that will make it more likely that we finish.

Come directly up here. When you come in, the courtroom should be open. Come directly to the jury room. Make sure you're wearing your jury badges as you come in. Thank you.

MR. BATLINER: Starting at 9:00?

THE COURT: Nine o'clock.

MR. BATLINER: Judge, they're asking about the badges. I would say keep them on.

Should they wear them back into the building tomorrow?

THE COURT: Make them a part of your body until we finish.

Any notes that you have, please leave them in the jury room.

(Court was adjourned at 4:21 p.m. to reconvene on April 30th, 2003, at 9 a.m.)

V I R G I N I A:

IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

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Norfolk, VA

COMMONWEALTH OF VIRGINIA :

vs. :

LESTER B. LYNCH, JR., : CR01003499-12

Defendant. :

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**JURY TRIAL**

VOLUME II

DATE: April 30, 2003

BEFORE: The Honorable Charles E. Poston and a jury

APPEARANCES: RONALD BATLINER, ESQUIRE
Assistant Commonwealth's Attorney
Appearing on Behalf of the
Commonwealth of Virginia.

GEORGE L. ANDERSON, JR., ESQUIRE
Attorney for the Defendant.

REPORTED BY: Susan Feehery, CSR, Court Reporter

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MR. BATLINER: Judge, there's one housekeeping matter. There was a stipulation from yesterday that I was getting typed.

THE COURT: All right. That's Commonwealth Exhibit 34.

MR. ANDERSON: That's correct, Your Honor.

MR. BATLINER: If I can add that to the stack, Judge.

THE COURT: Are we ready for the jury?

MR. BATLINER: The first witness will be --

THE COURT: Let's go ahead and put it on the record that the matter will be an adoptive admission.

MR. BATLINER: Judge, just for the record, we had had the Court review a transcript, which was the transcript from March 19th, 2003. And in that case, a proffer was done.

THE COURT: That's the other trial in this case which resulted in a mistrial?

MR. BATLINER: That's correct, Judge. At that time we did a proffer on the record of Kenneth Parker's testimony with regard to an adoptive admission. That was obtained at pages 120 and following in that transcript, I believe, through approximately 140 when the

next witness is called.

Next witness is called at 141. The Court has reviewed the transcript. We argued the matter in chambers, and it's my understanding that the Court has ruled that based on the proffer anyway, that the adoptive admission is admissible. When Kenny Parker testifies at the appropriate time, I understand Mr. Anderson wishes to object to that rule.

MR. ANDERSON: That is correct, Your Honor. It is still our position that the defendant -- the person, the light-skinned person, clearly, the defendant was not present, but the light-skinned person who would supposedly have uttered the words, "Why you telling them what we just did?" was not present at the time that Mr. Parker said that the statements were being made.

In addition, the statement, "Why you telling them what we just did?" doesn't say what we just did. Refers to -- it appears that the statement's in reference to committing a sting or having shot someone and occurred before the light-skinned person came up the steps. I accept the Court's ruling. We'd just ask the Court to note our exception for the record.

THE COURT: Bring the jury out, please.

(The jury entered the courtroom at 9:11 a.m.)

THE COURT: Good morning, ladies and gentlemen. I hope you're more relaxed today after coffee and donuts and you're ready to go now.

Bring the first witness in now.

THE BAILIFF: Yes, sir. They've gone to get him.

THE COURT: Raise your right hand.

KENNETH PARKER,

a Witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BATLINER:

Q. Please tell the ladies and gentlemen of the jury your name.

A. Kenneth Parker.

Q. You also go by KP?

A. Yes, sir.

Q. Do you know Ronald Scott?

A. Yes, I do.

Q. How do you know him?

A. He's a friend of mine.

Q. Did you know his mother, Belinda Scott?

A. Yes, I did.

Q. Did she have a nickname?

A. Plum.

Q. Did you also know Gregory Williams?

A. Yes, I did.

Q. Did he have a nickname?

A. Tyreke.

Q. How did you know him?

A. I was real close with his brother, and I was introduced to him through his brother.

Q. I'm going to direct your attention back to June the 9th of 2001. Do you remember that date?

A. Yes.

Q. On that date, did you go over to his brother's house?

A. Yes, I did.

Q. And is that 211 West 27th Street in the city of Norfolk?

A. Yes.

Q. I'm going to show you a photograph. Do you recognize that?

A. Yeah. That's the house.

MR. BATLINER: Judge, I'd ask that be admitted as a Commonwealth Exhibit.

MR. ANDERSON: No objection.

THE COURT: Commonwealth Exhibit 35.

(Whereupon, Commonwealth's Exhibit No. 35 was marked for identification and received into evidence.)

BY MR. BATLINER:

Q. That's Christopher Williams' house?

A. Yes.

Q. On the 9th, when did you go over there?

A. You said when did I go over there?

Q. Uh-huh.

A. It was around in the evening time, around maybe five o'clock.

Q. What were you going over there for?

A. We just hang over there. Everybody just go over there and just hang out every day with Chris and his girlfriend.

Q. Tell me what happened that day when you went over there.

A. I had just came from over Berkley side,

and I had went over there and was talking to him and this guy here and Tyreke.

Q. Okay. Wait a minute. When you said this guy here, you're pointing to somebody. Who were you pointing at?

A. The guy right there.

MR. BATLINER: The record reflect, Judge, he's pointing at the defendant.

THE COURT: Yes.

THE WITNESS: And Tyreke and another young man pulled up in like a brownish Acura Legend. And Tyreke got out the car and he went across the street, and this young man here got out and Tyreke's brother greeted him. They were shaking hands like they knew each other, you know, from way back and they hadn't seen each other for a while or something like that.

BY MR. BATLINER:

Q. Where did this greeting that you're talking about happen?

A. Right on the porch there.

Q. Mr. Parker, I'm going to hand you a laser pointer. You just push that little button and then the light comes on. Show me where the --

A. Right there by the stairway that was

right there.

Q. Right in there?

A. Yeah. His brother came from the house there and they met. As he got out the car, they met about right there.

Q. Can you see where the car was in this?

A. Yeah. The car was parked right there where that car is parked.

Q. Not that far, but --

A. No. It's not that far.

Q. How many people were in the car?

A. It was Tyreke, another young fella, and this man. What's his name? Lester. He was driving.

Q. Did you know him before that day?

A. No. I hadn't never seen him before in my life.

Q. What happened when you said that he went to the porch and Tyreke went across the street, Gregory Williams went across the street? What happened?

A. Gregory Williams, he went across the street, and as he was coming out, he was tucking something down in his waist which appeared to be a gun.

MR. ANDERSON: Objection, Your Honor, unless he knows what it is.

THE COURT: Sustain. The jury will

disregard the answer to the question regarding a gun.

BY MR. BATLINER:

Q. Don't tell me what you think it is. Tell me what you saw. What was the motion that you saw?

A. Okay. I saw him tucking a black object down in his waistband like this.

Q. Stand up so the jury can see what you're doing. I'm not sure they can see.

A. He had a shirt on and he pulled the shirt up and he was tucking it down in his pants like this. Then he came across the street. And I asked him, I was like, what's wrong, man? What you got some problems or something?

Q. Don't tell me what he told you. What did you-all end up doing? Did you want to do something with him?

A. Yeah. I needed a ride back over to Berkley.

Q. What did you want to go to Berkley for?

A. Because I had been over there gambling earlier that day, playing poker and stuff, and I had lost my money. I was trying to get back there to try to win my money back.

So Tyreke told me to come on. So I got

in the backseat of the car, and we pulled out of the driveway and started going this way because that's a one-way street right there. And we got to the light and we made a left, and then it's another light and then another left.

And at that time he asked -- asked Tyreke where was he taking me. So Tyreke was like, we're going to give him a ride to Berkley. And he was like, well, where is Berkley at? I said, it's over there by the Campostella Bridge. And then he was like, no. No, man. We got to go take care of this first. And then, you know what I'm saying, try to give you a ride or whatever. He said, but we don't got time for to be dropping you off, 'cause we got something we trying to go do.

So he came back around the corner, and Tyreke was like, look, we ain't going to be gone no more than like 30 minutes or so. And if you still be here when we get back, we'll give you a ride then. So they dropped me back off right in front of the house.

Q. Did you hang out?

A. Yeah. I hung out right there.

Q. Let me show you a couple of pictures. Do you recognize those?

A. Yeah. That's the car he was driving,

Lester.

Q. This is the car you said "he" and pointed. Do you mean the defendant?

A. Yeah. Lester was driving the car.

MR. BATLINER: Judge, for the record, I'm showing him what is Commonwealth's 32 and 33.

BY MR. BATLINER:

Q. This is number 32 and that's number 33. Was there anything distinctive about the car that you remember?

A. Yeah, the gold trim.

Q. What are you talking about? Show me what you're talking about.

A. Right there, the gold trim on the Acura Legend. The front grille is gold. It had factory rims on it.

Q. Show me what you're talking about with the gold rims.

A. Right there, the gold grille and the factory rims there. They the rims that come on the car.

Q. Now, let me show you these pictures. Do you recognize these?

A. Yeah. That's the inside of the vehicle.

MR. BATLINER: Just for the record,

Judge, those are Commonwealth's Exhibits 28 through 31.

BY MR. BATLINER:

Q. Okay. You got in the backseat?

A. Yes, I did.

Q. Where did you sit in the back?

A. If I'm not mistaken, I think it was the passenger side backseat.

Q. So there?

A. Yeah, exactly.

Q. That's Commonwealth Exhibit 28. Now, who else was in the backseat?

A. It was a young fellow whom I didn't know. I didn't know him either.

Q. So he would have been in the other seat in the backseat; is that correct?

A. Yeah, behind the driver.

Q. That's Commonwealth's 28. I'm sorry. Who was in the front passenger seat?

A. Tyreke.

Q. Who was driving?

A. The defendant right here.

Q. Commonwealth's 30. Tell me -- well, what did you do while they were gone?

A. I just -- from off of their porch to

maybe across the street to upstairs inside talking to them, 'cause his girlfriend, she was going into labor and --

Q. Whose girlfriend?

A. Tyreke's brother, Christopher. His girlfriend was going into labor and they was kind of excited about that.

Q. So you were going in the house?

A. Yeah. I was in the house talking to them, on the front porch, you know, just a little everywhere. A lot of people hang out at in the neighborhood right there on that one block.

Q. Did they come back?

A. Yeah, they came back.

Q. Tell me what happened when they came back.

A. When they pulled up, Gregory got out the car first. Tyreke and -- he had a different shirt on. He had the shirt that he had left wearing, he had it in his hand. He had something wrapped in it. And the shirt that he had on, had like little blood stains on it. So I asked him, I was like, what's wrong? He was like nothing. I was like, well, what's that that you got wrapped in your shirt? So he said it was --

MR. ANDERSON: Objection, Your Honor.

THE COURT: Sustained.

BY MR. BATLINER:

Q. What happened after you asked him what was in the shirt? You can't say what he said.

A. After I asked him what happened, I mean, after I asked him what was in the shirt, he rung the doorbell. His brother came downstairs and opened the door for him, and he went upstairs.

Q. Where did you go?

A. I went right behind him. I went right upstairs behind him, and I went into like the dining area of their house, and he, Tyreke, he went into the bathroom. And his brother went back in the room with his girlfriend.

Q. Let me stop you for just a second. This is the house again. Now, tell me what happened to the other two men. Did you see where they went when the car came back?

A. Oh, yeah. They were still parked in -- they parked right back in the driveway again.

Q. Right where that red car is here?

A. Yeah. Right where that red car is at they parked back right there again. And he was talking to the younger fellow, which the younger fellow was

leaned up with his arms folded like this, and he was just looking down at the ground like something was really really bothering him.

Q. Leaning where?

A. On the car.

Q. Where did the defendant go?

A. He was still talking to him when we went upstairs.

Q. All right. Tell me again now, you went upstairs. You followed Tyreke, or Gregory Williams, upstairs, right?

A. Right.

Q. What starts to happen when you get upstairs?

A. When I got in the den area, he had went to the bathroom. He came out and knocked on his brother's door, and he starts talking to his brother. He was telling him about what they had just done. So I was in the den area. I could hear basically what they were saying.

Q. Did you have any problem hearing anything that was being said?

A. No. And I heard him say that they had just shot a woman. So when I heard the part that they had just shot a woman, that's what really, really, you

Why no Objection?
contradictory
9/16/14+5

know, gripped my attention.

So I came out of the den, and I was like, man, what you done got yourself into? You-all done shot a woman? And he was like, yeah. So I was like, where was you-all at? He was like, we went to Little Ronald's house.

Why no objections? p. 16, l. 4+5; 17, 21-24

Q. Who is Little Ronald?

A. That's Ms. Scott's son. He said we went to go get him. And I was like, why would you-all go in and try to do something and rob him or whatever when he cool with everybody? You know, he hang out with us. And Gregory was like, man, I'm going to get put out. My light's due, my rent due, my girl getting ready to leave and I don't care who I get.

So I said, well, who was the lady that you-all shot? So he was like, it was a skinny lady. I said, that man's mom is, you know, skinny. And he was like, no, it won't his mom. It probably was his sister. I said, what difference does it make if it was his sister or his mom, you know? And at that time he was coming up the stairs.

THE COURT: Who was coming up the stairs?

THE WITNESS: This dude, Lester.

THE COURT: He was pointing to the

accused.

THE WITNESS: He was asking Tyreke, why was he telling us what they had just done. So Tyreke was like, this my brother. He ain't going to say nothing, and KP cool. You know, he ain't going to say nothing. So I was like, I ain't got nothing to do with it. I ain't, you know. And I just kindly walked off and came down the stairs. When I came down the stairs, I went to a friend's house to try to call Ronald on the cell phone.

BY MR. BATLINER:

Q. Who did you get when you called Ronald's cell phone?

A. Some girl that had been there. She was there, and she was kind of hysterical 'cause she said she was there, and she thought she was going to get killed, too.

Q. So you didn't get Ronald; you got a girl?

A. Yeah. I got a girl and I kept asking for Little Ronald, and she was like, he wasn't there. And so I asked her where was he at, and she said she didn't know. So I called back again about 20 minutes later, asked for him again. Then, she was like he was down at the police headquarters being questioned. So I

had told her that I needed to talk to him because the guy that supposedly had came around to his house and robbed him was talking about it and that I knew where they were.

And then I asked her about his mother and what kind of condition that she was in, and she said she didn't know. That she was at the hospital, and she was like, but she wasn't moving so --

Q. Let's back up a little bit earlier in the day. Earlier in the day had you been over to Ronald's?

A. Yeah. I had went over there.

Q. Tell the ladies and gentlemen what happened when you went over to Ronald's earlier in the day.

A. I normally go over to Ronald's house every day or mostly every day. I had a little drug problem, and I used to get him to go get little stuff for me.

Q. Did you get him to get some stuff for you that day?

A. Yes, I did.

Q. What did you get that day?

A. I had went over there twice. The first time I went over there I think I spent about $20, and

then later on in the evening, I spent about $50.

Q. At that time were you using a lot of heroin?

A. I mean, if you call $70 a lot then --

Q. Is that pretty much what you were using about a day?

A. Yeah.

Q. Now, when you went over, did you go with anybody? Did anybody go with you?

A. Yeah, my girlfriend.

Q. Now, Mr. Parker, you have been in trouble with the law before; is that correct?

A. Yes, I have.

Q. You've been convicted of a couple of misdemeanors. A receiving stolen property misdemeanor in '83 and a petty larceny in '87, correct?

A. Right.

Q. Then a receiving stolen goods in '87, felony, three burglaries in 1988, and then you got a possession of controlled substance just here recently in 2002?

A. Yes.

Q. Is that right?

A. Yes, sir.

Q. Mr. Parker, you don't have any kind of

agreement why you're testifying here today; is that right?

A. No, no, no. No kind of agreement. In fact, I'm doing a little city time now for a violation.

Q. In another jurisdiction, right?

A. Yeah.

Q. In Newport News?

A. Yeah, Newport News.

Q. Matter of fact, you really didn't want to come testify; is that right?

A. No, not really, but they done killed somebody's mom. I mean, I got a mom, too, so --

Q. Mr. Parker, you had said you had never seen this defendant before that day. Is there any doubt in your mind that this is the fellow sitting here in the courtroom that came up the steps and said, "Why you telling them what we just done?"

A. Ain't no doubt in my mind that's him. That's him.

MR. BATLINER: Answer any questions of the defense counsel or the Court might have for you.

CROSS-EXAMINATION

BY MR. ANDERSON:

Q. Mr. Parker, when was the first time you saw Gregory Williams, also known as Tyreke, that day? Was it earlier that day or was it -- I think you said it was five o'clock in the afternoon. Had you seen him earlier that day?

A. I see him every day, because I go over there every day.

Q. My question was, on June the 9th, did you see Gregory Williams earlier that day or did you just see him at about five o'clock? And I don't want to put words in your mouth. You said it was about five o'clock when you saw him over at his brother's house that afternoon.

A. Yeah. It was about five o'clock, yeah.

Q. But had you seen him earlier that day?

A. No. I don't think I did because I was over at Berkeley gambling most of the day.

Q. Let me just ask you this question. Did you ever go over to Ronald Scott's house with Gregory Williams on June the 9th at any time?

Contradicted by EE Scott 7/105, 13-25 7/106, 1-24

A. No, I did not.

Q. Not in the morning and not in the

afternoon?

A. No.

Q. Now, you went to Ronald Scott's house one time and you said your girlfriend took you?

A. Yeah.

Q. And do you recall who took you the other time?

A. I think it was my girlfriend. I got dropped off the first time, and the second time she stayed there with me, and she talked to Ronald's mom, and I talked to -- I was sitting in Ronald's room talking to him.

Q. So if you testified earlier that Vince took you over there, that would be incorrect?

A. I mean, he might have. Let me explain something to you, sir.

Q. No. If you would, just answer my questions. So my question is, so if you testified earlier that Vince took you over there, that would be incorrect?

A. No. It's correct. It's correct. In fact, he did, but that's something that slipped my mind. It's nothing to --

Q. So when you went over the first time, what time did you go over there?

A. I went over there the first time, it was in the morning time. I can't give you an exact time but I know the second time was noontime, around twelve o'clock.

Q. So that was the second time?

A. Yeah.

Q. Do you ever recall going over there like five o'clock in the evening or sometime right before it got dark?

A. No.

Q. The first time you went over, you purchased $20 worth?

Contradictory
See Scott p. 75
WKS 19-25 p. 76 12-18

A. Correct.

Q. Did you use it at that time?

A. I can't think back that far. I know I used it sometime or another, but I don't know if I used it there or took it with me. I mean, it's been a long time.

Q. At some point you and Ronald did get high that day together?

A. No. We've gotten high before, but I doubt if it was that day.

Q. Okay. So if you testified earlier that you and Ronald got high that day, that would be incorrect?

Contradictory see Scott p. 104 1/14-25

A. I mean, we probably did. I mean, I'm not going to sit here and call you a liar, sir. I mean, this lady got killed. I don't know --

Q. My question is, you testified earlier that you and Ronald had gotten high that day. Are you now saying that --

A. I'm not sure. I'm not sure. I'm not going to call you a liar. I'm not going to say I said it. I'm not going to say I didn't say it. It's been a long time. If you ask me what I was wearing that day, I couldn't tell you.

Q. I'm not asking you that.

A. Okay.

Q. Now, at about five o'clock, you said it's about five o'clock; is that correct? You don't know the exact time.

A. It might be --

Q. It's still light outside?

A. Five o'clock when? When I was there?

Q. The first time you saw the defendant.

A. Yeah, it was light outside.

Q. When you saw the defendant, the young guy that you don't know and Tyreke, that was the first time that you saw him?

A. Correct.

Q. Was it at about five o'clock in the afternoon?

A. I mean, I can't --

Q. It was still light outside?

A. Yeah. It was still light outside.

Q. And how much time passed between the time that you first saw them and the time that you saw them again?

A. I'll say around 30 minutes, 45 minutes. And at that time it was getting dark again. It was getting dark. That's why I estimated around about 5:00 or maybe 6:00 when I first saw him. It was light outside. They had been gone for like 30 or 45 minutes. When they got back, it was getting dark.

Q. It hadn't gotten yet?

A. No. It was -- it hadn't got all the way pitch dark, but it was dark.

Q. Now, the first time when the car drove up, you were standing out there by yourself or with a group of other people?

A. With a group of other people.

Q. At that time you had never seen this defendant before?

A. No.

Q. And there was nothing that drew your

attention to him? He was just another young man coming to --

A. What drew my attention to him was when Christopher came out and greeted him, and they shaking hands like they never -- like they hadn't seen each other in a long time. That's what made me focus my attention on him.

Q. And at that time Gregory left him and went someplace else, went across the street I think you said?

A. Yeah.

Q. Came back and got in the car. And you saw Gregory pushing something down his shirt. You're not sure what it is; is that correct?

A. Correct.

Q. And at that point, you asked him for a ride even though you just seen him push something down his shirt, but yet you asked him for a ride; is that right?

A. Correct.

Q. And you-all got in the car. And where was Lester when you asked for this ride?

A. I haven't the slightest idea. I asked Tyreke for the ride because I didn't know him. So I was, Tyreke, can you get your stick man to give me a ride?

And Tyreke was like, come on, man.

Q. But the person that you saw driving the car was the light-skinned person, right?

A. Not the light-skinned person, it was him.

Q. This is the person you saw driving the car?

A. Yeah.

Q. And at some point somebody says, we're going to Berkley?

A. No. He asked Tyreke where were they taking me. And Tyreke said, we're taking him to Berkley, and he said, where is Berkley? And I said, it's across the Campostella Bridge. And he said, no, we got something to take care of. We don't have time for that right now.

So Tyreke was like, look, we're going to drop you back off and we'll be right back. It ain't going to take us long. If you still out here, we give you a ride then.

Q. Did they say what the taking care of was?

A. Said they was going on a sting.

Q. At this point right now you're saying that they told you -- they said while you were in the car

that they were going on a sting?

A. Yeah.

Q. Have you ever testified to that before?

A. Yeah. I'm quite sure I said -- yeah. It's in the -- it should be in a transcript somewhere. They said they was going on a sting.

*Q. Did you ever tell the policemen that --

A. Yeah.

*Q. That they said they were going on a sting?

A. Of course, yes.

*Q. This is while you're in the car?

A. Yeah. This is while I'm in the car.

Q. So they're going on a sting. They've already announced to you that they're going to go on a sting, and you're waiting until they come back? You're to wait outside until they come back?

*A. I mean, I don't know what they going to do. They could be going to steal cars or cigarettes from the store. I mean, a sting can mean anything.

Q. But when they came back, you were still there and you went up and greeted them?

A. I see Tyreke get out the car with his shirt off, and he had a different shirt on. He had something wrapped up in the shirt that he left with.

Q. And you saw some blood on the shirt?

A. No. I saw blood on Tyreke.

Q. You saw blood on Tyreke?

A. Yeah.

Q. Did you see any on his hands?

A. I mean, it was kind -- I ain't pay that close attention to him. I mean, I'm trying -- I'm being nosey. I'm trying to find out what's going on. I don't know what they was --

Q. Where did you see the blood?

A. It was on the shirt, little specks of blood on the shirt.

Q. On the shirt that he was carrying or the shirt that he was wearing?

A. No. The shirt that he was wearing.

Q. And at that point Tyreke walks up the steps; is that correct?

A. Man, I don't know what point. You asking me so many different -- 'cause you jumping from scene to scene. I don't know at what point are you talking about?

Q. They come back the second time. You've seen Gregory.

A. Yeah.

Q. You've seen the blood on his shirt.

A. I seen him get out the car. He walked up on the porch, had the shirt that he was wearing when he left, had something wrapped in it. He was carrying it like this.

Q. And he walks up the steps?

MR. BATLINER: I can't see.

THE WITNESS: He's carrying it like this. He had the shirt wrapped up and he was carrying it like this. Whatever was in the shirt, he was carrying it like that.

MR. BATLINER: Judge, if the record would just reflect he's got his two hands off to his side down about at his waist level.

THE WITNESS: Yeah. I wouldn't have this hand here but with the handcuff.

MR. BATLINER: Oh, just one hand?

THE WITNESS: One hand like this holding. He walked up to the door, was ringing the door.

BY MR. ANDERSON:

Q. Which door? This is a two-story house?

A. This door right here. That leads to the upstairs right there, that door right there.

Q. He walks up -- so he comes up the steps --

A. Comes from out the car, walked up the stairs right there. There is a doorbell right there, ringing the doorbell. And right about there is where me and him started to talk. And he turned from the door facing me towards this way. And I was asking him, I was like, what just happened?

Q. Then he goes up the steps?

A. And I go behind him.

Q. And you go behind him?

A. Yeah.

Q. And he goes into one room?

A. He goes into the bathroom.

Q. And you go into another room?

A. The den. As soon as you walk up these stairs right there, you walk straight to the bathroom. The den is right there --

Q. You've answered my question.

Now, at that time, the dark-skinned guy and the person you're describing as Mr. Lynch is still outside by the car?

A. They're standing right by the car. The young fellow, he got his hands folded. He got his back towards the car, and he got his legs spread and he's just looking down at the dirt. And he's standing there. He's talking to him.

Q. But you're already upstairs at that time? You're --

A. I seen them while I'm talking to -- while I'm talking to Gregory right there before the door came open, I had seen them like that, the little young boy with his hands folded.

Q. Then you go upstairs?

A. Yeah.

Q. Okay. And at that time, you don't see the defendant and the young boy because they're still outside?

A. Yeah. They still outside while we outside.

Q. And you get upstairs --

A. Right.

Q. -- and there is a conversation that goes on. Gregory goes into the bathroom. You go into the den. Then Gregory and his brother engage in a conversation?

A. Correct.

Q. At that time Gregory tells him that they've just killed a woman?

Why no objections

A. Yeah. He said -- these words is his exact words. He said, "That young kid downstairs leaning on the car is trigger happy." And his brother was like,

What you talking about?" And he like, "Man, he just shot a lady."

Q. And at that point, the person that you're describing as Lester Lynch is not in the house, is he?

A. No. He didn't come up until --

Q. Okay.

A. Basically --

Q. Now, let me ask you something. You and Tyreke, you-all have gone over to Ronald Scott's house -- not that day, but you-all had gone over to Ronald Scott's house together, haven't you?

A. Yes, we have.

Q. And Ms. Scott, the person that you call Plum, she's been back and forth to 27th Street, hasn't she? The people in the neighborhood know her, don't they?

A. Yeah. The people in the neighborhood know her 'cause she used to stay right there on the side of the house. Ms. Plum and Ronald and all of them used to stay on the side apartment for the downstairs right there.

Q. In fact, Tyreke knew Plum just like you knew Plum, didn't he?

A. No, he did not.

Q. Do you recall at one time saying that he knew her just like you knew her?

A. No. He didn't know her like I know her. He might of known of her and she may have knew of him, but he did not know her personally.

MR. ANDERSON: I'm going to the transcript October 2nd, 2002, lines 5 and 6.

MR. BATLINER: What page?

MR. ANDERSON: Page 112. May I approach, Your Honor?

THE COURT: Yes.

BY MR. ANDERSON:

Q. Start to review --

A. That has nothing to --

Q. -- your statement --

A. -- knows his --

THE COURT REPORTER: Excuse me.

THE WITNESS: Yeah, he knows her. He seen her before, but he don't personally know her.

BY MR. ANDERSON:

Contradictory SEE p. 18, 15-18

Q. Your comment was: "And Tyreke knows his mother. Tyreke knows his mother just like I know his mother."

Is that what you said at that time?

A. Yeah. He know her. I just said that. I told you he know her, but he knows of her. He do not know her personally.

Q. But you know her personally?

A. Yes, I do. I'm like a son to her.

Q. You said like you know her; is that right?

A. No. He don't know her like I know her. I'm like a son to her. She's like -- she's like my mother.

MR. BATLINER: Judge, if he'd continue to read, his next answer is, no. They didn't have the same type of relationship that he had, basically, is what the next comment is down in his answer.

THE COURT: Go ahead.

MR. ANDERSON: But he also said that he'd been over there enough times. He also said that in that comment.

THE WITNESS: Said who had been over there enough times?

BY MR. ANDERSON:

Q. You said Tyreke had been over there enough times.

A. Over where?

Q. Ronald's house.

A. Yeah. Well, he probably go see Ronald and get --

Q. So he would have known if his mother got killed, if it was the mother that was killed. So you're saying that he told his brother he didn't know whether it was the mother or the sister.

A. He couldn't have known. At the time they killed her, he didn't know that it was her. He said it was a skinny lady. And I told him that his mother was skinny. And it turned out to be her, his mother. So if he knew, he would have knew at that point in time. He wouldn't even have had that conversation.

Q. So they're having this conversation and when they first -- when he starts the conversation, you don't see Mr. Lynch; is that correct? You don't see the light-skinned person?

A. No, I don't see him.

Q. Then you get involved in the conversation, and you-all talk some more; is that right?

A. The conversation never stopped. I just butted in once I heard they said they had killed a lady and that they had went to Little Ronald's house. I butted in the conversation. The conversation was for him

and his brother, but I overheard it and I got in it by saying, don't you know that that was his mom, that could have been his mom? And he was like, it wasn't his mom. It was a skinny lady.

Q. And then at some point while you're talking to him, the person comes upstairs and says, "Why are you telling him what we just done?"

A. Not the person. Him. The gentleman right there, Mr. Lester Lynch. He came up the stairs and asked him, he said, "Why are you telling them what we just done?"

Q. Did he ever say why you telling them why we went to kill someone?

A. No. He didn't say nothing about that. He asked him --

Q. Did he ever --

A. Tyreke -- Tyreke had already told us that someone had got killed. And he walked up and asked him why was he telling us what they had just done.

Q. But you said Tyreke told his brother we had been on a sting, right? Isn't that what you said?

A. Yes.

Q. And you said --

A. And he told them what happened.

Q. Didn't you just say a sting could be

anything?

A. A sting is a --

Q. My question --

A. Slang for --

Q. Didn't you --

A. -- robbing.

Q. You already answered the question.

A. Like a sting is slang for robbing or you can go steal something to get away with it. I got away with that sting. You could rob somebody. You could plan to rob somebody and say I'm going on a sting tonight, you know. You don't know. It could be stealing radios out cars, anything. A sting is going to do something wrong, period.

Q. So he never said it was killing anyone?

A. He said they had shot someone. He said they just shot --

Q. But that's what you're saying that Gregory said?

A. Yeah. Gregory said they had just killed somebody.

Q. All right, KP.

A. And he came up the stairs and asked him why was he telling us what they had just done.

Q. And as soon as you got this information,

you went and called the policemen, didn't you?

A. No. I called the cell phone. I don't know what's going on. I'm trying to find out what's going on. I'm trying to piece the puzzle together, too.

Q. You called the cell phone?

A. Yeah. I called Ronald's call phone to try to confirm whether or not they had been there or not and the girl kept answering the phone.

Q. Had you called Ronald earlier that day?

A. Not that I recall. I may have. I called him a lot of times, but it's nothing special to remember about me calling him at this point in time right here.

Q. So you don't remember calling Ronald's cell phone several times that day?

A. Yeah. After I heard what they -- after I --

Q. I'm sorry. I didn't ask the question proper. Earlier on the 9th, did you call Ronald's cell phone on a regular basis?

A. I called his phone on a regular basis. I probably had called him. I can't for sure -- I can't sit here and tell you. If I tell you I was for sure, I'd be lying to you.

Q. Did you talk to him before you went over

to score the drugs from him?

A. I can't remember. I probably did. I mean, I can't sit here and say I didn't. He was a friend of mine. I mean, a good friend like we see each other every day type friend.

Q. When you went to buy -- when you went to get the drugs from him, did he give you the drugs right there or did he have to leave and go get them and bring them back to you?

A. He left and went and got them.

Q. So he left the house and came back and gave them to you?

A. Yeah.

Q. And that was on both occasions?

A. Yeah.

Q. Now, fast forward going back to the afternoon. They tell you what happened. You don't call the police but you call his cell phone?

A. I call Ronald.

Q. You call Ronald?

A. I'm trying to get in touch with him to confirm was anybody shot at your house, you know. That's what I'm trying to confirm, but Ronald, at the time, is not there. So I call back again, and the girl says, yes, his mother was shot. And I told her, I say, well, the

guys is right here talking about it right now, you know what I'm saying. And she was like --

Q. Did you tell her -- after you tell -- did you tell her to tell the police at that time?

A. No. I ain't tell the police.

Q. This lady is like a mother to you, you said, right?

A. Yeah. I think I did, I think I was doing my part. And I asked her did they know who it was, and she said yeah. She said, "I can identify them and Ronald knows who they are." That was enough. What I need to tell the police for? They already know who done it.

Q. But that night of -- she told you Ronald can tell who they are?

A. She said her and Ronald know who those guys were. She said, we know who they were. At that time he had cornrows in his hair. She even said, yeah, I can identify the one with cornrows. And she said that was --

Q. Just answer --

A. -- Q's brother, Tyreke.

MR. ANDERSON: Your Honor, would you have him just answer my question.

THE COURT: Answer the question.

BY MR. ANDERSON:

Q. Now, she tells you -- after that point, when is the first time you came in contact with the police?

A. I think it was like the next day, couple of days. I don't know. I ain't for sure.

Q. And at that time when they stop you, they stop you for a traffic infraction?

A. Yeah.

Q. But they don't just give you a traffic infraction. They tell you that they want to talk to you; is that correct?

A. They gave me the traffic infraction and they also told me that I needed to go to POC because homicide needed to ask me some questions, and I already knew what it was. Ronald and the girl, Tamika, probably told them what I told them. So they wanted me to confirm --

Q. When you first got there, you lied to them and you told them you didn't know anything, didn't you?

A. I didn't tell them nothing of the sort. I ain't tell them I didn't know nothing. I told them I didn't want to be involved, you know, not to the point where I had to come here and be testifying and all that

old stuff like that. But then, they brought Little Ronald down there, and he was like, my mother's dead.

Q. Mr. Parker, I know you want to talk, but if you would just answer my question, okay.

MR. ANDERSON: Transcript dated March 19th, 2003, page 180, lines 12, 13, 14, and specifically, line 21.

BY MR. ANDERSON:

Q. Can you read that, please, starting at line 12?

A. I'm trying to see who's talking.

Yeah. The police asked me that some people down POC wanted to talk to me, and I told the police --

Q. Just --

A. -- that I didn't know anything.

Q. So you told the police you didn't know anything?

A. Yeah. Not there at POC, not the homicide detectives or nobody like that. When I got to POC, I told the homicide detective. That was regular police stopped me on the traffic violation, and they told me that some people wanted to talk to me about a homicide down POC, and I told them I don't know nothing about it.

Q. Then on line 21 on that same page, but you initially said you didn't know anything about it. You said, yes, I told a lie, told a lie, because I didn't want to get involved. So in other words, you're admitting you told a lie at that time, right?

A. Yeah. I didn't want to get involved. I told the regular police. When I got to POC, I told the truth. I even took a lie detector test.

MR. ANDERSON: Your Honor, I would object to any reference to a lie detector test.

THE COURT: Ladies and gentlemen, please disregard any comment about a lie detector test. It's not something that you can consider.

BY MR. ANDERSON:

Q. Now, I think you testified earlier that you picked out the defendant's picture out of a photo lineup?

A. No. They were just pictures. They was like pictures. Like when you get arrested for whatever reason, they just got pictures of you of different inmates or whatever.

Q. And you picked out a picture of the defendant?

A. I picked a picture of him and I picked a

Contradictory SEE HUFFMAN p. 105;



picture of Tyreke out.

Q. And you did that the same evening?

A. I'm not for sure in the same evening or not. I know I went to POC about ten times. Every other day they was calling my house for me to come down there to either look at photos or make another statement or to ask me questions about this murder.

Q. So if I tell you that earlier you testified that you picked it out that same day, that would be incorrect?

A. It probably is the truth. I told you they took me down there like ten times.

Q. Wait a minute. What I'm trying to get at, are you now saying that you did it the --

A. I don't know when I did it. I know I picked him out. I could have picked him out the same day. If they'd of asked me -- if they showed me those pictures the same day, I could have picked them out the same day. But I'm sitting here telling you I'm not for sure if it was the same day.

Q. But if earlier you testified to that, that would be incorrect? You were wrong doing that?

A. I may have. It's been so long. Sir --

Q. Okay. Now, you saw Christopher talking to the defendant; is that correct?

A. Talking to who?

Q. The light-skinned person that was there?

A. Are you talking about him?

Q. Yeah.

A. At what time? At what point in time are you asking me were you talking?

Q. Well, you saw Christopher talking to him when he -- when that light-skinned person first drove up, you saw them going to greet each other?

A. Yeah.

Q. Did at any point you go and ask Christopher what's that guy's name who came over?

A. I won't concerned about it.

Q. Now, at the time you were first stopped by the policeman, you knew you were a suspect, didn't you?

Contradictory EE Huffman 0.106, 14-23

A. No. Suspect for what? Why would I be a suspect?

Q. This is not your first involvement with the police; is that correct?

A. No, it's not.

Q. And --

A. I knew I was driving with no license.

Q. And they gave you a summons?

A. Yeah. I had to do weekends.

Q. But they didn't arrest you? Did they arrest you for that?

A. Yeah, they arrested me. That's what -- that's what got me to the police station.

Q. They arrested you for that?

A. Yeah.

Q. But they weren't questioning you about the driving offense, were they?

A. Yeah. They took my license and ran it. Told me that my license was suspended and that they had to take me to jail. On the way down in the back of the police car, he told me --

Q. How long --

A. -- homicide want to talk to you, too.

Q. How long did they talk to you about the traffic offense once they got you to the POC?

A. What you mean, to POC down there?

Q. Yes.

A. They didn't talk about -- they didn't talk about the traffic offense. The traffic offense they brought me here to jail for that.

Q. So they didn't spend any time talking about -- they spent most of the time talking about --

A. They wrote me a summons to come to court. I had to make bond to get out on it. And they

Admitted to COERCION

took me to POC for questioning, as far as what I had told the girl and Little Ronald over the phone about what I had heard them saying at the house. That's what they questioned me about. When I got down there, I told them I didn't want to be involved in it.

Q. You've answered my question. I understand. You've answered my question.

I know I asked you this before and I just need to make sure you and I both understand it. On page 184 of the transcript dated March 19th starting at line 10, the question posed to you:

"I don't recall exactly what day it was. I know they stopped me on a traffic violation, and they took me to POC to question me."

And then I asked the question: "That's the day you picked this picture out?" And you said, "Exactly." The Court then said, "What picture?" You said, "They had a mug shot," and you say, "Picture? Whose picture?" The witness, you say, "Lester. And I also picked out Gregory's picture." That's what you're basically saying today, right?

SEE HUFFMAN - 9,100,2-8

A. Yeah. I mean, if it says that, then that's what I did. That's the one time I remembered it.

Q. So that was on the 10th, the day that you're saying you picked out the picture on the 10th, the

day you were stopped for the traffic --

A. I ain't --

Q. You don't know the date you got stopped for the traffic violation?

A. Right.

Q. But the day that you got stopped for the traffic violation is the day you did it? Is that what you're saying?

A. Yeah. If that's what it says, that's what I did.

Q. And I just need to make sure I have this clear in my mind. So you're going over to Berkley. It's about five o'clock in the afternoon when you get back. It hadn't gotten dark. Then you see these people. They leave. And they come back and it's dusk. It's not quite completely dark that you see them the second time; is that right?

A. It's dark enough outside. It's getting dark.

Q. It's getting dark?

A. Yeah.

MR. ANDERSON: That's all I have, Your Honor.

REDIRECT EXAMINATION

BY MR. BATLINER:

Q. Was it right after you had heard the defendant say, Why you telling them what we just done? that you left and made the call to Ronald's cell phone?

A. Yes, I did.

Q. So it was right after you heard that?

A. As soon as he came upstairs and asked Tyreke why was he telling us what they had just done, I eased down the stairs and left and went up the street to a friend of mine's house to use his phone to call Little Ronald.

Q. So within minutes of hearing that?

A. Yeah.

Q. Now, defense counsel was asking you about what you had heard, and then you were trying to tell him exactly when Lester Lynch came upstairs, and he cut you off.

When in the conversation exactly did Lester Lynch come upstairs and say, "Why are you just telling them what we just done?"

A. After Tyreke had told us that the young boy was trigger happy and that they had just killed a girl, I mean, a young lady. And so I was like that

possibly was his mom, and he was like, no. It was a skinny lady. It might have been his sister. I was like, well, what difference do it make either if it's his sister or his mom? You-all just killed somebody, you know. And I was like, why would you-all go mess with Little Ronald anyway? I said, he's friends with all of us.

MR. ANDERSON: Your Honor, this is just a repeat of the testimony.

THE WITNESS: At that time he came --

THE COURT: Just a minute.

THE WITNESS: At that time, he came up --

THE COURT: Wait a minute. Wait a minute.

MR. BATLINER: Judge, he cut him off in cross and wouldn't let him tell exactly the sequencing. I think I'm entitled in redirect to bring it out exactly as to when it occurred.

MR. ANDERSON: Your Honor, this is just a repeat. I think he said it like six times. He's just repeating it. That's not the sequence. It's at what point.

THE COURT: Go ahead. It sounds very repetitious.

BY MR. BATLINER:

Q. When did he say the words, "Why are you just telling them what we just done?"

A. After Tyreke had told us what had just occurred.

Q. You've said also a couple of times -- you said you didn't want to get involved. Why didn't you want to be involved?

A. I just, you know, it's just like now. I ain't -- I just couldn't see myself sitting in court with stuff like that. But then once Little Ronald and his family explained to me that it was his mom, and she ain't never coming back and I got one, too, then yeah, I would want somebody to, if they knew something about it, to come forward, too. So here I am.

MR. BATLINER: No further questions, Judge.

RECROSS-EXAMINATION

BY MR. ANDERSON:

Q. Wait a minute. The Commonwealth just asked you again about the sequence. But you can't say at what point this defendant came upstairs -- you can't say what he heard, can you?

A. He had to hear the whole conversation --

Q. My question is --

A. -- because he asked, "Why are you telling --

Q. You're --

A. -- them what we just did?"

THE COURT: Just a minute.

BY MR. ANDERSON:

Q. You don't know --

A. So how would he know what Tyreke is telling us?

THE COURT: One at a time. Ask him a question.

BY MR. ANDERSON:

Q. So based on his response, you assumed that he heard what was said; is that correct? You don't know where he was? In fact, haven't you testified in the past that you don't know what he heard?

A. The only thing I know is, he was asking --

Q. My question, again, is haven't you testified in the past you don't know what he heard?

A. No. I can't tell you what the man

heard. It's a lot of people sitting in this courtroom --

THE COURT: May he be excused?

MR. ANDERSON: Yes.

THE COURT: Ladies and gentlemen, would you please retire to the jury room.

(The jury entered the jury room at 10:10 a.m.)

(Discussion off the record.)

THE COURT: Let's get the witness. Raise your right hand.

(Witness sworn.)

THE COURT: Bring the jury in.

(The jury entered the courtroom at 10:16 a.m.)

TAMIKA REID,

a Witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BATLINER:

Q. Tell the ladies and gentlemen of the jury your name.

A. Tamika Reid.

Q. Tamika, do you know Ronald Scott?

A. Yes.

Q. How do you know him?

A. He's a good friend.

Q. Tamika, I'm going to direct your attention back to June the 9th of 2001. Do you remember that day?

A. Yes.

Q. Do you remember, I guess, the early morning of that day or actually the late evening of the 8th? Did you hook up with Ronald Scott then?

A. Yes.

Q. Where did you do that at?

A. At a house in Norview.

Q. Is that a bootlegger's place?

A. Yes.

Q. And then where did you-all end up going?

A. To his mother's house.

Q. Is that 3331 Lens Avenue?

A. Yes.

Q. In the city of Norfolk?

A. Yes.

Q. Where did you-all go once you were in the house?

A. To his -- well, I sat and talked to her for a minute and then went in the back bedroom in the back part of the house.

Q. Did you stay there pretty much all day?

A. Yes.

Q. What went on sort of during the day while you were there?

A. Like traffic. He had been woken up, and a couple of people had came for him.

Q. Tell me about how -- when he'd get woke up, how would that usually go? What would happen?

A. His mother would knock at the door for him.

Q. And then would he wake up or would you wake him up? How would that go?

A. I'd end up having to wake him up.

Q. So you got to push on him?

A. Yes.

Q. Did you see the people who came over?

A. One, the first one I remember was by the name of Kenny Parker. He had came earlier that day.

Q. You saw Kenny Parker come over once that day?

A. I didn't really see him. I heard him.

Q. Heard him?

A. (Witness nodding head.)

Q. Did you recognize his voice?

A. Yeah, and his name. He just kept saying his name.

Q. When was that? When did he come over that you're --

A. It was the early part of the day.

Q. Let's go ahead and let's shift to later in the day toward the evening about nine-thirtyish, nine-fortyish.

A. Yes.

Q. Did somebody else -- did his mom come to the door about something else?

A. Yes.

Q. Tell me what happened.

A. She had came and knocked at the door, called his name, told him somebody by the name of Do Wop wanted him.

Q. So what did -- what happened then?

A. I shook him, told him somebody named Do Wop wanted him. He looked at me like I was crazy and said he didn't know no Do Wop. As he was getting up to put on his shorts, a firecracker sound, the room door getting kicked in.

Q. Let me slow you down for a minute. You're going a little fast. You said you heard a fire -- he's getting up and what's he doing?

A. Putting on his shorts.

Q. And then you said something about a firecracker sound. What is that?

A. It was just a firecracker sound.

Q. And then what happened?

A. The room door got kicked in.

Q. And what happened when the door got kicked in?

A. Seen a gun, him getting beat up, the room getting tore up, me getting hit with a clothes basket.

Q. When you say you saw a gun, how many people came into the room?

A. I saw two.

Q. What did the two men do?

A. They was hitting him. One was pacing the room like tearing up the room. One just stood there with the gun hitting him.

Q. Where did they hit him at?

A. On the top of his head.

Q. What are they saying?

A. Where is it? Give it up? They was looking -- well, like what they do when they rob somebody.

Q. Did any of them talk to you?

A. I was just asked not to move. That was it.

Q. Do you see either of the men that came into the room here in court today?

A. Yes.

Q. Where is he?

A. Right there.

THE COURT: She identified the accused.

BY MR. BATLINER:

Q. Okay. You said there were two men and one basically paced around and --

A. It was really --

Q. -- the other one -- I'm sorry.

A. It was really three, but I couldn't see the third one.

Q. There was a third one that you couldn't see?

A. Yes.

Q. Where did he stay?

A. Behind the second one.

Q. Which was he? You said one of them was the one that stood there and was --

A. He was the first one that entered the room.

Q. What did he do?

A. He had the gun. My focus -- my main focus was on him 'cause he was the first one I seen come through the door.

Q. Can you see that?

A. Yes.

Q. Do you recognize what that is?

A. It's a police sketch but it's kind of --

Q. Hard to see?

A. I can't hardly read it.

Q. Okay. Let's try it a different way. Let me show you some photographs. I'm going to show you what's previously been marked as Commonwealth's No. 8.

contradictory See R. Scott p.121 lines 5-5

contradictory - see R. Scott p.122 lines 23-25 + p.124 lines 9+20.

Do you recognize that?

A. Yeah.

Q. What is that?

A. That's the back bedroom we was in.

Q. And I'm going to show you number 10. What is that?

A. That's the room door. That's the room.

Q. Okay. And then I'm going to show you number 9. What is that?

A. We was standing there. That's the room. That's the dresser.

Q. You said something about a clothes basket being thrown at you or something like that?

A. Right.

Q. Tell me what happened there.

A. I was sitting on the bed.

Q. I'm going to show you this. This is Commonwealth's 8. Is the bed in that picture?

A. Right here.

Q. So this is the bed area right here?

A. Yeah, that's the bed.

Q. Is that where you were?

A. Yes. My back was to the wall here.

Q. Did you move back as far away as you could basically?

A. Yeah.

Q. Is that what you did?

A. Yeah.

Q. Now, tell me what happened with the basket.

A. It was right here by the bed. He picked it up and threw it at me.

Q. And what is all this?

A. That was what was in the clothes basket.

Q. And that had not been on the bed before they walked in the room?

A. No.

Q. Where was it that they had -- where did they have Mr. Scott when they were beating him? Which picture is the best one for that?

A. Right here.

MR. BATLINER: Could the jury see what I was doing on this one?

MR. ANDERSON: Which number is that?

MR. BATLINER: This was number 8.

BY MR. BATLINER:

Q. And number 9, show me where --

A. He was mainly right here sitting in the floor.

Q. Where were the two men?

A. One was right here and then one was right directly right --

MR. ANDERSON: I'm sorry.

THE WITNESS: One was right here. Ronald was right here. And there was one right here. And I seen the other, the arm of the third man. He was like mainly out towards the door.

BY MR. BATLINER:

Q. So the third man was out here somewhere?

A. Yeah.

Q. So you never saw his face?

A. I just seen his arm.

Q. And then there was a man basically right here?

A. Right here and one was right here.

Q. And one here near the TV?

A. And Ronald in the floor right here sitting in the floor.

Q. And they're hitting him in the head?

A. Yeah.

Q. Is that what you said?

A. Yes.

Q. Tamika, I'm going to show you

Commonwealth's No. 24. Do you recognize that?

A. Uh-huh.

Q. What's that?

A. Just stuff that was just thrown.

Q. Now, all these cookies on the floor, do you know where they came from?

A. That was in the room.

Q. They were in the room with you?

A. Yeah -- no, sir. I don't remember no cookies, to tell you the truth. I don't remember the cookies.

Q. Now, I'm going to show you this is Commonwealth's No. 10. Do you see the table right here?

A. Yes.

Q. Was there stuff on that table?

A. Yes.

Q. What was on it?

A. Some heroin.

Q. And what else?

A. A couple of dollars, dollar bills, not that much.

Q. What happened to this table that had the drugs and some money on it?

A. The guy took the stuff off of it.

Q. Which guy did that?

A. It wasn't him.

Q. The other guy?

A. Yes.

MR. BATLINER: Just so the jury knows, that was 24.

BY MR. BATLINER:

Q. Tamika, after the men came in and beat Ronald and took the stuff that was on the table, what happened then?

A. Things got quiet.

Q. Did they leave?

A. Yes.

Q. What did you do?

A. I jumped up and hid between the refrigerator and the washing machine.

Q. So you went out of the room and went toward the kitchen?

A. Yes.

Q. Why did you hide there?

A. I was scared.

Q. What did you do then?

A. I stood there for a minute, and he was crawling on the floor calling for his mother and I was asking him mainly was they gone. He was like, he thought

so. So that's when I came from behind the thing, when I heard him hollering, and he walked and I heard him say, Tamika, call 911. And I jumped and grabbed the phone. I ran out the door.

Q. What phone?

A. Ronald Scott's cell phone.

Q. And he told you to do what?

A. Call 911.

Q. And you had his phone in your hand. Did you call with the phone you had in your hand?

A. No.

Q. What did you do?

A. I think I woke the son up first, and then I ran out the door to the neighbor's house across the street.

Q. What did you tell him?

A. That Ronald had just got robbed and beaten and his mother needed an ambulance.

Q. And then did you go back to the house?

A. I ran back in one time and I seen her laying in the floor. Then I ran back out -- oh, I ran and got -- I had a wig so I ran and put on my wig and grabbed my pocketbook and ran out.

Q. What kind of wig did you have on?

A. A blond wig.

Q. Where did you go?

A. I stood across the street with the man's house that I had ran to. Then I asked him which way was towards where I stayed, and he pointed that way and that's the way I ran.

Q. Then you ran off?

A. Yes.

Q. Did you still have the cell phone?

A. I still had it, yeah.

Q. When you had the cell phone, did the cell phone ring while you had it?

A. Yes.

Q. Do you know who was on it?

A. Kenny Parker.

Q. Tamika, you've had a little bit of trouble with the law before, right?

A. Yes.

Q. You've had two misdemeanor convictions. A petty larceny in '95, right?

A. Yes.

Q. And then another petty larceny just this year; is that right?

A. Yeah.

Q. And then you had a felony burglary conviction back in '95; is that right?

A. Yeah.

Q. Tamika, had you ever seen the defendant before that day?

A. No, sir.

Q. Did you know him?

A. No, sir.

Q. Tamika, is there any doubt in your mind that the defendant is one of the men who came back in that room?

A. My eyes was mainly focused on him.

Q. So are you saying you don't have any doubt?

A. I'm sure.

Q. You're sure it's him?

A. Yes.

MR. BATLINER: Answer any questions defense counsel or the Court may have.

CROSS-EXAMINATION

BY MR. ANDERSON:

Q. Good morning, Ms. Reid.

A. Morning.

Q. Now, you had been out on June the 8th the first you came in contact with Mr. Scott; is that

correct?

A. Yes.

Q. And you were, I think you said, at a bootlegger's house?

A. Yeah.

Q. And you were getting high at -- had you gotten high that night?

A. Not at that spot. At the selling party I had.

Q. Excuse me.

A. Not at that house I hadn't. I was drinking there.

Q. You were drinking. Well, at some point that evening, did you smoke some marijuana?

A. Probably the beginning of the evening.

Q. And then at this selling party, you had -- just had something to drink?

A. Yeah.

Q. At some point you left. You call it a selling party?

A. Yes.

Q. You left there and went to Ronald Scott's mother's house?

A. Yes.

Q. Had you been to that house before?

A. No.

Q. It was the first time you had been there?

A. (Witness nodding head.)

Q. You knew Ronald Scott?

A. Yes, for years.

Q. For years?

A. (Witness nodding head.)

Q. And you knew his mother?

A. Yeah.

Q. Now, when you got to the house that night, what time was it when you got there?

A. It was like early in the morning about 3:00, 4:00, 5:00. It was early in the morning.

Q. When you got there, how many people were downstairs in the house when you got there?

A. His mother and the grandkids, and her grandkids.

Q. How many?

A. And her grandkids.

Q. How many grandkids were there?

A. I say about five or six.

Q. Five or six grandkids were there?

A. (Witness nodding head.)

Q. And it's early in the morning, and I

take it at some point you went to sleep that evening?

A. That morning, yes.

Q. That morning. Do you recall what time you woke up the next day?

A. Off and on.

Q. The first time?

A. It was about 10:00 something.

Q. About 10:00 something?

A. (Witness nodding head.)

Q. Do you recall what caused you to wake up or did you just wake up on --

A. I had to use the bathroom.

Q. Do you recall Kenny Parker coming over earlier that morning?

A. That morning? I can't say that morning. I remember him coming, though.

Q. How many times do you recall him coming over?

A. To my knowing, once.

Q. And you recall one?

A. Yeah.

Q. And when he came over, do you know if he came with anyone or was he by himself?

A. I can't say.

Q. At the time that he did come over, do

you recall Ronald Scott leaving the house?

A. I remember him getting up.

Q. But do you recall him going onto the front porch and even leaving the house for 15 minutes or so?

A. I really -- I can't say. I remember him getting up and leaving out the room.

Q. Leaving out the room. But how long would he stay gone from the room?

A. It wasn't that long.

Q. At some point, did you hear a drug transaction going on between Parker and Mr. Scott?

A. Yes.

Q. And do you recall what the nature of that transaction was? Can you tell this jury what that was about?

A. I guess he came to score some drugs from Ronald, and I guess he wanted a lookout, too.

Q. Explain to the jurors what a lookout is.

A. He wanted more for what he was paying for, and Ronald wouldn't give it to him. So they got to arguing and that was it.

Q. So KP and Ronald got into an argument?

A. It won't no serious argument. They had exchanged a couple of words and that was it.

Contradictory
See L. Scott
9/04/11

Q. Do you recall whether KP ever came into the bedroom?

A. I never seen him come into the bedroom.

Q. Now, going into the afternoon, you had been in and out of sleep that day; is that correct?

A. Yes.

Q. On the 9th, the people who were present in the house were you, Ronald, and his son; is that correct?

A. Yes.

Q. And the other grandkids --

A. They was gone.

Q. All right. Now, you're saying that the door kicked in? Someone kicked the door in?

A. From the outside, I couldn't see how it was. I just know it just flew open.

Q. And, in fact, at an earlier time you said -- do you recall saying there were pictures that showed that the door had been busted in?

A. It was messed up.

Q. You saw a picture with the door messed up?

A. Like not the part that you turn, but the part with the thing in it, that part was messed up.

Q. You saw a picture of that?

A. Uh-huh.

Q. Now, prior to that evening, you didn't know the defendant; is that correct?

A. No.

Q. And you didn't know the person that's called Tyreke; is that correct, Gregory Williams?

A. Who?

Q. Gregory Williams, Tyreke?

A. I don't know them.

Q. You don't know him? The people who came into the room, you don't know either one of them?

A. No.

Q. And the person that -- you're saying that the other person snatched the stuff off of the table and it was not this person?

A. No, sir, it wasn't.

Q. It wasn't him. Now, after this incident, Ronald Scott asked you to call someone, and you didn't call even though you had the phone in your hand; is that correct?

A. Yes.

Q. Would it be fair to say that you were in shock when all of this was going on?

A. I was nervous. I was just pacing. I didn't know what to do.

Contradictory
EG R. Scott
122/lines 11-
5; p. 143, 12-14

Q. And you left and you ran -- you went back to the person who was across from Mr. Scott's house. You left. He gave you directions and you went someplace; is that correct?

A. Yes.

Q. You never talked to the policeman that day, did you?

A. No. I was scared.

Q. Did you talk to Mr. Scott that night?

A. No.

Q. So Mr. Scott never told you he knew who the people were at that time?

A. Not -- I haven't talked to him. He had -- that night when I was between the refrigerator and the thing, I did ask him like, do you know him? He say, I know one of them. That's what he told me. He knew one of them. That's when I was between the refrigerator and the washing machine.

Q. And so he only knew one person at that time?

A. Yes.

Q. And when was the first time that you spoke to the police, if you recall?

A. I don't know the actual date, but I had talked to my grandmother.

Q. Would it help you if I tell you -- obviously it wasn't that day?

A. No, sir.

Q. And it wasn't the next day. If I told you that it was reported on the 16th of June, would that sound about right, about a week later?

A. Probably.

Q. At some point -- at that time you were asked to identify -- to take a look at some pictures and make some identifications; is that correct?

A. Yes.

Q. Now, prior to making the identifications, did you give the policemen or the officers a description of the person that you were to later identify?

A. Yes.

Q. And what description did you give?

A. Light-skinned cornrows, and I can't remember what I said about the eyes.

Q. So if one -- at one time, if I were to tell you at one time you said you couldn't remember at another time that you said they were brown, you really don't know if there was anything distinctive about the eyes; is that correct?

A. Huh?

Contradictory
EC R. Scott
132/11 NGS 19-25

Q. If at one time I asked you and you said there was nothing distinctive about the eyes, and then another time I asked you and you said his eyes were brown --

A. I can't recall what I said about the eyes, but I know I said something about his eyes.

Q. And it was -- was there anything distinctive about his nose?

A. Uh-uh.

Q. His mouth?

A. Uh-uh.

Q. Now, you have testified about this case before?

A. Too many times.

Q. Now, at one time you testified that he had -- did he have on a mask?

A. He had something over like the mouth area.

Q. You testified at one time that he had something that was on his mouth area; is that correct?

A. Yeah.

Q. But at another time you testified that he had something that came from --

A. I don't remember that. I swear I don't remember that.

Q. You don't remember but it's in the transcript.

A. Yeah, but I don't remember saying that.

Q. So you said it but you just don't remember saying it?

A. That's if I said it.

Q. Maybe I need to go and show you.

A. I seen it in the book, but I don't remember saying it.

Q. Do I need to show it to you?

A. It's there. I seen it before.

Q. Now, do you recall the first time that you actually testified in court in reference to this case?

A. General district court?

Q. In the general district court, yes.

A. Yes.

Q. And at that time do you recall who was present in court?

A. Yes.

Q. That would have been myself, Mr. Lynch, another person, and another attorney?

A. Yes, sir.

Q. And there was another attorney who is better looking than this attorney for the prosecutor?

A. It was a lady, a female, right.

Q. No. That's another time.

A. What time you talking about?

Q. That was another time. The first time was when Ronald was sitting over in a side room. Mr. Lynch had on prison clothes. Gregory Williams had on prison clothes. There was another attorney, another attorney, two other white attorneys and myself, and you. You were the only person who testified that day?

A. Yeah.

Q. You remember that day now?

A. Yeah.

Q. At that time -- so you remember that day now?

A. I don't remember no other -- I always thought it was a lady, the other Commonwealth. I don't remember the man.

Q. At that time do you recall identifying Mr. Lynch? You identified him as being the person in the courtroom; is that correct?

A. Yes.

Q. And you also identified the other person who was there, his name was Gregory Williams. Do you recall that?

A. I think so. I think I recall. I know

him, but I'm trying to think about Gregory.

Q. Do I need to show it to you in the transcript where the Court asked you to identify him, and the answer you gave?

A. You can. I know I identified him.

MR. ANDERSON: Preliminary hearing dated August 21st, 2001.

BY MR. ANDERSON:

Q. I'm going to ask you, Ms. Williams -- Ms. Reid, this is where the Commonwealth Attorney is talking.

"Your Honor, I ask that the record reflect that the witness has identified the second defendant, Mr. Williams."

Does that refresh your memory?

MR. BATLINER: What page?

MR. ANDERSON: Page 19, lines 4 through 6. It starts, Mr. Evans.

BY MR. ANDERSON:

Q. In other words, you did remember to -- you don't remember making the identification, but the record reflects that you identified the other person. And at that time, the question was asked had you been

shown any photos and whether you had made any identifications based on those photos.

A. Yes.

Q. Do you recall that?

A. Yes.

Q. At that time do you recall that you said that you had identified Mr. Lynch?

A. But I couldn't identify Mr. Lynch.

Q. And Mr. Williams?

A. In that photo lineup at the precinct, I didn't identify Gregory Williams. I didn't identify Mr. Gregory Williams at the photo lineup.

Q. Page 37 of that same transcript, page 37 starting with line 16.

A. I must have understood the question wrong. I didn't identify him in the lineup.

Q. The question was: "And when the man you identified, did you initial the photograph? Did you sign the back of it, and put your name on it?

"Yes.

"And do you know whose pictures you picked out?

"Those.

"You picked out Mr. Lynch and Mr. Williams?" And you said, "Yes."

A. Okay. But at that precinct, I didn't identify Gregory Williams.

Q. Then there was another hearing, and at that, that's when you saw the female Commonwealth's Attorney?

A. Okay.

Q. Now, at the first hearing you said he had -- the person had on a black mask; is that right? You said a thing covering his -- came down from his nose and went down and was black; is that correct?

A. Yes. I remember saying that.

Q. Then when you had the female attorney, you said it was beige and it went from his forehead down to the bottom of his lip?

A. I don't remember that. I don't remember that forehead part.

Q. On page -- February 21st, 2002, starting at line 2 and going through line 10. It says, "From where?" And you said, "From here to right about here.

"What was it that was covering?"

Then the Court said, "For the record, from what portion of his head to what portion?" And then the Court said, "Describe it. From the forehead?

"Yes, to right here.

"To the bottom of the nose?" And the

witness -- you said, "Yes."

Do you recall that now?

A. I said it in the book. I don't recall it.

Q. Now, later on during that same hearing -- at that time the people who were present in the court were the judge, that female prosecutor, and myself and the defendant; is that correct? Do you remember that? He had on an orange-looking suit?

A. What day was that?

Q. That was February 21st. I'm just trying to give you things that will help you remember. I'm sure you've testified enough times you don't remember all of the dates. That would have been in February. It was just him and I, the female attorney, and the judge. Do you recall that?

A. I can't say. I don't though.

Q. You don't. Do you remember the female attorney?

A. I remember her.

Q. Do you remember the time you went to court with her?

A. I been to court so many times. I don't know.

Q. But you've only been with the female one

time; is that right?

A. I think so. What courtroom was it in?

Q. We were in another courtroom down the hall?

A. I can't say.

Q. But do you remember the time, that it was just --

A. I remember seeing him with a orange suit on.

Q. And you didn't see another defendant sitting beside him at that time, do you recall that? There was no other -- at the time you saw him with an orange suit, there was no one else beside him?

A. Not that I know of.

Q. Okay. And at that time you said that you couldn't identify Gregory Williams. Do you recall saying that?

A. I remember that.

Q. He wasn't in the courtroom; is that right?

A. Gregory wasn't?

Q. Right.

A. Okay.

Q. You said -- you told him you couldn't identify him?

A. That was at the precinct. That's what I was talking about.

Q. No. We were at --

A. You said the question that -- whatever they asked me, that's probably what I was thinking, that they was talking about at the precinct could I identify him there. I couldn't identify him there. That's why I was saying some of the questions I might have had wrong. If it was saying the question -- I probably was thinking like at the precinct 'cause that was the only time that I couldn't identify him was at the precinct.

Q. But if I were to tell you another time you testified and you said no, I was thinking they were talking about the third person, asking me to identify the third person --

A. Asking me if they asked me something about the third person, too, and I said I couldn't identify him, too.

Q. So your testimony sometimes changes?

A. It's probably questions, I misunderstood the questions.

Q. All right. Now, the policemen showed you a photo lineup; is that correct?

A. Yes.

Q. And the description you gave was the

person was light-skinned; is that correct?

A. Yes.

Q. And after you had made that identification, do you recall the policemen telling you you had picked out the right person or picked out the person they expected you to pick out?

A. Huh?

Q. After the policemen showed you the photo lineup, do you recall them telling you you had picked out the person they expected you to pick out?

A. That they expected me to pick out?

Q. Uh-huh.

A. I don't know nothing about that. I can't recall that.

Q. Well, do you recall they told you -- do you recall testifying that they told you you picked out the right person?

A. It's been so long, sir. I don't know.

Q. So you don't recall?

A. I don't know if I said it or not. I just said I can't recall it. I don't remember them telling me that I picked out the right person. I don't know. I picked out him because I saw him.

Q. Now, you had never seen him before?

A. A day in my life.

Contradictory
Supp. 822-25
p831-12

Q. You don't know how long they were in that room that night, do you?

A. No, sir.

Q. I don't want you to guess. I think you've already told me before. You don't know how long they were in there?

A. (Witness shaking head.)

Q. Tamika, I think I'm just about finished if you'd give me one second, okay?

A. Yes.

Q. I did want to ask this. The son was still sleeping on the sofa when you went outside of the house?

A. I think I grabbed him before I went out.

Q. But was he sleeping or awake?

A. He was asleep.

Q. He was asleep?

A. Yes.

Q. And Ms. Scott, she came back and she said it was Do Wop, and then she left the door or she left the --

A. She left the door.

Q. She left the door.

A. And I heard a firecracker sound, but it was June. I never thought it was a gunshot. I thought

it was a firecracker. That's what I thought.

Q. Now, as far as you recall, nobody had -- you didn't hear anybody breaking into the front part of the house, did you?

A. Uh-uh.

Q. Now, when KP was calling you on the phone, how many times did he call you?

A. About five, six times. He called a lot.

Q. Did you know where Ronald was at that time?

A. He was at the precinct. That's what I assumed.

Q. So you assumed. You didn't know where he was?

A. I left him at the house.

Q. You left him at the house. Did you tell KP that Ronald was at the POC?

A. Uh-huh.

Q. And that's what you told him you assumed?

A. Yeah.

Q. And what time was that?

A. I can't recall, but it was -- I'll say about 11:00, 11:30.

Q. Now, when you did go see the police,

Contradictory
ee Parker
.19,20-23

they called your grandmother, and then your grandmother told you and then you went down there?

A. I called.

Q. You called and then you went down?

A. No. They sent somebody to come get me.

MR. ANDERSON: That's all I have, Your Honor.

THE COURT: Anything further?

MR. BATLINER: Just briefly, Judge.

REDIRECT EXAMINATION

BY MR. BATLINER:

Q. At the precinct, you weren't able to identify the defendant from a photo lineup; is that right?

A. Yeah.

Q. You were not able to identify Gregory Williams from the pictures that they showed you that day?

A. Yes.

Q. When you came into court the first time at the preliminary hearing, you were able to identify the defendant at the preliminary hearing?

A. Yes.

Q. And then when you saw Gregory Williams

in person you were able to identify him?

A. I said, that's the one who threw the clothes basket on me.

Q. Why couldn't you identify him from the pictures?

A. I don't know if it was the picture. I don't know what it was.

Q. Were you not sure?

A. Was I sure?

Q. Were you not sure on Gregory Williams when you looked at the picture?

A. That might -- well, yeah.

Q. And then you had seen him in person?

A. When I saw him, that's when I was like, that's the one that threw the clothes basket at me.

Q. He's asked you a lot of questions about the identification. Are you identifying the defendant today because he was the man that was in the room --

A. Yes.

Q. -- on June the 9th?

A. Yes.

Q. That was involved in beating Ronald Scott?

A. Yeah.

Q. And in taking the property out of the

room?

A. Yes.

Q. That's how you knew him?

A. He didn't take it. I didn't see him take it, but he was in the room.

Q. He was in the room?

A. Yeah.

Q. And that's what you're identifying from is from being in the room with you when, I think, you said your whole focus was on him?

A. Yes.

Q. When you ran out, was it dark outside?

A. Yes.

MR. BATLINER: I don't have anything further.

THE COURT: Thank you, ma'am.

Next witness.

MR. BATLINER: Detective Huffman, Your Honor.

THE COURT: You were sworn yesterday.

BRAD HUFFMAN,

a Witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BATLINER:

Q. Would you state your name for the ladies and gentlemen of the jury.

A. Investigator Brad Huffman.

Q. And Investigator Huffman, I'm going to direct your attention back to June the 9th of 2001. What division in the police department were you working in at that time?

A. I was with the homicide squad.

Q. Was it your assignment to investigate a situation that occurred at 3331 Lens Avenue in the city of Norfolk on that date?

A. Yes. I was working that night when the call went out.

Q. Tell the ladies and gentlemen of the jury when you got the call, what you did.

A. Well, approximately 9:45 p.m., a call went out over the police radio about a possible shooting

victim at 3331 Lens Avenue in the city of Norfolk. Myself and our corporal responded to the scene, got there approximately 10:05 p.m.

Upon first getting there, there was other investigators already on scene. There was also numerous precinct units on scene. I observed an investigator speaking with what ended up being Ronald Scott. I took a cursory look around the scene. It appeared to be a single-family dwelling upon first looking at it from the outside, but once I got up to the front porch, I did notice some red stain on the front porch which appeared to be blood. And looking in the front door, it wasn't well lit but there were lights on. You could see inside the front door. The entrance door was open but the storm door was closed. It was unlocked.

Inside you could see a stairway along the left rail which led to an upstairs, probably a separate dwelling. And right in front of that stairway, there was an overturned chair. At that point I waited until forensics got there to enter the scene so that it wouldn't be disturbed more than one time.

Q. What forensics investigator came out that night?

A. Investigator E.L. Martin.

Q. And then when he arrived, what did you do?

A. We entered the scene, looked at it obviously much more closely. You could see next to the chair that was overturned by the steps there was a large pool of blood or red stain that appeared to be blood. We looked around the entire scene throughout the whole downstairs apartment, went all the way to the back bedroom where there obviously had been some other type of altercation.

I advised Investigator Martin that I wanted pictures, overall pictures and close-up pictures of certain things, and then swabs of certain parts of evidence. I left him to do that and I proceeded back to the homicide office to interview Mr. Scott.

Q. So then you turned the scene over to Investigator Martin?

A. Yes. There were still several precinct units, and Corporal Davies was there who organized a canvass of the entire neighborhood. So they would talk to all the neighbors, as well as looking for any other physical evidence that was there.

Q. Sure. Then you got Ronald Scott down to the Police Operations Center?

A. That's correct.

Q. And at that time, what did he tell you had happened?

A. Well, Mr. Scott was very emotional obviously. I also need to state that the shooting victim had already been transported upon my arrival. The paramedics had already taken her to Norfolk General.

Mr. Scott was very emotional. He stated that he had been in his back bedroom with a young female. They heard somewhat of -- some sort of a ruckus out towards the front of the house. And as he was going toward the door, the door opened up and he thought there was possibly four black males there that came in.

Basically, some of them were hitting him, striking him with a pistol. He recognized some of them by nickname and gave a description of a fourth. He gave three nicknames of people that he thought were there and a fourth person by description.

Q. Who were the people that he named by nickname?

A. He gave a nickname of Q, a nickname of Tyree or Tyreke, a nickname of KP, and then like I said, he described a fourth individual.

Q. How did he describe the fourth individual?

A. The fourth individual was described as a

very light or reddish-skinned black male that was approximately the same height as the other two individuals that he knew, Q or Tyreke. A little bit fuller build and with either a full beard or just unshaven. He wasn't positive. But he was certain he could recognize that individual.

Q. And then did you figure out who the other three nicknames, who they belonged to?

A. Yeah. By utilizing our computer, I was able to determine all three names of Q, Tyreke, and KP.

Q. Okay. Who was KP?

A. KP was Kenneth Lee Parker.

Q. Who was Q?

A. Q ended up being Christopher Williams.

Q. And then who was Tyree or Tyreke?

A. That was Christopher's brother, Gregory Williams.

Q. And now, subsequently, you had Ronald come back and talk to him about the people that he had originally identified; is that correct?

A. Yes. He came back on the 11th later on the next day. And again, I told him that it was crucial that he be honest, that we needed to talk to him further about this and for him to tell us only what he knew for a fact, not what he assumed or thought had happened, only

what he actually saw or heard. It was at that point that he somewhat changed his scenario of what had taken place and who he had actually seen.

Q. Who had he actually seen when you went over with him how important it was just to say exactly what you saw and not anything else?

A. He stated that he definitely saw Tyreke, which was Gregory Williams, because he was the person that was up front with them and had actually hit him. He assumed that it was Christopher Williams, as well as Kenny Parker, because the three of those people associated and did a lot of things together.

He actually ended up stating that the other two individuals, there was only a total of three not four, and the other two individuals he had given the description of the light-skinned, reddish-skinned male that he didn't know. And a third younger, dark-skinned male that he didn't know.

Perjury
see Scott p. 93, 0-13
see K. Parker 9, 10; 11-13

Q. So when he went back to talk about exactly what he did know, it was Tyreke, the light-skinned fellow he described the first time, and then somebody else who was in the back?

A. That's correct.

Q. Did you subsequently develop some information to make the defendant here a suspect?

A. Yes, sir.

Q. Did you obtain a photograph of him after that?

A. Yes, I did.

Q. What day did you obtain the photograph?

SEE Parker P. 50, 12-25

A. I did not obtain the photograph until the 14th. We identified -- we had a nickname by the 12th, but I could not get a photograph until the 14th.

Q. Did you take that -- did you then take that photograph and put it into a photo lineup?

A. Yes, sir. I put together a photo lineup myself.

THE COURT: Any objection?

MR. ANDERSON: No objection.

THE COURT: The photo lineup is admitted as Commonwealth's Exhibit 36 without objection.

(Whereupon, Commonwealth's Exhibit No. 36 was marked for identification and received into evidence.)

BY MR. BATLINER:

Q. Detective, I'm going to show you -- what is that?

A. That's the photo lineup that I prepared

including a photo of Mr. Lynch.

Q. What did you do with that photo lineup after you prepared it?

A. Later on, on the 14th, at approximately 4:40 p.m., Ronald Scott was back at the Police Operations Center. At that point, I advised him that I had a photo lineup including a photo that may or may not have a photo of anybody involved, that he needed to look and concentrate on the facial features of the individuals because a person's appearance can change, their hair can change, their shaving can change. And I showed him the photo lineup including the photo of Lester Lynch.

Q. Did he pick somebody out?

A. Yes. He immediately picked out Photo No. 4.

Q. Where is that on there?

A. This individual here.

Q. And who is that?

A. That is Lester Bernard Lynch, the defendant.

Q. Did you also have an opportunity to show the lineup to Tamika Reid?

A. Two days later on the 16th, I was called at home that Ms. Reid had called our office and wanted to come speak to me. I came in from home. I began speaking

with Ms. Reid, and at that time I did show her a couple of photo lineups.

Q. You showed her this one and then did you show her one that had Gregory Williams in it?

A. That's correct.

Q. Since we've got this one on the board, what happened when you showed her this one?

A. She, also, immediately looked at Photo No. 4 and stated that that was definitely the individual that she had seen that night striking Ronald Scott in the bedroom.

Q. And again, so that there is nothing in the record that's not clear, Photo No. 4 is Lester Lynch; is that right?

A. That's correct.

Q. What happened when you showed her the photo lineup that you had with Gregory Williams in it?

A. She narrowed down to two possibilities, but she said she was not positive. She could not clearly identify which one was Gregory Williams or which one was the defendant.

Q. From the photographs?

A. From the six photos that were in that lineup. That's correct.

Q. Now, you got the photograph on the 14th,

I believe you said?

A. That's correct.

Q. So any wanted posters or any television stuff that was done after that would have had to have happened after the 14th at the earliest?

A. That's correct.

Q. At the scene there was a -- what was at least marked as a suspected boot print. There was never anything recovered to compare that to; is that correct?

A. That's correct.

Q. I mean, you weren't able to seize any boots from any suspected defendants or from any of the paramedics who would have been at the scene?

A. There was never anything to compare that print to.

MR. BATLINER: Just for the record, Judge, that would be Commonwealth's Exhibit 27.

BY MR. BATLINER:

Q. When Tamika picked out the defendant in that photo lineup, did you tell her that she had picked out the right person?

A. I stated to her that she had picked out the person that we knew that she would, because we had already identified him by other means and, in fact, we

EE Parker 4/10-18
E K. Palmer

had warrants on him.

MR. BATLINER: Detective, if you would answer any questions of defense counsel.

THE COURT: Mr. Anderson.

CROSS-EXAMINATION

BY MR. ANDERSON:

Q. Detective, do you recall whether Ronald Scott ever told you that his brother identified the automobile that was in front of his car -- earlier in front of his house on the earlier part of June the 9th?

A. I don't recall that, no.

Q. Do you ever remember interviewing his brother in reference to any people who were at the house earlier that day?

A. I believe I spoke to him at some point, but I don't recall.

Q. If his brother would have told you something about some car that was in front of the house or described a car in front of the house, that's something you would have put in your notes?

A. Yes, sir.

Q. Now, if Ronald Scott had told you about his brother being able to identify the car and the

light-skinned person in the car, is that something you would have put in your notes?

A. That's something I would, yes.

Q. Do you recall speaking to Kenny Parker?

A. Yes, sir.

Perjury See Parker P. 46, 16-25 P. 47, 1-19

Q. Did you ever show Kenny Parker a photo lineup with Mr. Lynch in it?

A. No, sir.

Q. So Mr. Parker never picked this defendant out of a photo lineup?

A. No, sir.

Contradictory See Parker P. 30, 7-13

Q. In your conversation with Mr. Parker, do you recall him telling you that he was present inside of a car with Mr. Tyreke and another black male, and they discussed that they were getting ready to go do a sting?

A. Not prior to this incident occurring, no.

Q. So I know he might have talked about a sting inside the house, but prior to the time that the sting had actually occurred or the killing occurred, do you recall him saying there was a conversation between him, the light-skinned person, Gregory Williams -- not him. He said it was the light-skinned person and Gregory Williams having the conversation inside of the car about the sting. Do you recall that?

Contradictory See Parker P. 30, 7-13

A. No, sir.

Q. Is that something you would have put in your notes?

A. Yes, sir.

Q. Now, Christopher Williams was, in fact, charged with this offense, wasn't he?

A. Christopher Williams --

Q. He was charged with an offense as it related to this event?

A. Yes.

Q. And those charges were subsequently dismissed or dropped?

A. That's correct.

Q. Now, at what point did KP become a suspect to you?

A. When we spoke with Ronald Scott that first night and he stated KP -- he thought he saw KP lingering in the background. He was a suspect at that point.

Q. He also said that he thought because of some mannerisms and a voice he thought it was KP there?

A. That's what he said that night, yes, sir.

Q. And you first came in contact with KP on June the 10th, the next day?

Contradictory EE Parker p. 48, 14-18

A. Yes, it was the next day.

Q. It was a traffic stop?

A. Yes.

Q. And at that point, was he made aware that he was a suspect?

A. He was told that he had been named as a possible suspect. That's correct.

Q. How long did you interview -- did you interview him or did someone else?

A. Yes, I was there for the interview.

Q. And that interview lasted for how long?

A. Give me a second to find that in my notes. It was lengthy. It was approximately at 7:40 p.m. when he was actually brought to the Police Operations Center.

Q. That's on the 10th?

A. On the 10th, yes, sir. I know it was after midnight. I'll have to find the exact time, but it was several hours. It was 2:10 in the morning when he was actually escorted out the front door on the 11th.

Q. Now, did you speak to -- you spoke to Christopher Williams; is that correct?

A. Yes, sir.

Q. Going back to the house, the 3331 Lens Avenue, when you got there, was there any evidence that

you recall of being forced entry to the front door?

A. It didn't appear that there was any fresh damage of forced entry to the front door that I could see. The storm door was closed. It was unlocked but closed and secured. The front entrance door was open, but I couldn't -- I didn't see any discernible fresh damage.

Q. And after Ms. Reid picked out the photo, picked out the picture, you in fact did tell her you picked out the picture that you expected that she would have picked out; is that correct?

A. Yeah. I told her that we had already developed a lead that identified Mr. Lynch and already had warrants for Mr. Lynch.

That's all I have, Your Honor.

THE COURT: May he be excused?

MR. BATLINER: He may, Judge.

THE COURT: Thank you. Have a nice day.

MR. BATLINER: The Commonwealth rests.

THE COURT: The Commonwealth rests.

Are you ready to proceed?

MR. ANDERSON: I have a motion.

THE COURT: Ladies and gentlemen, please retire to the jury room.

(The jury entered the jury room at 11:19 a.m.)

MR. ANDERSON: I have a motion to strike, specifically, as it relates to the burglary charge. The evidence is that there was no breaking and entry. I've asked several witnesses. They've said the front door was clearly open. It appears that, based on the evidence, that Ms. Scott opened the front door to let the people in, and she then went to the back to the bedroom. And it doesn't appear this was forced entry.

THE COURT: Isn't it just as logical that they may have walked in that door without being invited at all? I think it's a question of fact that the jury can make that determination.

MR. ANDERSON: For the record, Your Honor, just note my exception.

THE COURT: Motion to strike is denied. Anything else?

MR. ANDERSON: No, Your Honor.

THE COURT: Are you ready to proceed?

MR. ANDERSON: Yes, Your Honor.

THE COURT: All right.

(The jury entered the courtroom at 11:20 a.m.)

THE COURT: Who is your next witness?

MR. ANDERSON: Kim Palmer.

THE COURT: Was she sworn?

MR. ANDERSON: None of my witnesses were sworn.

THE COURT: Just raise your right hand, please.

KIMBERY PALMER,

a Witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ANDERSON:

Q. State your name for the Court.

A. Kimbery Palmer.

Q. And Ms. Palmer, do you know the defendant here, Lester Lynch?

A. Yes.

Q. And is he related to you?

A. Yes.

Q. And how is he related to you?

A. He's my cousin.

Q. Taking your attention back to June 9th of 2001, did you have a boyfriend?

A. Yes.

Q. What was your boyfriend's name?

A. Gregory Williams.

Q. Did he have a nickname?

A. Yes.

Q. What was it?

A. Tyreke.

Q. On June 9th, did you see him?

A. Yes.

Q. Did you see Gregory Williams, that is?

A. Yes, I have.

Q. Where was he on that day? What time did you first see him?

A. I seen him all day. He was at my house.

Q. He spent the day at your house?

A. Right.

Q. Did there come a point in time that you saw Mr. Lynch?

A. Yes.

Q. What time did you see him?

A. I seen him around 5:00. He came around to the house around 5:00.

Q. Did he ever leave your house?

A. Yes.

Q. Did he leave with someone?

A. Yes. He left with Mr. Williams.

Q. Do you know where they went?

A. Well, he supposed to have taken him to his brother's house to change clothes.

Q. Do you know his brother?

A. Yes.

Q. Have you ever been to his brother's house?

A. Yes.

Q. How long ago had it been before you went to his brother's house?

A. Prior to the date of June 9th?

Q. Yes.

A. Probably a month or two.

Q. At some point they left. Do you know what time they left your house?

A. I don't know what time they had left the house. I couldn't -- I don't remember, but they had -- it was like he was over there -- he came over. He stayed for a little while, but then they had left. So I don't

know exactly what time they had left.

Q. Did there come a point in time that you talked to your cousin again, your cousin, Lester, again?

A. Yes.

Q. Tell the jury what were the circumstances that caused you to have this conversation.

A. What was the --

Q. Tell the Court what were the circumstances.

A. Well, I was -- I was talking with my other cousin. I was looking for Mr. Williams at the time, and my cousin had walked in the house at that time. So that's how I got on the phone with him.

Q. You were talking to another cousin?

A. Right.

Q. What's that cousin's name?

A. LaTanya.

Q. And you're on the telephone?

A. Right, with her.

Q. Where were you at that time?

A. I was home.

Q. You were still at your house?

A. Right.

Q. Virginia Beach?

A. Right, in Virginia Beach.

Q. Go ahead.

A. Do you want me to continue?

Q. Yes.

A. Okay. I was talking with LaTanya on the phone. She had called to see was I coming over where she was, and I was asking her was -- and when I was talking with her -- 'cause I was telling her I was looking for Mr. Williams. And she said, well, Nu Nu, which is my cousin, Lester, is right here. He just walked through the door. So I asked, just like, give him the phone.

She handed him the phone. Me and him was talking, and I asked him where was Mr. Williams.

Q. Do you recall about what time that was that the conversation took place?

A. That he was around probably between 9:00 -- 8:30, 9:00.

Q. Did you call your cousin or did your cousin call you?

A. She had called me.

Q. Did she tell you she was at a particular place?

A. Yeah. She was over to Morris's house out Virginia Beach where we all hang out at.

Q. And were you planning to go out there that evening?

A. Yeah. We were all planning on going over there.

Q. Did you ever go there?

A. No, I didn't go.

MR. ANDERSON: Answer any questions the Commonwealth might have.

CROSS-EXAMINATION

BY MR. BATLINER:

Q. Ms. Palmer, he is your cousin?

A. Yes.

Q. And you call him Nu Nu?

A. Yes, we call him Nu Nu.

Q. You had been over to Gregory Williams' brother's house?

A. Yes.

Q. Did you know his nickname?

A. Quil.

Q. Quail?

A. Quil.

Q. Some of them call him Q?

A. Yeah, Q, whatever.

Q. You had been over there before?

A. Uh-huh.

Q. Okay. And your boyfriend was Gregory Williams?

A. Right.

Q. Who has also been charged?

A. Yes.

Q. For the murder of Belinda Scott; is that right?

A. Yes.

Q. And the last you saw the two of them that was about five o'clock?

A. Right.

Q. And they were headed over to Q's house?

A. Right.

MR. BATLINER: I have nothing further, Judge.

THE COURT: Thank you, ma'am. You may stay or leave as you desire.

MR. ANDERSON: Velma Figueroa.

THE COURT: Who?

MR. ANDERSON: Velma Figueroa, also called Shawn.

THE COURT: Would you raise your right hand, please, ma'am.

VELMA FIGUEROA,

a Witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ANDERSON:

Q. State your name for the Court.

A. Velma TaShawn Figueroa.

Q. Where do you live?

A. 739 Apartment F, Dunn Eden Road.

Q. Back on June the 9th, 2001, where did you live?

A. 1112 Rembrandt Court in Virginia Beach.

Q. Do you know the defendant sitting here?

A. Yes, sir.

Q. How do you know him?

A. He's my best friend.

Q. Are you boyfriend and girlfriend?

A. No, best friends.

Q. Does he have a nickname?

A. Nu Nu.

Q. How long have you known him?

A. A couple of years.

Q. Back in 2001, did he come to your house? Did he frequent your house on a regular basis?

A. Yes, sir.

Q. Going back to June the 9th of 2001, do you recall whether he came to your house or not?

A. Yes.

Q. Can you tell -- do you know what time he came to your house?

A. It was about around 8:00.

Q. Now, let me just ask you, that's almost two years ago. Why is it you can recall that day?

A. Because the Ali and Frazier fight.

Q. What about the Ali and Frazier fight?

A. I have a mutual friend that me and him has that taped it the night before and we watched it that night.

Q. The young lady that just left, do you know her, or do you know Kim?

A. Yes.

Q. So you watched a tape of a fight that you had taped the night before?

A. That a friend taped the night before. We went over there to watch it, and he had a big party.

Q. When he came to your house on the 9th -- let's be candid with the jury -- did you-all get high

together?

A. Yes.

Q. Did you drink alcohol also?

A. Yeah.

Q. Beer?

A. Beer.

Q. And you had more than a couple of blunts; is that correct?

A. Yes.

Q. Tell the jury what a blunt is.

A. A blunt is a cigar and you put marijuana in it and roll it up and smoke it.

Q. He gets to your house at eight o'clock. What happened after that?

A. We sat down and chilled and watched TV.

Q. Did there come a point in time that he left your house?

A. Uh-huh.

Q. Do you recall what time it was?

A. Not really. It was around -- I can't recall really. It was around 9:00, I can't recall really.

Q. You can't recall the time when he left. Did he ever come back?

A. Uh-huh.

Q. How long was he gone when he left?

A. No more than like 10 or 15 minutes.

Q. You weren't looking at a watch, so it could have been longer or it could have been shorter; is that correct?

A. It wasn't that long because he left to go to Morris's house to carry a comb and then he went to the store to get a blunt and something else, some other things I had asked him to get from the store.

Q. Then he came back to your house?

A. Yes.

Q. And he stayed at your house until what time?

A. He left about around 11:00, a little bit before -- after 11:00.

Q. Did you leave with him?

A. No, sir.

Q. Did you ever go over to Morris's house that evening?

A. Yes. I left after I had -- I had to clean up my house to put my kids to bed before I could go anywhere.

Q. Now, back on June the 9th of '01, were you taking medication?

A. Yes.

Q. What was the medication for?

A. My lupus.

Q. And so you took the medication and you smoked marijuana and drank alcohol at the same time?

A. I'm not a beer drinker. I'm a smoker but I'm not a real big beer drinker. I may have one beer but that's it.

Q. There is no question in your mind that he was at your house on June the 9th after 8:00?

A. There is no question about it. He was there.

Q. Okay. Now, at some point he was arrested. You didn't tell the policemen; is that correct?

A. Excuse me?

Q. After he was arrested, did you ever go talk to the policemen?

A. No. When he got arrested, I was with him.

Q. Actually, he turned himself in; isn't that right?

A. Yeah. He turned himself in. I was with him.

Q. Did you ever tell his mother that you knew he was at your house?

A. Did I ever tell his mother?

Q. Yeah.

A. She knew, she -- 'cause they called me whenever they couldn't find him.

MR. ANDERSON: Answer any questions that the Commonwealth might have.

THE WITNESS: Yes, sir.

CROSS-EXAMINATION

BY MR. BATLINER:

Q. Is that his car?

A. I haven't seen it in a while but it looks like it.

Q. Looks like it?

A. Yeah.

Q. Now, you came over at eight o'clock?

A. No. He came over to my house.

Q. Came over to your house at eight o'clock?

A. Yes, sir.

Q. All right. And then stayed until after 11:00?

A. Around 11:00, a little -- yeah, little before 11:00.

Q. And then he left and then you went over to Morris's at that point?

A. No. I went over to Morris's house later. It was around like 12:00 when I went over there.

Q. That's when you watched the fight --

A. Uh-huh.

Q. -- was when you went over there, when you got there?

A. The fight, it was already being played on the TV.

Q. That's when you saw the fight?

A. Yeah.

Q. Was that when you went over at 12:00?

A. Yeah.

Q. Right? And he was there at 12:00?

A. Uh-huh.

Q. Okay. And then he left one time from your place?

A. Yes.

Q. And then he went, you said, to take a comb to somebody?

A. To Pooh.

Q. That's his cousin, right?

A. Yes.

Q. So he's going to another cousin's?

A. Yes.

Q. And then he also was running an errand. What was the errand again?

A. He went to the Getty Mart. It's like right -- also right up the street.

Q. What was he getting?

A. Some blunts and he got a beer and he got some other stuff I needed -- needed in the house for me.

Q. So when you say blunt, I mean, they don't sell marijuana blunts at the store?

A. No.

Q. What was he buying?

A. Cigars.

Q. Now, as you described it to the defense attorney, basically, you hollow out the cigar, right?

A. Uh-huh.

Q. And then you pack it full of marijuana?

A. Yes.

Q. And then you smoke that?

A. Yes.

Q. Right. You had had a couple of those?

A. Yes.

Q. With the defendant?

A. Uh-huh.

Q. How many did you have?

A. Sir, honestly, that night, we smoked a couple of them at my house and then smoked again at Morris's house.

Q. So total you probably had three or four?

A. Yeah.

Q. Could it have been more?

A. It wasn't that many. And when you smoke with a lot of people, it's not that you just sitting there and smoking it by yourself. You're passing it around the whole time.

Q. Well, at your house there's only two of you to pass it back and forth, right?

A. Yeah, just me and him.

Q. So the two of you smoked a couple of blunts?

A. Yeah, about two or three at my house.

Q. Okay. And then you -- the two or three at your house and then more at Morris's house later?

A. Yes.

Q. And then you also drank some beer?

A. I'm not that -- I may have had one and maybe left a whole bottle on the counter. I'm not a drinker.

Q. Do you remember before saying that you had one at your house and then one over at Morris's?

A. Yes, sir.

Q. So you had been drinking, right?

A. Not like that night where I was getting intoxicated.

Q. And then the medication that the defense attorney has asked you about, that's pain medication, right?

A. Also it's an antibiotic.

Q. Right. But you're taking a pain medication as well, right?

A. Uh-huh, for lupus.

Q. For your lupus?

A. Yeah, as needed.

Q. Did you take them that day?

A. Yes.

Q. As I recall, you do not remember what you were watching on TV that evening with the defendant; is that correct?

A. No. I don't remember.

Q. And like the defense attorney said, you didn't go to the police and tell the police that you had this information, right?

A. No.

Q. You never went to them?

A. The first time I saw them and met the

detectives was when me and Nu Nu's girlfriend -- well, sorry, Lester Lynch, me and his girlfriend had went to go take him to turn himself in, and that was the only time I had saw the detective, the first time I had met him.

Q. You didn't tell him you knew where he was that evening when you saw him that day, right?

A. He didn't ask me no questions.

Q. And you didn't volunteer this information?

A. No.

Q. And then over a year had passed, you didn't call the police and tell them this information either, did you?

A. (Witness shaking head.)

Q. Is that a "no"?

A. No.

Q. And this is your best friend?

A. Yes.

MR. BATLINER: I don't have anything further, Judge.

MR. ANDERSON: Real quick.

REDIRECT EXAMINATION

BY MR. ANDERSON:

Q. Now, you didn't go talk to a policeman, but prior to the preliminary hearing, you did, in fact, have a conference with me in my office, didn't you?

A. Yes.

Q. So you did tell someone?

A. Yes. When his mom told me everything that was going on.

Q. And I need to make sure I have this clear. You're not saying that he stayed at your house from eight o'clock to 11:00? He left at some point and then came back?

A. He was at my house the whole time but to go to the store. That's all he did was go to the store and carry the comb and came right back.

Q. The comb to somebody else's house?

A. Uh-huh.

THE COURT: Thank you, ma'am. You may stay or leave as you desire.

Next witness, please.

MR. ANDERSON: Gloria Lynch.

THE COURT: Raise your right hand, please.

GLORIA LYNCH,

a Witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ANDERSON:

Q. State your name for the Court.

A. Gloria Lynch.

Q. And you know the defendant?

A. Yes. He's my son.

Q. Now, do you and your son -- do you have a cell phone?

A. Yes, I do.

Q. Does your son also have a cell phone under that same number?

A. Yes, he does.

Q. At my request did you get a copy of that cell phone bill?

A. Yes, I did.

MR. ANDERSON: Any objection?

MR. BATLINER: No.

MR. ANDERSON: May I approach, Your Honor?

THE COURT: Yes.

BY MR. ANDERSON:

Q. Does this appear to look like the bill that I had you to request?

A. Yes, it is.

MR. ANDERSON: I'd like to have this marked as Defense 1 and move to introduce it as an exhibit.

THE COURT: It's what appears to be a telephone statement from nTelos to Gloria Lynch for number 757-724-6960. The first date is June the 9th and the last is June the 10th. I don't see the year but I assume it is 2001.

MR. ANDERSON: Yeah, it is.

THE COURT: The date of the bill is 7/5/01. This page cover is June 9th to June 10th. Defense Exhibit 1.

MR. ANDERSON: Thank you, Your Honor.

(Whereupon, Defendant's Exhibit No. 1 was marked for identification and received into evidence.)

BY MR. ANDERSON:

Q. Ms. Lynch, back in June of 2001, what was your phone number?

A. 724-6963.

Q. Do you know what Lester's phone number was?

A. 724-6960.

Q. Does that bill show the calls that Lester would have made that day?

A. Yes, it does.

Q. And do you recall whether you called him at all that day?

A. Yes, I did.

Q. What time was that?

A. 7:35 to 7:36, so I know it was going on eight o'clock. I didn't know exactly what time it was, but it was going on eight o'clock p.m.

Q. And that's his bill?

A. Yes, it is.

MR. ANDERSON: Answer any questions that the Commonwealth may have.

CROSS-EXAMINATION

BY MR. BATLINER:

Q. Ms. Lynch, you talked to your son that evening, right?

A. Yes, I did.

Q. You got off work about 3:15?

A. Right. Yes, I did.

Q. And then he started calling you earlier in the day?

A. Yes, he did.

Q. Like 4:00, 4:30?

A. Somewhere around that time.

Q. And he kept calling you because he wanted money, didn't he?

A. Yeah. He asked me for some, yes, sir.

Q. He was asking for money, right?

A. Uh-huh, yes, sir.

Q. And you're his mother?

A. Yes, I am.

MR. BATLINER: I don't have any further questions.

THE COURT: Anything further?

MR. ANDERSON: Nothing further.

THE COURT: Thank you, ma'am. You may

stay in the courtroom or leave as you want.

Next witness, please.

MR. ANDERSON: LaTanya Palmer.

Your Honor, I'd like to have this published.

THE COURT: How many more witnesses to go?

MR. ANDERSON: She's it, Your Honor.

THE COURT: Raise your right hand, please.

LATANYA PALMER,

a Witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ANDERSON:

Q. State your name for the Court.

A. LaTanya Palmer.

Q. Ms. Palmer, where do you live?

A. In Norfolk.

Q. Back in June of 2001, where did you live?

A. In Norfolk.

Q. Do you know the defendant?

A. Yes.

Q. How do you know him?

A. He's my cousin.

Q. Does he have a nickname?

A. Nu Nu.

Q. Back on June 9th, 2001, did you see Mr. Lynch?

A. Yes.

Q. Tell the jury the first time you saw him.

A. Over at Morris's house it was.

Q. Who is Morris?

A. My friend. He was everybody's friend.

Q. Where did Morris live?

A. He lives in Virginia Beach.

Q. Do you know what time it was that you saw him?

A. Well, I know it was after 8:00 because it was dark.

Q. You don't know the exact time?

A. No.

Q. How did you, at that point, come in contact with him?

A. Well, he -- he knocked on the door and I answered it. I was talking with my cousin, Kimbery Palmer, who was on the phone.

Q. That young lady who just left here?

A. Yes. And she was looking for her friend.

Q. What's her friend's name?

A. Tyreke, the other guy, you know.

Q. His name is Christopher?

A. Christopher, yeah.

Q. Go ahead.

A. Well, anyway, we were playing cards and I was speaking with her. I don't know if I called her or she called me, but I know I was talking to her, and she was asking me about Nu Nu. And as I was talking to her, I was going to the door because the doorbell rang. And I answered the door and I told her, I said, Nu Nu is right here.

And then she asked me was Tyreke with him, and I said no. Tyreke is not with him. So she wanted to speak with him, so I just gave him the phone so she could speak with him and I went back to playing cards.

Q. Did Lester stay at the house for a while or did he leave?

A. Yeah. He was there for, I guess, a little bit. I don't -- for quite some time. I know he was in the kitchen because we were playing cards with the -- the way the living room is set, the living room and the dining room, and the dining room and the kitchen are combined together. He was in the kitchen talking to our other cousin, Pooh, when I gave him the phone. He had got off the phone with Kim. He handed me the phone back but he was still in the, you know, in the kitchen talking to Pooh.

And so he asked me, after he finished talking -- while we were on the phone -- I got off the phone with Kim and we were still playing cards and he asked me where was Morris and I told him Morris is upstairs and so he went upstairs.

Q. Did you see him when he left?

A. No. I just saw when he went upstairs.

Q. You don't know what time he left the house?

A. No.

Q. How is it that you recall the day?

A. Well, the reason why I recall this day because my cousin, which she -- her ex-boyfriend is the guy that he was looking for. She was telling me that he was on the news, and he's supposed to had did something

Saturday, and she said something about they also had Nu Nu's face up there. And I said that can't -- you know, that can't be because he was right at the house. I said there is no way. It was just a few days later, and the weekend -- the following weekend hadn't started. So I don't know if it was Monday or Tuesday, but I remember she was upset about that. And I told her I don't know why they have him up there because he wasn't there. He was with us at the party. Everybody was there, the family and friends, his friends. Everybody was there.

Q. So it was because your cousin's boyfriend was arrested?

A. And she mentioned that he was up there as well. And they said it happened Saturday, and I said there is no way possible because he was right there with us.

Q. Now, does Morris still live in Virginia Beach?

A. No. He lives in Atlanta now.

MR. ANDERSON: Answer any questions that the Commonwealth might have.

CROSS-EXAMINATION

BY MR. BATLINER:

Q. You're the defendant's cousin?

A. Yes.

Q. And he was talking to another cousin there?

A. Yeah, Pooh.

Q. In the kitchen?

A. Huh?

Q. And the person that was on the phone with him that was also a cousin, right?

A. Kim, the one that just walked out of here.

Q. Right. That was his cousin as well, right?

A. (Witness nodding head.)

Q. You were in there playing cards?

A. Yeah.

Q. That's what you do when you go over to Morris's, right, you play cards?

A. Yeah. He had the arcade games, everything, pool table, you play pool or anything, but we were playing cards.

Q. You have said before that you played

cards?

A. Yeah. We were playing cards.

Q. You don't usually watch the fight or watch the games and stuff that he tapes or anything of that stuff; is that right?

A. No. The guys watch it. I just know he had a tape in there.

Q. And you don't know whether it was your cell phone that was calling or whether it was Kim's cell phone that was calling, right? Who was calling who, you don't remember?

A. No. She called from the house. Either she called or I called. All I know, I remember speaking with her and she was looking for Tyreke, which is the other guy.

Q. But it was on your cell phone, right?

A. Yeah. On the cell phone. I told her, she --

Q. What's your cell phone number?

A. 237-0269. I don't really like giving it out in public.

Q. And the first time that you saw the defendant it was already dark?

A. Oh, yeah. I remember. I was indoors. It was total darkness outside.

Q. Total darkness?

A. (Witness nodding head.) And you know, in the summertime, it gets dark late.

Q. Right. Gets dark late, but it was totally dark?

A. Uh-huh.

MR. BATLINER: I don't have anything further.

MR. ANDERSON: That's all I have, Your Honor.

THE COURT: Thank you, ma'am. You can stay or leave as you desire.

THE WITNESS: Okay.

MR. ANDERSON: Defense rests, Your Honor.

THE COURT: Any rebuttal evidence?

MR. BATLINER: No, Judge.

THE COURT: Ladies and gentlemen, it's five to 12:00. We'll recess now for lunch, and I ask that you be back at 1:15. At that point, we'll begin our closing arguments and then the case will be ready to give to you.

Please do not discuss the case with anyone during the lunch recess or remain in the hearing of anyone who may be discussing the case. Wear your jury

badges at all times and I'll see you at 1:15.

(The jury was excused for lunch at 11:51 p.m.)

THE COURT: Are there any instructions that you want to add or anything we have to talk about?

MR. ANDERSON: No. I don't have any additions to that.

THE COURT: Here are the three that I think we need to pull out.

You have no more to add or take out, Mr. Batliner?

MR. BATLINER: I don't believe so, Judge.

THE COURT: Show those to him to make sure he agrees.

MR. BATLINER: Absolutely, Judge. They all need to be removed.

THE COURT: Okay. Thank you. I'll see you at 1:30.

MR. ANDERSON: Your Honor --

THE COURT: You renew your motion to strike on the same grounds?

MR. ANDERSON: Yes, sir. And the

additional grounds. We now have information from someone else that the defendant was at someplace else at that time. I renew my motion to strike.

THE COURT: Still a matter for the jury, and the motion is denied.

MR. ANDERSON: Thank you.

(Lunch recess.)

THE COURT: Bring the jury in.

(The jury entered the courtroom at 1:11 p.m.)

THE COURT: Ladies and gentlemen, you've heard all of the evidence in the case. And at this point I'm going to read to you the instructions of law which govern the case. These instructions, as I said, are written, and you'll be able to take them with you to the jury room when you retire to deliberate. You'll also be able to take all the exhibits that have been introduced.

After I read the instructions, the attorneys will give their closing arguments. Then after one final instruction from me, you'll be asked to retire and deliberate.

(Jury instructions read to the jury.)

THE COURT: Batliner.

MR. BATLINER: Thank you, Judge.

May I have the instructions.

Ladies and gentlemen, the good news is you get to take them back there, so you don't have to memorize everything.

What I want to do is spend a little time with you and review the evidence, and then I want to take a little bit of time and go through some of the instructions with you as well. A number of those instructions are what we call finding instructions, and I want to go through those with you.

First, I want to talk a little bit about the case. What we know now is on June 9th, earlier in the day, the defendant, Gregory Williams, and a young boy, we don't know -- nobody knew who he was because he hadn't been around before -- had been over at Christopher Williams' house at 211 West 27th Street, parked right here in this spot in the defendant's car, and what happens? One of the things that happens is the defendant gets out of the car and goes up on the porch and greets Christopher Williams, the brother, like they're long-lost friends.

One of the interesting things about this case is when you listen to the witnesses, they did not know who he was. So what would have been the connection to get Gregory Williams who lives here on 27th Street and this guy that nobody in the neighborhood had seen before together?

Well, you know that connection. Gregory Williams was dating his cousin. They put him there. They back up what Kenny Parker says. They're there, they greet. Then they want to get back in the car. At this time Kenny Parker sees Gregory Williams coming back across the street. And when he's coming across the street, he's putting something under in his pants, under his shirt. And Kenny wants to get a ride because he wants to go back and win some of the money that he lost gambling earlier in the day.

But when he gets in the car with these three fellas and they find out that he wants a ride over the Campostella Bridge, that's just too far because they got something they got to do. Something they've got to take care of. I think he called it a sting.

So they drive around the block once they realize they're not going to take him, and they drop him back off and then they leave. And then what happens? They go here to 3331 Lens Avenue. They come through that

entryway, walk across the little porch area by the stairs, and then what do we know? They knock or do something and they give a fake name, Do Wop is here.

Belinda Scott, Ronald Scott's mother, goes to the back and lets them know that Do Wop is here. And in the room you know that there is some confusion. They don't know no Do Wop. Tamika is shaking Ronald trying to wake him up, and she hears a firecracker noise.

She didn't know then, but we know now, what that firecracker noise was. It's a .25-caliber bullet. It's a contact gunshot wound right below the left eye. Contact, meaning the end of the gun is on the skin. How do we know that? The medical examiner has told you because there is soot, not stippling, that would have expanded when it goes. But the soot right from where the bullet comes out, that there is tearing because of the gases that come when it's right there on contact.

That's what we know that firecracker noise is, and that firecracker noise is out in this hall. The same hall just a different view. That's from the entryway and this is from her house. You can see the blood stain here. You can see the medical stuff from where the paramedic had been working laying on the ground. There's the close-up and you see the outside of her door. She is on the other side. She is out in that

foyer.

So when she wouldn't let them in, they killed her. Somebody put a gun under her eye and killed her, and then they step over her as she's laying there with a gunshot wound in her head. Walked through her very neat living room, through her very neat kitchen to the back to the bedroom and into the room. So where did we come? We've come up these steps, through this door. There is the blood stain that we've talked about, right there, number 6. Ms. Scott is laying right here outside of her door.

So then they come through that living room I just showed you, through the kitchen, down this hall, through this door, and bang, open the door. Whether it's kicked in, forced in, whatever, it's opened very forcefully. Ronald told you he knows he got hit in his head. He just doesn't know whether it was the door that caused the bump or something else. There's the bump.

Into the room they come, Ronald on his knees. Give it up, give it up. Struck in the head with the gun, struck with fists. And then there is the wound to the top of Ronald's head. They take the heroin that's on the dresser or on the table.

In this room, I can't tell you it's

quite as neat, but you can look at these pictures and I think you can see there is stuff on that little table. There's stuff all over the dresser.

But you know what, just like they said, you see that one table that's absolutely crystal clean, the only reason that table is crystal clean is because somebody yanked that tablecloth and everything on it onto the floor, the tablecloth he told you about, which is right here. Telling Tamika to get back and throws the clothes basket at her. Terror and confusion. Terror and confusion. That's the weapon that they wielded in addition to the guns.

They take the money off of the dresser and the heroin, and they take money out of his pocket. And what gets left on the outside of his pocket? Unfortunately, this one doesn't do as good a job. I know you've all seen it, the blood stain right there, and the DNA matched Belinda Scott. The blood stain right there, the DNA matches Belinda Scott's. Could it have gotten on him when he went out and saw his mother? Sure. Is it likely that he got it in exactly those spots, not all over the rest of the shorts? Use your common sense. The answer is no. The reason it is by his pockets is because somebody went in his pocket, somebody who had blood on them.

After they get what they came for, they leave. And what happens back at the house? Ronald and Tamika are very frightened and scared and come very slowly out of the back of the house.

Tamika tells you she is so scared, she doesn't even come really out at first. She hides between the refrigerator, which is right here, and one of the other appliances. She's that afraid. She said Ronald is crawling out. He tells you eventually he starts stepping out, and he comes out here and then he sees his mama and he tells Tamika to call for help.

Now, how scared is Tamika? She has a cell phone in her hand and she runs across the street to tell a neighbor to call. She is very scared from what she has just seen, which is a beating and had guns pointed at her face. Tamika does go across the street. Tells them to call. He calls. Paramedics come. By the time the paramedics got there, Tamika has left.

Like I told you at the outset of this case, if somebody's mama hadn't died, these witnesses don't want to be in a courtroom. They don't want to be involved. They don't want to be involved in the court system. She asked the man across the street, how do I get out of here? He told you -- as a matter of fact, he told you -- pointed -- which way was the way out of here.

So she leaves.

Paramedics get there. They get the call at 9:45, which I will also submit to you is about the one good firm time notation that we have in this whole case. The people in this case didn't wear watches, didn't look at a watch. They can't tell you what time anything really happened. The paramedic can tell you what time something happened because that's what he does. That's how they do their business. What time did the call come in? What time did we get there? What time did we respond? They responded at 9:48 and they found Ms. Scott laying here and tried to save her to no avail.

What's going on when that's going on? They got back in this car and they drove back to here. When I say they, I'm talking about the defendant, Gregory Williams, and the young boy. They get back and park in the same, pretty much the same location and KP is still there. KP has been just hanging out. Told you that's what they did over there, they just hung out.

And what happens when they get out of the car? Gregory has got something wrapped up in a shirt. You use your common sense. He was pushing something down his pants when he left. And when he's coming back, he's got something wrapped up in a shirt. We know there's been a gunshot fired. Common sense is

going to tell you he shoved that gun down his pants when he started, and what he's covering up when he's walking back in, it's the same gun.

And he's holding it off to the side wrapped in a shirt and he has flecks of blood on his shirt. So he goes in. The defendant stays here with the young boy, the young boy who's got his arms crossed, head down.

KP follows Gregory inside. He was friends with Gregory. He wants to find out what went on. He's nosey. Told you he was nosey. Gregory goes to the bathroom and comes out and starts talking to his brother. He overhears about what happened and Kenny starts getting himself involved in the conversation. Young boy had an itchy trigger finger. He just shot a lady. Had a sting at Little Ronald's. And then the defendant overhears what is going on, says, "Why are you telling what we just done?" Gregory says, "No, no, it's okay. KP is cool. He's cool." Again, showing somebody who is not in the normal circle. And how did he get there? because he has a relationship.

KP hears that information. And KP is not a boy scout. He's not going to go call the police, but he does get out of the house and he tries to call over to Ronald. Who does he get when he calls Ronald?

He gets Tamika who has got the phone because she's still got the phone from where she was scared and she ran off with Ronald Scott's phone.

He tells you he is trying to find out information. She tells him that Ronald is down at the POC and the mama is in the hospital. She tells you that KP called probably seven times and that she did tell him he was at the POC because she assumed that's where he was. She was gone. She left. That call was made right after they had pulled in and right after they made the comments.

Let's take a little bit of time and go through some of the instructions. Like I said, you get these to take back with you, and I'm going to put some of them up on the screen so you can see exactly what you get when you go back. I hope you can see it. Print doesn't always do as good up there.

This is what we call a finding instruction. This just means this is what you're looking for when you're trying to decide whether somebody is guilty of the crime. It says, "prove beyond a reasonable doubt each of the following elements of that crime," this one being the first-degree murder. "That the defendant or someone acting in concert with the defendant killed Belinda Scott." They came in together. They were acting

in concert because they were there for a purpose. They were there to rob. And I'll show you the in concert instruction in just a minute.

And we know she was killed. She was killed right outside the doorway to her house. The killing was malicious. There are other instructions that you can infer malice from the use of a deadly weapon. And ladies and gentlemen, I submit to you it cannot be more malicious then to put a gun to somebody's face and pull the trigger.

And then that the killing -- and you have a choice. You can find either/or, or you could presumably find both, that it was willful, deliberate, and premeditated or occurred during the commission of a robbery or attempted robbery.

The second one is much clearer and much easier to find. There is no doubt they went there to commit a robbery. There is no doubt that they completed their mission of the robbery. And what Belinda Scott was, was an obstacle that they removed. Willful, deliberate, and premeditated.

The Court tells you willful, deliberate, and premeditated means a specific intent to kill adopted at some time before the killing and which need not exist for any particular length of time. Specific intent to

kill, putting the gun to the face and pulling the trigger. And for no particular length of time, premeditation meaning that you thought, and it happened like that. When you decide what you're going to do, it's premeditation.

I told you I'm going to find it. Concert of action. Probably one of the best ways to think about concert of action is we all go in to do something together.

I watch old westerns from time to time, and they sometimes give you the best examples because the guys go in to rob the bank. And they go in, two guys usually go in with the guns to rob the bank and then they usually have some guy outside holding the horses ready to go. The guy holding the horses is just as guilty as the guys that went inside with the guns because that's part of the concert of action. You're in for part, you're in for all.

With the resulting crime, in this case the resulting crime we are talking about was the murder, one of its incidental probable consequences, then whether such crime was originally contemplated or not, meaning whether they went there intending to kill or not. All who participate in any way in bringing it about are equally answerable and bound by the acts of every other

person connected with the consummation of the resulting crime.

So they may have gone there just to rob, but when you go to rob and you go to rob with a gun, a loaded gun, one of the probable consequences of doing anything with a loaded gun is that you shoot people. Otherwise, you're not going to take a gun. In this case, an incidental probable consequence was that somebody was going to get killed, and that's what happened.

Now, let's take a look at the armed burglary. Again, armed burglary, the Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime: One, that the defendant or someone acting in concert with the defendant, without permission in the nighttime -- I've asked probably five or six witnesses was it dark, so we know it was at nighttime -- entered a dwelling house. We know that they were living there. So we know we have a dwelling house, did so with the intent to commit robbery. I think that's pretty self-evident. That's the reason that they went there, and the goal they went to accomplish was to do a robbery.

And at the time of the entry, the defendant or someone acting in concert with the defendant was armed with a deadly weapon. We know they were armed

with a deadly weapon because Belinda Scott is killed by the deadly weapon at the threshold of her home. And we also know, and when we talk to without permission, look at where Belinda Scott is shot and killed. She is not shot and killed inside her home. She didn't let them in. That's why they had to kill her is because she wouldn't let them in. She is in the hall not letting strangers into her house.

Now, we get to the robbery. That the defendant intended to steal. He's back in the back bedroom. He's one of the ones saying, give it up, give it up, right there as they're taking the money and the drugs. That U.S. currency, personal property was taken, that the taking was from Ronald Scott. It's his drugs. The money out of his pocket.

The taking was against the will of the owner or possessor and it was accomplished by threat or violence to the person or the threat of serious bodily harm. They're beating him in the head pointing guns at him. That's against the will of the owner or possessor. Threats of violence to the person. The threat of serious bodily harm, pointing a gun at you like you're going to be killed.

Then you have three charges that go along with each of the three I've talked about. They're

going to be Instructions 22, as you see up there in the right-hand corner, 23 and 24. And they just match up to, one to the murder, one to the robbery, and one to the armed burglary. But the elements in each are the same: Must prove beyond a reasonable doubt the following elements of the crime: That the defendant or someone acting in concert with the defendant used a firearm. And then this element changes depending on which offense they match up to. That the use was while committing or attempting to commit, in this case, the murder of Belinda Scott. We know that the gun was used there. And then the unfortunate fact that a .25-caliber bullet was recovered from her brain. And we know in the other two, was used in committing or attempting to commit the armed burglary of the house and the robbery of Ronald Scott.

Ladies and gentlemen, after you've considered all the evidence and all the things that I've talked to you about and all the things that the defense will talk to you about, I ask you to return verdicts of guilty for murder in the first degree for the terrible killing of Belinda Scott, a killing that was only done to remove her out of the way so they could accomplish the second act of violence they wanted to accomplish, which was the robbery.

I'm going to ask you to return verdicts

of guilty on the robbery. They took money. They took drugs. I'm going to ask you to return verdicts of guilty on the armed burglary where they went into Belinda Scott's house, and the only way they could get that entry was to kill her in the foyer right outside of her home.

And I'm going to ask you to return guilties on all the use of firearms in the various crimes, because that's how they were able to accomplish these deeds of violence. They took the gun and they went in and used it when they needed to. Thank you.

THE COURT: Mr. Anderson.

MR. ANDERSON: Assumptions and associations lead to misidentification in murder case in Norfolk. If you'll recall, that's how I opened this case. I said there were assumptions and there was association, and that's what led us to be here today. I'm only going to get to speak to you one time, so I'll have to probably have to put in a little bit more information than the Commonwealth did.

The burden is on the Commonwealth to prove beyond a reasonable doubt that the defendant is guilty of each of these charges. So he is going to get another chance to speak to you. So you only have to bear with me one more time, but you have to go through with him at least another time.

Now, the Commonwealth went through the evidence. But what didn't the Commonwealth give you? The thing that I told you you-all would be looking for to say this defendant is guilty beyond a reasonable doubt would be physical evidence. Was there any? I submit to you, no, there was not. There was a stipulation that there was some DNA that was recovered, but that was the DNA of Ms. Belinda Scott. However, there were other opportunities where we could have had DNA depending upon which witness you believe.

Ronald Scott testified that there was a tablecloth that was snatched by the light-skinned person in the room. One would suspect that it would be tested, the tablecloth, there's a possibility that we could have found DNA. The evidence was that that wasn't even done. There was also the possibility that we could have had fingerprints, but I think the last witness we had yesterday told you that there are certain surfaces that you can get prints and there are certain that you can't get prints. But then he proceeded to tell you that two of those surfaces, which are smooth, they never bothered to even dust for prints.

So the defendant lost the opportunity -- even though he doesn't have a burden of proving that he's innocent, he lost the opportunity because of policemen or

the forensics personnel failed to dust those surfaces to see whether there were any prints on it. So there is no physical evidence there. There is a stipulation that there were no other prints -- they attempted to collect other prints in the house. I think the officer testified the door and things of that nature, and he didn't recover any prints. There is also a stipulation that there was no prints recovered in the car. And when I say "stipulation," that means that even the Commonwealth has to agree that these things weren't recovered.

Now, I suspect when the Commonwealth, when he gets back up here again, is going to say, well, you don't always get prints. You don't always get prints. Well, maybe you don't always get prints, but if you're trying to convict someone, send them away for a significant period of their life, if not for the rest of their life, you want to dot the I's. You want to cross the T's. You don't want to wake up 10 years, 20 years from now looking in the newspaper and see that somebody has done some DNA and you've put the wrong person in jail.

So there was no physical evidence even though there was an opportunity to get the physical evidence. We did get some physical evidence, but that physical evidence contradicts the testimony of one of

their witnesses. You're going to have the opportunity to take these exhibits in the back with you. There are going to be exhibits, Commonwealth Exhibit 26 and Commonwealth Exhibit 25.

You'll recall Ms. Reid, the person who says she saw damage. She saw pictures of damage to the door. You're going to have an opportunity to take this exhibit in the back with you and see and review it. Now, maybe you'll see something I don't see, but based on the naked eye, I don't see any damage. So that's going to contradict one of the Commonwealth's own witnesses.

The officer testified, Officer Martin, the forensics officer came in, and he said they looked, they found a shoe print, but they were never able to tie it to this defendant. You're going to, again, be able to have that exhibit, but you'll have nothing that will tie that footprint to this defendant.

Ladies and gentlemen, quite simply, this is a case of mistaken identity. And mistaken identity starts when people begin making assumptions and people begin to say that people were associated with other people, so he must have been involved.

The Commonwealth is correct, the defendant's cousin was dating Gregory Williams. No secret. She came in today and told you that he was

dating -- she was dating Mr. Williams. She even told you that he had spent the day at her house. She even told you that her cousin was with Gregory Williams, and they left to go over to his brother's house. But she expected him back later that day. So they were together.

Now, I don't dispute that Mr. Parker saw the defendant come over to Christopher Williams' house. I don't dispute the fact that the defendant and Mr. Williams, that's Q Williams, shook hands, but that is all that happened. From that point on, you can't believe anything that Mr. Parker has said to you.

Mr. Parker would have you to believe that the defendant and someone else and Mr. Williams came over there together, that he saw him go across the street, come back and stuff something in his pants. But he still felt comfortable enough, he said, to give me a ride. He's seeing somebody push something down his pants, but he's still willing to get in the car and ride around with him. Tells you, you need to be a little bit concerned about his personality.

Then he says that they get in the car and they drive around the block. And he says that they were going to Campostella. He doesn't ask the defendant for a ride. He asks Quail -- I mean, I'm sorry. He asks Tyreke for a ride even though it's not Tyreke's car. He

says because your stick man will give -- I'll ask your stick man to give me a ride. So then he says they come back. And now, look at the time. Look at the time. Remember the time he says this happened. Not on my cross-examination, but on the direct examination from the Commonwealth, he said it was at five o'clock. He knew that they came over at about five o'clock. And then he says that they leave, and they come back at about a half an hour or an hour and 45 minutes later. At some point, eventually, he said it was starting to get dark. And as I kept questioning him he said, well, it was darker. It wasn't completely dark, but it was getting dark.

Well, ladies and gentlemen of the jury, this event happened June 9th. You can believe that at 9:45 or 9:30 or nine o'clock at the outside, it's already dark outside. We know that this incident took place at around 9:45. We know that because as the Commonwealth has indicated, the paramedics receive a call and within a matter of minutes, they got there. We also know, if you're to believe Ms. Reid, that as soon as the incident occurred, she went across the street. And she asked Mr. Rivell to make the call. Once Mr. Rivell makes the call, the paramedics came immediately. And we know that was 9:45.

Now, if Mr. Parker saw the defendant

come over at about five o'clock, which just happens to be just about the same time that Ms. Palmer says that her cousin left to take Tyreke over to Norfolk, then a half an hour or an hour later, even two hours later -- let's give him two hours -- he was reporting or he talked about an incident that hadn't even happened. Mr. Parker also said something today that was the first time I had ever heard him say it, was that they talked about a sting inside of the car. He said they got in the car and they were talking about a sting.

Well, you will recall that when Investigator Huffman took the stand and I asked him whether Mr. Parker ever discussed a sting with him, told him anything about a sting inside of the car, he said no, he hadn't. I asked him, he said not that I recall. Then I asked him, is that something that you would have put in your notes? And he said, yes. But there was no evidence of that discussion of a sting.

We can't believe anything Mr. Parker says. He has no credibility. Further evidence that we can't believe anything that Mr. Parker says. Mr. Parker says to you that when Mr. Williams and the light-skinned person and the third person came back, that they went -- that the person that he describes as the defendant and the dark-skinned -- I mean, the person, the young fella,

stood out by the car and that he went inside with Mr. Williams and Mr. Williams began making these statements. He kept telling you over and over again what he said, over and over again what he said. That it must have been the sister. But that doesn't make any sense that Gregory Williams wouldn't have known the person, i.e., Ms. Scott, in light of the fact that as he said, Ronald Williams used to -- he pointed, he showed you, they used to live right down there.

He also conceded that Christopher -- I mean, not Christopher. Gregory knew Ms. Scott. He said he didn't know her like I knew her. He didn't have the same type of relationship I had, but he knew her. He would have known that person. He wouldn't have to tell his brother, I don't know who it was. That part of it just didn't make -- it doesn't make any sense. KP just didn't make any sense. The story doesn't wash. Further evidence that we can't believe anything that Mr. Parker says.

Mr. Parker says that he takes a look at photographs and he identifies the defendant from the photographs. First of all he says that, and then you'll recall I showed it to him in the transcript that he said I did it on the exact day that I got the probation violation, which happened to have been June the 10th.

Well, the officer testified that we didn't even have a picture of the defendant until sometime after June 14th. So we know he couldn't have made the identification on that day. So let's assume that he could have been off a day or so, but then we asked the officer did he even ever identify him at all. Did you ever even show him a photo of the defendant? And the officer testified, no. We never showed him a photo.

Mr. Parker is not to be believed at all. And why isn't Mr. Parker to be believed at all? Mr. Parker had a bias. He had an interest in the outcome of this case. And on June 9th, Mr. Parker is a suspect. He hasn't been arrested, but he's a suspect. The next day when he's stopped for the traffic infraction and someone talks to him, he knows that he's a suspect.

Now, he said he didn't know that he was a suspect, but the officer told you that we told him he was a suspect. Now, if you're a suspect in a robbery and a murder and burglary case, you're going to try to get the weight off you. It's not like Mr. Parker is new to the system. As the Commonwealth said, he's not a boy scout. He knew he needed to put it on someone else.

He had already -- as he said, he had been calling several times. He had already talked to Ms. Scott. He told you that. Not Ms. Scott, Ms. Reid.

He knew that there was a light-skinned person there. So what does he do? He goes back and he tries to pin it on the light-skinned person that he saw at Ronald's -- at Christopher Williams' house earlier on the 9th. That person he saw at nine o'clock, he puts it on them. He knows the kind of car that he has because he saw it the day before. KP puts it on this young man. He doesn't give his name because he doesn't know his name.

And you would have thought that if, in fact, there was some truth to his story, it would have been a simple matter for him, since he said he saw the two people exchange greetings, to go back and say, hey, man, who was that fellow that came over to your house yesterday? You-all acted like you-all hadn't seen each other. Do I know him? What's his name? You would have expected something like that to happen. He didn't. KP wanted to put enough of the truth in it to make it sound believable, but he didn't want to take it too far. It kept growing. So eventually he said it's this man. He said he identified him by a photograph, but we know that's not true.

This is a case of mistaken identity that is based on an association that started on June the 9th, and it's led us to where we are today. Then that leads us to Ronald Scott.

Now, the Court told you when we first started, you can't be swayed by emotions when you're making your decision. I am sure that as you sit there, each of you sit there today, that you have to feel some sorrow for Mr. Scott because he's lost his mother. But you still have a job to do, and that's to make sure that justice is done and that is to make sure that the right person pays for the crime that was submitted. And I submit to you, based on the evidence that Mr. Scott gave you, that you can't believe Mr. Scott's identification.

Mr. Scott tells you, first of all, that he saw this defendant earlier that morning. I'm sorry. He didn't say morning. Let me not mistake. He didn't say -- he said he saw him twice that day. But who did he say he saw him with? He said he saw him when he came over with KP. What does KP tell you? I never went over there with this defendant. In fact, I didn't know this person prior to that day. So we know that for a fact that he couldn't have made the identification based on seeing this person earlier that day.

He then says the other way that we know that he doesn't have it right, and we can understand this was an emotional time for him and he has things confused, but he says that -- he's tried to say his brother was there. That is, Ronald Scott tried to say his brother

was there and couldn't make the identification, and that I gave that information to the policemen.

If you'll recall, I asked the policemen whether Ronald Scott or his brother ever identified the car or the person, and the officer said no. I asked them, is that something that you would have put in your notes? And he says yes, and it just wasn't there. So we know that he made the misidentification.

The other thing that Mr. Scott says, this is an inconsistent statement. And one of the instructions are going to tell you about inconsistent statements. At one time I asked him could he identify the car, the make and the model, and his testimony was, no, that he couldn't. This week he tells you that he can and he said it was an Acura or a Honda, that they're alike. But at another time he couldn't do that at all. An inconsistent statement. And you have to take that into consideration when you're trying to judge the credibility of the witness.

Then there was another contradiction in the testimony between the Commonwealth's witness. Ronald Scott said he sold him an eight ball, $550 worth. KP says I only purchased $20 the first time and $50 the second time. And isn't it ironic. KP says he's purchasing twice, so we know that we have him getting

high that day. He's using drugs all of that day, but Ronald and KP contradict as to what amount of drugs were purchased. The bottom line is the drugs were purchased.

Ronald said something very interesting when he said he made the assumption about KP, and I didn't think about it until later on when he said, the reason I assumed that it was KP was because the persons came to the back of my house. They went in my bedroom. Now, KP had been in the bedroom according to Ronald, but Tamika says she never remembers being in the bedroom that day, other contradictions.

Then, let's deal with what Ronald saw at the time that this beating or the robbery took place. Ronald says that he knows Tyreke. And let's assume for the sake of argument that he does know Tyreke. Then it stands to reason that his recollection of what happened of the first person in the door would be the one that we'd probably believe as neither party knew the light-skinned person who came to the door, i.e., Ms. Reid nor Ronald knew the person who came to the door.

Ronald said the first person in the door was Tyreke, and what's the thing he says that Tyreke does? He says he tells him to get down on his knees. Now, if I get down on my knees -- and you've seen the defendant, if I'm down on my knees -- and you're going to

see another picture, Exhibit 13, if I'm down on my knees with my head bent, I'm getting beat in the back of my head, tell me how can I see the face of that person there?

I can point over there and tell you to get the drugs over there, but I will not be able to see the face of that person. That's significant. Remember, that's the description. But the other thing that you find that Mr. Scott said to you, I was trying not to look. I was trying not to see him, and he didn't see him. He did not see this defendant. He saw a light-skinned person in the room. It was not the defendant. It was not Lester Lynch.

Ronald Scott will tell you that he picked out a picture. He says he picked it out the next day. Well, obviously, we know that's not right since the police testified they didn't even get a picture until the 14th.

Ronald Scott made assumptions. What did he assume? He assumed that it was Christopher Williams, because Christopher Williams was Tyreke's or Gregory Williams' brother. He assumed that it was KP because KP and Christopher Williams did things together. And now that he's had a conversation -- no, at this point he hasn't had a conversation. And that's what he tells the

policeman the first time. That's what he tells the policemen the night of June the 9th.

Subsequently, he has a conversation with KP. Now, you have to imagine that KP just told him about who this light-skinned -- I'm sure Ronald must have told him it was a light-skinned person there. KP said, I saw this light-skinned boy with Gregory or Tyreke earlier that day. And you know the first thing out of Ronald's mouth, that must have been him. That must have been him. And so all of a sudden it becomes the defendant because he associated with Gregory Williams. He has the same proximity to Gregory Williams as Q or Christopher Williams and KP. He associated with them.

Now, as the officer has testified today to charges that were brought against the two of them -- I'm sorry. The charges were brought against Christopher and subsequently dropped. They didn't even bother to charge KP.

Then we deal with Tamika, Tamika Reid. This must have been frightening and terrible, a terrifying evening for her. She wakes up. She says she wakes up, and the door is kicked in. Well, we know the door wasn't kicked in. And we have the picture to prove it. Then she says that Lester Lynch was the first one through the door, but we know that's not true. Because

we know Tyreke knows -- I mean, we know Ronald knows Tyreke and he knows who is the first person in the room.

She says that this defendant didn't -- the defendant had the gun. Ronald Williams said no -- I'm sorry. Ronald Scott said, no, Christopher Williams has the gun. So we know that she is off from the little subtle things that happen to begin. We also know that she was in a complete state of disarray.

She is asked to make a phone call to call the police. What does she do? She has a phone right there in her hand. All she had to do is punch three digits. But she runs out of the house across the street to ask someone else to make a call. She's not functioning. She's -- as the defendant -- I mean, Ronald Scott said in one of his statements, she was shocked. And because of that shock, her ability to observe was impaired.

How do we know that her ability to observe was impaired? I think all of us can agree that there is a difference between beige and black. Now, you have both of the colors, don't you? There is definitely a difference between beige and black. At one time she says that the defendant has on a mask and that it's beige. Another time she has on a mask and she says that it's black, inconsistent statements, statements that you

must use when you decide the credibility of the witnesses.

At one time she says there is a mask that comes from here and goes down to the lip. Another time, even though she doesn't remember saying it, she was put under oath, and she said it went from the forehead to the nose, inconsistent statements. We know that her ability to recall was impeded. So why does she then identify the defendant?

Now, what day did the police get the picture of the defendant? June 14th. What day does Ms. Reid make an identification of the defendant? June 16th. There is a stipulation in the record that you're going to have that says that the defendant's picture was ran, where? On regular TV and on Crime Line. She makes the identification two days after the defendant's picture is on television. Then she goes down to police headquarters.

The only description that she can give of the person is he's light-skinned with cornrows. She didn't remember anything distinctive about his eyes, his nose, or his mouth, even though if you recall that Ronald Scott did say at one time, he said he had gold fronts. Then he said, well, maybe I didn't say that.

But when you look at this picture, there

is one picture on here that I think each of you will have to concede is lighter than everyone else on this board. She picked out the lightest person on the board. Who is the lightest person on this sheet? The defendant, Lester Lynch. And once she picked the picture out, if there was ever any doubt in her mind that she had picked the right person out, all that doubt went out the window when one of Norfolk's finest told her that you had picked out the person that we expected you to pick out.

Now, answer me this. The police weren't there. They don't know who did it. How did they know who to expect would be the person that she would pick out? What they said was based on the witnesses. Well, the only two witnesses that they have produced for you today that identify this defendant has been the person -- was Ronald Scott and KP.

And without going through the litany of reasons I've just given you as to why their testimony or their identification has no credibility, you know that if they're wrong, then if their assumptions are wrong, then if the police tell her she has the right person, that's based on a false assumption. And if that assumption is wrong, then that means Ms. Reid's further assumption is wrong. Her identification is wrong.

Now, I suspect that the Commonwealth is

going to tell you, no. She says she picked out the picture because that's the person that she remembered. But what description did she give? It was a bland description. It could fit a number of young light-skinned men with cornrows. Nothing distinctive about this picture, nothing.

Now, those are the witnesses who try to place the defendant there, and the Commonwealth made a gallant effort. It just fails.

There is one instruction that is going to tell you about the thing that you can consider. One is going to be the appearance of the witnesses.

The three witnesses that tried to place the defendant there, what did they all have in common? They all came into this court in prison clothes. They were all in jail, in custody, for something else. So their appearance is one factor that you're going to consider.

What is their interest in the case? Ronald Scott's interest is trying to get somebody convicted, maybe he can win back some good graces with his family. Because as he said, they're not talking to me right now.

Then there is going to be another instruction that's going to tell you that you can

consider the fact that if a person has previously been convicted of a felony or a crime involving moral turpitude, that you can use that to judge the credibility of that witness.

Ronald Scott had, what, five felonies? KP had four. Ms. Reid had one, and then while this case is pending, she goes out and picks up another one. She had one felony, and she had some other charges involving moral turpitude. Are these the type of people that you want to believe? Are these the type of people that you'll use their testimony to send someone away for a significant amount of time?

So we have drug users, drug dealers, and thieves. These are the people that the Commonwealth wants you to use their testimony to send this person away. And the Commonwealth had other witnesses. They had other witnesses. They had Ms. Williams' neighbor who lived right there. And what did she tell you? She said she heard a shot. She's never seen this defendant before. She didn't see him in the neighborhood. She can't tell you that she was there.

We have Ms. Moye, used to date Ronald Scott, lived right above where this was, she was here to testify. And she said, no, she's never seen this defendant. She didn't see him that night. She's never

seen him in that neighborhood.

We had Mr. Rivell, the neighbor across the street. Been living in the neighborhood for 29 years. He says that he's never seen this defendant. He didn't see him that evening.

Then you have the police officers. None of them produced any evidence that they could tell you that placed this defendant at that crime scene. So even if we were to stop right -- if in your mind you might say it's suspicious or probable, but suspicion or probable doesn't work. It has to be guilt beyond a reasonable doubt, and there is not guilt beyond a reasonable doubt based solely on the Commonwealth's own evidence.

There is no physical evidence that puts him there. The credibility of each of the witnesses who testified has to be destroyed or is destroyed based on their criminal records, based on their inability to recall.

It just dawned on me as I'm talking, you know, these people who were in the room who identified this defendant, now, use your own collective recollection. Do any of you recall anyone saying what light was in that room? The only recollection was that someone said that the hallway was dim. No one said how the lighting was, what the lighting was like in this

room. No one ever said how long the people were in the room. Aren't those things that you think that the Commonwealth should have given you some evidence of before they asked you to put somebody away for the rest of their life? Their testimony was just not credible. The Commonwealth did the best he could with what he had. It's just not enough to convict this defendant.

Now, if we were to, again, stop there, you would have to vote for acquittal. But I told you I was going to make your job much easier. I was going to put on evidence for you that placed the defendant someplace else at the time of the incident.

Now, I called the witnesses. I questioned them. They were unshakeable. They all testified that at some time, they didn't have a clock either and they weren't watching a watch, but they know it was right around eight o'clock. And they know that it was at least dark when this event happened, that Mr. Lynch came to one person's house.

And I know the Commonwealth is going to make a big ta-do about the fact that they were getting high. Yes, they were getting high. And I'm not condoning the use of any drugs, but these people were using marijuana. The Commonwealth's witnesses were using heroin. These witnesses were drinking alcohol. The

Commonwealth's witnesses were using heroin. That Lester Lynch went to his friend's house, his very good friend, not his girlfriend, but a friend, that he got a call, that he went over to another friend's house, and while there, he sees a cousin who gives him the telephone because Pam -- not Pam -- Kim, the girlfriend of Gregory Williams, is on the other line. She asks for -- she says let me speak to Nu Nu. And she asks is Gregory Williams with him.

So we know at about nine o'clock the defendant and Gregory Williams aren't together. The defendant is in Virginia Beach. We know that because Ms. Palmer, LaTanya Palmer testifies, we were in Virginia Beach. I saw him when he came into the house. I gave him the phone. He carried on a conversation with Kim. Then she doesn't know what happened to him after that, but fortunately he went back to Shawn or Ms. Figueroa's house and stayed there until about eleven o'clock. And we know that this event occurred at about 9:45. And the Commonwealth did not offer any evidence to rebut it.

Now, the Commonwealth said they didn't bother to come and report what happened. Wait a minute. A person gets charged with the crime. The family members get charged with the crime. How many of you -- use your own common sense. How many of you are going -- do you

think your family members are going to run and say my brother or my sister or my cousin, my friend didn't do it?

Do you really think that the policemen are going to say, yeah, we believe you and let the charges go away? Wouldn't the reasonable thing to do would be to contact the attorney?

Now, on the flip side of that, if KP had something to say, don't you think that would have been the thing for him to do? If Tamika Reid was sure on June the 9th or the 10th, that would have been the reasonable thing for them to do. But no, Tamika Reid doesn't make an identification until after she sees his picture on TV.

So if you weigh the two, you'll have to say that the witnesses for the defendant are more credible. They all came in dressed appropriately, not in prison clothes. Now, the Commonwealth will say they have a bias, they're biased and they're right. Their bias is that the truth comes out. He's going to tell you that they are family members. But does that mean that because you're a family member you cannot tell the truth? None of these witnesses, none of the witnesses who have testified on behalf of the defendant have a felony conviction.

Then we had the mother who came in and

there's going to be an issue. And you're going to have an opportunity to take a look at it. There's a phone bill that's in here.

Now, there appears to be a number of calls starting -- with the part that's yellow between 5:00 and I think down to the next morning. So there are going to be a number of calls. At about the time that you would have thought, if we're to believe that these killings took place at like 9:30 or 9:45, there are going to be calls right around that time.

There is a span of about 38 minutes that there are no phone calls. But if you're to believe that the defendant was on his phone -- and we know that this is his phone bill, the mother's name is on it, this is his bill. There is a span of 38 minutes. So this is -- now, of course, I know the Commonwealth assumes, well, he could have been driving the car at the time he was making these calls.

I guess that's the unfortunate thing with having a cell phone. And unfortunately, these bills don't tell you where the person was, where they were when the call was made, but it does tell you that he's on the telephone. Now, use your common sense. A person who is about to go out and commit a robbery or kill someone, would they be on the cell phone? So that would mean that

for this span of 38 minutes, that he would have to leave Virginia Beach and pick up Gregory Williams, go to Ronald Scott's house, commit the robbery, go back to Gregory Williams' house, have time to be engaged in a conversation, then leave and go back to Virginia Beach. It just doesn't make sense.

Ladies and gentlemen of the jury, as I've indicated to you, this will be my only time that I get to address you. On behalf of the defendant, I would like to thank you for your patience, your time. I've observed most of you or all of you as you've been sitting here in the pews and this has been a very attentive jury. I've seen you taking a lot of notes. My recollection of the facts is not what counts. Mr. Batliner's recollection of the facts is not what counts. It's your recollection.

But when you go there and deliberate, remember that people made assumptions in this case. We know they made assumptions. We know that they were false assumptions. We know that these assumptions were based on this defendant's association with someone. But just because he was associated with him, does not mean that he participated in the activities with that person, if in fact, that person participated in them.

When you go back there, ask yourself, am

I prepared to deny someone their freedom for a significant amount of time based on this evidence? Ask yourself, why didn't the Commonwealth give me any physical evidence? Why didn't they at least dust that table? Why didn't they at least dust that plastic container? Maybe no prints would have came out, maybe they wouldn't, but shouldn't I at least -- shouldn't the defendant at least had an opportunity to have that as evidence? Ask yourself why weren't they able to do any DNA. There was a tablecloth there. Why weren't they able to get some DNA from that?

Ask yourself is this enough physical evidence to tie this defendant to this crime, and I submit to you that you will answer no. Then ask yourself, when you review the credibility of the witnesses, those witnesses that placed this defendant there, ask yourself were those witnesses so credible I would be willing to deny a person their freedom.

Ask yourself why didn't they bring in Q, Christopher Williams. He was not -- he was charged and subsequently the charges were dismissed against him. He would at least been able to tell you, yes, I know this man. I was there when my brother came in and made these statements. They didn't do it because it didn't happen.

On behalf of the defendant, I again

thank you. And I am sure that after you've had an opportunity to review all of the exhibits, you'll realize that there is evidence that's missing. And after you've had an opportunity to consider the testimony of the alibi witnesses, you will acquit this defendant.

THE COURT: Mr. Batliner.

MR. BATLINER: Thank you, Judge.

No. Amazingly, the Commonwealth didn't bring you the brother of the codefendant to the murder to testify to implicate his brother. And no, we don't have a spy satellite that happened to catch it all on tape to bring it to you and to show it to you.

What the defense is trying to do -- there's an old story about -- I believe it's four or five blind men that are allowed to examine an elephant.

Judge, a juror needs to go to the rest room.

THE COURT: Okay.

(A juror entered the jury room at 2:43 and re-entered the courtroom at 2:45 p.m.)

MR. BATLINER: Okay. There's an old story about blind men being allowed to examine an elephant. And each one of the blind men sort of gets to

touch a different part of the elephant. One comes up to his side and he says, it feels very much like a wall. One gets to examine his foot. It feels like a tree trunk. And one examines the tail and talks about how it feels like a rope, and one gets to examine the trunk. This is very much like a snake, a serpent. And that's really what the defense is trying to do to you today, is to get you to be the blind men so that you don't see the elephant. They want to break every little piece out and say this piece here, that's just not enough. That's not right. But the problem is, it's an elephant.

Three people were right here and they all said he's the one. Ronald Scott sat here and he told you he did say some other people were involved in the beginning and the police said, you got to tell us exactly what you saw, what the facts were. And the very first time he talked about the case, he talked about the light-skinned guy. He never changed the light-skinned guy. Never changed.

And who was the light-skinned guy? A guy he'd never seen before, Lester Lynch. Kenny Parker had never seen him before. What drew his attention to him? Because this was just a normal day of hanging out in the neighborhood. I mean, that's what it was. I mean, no doubt about it. Kenny's gambling, doing a

little heroin. He's just hanging out.

What drew his attention? Because he walked up and he was friendly with Q, and he had never seen him before. And that's what originally drew his attention. Lester Lynch was there. They've told you. They've just conceded it. He was there. Kenny is right when he told you who was there. Kenny is right when he told you who was in the car, and Kenny is right when he told you who walked up the steps and said, "Why are you telling them what we just done?"

And Tamika told you she was focused on him. That's who she was focused on when this was going on. But defense wants you to believe that she just kind of looked on TV, and she is going to see pictures of Gregory Williams and Lester Lynch, and then she's just going to come and identify somebody and say that's the guy.

There is a problem with that. What's the big problem? When she was shown lineups, she picked out one person. She picked out Lester Lynch. Did she pick out Gregory Williams? No. She didn't pick out Gregory Williams. Why? Because she wasn't sure enough. She was going to be careful. She didn't want to say somebody did it if it wasn't the right person. She didn't just pick somebody out because they put pictures

in front of her. She made sure.

But that's a serpent, a tree trunk, and a wall, I guess. You should just look at them and not in aggregate. Because if you start looking at them together, you start figuring out what an awful, awful coincidence it must be for Lester Lynch that three people who had never seen him before, had no beef with him, not somebody in the neighborhood they're out to do something to, all of them independently say he's the one.

Let's talk a little bit about this alibi. I don't know if that will work for all of you or not. June the 9th, this is his cell phone. Not somebody else's. This is his cell phone. We know when it happened. We know it happened at 9:45. Right. Come down, and we're going to get to right here. The last call, 9:21, an incoming call for a minute and then we have a gap to 9:59, and then he has another call for a minute.

And up here, it's kind of interesting, the 8:35, 8:37 call, that was an incoming call obviously not answered because there was no time there. Right when the murder is happening he's not on his cell phone. Well, it's kind of hard to be on your cell phone when you're robbing people. And despite what the defense says, I'm not going to tell you that family members are

going to come in and necessarily lie.

But what I am going to tell you is that when it's your cousins and your mother and your best friend, you do not want to believe that he is capable of being involved in a murder where somebody's mama gets shot and killed. They don't want to believe it.

One of the most telling things about this alibi is that the only event that gives any credence to a date is a taped -- something that's taped. Not an event that's live, not a birthday party, not an actual event that occurred on TV that they watched while it was going on, something somebody taped. It could have been any Saturday that it happened. There is nothing to tie it in.

And the only one, even by their description, that even if they are absolutely correct that would account for the time of the robbery, is his best friend, Velma Figueroa. Because you heard me question the last witness, the cousin, it was already dark when he came over.

I submit to you as I submitted to you earlier, the only time that is going to be good and solid for you in this whole case is the paramedic telling you what time they got the call and what time they got there. She doesn't know whether he got there at 8:00 or 9:00 or

whether it was after 11:00. Like Velma said, they went over late. The alibi is without merit.

If we go through some of the evidence, supposedly, you have no physical evidence. There is the car. I can't bring a car into the courtroom for you. There are the shorts that had Ms. Scott's blood and DNA by the pockets that people took money from Ronald Scott. There was a DNA analysis -- fingerprints were attempted to be recovered. I guess I'm supposed to make up evidence. You can only seek for what's there. And that's what was done. Physical evidence is here, and you have eyewitness testimony, and you have, frankly, a confession from the defendant.

It's very interesting that the defense wants to talk about the bias and the interest that the witnesses have in the outcome. And I think it is a factor for you to consider. And the good thing about the jury system is that collectively you bring your collective common sense to cases. That's what the whole system is founded on, is that twelve people bringing different backgrounds together can ferret out the truth.

Where is the bias and interest and outcome -- the bias or interest in the outcome of this case when the person that they said did it is someone they don't know? There is no grudge. There is no beef.

There is no trying to get even with somebody. I told you at the outset that the witnesses didn't want to be here.

You know it's funny when people go to rob a drug house, a drug dealer, you tend to find drug users around. They sometimes comically talk about this when they talk to us, you know, about witnesses. You know, you don't find swans in the sewer, okay.

The people who were there and the people who can tell you what happened are the people that you heard from. They did not have bias to put it on him. They didn't have any interest to put it on him. The only reason they put it on him is because he did it. He went in with Gregory Williams and some other friends of theirs, and at that doorway of Ms. Scott's home, shot her dead. And then went into her house and robbed her son.

Ladies and gentlemen, no matter how they try and change it, no matter how they try and parse it out into little tiny pieces that this isn't enough, this is a tree trunk or this is a rope or this is a snake, it's an elephant. And in this case the circumstantial evidence is overwhelming.

Lester Lynch is guilty of first-degree murder, robbery, and armed burglary and using a gun in each crime, and I'd ask you to find him guilty of all that.

THE COURT: Members of the jury, this is an important case both for the Commonwealth and to the defendant. In order to return a verdict, each of you must agree upon the verdict. Your verdict must be unanimous. In pursuing this goal, your deliberations should be conducted in a business-like manner.

When you go to the jury room to begin your deliberations, you should first select a leader. He or she should see to it that the discussion goes forward in a sensible, orderly fashion and that each juror has the opportunity to discuss the issues fully and fairly.

During the trial, some of you have chosen to take notes. You may take your notes with you to the jury room and use them during your deliberations if you wish. As I told you at the beginning of the trial, your notes are only intended to be an aid to your own memory and should not take precedence over your independent memory.

Those jurors who have not taken notes, should rely on their own memories of the evidence and should not be influenced by the fact that another juror has taken notes since the notes are only for the note taker's personal use in assisting his or her memory of the evidence.

When you have finished your

deliberations, please leave your notes on the jury table so that the bailiff can destroy them. You may not retain your notes after the trial has been concluded.

The attitude and conduct of the jurors at the outset of deliberations are of considerable importance. It is rarely helpful for jurors upon first entering the jury room to take a straw vote or for any juror to make an emphatic expression of his or her opinion on the case or to announce a determination to stand for a certain verdict. To do so before all jurors have had an opportunity to consult with one another and exchange views and opinions might allow your sense of pride to prevent you from retreating from an announced position even when shown that your position may be unsound.

You have the duty to consult with one another to deliberate with the view to reaching an agreement if it can be done without violence to your individual judgment. Each of you must decide the case for yourself but only after an impartial consideration of the evidence with your fellow jurors. In the course of deliberation, the jurors should not hesitate to reexamine his or her own views and change his or her own opinion if convinced it is erroneous. However, none of you should surrender your honest conviction as to the weight or

effect of the evidence solely because of the opinion of your fellow jurors or for the mere purpose of returning a verdict.

You will report your verdict on the verdict form signed by your leader. There are six forms, one for each charge. In the form for murder, there are three choices: You may find the defendant guilty of first-degree murder, second-degree murder, or you may find him not guilty. Your foreperson will sign on the one appropriate line. For robbery, it's guilty or not guilty. For armed burglary, you may find him guilty of armed robbery -- burglary or you may find him not guilty. On each of the three gun charges, you may find him guilty or not guilty.

And in the instructions which you have heard and which you will see, masculine pronouns may be read to include the feminine and where the feminine should also be read to include the masculine.

Ms. Austin, you were the alternate juror and your duty is concluded. We thank you for your attendance and your attention in the case today. If you will leave your jury badge with the sheriff, you may go. Do you have anything in the jury room? You may go.

THE COURT: Ladies and gentlemen of the jury, please retire to the jury room to commence your

deliberations.

(The jury entered the jury room at 3 p.m.)

THE COURT: We'll be in recess.

(Recess.)

THE COURT: Question from the jury referring to Defendant's Exhibit No. 1:

"How are we to interpret the notation of K. Parker beside the telephone number 518-0837 on Exhibit 1, on Defendant's Exhibit 1?"

And the response, "Counsel has stipulated that the notation is not K. Parker, but it is Kimbery Palmer. The Court can give you no further guidance on this question."

Is that acceptable?

MR. ANDERSON: That's correct.

MR. BATLINER: That's acceptable to the Commonwealth.

(Recess.)

THE COURT: Bring the jury out.

(The jury entered the courtroom at 5:30 p.m.)

THE COURT: Ladies and gentlemen, we're going to recess for the day. I'd ask that you don't discuss the case with anyone. I know that your families may be anxious to know what's going on with you. You may want to tell them. You can tell them tomorrow night, but not tonight.

Tomorrow morning if you'd be back at nine o'clock. As soon as all of you are here, we'll give you the evidence again, and you can resume with your deliberations.

When you come tomorrow, you may find other things going on in the courtroom. If so, just come straight into the jury room and don't be bashful about that. So wear the jury badges when you're around the city hall complex, and we'll see you tomorrow morning.

Leave your notes in the jury room.

Thank you.

(Whereupon, Court was adjourned at 5:28 p.m. to reconvene May 1st, 2003, at 9 a.m.)

V I R G I N I A:

IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

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Norfolk, VA

COMMONWEALTH OF VIRGINIA :

vs. :

LESTER B. LYNCH, JR., : CR01003499-12

Defendant. :

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**JURY TRIAL**

VOLUME III

DATE: May 1, 2003

BEFORE: The Honorable Charles E. Poston and a jury

APPEARANCES: RONALD BATLINER, ESQUIRE
Assistant Commonwealth's Attorney
Appearing on Behalf of the
Commonwealth of Virginia.

GEORGE L. ANDERSON, JR., ESQUIRE
Attorney for the Defendant.

REPORTED BY: Susan Feehery, CSR, Court Reporter

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(The jury entered the jury room at 9 a.m.)

THE COURT: Before the jury comes out, they've indicated they have a verdict. I just want to thank both of you for the case that you presented. I don't know that either of you could have done any more than you did, and it was a professional job.

Ask the jury to come in.

(The jury entered the courtroom at 10:03 a.m.)

THE COURT: Be seated, please.

Ask the defendant to please stand and face the jury.

The jury says: We, the jury, find the defendant guilty of first-degree murder. We, the jury, find the defendant guilty of armed burglary. We, the jury, find the defendant guilty of robbery. We, the jury, find the defendant guilty of using, attempting to use, or displaying a firearm while committing a felony; to wit, armed burglary. We, the jury, find the defendant guilty of using, attempting to use, or displaying a firearm while committing a felony; to wit, the robbery of

Ronald Scott. We, the jury, find the defendant guilty of using, attempting to use, or displaying a firearm while committing the murder of Belinda Scott.

Is this your verdict?

THE JURY: Yes, Your Honor.

THE COURT: Do you wish the jury to be polled?

MR. ANDERSON: Yes, Your Honor.

THE COURT: When I read your name, if these are your verdicts, please say "yes," if not, say "no."

Patricia Turner?

MS. TURNER: Yes.

THE COURT: Brent Ramey?

MR. RAMEY: Yes.

THE COURT: David Jolley?

MR. JOLLEY: Yes.

THE COURT: Suzanne Schweitzer?

MS. SCHWEITZER: Yes.

THE COURT: Demetri DeBerry?

MS. DEBERRY: Yes.

THE COURT: Arie Savage?

MS. SAVAGE: Yes.

THE COURT: Lloyd Bailey?

MR. BAILEY: Yes.

THE COURT: Machelle Bogue?

MS. BOGUE: Yes.

THE COURT: Charles Stevens?

MR. STEVENS: Yes.

THE COURT: Richard Wright?

MR. WRIGHT: Yes.

THE COURT: William Alcorn?

MR. ALCORN: Yes.

THE COURT: Steven Forrest?

MR. FORREST: Yes.

THE COURT: Ladies and gentlemen, please retire to the jury room. We need to do a few other things before we ask you to come back.

(The jury entered the jury room at 10:06 a.m.)

THE COURT: You can have a seat. Just so the record is clear, the sentencing instructions are marked S1 through S6.

Counsel, would you look at the sentencing instructions and the verdict forms.

MR. BATLINER: May I approach, Judge?

THE COURT: Yes.

Let's take just a short break.

(Recess.)

THE COURT: Are you ready?

MR. BATLINER: Ready, Judge.

THE COURT: Okay.

(The jury entered the courtroom at 10:12 a.m.)

THE COURT: Ladies and gentlemen, we're at the stage where you're asked to hear some additional evidence with respect to the sentencing decisions you have to make.

Does the Commonwealth have evidence to present?

MR. BATLINER: Yes, sir, Judge. I have four certified copies that I would ask be admitted into evidence. They are, respectively, Commonwealth's No. 37, which is a conviction for petty larceny from the defendant from the city of Virginia Beach, a conviction of 8/11/95, and a conviction date of December 10th, 2001, for domestic assault, also from Virginia Beach.

THE COURT: What's the exhibit number?

MR. BATLINER: That would be Exhibit No. 38. A conviction also from Virginia Beach for

concealed weapon, date of offense 12/10/97.

THE COURT: What exhibit is that?

MR. BATLINER: That would be Exhibit No. 39. All three of those, Judge, are misdemeanor convictions. Number 40 is a conviction for eluding police, endangerment felony. The date of the hearing where the defendant was convicted was April 22, 2002, and that would be Commonwealth's Exhibit No. 40.

THE COURT: Have you seen those, Mr. Anderson?

MR. ANDERSON: Yes, Your Honor.

THE COURT: They'll be admitted and marked.

(Whereupon, Commonwealth's Exhibit Nos. 37 through 40 were marked for identification and received into evidence.)

MR. BATLINER: May I publish them?

THE COURT: Yes.

Does the defense have any evidence?

MR. ANDERSON: Yes, Your Honor. I call the defendant.

THE COURT: Were you sworn yesterday?

MR. ANDERSON: He was never sworn.

LESTER B. LYNCH, JR.,

the Defendant, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ANDERSON:

Q. State your name for the Court.

A. Lester Bernard Lynch, Jr.

Q. Mr. Lynch, how old are you?

A. 26 years old.

Q. And your marriage status right now is you're separated?

A. Yes, sir.

Q. Do you have any children?

A. Yes.

Q. And how many children do you have?

A. I have three, two girls and a boy.

Q. How old are they?

A. My oldest daughter, she's 11. She'll be 12 this year. My son, he's 10 years old, and my baby girl, she's 6.

Q. You said you're how old now?

A. I'm 26 years old.

Q. Is there anything -- you've heard the jury's verdict and you're not questioning the verdict. Is there anything else you'd like to say to them before they pronounce sentence on you?

A. Yes. I just would like to say I'm sorry about what happened to Ronald Scott's mother and I'm sorry for the grief that's been caused to his family even though I'm innocent.

And I just pray that when you sentence me, that you'll have mercy on me so one day I can get out and be with my kids again.

MR. ANDERSON: That's all I have, Your Honor.

MR. BATLINER: I have no questions of him, Judge.

THE COURT: Thank you, Mr. Lynch.

MR. BATLINER: Proceed?

THE COURT: Not yet. Let me instruct them first.

Members of the jury, you have found the defendant guilty. You should now impose such punishment as you feel is just under the evidence and the instructions of the Court. You are not to concern yourselves with what may happen afterwards.

You are instructed that Virginia has

abolished parole for all offenses committed after January 1, 1995.

You have found the defendant guilty of first-degree murder and must now fix his punishment at imprisonment for life or imprisonment for life and a fine of a specific amount, but not more that $100,000; or a specific term of imprisonment, but not less than 20 years; or a specific term of imprisonment, but not less that 20 years and a fine of a specific amount, but not more than $100,000.

You have found the defendant guilty of the felony of robbery and must now fix his punishment at imprisonment for life or a specific term of imprisonment, but not less than five years.

You have found the defendant guilty of the felony of burglary while armed. Upon consideration of all the evidence you have heard, you shall fix the defendant's punishment at imprisonment for life or for a specific term, but not less than 20 years or imprisonment for life or for a specific term but not less that 20 years and a fine of a specific amount, but not more than $100,000.

You have found the defendant guilty of three counts of using, attempting to use, or displaying a firearm while committing a felony and must now fix his

punishment at a term of imprisonment for three years for the first count, and five years for the second count and five years for the third count.

MR. BATLINER: Ladies and gentlemen, the defendant just got up here and asked you for mercy. He's had a trial. He's had the witnesses come forward and prove his guilt, not like Belinda Scott, the mercy that was shown to her when a gun was placed under her eye and a gun put in her brain, a bullet put in her brain.

He has not accepted responsibility for his acts. You now know how serious the crimes are. I'm not going to take a lot of your time. It's a serious crime and it deserves very serious punishment.

And on behalf of the Commonwealth of Virginia, I thank you.

THE COURT: Mr. Anderson.

MR. ANDERSON: Good morning, ladies and gentlemen. Obviously, I don't agree with your verdict, but I respect your verdict just as my client does. He's maintained his innocence throughout this proceeding. You've heard the evidence and the 12 of you have decided that he's, in fact, guilty, and so under the law, he's, in fact, guilty.

What I am going to ask you to do in terms of sentencing is you listen to the Court. I'm

going to ask you -- the Court gave you what the range of punishment was. I think for the first-degree murder is life or the minimum you can give him is 20 years. I'm going to ask you to give him the minimum.

For burglary while armed, the minimum is 20 years or the alternative is life. I'm going to ask you to give him the minimum.

The minimum that you can receive for the robbery is five years. I'm going to ask that you give him the minimum for that amount of time.

The other charges, the guns, you have no choice but to give him three years on the first. You have no choice but to give him five on the second and five on the third. So those thirteen years, there's not going to be a lot of debate. You have to give him that. I can't ask you to do anything other than give him that time. But on the other charges, respectfully, I am going to ask that you give him the minimum.

As I said, you heard the evidence. And if you recall the evidence, I think Ronald Scott basically said, if you're to believe that this is the person who was there, that he wasn't doing anything. He snatched something, that he just took stuff off the table, that he was really just there.

If you're to believe the story that KP

told, it was not this person who caused the death. He was present. He was there, but I think the evidence was that the young boy was trigger happy. I think KP testified that there was blood on Christopher -- not Christopher, Gregory Williams, but not on this defendant.

The factor of taking those things into consideration, the jury -- you've already spoken. So there is no need for me to say he's not guilty because you've already said he's guilty. But I would respectfully ask that you give him the minimum amount of time.

My calculation comes up close to 58 years. He's 26 years now. You do the math whether he'll get to see his children again. Thank you again for your time, and we respect your verdict.

THE COURT: Ladies and gentlemen, there is a verdict form for each of the charges. There is a blank for the foreperson to write the charges, the sentence there. You give a sentence for three years, it must say three years. It must be exactly what you impose. If you choose to impose a fine with the sentence on the offenses that carry a fine, then you must write the number of years, as well as the exact amount of the fine you choose.

Now please retire to the jury room for

sentencing.

(The jury entered the jury room at 10:22 a.m.)

(Recess.)

MR. ANDERSON: Can we get a PSR date, Your Honor?

THE COURT: What is the date?

MR. ANDERSON: June 20th at eleven o'clock.

THE COURT: At 11:00.

THE CLERK: They're asking for eight weeks now.

MR. ANDERSON: Almost two months. If you don't think that's enough, give us a date.

THE COURT: July 11th, I have sentencings.

MR. BATLINER: I can do the 11th. I cannot do the 3rd.

THE CLERK: July 11th?

MR. ANDERSON: That's good for me.

THE COURT: What time?

MR. ANDERSON: 11:00. July 11th at

11:00.

THE COURT: Ask the jury to come in.

(The jury entered the courtroom at 11:03 a.m.)

THE COURT: Be seated.

Stand and face the jury. The jury says: We, the jury, having found the defendant guilty of first-degree murder, now fix his punishment at 30 years. We, the jury, having found the defendant guilty of armed burglary now fix his punishment at 20 years. We, the jury, having found the defendant guilty of robbery, now fix his punishment at 5 years. We, the jury, having found the defendant guilty of use of a firearm in the commission of armed burglary, now fix his punishment at 3 years. We, the jury, having found the defendant guilty of use of a firearm in the commission of first-degree murder, now fix his punishment at 5 years. We, the jury, having found the defendant guilty of use of a firearm in the commission of robbery, now fix his punishment at 5 years.

When I call your name, if these are your verdicts, please say "yes."

Ms. Turner?

MS. TURNER: Yes.

THE COURT: Mr. Ramey?

MR. RAMEY: Yes.

THE COURT: Mr. Jolley?

MR. JOLLEY: Yes.

THE COURT: Ms. Schweitzer?

MS. SCHWEITZER: Yes.

THE COURT: And Ms. DeBerry?

MS. DEBERRY: Yes.

THE COURT: Ms. Savage?

MS. SAVAGE: Yes.

THE COURT: Mr. Bailey?

MR. BAILEY: Yes.

THE COURT: Ms. Bogue?

MS. BOGUE: Yes.

THE COURT: Mr. Stevens?

MR. STEVENS: Yes.

THE COURT: Mr. Wright?

MR. WRIGHT: Yes.

THE COURT: Mr. Alcorn?

MR. ALCORN: Yes.

THE COURT: Mr. Forrest?

MR. FORREST: Yes.

THE COURT: Thank you for your service in this case. You're discharged at this point. I hope

you have a pleasant day. Give the sheriff your badges as you exit.

Refer to the probation department for a presentence report returnable July 11th at eleven o'clock. Thank you.

(The jury was excused at 11:06 a.m.)

THE COURT: Anything further?

MR. BATLINER: Not at this time.

MR. ANDERSON: No, Your Honor.

THE COURT: All right.

(Whereupon, court was adjourned.)

C E R T I F I C A T E

COMMONWEALTH OF VIRGINIA

CITY OF NORFOLK, To-Wit:

I, Susan Feehery, CSR, Court Reporter, a Notary Public in and for the Commonwealth of Virginia at Large, certify that the foregoing pages are a true and correct transcript of the testimony introduced and proceedings had before the said Court at the time and place in the caption mentioned.

I further certify that I am not a relative or employee of attorney or counsel of any of the parties or financially interested in the action.

Given under my hand this 12th day of February, 2004.

Susan Feehery, Notary Public

My commission expires June 30, 2006.

V I R G I N I A:

IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

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| | | |
|---|---|---|
| LESTER B. LYNCH, #1162173, | : | |
| Petitioner, | : | |
| vs. | : | DOCKET NO.: |
| BETH CABELL, WARDEN, | : | CL17000583-00 |
| SUSSEX II STATE PRISON, | : | |
| Respondent. | : | |

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HABEAS CORPUS PROCEEDINGS

DATE: August 2, 2018

BEFORE: The Honorable Joseph A. Migliozzi, Jr.

APPEARANCES:
EDWARD A. FIORELLA, ESQUIRE
Counsel for the Petitioner
150 Boush Street, Suite 601
Norfolk, Virginia 23510

ROSEMARY V. BOURNE, ESQUIRE
Office of the Attorney General
Counsel for the Respondent
202 North 9th Street
Richmond, Virginia 23219

REPORTED BY: Cathy D. Aiello, RPR

I N D E X

WITNESSES

ON BEHALF OF THE PETITIONER:


| | Direct | Cross | Redirect | Examination |
|---|---|---|---|---|
| GEORGE ANDERSON | 19 | 31 | 56 | 50 |


PETITIONER EXHIBITS


| No. | Description | Page |
|---|---|---|
| A | Evidence Voucher, Tapes | 18 |
| B | Norfolk PD Letter | 18 |
| C | George Anderson Affidavit | 18 |
| F | Kenneth Parker's Statement | 18 |
| G | Tamika Reid's Statement | 18 |
| H | Ronald Smith's Statement | 18 |
| I | Ronald Smith's Statement | 18 |
| J | George Anderson Affidavit | 18 |


RESPONDENT EXHIBITS


| No. | Description | Page |
|---|---|---|
| 1 | Photograph of Petitioner | 66 |
| 2 | Discovery Letter | 66 |

P R O C E E D I N G S

THE COURT: All right. We are on the record in the matter of Lester Lynch versus -- well, it's Sussex II State Prison and the warden, who is now -- is it still Stacy Ray?

MR. FIORELLA: That's correct, Your Honor.

THE COURT: Okay. And --

MR. FIORELLA: Your Honor, I believe the new warden is Beth E. Cabell.

THE COURT: That's what I thought. That's right. There was a motion to amend the habeas pleading to changing the name, and I believe I entered that.

MS. BOURNE: I never received a copy of that yet, but I have no objection.

THE COURT: All right. Because I think the warden just changed.

MS. BOURNE: Yes, Your Honor.

THE COURT: All right. So there's no objection to amending the habeas pleading to reflect the new warden.

This matter has been before the Court before, and it was continued for a hearing today on the habeas claim by Mr. Lynch, and he is being represented by Mr. Fiorella, and the counsel and I have spoken briefly

before taking the bench, and there are some issues, and let's go ahead and get those on the record.

So beginning -- Ms. Bourne, right?

MS. BOURNE: Yes, Your Honor.

THE COURT: Okay. What issues do you have with the current habeas petition?

MS. BOURNE: Well, by way of preliminary matters, there was, I believe, a motion to decide the matter on the record and not to take evidence today, and our position is, Your Honor, that we're here for a habeas matter. The Court ordered -- we're here for a habeas matter and a court-ordered hearing. We're prepared to go forward today. So we do object to the motion to decide the matter on the record without taking evidence.

I would argue that, in addition, his original habeas pleading did not make specific allegations, and the habeas statute, 8.01-655, requires that the petitioner not only do a notice pleading but -- would the Court prefer me to stand up at the podium?

THE COURT: I just need you to speak loud enough so that the court reporter can hear you, and I think you're doing it sufficiently.

MS. BOURNE: I think my voice is pretty loud.

Under the statute, it requires him not

only to file his allegation but also to file facts in support. A notice pleading is not sufficient under Virginia law with regard to a habeas corpus.

There was an indication -- because this new pleading contained actual facts, it's our position that -- I have no objection to him amending that pleading or viewing that pleading as an amended petition for writ of habeas corpus.

THE COURT: All right. That's the preliminary matter.

Mr. Fiorella, is that sufficient for you?

MR. FIORELLA: Your Honor --

THE COURT: I'm going to permit you to amend the pleading based upon the recent discovery that you received from Ms. Bourne on behalf of the Commonwealth, but my question to you is are you okay with proceeding with the motion that you filed as your amended habeas petition?

MR. FIORELLA: I am, Your Honor, but I disagree with the respondent's position with respect to needing an amended pleading.

A brief history procedurally would be we filed this habeas proceeding on the allegation that I was appointed on another matter during the course of the investigation, which was to preserve DNA evidence. There

was no DNA evidence. The Commonwealth came in here and said, We'll agree to it. There was another issue raised about some evidence, and the Court appointed me to go ahead and investigate that further. That's when we learned that there was the existence of some tapes and that the tapes were destroyed, and based upon affidavits of Mr. Lynch's trial counsel, those transcripts of the key witnesses, material witnesses, in the case against him were never provided to the defense.

We filed our original habeas motion on that basis. When we came in here for the hearing, at that point in time, we requested an evidentiary hearing because -- an evidentiary hearing to recreate what possibly may have been on those tapes from those material witnesses, and the material witnesses that I'm referring to are Mr. Ronald Scott, Mr. Kenneth Parker, and Ms. Tamika Reid. They testified in three previous trials. Two were juries, were unable to come to a conclusion. The third, they finally convicted him, but we learned that there were statements that were made at or near the time of these events that were recorded that were subsequently destroyed. We didn't know what they were.

We filed the motion. We're down here, and the Attorney General was arguing at that point in time we've got speculation and conjecture. There's no way for

anyone to know what was on those tapes; therefore -- in addition to the time-bar argument, there's no way for Mr. Fiorella to ever know what was on those tapes. Therefore, we move to dismiss. And before we went further, I took a nonsuit, recognizing that there wasn't anything in the evidence or on the record to suggest what was in there would rise to the level of a potential Brady violation.

At that point in time, we refiled it with an affidavit from Mr. Anderson, which said that his only defense at trial, in addition to some alibi witnesses that testified that Mr. Lynch wasn't present, was the cross-examination of these witnesses who had never seen this individual before the alleged events which occurred that they tie him to, but that anything that they would have said with respect to identification in Brady on the basis of two mistrials and everything that had gone on with the inconsistency with the witness.

At that point in time, the respondent filed a pleading. Two days before the hearing -- and again, I was going to have to recreate the record although I did have, in my opinion, something in the record which suggested that it rose to the level.

Two days before the last hearing, we get finally the statements, and it's my position now, once

reviewing the statements, the statements speak for themselves. That is my record. I've agreed with the respondent to make every transcript from the trial available. I think I've done that. I've reduced everything that I've had to CD. I've sent them to Mr. Schaefer to record them as part of the record in this file, but my case is those transcripts, and if the Court is asking me should I amend it to go ahead and say these transcripts -- I've done that. I've attached the transcripts. If the Court wants to accept my motion to rule on the record as --

THE COURT: Well, Mr. Fiorella, you're arguing your case. My question is simply this: Are you willing to proceed with an amended habeas, which is essentially the motion that you filed with regard to these transcripts?

MR. FIORELLA: I am, Judge, but I'm not saying that everything in that motion is everything that the trier of fact has to review to determine -- I don't think, unless the Court otherwise directs me, that I have to go through every one of those transcripts and every page of trial to go ahead and point out every inconsistency. I think the transcripts part of the record speak for themselves.

I can point out in argument some of the

things that I think are relevant, but I don't agree with the respondent that I have to go ahead -- and my notice pleading lists every individual inconsistency --

THE COURT: You have to answer my question, please.

MR. FIORELLA: Yes, sir.

THE COURT: Are you willing to proceed with an amended habeas that is your motion that you filed?

MR. FIORELLA: Yes, Your Honor.

THE COURT: Okay. Thank you. All right. I'll move on to the next issue.

All right. The next issue is what? Do you have an objection to something? I think you had an issue with regard to the timing of the habeas filed.

MS. BOURNE: Your Honor, by agreeing to allow him to amend his pleading, I'm not waiving any procedural defenses that I may have in this case, including the ones that I previously asserted in my motion to dismiss, which was that this matter is barred by the habeas statute of limitations.

I do agree that if the original statute of limitations is found not to apply in this case, that these new materials would relate back to those claims that he raised, but I'm still not conceding that the original pleading is timely.

THE COURT: Okay. All right. Well, that's a procedural issue that you have raised, and I'm going to deny that, and we're going to proceed with this matter.

Now, there were witnesses that were subpoenaed for today's hearing.

Mr. Fiorella, are you ready to proceed without those witnesses?

MR. FIORELLA: Your Honor, in consultation with my client, we believe that we are ready to proceed without those witnesses.

THE COURT: All right. And, Ms. Bourne, do you have witnesses available today?

MS. BOURNE: Yes, I do, Your Honor.

THE COURT: Okay. All right.

MS. BOURNE: And, Your Honor, I would object to him relying on an affidavit in this case. I think pursuant to the Court's discretion that he can present an affidavit, but we're here for a hearing to hear live testimony.

THE COURT: I understand. And is Mr. Anderson available?

MR. FIORELLA: I spoke with him yesterday. He said he would be here. I have not checked to see if he is actually in the courthouse.

THE COURT: Can we call around to see if Mr. Anderson is available?

THE DEPUTY: Yes, sir. I believe I saw him walking in.

MR. FIORELLA: Your Honor, while we're doing that, I would like to tender for the record -- and these are documents that are already into evidence. I have labeled them Exhibits A through L, but if the Court wishes to label them separately -- there is an explanation page of what they are. I've provided a copy to the --

THE COURT: Yes.

MR. FIORELLA: And I would like to tender these for the record at this point in time.

THE COURT: All right. I have --

THE DEPUTY: Your Honor, Mr. Anderson is here.

THE COURT: He is here?

THE DEPUTY: Yes, sir.

THE COURT: Okay. I have some that were filed with the Court. I have Exhibit H, I, G, F, and J.

MR. FIORELLA: A would be the evidence voucher, which started the whole thing.

THE COURT: If you have the whole packet there, I'll take it from you.

MR. FIORELLA: I do.

THE COURT: Okay. And, Ms. Bourne, have you seen this?

MR. FIORELLA: Judge, the only new additions to that would be the last two, which is -- and I think by agreement, the entire transcripts of everything are coming in. That is a transcript from a trial of Mr. Williams in which the witness Kenneth Parker appeared strung out on heroin.

MS. BOURNE: Your Honor, I would object to that. This has not been filed in a pleading, in an amended pleading. It's a transcript of a completely separate criminal matter that has not ever been referenced in any pleading thus far.

THE COURT: All right. This is Kenneth Parker's -- K and L are Kenneth Parker's trial transcript, Commonwealth versus Greg Williams, pages 74 to 96 and pages 110 to 125.

MR. FIORELLA: Judge, what I did with that is when I learned of its existence, I went and got copies of it. I believe it's additional evidence --

THE COURT: Ms. Bourne says that she's not been put on notice with regard to this.

MR. FIORELLA: I just filed it with the clerk's office as a matter of record this past Monday when I got a copy of it and learned of its existence, and the

Court can rule on it. I want it to be a part of the record, but what it represents is what I would consider additional evidence that was Brady material that failed to be presented to the defense with a material witness appearing at a codefendant's trial admitting to being high on heroin and asking to go home because he was too sick to testify.

THE COURT: I'm not going to rule on that at this time until Ms. Bourne has an opportunity to see the transcripts and prepare for argument.

So I'm going to return these to you, and you can see them if you want, and we can just take that up -- we'll take that up later.

MS. BOURNE: Thank you.

THE COURT: But at this point, I have exhibits, Ms. Bourne, evidence voucher, four cassette tapes, et cetera, as A.

B is Norfolk PD letter to Commonwealth Attorney confirming tapes were destroyed.

C, George Anderson affidavit, which he's going to testify today, but I will -- anyway, that's being offered.

And D, transcript checklist.

E, Detective Ford's sentencing documents.

F, Kenneth Parker's statement.

G, Tamika Reid's statement.

H, Ronald Scott's statement.

I, another Ronald Scott statement on a different date.

And J, George Anderson's supplemental affidavit.

These are being offered as exhibits on behalf of the petitioner.

MS. BOURNE: I don't have any objection to the other exhibits, Your Honor. I would ask that -- we've discussed this -- that all transcripts in this matter be made part of the record so that they can be referred to because, obviously, the Court has to make a decision.

THE COURT: Yes.

MS. BOURNE: He's referred to transcripts of the mistrials in this case. I'm told by the clerk's office that these transcripts are available to the Court.

THE COURT: Yes.

MS. BOURNE: Including there was a motion to suppress transcript. I don't want to introduce the entire transcript as an exhibit, but the Court can look at those transcripts and consider them in the record.

THE COURT: All right. So there's no objection to A through J, which Mr. Fiorella just introduced, and in addition --

MS. BOURNE: I guess I would since -- I would object to E, to Detective Ford's sentencing documents, based upon the statement this morning that Detective Ford is not here, and I don't know what the relevance is of his sentencing documents. And I also object to C, George Anderson's affidavit, for the reason previously stated.

THE COURT: All right. Well, I'm going to -- with regard to the affidavits by George Anderson, I am going to overrule your objection. I'm going to admit them, but he is also going to be here to testify.

And with regard to Detective Ford's sentencing documents, Mr. Fiorella, do you want to be heard on the objection to that?

MR. FIORELLA: I do, Your Honor. Your Honor, the first time that we learned definitively that Detective Ford was involved in this prosecution -- and the Court is well aware of the reputation of Detective Ford -- is when we got these transcripts. In my review of all the transcripts, Detective Ford testified in, I think, the second trial for about three pages about a search of my client's vehicle where nothing was found, and heretofore, before we got the transcripts, that was the only evidence that Detective Ford was involved in.

My client kept telling me he was involved;

he kept telling me. That's why we had him here because I really didn't know what Detective Ford was going to say. I got the transcripts. I think the reason why -- with the transcripts and knowing now of his involvement in taking these statements, I think it's relevant. We did make every indication to have him here. I think I shared the letter with the Court about the difficulty and the issues being raised about his transportation from Estill, South Carolina, but we intended to have him here. The fact that he's not here, I don't think I need him, but I do think it's relevant to the Court, who is the trier of fact in this case, in determining whether or not a willful or neglectful Brady violation occurred, to know the reputations of the parties involved, and those documents speak to the reputation of Detective Ford.

MS. BOURNE: If I might respond. When he puts on evidence that Detective Ford had some meaningful involvement in this case and that his reputation is relevant for that reason, with regard to these specific allegations that he's made, then the Court can rule on whether it's relevant at that point, but that evidence has not been put on.

THE COURT: Okay. Well, you are not denying that Detective Ford was involved in this case, are you?

MS. BOURNE: I'm denying that he was solely involved in any of these statements that were taken, and so, therefore, I would argue that his sentencing documents are irrelevant.

THE COURT: Well, I'm going to -- I'm inclined to admit that, but I will hold off until I hear from Mr. Anderson.

MS. BOURNE: If I might just address -- I'm sorry, Your Honor. I'm looking at these for the first time this morning at this very minute. So Exhibit D, I'm not sure what the relevance is of the checklist of Lester Lynch trial transcripts. The transcripts are the transcripts, right? We have the transcripts here. What is this checklist from the Innocence Project? Why does that need to be admitted as an exhibit?

THE COURT: Well, are you challenging its --

MS. BOURNE: I'm just saying it's irrelevant. It's something that's prepared by the Innocence Project. I don't see what it has to do with the issues in this case.

MR. FIORELLA: Your Honor, I can withdraw D. It's just a checklist regarding the transcripts in question. I was trying to go ahead and at the time get everything involved. I can withdraw D.

THE COURT: He's going to withdraw D. Okay. So D is withdrawn.

So, so far I've got A, B, C, F, G, H, I, J, and I'm going to hold off on Exhibit E until I hear evidence from Mr. Anderson. So I will admit these exhibits.

(Thereupon, the above-referenced documents were admitted into evidence as Exhibits A, B, C, F, G, H, I, J.)

THE COURT: It is my understanding, as well, that both Ms. Bourne and Mr. Fiorella, counsel in this case, agree that the trial transcripts in Mr. Lynch's cases have been submitted to the Clerk of the Court and that they will be available to the Court to review if I deem necessary. Is that correct?

MS. BOURNE: Yes, Your Honor.

THE COURT: Okay. Any other preliminary matters that we need to take up?

MR. FIORELLA: No, sir.

THE COURT: Okay. Ms. Bourne?

MS. BOURNE: No, Your Honor.

THE COURT: All right. Mr. Fiorella, do you want to call Mr. Anderson?

MR. FIORELLA: Your Honor, it would be my position that I can call Mr. Anderson, but the statute

allows me to rely upon affidavits. My affidavit is in the record. If Ms. Bourne wants to cross-examine, I would tender him to cross-examine.

THE COURT: All right. Well, do you want to call him?

MR. FIORELLA: I'll call him.

THE COURT: Okay.

MR. FIORELLA: George Anderson.

Your Honor, may I have the Exhibit No. C and Exhibit No. J.

THE COURT: C and J. Yes.

All right.

(Witness sworn.)

THE COURT: Thank you.

GEORGE ANDERSON, called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. FIORELLA:

Q. Good morning, Mr. Anderson.

A. Good morning.

Q. Would you identify yourself for the record, please.

A. My name is George Anderson.

Q. Mr. Anderson, how are you employed?

A. I'm an attorney.

Q. And an attorney licensed in the Commonwealth of Virginia?

A. That is correct.

Q. For how long?

A. This will be 34 years, 35 years. Since '83. It's been a long time.

Q. And as part of those 30-some odd years, has part of your practice been the representation of defendants charged with crimes?

A. That is correct.

Q. Were you so engaged to defend an individual known as Lester B. Lynch, Jr.?

A. Yes.

Q. Okay. Do you recall how many times Mr. Lynch was actually tried for the charges that you represented him on?

A. I believe it was three times.

Q. Okay. And the third time was a conviction?

A. It was.

Q. Okay.

THE COURT: I'm going to interject for a minute.

Mr. Anderson, did you prepare affidavits

in this case particularly on October 5th of 2017 and again on July 11th, 2018?

THE WITNESS: Yes, Your Honor.

THE COURT: And is everything in these affidavits accurate to the best of your knowledge?

THE WITNESS: Yes, Your Honor.

THE COURT: And you swore to these affidavits before a notary; is that correct?

THE WITNESS: Yes.

THE COURT: All right. I'm going to turn these over to Mr. Fiorella.

All right. Why don't we go from that point.

BY MR. FIORELLA:

Q. In follow-up to the Court's questions, Mr. Anderson, I'm going to show you two affidavits marked as exhibits C and J.

MR. FIORELLA: May I approach, Your Honor?

THE COURT: Yes.

BY MR. FIORELLA:

Q. Those are the two affidavits that the Court just asked you about?

A. Yes.

Q. Drawing your attention to the affidavit listed as Exhibit No. C, is it an accurate statement that

that affidavit was prepared before you knew of the existence of the four transcribed statements in question?

A. Yes.

Q. Okay. The second affidavit, the one dated July 11th, 2018, was that an affidavit that was prepared by you after learning of the existence of the transcripts and particularly the transcripts of Kenneth Parker, Tamika Reid, and two transcripts of Ronald Scott? Was that transcript prepared after you had the ability to review those transcripts and formulate your opinion with respect to the content of those transcripts?

A. Yes.

Q. And is it your testimony today that you never had access to those transcripts during the three courses of your trials while defending Mr. Lynch?

A. Never.

Q. Is it your testimony that the contents of those affidavits would have been material --

MS. BOURNE: Your Honor, I object to, A, to his leading his witness. B, I object to him reaching any legal conclusion in this case because that's for the Court to decide. He can testify what he received and maybe what he would have done, but he can't testify as to legal conclusions.

THE COURT: All right. Well, you are

leading, and I understand that there's been an affidavit prepared, but why don't you just in a more open-ended fashion ask Mr. Anderson about what he would have done with those.

BY MR. FIORELLA:

Q. With respect to the detail, particularly with respect to identification contained in those affidavits, was that information that would have been useful to you at trial in procuring the innocence and a not-guilty verdict in defending Mr. Lynch?

MS. BOURNE: Your Honor, I object to his opinion about whether it would have been useful for him at trial. I mean, whether he would have used it --

THE COURT: All right. I'm going to overrule your objection, but just ask him a question.

BY MR. FIORELLA:

Q. What is your opinion with respect to the content of the transcripts that you first learned of?

A. In reviewing those transcripts, it appeared to me there would have been enough information in there that would have caused a question in somebody else's mind, especially --

MS. BOURNE: Objection. Your Honor, again, he's reaching a legal conclusion.

THE COURT: Well, I understand.

Overruled. I'm going to allow him to -- just tell us what you would have done with it at trial.

THE WITNESS: I would have used that information to let the jury, the jury pool, realize that there would be some other persons who might have been named in this. So, sure, I would have made sure that information was put before the jury so they would have had that to consider in making their decision as to whether the client was guilty or innocent. So, clearly, I would have used that information.

BY MR. FIORELLA:

Q. Mr. Anderson, was Ronald Scott a witness who testified against Mr. Lynch at trial or at trials?

A. Now, I'm not -- I don't remember exactly who every person was.

Q. That would have been the decedent's son.

A. I'm not going to tell you something that --

Q. Ronald Scott is an individual -- I'm going to show you what's been marked as exhibits H and I.

MR. FIORELLA: May I approach, Your Honor?

THE COURT: Yes.

BY MR. FIORELLA:

Q. Do you recall reviewing those transcripts when received?

A. I didn't receive these until recently.
Q. Yes. Those are the transcripts --
A. That's what I'm saying.
Q. Ronald Scott was a witness who testified --
A. Yes.
MS. BOURNE: Objection to him leading the witness.
THE COURT: Overruled.
BY MR. FIORELLA:
Q. Does that refresh your recollection?
A. It refreshes my recollection.
Q. Were you aware at any time during defending Mr. Lynch that Ronald Scott had given two statements to the detectives?
A. No, I was not.
Q. Is that something that you would have used?
A. Yes.
Q. After your review of those statements, were those statements internally inconsistent with one another?
MS. BOURNE: Objection to him opining whether they're internally inconsistent. The records speak for themselves.

THE COURT: Yes, they do, but he was the lawyer that represented the defendant -- the petitioner. So go ahead.

THE WITNESS: Yes, I would say they would be inconsistent.

BY MR. FIORELLA:

Q. Is that something that you would have made use of at trial had you had that information?

A. Yes.

Q. In several of the transcripts, Mr. Scott referred to the amount of drug money that was alleged to have been stolen during the course of the robbery and subsequent murder. Do you recall reading that in the transcript?

A. No. I'll have to reread it, but no.

MR. FIORELLA: Your Honor, again, I can point out these to the Court.

MS. BOURNE: And, Your Honor, I guess my position would be, if he's going to show that this witness would have used this stuff, he can't be pointing, arguing from the documents themselves. I mean, the witness has to say what he would have done differently based on the evidence in this case.

He amended his pleading in this case to allege certain claims. As part of that, there was an

affidavit that counsel would have used these. Presumably, counsel knows what the issues are that he would have done differently. I don't think Mr. Fiorella can essentially testify for him regarding that.

THE COURT: Mr. Anderson, when was this case tried? I know it was tried three times, but when was the conviction? Do you remember?

THE WITNESS: I can't remember, Your Honor.

THE COURT: What year was it?

MR. FIORELLA: I believe it was 2003.

THE COURT: All right. So that is 15 years ago.

THE WITNESS: Yes, Your Honor.

THE COURT: How many cases have you tried in those 15 years?

THE WITNESS: It's been a number. I don't know, Your Honor. It would be -- I don't know. Maybe 4- or 500.

THE COURT: All right. Is it fair to say that you don't remember the specifics of this trial?

THE WITNESS: That is correct, Your Honor. I don't remember everything. I remember doing it three times though.

THE COURT: Okay. And what happened to

the first two trials?

THE WITNESS: They ended in hung juries.

THE COURT: All right. And what happened at the last trial?

THE WITNESS: Unfortunately, he was convicted.

THE COURT: All right. And what was the sentence, if you can remember?

THE WITNESS: I think it was like 68 years, something like that.

THE COURT: How much?

THE WITNESS: Sixty-eight years, something like that.

THE COURT: All right. And do you remember who the detectives were on the case?

THE WITNESS: To be perfectly honest, no, Your Honor.

THE COURT: You don't remember any of them?

THE WITNESS: I remember faces, but I don't remember their names at this time.

THE COURT: Okay. All right. And when Mr. Fiorella provided you with these documents, these transcripts, how did they refresh your recollection?

THE WITNESS: Well, one of the things,

there was information in there that I had never seen before when he gave me those transcripts.

THE COURT: How do you know that you had never seen them before if it was 15 years ago?

THE WITNESS: Because I would have been -- clearly, that information would have been useful. For them to say somebody else had did the shooting and my client was there, obviously, I would have wanted to put that person under the gun to show that that person has all but admitted that they did the shooting. So clearly that would have cleared my client.

THE COURT: And you recall that you did not have that information at the time?

THE WITNESS: No, I did not.

THE COURT: Because you did not raise it to the jury?

THE WITNESS: That would have been basic to use that. If this person made a statement to other people -- I remember the transcript, but I didn't have it at that time.

THE COURT: And is there anything else about the case that you remember?

THE WITNESS: No, Your Honor.

THE COURT: Okay. And you've already testified that everything you provided in the two

affidavits are accurate?

THE WITNESS: Yes, Your Honor.

THE COURT: All right. Do you know who -- you've been shown these two transcripts with regard to Mr. Scott. Do you know who Investigator Huffman is?

THE WITNESS: I know Investigator Huffman, yes.

THE COURT: You know who he is?

THE WITNESS: Yes.

THE COURT: All right. And his name is on this transcript. Was he involved in this case?

THE WITNESS: I believe he was.

THE COURT: All right. But you can't off the top of your head recall who else was involved in terms of the police officers or investigators?

THE WITNESS: No, Your Honor.

THE COURT: Okay. All right. Mr. Fiorella.

MR. FIORELLA: Just one follow-up, Your Honor.

BY MR. FIORELLA:

Q. And, Mr. Anderson, is it your testimony that before I shared these transcripts with you, you had never seen them, nor had access to the content contained within those transcripts?

A. Clearly had not.

THE COURT: All right. Thank you.

Ms. Bourne.

CROSS-EXAMINATION

BY MS. BOURNE:

Q. So you were the attorney for Mr. Lynch?

A. Yes.

Q. Throughout all those proceedings; is that correct?

A. That is correct.

Q. Including the preliminary hearing?

A. That is correct.

Q. A motion to suppress?

A. That is correct.

Q. Do you recall the motion to suppress?

A. I'm sorry. No, I don't.

Q. Do you recall the specifics of the two mistrials in this case?

A. In all candor, no.

Q. Do you recall who the witnesses were in this case?

A. I would have to review the transcript to see who they were.

Q. So as you sit here today, you have no recollection of who the witnesses are in this case?

A. No.
Q. Yet in your affidavit, you stated that you believed that these materials would have been exculpatory?
A. Yes. Based on reading that information, I thought it would have been exculpatory.
Q. But you didn't know who the witnesses were in this case or what they testified to?
A. I read the transcript, so I still had that, but I was given the affidavits showing, I guess, what other witnesses would have said or in the affidavits that they provided.
Q. You were given affidavits? What affidavits?
A. No. I was given the affidavits of, what was it, Mr. -- there were a number of people. That was the first time I ever read anything that those people had said.
Q. But you don't even recall who those people were as you sit here independently?
A. Like the name of the --
Q. The names of the witnesses, these witnesses who testified.
A. No, I don't recall the names.
Q. Do you recall what they testified to?
A. Yes.

Q. Okay. But you don't recall their names?
A. No.
Q. Now, what discovery did you receive in this case?
A. I do remember receiving some statements.
Q. Statements. Recorded statements or transcripts of statements?
A. I think it was transcripts of statements.
Q. So you received transcripts from the police department of --
A. Yes.
Q. -- witness statements?
A. Yes.
Q. Do you recall which statements you received?
A. To be candid, no, I don't.
Q. So you don't recall specifically which transcripts from witnesses you did receive?
A. No.
Q. How long at the time of this trial, these three trials, I guess, starting in 2002 and then going into 2003, how long had you been practicing in the Norfolk area?
A. In the Norfolk area, that would have probably been -- I think I came here in '87, '88. So

probably about 12, 13 years.

Q. Okay. And would you agree that it was the policy of the police department at that time to record witness statements when witnesses came down?

MR. FIORELLA: I'd object to his opinion of what the policy of the police department was.

MS. BOURNE: In his experience, if this is something he was familiar with.

THE COURT: Do you know whether it was the policy?

MS. BOURNE: Maybe I'll rephrase my question.

THE COURT: Okay.

BY MS. BOURNE:

Q. In previous cases that you had in the city of Norfolk, had you received recorded statements?

A. Yes.

Q. From witnesses?

A. Yes.

Q. Whenever they went to the police department?

A. Yes.

Q. And so were you then familiar with the Norfolk city police department's policy to record witness statements if the witnesses were at the police department?

A. I know I've received recorded statements. I didn't know what their policy was. I didn't receive it on every case. So I can't say that was standard every time they interviewed somebody, I would get a copy of the statement.

Q. How many jury trials had you had in Norfolk at this time?

A. I don't remember.

Q. How many bench trials?

A. I don't remember.

Q. Hundreds?

A. I hadn't had a hundred jury trials. I'd had more than a hundred bench trials.

Q. Okay. And in many of those cases, you had received transcripts of recorded statements?

A. Yes.

Q. And you received such statements in this case, transcripts from the police department?

A. I received some statements, yes.

Q. Did you receive any statements from Ronald Scott?

A. No, I didn't.

Q. No statements at all?

A. No.

Q. Did you receive any statements from Tamika

Reid?

A. No.

Q. Did you receive any statements from Kenneth Parker?

A. No.

Q. You don't remember these people's names, but you know specifically you didn't get any recorded statements or any transcripts of any statements from them?

A. Correct.

Q. Now, would you agree that you were told prior to trial that Ronald Scott had initially ID'd two assailants, Gregory Williams and his brother, Christopher Williams?

A. In all candor, I can't remember being told that or not.

Q. You can't remember whether you received a discovery letter that was filed with this court stating that?

A. I don't recall, no.

Q. Do you recall whether or not you received information prior to trial that there was a third assailant who was red skinned or light skinned?

A. I don't recall that.

Q. So you can't say that you didn't receive that information?

A. No.

Q. By the first trial on October 2nd, 2002 -- have you reviewed the transcripts at all in this case?

A. No, I have not. In fact, I don't have that file anymore.

Q. Were you aware by the time of the trial of this case that there was -- that Ronald Parker had previously stated that Gregory Williams and Kenneth Parker were involved but then had later changed his statement?

A. I don't recall that.

Q. You don't recall. I'm going to ask you to look at pages from the trial transcript from October 2nd, 2002.

MR. FIORELLA: Which trial is this?

MS. BOURNE: October 2nd, 2002.

MR. FIORELLA: Is that the third trial?

MS. BOURNE: I think that's the first trial. You have all of those, right? Kenneth Parker's testimony, pages 87 through 122.

MR. FIORELLA: What pages?

MS. BOURNE: I'm sorry. I told you the wrong pages. Twenty-five through 79.

I'm going to show him these pages, 25 through 79, from October 2nd, 2002.

BY MS. BOURNE:

Q. I have a copy of that trial testimony for you.

So you previously said that you did not recall whether or not he had previously named Gregory Williams and Kenny Parker as assailants, as being involved, Christopher Williams and another guy?

A. Say that again.

Q. Okay.

A. Do you want me to read these pages right now?

Q. If you can go to page 51 of the transcript, maybe that will make it easier. Then I'll ask you a question.

All right. Now, you said by the time of the trial in this case, and sitting here now, you cannot recall whether or not you knew that Ronald Parker had previously named other suspects involved in this case and then changed his story. Was that your testimony?

A. Let me --

Q. I'm just asking you, was that your testimony just now?

A. That I don't recall him saying that?

Q. Right.

A. No, I don't.

Q. Okay. If I can ask you to take a look at page 51, and if you can look down at line 7 and then all the way down to 17, would you agree -- does that refresh your memory?

A. Yes. I do see that he did mention those two people.

Q. So you would agree that on page 51, he initially told police that Gregory Williams, which was Tyreke, was involved and that Kenny Parker was involved and that Christopher Williams was involved and another guy?

A. Yes.

Q. So you did know that -- and this was in the October 2nd, 2002, trial. So you clearly knew that by the time of the trial in this case in April of 2003?

A. Yes.

Q. So you knew that there were potentially -- that he had made a statement that there were potentially four people involved at one time?

A. Yes.

Q. Were you aware that Mr. Parker had admitted that he had changed his story by the time you took this case to trial?

A. Mr. Parker had changed his story?

Q. Right. By the time you cross-examined him

at trial or heard his testimony at trial, had it been disclosed to you that he had changed his story?

MR. FIORELLA: We were talking about Mr. Scott.

MS. BOURNE: I'm sorry. I apologize. I misspoke. Mr. Scott.

MR. FIORELLA: I think given the time frame and the recollections, it's very difficult for --

MS. BOURNE: I apologize. I misspoke.

THE COURT: All right. Go ahead.

BY MS. BOURNE:

Q. Do you admit that Mr. Scott had admitted that he had changed his story? Were you aware of that by the time of the trial?

A. I don't recall whether I was aware or not. So I'm not going to lie to you.

Q. Can you look at page 56 of the transcript, please, that I just provided to you.

A. Okay.

Q. And if I can ask you to look at line 17 through 19. Does that refresh your recollection?

MR. FIORELLA: What page are we on?

MS. BOURNE: Page 56.

MR. FIORELLA: Line 17 beginning with, "So you didn't voluntarily go down there."

MS. BOURNE: And then it says, "Changed your story."

MR. FIORELLA: Are we on Ronald Scott?

MS. BOURNE: We're on Ronald Scott.

MR. FIORELLA: My page 56 is showing something different. Let me make sure we're on the same page. You're on page 54. I'm on 56.

MS. BOURNE: Fifty-six, "So you didn't voluntarily go down there. It was only after they contacted you that you went down and changed your story."

MR. FIORELLA: Okay.

MS. BOURNE: Right here. Line 17 through 20.

MR. FIORELLA: Okay.

BY MS. BOURNE:

Q. All right. So you were aware that he had changed his story by the time of the trial in this case?

A. Yes. I should have been.

Q. Did you discuss with counsel in this case the specific allegations of what you thought -- what information you thought had not been disclosed and would have been useful to you?

A. Excuse me?

Q. Did you and counsel discuss specifically what the specific items of Brady were that you believe

would have been -- were not disclosed and would have been useful to you? Did you tell him what you thought was not disclosed and that you would have used?

A. Basically, I guess it would have been the statements.

Q. The entire statement, or did you talk about the specifics therein and what you were not aware of?

A. I guess it went to just the -- I guess the change in stories.

Q. Okay. But I'm asking you -- he has made specific allegations in an amended pleading, and I'm trying to go through each one of those specific allegations and see whether or not you were aware of that information, and so what I'm asking you is when he wrote that pleading saying those were the things that were different and were material in this case, had he discussed that with you to find out whether you were aware of those things?

A. I don't recall.

Q. Did you have a meeting with counsel to discuss this case?

A. We had several telephone conferences.

Q. And did you go over the testimony in any specificity?

A. We reviewed the transcript, at least parts of the transcripts, yeah.

THE COURT: Mr. Anderson, can you speak up in the microphone.

BY MS. BOURNE:

Q. Part of the trial transcripts or part of these transcripts of these statements?

A. Just the statements, I believe.

Q. What about your file, did you produce your file to him?

A. I believe I made the whole file available.

Q. What did you have in your file?

A. It would have been any interviews, any -- any discovery that I had received.

Q. So your file was still in the same condition that it was in when -- some many years ago; you had all of that information?

A. I believe I did.

Q. All right. So if I can move on to trial testimony in this case, the actual trial testimony from the third trial involving Ronald Scott, April 29th, 2003.

MS. BOURNE: May I approach the witness?

THE COURT: Yes.

BY MS. BOURNE:

Q. I'm going to show you Ronald Scott's --

MS. BOURNE: Did you want to see that to make sure you've got the same thing?

MR. FIORELLA: It's from April 29, 2003. Ronald Scott's testimony starts on page 62?

MS. BOURNE: Yes.

MR. FIORELLA: We're on the same page.

BY MS. BOURNE:

Q. So you say you're not completely familiar with what the allegations are in the habeas petition; is that fair?

A. Yes.

Q. So one of the allegations was that you were not aware of the number of people that were originally at the crime scene where Ms. Scott was shot. Do you recall how many people during the trial testimony Mr. Scott said were present?

A. No, I don't.

Q. You don't recall?

A. No, I do not.

Q. Do you recall from any of the previous trials how many people he said were present?

A. No, I do not.

Q. So you can't, as you sit here today, say whether or not the information in the affidavit talking about the number of people that were present was

inconsistent with what he testified to at the various other hearings or not, can you?

A. No.

Q. If I can draw your attention, please, to page 131 of the transcript. You said you were not aware of these statements to police; is that correct? The statement that Ronald Scott gave to police, you were not aware of that?

A. I don't recall, no.

Q. You don't recall or you were not aware?

A. I know I don't recall it. So I can't say whether I was aware or not.

Q. So it's possible that you did know about the statements that he made to police? Is that possible?

A. In all candor, I can't tell you now.

Q. You can't tell me that you were not aware of these statements?

A. As I sit here today, I can't recall.

Q. So when you previously testified that you hadn't seen the information that was in those transcripts, you're now saying you can't recall that?

A. Can't recall what?

Q. Well, you previously testified, I think, that you were not aware of the information that was in the transcribed statements from the police officer regarding

Ronald Scott.

A. Right.

Q. But now you're saying you can't recall whether or not you had statements from Ronald Scott?

A. I'm sorry. You confused me, but no, those statements I still don't -- I don't believe I ever saw those.

Q. Can you recall whether you received the information that was in those statements regardless of whether or not you got copies of the transcripts?

A. No.

Q. So it's possible that you might have received the information that was in those transcripts from another form?

MR. FIORELLA: Your Honor, I'm going to object. What counsel is doing here is -- Mr. Anderson has already testified to the details of the statement he didn't have. This case was tried three times, and if you look at the cross-examination, there's evidence that comes out during each cross-examination that's built upon for the next trial, and that's where I think Mr. Anderson is getting the information from rather than transcripts from statements. He's already said he checked his file, he didn't have them, and he's never seen them.

So I think it's unfair to this witness to

be cross-examining him this way.

MS. BOURNE: If I might respond.

THE COURT: No. That's where you think he's getting the information, but the Commonwealth has the opportunity to question him. I'm going to give her the opportunity. Overruled.

Continue.

BY MS. BOURNE:

Q. So as you sit here today, you can't say that you didn't receive the information that was in those statements from another source?

A. No, I can't.

Q. Okay. And is that true for the statements of Tamika Reid and of Kenneth Parker also or -- I want to make sure that -- I was originally asking you about Ronald Scott, but if that's also true about Tamika Reid and Kenneth Parker, let me also ask that.

A. As the attorney just said, I did this three times. So where the information was or not, I don't recall this information, where I received the information, if I received the information.

Q. But you understand this is a very serious allegation alleging that the prosecutor and the police in the case committed a Brady violation and didn't disclose information to you that was exculpatory?

A. Any information that I received from the Commonwealth, I would have used it in the trial, and if it's not here, then I just didn't have it.

Q. But you can't sit here today and say whether or not you received the information that is in these statements?

A. No.

Q. All right. So although you may not have seen the amended petition, one of the allegations is that Ronald Scott told the police that there were originally four or five people there, and then he later came and testified that there were three people. Does that sound familiar to you?

A. No, but that doesn't mean -- just because it doesn't --

MR. FIORELLA: Well, Your Honor, if counsel wants to be accurate, if she shows him Ronald Scott's first transcript, he said there was only three people there -- a Q, KP, which is Kenneth Parker, and Marquise -- and then the next day he gives a statement, he says he saw five guys there. So it's unfair to be asking the questions in this manner when the record speaks for itself.

MS. BOURNE: I disagree. I don't think the record shows that he says five people at the second

trial. I think if you read the transcript in its entirety, it seems to suggest four people and maybe he saw a shadow, but I think it's perfectly fair cross-examination. We have a witness here who's made very serious allegations who apparently cannot recall the specifics of this case but has no problem executing an affidavit saying he absolutely would have used this and he didn't receive it, without getting into the specifics, and that's exactly why, Your Honor, I asked him to amend these pleadings because it's imperative that if this witness did not receive this information from another source, I mean, that decides the Brady issue.

THE COURT: Well, Mr. Anderson has already testified ad nauseam that he does not recall the specifics of this trial, and he has not read the trial transcript of all three trials.

So I am going to allow you to continue your cross-examination, but not with regard to the specific information that's in these transcripts -- in other words, four or five or this or that -- because he doesn't recall it, and it's just futile.

So the information -- the cross-examination needs to be with regard to the issues that are raised in the affidavit.

MS. BOURNE: I think I have -- the

affidavit doesn't provide any specifics, and, I mean, to the extent that -- and I'm happy to argue from the record about what he knew and didn't know from various times prior to this trial because I think that the record shows he knew a lot of this information.

THE COURT: That's my ruling. So proceed.

BY MS. BOURNE:

Q. Did you know, for example, that there was -- that Ronald Scott had identified the defendant as a red-skinned guy prior to trial?

MR. FIORELLA: Well, Your Honor, I'm going to ask that she goes ahead and asks the question accurately. He said a red-skinned guy with --

THE COURT: Stop. I specifically said no facts from the transcript. Okay?

MS. BOURNE: I don't have any further questions.

THE COURT: All right.

MR. FIORELLA: I have nothing further, Your Honor.

EXAMINATION

BY THE COURT:

Q. Mr. Anderson?

A. Yes, Your Honor.

Q. In this affidavit that you prepared --

A. Yes, Your Honor.

Q. -- on July 11th of this year, you stated, No. 1, "I unequivocally state under oath that the content of each transcript" -- and you know what transcripts that you're referring to; is that right?

A. Yes.

Q. And those are the transcripts that Ms. Bourne was just reading to you from Mr. Scott, Mr. Parker, and Ms. Reid?

MR. FIORELLA: Your Honor, I believe what Ms. Bourne was doing was transcripts from the trial --

THE COURT: Don't interrupt me, please.

MR. FIORELLA: Yes, sir.

BY THE COURT:

Q. So you said that the evidence that was in these transcripts was evidence favorable to Mr. Lynch. Why did you say that?

A. Specifically as it related to -- I can't remember -- I think it was Mr. Scott, he basically said -- he named someone else as being -- based on what I saw, he was actually saying it was someone other than Mr. Lynch that had, in fact, taken part in the robbery. So that in and of itself I think would have given the jury reason to think or pause before they would have convicted him.

Q. And what about Ms. Reid and Mr. Parker's?

A. As it relates to Mr. Reid (sic) and Ms. Parker (sic), I don't know that their testimony -- I don't remember exactly, but I do remember Mr. Scott's testimony. It was basically he named the other person who had, in fact, committed the offense.

Q. All right. And then you go on to say, "This evidence was suppressed by the Commonwealth either willfully or inadvertently."

Now, "suppressed" is, of course, a term of art that we use here, but are you suggesting in that statement that you -- or are you telling us that you did not receive those transcripts?

A. The transcripts --

Q. The transcripts that were just provided to you from Parker, Reid, and Scott.

A. Your Honor, in all candor, I don't remember the status of those transcripts because it's been so long ago. I know at the time these were filed, I didn't have the transcripts with me at that time.

Q. So my question to you is at the time that you tried Mr. Lynch's three cases, did you have transcripts of these statements from these three people?

A. Yes.

Q. You did have them?

A. I believe I did, yes.

Q. Well, then why did you say in your affidavit that you did not have them?

A. Wait a minute. I don't know when I ordered those transcripts, Your Honor, so I can't tell you off the top of my head whether I had them or not. It would have been my normal course of action to get the transcripts from the previous trial.

MR. FIORELLA: Your Honor, I --

THE COURT: No.

BY THE COURT:

Q. Listen to what I'm saying. I'm referring to your affidavit --

A. Right.

Q. -- that you provided in July.

A. Right.

Q. In your affidavit, you say that these transcripts of statements given to the police by Kenneth Parker, Tamika Reid, and Ronald Scott were suppressed by the Commonwealth during the first three trials. In other words, they weren't given to you. Do you --

A. I don't recall them, Your Honor. That's all I can -- I don't recall them.

Q. You don't recall that they existed?

A. That's correct, Your Honor.

Q. But you're not sure?

A. I can't be positive, no.
Q. Well, then why would you swear under oath to this affidavit?
A. At that time, I looked at my file, I didn't have those -- I didn't have all of these transcripts, and I guess I couldn't --
Q. So before you prepared this, you reviewed your file?
A. I looked for my file. I didn't have my file at that time.
Q. All right. Do you have it now?
A. No, I don't.
Q. So, I mean -- and I'm not -- I want to be clear that I'm not -- I can't remember what happened a month ago, but this is 15 years ago. My question to you is how can you swear to this affidavit if you don't remember whether you had these statements?
A. Your Honor, when I signed them based on that information, I just don't recall it. I guess in hindsight, I could have asked the Court to let me see the copies of the transcripts before I submitted it, but I just don't recall that information, and that's why I filed the affidavit.
Q. All right. Then you go on to say that "the content of these transcripts made it likely that

there was a reasonable probability that if the evidence had been disclosed, that the results of the trials would have been different."

All right. And you go on to talk about Detective Glenn Ford. Was Detective Ford in this case?

A. He was, Your Honor.

Q. How do you know that?

A. Because I -- well, I knew him as a person, and I knew of what happened with him at another point of his life that he's no longer an officer.

Q. But regarding this trial, how do you remember that he was in this trial?

A. Excuse me?

Q. How do you remember that he was a detective in this trial?

A. He was just one of the persons I remember.

Q. Okay. But at the beginning, you couldn't remember that he was in it, at the beginning of today's hearing?

A. No. I knew he was -- I always knew he was in it.

Q. Well, I asked you what detectives were in there, and you said you didn't know, you couldn't remember.

A. I remember seeing something -- some of the

reports he did, some conversation he had with some witnesses.

Q. All right.

THE COURT: All right. Thank you, Mr. Anderson. I'm going to excuse you at this time.

THE WITNESS: Thank you.

MR. FIORELLA: Your Honor, may I just ask one or two follow-up questions?

THE COURT: Yes.

REDIRECT EXAMINATION

BY MR. FIORELLA:

Q. Mr. Anderson, I want to make sure that we're not confusing trial transcripts with statement transcripts. Do you understand the difference between the two?

A. Right.

Q. The trial transcripts, did you have access to those?

A. The trial transcripts?

Q. Yes. During the course of your representation.

A. I would probably say yes, but because, again, by now, I'm sure I --

Q. Did I send you copies of the trial transcripts?

A. Yes.
Q. Okay. You reviewed those?
A. Yes.
Q. Okay. Then you got the transcripts right -- the statement transcripts right before the last hearing?
A. Right.
Q. I sent you those?
A. Right.
Q. Did those statement transcripts of the three witnesses involved talk about a lot more detail than the cross-examination that you had prepared in your three trials?
A. Yes.
Q. For instance, did you ever recall --
MS. BOURNE: Your Honor, I'm going to object. You would not allow me to cross-examine him about the transcripts. This is just opening up the door to the same thing.
THE COURT: Yes.
BY MR. FIORELLA:
Q. So is it your testimony, to the best of your recollection, those statement transcripts, you don't ever recall seeing anything containing that kind of detail --

MS. BOURNE: Objection to him leading the witness. I mean, he's testifying at this point.

BY MR. FIORELLA:

Q. Do you recall seeing those transcripts before I presented them to you, the statements?

A. The statements?

Q. Yes.

A. No.

Q. You tried this case three times?

A. Yes.

Q. That's something you would have recalled?

A. Right.

Q. Statements of three material witnesses, correct?

MS. BOURNE: Objection, Your Honor.

THE COURT: Sustained.

BY MR. FIORELLA:

Q. Is that something in your practice that you would have recalled, based upon the number of years you've been practicing, of seeing transcribed statements of three material witnesses?

A. I would like to think so.

Q. And you were asked during cross-examination about the policy of the Commonwealth Attorney's Office. Isn't it the policy of the

Commonwealth Attorney's Office as you know it that transcribed statements are only produced to the extent that the Commonwealth Attorney believes it to be Brady? You don't get every statement that's transcribed, do you?

A. I can't tell you what the policy of the Commonwealth Attorney's Office is.

Q. Do you get the transcribed statement of every witness of every case you've tried in this jurisdiction?

A. No.

Q. Don't you only get them to the extent that they're considered Brady material?

MS. BOURNE: Objection, Your Honor. He's leading the witness.

MR. FIORELLA: I think she asked about the policy, Your Honor, and I'm just trying to --

THE COURT: He stated he doesn't know what the policy is.

MR. FIORELLA: Okay. That's all, Your Honor.

THE COURT: All right. Thank you. You're excused. Thank you, Mr. Anderson.

THE WITNESS: Thank you, Your Honor.

THE COURT: All right. What else?

MR. FIORELLA: Your Honor, I could put

Mr. Lynch on, but he was part and parcel involved in this, and I would proffer that his testimony would be that he never saw those statements before we got them transcribed. I can call him, or will the respondent accept my proffer?

MS. BOURNE: Again, I don't know what relevance that has at this point. If it was disclosed to counsel, they're disclosed to counsel.

THE COURT: I don't know that it's necessarily relevant.

MR. FIORELLA: Okay. Your Honor, at this point in time, we would rest.

THE COURT: All right. So I took under advisement the Detective Ford sentencing documents until after I heard from Mr. Anderson, and my concern was, at first, that Mr. Anderson could not recall any of the detectives involved in the case, and I referred to Investigator Huffman, who he knows and says yes, he was in the case, and then didn't mention anyone else until I read his affidavit, which he said Detective Ford, whom he knows, but other than -- I'm going to -- based upon what's been provided so far, I don't think that the issue of Detective Ford's sentencing is relevant. So I'm going to deny the admission of Exhibit E on behalf of the petitioner.

So that leaves A, B, C, F, G, H, I, J, and

the petitioner has no other evidence.

Do you have evidence?

MS. BOURNE: I have a motion to strike.

THE COURT: Okay. Why?

MS. BOURNE: Your Honor, you heard the testimony today. He can't say whether he received this information from other sources. He doesn't remember what he got and when he got it. He couldn't even say whether he had -- he candidly said, maybe not initially in the affidavit, but upon cross-examination, he couldn't recall whether he had received the information that was in the transcript.

I don't think it's his burden to show by a preponderance of the evidence that there would be a reasonable probability of a different result at trial and that exculpatory evidence was suppressed by the Commonwealth. I don't think he can meet any of those prongs of the Brady test without counsel saying that he absolutely did not have that information either from the transcripts or other sources.

You know, case law in Virginia is that you don't have to provide the transcripts as long as you provide the exculpatory information, and I'm not conceding that he didn't have the transcripts. He candidly says he does not recall, but he certainly did not recall whether

or not he received the information. He didn't even know what the allegations were in the habeas petition, which made it very difficult for me to try to figure out if he had that from another source, but he candidly stated he didn't know. He couldn't say whether or not he had received it from another source, and he couldn't identify any exculpatory information from anybody other than Tamika -- I mean, from Tamika Reid or Kenny Parker.

So at this point, I would move to strike.

THE COURT: All right. Mr. Fiorella.

MR. FIORELLA: Judge, in all fairness to Mr. Anderson, he was asked to recall things that happened 15 years ago, although he did try the case three times.

I provided him with the transcripts and I -- the trial transcripts. I also provided him with the statement transcripts of the witnesses. I think for a time there, he was confused between the two, referring to transcripts interchangeably. But when pointedly asked both in his affidavit, he said he never got it and didn't -- and when pointedly asked about the detail, he said he doesn't recall any of that detail. Therefore, he believes that he never received the transcript. I think he was just trying to be fair because what happened 15 years ago, Your Honor said what happened a month ago.

So I think that the motion to strike is

misplaced because I think if the Court gets to the point where it reviews the cross-examination and reviews the detail of these transcripts, you will see that that detail was not provided, and I think that's where we need to get to, and that's why we move for the motion on the record because I think the record will speak for itself.

Mr. Anderson -- and I'm probably not going to be good enough to point out every little detail about the differences from the statements, whether they're internally inconsistent with one another, whether they are inconsistent with the statement given by the same witness on the same day much closer to what they testified over three trials, but there's a number of them, and I would think, in the totality, Judge, once you review this record, you'll see clearly that Mr. Anderson was correct that he didn't have this information, where they spoke of gold teeth, wearing masks, transposing automobiles that were used, where people were sitting in the automobiles. I think once the Court sees that, if I'm eloquent enough to point all of it out, I think you'll clearly see that the information wasn't had because it certainly would have been used.

THE COURT: All right. Well, Ms. Bourne, with regard to your motion, I agree with you that on direct questioning from the Court, Mr. Anderson could not

recall very much about the case, which contradicts in some respect the affidavits that he prepared, but he did prepare the affidavit, and there is a great deal of transcript testimony here, which the Court has not yet reviewed, but considering the standard of review at this stage, I'm going to rule that Mr. Lynch has met his burden.

So I'm going to deny your motion to strike.

What else?

MS. BOURNE: Can I have just a moment, Your Honor?

THE COURT: Yes. Actually, we'll take a brief recess.

(A recess was held.)

THE COURT: Okay.

MS. BOURNE: I think where we are, Your Honor, I do have one exhibit that there's no objection to, which is a photograph of Mr. Lynch on the date --

THE DEPUTY: Hold on one second.

MS. BOURNE: I'm sorry. I'll wait.

(Defendant present.)

THE COURT: All right. Mr. Lynch is back with us.

And, Ms. Bourne, you had an exhibit you

wanted to produce.

MS. BOURNE: Yes, and there's no objection. This is, I'd proffer for the Court, a mug shot of Mr. Lester Bernard Lynch on the date I believe he was arrested and showing that he has cornrows.

THE COURT: Okay.

MR. FIORELLA: Your Honor, there's another document that she was going to introduce, and we have no objection.

MS. BOURNE: This was already a part of the record. I don't know that it needs to be introduced, but there was a discovery letter that was sent well before Mr. Batliner was involved in the case in general district court that has some of this information in it on September 27th, 2001. So those are two exhibits, I guess my exhibits.

THE COURT: We'll introduce for today's hearing. All right.

MR. FIORELLA: Your Honor, may I get his family back in? I don't think they know the Court's back.

THE COURT: Yes.

All right. The photo will be Commonwealth's Exhibit 1.

MS. BOURNE: I'm not trying to be picky, but I'm not the Commonwealth.

THE COURT: I know. I understand.
MS. BOURNE: The warden.
THE COURT: Defendant's exhibit. Sorry.
MS. BOURNE: Respondent, I guess.
THE COURT: Yes, respondent.
Okay. Those have been admitted as Exhibits 1 and 2.
(Thereupon, the above-referenced photograph and letter were marked and received into evidence as Respondent's Exhibit Nos. 1 and 2.)
MS. BOURNE: Okay. I've spoken with counsel. I think my position is I'm not going to put on any additional evidence at this time.
THE COURT: Okay.
MS. BOURNE: We clearly have a lot of argument we could make orally, but it might be more helpful to the Court -- we've decided, if the Court is amenable to this, to file written briefs after the Court has a chance to review the record.
I'd also, before any brief would be filed, I would like to have a copy of the transcript of the testimony today so that I can refer to that in any written or oral argument with regard to the specifics in this case and the record.
THE COURT: Absolutely. Mr. Fiorella, is

that your understanding?

MR. FIORELLA: That's agreeable. I think Ms. Bourne and I thought that it might be best, even if the Court needed oral argument after you reviewed the record and the issues are briefed, if you thought oral argument was necessary, then we could report back to the Court, but we thought that would be appropriate after the Court reviewed the record and reviewed all the pleadings.

THE COURT: I don't believe that oral argument would be necessary. I would rely -- I rely in great deal on your arguments, written arguments, and I think that that is -- I think that's a good idea for what it's worth. Okay.

MS. BOURNE: Your Honor, as he has the burden in this case, my preference would be that he file a brief, I file a response, and if he wants to file a rebuttal to that so that I know what I'm responding to, which was my concern earlier.

THE COURT: All right. Okay.

MR. FIORELLA: Do you want to put any time frames on it?

THE COURT: Yes, please. The time frame is going to incorporate my reading this transcript. Well, the exhibits that have been introduced, that is, and so -- today is Thursday, the 2nd. Give me until the 9th.

That's essentially one week, and then, Mr. Fiorella, if you can have your brief in by the following -- can you do it within a week?

MR. FIORELLA: Could I have 14 days, Your Honor?

THE COURT: Okay. If you can have it in by the 24th of August.

MR. FIORELLA: Yes, sir.

THE COURT: And, Ms. Bourne, I know you're going to be working on yours, and you've got to get the transcript as well.

(Off-the-record discussion between the Court and the court reporter.)

MR. FIORELLA: Judge, I'd need the transcript as well. We can push my time back. I'm not trying to rush the Court or the court reporter.

THE COURT: I understand.

MS. BOURNE: If I might note, although there have been certain exhibits entered, we are relying on the entire -- I mean, we made all of these transcripts part of the record, and so the problem is that they're very lengthy and involving three trial transcripts and a motions transcript.

THE COURT: Okay. We don't have -- I'm just looking in the interest of fairness to both sides

with regard to getting this case resolved, but if we give the court reporter two weeks, that is the 17th, and then why don't I give Mr. Fiorella until the 31st. That's two weeks after that. That's a month basically. And then, Ms. Bourne, if you want until the 14th of September.

MS. BOURNE: That's fine, Your Honor.

THE COURT: That would be enough time? That's a month and a half.

MS. BOURNE: Yes.

THE COURT: Are you sure?

MS. BOURNE: I will endeavor to get it done.

THE COURT: Okay. All right. Well --

MR. FIORELLA: Judge, any new issues raised, would I have seven days to respond thereafter?

THE COURT: Any new issues raised?

MR. FIORELLA: To any issues that weren't addressed.

THE COURT: You mean in rebuttal?

MR. FIORELLA: Her reply.

THE COURT: Yes. I will give you seven days. You'll have until the 21st.

MS. BOURNE: Does the Court wish to have a page limit?

THE COURT: No. You do whatever you think

is necessary. I'm not going to limit anything when it comes to someone's freedom.

I will point out -- well, all right. So that will be the time, and then I will -- as soon as I get all the material, I'll review it, including the briefs, and you'll hear from me when I have an opportunity to do it. Okay?

MR. FIORELLA: Yes, sir.

MS. BOURNE: Thank you very much.

THE COURT: Anything else?

MS. BOURNE: No, Your Honor.

THE COURT: All right. Thank you very much, and I will file these exhibits with the clerk.

MR. FIORELLA: Judge, did you ever make a ruling with respect to exhibits K and L? That would have been the transcripts from the --

THE COURT: I granted the motion to exclude.

MR. FIORELLA: I think that was on Detective Ford's documents.

THE COURT: I excluded -- you removed the transcript checklist, which was D. I ruled on Detective Ford's sentencing documents, and then with regard to the transcript in Commonwealth versus Greg Williams, K and L, there was an objection to entering those with regard to

relevance, and I believe I granted that objection. So they're not in.

MR. FIORELLA: Okay.

THE COURT: All right. And I will deliver these to the clerk so they can be filed, and you have the court reporter's information.

MR. FIORELLA: Your Honor, for the record, we would note our objection to the Court's excluding K and L.

THE COURT: Yes. All right. Noted. Thank you.

(The hearing was concluded.)

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C E R T I F I C A T E

COMMONWEALTH OF VIRGINIA

CITY OF NORFOLK, to wit:

I, Cathy D. Aiello, RPR, do hereby certify that the foregoing pages are a true and correct transcript of my Stenotype notes of the proceedings had at the time and place in the caption mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal on this 8th day of August, 2018.

Cathy D. Aiello

Cathy D. Aiello, Notary Public

Notary Registration No. 213259

My term of office expires March 31, 2019

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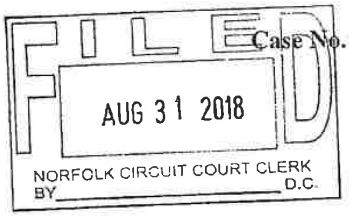
VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF NORFOLK

LESTER B. LYNCH, #1162173
Petitioner,

v.

BETH CABELL, WARDEN,
SUSSEX II STATE PRISON
Respondent




Case No.: CL17000583-00

**MEMORANDUM IN SUPPORT OF PETITIONER'S HABEAS CORPUS PETITION**

**I. FACTS**

On August 2, 2018, this Court held an evidentiary hearing for both parties to present evidence on the question of whether the Commonwealth committed a *Brady* violation in failing to produce recently transcribed statements of material witnesses: Tamika Reid, Ronald Scott, and Kenneth Parker. These statements were not found and provided to Petitioner until May 1, 2018, two days before the agreed date the first evidentiary hearing was set to be heard.

During the August hearing, Petitioner admitted two affidavits from Attorney George Anderson, Petitioner's trial counsel, stating that the transcribed statements were not provided to him during his representation of Mr. Lynch over the course of three jury trials. On direct examination, Mr. Anderson unequivocally restated his recollection that he never had access to the transcripts, nor the detailed information contained in those transcripts, while defending Mr. Lynch. [See Evidentiary Hearing (EH) p. 22].

On cross-examination, Mr. Anderson acknowledged that he could not recall every detail regarding his handling of the case given the passage of sixteen years since Lynch's conviction. (EH pp. 45-47, 52). Mr. Anderson admitted that he did not recall seeing the four transcribed

witness statements (EH p. 53), but that to the best of his recollection, he did not recall ever seeing them (EH p. 57-58). [1]

Counsel has expended considerable time reviewing the trial testimonies of Reid, Scott, and Parker over the course of the Petitioner's three jury trials. It is clear from that review of the record, that defense counsel did not have the transcribed statements, nor did trial counsel have the details contained in those statements regarding each witness's recall of the murder, in that the transcribed statements are never directly mentioned at any time or referred to in either direct or cross-examination.

Furthermore, the transcripts are not listed as being produced in the Commonwealth's discovery letter, which was sent to Mr. Anderson dated September 27, 2001. (See Exhibit 13). [2]

Counsel also asserts that Attorney Ronald Batliner, the trial prosecutor, was subpoenaed as a witness for the Commonwealth. Mr. Batliner was present and available to testify at the hearing, but did not do so. The Court can glean from this fact that Mr. Batliner could not definitively state whether he produced the statements to defense counsel during the trial proceeding.

Lastly, these statements were obviously missing from the record because they were not produced until two days before the first evidentiary hearing. No satisfactory explanation has been given by the Respondent as to where the statements were found and remained for the past sixteen years prior to the filing of this Petition for habeas corpus. Counsel will now contrast

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[1] Petitioner, at this juncture, asumes that the information contained in the transcripts is both material, and that any failure to produce the transcripts would be deemed prejudicial to him.

[2] The discovery letter, at p. 2, does relate a somewhat brief description of what is purportedly contained in the transcribed statements, but this limited disclosure lacks any of the detail and context contained in the original tape recordings or transcripts.

each transcribed statement against the trial testimonies of each witness to set out for the Court the prejudice suffered by the defendant by not having the transcribed statements.

## II. LAW

A *Brady* violation occurs where the nondisclosure by the prosecutor is so serious that there is reasonable probability that the suppressed evidence would have produced a different verdict. *See Brady v. Maryland, 373 U.S. 83 (1963); Strickler v. Greene, 527 U.S. 263, 281-82 (1999); United States v. Bagley, 473 U.S. 667, 677 (1985); and Kyles v. Whitley, 514 U.S. 419, 433-34 (1995).*

In *Smith v. Cain, 565 U.S. 73 (2012),* a case strikingly similar to the case at bar, the United States Supreme Court reversed and remanded a state court's refusal of the defendant's post-conviction relief where contradictory eyewitness statements were withheld from the defense. In *Smith*, the Court held that the withholding of just one witness's statement from the defense was material and warranted reversal where there was a likelihood of a different result great enough to undermine the confidence in the outcome of the trial. *See, Smith, supra.*

## III. ARGUMENT

In reviewing the trial testimony with the four statements in question, counsel will use the following Key. Emphasis has been added to those portions of the witnesses' testimony, which were inconsistent with the witnesses' pretrial statements.

**Key:**
**Exhibit #1:** Ronald Scott: Second Statement to Police
**Exhibit #2:** Ronald Scott: First Statement to Police
**Exhibit #3:** Ronald Scott: First Trial
**Exhibit #4:** Ronald Scott: Second Trial
**Exhibit #5:** Ronald Scott: Third Trial
**Exhibit #6:** Kenneth Parker: Statement to Police
**Exhibit #7:** Kenneth Parker: First Trial

**Exhibit #8:** Kenneth Parker: Second Trial
**Exhibit #9:** Kenneth Parker: Third Trial
**Exhibit #10:** Tamika Reid: Statement to Police
**Exhibit #11:** Tamika Reid: First Trial
**Exhibit #12:** Tamika Reid: Third Trial

**Ronald Scott**

Ronald Scott gave two transcribed statements to the police. In Ronald Scott's first statement he states that Gregory "Tyree" Williams, his brother Christopher "Q" Williams, and Kenneth Parker were the three individuals who entered his room on the night that his mother was shot. Scott stated that he definitely recognized Gregory Williams and Christopher Williams because he saw them almost every other day, and he knew their voices. Scott gave another statement to the police the next day, in which he indicated that it was Gregory Williams and two other men, but not Christopher Williams and Kenneth Parker. Mr. Anderson was provided a single-paragraph account of Scott's inconsistent statements to the police, but this paragraph lacked the detail in the transcription of Scott's statements. Specifically, the summary lacked Scott's language regarding certainty of the identities of the individuals when he made his first statement to the police. Accordingly, Mr. Anderson asks Scott general questions about his changes in statements during the trials. When Scott attempts to justify his inconsistent statements by referring to his first statement, Mr. Anderson does not impeach him with the transcript of his first statement. Mr. Anderson does not mention Scott having initially stated that he knew that Gregory Williams, Christopher Williams, and Kenneth Parker were there because he knew each assailant and recognized their appearance and the sound of their voices.

Scott was also inconsistent about more discrete details. In his statement to the police, Scott states that the first two men both had guns. In his trial testimony, however, Scott states that he was unsure whether the second assailant, who he asserted was the defendant, had a firearm.

Scott also told the police that the assailants were wearing scarves on their foreheads and chins, but in the second trial Scott testifies that they were not wearing anything on their faces.

Scott's trial testimony "evolved" from his two transcribed statements regarding the amount of heroin which was alleged to have been stolen. In his first statement on June 9th, he said $400.00 of heroin was taken; his next statement on June 10th, he said $800.00 of heroin was taken; while at trial, he testified that $1,200.00 of heroin was taken. Additional discrepancies include Scott describing the perpetrator as having "gold in teeth" and being "red skinned" (first trial p. 133). There was no mention in the interview statements of any perpetrators wearing bandanas, yet at trial, Scott testified that he recognized the two individuals as brothers even though they had bandanas on their faces. Mr. Anderson did not have access to the earlier statements, with which he could have cross-examined the witnesses about these discrepancies. Instead of questioning Scott about the inconsistent details of his statements, Mr. Anderson concerns his cross-examination with characteristics of the individuals Scott remembered and general questions about his change in story. This is likely based upon the single paragraph summary contained in the discovery letter.

It also shows that Mr. Anderson did not have access to the transcribed witness statements. Had the statements been produced, it would have been unconscionable for Mr. Anderson not to have questioned, at the very least, the accounts of events that Scott gave in his first statement to the police in relation to the account he gave in his subsequent statement. Failure to produce the two inconsistent statements alone is sufficient to warrant their production.

Ronald Scott's First Statement to Police: (June 9, 2001)

Question: "Describe to me the two people that were in the front that had handguns and what they were wearing."
Scott: "They was brown skinned, and they was wearing little half scarves tied around their forehead and like around the chin."
Question: "Did you recognize any of these individuals?

Scott: **"Recognized the first two I looked at."**
Question: **"How did you recognize them?"**
Scott: **"I see them almost every other day, and I know their voice, they voice they got like an accent in their voice."**
Question: "All right. So these two in the front you definitely recognized. What did they do?
Scott: **"They was beating me with handguns.** One of them had a chrome handgun, and you could tell the handle was black because he put the chrome part in his hand and hit me with the handle, and then he put the handle back in his hand and slammed me with the chrome part, and the other one had a black handgun."
Question: "These two individuals both were hitting you with the handgun?"
Scott: "Yes, sir." (Ex. 2, at 3–4 (emphasis added).)

Question: **"The two guys in the front that were demanding money and hitting you with the guns, you said you immediately recognized both of them even though they had bandannas over their face?"**
Answer: **"I recognized them, and they're brothers."**
Question: "You think that they're brothers?"
Answer: "Yeah."
Question: "Earlier I showed you a photo lineup. I show it to you again. Do you recognize anybody in that photo lineup?"
Answer: **"I recognize a few people, but I see the person that was hitting—one of the persons that was hitting me in the head with the gun."**
Question: "You're point at Photo Number Four, the first one in the bottom row, is that correct?"
Answer: "Yes, sir."
Question: "Who is that?"
Scott: **"That's Q, call him Q, but his real name is Christopher. I can't think of his last name."** (Ex. 2, at 5 (emphasis added).)

Question: **"What was—the guy that was standing in the background, you stated you heard his voice, and you recognized his voice; is that correct?"**
Scott: **Kenny Parker.**
Question: "I show you a second photo lineup."
Scott: "Yes, sir."
Question: "And ask you if you identified anybody in that photo lineup."
Scott: "Yes, sir, on the bottom row, the second picture."
Question: "And that's the person you know as KP or Kenny Parker."
Scott: "Kenny Parker."
Question: **"And did you recognized [sic] his voice when he talked to you and his walk when he walked away from you; is that correct?"**
Scott: **"Yes, sir, and earlier he came to my house two times earlier that day, and kept getting mad because my mother kept telling him she's not going to wake me up, and he kept getting mad."** (Ex. 2, at 6–7 (emphasis added).)

Question: "Let the record reflect that the first photo lineup **Mr. Scott identified Christopher Williams**, ID number 655231 as being the person he knows as Q that struck him and participated in robbing him, and in the second photo lineup, **Mr. Scott identified Kenneth Lee Parker**, ID Number 173076 as the individual he heard and saw in the background when he was being struck repeatedly." (Ex. 2, at 7–8 (emphasis added).)

Question: **"So there was a total of four people, the two you've identified as Q, which is Christopher Williams, the one that you think is his brother?"**
Scott: **"Tyree."**
Question: "One you think is his brother by the name of Tyree. Those were the two that were actually striking you?"
Scott: "Yes, sir."
Question: "And the third individual that was in the room you believe to be a person by the name of Maurice or Marquis?
Scott: "Marquis." (Ex. 2, at 11–12 (emphasis added).)

Question: **"How long have you known Q or Christopher Williams?"**
Scott: **"I've known him through his baby's mama Rashawn."**
Question: **"How long have you known him?"**
Scott: **"Two years."**
Question: **"How long have you known Kenneth Parker or KP?"**
Scott: **"Two years."**
Question: **"How long have you known Q's brother, the one you think to be Q's brother Tyree?"**
Scott: **"A year now."**
Question: "How long have you known or have you ever known the gentleman that you called Marquis or Maurice?"
Scott: "I don't know him."
Question: "Had you ever seen him before tonight?"
Scott: "Yes, sir. I've seen his face before somewhere. I'm trying to place him."
Question: "But you're not as sure of him as you are the other three?"
Scott: "Right." (Ex. 2, 12–13 (emphasis added).)

Ronald Scott's Second Statement to the Police: (June 10, 2001)

Question: "When the door first opened, what did you see?"
Scott: "I seen a red guy."
Question: "A red skinned guy?"
Scott: "A red skinned guy."
Question: "Did he have anything covering part of his face?"
Scott: "He had something covering the forehead and around the bottom lip."
Question: "What did you see next?"
Scott: "I seen Tyreek."
Question: "You clearly saw Tyreek?"
Scott: "I clearly seen Tyreek. It was like Tyreek didn't have nothing covering his face at all."
Question: "Did he have something over part of his head?"
Scott: "The only thing he had was a bandanna on his forehead, and he had something on the bottom, the very bottom of his chin like a cowboy—like an old cowboy picture, you know how the cowboys had a handkerchief hanging from the chin, and that's all he had."
Question: "And you got a clear look at his face?"
Scott: I got a look so clear that I almost screamed his name out."
Question: "And that was the person that you know as Tyreek?"
Scott: "As Tyreek, Q's brother."

Question: "Earlier I showed you a set of photos, and I asked you if you could recognize anybody from this set of photos. Could you pick anybody out?
Scott: "Yeah. I recognized the person in the top row, Number Three."
Question: "The top row, this third picture, the picture all the way on the right-hand side?"
Scott: "Yes, sir."
Question: "Let the record reflect that he has identified Gregory Williams, ID Number 620925, as being Tyreek. After you saw Tyreek and the red skinned guy, did you see anybody else?"
Scott: "I seen a young—you could say between—dark skinned guy. He was at the door."
Question: "Tyreek and the red skinned guy were in front of the dark skinned guy?"
Scott: "Only thing I know about the red skinned guy. He had golds in his mouth." (Ex. 1, 3–5.)

Question: "Okay. You've given us a taped statement, some of things you said are different, slightly different, from what you're telling me now; is that correct?"
Scott: "Yes, sir."
Question: "Tell me why this statement is different from the first statement?
Scott: **"Because, well, the person I seen Tyreek clearly, so I automatically put faces on the other two guys."**
Question: **"So you clearly saw Tyreek, but you assume that it was two other guys that you knew that were with Tyreek?"**
Scott: "Yes, sir."
Question: **"Who were the other guys that you assumed would be with Tyreek?"**
Scott: **"Q and KP."**
Question: "And Q is Tyreek's brother?"
Scott: "Yes, sir. Don't see one without the other."
Question: **"On this event, how many people total did you actually see come up to your room?"**
Scott: **"Three."**
Question: "It was only three people that came in towards your room?"
Scott: "It was only three. It was only three."
Question: "And you're sure that Tyreek was one of them, and the other two people, do you think you could identify them?"
Scott: "Yes, sir. I can identify them."
Question: "But you're positive Tyreek or Gregory Williams was one of the ones?"
Scott: "Yes, sir." (Ex. 1, 9–10.)

Ronald Scott's Testimony from Trial #1:

Scott [referencing "the light skinned guy"]: **"I didn't see if he had a gun or not, so I am not going to say he had a gun, but he was hitting me in my head, though. I know Gregory had a gun because Gregory was right in front of me."** (Ex. 3, at 30 (emphasis added).)

Question: "Now, when the incident happened—after it happened, you had told the police who you thought was involved in it afterwards. Or did you tell the police was involved in it afterwards?"
Scott: **"I told them Gregory Williams which was Tyreke. I didn't know him by Gregory Williams. I just know him by Tyreke. I told them Kenny Parker. I told them Christopher**

**Williams, and I told them another guy because, you know, that's the same guys I kept seeing coming to the house. They came to my house two times. I seen them in the car."**
Question: **"Which of those guys was really there?"**
Scott: **"The guy right there, Gregory Williams, and another guy.** I couldn't get a look at him, but the other guy, they came to the house earlier, but they wasn't there during the incident. I don't know who was in the car, you know."
Question: **"Why did you tell the police about Kenny Parker and Christopher Williams? Why did you tell them that?"**
Scott: **"I was telling them everybody that, you know, basically that kept coming to my house. They came to the house back to back, kept coming to my house, you know. And I felt it was right. I was just trying to tell them everything, you know.**" (Ex. 3, at 51 (emphasis added).)

Question: "Who was there?"
Scott: **"That guy right there, Gregory Williams, and I couldn't see the other guy."**
Question: "You don't know who the third guy was?"
Scott: "No, I couldn't see him. I got a look at him, but I didn't get a very good look at him to basically say that's him, but I seen that guy right there." (Ex. 3, at 53 (emphasis added).)

Question: "Mr. Scott, you said something at the end that has me a little bit curious. You indicated that you picked the defendant out of a mug shot the next day?"
Scott: "Yeah, I believe it was the next day, yeah."
Question: **"Now, you also testified that you changed your story. You told police that you changed your story the next day?"**
Scott: "Yeah, went down there and told the truth."
Question: "That was the next day?"
Scott: "Yeah, as far back as I can remember. I believe it was the next day."
Question: "Isn't it a fact that the investigators approached you and told you that they had done some investigation, and they discovered that the information that you gave them was not correct, that Kenny Parker and Christopher Williams had alibis, and that's when you changed your mind?"
Scott: They called me on my cell phone and told me to come down there.
Question: "So you didn't voluntarily go down there. It was only after they contacted you with that information that you went down and changed your story; isn't that correct?
Scott: "Yes"
Question: So it's not like you just changed your mind.
Scott: "Yes, I changed my mind, too."
Question: "After they convinced you?"
Scott: **"No, it wasn't that. It was like I told you, my mother wasn't dead at that time, you know. It was like the death of my mom and what I was about to do was I was about to get myself into something I had no business getting into."** (Ex. 3, at 57 (emphasis added).)

Question: "Did you give the police a description of the person who came in?"
Scott: "Yeah."
Question: "What was the description?"
Scott: "Of him?
Question: "The description. What description did you give the police of the person who was in your house that evening?"

Scott: "I told him a light skinned guy that came to the house."
Question: "Did you tell him--?"
Scott: "With Gregory."
Question: "I'm sorry."
Scott: "I told him a light skinned guy that came to the house with Gregory."
Question: "Did you tell him there was anything about his eyes?"
Scott: "About his eyes?"
Question: "Yeah."
Scott: "Nah."
Question: "Did you tell them there was anything distinctive about his nose?"
Scott: "No."
Question: "Did you tell them he had any type of tattoo?"
Scott: "Nah."
Question: "Did you give them a height?"
Scott: "No, I don't remember giving a height. Only thing I remember doing was telling them he appeared to have some gold front in his mouth."
Question: "He had gold front in his mouth?"
Scott: "Yeah, like he had gold front in his mouth."
Question: "You told the police that?"
Scott: "I told them that. You know, the kind you can pull it out and put it in." (Ex. 3, at 74.)

Ronald Scott's Testimony from Trial #2: (March 19, 2003 – March 24, 2003)

Scott: **"Tyreke had the gun. I never seen the gun in Lester's hand, so I can't say he had a gun or not."** (Ex. 4, at 26 (emphasis added).)

Question: "What is he hitting you with?"
Scott: **"I didn't see his hands, so I'm going to have to say his bare hands.** And at this time my face was already numb. I wasn't feeling it." (Ex. 4, at 32 (emphasis added).)

Question: "Did you talk to [the police] and tell them who was in there?"
Scott: "Yeah, as far as what I knew at the time."
Question: "You told them Tyreke, right?"
Scott: "Yes, I told them Tyreke."
Question: **"Then you also told them Christopher Williams, and you thought maybe K.P., right?"**
Scott: **"Yeah."**
Question: **"Why did you tell them that?"**
Scott: **"Because K.P. brought all them guys to the house two times that day already. I was basically telling them, you know, who came to the house because they came two times before that even happened."**
Question: "Was K.P. there that you know?"
Scott: "K.P. wasn't there."
Question: "Was Christopher Williams there?"
Scott: "Nah, Christopher Williams wasn't there because I didn't see him there, you know, but there was another guy there, and I know for a fact that it wasn't K.P."
Question: "Who was there?"

Scott: "Lester Lynch and Tyreke was the only two guys that I seen, that my eyes came in contact with their eyes, and I saw them, and I can say a hundred percent they were the only guys I could say was there." (Ex. 4, at 36.)

Question: "On the night of the incident, did you give them a description of the light skinned person?"
Scott: "I just said a light skinned guy. I told them how he appeared to be. I don't call them corn rolls. I call them chain rolls because his hair wasn't corn rolls. His hair was plaits, but it was braided into one another so I just called them chain plaits. It wasn't corn rolled."
Question: "Did you tell them there was anything distinctive about his eyes?"
Scott: "No. They didn't ask me. I don't think they asked me."
Question: "Did you tell them there was anything distinctive about his nose."
Scott: "I don't remember."
Question: "You don't remember whether you told them or you didn't tell them?"
Scott: "I don't think we ever discussed things like this. They probably asked me have I seen anything. My answer to that was probably nah. It could have been."
Question: "Did you tell them about any tattoos that he could have had?"
Scott: "I don't think I seen any tattoos on him, man."
Question: "Did you tell them anything about his height or weight?"
Scott: "No. He was just taller than me. Well, I said something about the voice that you should find. That is the only thing I said something about. They asked me about the voice."
Question: "Do you recall telling them anything distinctive about his mouth?"
Scott: "No, just his voice."
Question: "Just his voice?"
Scott: "Yeah, his vocal."
Question: **"Did you recall saying whether he had a mask or anything? Do you recall whether the person had a mask or anything?"**
Scott: **"Nah, man. He was clear faced. That's why the whole time I was thinking they was going to kill me because they didn't have nothing on their face."**
Question: **Do you recall telling the police officer he might have had something covering his mouth?"**
**Scott: "Nah. That was just Tyreke. When I opened the door, Tyreke had his shirt like this, but it eventually slipped down. I can't tell you why he did that or not."**
Question: "So you're trying to say that you never said that Lester covered his face; it was only Tyreke?"
Scott: "I don't remember saying Lester covering his face. I am just telling you how I seen Lester, man, and if anybody can tell you more about Lester than me, that's Tamika. He was standing in front of her face the whole time." (Ex. 4, at 66–67 (emphasis added).)

Ronald Scott's Testimony from Trial #3: (April 29, 2003 – May 1, 2003)

Scott: "And the door kind of hit me a little bit, you know. And once the door opened all the way, I see Gregory Williams. He's the first person I see 'cause I know him, you know. And they rush into the room, right, ain't but two dudes come in the room. It's Gregory and it's the guy right there." (Ex. 5, at 81.)

Question: **"Who did you see have a gun?"**
Scott: **"I seen Gregory with the gun."**

Question: "What did he do with the gun when he came in?"
Scott: "He put the gun in my face. That's how he got control of the situation. Without the gun, I mean, I know—know what I am saying. I'm not going down without no gun. It took a gun." (Ex. 5, at 83 (emphasis added).)

Scott: "Tyreke the only one that I—know what I'm saying, really I knew, that I had known, that I had a positive. I mean, a make on the person and a name to it." (Ex. 5, at 91.)

Question: "Did you tell [the police] about this man?
Scott: "Yeah. I told them a light-skinned guy." (Ex. 5, at 91.)

Question: **"Okay. Now, you told them some other people, didn't you, when you were at the police?"**
Scott: **"I told that Kenny—I told them Kenny Parker could have been the guy that stuck his head through the door. And I told them about Tyreke's brother, Q, because he was in the car one of the times when they came up the first time. You know, I was just basically trying to put everything in, everybody that came to the house."** (Ex. 5, at 92 (emphasis added).)

Question: "And Tyreke, or the person that you describe as Tyreke, is hitting you with a gun?"
Scott: "Yes, sir."
Question: "And he's banging you—I saw in one of the pictures. It looks like a knot in the back of your head?"
Scott: "Yes, sir."
Question: "So I can take it he hit you pretty hard?"
Scott: "There's two people hitting me."
Question: "But the other person, the light-skinned person is hitting you. You don't—I think you testified—
Scott: "Light-skinned person—"
Question: "—you don't recall the gun in his hand?"
Scott: "He was hitting me, the light-skinned person."
Question: "The person—you didn't see a gun in that person's hand, did you?"
Scott: "In the left hand."
Question: "In the light-skinned person's that hit you?"
Scott: "I'm saying a light-skinned person."
Question: "You described to the police as the person as being light-skinned?"
Scott: "Yeah. I remember the person. The person is him, yeah, that person. And I know what I be talking about." (Ex. 5, at 123.)

Scott: "I told you—I told you the only thing I just told you. I don't recall looking for no gloves. Like the same thing I told you truthfully when you asked me did I see a gun in his hand. **I told you I can't recall ever seeing a gun in his hand.**" (Ex. 5, at 124 (emphasis added).)

Question: **"Isn't it a fact that you gave them the name of Tyreke, Q, Kenny Parker, and a light-skinned person; is that right?"**
Scott: **"Yes, sir."**
Question: **"But you assumed that Kenny Parker and Q was there; is that correct?"**
Scott: **"Yeah."**
Question: "And at some point the police—"

Scott: "I only told them two people came in the bedroom, though."
Question: "But you told them that there were other people there; is that correct?"
Scott: "Yeah."
Question: "And you gave them the names of people who were there?"
Scott: "I mean, people that could have been there. By me, the car--"
Question: "So—"
Scott: "When I see them—"
Question: "Wait a minute. So you gave them those names; is that correct?"
Scott: "Yes, sir."
Question: "At some point you retracted that statement; is that correct?"
Scott: "Yeah, it got cleared up." (Ex. 5, at 130–31 (emphasis added).)

Question: "All right. This is the way I described him to the police. I said, I told them his hair wasn't like no corn—no cornrows, go straight back. His hair was like in chains, like it was connected to the next plait. That's what I told them." (Ex. 5, at 132.)

Question: "Did you tell the police there was anything distinctive about his eyes?"
Scott: "I'm sure I said—I know I said brown if I said anything about the eyes. It's just this, man, come on."
Question: "Now, just--"
Scott: "The only thing--"
Question: "Just—do you recall saying there was anything distinctive about his nose?"
Scott: "I don't remember saying nothing about his nose, sir."
Question: "Do you recall saying whether there was anything distinctive about his mouth?"
Scott: "I don't know, sir. But I can tell you this--"
Question: "Do you ever recall testifying and saying that you recall his mouth because he has gold fronts in it?"
Scott: "All right. I remember saying something about some gold fronts."
Question: "Did you tell the police about these gold fronts?"
Scott: "I don't know if I told the police about the gold fronts or not. I could have. (Ex. 5, 133–34.)

Question: "Did you tell them anything about his height and weight?"
Scott: "No. He was just taller than me. That's what you want me to say?"
Question: "You answered my question, but then keep on. Your answer?"
Scott: "When I say something--"
Question: "Well, what else did you say?"
Scott: "About the voice that you should find. That is the only thing that I said something about."
Question: "So you said something about his voice. You said that. I didn't ask you about that. You just took and volunteered that you said something about his voice; is that correct? At least, that's what the transcript says."
Scott: "What's the transcript say? That's what I said." (Ex. 5, at 138.)

Question: "Now, prior to the date of this incident, did you know this defendant?"
Scott: "I already told you man."
Question: "Just answer the question, Ronald. Did you know the defendant?"
Scott: "I only knew him from the three times he came to my house." (Ex. 5, at 138.)

**Kenneth Parker**

Although Kenneth Parker alleged that he was not involved in the crime, his recitation of the facts to the police had distinct differences from his trial testimony, which Mr. Anderson did not address at trial because the information was never produced.

Parker told the police in his statement that someone told him that a young dark skinned individual shot the victim. At trial, he testified that he told the police that the assailant was a light skinned individual with corn rows, which he identified as the defendant.

In the second trial, Parker definitively changed his story by testifying that the defendant, who he identified as the light skinned individual, was the one who shot the victim, although a dark skinned individual was also present.

In the third trial, which resulted in the Petitioner's conviction, it is not clear which individual Parker is describing when he states that Gregory had informed him that "the young kid" just shot a woman. In spite of the inconsistency and lack of clarity, Mr. Anderson could have used Parker's statement to the police where Parker implicates the "dark skinned" individual as the perpetrator, rather than the "light skinned individual". This was a clear description change of the perpetrator to match the Petitioner's complexion. It is not reasonable to assume that Mr. Anderson had this information and the inconsistent details contained in Parker's statement to the police, as he failed to make use of them in cross-examining the witnesses over the course of three separate jury trials.

Kenneth Parker's Statement to the Police: (June 21, 2001)

Question: "Who knocked on the door? Who did the robbery?"
Parker: "He said the young dude—he didn't say exactly who knocked on the door. He said, "When we went there, knocked on the door, asked for Little Ron, she opened the door and said that he was asleep. The little young dude tried to grab the door and tussle with her to get the door opened, and while they were tussling, **the young dude took the gun and shot her.**"
Question: **"This is the young dark skinned?"**
Parker: **"The young dark skinned one. Then Tyreek said as they was going in, that she fell on him. That's how he got the blood on his hands."** (Ex. 6, at 10 (emphasis added).)

Question: "Have you ever seen the guy with the cornrows before, **the light skinned guy**?"
Parker: "I've never seen him before in my life."
Question: "Have you ever seen the little **dark black skinned guy** that you've described?"
Parker: "I've never seen him before in my life." (Ex. 6, at 14 (emphasis added).)

Kenneth Parkers Testimony from Trial #1: (June 21, 2001)

Parker: "He had something wrapped up in his shirt."
Question: "Had something in his shirt?"
Parker: "Yes, in the shirt that he had on, had like a little bit of blood on it. He had a little blood on his hands, you know what I am saying? **So the little dark skinned one that was in the car in the back seat, when I had got in there, he got out the car. He was leaning on the car. He had his arms folded, and he was just looking down at the ground like, you know, something was really bothering him, you know what I am saying?** So I went upstairs with Tyreke and Tyreke knocked on his brother's door, and started telling him." (Ex. 7, at 93–94 (emphasis added).)

Question: "The light skinned guy and the dark skinned guy, they stayed downstairs?"
Parker: "Yeah. The little dark skinned dude had his arms folded like this. He was leaning on the car. He was looking down."
Question: "But the light skinned guy was downstairs also?"
Parker: "Yeah." (Ex. 7, at 109–10.)

Question: "But prior to identifying him in the photo lineup, did you ever give them a description of the person?"
Parker: "Yeah."
Question: "What description did you give?"
Parker: **"A light skinned guy with corn rolls."** (Ex. 7, at 116 (emphasis added).)

Kenneth Parker's Testimony from Trial #2: (March 19, 2003 – March 24, 2003)

Question: "Mr. Parker, you saw a light skinned person and a dark skinned person downstairs; is that correct?"
Parker: "I didn't see a light skinned person. I saw him downstairs."
The Court: "When you say him, who are you pointing to?"
Parker: "Lester. The guy sitting right here in the corner." (Ex. 8, at 125.)

Question: **"The person that you're calling Lester and the dark skinned person stayed downstairs; is that correct?"**
Parker: **"Yeah, until he got the door open because he was like ringing the bell to get the door open."** (Ex. 8, at 126 (emphasis added).)

Kenneth Parker's Testimony from Trial #3: (April 29, 2003 – May 1, 2003)

Question: "Now, at that time, the dark-skinned guy and the person you're describing as Mr. Lynch is still outside by the car?"

Parker: "They're standing right by the car. The young fellow, he got his hands folded. He got his back towards the car, and he got his legs spread and he's just looking down at the dirt. And he's standing there. He's talking to him." (Ex. 9, at 33.)

Question: "At that time Gregory tells him that they've just killed a woman?"
Parker: "Yeah. He said—these words is his exact words. **He said 'That young kid downstairs leaning on the car is trigger happy.' And his brother was like 'What you talking about?' And he like, 'Man, he just shot a lady.'"** (Ex. 9, at 34–35 (emphasis added).)

**Tamika Reid**

Tamika Reid's statement to the police was also inconsistent with her trial testimony. As quoted below, Reid stated that the defendant took the gun from a darker skinned suspect after the men entered the room. She also indicates that the defendant called the other suspect "trigger happy." This is not only inconsistent with Scott and Parker's testimony, but it is also inconsistent with her trial testimony that the defendant was the first one to come through the door, and further that the defendant had the gun at that time. Reid's testimony during the first trial, attached hereto as Exhibit 11, also includes Mr. Anderson's cross-examination. He asks questions regarding the events surrounding the victim being shot and the statements she made to the police generally, but Mr. Anderson does not reference a single specific statement she made to the police. From this testimony, it is clear that Mr. Anderson did not have, and had not reviewed, Reid's recorded statement to the police.

Tamika Reid's Statement to the Police: (June 9, 2001)

Question: "Did you see any weapons?"
Reid: "Yes, I did."
Question: "What type of weapon?"
Reid: "A black gun."
Question: **"Who had the black gun?"**
Reid: **"The tall light skinned one with cornrows."**
Question: **"Did he have it the whole time?"**
Reid: **"He took it from another suspect."**
Question: "So there were three people that came in that room; is that correct?"
Reid: "Yes, it was."
Question: "And there was a light skinned suspect, and then there was two brown skinned suspects, one a little older than the other; is that correct?"

Reid: "Yes, it is."
Question: **"The light skinned suspect you say actually took the gun from the younger brown skinned suspect?"**
Reid: "Yes. Yes."
Question: "What did he do with the gun after he took it?"
Reid: "Hit Ronald Scott with the gun."
Question: "Were the other two suspects also hitting Ronald?"
Reid: "Yes, sir." (Ex. 10, at 2–3 (emphasis added).)

Question: "When these three subjects first came into the back room where you and Ronald were, you stated that one subject actually took the gun from one of the others?"
Reid: "Yes, I did."
Question: **"The light skinned subject actually took the gun away from one of the other two guys?"**
Reid: **"Number Four."**
Question: **"He took the gun away from one of the other two darker skinned guys?"**
Reid: **"Yes, he did."**
Question: **"Was it the—do you know if it was the older or the young of the two darker skinned?"**
Reid: **"The younger."**
Question: **"So the younger dark skinned guy—the younger darker skinned guy had the gun when they first came into that room?"**
Reid: "Yes, he did, and Number Four took the gun from him and called him trigger happy." (Ex. 10, at 10 (emphasis added).)

Tamika Reid's Testimony from Trial #3: (April 29, 2003 – May 1, 2003)

Question [referring to the defendant]: "What did he do?"
Reid: **"He had the gun. My focus—my main focus was on him 'cause he was the first one I seen come through the door."** (Ex. 12, at 62 (emphasis added).)

## IV. CONCLUSION

Petitioner asserts that the record clearly shows that neither he, nor his trial counsel, had the transcribed statements during any of the three jury trials. The transcribed statements contained statements that were internally inconsistent and inconsistent with the witnesses' trial testimony. These inconsistent statements contained exculpatory evidence and created an affirmative duty on the part of the prosecutor to disclose the evidence to the defense. *See Kyles v. Whitley, 514 U.S. 419 (1995) (reversal warranted where prosecution suppressed inconsistent eyewitness statement).*

Wherefore, the undersigned Petitioner, moves this Court to grant the relief requested by setting aside his sentence, and grant any further relief as the Court may deem just and proper.

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**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing has been served on opposing counsel via electronic mail and by depositing same in the United States Mail with sufficient postage attached thereto to ensure delivery, on this 31st day of August, 2018, addressed as follows:

Rosemary V. Bourne
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***Office of the Attorney General***
202 N. 9th St.
Richmond, VA 23219

_____

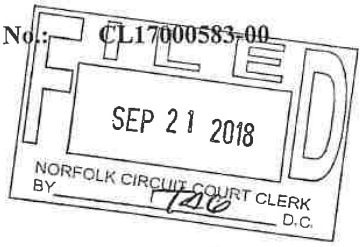
VIRGINIA:
IN THE CIRCUIT COURT FOR THE CITY OF NORFOLK

LESTER B. LYNCH, #1162173
Petitioner,

v.

BETH CABELL, WARDEN,
SUSSEX II STATE PRISON
Respondent

Case No.: CL17000583-00




## PETITIONER'S REPLY BRIEF TO RESPONDENT'S POST HEARING BRIEF

### I. PROCEDURAL HISTORY

In its Post Hearing Brief, Respondent argues that Petitioner failed to prove a *Brady* violation. Respondent makes this pronouncement without ever addressing why neither the transcribed witness statements nor the actual tape recordings themselves, were ever produced to trial counsel over the course of three jury trials.

Without question, the statements of Tamika Reid, Ronald Scott, and Kenneth Parker contain *Brady* evidence and any failure to disclose their content constitutes a *Brady* violation. Rather than acknowledging this fact or explaining how the statements mysteriously appeared in Respondent's file only to be produced days before a scheduled evidentiary hearing, Respondent continues to refuse to acknowledge that any violation occurred. This latent disclosure required continuance of the hearing.

At paragraph 5 of its brief, Respondent acknowledges the previous nonsuit, but fails to state why the nonsuit was necessary. Petitioner nonsuited its case following Respondent's moving to dismiss on the basis of the Respondent's arguing that a *Brady* violation could never be

shown where the evidence had been destroyed and Petitioner could not relay to the Court what was on the destroyed tapes.[1]

Upon refiling his Petition, Petitioner included an Affidavit from his trial counsel. This Court ordered an evidentiary hearing for May 7, 2018. This hearing was continued when the long-lost transcribed statements, which had been missing for sixteen years, were suddenly disclosed to the undersigned without explanation as to where they had been located and how long they had been missing. Respondent still offers no explanation as to where or when the transcriptions were located and why they were first produced in May, 2018, despite the Habeas Petition having been filed since January, 2017. [2]

The Respondent's failure to articulate to this Court when and where these transcripts were found, and why they were not sooner produced, negates their substantive arguments on the issue that no *Brady* violation occurred. This fact alone warrants the relief requested.

At paragraph 5 (p. 3) of its brief, Respondent refers to the "alleged nondisclosed taped statements" without explaining to the Court why it failed to call the lower court prosecutor, Ron Batliner, to testify about whether he produced the tape recordings or transcribed statements to defense counsel at any time during the trial prosecutions. No document offered corroborates this fact, nor does a review of the three trial testimonies evidence that defense counsel had access to the tapes or the witnesses' transcribed statements.

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[1] Petitioner filed his original Habeas Petition alleging a *Brady* violation on January 18, 2017. This Petition was nonsuited during the first evidentiary hearing, when Respondent moved to dismiss the case, arguing that Petitioner could not prove a prima facie *Brady* violation in the absence of any proof as to what was contained on the tapes. Petitioner elected to nonsuit the original Petition rather than chance dismissal on the grounds argued by Respondent.

[2] There is no way for Petitioner to corroborate that the transcripts produced are accurate verbatim transcriptions of the actual voice recordings, which were destroyed in July, 2015. (*See* Exhibits C–D).

The Court's granting Respondent's motion to dismiss before Respondent produced the transcribed statements would have been a miscarriage of justice had Petitioner not elected to nonsuit the original Petition when he did. Similarly, failing to grant the relief requested now that the transcripts and their content have come to light, would be a miscarriage of justice.

## II. REBUTTAL

According to *Brady v. Maryland*, "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." 373 U.S. 83, 87 (1963). Specifically, "[t]he Commonwealth is required to provide a defendant exculpatory evidence, including evidence which *impeaches the credibility of a prosecution witness*." *Goins v. Commonwealth*, 251 Va. 442, 456, 470 S.E.2d 114, 124 (1996) (emphasis added). "Moreover, the prosecutor's duty encompasses . . . material that is 'known only to police investigators and not to the prosecutor.'" *Monroe v. Angelone*, 323 F.3d 286, 299 (2003) (quoting *Kyles v. Whitley*, 514 U.S. 419, 438 (1995)).

The Attorney General correctly states that in order to establish a *Brady* violation, the following must be shown: "(1) the evidence must be favorable to the accused; (2) it must have been suppressed by the government, either willfully or inadvertently; and (3) the suppression must have been material, i.e., it must have prejudiced the defense at trial." *Monroe*, 323 F.3d at 299. Petitioner has shown sufficient evidence to prove these elements.

It should not be disputed that the statements of Reid, Scott, and Parker contain material evidence that was favorable to the defense. Respondent asserts without any proof, that Petitioner has failed to demonstrate that the witness statements were not provided to his trial counsel. This

fact is all but ignored in Respondent's brief. Petitioner's brief provides details numerous inconsistencies between the witnesses' statements made to the police and their subsequent testimony at trial. Nowhere in the three trial transcripts does Anderson ever mention the statements or their content beyond that which is contained in the discovery letter or information that was obtained during the course of three separate jury trials.

Respondent asserts that Anderson's references to the statements at trial show that he had more detail than was in the discovery letter. Specifically, Respondent suggests that Anderson's reference to the witnesses' statements during trial shows that he had the information in question. (*See* Resp.'s Post-Hr'g Br. at 23–24.) These cited references were from the Petitioner's third trial. Anderson's arguments at that time obviously contained information gleaned over the course of two previous trials and was not the detail and context of the *Brady* information contained in the original voice recordings of the witnesses, nor the subsequently produced transcriptions.

Accordingly, the content of the argument was a product of learning new facts from the witnesses over the course of the first two trials. (Ex. A, at 51, 54.) In fact, *in the first trial*, Anderson's opening statement appears to summarize the discovery letter: "But Mr. Scott is going to tell you that about three hours before this incident took place, that he saw—that Mr. Parker came over with a Gregory Williams, and then if he testifies consistently with what he said in the past, he is going to say it looked like Gregory Williams' brother and a light skinned person in the car." (Ex. B, at 16–17.) This language tracks the discovery letter, which states,

> When the victim [Ronald Scott] was interviewed the night the crime occurred, he initially testified two of the assailants as Gregory Williams (he knew him as "Tyree" or "Tyreek") and his brother Christopher Williams (who he knew as "Christopher" or "Q"). *He stated he got a good look at Gregory Williams, and assumed his brother, Christopher was also present.* It was later proven that Christopher Williams could not have been present. *He also described a third*

> *assailant who was light skinned.* The victim was shown several photo lineups and selected photographs of Gregory Williams and Lester Lynch out of those lineups.

(Emphasis added.)

Interestingly, Anderson's opening statement from the first trial shows that he did not have access to the transcribed witness statements, but only had the information contained in the above-identified discovery letter summary. The development of the evidence over the course of two subsequent trials, which was the result of counsels questioning and witnesses' responses, suggested additional details in their stories. Anderson's questioning of the witnesses regarding their statements to the police and their earlier trial testimony becomes more detailed over the course of trying the case three separate times, demonstrating that this information was actually learned during the course of trial, and not based upon information provided by the Commonwealth.

This shows that Anderson failed to have the detail and context of the actual statements of the witnesses, which as previously argued, contained *Brady* material warranting its production. Furthermore, Anderson's questioning on the information he learned over the course of the court proceedings *is evidence that Anderson would have questioned the witnesses regarding the inconsistencies in their statements had he had access to the statements.*[3]

The fact that Anderson would have asked about the inconsistencies in the statements also supports the fact that access to these statements was material. The content of Ronald Scott's first statement to the police was completely exculpatory for the Petitioner. When asked about the statement at trial, Scott testified that he originally named Kenneth Parker and Christopher Williams because he expected them to be with Gregory Williams. Anderson had to accept that testimony at trial, without any further avenue of impeachment. Had Anderson had access to the

[3] Of note, although a great deal of focus has been placed on the transcribed statements, there were also cassette recordings of the statements that were not provided, and have since been destroyed. (*See* Exhibits C–D.)

transcripts from the statements, Anderson could have impeached Scott's justification by questioning him on the fact that Scott told the police that "he recognized" the assailants, that he knew their voices, that he recognized the person hitting him as Christopher Williams, and that he recognized the way Kenneth Parker walked. Of significant note, the discovery letter does not disclose these details indicating Scott's certainty in his identification in his initial statement to the police. In fact, the discovery letter misleads the reader to believe that Scott indicated in his original statement that he assumed that Christopher Williams was present and that that he did not know who the third assailant was. This, however, is not representative of Scott's actual statement to the police.

The details of Scott's pretrial statement to the police is contradicted by his trial testimony where he stated he assumed it was Kenneth Parker and Christopher Williams. This is but one example of many where Anderson was left without recourse to impeach during the cross-examination. The trial transcripts show numerous instances where Anderson was unable to impeach these key witnesses on points raised because he did not have the witnesses' statements to police at the time of questioning. The number of instances in which Anderson could have discredited these witnesses based on the Commonwealth's *Brady* violation and failure to produce the exculpatory evidence are numerous in number, but any one instance is sufficient to show their materiality and a violation of the Commonwealth's *Brady* obligations in its failure to disclose.

Respondent points to inconsistencies in the testimony of the witnesses throughout the three trials, which could have served to impeach the witnesses, but did not change the outcome of the case. The existence of these inconsistencies does not, however, prove that the government's suppression of the transcribed statements was harmless error. In contrast, the use

of the details in the statements to the police would have compounded with the other inconsistencies the Respondent mentions, completely discrediting the witnesses and providing for a verdict favor of the accused.

Use of these undisclosed statements would not only have resulted in a different outcome following the third trial, but subsequent trials may not have even been necessary had the statements been disclosed in the first instance. Petitioner was tried three times during which his trial attorney was denied access to significant exculpatory statements, which were recorded by law enforcement, made by key witnesses for the prosecution, were internally inconsistent with each other and the witnesses' subsequent trial testimony.

The Commonwealth's duty to provide these statements was not fulfilled by providing Anderson with the conclusory paragraph contained in its discovery letter. The fact that Anderson knew generally that statements were made did not provide him with the context and detail contained in the statements themselves to allow a meaningful cross-examination of these important witnesses. Consequently, the jury could ignore the change in the witnesses' testimony as to who and how these crimes were committed because they were unaware of the detail and content of these recorded and purportedly transcribed statements. Anderson's cross-examination during the third trial was ineffectual at impeaching the witnesses. Had Anderson had the original recordings or the transcribed statements, the witnesses would not have been able to overcome their lies in the eyes of the jury. The prosecution's primary evidence would have been significantly discredited. The prosecution's continued suppression of these statements, which persisted through three separate jury trials, constitutes a *Brady* violation of the greatest magnitude. For without the credibility of Scott, Reid, and Parker, the prosecution's case rested solely on eyewitness testimony whose witnesses' credibility should have been detrimentally

challenged. The Commonwealth offered no scientific evidence by way of fingerprint analysis, or DNA, which suggested Petitioner's guilt of the crimes charged.

## III. ABANDONMENT

Petitioner fails to understand Respondent's abandonment argument. The theory of Petitioner's case remains that all of the evidence contained in the transcribed statements constituted *Brady* material, and that any failure to disclose the statements violated *Brady's* mandate.

Petitioner has not abandoned any fact or issue contained in these transcribed statements which this Court may deem relevant to its decision following its review of the record in its entirety. This Court has the duty to review the record matters and make its determination whether such writ should issue on the basis of the record. *Va. Code* § 8.01-654 B.4. (2005).

Respondent has failed to show that the evidence was produced and as such this Court can accept as true Petitioner's argument to the contrary. *See Morris v. Smyth,* 202 Va. 832, 120 S.E.2d 465 (1961), *cert. denied,* 371 U.S. 849, 83 S. Ct. 83, 9 L. Ed. 2d 83 (1962).

Respondent has been on notice since the first filing, after which it finally produced the transcripts in question, that Petitioner relied on all facts and circumstances contained in those transcripts to allege that a *Brady* violation occurred.

It is an absurdity for Respondent to suggest to this Court, that Petitioner's trial counsel had all material evidence in question, when Respondent itself apparently did not have the transcribed statements in hand until days before the May, 2018 evidentiary hearing, despite the fact that this Habeas Petition had been pending some sixteen months earlier.

## IV. CONCLUSION

Petitioner has shown that the Commonwealth did not produce *Brady* material; that the transcribed statements contained both material and exculpatory evidence; that the evidence should have been disclosed to Petitioner's trial counsel; and the failure to disclose the evidence constitutes a *Brady* violation warranting reversal of his conviction and granting him a new trial.

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**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing has been served on opposing counsel via electronic mail and by depositing same in the United States Mail with sufficient postage attached thereto to ensure delivery, on this 21st day of September, 2018, addressed as follows:

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