SC93248

Electronically Filed - Supreme Court - March 22, 2013 - 05:48 PM CDT

IN THE
SUPREME COURT OF MISSOURI

STATE OF MISSOURI EX REL., TYRONE DeSANTE MORANT,	)	
Petitioner,	)	
vs.	)	Case No. _____
TROY STEELE, in his capacity as Superintendent, Potosi Correctional Center,	)	
Respondent.	)	

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Electronically Filed - SUPREME COURT OF MISSOURI - December 12, 2022 - 11:05 AM

IN THE
SUPREME COURT OF MISSOURI

STATE OF MISSOURI EX REL., TYRONE DeSANTE MORANT, Petitioner,	)	
vs.	)	SC93248
TROY STEELE, in his capacity as Superintendent, Potosi Correctional Center, Respondent.	)	

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CERTIFICATE OF SERVICE

I hereby certify that on December 12, 2022, a true and correct copy of the foregoing was electronically filed with the Clerk of the Court using the electronic filing system. In addition, a copy was sent via email to Respondent's counsel, Assistant Attorney General Stephen Hawke at stephen.hawke@ago.mo.gov.

/s/ Jeannie Willibey
Jeannie Willibey

SC93248

Electronically Filed - Supreme Court - March 22, 2013 - 05:48 PM CDT

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS

STATE OF MISSOURI

STATE OF MISSOURI, Plaintiff,	)	
vs.	)	Cause Nos. 951-4326A 951-4326B
CARLOS WADE, TYRONE DeSANTE MORANT, Defendants.	)	

Deposition of

ANGELA HICKMAN

On Behalf of the Defendant

August 6, 1995

FILED

AUG 1[illegible] 1996

DAVIS T. THOMPSON
CLERK, CIRCUIT COURT
BY _____ DEPUTY

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ORIGINAL

Exhibit 1 A-1

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
STATE OF MISSOURI

STATE OF MISSOURI,	)	
	)	
Plaintiff,	)	
vs.	)	NOS. 951-4326A
	)	951-4326B
CARLOS WADE,	)	
TYRONE DeSANTE MORANT,	)	
	)	
Defendants.	)	

Deposition of Angela Hickman, taken on behalf of the defendant, at the law offices of the Special Public Defender, 1320 Market Street, Room 235, in the City of St. Louis, State of Missouri, on the 6th day of August, 1996, before Sandra K. LaRose, Certified Shorthand Reporter and Notary Public.

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Appearances of Counsel:

For The Plaintiff:

Circuit Attorney's Office
1320 Market Street
St. Louis, MO 63103
By: Mark Hagemeister, Esq.

For The Defendant Wade:

Special Public Defender's Office
1320 Market Street, Room 235
St. Louis, MO 63103
By: Beverly Beimdiek, Esq.

For The Defendant Morant:

Public Defender's Office
1320 Market Street, Room 62
St. Louis, MO 63103
By: Katrina Jones, Esq.

Also Present: Johanna Strong, Intern

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ANGELA HICKMAN,

of lawful age, having been first duly sworn to testify the truth, the whole truth, and nothing but the truth, deposes and says on behalf of the defendants, as follows:

DIRECT EXAMINATION

QUESTIONS BY MS. BEIMDIEK:

Q. Angela, I told you earlier my name is Beverly Beimdiek and I'm Carlos Wade's lawyer. This is Katrina Jones, she's Tyrone Morant's lawyer. That's Johanna Strong, she's a law student with my office. And you've met Mr. Hagemeister.

A. Right.

Q. This lady is a court reporter and she's going to type down everything that I say, that Miss Jones says and that Mr. Hagemeister says and that you say. So, in order for her to do that, you have to answer out loud.

A. Okay.

Q. If you say "uh-huh" or nod your head, she won't be able to take that down. Okay?

A. (Witness nods.)

Q. You have to answer out loud and clearly so that she can get it. If I ask you a question and you don't understand what I've asked

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you, will you tell me to stop and clear up the question so that you understand the question?

A. Yeah.

Q. If I ask you a question and I don't give you a chance to fully answer it, will you stop me and tell me I have more information to give to you?

A. Yeah.

Q. If you answer a question, I'm going to assume that you understood the question and that your answer was full and complete. Will that be fair?

A. Yes.

Q. How old are you, Angela?

A. Twenty-four.

Q. Are you nervous?

A. A little bit.

Q. Don't be nervous. Do you want some more water?

A. No. I'm okay.

Q. Don't be offended, I ask this of everybody. Do you have any prior convictions, anything you've gone to court for --

A. No.

Q. -- or gotten probation or anything

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like that?

A. No.

Q. What about Juvenile Court?

A. No, never been to Juvenile Court.

Q. Are you currently employed?

A. No.

Q. I want to ask you about the day that John Allen was shot. Okay?

A. Yes.

Q. Can you tell me on that day what you were doing like in the evening hours?

A. I was across the lot to my house, I stay on Aldine. And he had sent my little nephew over there to tell me that he was over there, because he don't come outside when he's over there.

Q. Who is it when you say "he"?

A. John.

Q. John Allen?

A. Is my nephew.

Q. Is your nephew. And he came over?

A. No. He sent one of my other little nephews over to let me know he was over there, so then he come over and he let me know.

Q. I'm not sure when you say "over there." Where was he?

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A. Over on Martin Luther King.

Q. He was over on Martin Luther King.

A. And I was on Aldine.

Q. Which is pretty close?

A. Yes, across the lot. So, he had sent one of my little nephews over to let me know he was over there so I could come over there and spend some time with him.

Q. You've got to slow down. She's a good typist, but she's not real fast, I mean, it's impossible to take it down that fast, so if you can just slow down a little bit and remember that even though I know you know these people, I don't know them, so I may ask you their names if you can give me names.

A. Oh. Okay.

Q. Do you remember who it was that came over and said that John was over on Martin Luther King?

A. My little nephew Johnnie.

Q. Do you know his last name?

A. Hickman.

Q. Johnnie Hickman. Did you then go over on Martin Luther King?

A. I think I put on some clothes, then I

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went over there, because I didn't have anything to do.

Q. What time did you go over there?

A. It was about -- it was night, about ten-thirty, something like that.

Q. What had you been doing earlier that day?

A. Earlier that day, probably nothing, because I didn't go nowhere during the day, so I was in the house.

Q. You walked on over to Martin Luther King?

A. Yes.

Q. Did you walk by yourself?

A. Yes, I did.

Q. Did anything strange happen when you walked over there?

A. No.

Q. What route did you take to get there?

A. Right in back of our house was a lot, then Martin Luther King, so I walked through the lot.

Q. Right in the back of your house?

A. Yes.

Q. There's no fence blocking you to get

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there?

A. No. It's a fence, but it's not blocking me.

Q. And where on Martin Luther King did you go?

A. In between Whittier and Annie Malone.

Q. Whose house did you go to?

A. My cousin's, G. W. Wells.

Q. G. W. Wells?

A. Yes.

Q. How old is he?

A. I don't know exactly, he's in his late twenties.

Q. Did he live there by himself or with anybody else?

A. Him and his brother Willie Hickman.

Q. Was Willie Hickman there?

A. Yes, he was there.

Q. When you got there, who was there?

A. It was G. W., Willie, Johnnie.

Q. Johnnie Bell?

A. Yes. My nephew John.

Q. That was John Allen?

A. Yeah.

Q. Okay.

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A. And let me see. Who else was there? And my cousin G. W. Wells' girlfriend Shantay, I don't know her last name.

Q. What did you all do when you went over there?

A. Went over there and sat down and watched some cartoons that was on TV, watching cartoons, sitting there talking, talking for about -- playing cards.

Q. Did you have anything to drink?

A. No. I don't drink.

Q. Any beer or alcohol?

A. No. I don't drink.

Q. Did you have any marijuana?

A. No.

Q. Any blunts?

A. No.

Q. Was anybody smoking any blunts?

A. Let me see. If they was, I didn't see them.

Q. What about any other kind of drugs?

A. No.

Q. At some point, you guys decided to leave?

A. It was getting late, so I decided to

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leave. John said he was going to go across the street to the pay phone.

Q. This was John Allen?

A. Yes. He was going to go across the street to the pay phone that was on the other side of Martin Luther King to call my sister to tell her to come and get him.

Q. When you decided to leave, were all the people that you named still in the apartment?

A. Yes, everybody was still there.

Q. What happened when you chose to leave?

A. He said he was going to go use the pay phone to call my sister to come and give him a ride home, so we opened the door and we walked outside.

Q. When you say "we," who walked out?

A. Me, John Allen and Johnnie.

Q. Johnnie Bell?

A. Yes. I walked out first and then John, and then Johnnie Bell. I was in the street mostly, you know, I was in the street since I walked out first. I didn't see the car, it just pulled up from out of nowhere.

Q. When the car pulled up, where were

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you in the street?

A. I was like a couple of feet from the sidewalk, I was like six, seven feet from the sidewalk. I was real close, I wasn't in the middle of the street yet.

Q. I'm going to show you what we've marked as Defendant's Exhibit 2, I'll give you a second to look at it, it's just a map of the streets. I put the address of 4236 right there. It may not necessarily be exactly where it's at between Annie Malone and Whittier, but is that about accurate, about how the streets go, if that's Martin Luther King?

A. Somewhat, yes.

Q. Is there anything that doesn't look right on that?

A. It's -- I wear glasses.

Q. You do wear glasses?

A. Yes.

Q. Do you normally wear glasses, is that what you said?

A. Yeah.

Q. Were you wearing your glasses on the night that this happened?

A. I had some contacts.

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Q. You were wearing the contacts?

A. Yes.

Q. Do you have your contacts on today?

A. No.

Q. Do you need your contacts or glasses to see things --

A. Far away. I can see close, yeah.

Q. You can't see far away?

A. No. I can see far away, I can't see close up.

Q. You can't see close up. Okay. When you came out of -- was the address that you came out of 4236?

A. I don't remember the address.

Q. But you came out of the building on Martin Luther King?

A. Yes.

Q. You walked out into Martin Luther King?

A. Yes, into the street.

Q. Were you actually where traffic was coming?

A. Wasn't no traffic coming either way.

Q. But if cars would have been coming, you would have been in the way?

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A. Yes.

Q. And if we just assume that Martin Luther King goes two ways, cars could go east on Martin Luther King and west?

A. Yes.

Q. Were you in the eastbound lane or westbound lane?

A. They was going towards downtown.

Q. That would be this way, that's towards downtown. Were you in that lane of traffic or had you crossed over all the way to where cars would have been going --

A. I didn't cross over.

Q. You were still right in that first lane?

A. Yeah. I haven't crossed over yet, I was still by the sidewalk.

Q. When did you first notice this car?

A. When it was in front of me.

Q. You hadn't even seen it coming down?

A. No. It didn't have any headlights on at first.

Q. Did you see the lights come on at sometime?

A. No -- when it pulled up, I seen the

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lights come on, but they wasn't --

Q. Where were you standing when the car pulled up?

A. Couple of feet from the car, because the car pulled up -- I was standing by the car and my nephew John stepped up to where I was at.

Q. I'm going to draw the car. I think there's two lanes of traffic going towards downtown, right?

A. Uh-huh.

Q. Is that right?

A. Yes, it's two lanes.

Q. Was the car in the lane closest to the sidewalk?

A. Yes, because there wasn't no cars parked on that side.

Q. Was it right in front of the door that you came out of?

A. Yes.

Q. I'm going to draw the car and I'm going to let you show me where you were standing in relation to the car. Okay?

MR. HAGEMEISTER: Where she was standing when?

MS. BEIMDIEK: I'll ask her.

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Q. (By Ms. Beimdiek) I drew the car, the square box, which would be right in front of -- is that about where you were when you first noticed the car, it was right there?

A. I standing on this side of the car. (Indicating.)

Q. You were standing on sort of the driver's side of the car?

A. No, the passenger's side. That's what I said, I was on the other side, so I couldn't see the driver.

Q. Let me try to draw this a little bit better. This is the steering wheel on the car. I drew a solid circle. It's a two-door car, not a four-door car; is that right?

A. Yeah.

MR. HAGEMEISTER: Put an arrow for which way the car is facing.

Q. (By Ms. Beimdiek) The car is facing this way going down, the driver would be sitting here.

A. No. The car was going the other way.

Q. The car was going away from downtown?

A. It was going towards downtown, but Martin Luther King goes like this. (Indicating.)

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Q. But not at an angle?

A. Yeah. And I was on this side of the car, right here. The driver was on this side, therefore, I couldn't see the driver, I could only see who was on the passenger's side. (Indicating.)

Q. This is the building you came out of, right, is that fair to say? I marked it 4236, because that's what the police report said.

A. Okay. The building is right here, therefore, the -- (Indicating.)

Q. Let's look at it this way. Does that help you? If you came out of the building, your house would be over here on Aldine. You're looking at it from a different direction.

A. Aldine -- Martin Luther King come before Aldine.

Q. You're looking at this map backwards.

MR. HAGEMEISTER: Just look at it this way. If that's going downtown, that's going this way, right? Can I ask a question?

MS. BEIMDIEK: Yes.

MR. HAGEMEISTER: If you were standing on the front porch of the house that you walked out of --

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THE WITNESS: There wasn't no porch.

MR. HAGEMEISTER: Okay. Standing at the front door, would you be looking at the passenger's side of the car or the driver's side?

THE WITNESS: The passenger's side, because I couldn't see the driver's side.

MR. HAGEMEISTER: Let's say this is the house and this is Martin Luther King, forget about the rest of it, you would be looking at the passenger's side of the car, right?

THE WITNESS: Yes.

MR. HAGEMEISTER: Let's say this is the passenger's side of the car facing the house.

THE WITNESS: Okay.

MR. HAGEMEISTER: Where were you -- go ahead.

THE WITNESS: Standing in between the car and the house. I was in between on the passenger's side and the house standing right between them. (Indicating.)

Q. (By Ms. Beimdiek) Were you in the street or on the sidewalk?

A. In the street.

Q. Do you not -- do you understand how this is set up now? I know everybody has different

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ways of looking at maps, this is not a test on reading maps at all. But I think you live down here on Aldine.

A. I stay right -- like if this is this house, I stay about right here. (Indicating.)

Q. All right. And Annie Malone is up here and Whittier is up here?

A. Yes.

Q. So, the map -- we're square with the way this is set up on the map, right?

A. Yeah.

Q. You came out. I'm just going to have you put an "X" about where you were standing.

A. I was about right here. (Indicating.)

Q. But in the street, not on the sidewalk?

A. In the street, I was in the street.

Q. I'm going to put your initials next to that "X", little arrow, AH. Okay. Where was John Allen standing?

A. He -- first he was on the sidewalk when they pulled up. And then he came up to where I was at.

Q. Stood right beside you?

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A. Right beside me, came and stood right beside me.

Q. Where was Johnnie Bell?

A. I don't know where he was at.

Q. What was the first thing -- tell me about this car. What color was it?

A. It was gray.

Q. Had you ever seen that car before?

A. Yes. I seen it on Aldine before.

Q. Do you know what kind of car it was?

A. No, I don't know.

Q. Do you know how many doors it had?

A. It had two doors, I think.

Q. Do you know what color it was? I'm sorry. I think you said it was gray?

A. Yes.

Q. I apologize. You had seen that car on Aldine before?

A. Yes.

Q. Where on Aldine?

A. On Aldine and Whittier across the street from our house.

Q. Had you ever seen anybody driving it before?

A. But I don't know the person who's

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driving it.

Q. Do you know Carlos Wade?

A. I just know of him, I don't know him.

Q. Had you ever seen him in that car before?

A. Have I seen him? Yes, I seen him before.

Q. Had you seen him driving that car before?

A. No, I never seen him drive it.

Q. I'm going to put an arrow and put a JA for John Allen. Okay?

A. Uh-huh.

Q. So, this gray car, you had seen before on Aldine. Before John Allen was shot, when was the last time you had seen that car?

A. Probably earlier that day or the day before.

Q. Do you know who was driving it when you saw it?

A. I don't know the person driving the car.

Q. Did you recognize anybody in the car when you saw that car?

A. Only Carlos, that's the only person.

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Q. Did you actually see him in that car?
A. Yes.
Q. On the day that John Allen was shot?
A. Yes.
Q. Where was that that you saw him?
A. On Martin Luther King.
Q. I'm not talking about the time of the shooting, I'm talking about before the shooting.
A. Before -- have I seen him in the car earlier that day?
Q. Yes.
A. No.
Q. Had you ever seen Carlos in that car before that day of the shooting?
A. Yes, I seen him.
Q. But not on the day of the shooting?
A. Yes, I seen him in the car before, but earlier that day, I did not see him in the car before it happened.
Q. But days before the shooting, you had seen him in that car?
A. Yes.
Q. Had he been driving the car or riding in the car?
A. He was riding in the car. I never

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seen him drive the car.

Q. You don't know who the driver was?

A. No, I don't.

Q. What's the first thing that you noticed when this car pulled up?

A. Because they was -- he was mumbling something.

Q. Who was mumbling?

A. The guy that was on the driver's side, I don't know who it was, he was telling him to get out the car.

Q. The person driving --

A. Was telling, I guess, the one in the back, Tyrone, to get out the car. He was like, "There them sissies is right there." I guess he couldn't see us at first. He was like, "There they is right there," he was like, "Get out the car and do it," because he wasn't going to get out the car.

Q. Let me stop you there. You could hear somebody saying, "There's those sissies right there"?

A. Yes.

Q. That's the first thing you think you heard?

A. Yes. That was the first thing.

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Q. That was the driver who said that?

A. Yes.

Q. Did you recognize that voice, had you ever heard it before?

A. No. I could tell it was coming from the front of the car.

Q. Could you tell if it was coming from the driver or the passenger?

A. It was coming from the driver, because the passenger was looking.

Q. Were the windows on the car rolled down or rolled up?

A. They was down.

Q. Were there any street lights near where you were standing?

A. Yes. There's a lot of street lights on Martin Luther King.

Q. Was there one close to the building where you had just come out of?

A. Right in front of it.

Q. So, you hear somebody say, "There's those sissies." And then what was the next thing that you saw or heard?

A. He told him to get out the car.

Q. This was the driver still?

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A. Telling him to get out the car.
Q. Did you recognize anybody else in that car?
A. No. I don't know them.
Q. How close were you to the car?
A. I was feet from the car.
Q. Could you reach and touch it?
A. If I tried, I probably could have.
Q. Did you recognize the person in the front passenger's seat?
A. Yes.
Q. Who did you believe that person was?
A. Carlos.
Q. What was that person wearing?
A. I couldn't see what he was wearing.
Q. Did you --
A. Dark color.
Q. I'm sorry?
A. It was a dark color, I can remember it was a dark color.
Q. Could you see who was in the back seat?
A. It was -- I just seen his face, but I didn't know him. I don't know him.
Q. You didn't know that person's name?

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A. No. I've never seen him.

Q. How many people were in the car total?

A. It was four.

Q. So, there were two people in the front seat, the driver and the passenger?

A. Yes.

Q. There was somebody on the passenger's side right beside the building?

A. Yeah.

Q. Closest to where you were, is that right?

A. Yes.

Q. And then there was somebody sitting next to the passenger in the back seat behind the driver?

A. Yes. There was two in the front and two in the back.

Q. Did you know the person in the back behind the driver?

A. No. Only person I knew in the car was Carlos. I didn't know him, I just knew him from staying across the street from us.

Q. Did you have any bad blood between Carlos?

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A. No. I didn't know him.
Q. You never had any trouble with him?
A. No.
Q. What about any of his family?
A. No. I just met their family when they moved across the street from me.
Q. How long had they lived across the street from you?
A. Wasn't even a year, about six, seven months, something like that.
Q. Had you ever talked to Carlos?
A. No, not really.
Q. How did you learn his name?
A. I used to talk to his brother, they call him Crippled Waldie, he walked with a limp. We used to sit out in front and talk on the step.
Q. Do you know his brother's real name?
A. No, called him Waldie.
Q. His brother would tell you that that was Carlos?
A. He told me that that's his brother Carlos.
Q. Could you ever hear the person in the front seat say anything to you?
A. What do you mean?

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Q. Did they say anything, "There are those sissies" or was that just the driver saying sissies?

A. He -- Carlos didn't say anything.

Q. What about anybody in the back seat, did they say anything?

A. One in the back was saying, "Where at, where at?" I guess he couldn't see us at first, he was like, "Where at?" He was like, "Right there."

Q. At this point, you still hadn't seen any guns, though, or had you?

A. Let me see. No, I didn't see them yet.

Q. What was the next thing that happened?

A. That's when John Allen -- right when he was like, "There them sissies," he came up to where I was and he told me to run.

Q. Did you?

A. I -- when I -- before I could run, they started shooting. So, when they started shooting, I just -- I laid down. I thought he was faking, too, I didn't know he got shot.

Q. When you laid down, where did you lay

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down?

A. I was half -- some part of my legs was in the street or something, I was like halfway on the curb and --

Q. Were you still on the curb right by where you had come out of?

A. No. Let me see. I'm trying to picture, this. Yeah. It was right there. We was still in front of the building. (Indicating.)

Q. Had you ever gone to the other side of the car?

A. No, I -- after the car pulled off, the phone booth was on the other side, so I ran on the other side and called the police.

Q. When the shooting started, the first thing you did was hit the dirt, basically?

A. Yes.

Q. Did you cover your head?

A. No. I just laid down, fell down.

Q. Which way was your head turned?

A. Towards -- on the curb. My legs was like in the street.

Q. If you opened -- were your eyes looking more toward the car or were they looking more toward this building?

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A. It would have been looking straight down Martin Luther King.

Q. Going towards downtown?

A. No, towards Kingshighway.

Q. Do you know where Johnnie Bell was during all of this?

A. I don't know where he went to.

Q. After the car drove away -- well, let me ask, do you know how many shots you heard?

A. No. It was a lot of them.

Q. Could you tell if it was more than one gun?

A. Yes, it was more. They was shooting from the front and the back seat.

Q. After the car drove away, what was the first thing that you did?

A. I made sure the car was gone. I got up, went across -- I got up, I walked over next to where my nephew John was and I told him he would be okay, he was, "umm-umm-umm-umm," I couldn't understand what he was saying. So, I opened up his jacket, seen he was shot, so I ran across the street and called the police.

Q. Was there a phone inside here, at 4236?

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A. No.

Q. Did you ever try to go in and get help from those people?

A. No. I ran right to the phone.

Q. Did you actually get through and call the police?

A. Yes.

Q. Did you tell them who did it when you called on 911?

A. They was asking me a lot of questions, I was like, "You just get here." I was trying to get back over to my little nephew and hold my little nephew. They was asking a whole bunch of questions. I was like I don't know if he's dying or if he's dead, I have to get back over there to where he was at.

Q. Did you ever flag down a patrol police officer?

A. Did I flag --

Q. A woman police officer.

A. I don't know. I don't know if she was flagged down or --

Q. Or if she just arrived?

A. I'm not quite sure.

Q. Did you speak to a woman police

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officer who arrived?

A. I think the first one there was a man, if I ain't mistaken.

Q. Did you tell them the name of anybody who had done the shooting, at that time?

A. Not at that time, because I was -- I couldn't believe it happened.

Q. Did they ask you who did it?

A. Right then and there, they was telling me to hold my little nephew and get a towel and put it on the hole, so they wasn't asking me no questions. They was telling me if you want to keep him alive, put pressure on the hole, so I was putting pressure on the hole.

Q. Had you actually gone and gotten a towel or did they have towel or --

A. When the police came, everybody that was in the house, they came out. The police told one of them to go get a towel. Shantay went and got a towel and gave it to me.

Q. Was Johnnie Bell outside with you also?

A. He was back outside when I came back from the phone, but I don't know where he went.

Q. In between then, you don't know?

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A. No.

Q. When you got back over after you called 911, was Johnnie Bell talking to John Allen at all?

A. He was holding his head.

Q. Was John Allen able to talk at all, at that time?

A. Yes, he was saying -- they was talking.

Q. Could you hear what they were saying?

A. No, I couldn't hear what they was saying.

Q. Did you ever hear John Allen say any names of any people?

A. No, I didn't.

Q. Could you understand the words that John Allen was saying?

A. I wasn't listening to what he was saying, I was just trying to put pressure on the hole. Him and Johnnie was talking.

Q. Now, at some point, the paramedics arrived; is that right?

A. Yes.

Q. Did they start working on John Allen?

A. No.

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Q. Did that upset you that they didn't?
A. Yeah.
Q. Did the police still try to talk to you about what you knew?
A. They wasn't trying to talk to me. They put me in the back of the paddy wagon.
Q. What did they do with you?
A. Sat me in there and left me in there.
Q. Nobody ever came and talked to you?
A. Not right then and there. They was saying they wanted me to calm down and everything before they talked to me.
Q. Were you pretty upset, at that point?
A. Yes.
Q. Did they ever talk to you there or did they take you downtown to talk to you?
A. They was talking to me there. And at this time, this car had passed by. And I told them that was another car that was -- you know, that they also use. So, they had followed the car and stopped it on -- they stopped them on Whittier and Martin Luther King and they took me down there and asked me can I identify anybody that was in the car, was in -- was in the first car. And I told them that I didn't know who the other two people

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was in the car, but I seen one of them and that was Tyrone, and I didn't know his name or nothing at first, I seen him in the car.

Q. So, Tyrone was one of these guys in the car that the police stopped right after the shooting happened?

A. Yes. It wasn't even twenty or thirty minutes or something like that.

Q. Did you ever tell the police that some dudes had just shot your nephew or your cousin?

A. Some dudes?

Q. Yes.

A. No, not saying some dudes.

Q. Did you ever tell the police the name of Carlos?

A. Yes, I told them his name was Carlos, but I didn't know his last name.

Q. Did you tell them where you thought Carlos lived?

A. I knew where he lived, across the street from me.

Q. Did you tell that to the police?

A. Yes.

Q. Where were you when you gave them

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that information?

A. I was in the homicide department.

Q. Before you had gotten down to the homicide department, did you give them the name of Carlos?

A. Yes.

Q. That was when?

A. Let me see. After they had got Tyrone out the car, they asked me was the other guy in the car, too. And I was telling them, no, he wasn't in the car. They was asking me what was his name. I told them his name was Carlos. They asked me his last name, I said I didn't know it.

Q. So, that was the first -- after they had Tyrone, the first time you named Carlos was at that time?

A. Yes. Because they was talking to me then, but they wouldn't talk to me at first, they seen that I was real upset. When I seen the car go past, I told them that that was one of the cars they always driving.

Q. What did that car look like?

A. It was a blue -- I think the car they stopped them in was burgundy or red. It was burgundy or red, bright color.

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Q. I'm going to jump around a little bit, so if I confuse you, please tell me. At the time that the shooting happened, did anybody in the gray car ever get out of the car?

A. No, they didn't get out.

Q. Right after John Allen was shot, did this other car -- did a second car drive by?

A. Yeah.

Q. What kind of car was that or what color was it?

A. It was a powder --

MR. HAGEMEISTER: I'll object to the form of the question. She said this was like within twenty minutes. You mean right after, like five seconds later? Right after what?

Q. (By Ms. Beimdiek) Let me clear it up. John Allen was shot. Did any other cars, even before the police got there, did any other cars come driving by?

A. Yes.

Q. What kind of car was that?

A. I don't know what kind it was, it was a powder blue four-door.

Q. Were the police even there when that car drove by?

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A. I had told them about that car and they drove up Martin Luther King and they said they lost the car, they couldn't catch it or something.

Q. Did you recognize that car?

A. Yes.

Q. Why did you recognize that car?

A. They be across the street from me on Aldine. Carlos stayed across -- right across the street from me.

Q. And you had seen Carlos in that car before?

A. Yeah.

Q. But that's not the car that you saw later on, the burgundy car that you said Tyrone was arrested in?

A. No.

Q. Is that right?

A. Yes.

Q. Did you actually see Tyrone getting out of the burgundy car with the police?

A. When they stopped the car and flashed the lights, they asked all of them to get out the car. They was, one by one, making them step in the light, asking me did I know who was -- was they the ones in that car. And the only one in the car that

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I seen was Tyrone.

Q. Did you recognize that burgundy car also as one that --

A. Yes.

Q. Had you ever seen Carlos in that burgundy car?

A. Yes.

Q. Had you ever seen that burgundy car parked anywhere near Carlos' house on Aldine?

A. Yes.

Q. Did you go back down -- I know you went to the homicide office the night that John was shot. Did you go back to homicide the next day and talk to them?

A. Yeah. I think, yeah.

Q. And were they trying to track down Carlos?

A. Yes.

Q. What did you do to help them to try to find Carlos?

A. They asked me to show them -- show them where he stayed at.

Q. Had you done that the day before?

A. That night?

Q. Yes.

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A. No. I did it that morning, because it was real late then.

Q. Why didn't you tell them that he lived across the street from you?

A. I told them.

Q. That night, you did?

A. Yes.

Q. But they didn't know where that was or you don't know why they asked you again?

A. I don't know.

Q. What did you tell them when they said where does he stay?

A. They asked me would I go by and show them.

Q. Did you agree to do that?

A. Yes.

Q. Did anybody else go with you?

A. Yes, it was two more people with me. It was me and two more females.

Q. Were they relatives of yours?

A. Let me see. Who was with me? I've been trying hard to forget what happened. I think one of them was Sherry. I can't remember.

Q. Do you know if it was Tametra Crawford?

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A. Yes, Tametra.

Q. What about Venita Hickman?

A. Yeah, my sister.

Q. That's who it was?

A. Yes.

Q. Now, they didn't actually see John get shot; is that right?

A. No, they didn't.

Q. Did they have information about this?

A. About what?

Q. About John being shot. Or did they just know Carlos?

A. They -- see, Carlos, a couple of houses down from where they stayed, they've got this house where they hide their guns and stuff in and they use for drive-bys and stuff.

Q. How do you know that they've got this house where they --

A. She -- Venita told me this. So, they wanted her to show them where the house was at. So, when we was going past, Carlos was standing outside.

Q. Was he standing outside his house or the other house?

A. Outside of his house.

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Q. What did you do when you drove past?
A. I told them that was him right there.
Q. What did the police do?
A. They called in and told them that he was outside of his house.
Q. Do you remember what he was wearing that day?
A. No.
Q. Did you see Carlos anymore that day?
A. Yes. I seen him when the police got him.
Q. Did you ever see him driving in a Honda that day?
A. I didn't see him driving.
Q. Did you see him riding in the Honda?
A. I don't know if it was a Honda, I'm not sure what kind of car it was, but he was in a gray car.
Q. Was it the same car that was used in the shooting?
A. Yes.
Q. Did you ever get the license plate off that car?
A. No.
Q. How many times before the cops

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arrested him did you see him in that gray car on that day that you were riding with the police?

A. That same day that the shooting happened?

Q. No, I'm sorry, the day after, the day you were riding around with the police.

A. How many times did I see him? I had just went to the police station earlier that morning.

Q. Let me clear it up. You get with the police, you drive by, Carlos is standing outside his house?

A. Yeah.

Q. And then did you see Carlos later on in that gray car?

A. When the police radioed for them to tell them where Carlos was at, I guess, by that time, the car pulled up, and he got in the car. And we was going up Cote Brilliante to Annie Malone, and they was driving the car up there one way going towards Annie Malone, because Aldine is one way coming back. When we got up there, the police was coming from Martin Luther King and stopped them right there.

Q. What car was that that you saw Carlos

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get in?

A. I didn't see him get in the car, I saw him get out the car.

Q. When the police stopped him?

A. Yes.

Q. He was riding in the car?

A. Yes.

Q. Did you know anybody else who was in the car with him?

A. No, because the van didn't stop, you know, they just drove by the car real slow.

Q. So, you only saw Carlos in that car once that day when you were with the police?

A. That day and this night.

Q. The night before -- I'm only talking now about the day after the shooting.

A. Oh, okay.

Q. Okay. I know you said he was in the car that night, I understand that. I'm talking about the day you see him outside, then you see him getting out of this car because the police have stopped him.

A. Yes.

Q. That's the only time you saw him in this Honda, or this gray car? I'm sorry.

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A. Uh-huh.

Q. Do you know a guy named Myron Mitchell?

A. No.

Q. Do you know anybody named Ena or Ina Dancy?

A. No.

Q. Do you know Marlin Mitchell?

A. No. See, most people go by nicknames and I don't know them by their real names. So, if I know them, I probably know them by their nicknames and not their real names.

Q. Did you or did Johnnie Bell get to John Allen first right after he got shot?

A. Right after he got shot, me.

Q. You got to him first?

A. Yes.

Q. And then you ran over to call 911?

A. Yes.

Q. Did you know anything about any static between Johnnie Bell and John Allen and Carlos Wade?

A. I know they had got into a fight on Martin Luther King, they got into a fight with fists on Martin Luther King.

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Q. Do you know when that was?
A. I don't remember exactly when. It was at Shell shop on Martin Luther King.
Q. Do you know how soon it was before John Allen was killed?
A. It was a month, about a month.
Q. About a month. Were you there when that happened?
A. No.
Q. You just heard about it?
A. Yes. I wasn't there.
Q. Did you ever see, other than -- I mean, you heard about stuff. Were there ever any times that you actually saw --
A. No.
Q. -- any fighting?
A. No.
Q. Did Johnnie Bell ever tell you about any shootouts between the three of them?
A. I know they told me they was -- Carlos was getting ready to get on Sarah and Fourth Street, they was going over to East St. Louis, and they seen him on Sarah and Martin Luther King and they started shooting at John and Johnnie.
Q. When did you learn about that?

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A. The same day, because my --

Q. The day that it happened?

A. Yes. My sister, which is John Allen's mother, went to the bus stop and picked them up, but they was running down Sarah towards Forest Park, she picked them up and took them to Metro.

Q. Did they say they ever called the police about that?

A. I don't think so. Most of them try to deal with their problems theirself.

Q. The night that John Allen was shot and the police were talking to you, did you and Johnnie Bell ever talk to each other about who did it?

A. No, because they put him --

Q. Separate?

A. Yes. They put me in the paddy wagon. I think they -- I don't know what they -- they took him somewhere else.

Q. Did you ever see him down at the homicide office?

A. Yes.

Q. Did you have a chance to talk to him down there at all?

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A. No, because I was talking to one detective.

Q. He was talking to somebody different or a different time?

A. Yes.

Q. Did you leave together or did you leave separate from the homicide station?

A. I think we left together.

Q. Did you talk at all when you left the station?

A. No, because he was upset. He was saying that he couldn't believe it happened and he was going to get them, he was saying a whole bunch of stupid stuff.

Q. When he said he was going to get them, what did you think he meant?

A. He meant he wanted revenge.

Q. Did he tell you if he had told the police the names of the people who did it?

A. He said he wasn't going to tell them nothing, because --

Q. Did you ask him why?

A. I knew why. And I told him that if he -- if he wished to go after them that I was going to call the police and have him locked up.

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Q. Do you know a guy named Kenneth Wagner or Kenny G, they call him?

A. No, not that I know of.

Q. Do you know a guy named BB?

A. No.

Q. Maybe Eduan Harris?

A. No, I don't think so.

Q. Have you gotten any threats about testifying in this case?

A. Yes.

Q. Who has threatened you?

A. They really called my sister's house on Natural Bridge, so my sister moved to Belleville. Carlos recently called my mother at work, I think it was one day last week, he called my mother at work. He had a guy go to my mother's job telling her to tell me that I better not testify.

Q. Do you know what Carlos said to your mother when he called her at work?

A. He was telling her to get in contact with somebody, he wanted her to talk to somebody. She said she didn't want to talk to him.

Q. Did he ever say any threats or anything like that?

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A. He told her that if -- if they go to jail, I was going to hell.

Q. Do you know if she called the police about that?

A. No.

Q. Did you ever tell Detective Hornak that?

A. Yes. I tell him all the time.

Q. Do you see him a lot?

A. Not recently, because I stay out of town now.

Q. Has Carlos ever specifically contacted you?

A. No, because I don't live in St. Louis.

Q. Did you actually see the shooting happen?

A. Yes.

Q. Did you actually see guns in people's hands?

A. It was two guns that I seen. One was in Carlos' hand, the other one was in Tyrone's hand and they was shooting towards Johnnie and John.

Q. Do you remember telling the police, back when they made a taped statement the next day,

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actually it was that same morning, early in the morning, that you didn't really see them shooting?

A. No, I didn't tell them that.

Q. Now, your nephew, your other nephew is Antonio Hickman?

A. Yes.

Q. He got shot a while back?

A. Yes.

Q. Do you know who shot him?

A. He said -- he said it was Carlos and some more boys that was with him. He paralyzed now.

Q. Did he say that Carlos actually shot him?

A. No, he didn't say Carlos. He said Carlos and some more guys, that's what he said. He said they stopped and talked to him first. And as he was thinking that the conversation was over with, he turned to walk away and they shot him in the back.

Q. Do you know why he was shot, what that was all about?

A. No, I don't know what it was all about.

Q. Do you know why John Allen was shot?

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A. I guess they -- I don't know. But John, I can't say that they ever shot at Carlos and them, but Carlos and them always shooting at them. They shot up his mama house on Fair, they had to move off Fair, then they shot my mother house up, then they shot up on Martin Luther King.

Q. You were never there when any of that happened; is that right?

A. I was there when they shot up the house on Fair.

Q. When did that happen?

A. I don't remember exactly what day. But John's mother was in the van, because they shot up the van and the house, so she was in the van.

Q. Did you see the person or the people who were doing that shooting?

A. No, because I had ran out the house.

Q. Did anybody ever call the police when that happened?

A. I think my sister called.

Q. That was way before John Allen got killed?

A. Yes, it was.

Q. That's all the questions I have, I just have a few follow-ups. Are there any

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questions that I asked you that you didn't understand but you went ahead and answered them anyway?

A. No.

Q. Are there any questions that you had additional information but I cut you off and didn't give you a chance to fully answer the question?

A. No.

MS. BEIMDIEK: Miss Jones may have a few for you.

QUESTIONS MS. JONES:

Q. Before John was shot, had you ever met Tyrone before?

A. No, I didn't. I still don't know him.

Q. Had you ever seen him at Carlos' house?

A. No.

Q. How did you recognize the face in the car the night John was shot?

A. Because I seen the face. And then when the police stopped him, I said that was the guy that was in the car. I don't know Tyrone.

Q. When you picked Tyrone out that evening after John was shot, where were you?

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A. Where was I when I picked him out?

Q. Yes.

A. On Martin Luther King and Whittier.

Q. You were still at -- where John Allen was still laying?

A. Uh-huh. The police, when I seen the car go past, I told them that was one of the cars they also drive. They followed the car and stopped it on Martin Luther King and Whittier and they had them to get out the car while I was in the paddy wagon. They had me to go down there. They had them get out the car one by one and they asked me was any one of them in the car when it happened. I said that that guy, he was in there. They asked me what was his name, I said I didn't know.

Q. How did you recognize him?

A. By face, I seen his face.

Q. Where did you see the face in the car, are you talking about in the front or back?

A. I seen him in the back.

Q. You're talking about behind the driver?

A. No, behind the passenger.

Q. And you're still between the car and the house, right?

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A. Yes.

Q. Okay. You said one person was talking in the car?

A. I heard -- no. I heard the driver, it was coming from the front, so it was the driver, he was saying -- telling him to get out and do it, get out, I guess, get out. I don't know. He said get out and do it.

Q. So, Tyrone you are saying was in the back?

A. In the back.

Q. Behind the passenger?

A. Yes.

Q. Okay. Could you see him speaking?

A. No, I couldn't see his mouth move.

Q. You're saying you could see two guns?

A. Yes.

Q. Was anything hanging outside of the gray car, anybody hanging out of the gray car?

A. Their arm, just -- you know, they had their arm outside the car.

Q. So, you're saying there were two arms?

A. Yes.

Q. Can you describe the guns?

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A. I don't know nothing about guns. I just seen the guns.

MS. JONES: I have no further questions.

MS. BEIMDIEK: Angela, the court reporter is going to type up everything that we have all said in a little booklet. You have the right to look it over and make sure that she took down what you said correctly. The other choice you have is to trust that she took it down correctly and simply waive your signature, give up your right to review what she types up, but the choice is yours. You can review it for accuracy or trust that she got it right. It's up to you.

THE WITNESS: I'll review it.

MS. BEIMDIEK: You would like to review it. That's fine. Thank you.

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STATE OF MISSOURI)
) SS.
CITY OF ST. LOUIS)

I, Sandra K. LaRose, a notary public in and for the State of Missouri, do hereby certify that pursuant to Notice, there came before me at the offices of the Special Public Defender, 1320 Market Street, in the City of St. Louis, State of Missouri,

ANGELA HICKMAN,

who was by me first duly sworn to tell the whole truth of her knowledge touching the matter in controversy aforesaid; that the witness was examined on the day, between the hours and at the place in that behalf first aforesaid, and the examination was taken in shorthand and later reduced to typewriting; that the signature of the deponent was not waived by agreement of counsel, and the deposition is herewith returned.

In witness whereof, I have hereunto set my hand and affixed my notarial seal this 13th day of August, 1996.

My commission expires February 16, 2000.

Sandra K. LaRose

Notary Public in and for the State of Missouri

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Exhibit 2

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IN THE
MISSOURI COURT OF APPEALS
EASTERN DISTRICT

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FILED
JUL 25 1997
DEIRDRE O. SMITH
CLERK, MISSOURI COURT OF APPEALS
EASTERN DISTRICT

TYRONE MORANT,

Appellant,

vs.

STATE OF MISSOURI,

Respondent.

) ED Appeal No. 71966

LEGAL FILE

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Exhibit 3

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CERTIFICATE OF SERVICE

I hereby certify that on this 24 day of July, 1997, a true and correct copy of the foregoing Legal File was mailed postage prepaid to the Office of the Attorney General, P.O. Box 899, Jefferson City, MO 65102, and a copy of the legal file index was served to the Clerk , City of St. Louis, State of Missouri.

Attorney for Appellant

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DATE	REF*	JUDGES DOCKET SHEET	CLERK
12/21/95	01* 02*	INDICTMENT FILED, CASE ASSIGNED TO DIV 25 BOND SET; NO BOND ALLOWED	PROBE
01/08/96	01 02 03 04	KRISTINE A. KERR (PD) ENTERS APPEARANCE FOR DEFT MARK W. HAGEMEISTER (CA) ENTERS APPEARANCE FOR STATE OF MISSOURI DEFENDANT ARRAIGNED, CASE ASSIGNED TO DIV 16 CASE SET FOR INITIAL APPEARANCE 02/05/96 09:30AM DIV 16 JUDGE ARTHUR F. MIORELLI	IPROC NMAG
01/31/96	01 02 03	CONTINUED BY DEFENDANT 03/25/96 09:30AM DIV 16 JUDGE ANNA C. FORDER, DIV 16 KRISTINE A. KERR (PD) WITHDRAWS AS ATTORNEY FOR DEFT KATRINA A. JONES (PD) ENTERS APPEARANCE FOR DEFT	NMAG
02/05/96	01	DISCOVERY NOTICE FILED.	VOPER
02/08/96	01	REQUEST FOR DISCOVERY FILED	RBUTL
02/16/96	01* 02* 03* 04*	MOTION TO SEVER DEFENDANTS FILED MOTION TO SUPPRESS STATEMENTS FILED MOTION TO SUPPRESS IDENTIFICATION FILED MOTION TO SUPPRESS EVIDENCE FILED	DJON
03/20/96	01	CONTINUED BY DEFENDANT 05/13/96 09:30AM DIV 16 JUDGE ANNA C. FORDER, DIV 16	NMAG
05/15/96	01	CONTINUED FOR WANT OF TIME BY DEFENDANT 07/15/96 09:30AM DIV 16 JUDGE ANNA C. FORDER, DIV 16	NMAG
07/16/96	01	CONTINUED BY STATE 08/26/96 09:30AM DIV 16 JUDGE ANNA C. FORDER, DIV 16	NMAG
07/18/96	01	CAUSE ASSIGNED TO DIVISION NUMBER 11 FOR FURTHER PROCEEDINGS JUDGE ANNA C. FORDER, DIV 16	NMAG
08/09/96	01 02	HEARING SET 08/15/96 02:00PM DIV 11 JUDGE FLOYD MCBRIDE JR, DIV 11 ENDORSEMENT OF WITNESSES BY STATE FILED	JJULI RBUTL
08/12/96	01 02	NOTICE OF ALIBI AND ENDORSEMENT OF WITNESSES FILED. ALIBI WITNESS ENDORSEMENT FILED	RBUTL
08/15/96	01	CAUSE RETURNED TO DIVISION 16 FOR FURTHER PROCEEDINGS. JUDGE FLOYD MCBRIDE JR, DIV 11 COURT REPORTER: CAROL VAGEN	JJULI
08/21/96	01	KATRINA A. JONES (PD) WITHDRAWS AS ATTORNEY FOR DEFT	NMAG

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DATE	REF*	JUDGES DOCKET SHEET	CLERK
08/21/96	02	SANDRA MOORE DYSON (PR) ENTERS APPEARANCE FOR DEFT	
09/26/96	01	CONTINUED BY COURT 11/12/96 09:30AM DIV 16	NMAG
	02	CAUSE ASSIGNED TO DIVISION NUMBER 11 FOR FURTHER PROCEEDINGS JUDGE ANNA C. FORDER, DIV 16	
10/09/96	01*	MOTION TO SEVER TRIAL FILED.	SRODE
10/19/96	01	MOTION FOR SEVERANCE FILED BY DEFENDANT	JJULI
10/20/96	01*	INSTRUCTIONS READ. ARGUMENTS MADE BY COUNSELS FOR STATE AND DEFENDANT. SHERIFF'S SWORN. JUDGE FLOYD MCBRIDE JR, DIV 11 COURT REPORTER: NANCY KUTTA	JJULI
10/25/96	01*	MEMORANDUM OF LAW, FILED BY MARK HAGEMIESTER, ASST. CIRCUIT ATTY.	SRODE
10/28/96	01	MEMORANDUM OF LAW, FILED BY STATE	JJULI
10/29/96	01	MOTION FOR SEPERATE TRIAL FILED BY DEFENDANT	JJULI
	02*	MOTION FOR SEPERATE TRIAL FILED BY DEFENDANT	
11/12/96	01	JURY TRIAL. STATE BY ASSISTANT CIRCUIT ATTORNEY MARK W. HAGEMEISTER, #40365 DEFENDANT IN PERSON AND BY ATTORNEY SANDRA MOORE DYSON, #30584 THE COURT ORDERS COURT REPORTER TO TAKE NOTES TO PRESERVE THE EVIDENCE.	JJULI
	02	PANEL OF SIXTY-SIX (66) JURORS CALLED. MAI-CR 300.02 INSTRUCTION PARTIALLY READ TO PANEL. JURY PANEL SWORN. MAI-CR 300.02 INSTRUCTION COMPLETED. EXAMINATION OF JURY PANEL ON VOIR DIRE BEGUN NOT CONCLUDED	
	03	COURT IS ADJOURNED UNTIL TOMORROW, NOVEMBER 13, 1996 AT 9:30 A.M.	
	04	DEFENDANT'S MOTION FOR SEPERATE TRIAL OVERRULED JUDGE FLOYD MCBRIDE JR, DIV 11 COURT REPORTER: CAROL VAGEN	
11/13/96	01	JURY TRIAL. STATE BY ASSISTANT CIRCUIT ATTORNEY MARK W. HAGEMEISTER, #40365 DEFENDANT IN PERSON AND BY ATTORNEY SANDRA MOORE DYSON, #30584	JJUL
	02	EXAMINATION OF JURY PANEL ON VOIR DIRE CONTINUES AND CONCLUDED	
	03	JURY OF TWELVE (12) AND TWO (2) ALTERNATES SELECTED NOT SWORN	
	04	COURT IS ADJOURNED UNTIL TOMORROW, NOVEMBER 14, 1996 AT 9:30 A.M. JUDGE FLOYD MCBRIDE JR, DIV 11 COURT REPORTER: CAROL VAGEN	

DATE	REF#	JUDGES DOCKET SHEET	CLER
11/14/96	01	JURY TRIAL. STATE BY ASSISTANT CIRCUIT ATTORNEY MARK W. HAGEMEISTER, #40365 DEFENDANT IN PERSON AND BY ATTORNEY SANDRA MOORE DYSON, #30584	JJUL
	02	JURY OF TWELVE (12) AND TWO (2) ALTERNATES SWORN.	
	03	MAI-CR 3D INSTRUCTION NUMBERS #300.06, 302.01 AND. 302.02 READ TO JURY.	
	04	OPENING STATEMENTS MADE BY STATE AND DEFENDANT.	
	05	TESTIMONY OF STATE'S WITNESSES BEGUN AND NOT CONCLUDED	
	06	COURT IS ADJOURNED UNTIL TOMORROW, NOVEMBER 15, 1996 AT 9:30 A.M.	
		JUDGE FLOYD MCBRIDE JR, DIV 11 COURT REPORTER: CAROL VAGEN	
11/15/96	01	JURY TRIAL. STATE BY ASSISTANT CIRCUIT ATTORNEY MARK W. HAGEMEISTER, 40365 DEFENDANT IN PERSON AND BY ATTORNEY SANDRA MOORE DYSON, #30584	JJUL
	02	TESTIMONY OF STATE'S WITNESSES CONTINUES NOT CONCLUDED	
	03	COURT IS ADJOURNED UNTIL MONDAY, NOVEMBER 18, 1996 AT 9:30 A.M.	
		JUDGE FLOYD MCBRIDE JR, DIV 11 COURT REPORTER: CAROL VAGEN	
11/18/96	01	JURY TRIAL. STATE BY ASSISTANT CIRCUIT ATTORNEY MARK W. HAGEMEISTER, #40365 DEFENDANT IN PERSON AND BY ATTORNEY SANDRA MOORE DYSON, #30584	JJUL
	02	TESTIMONY OF STATE'S WITNESSES CONTINUES AND CONCLUDED	
	03	STATE RESTS.	
	04	AT THE CLOSE OF THE STATE'S CASE DEFENDANT MAKES ORAL MOTION FOR JUDGMENT OF ACQUITTAL. MOTION HEARD AND DENIED	
	05	TESTIMONY OF DEFENDANT'S WITNESSES BEGUN NOT CONCLUDED	
	06	COURT IS ADJOURNED UNTIL TOMORROW, NOVEMBER 19, 1996 AT 9:30 A.M.	
		JUDGE FLOYD MCBRIDE JR, DIV 11 COURT REPORTER: NANCY KUTTA	
11/19/96	01	JURY TRIAL. STATE BY ASSISTANT CIRCUIT ATTORNEY MARK W. HAGEMEISTER, #40365 DEFENDANT IN PERSON AND BY ATTORNEY SANDRA MOORE DYSON, #30584	JJUL
	02	TESTIMONY OF DEFENDANT'S WITNESSES CONTINUES AND CONCLUDED	
	03	DEFENSE RESTS.	
	04	TESTIMONY OF DEFENDANT'S WITNESSES BEGUN AND CONCLUDED	
	05	INSTRUCTIONS READ. ARGUMENTS MADE BY COUNSELS FOR STATE AND DEFENDANT. SHERIFF'S SWORN.	
	06	STATE RESTS.	
	07	DEFENSE RESTS.	
	08	COURT IS ADJOURNED UNTIL TOMORROW, NOVEMBER 20, 1996 AT 10:30 A.M	
		JUDGE FLOYD MCBRIDE JR, DIV 11	

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DATE	REF#	JUDGES DOCKET SHEET	CLER
11/19/96		COURT REPORTER: NANCY KUTTA	
11/20/96	01	JURY TRIAL. STATE BY ASSISTANT CIRCUIT ATTORNEY MARK W. HAGEMEISTER DEFENDANT IN PERSON AND BY ATTORNEY SANDRA MOORE DYSON	JJUL
	02	ALTERNATE JURORS DISCHARGED.	
	03	JURY RETIRES TO DELIBERATE AT 3:20 A.M.	
	04	RECESS CALLED MAI-CR INSTRUCTION 300.04.2 READ. COURT ADJOURNED UNTIL TOMORROW, NOVEMBER 21, 1996 AT 9:30 P.M.	
		JUDGE FLOYD MCBRIDE JR, DIV 11 COURT REPORTER: NANCY KUTTA	
11/21/96	01	JURY TRIAL. STATE BY ASSISTANT CIRCUIT ATTORNEY MARK W. HAGEMEISTER DEFENDANT IN PERSON AND BY ATTORNEY SANDRA MOORE DYSON	JJUL
	02	AT 9:40 A.M. JURY DELIBERATIONS RESUMED.	
	03	JURY RETURNED FROM LUNCH AND RESUMED DELIBERATION.	
	04	ORIGINALS OF ALL FOOD BILLS SENT TO PURCHASING AND COPY IS FILED.	
	05	RECESS CALLED MAI-CR INSTRUCTION 300.04.2 READ. COURT ADJOURNED UNTIL TOMORROW, NOVEMBER 22, 1996 AT 9:30 A.M.	
		JUDGE FLOYD MCBRIDE JR, DIV 11 COURT REPORTER: NANCY KUTTA	
11/22/96	01	JURY TRIAL. STATE BY ASSISTANT CIRCUIT ATTORNEY MARK W. HAGEMEISTER, #40365 DEFENDANT IN PERSON AND BY ATTORNEY SANDRA MOORE DYSON, #30584	JJUL
	02	AT 9:30 A.M. JURY DELIBERATIONS RESUMED.	
	03	AT 12:45 P.M. JURY RETURNS A VERDICT AS FOLLOWS:	
	04	SANDRA M. MOORE (PR) ENTERS APPEARANCE FOR DEFT	
	05	DEFT APPEARS REPRESENTED BY COUNSEL SANDRA M. MOORE STATE OF MISSOURI APPEARS REPRESENTED BY COUNSEL MARK W. HAGEMEISTER	
	06	CT-01, MURDER 1ST DEGREE , (F). JURY FINDS THE DEFT GUILTY; TRIAL DAYS: 9	
	07	CONTINUED FOR SENTENCING BY COURT 01/10/97 10:00AM DIV 11	
	08	JURY ASSESSES PUNISHMENT AT LIFE WITHOUT PROBATION OR PAROLE	
	09	CT-02, ARMED CRIMINAL ACTION , (F). JURY FINDS THE DEFT GUILTY	
	10	JURY ASSESSES PUNISHMENT AT THIRTY (30)	
	11	CT-03, ASSAULT 1ST DEG , (F). JURY FINDS THE DEFT GUILTY	
	12	JURY ASSESSES PUNISHMENT AT FIFTEEN (15) YEARS	
	13	CT-04, ARMED CRIMINAL ACTION , (F). JURY FINDS THE DEFT GUILTY	
	14	JURY ASSESSES PUNISHMENT AT THIRTY (30) YEARS	

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DATE	REF#	JUDGES DOCKET SHEET	CLER
11/22/96	15	CT-05, ASSAULT 1ST DEG , (F). JURY FINDS THE DEFT GUILTY	
	16	JURY ASSESSES PUNISHMENT AT FIFTEEN (15) YEARS	
	17	CT-06, ARMED CRIMINAL ACTION , (F). JURY FINDS THE DEFT GUILTY	
	18	JURY ASSESSES PUNISHMENT AT THIRTY (30) YEARS	
	19	VERDICT FORMS RECEIVED AND FILED.	
	20	JURY POLLED. JURY DISCHARGED.	
	21	DEFENDANT GRANTED TEN (10) DAYS ADDITIONAL DAYS TO FILE MOTION FOR NEW TRIAL.	
	22	SENTENCING DATE SET FOR FRIDAY, JANUARY 10, 1997 AT 10:00 A.M. IN DIVISION # 11	
	23	INSTRUCTIONS FILED.	
	24	JURY PANEL LIST AND JURY LIST FILED.	
	25	WITNESS LIST FILED.	
	26	DEFENDANT REMANDED TO THE CUSTODY OF THE SHERIFF. JUDGE FLOYD MCBRIDE JR, DIV 11 COURT REPORTER: SHERRY MARSHALL	
01/10/97	01*	MOTION FOR JUDGMENT OF ACQUITTAL NOT WITHSTANDING THE JURY VERDICT OR IN THE ALTERNATIVE FOR A NEW TRIAL FILED BY DEFENDANT	WFRI
	02*	CAUSE CALLED FOR MOTION HEARING. STATE APPEARS BY MARK HAGEMEISTER AND DEFENDANT APPEARS IN PERSON, AND BY SANDRA MOORE-DYSON	
	03*	DEFENDANT'S MOTION FOR JUDGMENT OF ACQUITTAL NOT WITHSTANDING THE JURY VERDICT OR IN THE ALTERNATIVE FOR A NEW TRIAL HEARD WITH TESTIMONY AND SUBMITTED	
	04*	DEFENDANT'S MOTION FOR JUDGMENT OF ACQUITTAL NOT WITHSTANDING THE JURY VERDICT OR IN THE ALTERNATIVE FOR A NEW TRIAL OVERRULED. HEARD, SUBMITTED AND OVERRULED	
	05*	DEFT APPEARS REPRESENTED BY COUNSEL SANDRA MOORE DYSON STATE OF MISSOURI APPEARS REPRESENTED BY COUNSEL MARK W. HAGEMEISTER	
	06*	DEFT SENTENCED ON CT-01 TO LIFE WITHOUT PAROLE IN THE CUSTODY OF MISSOURI DEPT. OF CORRECTIONS	
	07*	JAIL TIME ALLOWED.	
	08*	DEFENDANT EXAMINED PURSUANT TO 29.07	
	09*	COURT COSTS ORDERED, CVC JUDGMENT $408.00 ORDERED	
	10*	DEFT SENTENCED ON CT-02 TO SERVE 30 YEARS IN THE CUSTODY OF MISSOURI DEPT. OF CORRECTIONS SENTENCE TO RUN CONSECUTIVE WITH 951-043268 CT-01	
	11*	DEFT SENTENCED ON CT-03 TO SERVE 15 YEARS IN THE CUSTODY OF MISSOURI DEPT. OF CORRECTIONS SENTENCE TO RUN CONSECUTIVE WITH 951-043268 CT-02	
	12*	DEFT SENTENCED ON CT-04 TO SERVE 30 YEARS IN THE CUSTODY OF MISSOURI DEPT. OF CORRECTIONS SENTENCE TO RUN CONSECUTIVE WITH 951-043268 CT-03	
	13*	DEFT SENTENCED ON CT-05 TO SERVE 15 YEARS IN THE CUSTODY OF MISSOURI DEPT. OF CORRECTIONS	

DATE	REF#	JUDGES DOCKET SHEET	CLER
01/10/97		SENTENCE TO RUN CONSECUTIVE WITH 951-04326B CT-04	
	14*	DEFT SENTENCED ON CT-06 TO SERVE 30 YEARS IN THE CUSTODY OF MISSOURI DEPT. OF CORRECTIONS SENTENCE TO RUN CONSECUTIVE WITH 951-04326B	
	15*	SENTENCE IN ALL COUNTS ARE TO RUN CONSECUTIVELY TO TO EACH OTHER PER SENTENCE AND JUDGMENT FILED.	
	16*	DEFENDANT IS GRANTED AN ADDITIONAL TEN DAYS IN WHICH TO FILE MOTION FOR A NEW TRIAL.	
	17*	COPY OF LETTER FROM COURT TO CLERK OF THE SUPREME COURT FILED.	
	16*	ORDER OF COURT ENTERED AS FOLLOWS: " AFTER HEARING AN ORAL MOTION TO DETERMINE THE INDIGENCY OF THE DEFT., THE COURT FINDS THAT THE DEFENDANT IS INDIGENT FOR THE PURPOSES OF FILING, AND PROSECUTING HIS APPEAL. PRESENT COUNSEL TO PREPARE MOTION TO PROCEED IN FORMA PAUPERIS AND NOTICE OF APPEAL, IN TIME ." JUDGE FLOYD MCBRIDE JR, DIV 11	
01/11/97	01*	DEFENDANT REMANDED TO THE CUSTODY OF THE SHERIFF TO BE TRANSPORTED TO THE MDC FORTHWITH, PER ORDER FILED. JUDGE FLOYD MCBRIDE JR, DIV 11	WFRI
01/14/97	01*	MOTION TO APPEAL AS A POOR PERSON FILED BY DEFENDANT	WFRI
	02*	DEFENDANT'S MOTION TO APPEAL AS A POOR PERSON GRANTED. THE COURT HEREBY APPOINTS MS. DEBORAH WAFER, DISTRICT PUBLIC DEFENDER, APPELLATE DIVISION, TO REPRESENT THE DEFENDANT JUDGE FLOYD MCBRIDE JR, DIV 11	
01/22/97	01	MOTION TO APPEAL AS A POOR PERSON FILED	PSMI
	02*	MOTION TO PROCEED IN FORMA PAUPERIS FILED BY DEFENDANT	MHOL
	03*	DEFENDANT'S MOTION TO PROCEED IN FORMA PAUPERIS GRANTED JUDGE FLOYD MCBRIDE JR, DIV 11	
02/18/97	01	NOTICE OF APPEAL TO THE MISSOURI COURT OF APPEALS EASTERN DISTRICT FILED IN FORMA PAUPERIS.	MHOL
	02	MOTION RULINGS OF FEBRUARY 10,1997 BY MISSOUIR COURT OF APPEALS FILED.	
	03	A BRIEF STATEMENT OR DESCRIPTION OF THE CASE FILED.	
	04	COPY OF NOTICE OF APPEAL ,STATEMENT OF THE CASE, STATEMENT AS TO RECORD ON APPEAL, LIST OF PARTIES AND ATTORNEY'S ,STATEMENT AS TO DEFENDANTS STATUS, SENTENCE AND JUDGMENT , SENT TO THE MISSOURI COURT OF APPEALS, EASTERN DISTRICT AND THE ATTORNEY GENERALS OFFICE BY CERTIFIED MAIL (P251-490-065) (P 251-490-066) AND SERVED ON THE CIRCUIT ATTORNEY'S OFFICE.	
	05	ORDER FROM THE MISSOURI COURT OF APPEALS GRANTING APPELLANT MOTION TO FILE A LATE NOTICE OF APPEAL FILED. APPELLANT GRANTED 15 DAYS FROM RECEIPT OF THIS ORDER TO FILE NOTICE OF APPEAL WITHOUT DOCKET FEE.	

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APR 16 1997

03/20/97 22ND JUDICIAL CIRCUIT COURT #22MHOL

DATE	REF#	JUDGES DOCKET SHEET	CLERK
02/18/97			
02/24/97	01	RETURN RECEIFT CARD OF CERTIFICATION FILED	MHOL
	02	RETURN RECEIFT CARD OF CERTIFICATION FILED	
02/26/97	01	LETTER OF ACKNOWLEDGMENT FROM THE MISSOURI COURT OF APPEALS FILED	MHOL
03/19/97	01	REQUEST FOR LEGAL FILE FILED	MHOL

CASE-NO:951-00043268 (6) DEFT:MORANT, TYRONE DESANTE CY:01 PG:07

A-69 (7)

MISSOURI CIRCUIT COURT - TWENTY-SECOND JUDICIAL CIRCUIT
(ST. LOUIS CITY)

STATE OF MISSOURI
VS
MORANT, TYRONE DESANTE

DIV #: | CA#: F71667b | CAUSE#: 951-4326B
DESTINATION: GRJURY

DEFENDANT INFORMATION

ADDRESS: 4258 W COTE BRILLIANTE
ST LOUIS, MO

PEDIGREE: RACE: B | DOB: 07/25/1978 | HGT: 508
SEX: M | AGE: 17 | WGT: 210

ID #S: COMPLAINT#: 95-137954 | LID: 263397
ARREST#: 95/011035 Dist: 4 | OCN: 93005909

ALIASES:

SSNS: **********

CHARGES(S):
01. CNT: 01 MURDER 1ST DEGREE (Class A Felony)
2. CNT: 02 ARMED CRIMINAL ACTION (Class A Felony)
3. CNT: 03 ASSAULT 1ST DEG (Class B Felony)
4. CNT: 04 ARMED CRIMINAL ACTION (Class A Felony)
5. CNT: 05 ASSAULT 1ST DEG (Class B Felony)
6. CNT: 06 ARMED CRIMINAL ACTION (Class A Felony)

WITNESSES:
ALLEN, JOHN | BELL, JOHNNY | HICKMAN, ANGELA
HORNAN, KENNETH 1797 | PAPPAS, CHRIS 0855

STATE OF MISSOURI)
CITY OF ST. LOUIS) SS

INDICTMENT

COUNT I

The Grand Jurors of the City of St. Louis, State of Missouri, charge that the defendants CARLOS WADE AND TYRONE MORANT, in violation of Section 565.020.1, RSMo, committed the class A felony of murder in the first degree, punishable upon conviction under Section 565.020.2, RSMo, in that on the 17th day of September, 1995, in the City of St. Louis, State of Missouri, the defendants Tyrone Morant and Carlos Wade, after deliberation, knowingly killed John Allen by shooting him.

L:RW

FILED
DEC 21 1995
MAVIS T. THOMPSON
CLERK, CIRCUIT COURT
BY _____ DEPUTY

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COUNT II

The Grand Jurors of the City of St. Louis, State of Missouri, charge that the defendants Tyrone Morant and Carlos Wade, in violation of Section 571.015, RSMo, committed the class A felony of armed criminal action, punishable upon conviction under Section 571.015.1, RSMo, in that on the 17th day of September, 1995, in the City of St. Louis, State of Missouri, the defendants Tyrone Morant and Carlos Wade committed the felony of Murder First charged in Count I, all allegations of which are incorporated herein by reference, and the defendants Tyrone Morant and Carlos Wade committed the foregoing felony of murder first by, with and through the use, assistance and aid of a deadly weapon.

COUNT III

The Grand Jurors of the City of St. Louis, State of Missouri, charge that the defendants Tyrone Morant and Carlos Wade, in violation of Section 565.050, RSMo, committed the class B felony of assault in the first degree, punishable upon conviction under Section 558.011.1.(1) RSMo, in that on the 17th day of September, 1995, in the City of St. Louis, State of Missouri, the defendants Tyrone Morant and Carlos Wade attempted to kill or cause serious physical injury to Johnny Bell by shooting him.

COUNT IV

The Grand Jurors of the City of St. Louis, State of Missouri, charge that the defendants Tyrone Morant and Carlos Wade, in violation of Section 571.015, RSMo, committed the class A felony of armed criminal action, punishable upon conviction under Section 571.015.1, RSMo, in that on the 17th day of September, 1995, in the City of St. Louis, State of Missouri, the defendants Tyrone Morant and Carlos Wade committed the felony of Assault First degree charged in Count III, all allegations of which are incorporated herein by reference, and the defendants Tyrone Morant and Carlos Wade committed the foregoing felony of assault first degree by, with and through the use, assistance and aid of a deadly weapon.

COUNT V

The Grand Jurors of the City of St. Louis, State of Missouri, charge that the defendants Tyrone Morant and Carlos Wade, in violation of Section 565.050, RSMo, committed the class B felony of assault in the first degree, punishable upon conviction under Section 558.011.1(1) RSMo, in that on the 17th day of September, 1995, in the City of St. Louis, State of Missouri, the defendants Tyrone Morant and Carlos Wade attempted to kill or cause serious physical injury to Angela Hickman by shooting her.

L:RW
570725
TYRONE MORANT

FILED
DEC 21 1995
MAVIS T. THOMPSON
CLERK, CIRCUIT COURT
BY _____ DEPUTY
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COUNT VI

The [illegible] Circuit of the City of St. Louis, State of Missouri, charge that the defendants Tyrone Morant and Carlos Wade, in violation of Section 571.015, RSMo, committed the class A felony of armed criminal action, punishable upon conviction under Section 571.015.2, RSMo, in that on the 17th day of September, 1995, in the City of St. Louis, State of Missouri, the defendants Tyrone Morant and Carlos Wade committed the felony of Assault First degree as charged in Count V, all allegations of which are incorporated herein by reference, and the defendants Tyrone Morant and Carlos Wade committed the foregoing felony of assault first degree by, with and through the use, assistance and aid of a deadly weapon.

[illegible]
Judith K. Doss
[illegible]

DEE JOYCE HAYES
Circuit Attorney
of the City of St. Louis
State of Missouri

Assistant Circuit Attorney

Received and filed December 21, 1995 and bail set at $ No Bond.

Marcia B. Sullivan
Circuit Judge

PAGE [illegible]
TYRONE MORANT
F70775
L:RW

FILED
DEC 21 1995
MAVIS A. THOMPSON
CLERK, CIRCUIT COURT
BY _____ DEPUTY

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STATE OF MISSOURI)
) ss
CITY OF ST. LOUIS)

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
STATE OF MISSOURI

STATE OF MISSOURI,

Plaintiff,

vs.

MORANT. TYRONE DESANTE

Defendant,

FILED
JAN 8 1996
MAVIS THOMPSON
CLERK CIRCUIT COURT
BY DEPUTY

Cause No.:	
Charge(s)	
01	MURDER 1ST DEGREE
02	ARMED CRIMINAL ACTION
03	ASSAULT 1ST DEG
04	ARMED CRIMINAL ACTION
05	ASSAULT 1ST DEG
06	ARMED CRIMINAL ACTION

REQUEST FOR DISCLOSURE

Comes now the State of Missouri and hereby requests the defendant to disclose the following material or information in compliance with Supreme Court Rules 25.02, 25.05, 25.06, 25.07 and 25.08, to wit:

1. All reports or statements of experts made in connection with his case, including but not limited to results of physical or mental examination and of scientific tests, experiments or comparisons which the defense intends to introduce into evidence at a hearing or a trial except those portions containing statements made by the defendant;

2. The names and last known addresses of persons other than defendant, who the defense intends to call as witnesses at a hearing or a trial, together with their written or recorded statements, and existing memoranda reporting or summarizing part or all of their oral statement;

3. Those parts of any books, papers, documents, photographs or objects, excluding portions containing statement of defendant, which the defense intends to introduce at a hearing or a trial;

4. A written statement from defense counsel disclosing defendant's intention to rely on the defense of mental disease or defect excluding responsibility, if such defense will be relied on;

5. A written statement from defense counsel announcing the intention to rely on the defense of alibi, including specific information as the place at which the accused claims to have been at the time of the alleged offense, and as particularly as is known, the names and addresses of the witnesses by whom he proposes to establish such alibi, If defendant intends to rely on this defense.

6. Notes, memorandum, written or recorded statements reporting or summarizing ex-parte statements obtained from the State's witnesses and impeachment defense witnesses or alibi witnesses. (State vs. Alkin) 791 S.W.2d 803, (Mo. App. 1990); (Foote v. Hart), 728 S.W.2d 195 (Mo. App. 1987).

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A-73

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The defendant is charged with:

01 MURDER 1ST DEGREE
02 ARMED CRIMINAL ACTION
03 ASSAULT 1ST DEG
04 ARMED CRIMINAL ACTION
05 ASSAULT 1ST DEG
06 ARMED CRIMINAL ACTION

at 01 4236 DR MARTIN L KING
02 4236 DR MARTIN L KING
03 4236 DR MARTIN L KING
04 4236 DR MARTIN L KING
05 4236 DR MARTIN L KING
06 4236 DR MARTIN L KING

on or about: 09/17/1995 11:25 PM

A copy of the foregoing has been mailed/handed to:

Hagemeister 40365

Assistant Circuit Attorney
1320 Market St., Room 330
St. Louis, MO 63103
(314) 622-4941

FILED
0 1996
CLERK CIRCUIT COURT
BY DEPUTY

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A-74

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MISSOURI CIRCUIT COURT
TWENTY-SECOND JUDICIAL CIRCUIT
(St. Louis City)

STATE OF MISSOURI
VS.
Tyrone Morant

CASE NO. 951-4326B DIVISION 25 1-8 1996

COURT ORDER

Affidavit of Indigent filed. Finding made.
Public Defender appointed by Court.
Attorney for defendant R. Teer 35238
(Bar #)

State appears by: A. Sigurstrom

Defendant in person by Attorney G Battile

Waives reading of Indictment received copy by counsel;

Pleads not guilty. Defendant arraigned according to Supreme Court Rule 24.01.

Trial set for 2-5-96 in Division 16

REQUEST FOR DISCOVERY FILED.
REQUEST FOR DISCLOSURE FILED.

Circuit Attorney assigned: M. Hagemeister 40365
(Bar #)

FILED
JAN 8 1996
CIRCUIT COURT
BY THOMPSON DEPUTY

SO ORDERED:

Arthur Mioreli
Circuit Judge-Division 25

13

A-75

FORM 14-8 (MI90-REV)

Electronically Filed - Supreme Court - March 22, 2013 - 05:48 PM CDT

IN THE CIRCUIT COURT IN AND FOR THE CITY OF ST. LOUIS
STATE OF MISSOURI

STATE OF MISSOURI,
Plaintiff

v.

Tyrone Morant Defendant

FILED
)
)
)
MAR 3 1996
MAVIS THOMPSON
CLERK, CIRCUIT COURT
BY DEPUTY

Cause No. 951-432613
Division No. 16

6
3/25

REQUEST FOR DISCOVERY

The Defendant requests the following within ten days and/or throughout the duration of this cause, all as provided by Rule 25.03:

1. The names and last known addresses of persons whom the State intends to call as witnesses at any hearing or at trial, together with their written or recorded statements, and existing memoranda reporting or summarizing part or all of their oral statements;

2. Any written or recorded statements and the substance of any oral statements made by the defendant or by a co-defendant, a list of all witnesses to the making, and a list of all witnesses to the acknowledgement of such statements, and the last known addresses of such witnesses;

3. Those portions of any existing transcript of grand jury proceedings which relate to the offense with which defendant is charged, containing testimony of the defendant and testimony of persons whom the State intends to call as witnesses at a hearing or trial;

4. Any existing transcript of the preliminary hearing and of any prior trial held in the defendant's case if the State has such in its possession or if such is available to the State;

5. Any reports or statements of experts, made in connection with the particular case, including results of physical or mental wxaminations an of scientific tests, experiments or comparisons;

6. Any books, papers, documemts, photographs or objects which the State intends to introduce into evidence at the hearing or trial or which were obtained from or belong to the defendant;

7. Any record of prior ciminal convictions of persons the State intends to call as witnesses at a hearing or the trial;

8. A written statement by counsel for the State setting forth the facts pertaining to the time, place, and persons making any photographic or electronic surveillance relating to the offense with which this defendant is charged.

9. Any material or information, within the possession or control of the State, which tends to negate the guilt of the defendant as to the offense charged, mitigate the degree of the offense charged or reduct the punishment;

10. A written statement, within a reasonable time, listing all aggravating circumstances as provided for in section 565,032 RSMo under the Fifth, Sixth, Eighth and Fourteenth Amendments of the U.S. Constitution, Article I Sections (10), (18)a and (21) of the Missouri Constitution and sections 565.004 and 565.005 RSMo.

Katrina A. Jones
Assistant Public Defender
Attorney for Defendant

I hereby certify that I served a copy of the foregoing Request for Discovery on the Circuit Attorney, City of St. Louis, by delivering a copy to his office the 7th day of February, 1996.

Katrina A. Jones
Assistant Public Defender

A-76

(14)

Electronically Filed - Supreme Court - March 22, 2013 - 05:48 PM CDT

FILED
1996
MAVIS T. THOMPSON
CLERK, CIRCUIT COURT
BY

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS

STATE OF MISSOURI

STATE OF MISSOURI,)
Plaintiff,)
v.) Cause No. 951-4326
TYRONE MORANT,) Division No. 16
Defendant)

MOTION TO SUPPRESS EVIDENCE

Comes now defendant, by and through his attorney, Katrina A. Jones, aggrieved by an unlawful search and seizure made by members of St. Louis Police Department and moves the court to suppress as evidence any and all articles seized and intended to be used against the defendant in this cause and now being held by either the Police Department or the Circuit Attorney's Office, and any and all testimony regarding any observations made of defendant's person while he was under arrest.

The grounds for defendant's motion are as follows:

1. Said article(s) which the State intends to use against defendant was obtained pursuant to an unlawful search and seizure by members of the St. Louis Police Department.

2. Defendant did not consent to the search and seizure complained of herein.

3. The search herein was unlawful in that it was conducted without a warrant, without probable cause, and was not within the scope of any exception to the warrant requirement.

4. The search complained of herein is unlawful because it exceeded the scope of the search authorized by the warrant issued herein.

A-77 (15)

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5. There is no evidence that the seized article(s) had been used or was about to be used in any way upon which this criminal charge could arise.

6. The defendant did not violate any law, either misdemeanor or felony, in the presence of the officers which would warrant the arrest.

7. Said search and seizure thus violated defendant's rights under Article I, Sections 10, 15, and 18(a) of the Missouri Constitution, the Fourth, Fifth, Sixth and Fourteenth Amendments to the United States Constitution, and Section 542.261 et.seq. RSMo.

WHEREFORE, defendant respectfully moves the Court to suppress any evidence concerning items allegedly seized as a result of the search complained of herein.

Respectfully submitted,

Katrina A. Jones

Katrina A. Jones
Attorney-at-Law
Missouri Bar No. 36337
1320 Market Street-RM 62
St. Louis, Mo 63103
(314) 340-7625
Attorney for Defendant

A copy of the above motion served on the Circuit Attorney this 15th day of February, 1996.

Katrina A. Jones
Attorney for Defendant

16

A-78

Electronically Filed - Supreme Court - March 22, 2013 - 05:48 PM CDT

Electronically Filed - Supreme Court - March 22, 2013 - 05:48 PM CDT

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS

STATE OF MISSOURI

STATE OF MISSOURI,	)	
	)	
Plaintiff,	)	Cause No. 951-4326B
	)	
v.	)	Division No. 16
	)	
TYRONE MORANT,	)	
	)	
Defendant	)	

MOTION TO SUPPRESS IDENTIFICATION

Comes now defendant, by and through his attorney, and moves this Honorable Court to suppress any and all testimony by all witnesses in this case with regard to the out-of-court identification of the defendant, and to suppress all testimony by said witnesses at the trial of this cause regarding in-court identification of the defendant on the grounds that:

1. Defendant was arrested without warrant or probable cause to believe that she had committed a crime, and said out-of-court identification was the product, result, and poisonous fruit of said unlawful arrest.

2. The circumstances surrounding the said out-of-court identification were so inherently suggestive and conducive to mistaken identification as to violate due process under the Fourth, Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, and Article I, Sections 10, 15, and 18(a) of the Missouri Constitution.

Overruled (17)

11/13/96

Judge

A-79

3. Any in-court identification of defendant would be tainted by those impermissibly suggestive identification procedures, and would give rise to a substantial likelihood of irreparable misidentification.

4. There is no adequate independent basis for any in-court identification of defendant.

5. Said confrontation constituted a violation of defendant's rights under the U.S. Constitution, Amendments IV, V, VI, and XIV, and Missouri Constitution, Article I, Sections 10, 15, and 18(a).

WHEREFORE, defendant prays the court for an order suppressing all testimony concerning any out-of-court confrontation-identification by any eyewitnesses to the charge now pending as well as any in-court identification of the defendant.

Respectfully submitted,

Katrina A. Jones

Katrina A. Jones
Attorney-at-Law
Missouri Bar No. 36337
1320 Market Street-Rm 62
St. Louis, MO 63103
(314) 340-7625
Attorney for Defendant

A copy of the foregoing has been delivered to the Office of the Prosecuting Attorney this 15th day of February, 1996.

Katrina A. Jones
Attorney for Defendant

A-80

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Electronically Filed - Supreme Court - March 22, 2013 - 05:48 PM CDT

FILED
JUN 6 1995
MARIE T. THOMPSON
CLERK, CIRCUIT COURT
BY DEPUTY

IN THE CIRCUIT COURT IN AND FOR THE CITY OF ST. LOUIS

STATE OF MISSOURI

STATE OF MISSOURI, Plaintiff,	)	
v.	)	Cause No. 951-4326B
TYRONE MORANT, Defendant	)	Division No. 16

MOTION TO SUPPRESS STATEMENTS

Comes now defendant, Tyrone Morant, by counsel, Katrina A. Jones, Assistant Public Defender, and respectfully moves the Court to suppress any evidence concerning any oral or written statements allegedly made by Defendant to any officers of the St. Louis Police Department or witnesses in this case, on the grounds that any such statements were obtained in violation of the rights of Defendant secured by the Fifth and Fourteenth Amendments to the United States Constitution and by Article I, Sections 10, 15, 18(a) and 19 of the Constitution of Missouri. In support thereof, Defendant states:

1. Defendant is charged with Murder, 1st Degree, 3 Counts of Armed Criminal Action, 2 Counts of Assault, 1st Degree;

2. Subsequent to Defendant's arrest in connection with this offense, he was interrogated by members of the St. Louis Police Department. In the course of that interrogation, defendant allegedly made the statements complained of herein;

3. Any statements of the Defendant were illegally obtained for the following reasons:

A. Said statement was not voluntary in that:

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1. Defendant was not presented before a magistrate "as soon as practicable", said statement was obtained prior to presentation before a magistrate, and a lawyer was not afforded him prior to or during said interrogation;

2. The length and nature of Defendant's custody, and the duration and nature of Defendant's interrogation and the conditions under which it was conducted, were inherently coercive as applied to a person of Defendant's education, background, and physical and mental condition at the time such interrogation occurred;

3. Defendant was subjected to mental, physical, and psychological duress during said interrogation;

4. Defendant, a person of limited education, was induced to make alleged statements by averments and promises of the arresting officers, either explicit or implied, and said promises were ones of leniency and of a desire to help the Defendant.

B. Said statement was made without the Defendant first being advised of his constitutional rights, to wit:

1. Defendant was not advised in clear and unequivocal terms of his right to remain silent prior to his interrogation; and further that should he agree to answer questions, she could, nonetheless, choose to stop the questioning at any time;

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2. The Defendant was not advised that anything that he said could and would be used against him in a court of law;

3. The Defendant was not advised of his right to consult with a lawyer and to have a lawyer present with him during the interrogation;

4. The Defendant was not advised that a lawyer would be appointed for him if he was indigent;

5. Defendant did not waive his right to remain silent or his right to counsel, or his right to have counsel appointed for him;

6. The interrogation by said police officers did not cease when Defendant indicated that he wished to remain silent, and that he desired to have appointed counsel present on his behalf at said interrogation.

All of the matters herein mentioned in 3A and 3B, supra, were in violation of the constitutional rights of the Defendant under the Fifth Amendment and Due Process Clause of the Fourteenth Amendment of the United States Constitution, and under Article I, Sections 10 and 19 of the Missouri Constitution.

C. Said statement was the direct result of an unlawful arrest in that:

1. The arrest was made without warrant and without authority;

2. The Defendant did not violate any law, either misdemeanor or felony, in the presence of the officers which would warrant the arrest;

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3. The arresting officer had no probable cause or reasonable grounds to believe that the Defendant had committed a felony;

4. Said statements were thereby obtained in violation of Article I, Section 15 of the Missouri Constitution, and of the Fourth, Fifth, and Fourteenth Amendments of the United States Constitution.

WHEREFORE, Defendant respectfully moves the Court to suppress any evidence concerning any oral or written statements alleged to have been made by Defendant to officers of the St. Louis Police Department or other witnesses in connection with this case.

Respectfully submitted,

Katrina A. Jones

Katrina A. Jones
Attorney-at-Law
Missouri Bar No. 36337
Attorney for Defendant
1320 Market Street, Rm 62
St. Louis, Missouri 63103
(314)340-7625

A copy of the foregoing was delivered to the Circuit Attorney on this 15th day of February, 1996.

Katrina A. Jones
Attorney for Defendant

22

A-84

Electronically Filed - Supreme Court - March 22, 2013 - 05:48 PM CDT

3/25

FILED

FEB 16 1996

MAVIS T. THOMAS
CLERK, CIRCUIT
BY

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS

STATE OF MISSOURI

STATE OF MISSOURI,	)	
	)	
Plaintiff,	)	Cause No. 951-4326B -6
	)	
v.	)	Division No. 16
	)	
TYRONE MORANT,	)	
	)	
Defendant	)	

1801
8010
8007
8006

MOTION TO SEVER DEFENDANTS

Comes now the Defendant by and through his attorney, Katrina Jones, and moves this Honorable Court to enter its order severing co-defendant Carlos Wade, a separate trial. In support thereof Defendant states as follows:

1. Defendant is charged with Murder, 1st Degree, 3 Counts of Armed Criminal Action and 2 Counts of Assault, 1st Degree;

2. The case is presently set March 25, 1996 in Division 16.

3. Missouri Supreme Court Rule 24.07 allows for severance of Defendant's when one Defendant is entitled to jury sentencing and the co-defendant is not so entitled.

4. Since Defendant is entitled to jury sentencing, to deny him that right would be prejudicial and unconstitutional.

WHEREFORE, for all of the above-mentioned reasons, Defendant respectfully requests this court to enter its order granting a severance of Defendants.

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Respectfully submitted,

Katrina A. Jones

Katrina Jones
Attorney at Law
Missouri Bar No. 36337
1320 Market Street, Rm 62
St. Louis, Mo 63103
(314) 340-7625
Attorney for Defendant

A copy of the above motion was delivered to the Circuit Attorney this 15th day of February, 1996.

Katrina A. Jones

Attorney for Defendant

24

A-86

Electronically Filed - Supreme Court - March 22, 2013 - 05:48 PM CDT

STATE OF MISSOURI)
) SS
CITY OF ST. LOUIS)

AUG 09 1996
MAVIS T. THOMPSON
CLERK, CIRCUIT COURT
ST. LOUIS DEPUTY

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
STATE OF MISSOURI

STATE OF MISSOURI,
Plaintiff,

vs.
Carlos Wade & Tyrone Morant,
Defendant.

Cause No. 951-4326A & B
Division No.

ENDORSEMENTS of witnesses for state's case in chief and as rebuttal to alibi witne

Comes now Mark Hagemeister, Assistant Circuit Attorney, and hereby endorses/deletes the following named person(s) in the above entitled cause as witnesses for state's case & rebuttal to a

Antonio Hickman 3132 Fair — Tenetra Crawford — Marlin Mitche
Annie Hickman " " — Det Michael Strong 3306
Betty Hickman — Det Donnell Tanksley 4179
Eina Dancy — Det Stephen Clemons 3265
Bonita Hickman — Det Samuel Jefferson 3886
Dr. Graham, Michael — Det Timothy Kaelin 8545
Bill George, Firearms Expert — Custodian of Records - Dept of Revenue
P.O. George Weindel 8576 — P.O. David Ellison DSN 3683
P.O. George Taylor 0945 — P.O. Jeffrey Fuesting DSN 4351

Respectfully submitted,

Assistant Circuit Attorney

A copy of the foregoing has been delivered to _____, Attorney for Defendant, this ___ day of _____, _____.

25

A-87

Electronically Filed - Supreme Court - March 22, 2013 - 05:48 PM CDT

IN THE CIRCUIT COURT OF ST. LOUIS CITY
TWENTY-SECOND JUDICIAL CIRCUIT
STATE OF MISSOURI

STATE OF MISSOURI,

Plaintiff,

v.

TYRONE MORANT,

Defendant.

Case No.: 951-4326B

Division 11

FILED

OCT 18 1996

MAVIS T. THOMPSON
CLERK, CIRCUIT COURT
BY DEPUTY

MOTION TO SEVER TRIAL

Comes now defendant, by and through counsel pursuant to Missouri State Court Rule 24.06, and respectfully requests this memorable court sever the trial of joint defendants Tyrone Morant and Carlos Wade and Defendant Tyrone Morant states the following in support:

1. That the trial of Defendants Tyrone Morant and Carlos Wade is scheduled for November 12, 1996.

2. That trying defendants together will substantially prejudice Defendant Morant since material and substantial evidence and out of court statements are expected to be presented against Defendant Wade that is not admissible against Defendant Morant.

3. That Defendant Wade has been accused of similar crimes to the one presently charged.

WHEREFORE, Defendant Morant requests this court sever trial of Defendant Tyrone Morant and Defendant Carlos Wade and allow each Defendant to be tried seperately.

Respectfully submitted,

Sandra Moore-Dyson, #31709
Attorney for Defendant
509 Olive St., Suite 805
St. Louis, MO 63101
(314) 421-5001

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Electronically Filed - Supreme Court - March 22, 2013 - 05:48 PM CDT

CERTIFICATE OF SERVICE

This certifies that a copy of the foregoing was mailed via U. S. Postal Service this 1 day of October, 1996 to:

Office of the Circuit Attorney
Attn: Mark Hagemeister, ACA
1320 Market Street, Room 130
St. Louis, Missouri 63103

Beverly Beimdiek
Public Defender's Office
Municipal Courts Building
1320 Market St., Room 235
St. Louis, MO 63103

Sandra Moore-Dyson

FILED
OCT 2 1996
MAVIS T. THOMPSON
CLERK, CIRCUIT COURT

STATE OF MISSOURI)
) SS
CITY OF ST. LOUIS)

IN THE CIRCUIT COURT OF ~~THE CITY OF ST. LOUIS~~
STATE OF MISSOURI

STATE OF MISSOURI,)
Plaintiff,)
)
vs.)
)
CARLOS WADE,)
&)
TYRONE MORANT,)
Defendant.)

Cause No. 951-4326 A&B
Division No. 11
Honorable Floyd McBride

ME MO 16

MEMORANDUM OF LAW

The defendant Carlos Wade through his attorney Beverly Beimdiek has filed a motion in limine requesting this Court to exclude evidence of uncharged crimes committed by the defendant against the victims in this case.

Courts agree that evidence of commission by defendant of crimes separate and distinct from crime charged is generally inadmissible except to prove crime charged when it tends to establish motive, intent, absence of mistake or accident, common scheme or plan embracing commission of two or more crimes so related that proof of one tends to establish the other, or identity of person (or persons) charged with crime on trial. State v. Mallett, 732 S.W.2d 527 (Mo.banc 1987). The trial Court has discretion to balance the probative value and prejudicial effect. Id at 534. However wide latitude is generally allowed in the development of evidence of motive. Id at 535. In the present case the ongoing conduct of the defendants and their repeated attempts to injure or kill the victims has great probative value as evidence of motive and intent to kill.

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Naturally, where evidence of other crimes is logically relevant to crime on trial the Court must consider degree to which such evidence may prejudice the jury against the defendant, but in exercising such discretion the Court may also consider the heavy burden of proof placed upon the State in the presentation of evidence. State v. Cheesebrew, 575 S.W.2d 218,219. Evidence of prior shootings and assaults are admissible in murder prosecutions to show the defendant's culpable mental state, State v. Smith, 791 S.W.2d 744,746 (Mo.App. 1990).

The prior shootings and assaults by the defendants were not isolated events or remote in time but continued repeatedly in the same fashion: guerilla attacks and retreats on foot and drivebys as in the present case. "Sensibly considered, a great deal of time is necessary to wash the causes of a prior shooting from the mind of the perpetrator". Id. The Court of Appeals acknowledges that a trial Court is well within its discretion in permitting the admission into evidence of a prior shooting to show a defendant's culpable mental state. Id. at 747 citing State v. Johnson, 349 Mo. 910, 163 S.W.2d 780,783 (1942).

The defendant Tyrone Morant through his attorney Sandra Moore-Dyson seeks a severance and separate trials for each defendant and she states "material and substantial evidence and out of Court statements are expected to be presented against Defendant Wade that is not admissible against Defendant Morant". Determination of motion for severance is left to the sound discretion of trial Court and will not be reversed absent showing

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of abuse of discretion resulting in clear prejudice. U.S. v. Mason, 982 F.2d 325 (1993), (note the Missouri rule for severance tracks the Federal rule.) It is well established that "the fact that evidence may be admissible as to one defendant but not as to another does not alone require that the defendants be given separate trials". U.S. v. Knife, 592 S.W.2d 472,480 (8th Cir. 1979). The Federal Court cases show that when similar bad act evidence is admitted against a codefendant, even though similar bad act evidence was not admissible against the defendant, this evidence is sufficiently distinct that a jury, aided by Court's instruction to consider it against the codefendant only, could compartmentalize such evidence against the codefendant only. Id. at 325. In the present case the State will seek to introduce evidence of prior uncharged crimes committed by both defendants acting together against these same victims, and prior uncharged crimes committed by defendant Carlos Wade acting alone. (see attachment A). With regard to the latter, such evidence shall be accompanied by a Court's instruction to the jury that it is to be considered against Wade only and not to be applied in any way to Movant. This does not require severance of the trial. Id. at 327.

There is a preference for joint trials of defendants who are indicted together. They "play a vital role in the criminal justice system". Richardson v. Marsh, 481 U.S. 200, 209 (1987). They promote efficiency and "serve the interests of justice by avoiding the scandal and inequity of inconsistent verdicts." Id. at 210.

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Preference for joint trials of defendants jointly indicted is not limited by any requirement that the quantum of evidence of each defendant's culpability be equal, a defendant is not entitled to severance merely because the evidence against the codefendant is more damaging than the evidence against him. The issue hinges on the jury's ability to compartmentalize the evidence. U.S. v. Jackson 549 F.2d 517 (1977). The evidence in the present case is not complex or too complicated to compartmentalize. At times one or the other defendant acted alone or with nondefendants against the victims, at times the two defendants acted together against the victims, as in the present case. The jury can keep this separate especially when it is presented in an orderly manner. The Court will instruct the jury that it must "give separate consideration to each individual defendant and to each separate charge against him. Each defendant is entitled to have his or her case determined from his or her own conduct and from the evidence (that) may be applicable". Zofiro, Garcia and Soto v. U.S. Opinion No. 91-6824 (1993).

Any claims that defendants might suffer prejudice because certain statements made by one or more of them might be used in evidence against all of them does not warrant severance, where defendants do not state nature of statements nor do they show that the statements constituted confessions or inculpatory statements. U.S. v. Rizzo, 487 F.Supp. 323 (1980). The Court has not been informed, even generally, of the statements to which the defendant refers.

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The defense attorneys do not allege antagonistic defenses or that a codefendant would testify of a defendant's behalf in a separate trial so as to exculpate the defendant. The reasons advanced by the defendants as supporting their claim of actual prejudice consist of nothing more than conclusory assertions.

Respectfully submitted,

MARK HAGEMEISTER
Assistant Circuit Attorney

CERTIFICATE OF SERVICE

I, Mark Hagemeister, hereby certify that I have postage pre-paid mailed/delivered to defense counsel _____, a copy of the foregoing on this ____ day of October, 1996.

_____

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Electronically Filed - Supreme Court - March 22, 2013 - 05:48 PM CDT

IN THE CIRCUIT COURT OF ST. LOUIS CITY
TWENTY-SECOND JUDICIAL CIRCUIT
STATE OF MISSOURI

STATE OF MISSOURI,	)	
	)	Case No.: 951-4326B
Plaintiff,	)	
	)	Division 11
v.	)	
	)	
TYRONE MORANT,	)	
	)	
Defendant.	)	

11/12

Received
12/9/96

FILED
CIRCUIT CLERK'S OFFICE
HARVIS T. THOMPSON
Oct 9 10 59 AM '96

MOTION TO SEVER TRIAL

Comes now defendant, by and through counsel pursuant to Missouri State Court Rule 24.06, and respectfully requests this memorable court sever the trial of joint defendants Tyrone Morant and Carlos Wade and Defendant Tyrone Morant states the following in support:

1. That the trial of Defendants Tyrone Morant and Carlos Wade is scheduled for November 12, 1996.

2. That trying defendants together will substantially prejudice Defendant Morant since material and substantial evidence and out of court statements are expected to be presented against Defendant Wade that is not admissible against Defendant Morant.

3. That Defendant Wade has been accused of similar crimes to the one presently charged.

WHEREFORE, Defendant Morant requests this court sever trial of Defendant Tyrone Morant and Defendant Carlos Wade and allow each Defendant to be tried seperately.

Respectfully submitted,

Sandra Moore-Dyson, #31709
Attorney for Defendant
509 Olive St., Suite 805
St. Louis, MO 63101
(314) 421-5001

33

A-95

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CERTIFICATE OF SERVICE

This certifies that a copy of the foregoing was mailed via U. S. Postal Service this 7 day of October, 1996 to:

Office of the Circuit Attorney
Attn: Mark Hagemeister, ACA
1320 Market Street, Room 130
St. Louis, Missouri 63103

Beverly Beimdiek
Public Defender's Office
Municipal Courts Building
1320 Market St., Room 235
St. Louis, MO 63103

Sandra Moore-Dyson

951-4326B Ref Tyrone Forman

ATTACHMENT A

Times are Approximate -	Prior uncharged crimes by defendants and defendant's associates against victims.
December 10, 1993 -	Demetrius, Otis & Dwight shoot brother of victim, Antonio Hickman. Carlos is with the shooters. (brother is paralyzed).
Early to Mid 1994 -	Carlos, Dwight & Tony shoot out of a car at Allen & Bell on a porch (Allen's) on Fair.
	Carlos & Demetrius park car and come thru gangway and shoot at Allen & Bell on Betty Hickman's porch on Aldine.
Mid '95 -	Demetrius flourishes John Allen at 4213 E. Aldine but neighbor came out and Angela Hickman steps between them.
	Carlos, Tyrone & Demetrius fight and argue with Allen & Bell at Bill's Auto Shop at Martin Luther King and Annie Malone.
	Carlos, Tyrone & Demetrius pull up in black vehicle (Truck/Cherokee) and shoot at Bell & Allen on Sarah.
	Carlos and another (appears to be Demetrius) came thru gangway and shoot across the street at Bell & Allen at Sarah & Martin Luther King.
September -	Carlos & Demetrius kill Steve AKA 4-6 a friend of Allen & Bell.
September 17, 1995 -	Demetrius is shot same night prior to present case.
September 17, 1995 -	Carlos & Tyrone shoot from car and kill John Allen & miss Bell & Hickman.

FILED
OCT 13 1998
MAVIS T. THOMPSON
CLERK, CIRCUIT COURT
BY _____ DEPUTY

More accurate estimates are available on some events but police reports weren't made. These are only some examples involving the major players in this case. There are several actions between other members of these two groups.

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A-97

Electronically Filed - Supreme Court - March 22, 2013 - 05:48 PM CDT

IN CIRCUIT COURT OF ST. LOUIS CITY
TWENTY-SECOND JUDICIAL CIRCUIT
STATE OF MISSOURI

FILED

OCT 29 1996

MAVIS T. THOMPSON
CLERK, CIRCUIT COURT
BY _____ DEPUTY

STATE OF MISSOURI,	)	
	)	Case No. 951-4326[illegible]
Plaintiff,	)	Case No. 951-4326[illegible]
	)	
v.	)	
	)	
CARLOS WADE and TYRONE MORANT,	)	
	)	
Defendants.	)	

MOTION TO SEVER TRIAL AND SUGGESTIONS IN SUPPORT THEREOF

COMES NOW defendant Morant, by and through counsel pursuant to Missouri State Court Rule 24.06, respectfully requests this Honorable court sever the trial of joint defendants Tyrone Morant and Carlos Wade and Defendant Morant states the following in support:

FACTS

The prosecutor plans to introduce prior shootings between Defendant Carlos Wade and John Allen and Johnnie Bell. Johnnie Bell stated that on four different occasions, on Fair, Aldine, Sarah and Sarah and Martin Luther King, Defendant Carlos Wade and his associates, Antonio Frost, Demetrius Adams, Otis and DeWitt shot at John Allen and Johnnie Bell. (Tr. 24, L 1-25, 26 L. 1-25, 29 L. 1-25 and 34 L. 1-25) Johnnie Bell did not implicate

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A-98

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Tyrone Morant in any of these shootings. (Tr. 84, L. 21-24)

The prosecutor also plans to introduce evidence from Johnnie Bell that Carlos Wade had threatened to kill John Allen and Johnnie Bell. (Tr. 74, L-8-24) Johnnie Bell did not implicate Tyrone Morant in any of these threats. In addition, Johnnie Bell stated that John Allen uttered the words "Carlos", after he had been shot. (Tr. 59, L 20-29). John Allen did not implicate Tyrone after he had been shot.

LEGAL ANALYSIS

DEFENDANT TYRONE MORANT AND DEFENDANT CARLOS WADE'S TRIAL SHOULD BE SEVERED SINCE THE PROBABILITY OF PREJUDICE EXISTS, MATERIAL AND SUBSTANTIAL EVIDENCE NOT ADMISSIBLE AGAINST DEFENDANT MORANT WOULD BE ADMISSIBLE AGAINST DEFENDANT WADE AND INCRIMINATING OUT OF COURT STATEMENTS EXIST AGAINST DEFENDANT WADE AND NOT DEFENDANT MORANT.

Rule 24.06 requires that defendants be tried separately only if a defendant files a written motion for severance and the court finds the probability of prejudice exists; or:

(1) The defendant is subject to assessment of punishment by the jury and the defendant shows a probability of prejudice would result from this fact if he is not tried separately; or

(2) There is, or may reasonably be expected to be material and substantial evidence not admissible against the defendant that would be admissible against other defendants if a separate trial is not ordered; or

(3) There is an out of court statement that is not admissible against the defendant that would be admissible against

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other defendants if a separate trial is not ordered unless the court finds the out of court statement can be limited by eliminating any reference to the defendant or

(4) A separate trial is necessary to a fair determination of whether the defendant is guilty.

The motion to sever a joint trial lies within the sound discretion of the trial court. State v. Mahurin, 799 S.W.2d 840, 843 (Mo. banc. 1990) Section 545.880.2, RSMo 1986 requires the trial court to consider the probability for prejudice to defendant in a joint trial. Section 545.880.2 provides that the trial court shall find that the probability for prejudice exists if severance of the joint defendants is necessary to achieve a fair determination of guilt or innocence of any defendant.

Section 545.880.2 also states that there exists an out of court statement of a codefendant which makes reference to another of the joint defendants, but is not admissible against that defendant, and if the statement cannot be properly limited so as to eliminate reference to the complaining defendant.

A motion to sever is appropriate only where there exists a serious risk of compromise of the defendant's rights or the jury's ability to make reliable judgement about guilt or innocence or jury is unable to compartmentalize the evidence. Section 545.880.2 (4) and State v. Isa, 850 S.W.2d 876 (Mo. banc. 1993)

The purpose of the statute is to protect defendants in joint

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trials from being convicted on evidence that would be inadmissible against them in a separate trial. State v. Ward, 782 S.W.2d 725, 728. The evidence which poses the greatest danger in this regard is evidence that is material to the moving defendant.

A. THERE IS OUT OF COURT STATEMENTS THAT IS NOT ADMISSIBLE AGAINST DEFENDANT MORANT BUT WOULD BE ADMISSIBLE AGAINST DEFENDANT WADE IF A SEPARATE TRIAL IS NOT ORDERED.

In the leading case involving a motion to sever due to out of court statements, the United States court held that a substantial risk that the jury, despite instructions to the contrary, looked to the incriminating extrajudicial statements in determining a defendant's guilt. Bruton v. United States of America, 391 U.S. 123 (1968).

In the State of Missouri v. Ward, the court held that there was no Bruton problem. The court held that the state's intent to use coconspirator's confession did not require severance, inasmuch a confession did not make reference to defendant and, although statements became material and substantial against defendant when linked with evidence showing defendant was present at time of crime, confession was not material and substantial against defendant on face.

Contrary to Ward and in accordance to Bruton, this case involves incriminating extrajudicial statements that would be detrimental to Defendant Morant's case. Johnnie Bell accused Defendant Wade of threatening to kill both Mr. Bell and John

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Allen. Mr. Bell also stated that Mr. Allen uttered the words "Carlos" after he had been shot. No incriminating out of court statements were made against Mr. Morant, as such, these statements would not be admissible at his separate trial. However, if a joint trial does occur, Mr. Bell's statements of prior threats and Mr. Allen's alleged declaration would be admissible and therefore would compromise Mr. Morant's defense. A jury, under these circumstances would not be able to compartmentalize the out of the court statements against Defendant Wade and understand that these statements should not be used against Defendant Morant.

B. THERE IS MATERIAL AND SUBSTANTIAL EVIDENCE NOT ADMISSIBLE AGAINST DEFENDANT MORANT THAT WOULD BE ADMISSIBLE AGAINST DEFENDANT WADE IF A SEPARATE TRIAL IS NOT ORDERED.

Defendant Wade has been accused of several prior bad acts or shootings on John Allen and Johnnie Bell. Clearly, these prior bad acts would have a material and substantial prejudice against Defendant Morant's defense. A jury would again have difficulty compartmentalizing the evidence in that the evidence primarily admissible against Defendant Wade is not admissible against Defendant Morant. Mr. Bell made no accusations against Defendant Morant, but the introduction of these accusations of prior bad acts similar to the shooting death of Mr. Allen would have a detrimental and prejudicial effect on Mr. Morant's defense.

More specifically, a fair determination of Mr. Morant's innocence or guilt would not be achieved with the introduction of this evidence. Evidence exist that Defendant Wade is a part of

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a crew or posse. The prosecutor plans to introduce evidence that his crew on previous occasions shot at John Allen and Johnnie Bell. A jury would reasonably and easily believe that Mr. Morant was a part of Mr. Wade's "crew" or association and; as such, Mr. Morant would be determined to be involved with the alleged prior shootings of John Allen and Johnnie Bell.

In addition, the jury would be accessing Defendant Morant's guilt and sentence, as such, any inference of guilt due to a suspected association with the alleged prior bad acts would unfairly jeopardize Defendant Morant's defense.

If there is a separate trial, these prior bad acts would not be introduced into evidence in Mr. Morant's case and a jury could fairly access Mr. Morant's guilt or innocence.

WHEREFORE, Defendant Morant requests this court sever the trial of Defendant Tyrone Morant and Defendant Carlos Wade and allow each defendant to be tried separately; in the alternative a motion in limine pertaining to the above mentioned prior bad acts and out of court statements; or instruction limiting alleged prior bad acts and out of court statements to Defendant Wade.

Respectfully submitted,

Sandra Moore-Dyson #3892
509 Olive St., Suite 805
St. Louis, MO 63101
(314) 421-5001

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent U.S. mail, postage pre-paid, this 29 day of October, 1996 to.

Office of the Circuit Court
Attn: Mark Hagemeister, ACA
1320 Market St., Room 130

Beverly Beimdiek
Public Defender's Office
Municipal Courts Building
1320 Market St., Room 235
St. Louis, MO 63103

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MISSOURI CIRCUIT COURT
TWENTY-SECOND JUDICIAL CIRCUIT
(St. Louis City)

STATE OF MISSOURI,	)	
	)	
Plaintiff,	)	
	)	Cause No. 951-4326B
vs.	)	
	)	Division No. 11
TYRONE DESANTE MORANT,	)	
	)	
	)	
Defendant.	)	

ORDER

Defendant Morant's motion to sever trial, heretofore heard and submitted is hereby OVERRULED.

SO ORDERED:

Judge

Dated: November 12, 1996

cc: Attorneys of record.

FILED

NOV 12 1996

MAVIS T. THOMPSON
CLERK, CIRCUIT COURT
BY _____ DEPUTY

43

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MISSOURI CIRCUIT COURT
TWENTY-SECOND JUDICIAL CIRCUIT
(St. Louis City)

State of Missouri

VS.

Tyrone Desant Morant

CASE NO. 951-04326(6) DIVISION 11 11-18 1996

COURT ORDER

Jury trial resumed

State by Asst. Circ. Attorney Mark W. Hagemeister #4036.

Deft in person and by Atty Sandra Mobre Dyson, #30588

Testimony of State's witnesses continues and concludes.

State rests.

At the close of the State's case, defendant oral motion for Judgment of Acquittal. Heard and Overruled.

Testimony of defendant's witnesses begun, not concluded.

Cause laid over until tomorrow November 19, 1996 at 9:30 a.m.

So Ordered

Judge

#17636

FILED

NOV 18 1996

MAVIS T. THOMPSON
CLERK, CIRCUIT COURT
BY ____ DEPUTY

NANCY Kutta.
C.R. C0063

44

102-305 (Rev 1-90)

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THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
TWENTY-SECOND JUDICIAL DIVISION
STATE OF MISSOURI

STATE OF MISSOURI, Plaintiff, v. TYRONE MORANT, Defendant.	Cause No. 951-4326B Division No. 11

DEFENDANT'S MOTION FOR JUDGMENT OF ACQUITTAL AT THE CLOSE OF ALL THE EVIDENCE

Comes now the Defendant, Tyrone Morant, at the close of all the evidence and moves the court to enter a judgment of acquittal for the reason that the evidence is insufficient to sustain a conviction of the offenses charged in the indictment.

Respectfully submitted,

Sandra Moore Dyson 31709
509 Olive Street, Suite 805
St. Louis, MO 63101
314-421-5001

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was hand delivered to the Assistant Circuit Attorney, 1320 Market Street, St. Louis, MO 63103, this _____ day of November, 1996.

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Overruled.

A-107

#19636 Judge

MISSOURI CIRCUIT COURT
TWENTY-SECOND JUDICIAL CIRCUIT
(St. Louis City)

State of Missouri

VS.

Dyonne Desante Morant

CASE NO. 951-04326 B DIVISION 11 11-19 19 96

COURT ORDER

Jury trial resumed.

State by Asst. Circ. Attorney Mark A. Hagemeister, #40365

Deft. In person and by Atty. Sandra Moore Dyson, #30585

Testimony of defendant Wade continued and concluded.

Defendant Wade rests.

Testimony of Defendant Morant's witnesses heard and concluded.

Defendant Morant rests.

State's rebuttal testimony heard. State rests. Defendants Wade and Morant rests.

Cause laid over until tomorrow, November 20, 1996 at 10:30 a.m.

So Ordered

Judge
#17636

FILED

NOV 19 1996

MAVIS THOMPSON
CLERK, CIRCUIT COURT
BY _____ DEPUTY

NANCY KUTTA
CR#C0063

102-305 (Rev 1-90)

A-108

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MISSOURI CIRCUIT COURT
TWENTY-SECOND JUDICIAL CIRCUIT
(St. Louis City)

State of Missouri

VS.

Tyrone Desante Mowatt

CASE NO 951-04326B DIVISION 11 11-20 1996

(6) COURT ORDER

Jury Trial resumed

State by Asst Circ Attorney Mark W. Hagenseiter #40365

Deft. In person and by Atty. Sandra Moore Dyson #30584

Instructions read. Arguments made by Counsel for the State and the Defendant.

Sheriff sworn.

Jury retired to deliberate at 3:20 p.m.

Alternate juror discharged.

The jury will continue deliberations tomorrow, November 21, 1996 at 9:30 a.m.

So Ordered

#17636

FILED

NOV 20 1996

MAVIS T. THOMPSON
CLERK, CIRCUIT COURT
BY _____ DEPUTY

NANCY KUTTA
C.K. C0063

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102-305 (Rev 1-90)

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STATE OF MISSOURI,
VS.
TYRONE DESANTE MORANT

CAUSE # Y51-4326B
JUDGE MCBRIDE, Div #

1	CAMPBELL, SAMUEL E.	1323
2	TROTTER, JOYCE Y.	1128
3	DAVIS, ANNIE M.	752
4	JACKSON, ELMER	432
5	MCCULLEY, KAROL J.	775
6	ARENS, DANIEL J.	14
7	HOWARD, WILLIAM LEE	1219
8	DUFF, WARREN HOMER	1085
9	CARPER, SHELLAGH C.	407
10	TEMPLIN, VICTORIA G.	537
11	BURTON, HUBERT T.	1205
12	HOCK, MARILYN M.	1294
1st Alt.	PROTHERO, CONSTANCE P.	573
2nd Alt.	CUMMINGS, JANETTE	87

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FILED
NOV 22 1996
MAVIS ... CLERK, CIRCUIT COURT
BY ... DEPUTY

List of Jurors, selected and sworn to try the above entitled cause, as furnished by me this FOURTEENTH (14TH) day of NOVEMBER A.D. 1996

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66 Jurors called

JAMES W. MURPHY [illegible] Sheriff
August J. Buttrie #226

Deputy

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JURY PANEL LIST

Local Court Rule 52.2 Juror Anonymity

Unless otherwise ordered, no counsel or party may view a petit jury list except during voir dire, after the panel has been called into the courtroom. Counsel and the parties shall return their jury lists to the Clerk at the conclusion of voir dire.

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Personal	Family	Court Experience		
BRADFORD, SHIRLEY KING 134608 / 01132 Homemaker HW Education: 11 Age: 56 B/F	Married Heavy Equipment Operator JAMES RIVER Children < 25:	63113-0000	Police/court relation N Ever been on crm jury Y Witness in crm trial N Party to pending suit N Accident w/injury N Convict/misdemeanor (Y)	Crime victim Y Ever been on civ jury Y Witness in civ trial N Crm charges pending N Convicted felon N
WEST, DARREN L 058596 / 00205 Laid JEFFERSON PRINT Education: 12 Age: 37 B/M	Married Unemployed UNEMPLOYED Children < 25: 2	63115-0000	Police/court relation N Ever been on crm jury N Witness in crm trial N Party to pending suit N Accident w/injury N Convict/misdemeanor N	Crime victim N Ever been on civ jury N Witness in civ trial N Crm charges pending N Convicted felon N
OTTEN, CAROL ANN 099966 / 00952 Homemaker HOMEMAKER Education: 9 Age: 48 C/F	Married Unemployed DISABLED Children < 25: 2	63116-0000	Police/court relation N Ever been on crm jury N Witness in crm trial N Party to pending suit N Accident w/injury N Convict/misdemeanor N	Crime victim Y Ever been on civ jury N Witness in civ trial N Crm charges pending N Convicted felon N
LINDSAY, LESTER L 032716 / 01418 Guard ST L CITY Education: 12 Age: 49 C/M	Married Janitor SERVICE MASTER Children < 25:	63107-3644	Police/court relation N Ever been on crm jury N Witness in crm trial Y Party to pending suit N Accident w/injury N Convict/misdemeanor N	Crime victim Y Ever been on civ jury N Witness in civ trial N Crm charges pending N Convicted felon N
EIMLER, CAROL L 178566 / 00512 Homemaker HOUSEWIFE Education: 14 Age: 67 C/F	Widowed Children < 25:	63109-0000	Police/court relation N Ever been on crm jury Y Witness in crm trial N Party to pending suit N Accident w/injury N Convict/misdemeanor N	Crime victim N Ever been on civ jury Y Witness in civ trial N Crm charges pending N Convicted felon N
WARD, NATHANIEL 402421 / 00388 Education: 14 Age: 25 B/M	Single Children < 25: 3	63110-0000	Police/court relation (Y) Ever been on crm jury N Witness in crm trial N Party to pending suit Y Accident w/injury Y Convict/misdemeanor N	Crime victim Y Ever been on civ jury N Witness in civ trial N Crm charges pending N Convicted felon N

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Personal | Family | Court Experience

CAMPBELL, SAMUEL E
181923 / 01323
Retired
RETIRED
Education: 14
Age: 67 B/M

Married
Retired
RETIRED
Children < 25:

63115-0000
Police/court relation N
Ever been on crm jury N
Witness in crm trial N
Party to pending suit N
Accident w/injury N
Convict/misdemeanor N
Crime victim Y
Ever been on civ jury Y
Witness in civ trial N
Crm charges pending N
Convicted felon N

PATTERSON, WILLIAM R
184163 / 00252
Retired
RETIRED
Education: 6
Age: 70 B/M

Widowed
Children < 25:

63120-0000
Police/court relation N
Ever been on crm jury Y
Witness in crm trial N
Party to pending suit N
Accident w/injury N
Convict/misdemeanor N
Crime victim N
Ever been on civ jury Y
Witness in civ trial N
Crm charges pending N
Convicted felon N

TURNER, SHERON D
055786 / 01014
Blue collar
WHITE CASTLE
Education: 12
Age: 37 B/F

Single
Children < 25: 1

63120-0000
Police/court relation N
Ever been on crm jury N
Witness in crm trial N
Party to pending suit N
Accident w/injury N
Convict/misdemeanor N
Crime victim N
Ever been on civ jury N
Witness in civ trial N
Crm charges pending N
Convicted felon N

WASHINGTON, YOLANDO G
338272 / 00933
Blue collar
LEE CK
Education: 12
Age: 34 B/M

Single
Children < 25: 1

63113-0000
Police/court relation N
Ever been on crm jury N
Witness in crm trial N
Party to pending suit N
Accident w/injury Y
Convict/misdemeanor Y
Crime victim Y
Ever been on civ jury N
Witness in civ trial N
Crm charges pending N
Convicted felon Y

UCAS, GLENN A
405013 / 00214
White collar
NEW YORK BAGEL
Education: 12
Age: 41 B/M

Married
Nurse Aide
YMCA
Children < 25: 4

63110-0000
Police/court relation N
Ever been on crm jury Y
Witness in crm trial N
Party to pending suit N
Accident w/injury N
Convict/misdemeanor N
Crime victim N
Ever been on civ jury N
Witness in civ trial N
Crm charges pending N
Convicted felon N

TROTTER, JOYCE Y
176021 / 01128
Manager
SPORTS SERVICE
Education: 11
Age: 45 B/F

Married
Unemployed
UNEMPLOYED
Children < 25: 4

63107-0000
Police/court relation N
Ever been on crm jury N
Witness in crm trial N
Party to pending suit N
Accident w/injury N
Convict/misdemeanor N
Crime victim Y
Ever been on civ jury Y
Witness in civ trial N
Crm charges pending N
Convicted felon N

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Personal	Family	Court Experience		
DAVIS, ANNIE M 012378 / 00752 Social Worker STATE OF MO Education: 14 Age: 62 B/F	Married Retired RETIRED Children < 25:	63115-0000	Police/court relation Y Ever been on crm jury N Witness in crm trial N Party to pending suit N Accident w/injury N Convict/misdemeanor N	Crime victim Y Ever been on civ jury N Witness in civ trial N Crm charges pending N Convicted felon N
JACKSON, ELMER 026478 / 00432 aid BARNES HOSPITAL Education: 9 Age: 65 B/F	Widowed Children < 25:	63120-0000	Police/court relation N Ever been on crm jury N Witness in crm trial N Party to pending suit N Accident w/injury N Convict/misdemeanor N	Crime victim N Ever been on civ jury N Witness in civ trial N Crm charges pending N Convicted felon N
CUNIGAN, BELINDA 011745 / 01293 Blue collar ALWAYS CARE Education: 12 Age: 38 B/F	Divorced Blue collar CHILDRENS HOSP Children < 25: 7	63112-0000	Police/court relation N Ever been on crm jury N Witness in crm trial N Party to pending suit N Accident w/injury N Convict/misdemeanor N	Crime victim Y Ever been on civ jury N Witness in civ trial N Crm charges pending N Convicted felon N
MCCULLEY, KAROL J 172644 / 00775 Hospital Worker JEWISH HOSPITAL Education: 12 Age: 36 B/F	Married Hospital Worker JEWISH HOSP Children < 25: 2	63120-0000	Police/court relation Y Ever been on crm jury N Witness in crm trial N Party to pending suit N Accident w/injury N Convict/misdemeanor N	Crime victim N Ever been on civ jury Y Witness in civ trial N Crm charges pending N Convicted felon N
AWSON, TIMOTHY EDWARD 128944 / 00109 Artist UNIVERSAL Education: 14 Age: 31 C/M	Single Children < 25:	63139-0000	Police/court relation N Ever been on crm jury N Witness in crm trial N Party to pending suit N Accident w/injury N Convict/misdemeanor N	Crime victim N Ever been on civ jury Y Witness in civ trial N Crm charges pending N Convicted felon N
HOELSCHER, WILLIAM DANZ 356290 / 00960 Printer JOHN SWIFT PET Education: 12 Age: 62 C/M	Married Homemaker HW Children < 25:	63139-0000	Police/court relation N Ever been on crm jury N Witness in crm trial N Party to pending suit N Accident w/injury N Convict/misdemeanor N	Crime victim N Ever been on civ jury N Witness in civ trial N Crm charges pending N Convicted felon N

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Personal	Family	Court Experience		
ARENS, DANIEL J 356756 / 00014 White collar SCIENTIFIC Education: 12 Age: 23 C/M	Single Children < 25:	63139-0000	Police/court relation N Ever been on crm jury N Witness in crm trial N Party to pending suit N Accident w/injury N Convict/misdemeanor N	Crime victim Y Ever been on civ jury N Witness in civ trial N Crm charges pending N Convicted felon N
SHROUT, DEBRA J 178526 / 00817 Teacher KIRKWOOD SCH Education: 19 Age: 43 C/F	Married White collar CITIZENS MODERN Children < 25: 2	63108-0000	Police/court relation N Ever been on crm jury N Witness in crm trial N Party to pending suit Y Accident w/injury N Convict/misdemeanor N	Crime victim Y Ever been on civ jury N Witness in civ trial N Crm charges pending N Convicted felon N
HOWARD, WILLIAM LEE 183712 / 01219 White collar ST L U HOSPITAL Education: 14 Age: 45 C/M	Married Manager WATSON LABEL PR Children < 25: 3	63111-0000	Police/court relation N Ever been on crm jury N Witness in crm trial N Party to pending suit N Accident w/injury N Convict/misdemeanor N	Crime victim Y Ever been on civ jury N Witness in civ trial N Crm charges pending N Convicted felon N
ESPOSITO, SAL 388068 / 00647 Education: 13 Age: 56 C/M	Widowed Children < 25: 1	63104-0000	Police/court relation N Ever been on crm jury N Witness in crm trial N Party to pending suit N Accident w/injury N Convict/misdemeanor Y	Crime victim Y Ever been on civ jury N Witness in civ trial N Crm charges pending N Convicted felon N
JUFF, WARREN HOMER 405073 / 01085 Salesperson PROGRESSIVE Education: 12 Age: 52 /M	Single Children < 25:	63108-0000	Police/court relation Y Ever been on crm jury N Witness in crm trial N Party to pending suit N Accident w/injury Y Convict/misdemeanor N	Crime victim Y Ever been on civ jury Y Witness in civ trial Y Crm charges pending N Convicted felon N
SHELTON, O L 138286 / 00070 White collar MO HOUSE OF REP Education: 16 Age: 50 B/M	Married White collar SWBELL Children < 25: 2	63113-0000	Police/court relation Y Ever been on crm jury N Witness in crm trial N Party to pending suit N Accident w/injury N Convict/misdemeanor N	Crime victim Y Ever been on civ jury N Witness in civ trial N Crm charges pending N Convicted felon N

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Personal | Family | Court Experience

CARPER, SHELLAGH C
171894 / 00407
Student
STUDENT
Education: 19
Age: 43 C/F

Married
Self-employed
SELF EMPLOYED
Children < 25:

63118-0000
Police/court relation N
Ever been on crm jury N
Witness in crm trial N
Party to pending suit N
Accident w/injury N
Convict/misdemeanor N
Crime victim N
Ever been on civ jury N
Witness in civ trial N
Crm charges pending N
Convicted felon N

THOMAS, PHYLLIS
145782 / 01152
librarian
US ARMY CORP EN
Education: 14
Age: 30 B/F

Single
Children < 25:

63107-0000
Police/court relation N
Ever been on crm jury N
Witness in crm trial N
Party to pending suit N
Accident w/injury N
Convict/misdemeanor N
Crime victim N
Ever been on civ jury N
Witness in civ trial N
Crm charges pending N
Convicted felon N

HESSLING, ROY L
171036 / 00113
White collar
BELLEFONTAINE H
Education: 12
Age: 47 C/M

Married
Cosmetologist
SELF EMPLOYED
Children < 25: 1

63116-0000
Police/court relation N
Ever been on crm jury N
Witness in crm trial N
Party to pending suit N
Accident w/injury N
Convict/misdemeanor N
Crime victim Y
Ever been on civ jury Y
Witness in civ trial N
Crm charges pending N
Convicted felon N

HARRIS, SINGLETON LEV L JR
082784 / 00816
Mechanic
MCDONNELL DOUGL
Education: 14
Age: 46 B/M

Married
Blue collar
ST ENGELBERT SC
Children < 25: 5

63115-0000
Police/court relation N
Ever been on crm jury Y
Witness in crm trial N
Party to pending suit N
Accident w/injury N
Convict/misdemeanor N
Crime victim Y
Ever been on civ jury Y
Witness in civ trial N
Crm charges pending N
Convicted felon N

TEMPLIN, VICTORIA G
184699 / 00537
Accountant
UNION ELECT
Education: 12
Age: 40 C/F

Married
Cook
LOHR DIST CO
Children < 25: 2

63109-0000
Police/court relation N
Ever been on crm jury Y
Witness in crm trial N
Party to pending suit N
Accident w/injury N
Convict/misdemeanor N
Crime victim Y
Ever been on civ jury Y
Witness in civ trial N
Crm charges pending N
Convicted felon N

PAYTON, ROBERT R
041857 / 00028
Blue collar
NOLLAU ELEC
Education: 12
Age: 31 C/M

Single
Children < 25:

63118-0000
Police/court relation N
Ever been on crm jury N
Witness in crm trial N
Party to pending suit N
Accident w/injury N
Convict/misdemeanor N
Crime victim Y
Ever been on civ jury N
Witness in civ trial N
Crm charges pending N
Convicted felon N

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Personal	Family	Court Experience		
JACKSON, EARL 026464 / 00368 Janitor DRURY INNS Education: 13 Age: 31 B/M	Single Children < 25:	63112-0000	Police/court relation N Ever been on crm jury N Witness in crm trial N Party to pending suit N Accident w/injury N Convict/misdemeanor N	Crime victim Y Ever been on civ jury N Witness in civ trial N Crm charges pending N Convicted felon N
BURTON, HUBERT T 180155 / 01205 etired RETIRED Education: 12 Age: 74 B/M	Married Retired RETIRED Children < 25:	63108-0000	Police/court relation N Ever been on crm jury Y Witness in crm trial N Party to pending suit N Accident w/injury N Convict/misdemeanor N	Crime victim Y Ever been on civ jury Y Witness in civ trial N Crm charges pending N Convicted felon N
DODSON, CHRISTOPHER G 013726 / 01337 Factory Worker F G ENTERPRISES Education: 12 Age: 31 B/M	Married Homemaker HOUSEWIFE Children < 25: 2	63120-0000	Police/court relation N Ever been on crm jury N Witness in crm trial N Party to pending suit N Accident w/injury N Convict/misdemeanor N	Crime victim N Ever been on civ jury N Witness in civ trial N Crm charges pending N Convicted felon N
LEISURE, TRACY L 138309 / 00029 Clerk GUARANTEE ELECT Education: 12 Age: 29 C/F	Married Salesperson BABY HEAVEN Children < 25: 1	63116-1604	Police/court relation N Ever been on crm jury N Witness in crm trial N Party to pending suit N Accident w/injury N Convict/misdemeanor N	Crime victim Y Ever been on civ jury N Witness in civ trial N Crm charges pending N Convicted felon N
AYLOR, ELLA J 279433 / 00784 Artist W B STUDIOS Education: 11 Age: 55 C/F	Married Retired RETIRED Children < 25:	63139-0000	Police/court relation N Ever been on crm jury Y Witness in crm trial N Party to pending suit N Accident w/injury N Convict/misdemeanor N	Crime victim Y Ever been on civ jury N Witness in civ trial N Crm charges pending N Convicted felon N
HOCK, MARILYN M 399241 / 01294 Homemaker HM Education: 12 Age: 69 C/F	Married Retired RETIRED Children < 25:	63116-0000	Police/court relation N Ever been on crm jury N Witness in crm trial N Party to pending suit N Accident w/injury N Convict/misdemeanor N	Crime victim Y Ever been on civ jury N Witness in civ trial N Crm charges pending N Convicted felon N

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Personal | Family | Court Experience

SNIPES, DOUGLAS W
124149 / 00304
Unemployed
UNEMPLOYED
Education: 11
Age: 36 B/M

Married

Children < 25: 2

63107-0000

Police/court relation	N	Crime victim	Y
Ever been on crm jury	N	Ever been on civ jury	N
Witness in crm trial	Y	Witness in civ trial	N
Party to pending suit	N	Crm charges pending	N
Accident w/injury	N	Convicted felon	N
Convict/misdemeanor	Y		

PROTHERO, CONSTANCE P
181641 / 00573
elephone Operator
GRANT MED CNTR
Education: 12
Age: 62 C/F

Divorced

Children < 25:

63116-0000

Police/court relation	N	Crime victim	Y
Ever been on crm jury	Y	Ever been on civ jury	N
Witness in crm trial	N	Witness in civ trial	Y
Party to pending suit	N	Crm charges pending	N
Accident w/injury	N	Convicted felon	N
Convict/misdemeanor	N		

BRUTON, LORETTA
151782 / 00187
Machine Tool Operator
HUSSMANN REFRIG
Education: 12
Age: 59 B/F

Divorced

Children < 25:

63112-0000

Police/court relation	N	Crime victim	Y
Ever been on crm jury	N	Ever been on civ jury	N
Witness in crm trial	N	Witness in civ trial	N
Party to pending suit	N	Crm charges pending	N
Accident w/injury	N	Convicted felon	N
Convict/misdemeanor	N		

JONES, MATTIE M
282985 / 00597
Blue collar
EMBASSY SUITES
Education: 12
Age: 51 B/F

Divorced

Children < 25:

63110-0000

Police/court relation	N	Crime victim	Y
Ever been on crm jury	N	Ever been on civ jury	N
Witness in crm trial	N	Witness in civ trial	Y
Party to pending suit	N	Crm charges pending	N
Accident w/injury	N	Convicted felon	N
Convict/misdemeanor	N		

OODMAN, ROBERT J
159803 / 00061
White collar
TRUMP IN
Education: 14
Age: 39 C/M

Married

Retired
RETIRED

Children < 25: 3

63123-0000

Police/court relation	N	Crime victim	N
Ever been on crm jury	N	Ever been on civ jury	N
Witness in crm trial	N	Witness in civ trial	Y
Party to pending suit	N	Crm charges pending	N
Accident w/injury	N	Convicted felon	N
Convict/misdemeanor	N		

HENRY, GRACE
179327 / 00662
Retired
RETIRED
Education: 10
Age: 72 B/F

Widowed

Children < 25:

63115-0000

Police/court relation	N	Crime victim	N
Ever been on crm jury	N	Ever been on civ jury	Y
Witness in crm trial	N	Witness in civ trial	N
Party to pending suit	N	Crm charges pending	N
Accident w/injury	N	Convicted felon	N
Convict/misdemeanor	N		

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Personal	Family	Court Experience		
PUTNEY, JOSEPH M 043977 / 01000 Blue collar SAFEWAY Education: 12 Age: 44 C/M	Single Children < 25:	63111-0000	Police/court relation Y Ever been on crm jury N Witness in crm trial N Party to pending suit N Accident w/injury N Convict/misdemeanor N	Crime victim Y Ever been on civ jury N Witness in civ trial N Crm charges pending N Convicted felon N
WARD, BOB A 173103 / 00354 etired RETIRED Education: 12 Age: 62 C/M	Married Retired RETIRED Children < 25:	63139-0000	Police/court relation N Ever been on crm jury N Witness in crm trial N Party to pending suit N Accident w/injury N Convict/misdemeanor N	Crime victim N Ever been on civ jury N Witness in civ trial N Crm charges pending N Convicted felon N
WAMSER, JAMES L 181467 / 01419 Retired RETIRED Education: 12 Age: 72 C/M	Married Homemaker HOUSEWIFE Children < 25: 2	63110-0000	Police/court relation N Ever been on crm jury Y Witness in crm trial Y Party to pending suit N Accident w/injury N Convict/misdemeanor N	Crime victim Y Ever been on civ jury N Witness in civ trial N Crm charges pending N Convicted felon N
JONES, JAMESANNA S 162250 / 00444 White collar CITY OF ST L Education: 16 Age: 50 B/F	Single Children < 25:	63103-0000	Police/court relation N Ever been on crm jury N Witness in crm trial N Party to pending suit N Accident w/injury N Convict/misdemeanor N	Crime victim Y Ever been on civ jury Y Witness in civ trial N Crm charges pending N Convicted felon N
EDGE, DOUGLAS ALAN 397453 / 00395 Cook OZZIE'S Education: 12 Age: 27 C/M	Married Cashier TEXECO Children < 25:	63111-0000	Police/court relation Y Ever been on crm jury N Witness in crm trial N Party to pending suit N Accident w/injury N Convict/misdemeanor N	Crime victim N Ever been on civ jury N Witness in civ trial N Crm charges pending N Convicted felon N
NAUM, LOUIS J 164169 / 00672 Blue collar C F MOTOR FRT Education: 8 Age: 56 C/M	Married Homemaker HOUSEWIFE Children < 25: 1	63110-0000	Police/court relation N Ever been on crm jury Y Witness in crm trial N Party to pending suit Y Accident w/injury N Convict/misdemeanor N	Crime victim N Ever been on civ jury Y Witness in civ trial N Crm charges pending N Convicted felon N

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Personal	Family	Court Experience		
CHERRY, MADALINE E 256354 / 01412 Unemployed UNEMPLOYED Education: 12 Age: 30 B/F	Single Children < 25: 3	63106-0000	Police/court relation N Ever been on crm jury N Witness in crm trial N Party to pending suit N Accident w/injury N Convict/misdemeanor N	Crime victim N Ever been on civ jury N Witness in civ trial N Crm charges pending N Convicted felon N
CUMMINGS, JANETTE 182658 / 00087 Unemployed UNEMPLOYED Education: 13 Age: 38 B/F	Single Children < 25: 1	63120-0000	Police/court relation N Ever been on crm jury N Witness in crm trial N Party to pending suit N Accident w/injury N Convict/misdemeanor N	Crime victim Y Ever been on civ jury N Witness in civ trial N Crm charges pending N Convicted felon N
MORRIS, THOMAS R 222065 / 01104 Blue collar UNION PACIFIC R Education: 12 Age: 45 C/M	Married Homemaker HOMEMAKER Children < 25: 1	63139-0000	Police/court relation N Ever been on crm jury N Witness in crm trial N Party to pending suit N Accident w/injury N Convict/misdemeanor N	Crime victim Y Ever been on civ jury N Witness in civ trial N Crm charges pending N Convicted felon N
BAROLI, ELIZABETH A 405024 / 00328 Homemaker HW Education: 8 Age: 59 C/F	Married Driver AUTHER WELLS Children < 25:	63139-1619	Police/court relation N Ever been on crm jury N Witness in crm trial N Party to pending suit N Accident w/injury N Convict/misdemeanor N	Crime victim N Ever been on civ jury N Witness in civ trial N Crm charges pending N Convicted felon N
LANG, BONITA S 145170 / 01027 Clerk S W BELL TELE Education: 16 Age: 48 C/F	Married Manager TRUE VALUE HW Children < 25: 2	63110-0000	Police/court relation N Ever been on crm jury Y Witness in crm trial N Party to pending suit N Accident w/injury N Convict/misdemeanor N	Crime victim Y Ever been on civ jury N Witness in civ trial N Crm charges pending N Convicted felon N
CANADA, RAOUL K 184037 / 01426 Computer Programmer UNION PACIFIC Education: 16 Age: 34 C/M	Single Children < 25:	63139-0000	Police/court relation Y Ever been on crm jury N Witness in crm trial N Party to pending suit N Accident w/injury N Convict/misdemeanor N	Crime victim Y Ever been on civ jury Y Witness in civ trial N Crm charges pending N Convicted felon N

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Personal	Family	Court Experience		
ABEL, DONALD R 142386 / 00139 Clerk A G EDWARDS Education: 14 Age: 56 C/M	Single Children < 25:	63109-0000	Police/court relation N Ever been on crm jury Y Witness in crm trial N Party to pending suit N Accident w/injury N Convict/misdemeanor N	Crime victim N Ever been on civ jury N Witness in civ trial N Crm charges pending N Convicted felon N
KREITZER, RAYMOND B 145331 / 00854 oreman ST L CITY WATER Education: 9 Age: 60 C/M	Married Homemaker HW Children < 25: 1	63139-0000	Police/court relation Y Ever been on crm jury N Witness in crm trial N Party to pending suit N Accident w/injury N Convict/misdemeanor N	Crime victim N Ever been on civ jury N Witness in civ trial N Crm charges pending N Convicted felon N
COLEMAN, LARRY ROY R 179895 / 00529 White collar ST L POLICE DEP Education: 12 Age: 32 C/M	Single Children < 25:	63116-0000	Police/court relation N Ever been on crm jury Y Witness in crm trial N Party to pending suit N Accident w/injury N Convict/misdemeanor N	Crime victim Y Ever been on civ jury Y Witness in civ trial N Crm charges pending N Convicted felon N
LINDSEY, MICHELLE A 157679 / 00255 Clerk MALLINCKRODT Education: 16 Age: 27 B/F	Single Children < 25:	63107-0000	Police/court relation N Ever been on crm jury N Witness in crm trial N Party to pending suit N Accident w/injury N Convict/misdemeanor N	Crime victim N Ever been on civ jury N Witness in civ trial N Crm charges pending N Convicted felon N
JERRY, P MICHELE 405067 / 01011 Blue collar DILLARDS Education: 16 Age: 44 /F	Divorced Children < 25: 2	63110-0000	Police/court relation N Ever been on crm jury N Witness in crm trial Y Party to pending suit N Accident w/injury N Convict/misdemeanor N	Crime victim Y Ever been on civ jury N Witness in civ trial Y Crm charges pending N Convicted felon N
CLAYBORN, KIMBERLY J 405003 / 00134 Blue collar ST CHARLES CASI Education: 12 Age: 27 B/F	Single Children < 25: 2	63107-0000	Police/court relation Y Ever been on crm jury N Witness in crm trial N Party to pending suit N Accident w/injury N Convict/misdemeanor Y	Crime victim Y Ever been on civ jury N Witness in civ trial N Crm charges pending N Convicted felon N

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Personal	Family	Court Experience		
HAMMEIT, JAMES E 177414 / 00171 Retired RETIRED Education: 12 Age: 74 C/M	Married Retired RETIRED Children < 25:	63109-0000	Police/court relation N Ever been on crm jury N Witness in crm trial N Party to pending suit N Accident w/injury N Convict/misdemeanor N	Crime victim N Ever been on civ jury N Witness in civ trial N Crm charges pending N Convicted felon N
WRIGHT, CAROLYN S 182582 / 00551 Manager AMOUS BARR Education: 13 Age: 57 C/F	Single Children < 25:	63109-0000	Police/court relation N Ever been on crm jury N Witness in crm trial N Party to pending suit N Accident w/injury Y Convict/misdemeanor N	Crime victim Y Ever been on civ jury Y Witness in civ trial N Crm charges pending N Convicted felon N
COWAN, SHARON F 175877 / 00587 Nurse COLONIAL HLTH C Education: 13 Age: 33 O/F	Single Children < 25:	63115-0000	Police/court relation N Ever been on crm jury N Witness in crm trial N Party to pending suit N Accident w/injury N Convict/misdemeanor N	Crime victim Y Ever been on civ jury N Witness in civ trial N Crm charges pending N Convicted felon N
LOEMKER, DOUGLAS CRAIG 405057 / 00842 Police Officer ST LOUIS CITY Education: 16 Age: 35 C/M	Married Police Officer ST LOUIS CITY Children < 25:	63109-0000	Police/court relation Y Ever been on crm jury N Witness in crm trial Y Party to pending suit N Accident w/injury N Convict/misdemeanor N	Crime victim N Ever been on civ jury N Witness in civ trial N Crm charges pending N Convicted felon N
THROWER, DAWN M 226934 / 00665 ASSISTANT DR LEHRER Education: 13 Age: 31 C/F	Married Salesperson ALLSTATE Children < 25: 1	63109-0000	Police/court relation Y Ever been on crm jury N Witness in crm trial N Party to pending suit N Accident w/injury N Convict/misdemeanor N	Crime victim N Ever been on civ jury N Witness in civ trial N Crm charges pending N Convicted felon N
CUMMINGS, MICHAEL 182779 / 00812 Cook HOULIHAN Education: 11 Age: 41 B/M	Married Unemployed UNEMPLOYED Children < 25:	63147-0000	Police/court relation N Ever been on crm jury N Witness in crm trial N Party to pending suit N Accident w/injury N Convict/misdemeanor N	Crime victim N Ever been on civ jury N Witness in civ trial N Crm charges pending N Convicted felon N

(09)

A-123

MISSOURI CIRCUIT COURT
TWENTY-SECOND JUDICIAL CIRCUIT
(St. Louis City)

State of Missouri

VS.

FILED
NOV 22 1996
CIRCUIT COURT
DEPUTY

Tyrone Mosley

CASE NO. 951432GB DIVISION 11 - 14 19 96

COURT ORDER

Defendant's Tyrone Mosley's motion to suppress identification is heard and submitted. The motion is overruled in part and sustained in part as to testimony regarding identification of defendant in the show-up room at Police Headquarters.

So Ordered:

Respectfully,

Judge

3-709

(6)

A-123

102-305 (Rev 1-90)

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MISSOURI CIRCUIT COURT
TWENTY-SECOND JUDICIAL CIRCUIT
(St. Louis City)

State of Missouri

VS.

Tyrone Deonte Mosnit

CASE NO. 961-043303 DIVISION 11 11-22 19 96

COURT ORDER

Jury trial resumed.

State by Asst. Circ. Attorney Mark W. Haggerty #40365

Deft. in person and by Atty. Sandra Moore Dyson, #3058

Jury continues deliberations at 9:30 a.m. At 12:45 pm the jury returns with its verdict. Count I, the jury found the defendant Tyrone Mosnit guilty of murder in the first degree as submitted in instruction No. 8.

The jurors assessed and declared the punishment for murder in the first degree at imprisonment for life without eligibility for probation or parole.

Count II, the jury found the defendant Tyrone Mosnit, guilty of armed criminal action in connection with the offense of murder in the first degree as submitted in instruction No. 12.

The jurors assessed and declared the punishment for armed criminal action in connection with the offense of murder in the first degree at imprisonment for a term of thirty (30) years.

102-305 (Rev 1-90)

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MISSOURI CIRCUIT COURT
TWENTY-SECOND JUDICIAL CIRCUIT
(St. Louis City)

State of Missouri

VS.

Tyrone Devante Mosant

CASE NO. 951-043260 DIVISION 11 11-22 1996

(6) COURT ORDER

Count III, the jury found the defendant Tyrone Mosant guilty of assault in the first degree as submitted in instruction No. 15. The jurors assessed and declared the punishment for assault in the first degree at imprisonment for a term of fifteen (15) years.

Count IV, the jury found the defendant Tyrone Mosant, guilty of armed criminal action in connection with the offense of assault in the first degree as submitted in instruction No. 17. The jurors assessed and declared the punishment for armed criminal action in connection with the offense of assault in the first degree at imprisonment for a term of thirty (30) years.

Count V, the defendant found the defendant Tyrone Mosant guilty of assault in the first degree as submitted in instruction No. 19. The jurors assessed and declared the

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MISSOURI CIRCUIT COURT
TWENTY-SECOND JUDICIAL CIRCUIT
(St. Louis City)

State of Missouri

VS.

Tyrone Demonte Mozant

CASE NO. 961-04326B DIVISION 11 11-22 1996

(6) COURT ORDER

punishment for assault in the first degree at imprisonment for a term of fifteen (15) years.

Count VI. the jurors found the defendant Tyrone Mozant, guilty of armed criminal action in connection with the offense of assault in the first degree as submitted in instruction No. 21. The jurors assessed and declared the punishment for armed criminal action in connection with the offense of assault in the first degree at imprisonment for a term of thirty (30) years.

Jury polled.

Verdict accepted by the Court and ordered filed together with the instruction of the Court. Jury discharged.

Defendant granted an additional ten (10) days to file Motion for New Trial as per memo filed. State's oral motion to set aside prior bond settings reinstated as per memo filed.

Sentencing is set for Friday, January 10, 1997 at 10:00 a.m. in Division 11.

Sheriff's fees, question filed.

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MISSOURI CIRCUIT COURT
TWENTY-SECOND JUDICIAL CIRCUIT
(St. Louis City)

State of Missouri

VS.

Tyrone Desante Mozant

CASE NO. 961-04326(6) DIVISION 11 11-22 19 96

COURT ORDER

Defendant remanded to the custody of the Sheriff of the City of St. Louis forthwith.

So Ordered,

Judge

17636

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NOV 22 1996

MAVIS T. THOMPSON
CLERK, CIRCUIT COURT
BY _____ DEPUTY

Sherry Marshall
C.R.T. Co 486

102-305 (Rev 1-90)

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Instruction No. 1

Those who participate in a jury trial must do so in accordance with established rules. This is true of the parties, the witnesses, the lawyers, and the judge. It is equally true of jurors. It is the Court's duty to enforce those rules and to instruct you upon the law applicable to the case. It is your duty to follow the law as the Court gives it to you.

However, no statement, ruling, or remark that I may make during the trial is intended to indicate my opinion of what the facts are. It is your duty to determine the facts and to determine them only from the evidence and the reasonable inferences to be drawn from the evidence. In this determination, you alone must decide upon the believability of the witnesses and the weight and value of the evidence.

In determining the believability of a witness and the weight to be given to testimony of the witness, you may take into consideration the witness' manner while testifying; the ability and opportunity of the witness to observe and remember any matter about which testimony is given; any interest, bias, or prejudice the witness may have; the reasonableness of the witness' testimony considered in the light of all of the evidence in the case; and any other matter that has a tendency in reason to prove or disprove the truthfulness of the testimony of the witness.

Faithful performance by you of your duties as jurors is vital to the administration of justice. You should perform your duties without prejudice or fear, and solely from a fair and impartial consideration of the whole case.

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NOV 22 1996
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MAVIS T. THOMPSON
CLERK, CIRCUIT COURT
DEPUTY

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Instruction No. 2

You must not assume as true any fact solely because it is included in or suggested by a question asked a witness. A question is not evidence,and may be considered only as it supplies meaning to the answer.

From time to time the attorneys may make objections. They have a right to do so and are only doing their duty as they see it. You should draw no inference from the fact that an objection has been made.

If the Court sustains an objection to a question, you will disregard the entire question and you should not speculate as to what the answer of the witness might have been. The same applies to exhibits offered but excluded from the evidence after an objection has been sustained. You will also disregard any answer or other matter which the Court directs you not to consider and anything which the Court orders to be stricken from the record.

The opening statements of attorneys are not evidence. Also you must not consider as evidence any statement or remark or argument by any of the attorneys addressed to another attorney or to the Court. However, the attorneys may enter into agreements or stipulations of fact. These agreements and stipulations become part of the evidence and are to be considered by you as such.

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MAVIS T. THOMPSON
CLERK, CIRCUIT COURT
BY _____ DEPUTY

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Instruction No. 3

The law applicable to this case is stated in these instructions and the two which the Court read to you immediately after you were sworn as jurors. All of the instructions will be given to you to take to your jury room for use during your deliberations.

You must not single out certain instructions and disregard others or question the wisdom of any rule of law.

The Court does not mean to assume as true any fact referred to in these instructions but leaves it to you to determine what the facts are.

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NOV 23 1996
MAVIS T. THOMPSON
CLERK, CIRCUIT COURT
BY _____ DEPUTY

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Instruction No. 4

The charge of any offense is not evidence, and it creates no inference that any offense was committed or that either defendant is guilty of an offense.

Each defendant is presumed to be innocent, unless and until, during your deliberations upon your verdict, you find him guilty. This presumption of innocence places upon the state the burden of proving beyond a reasonable doubt that either defendant is guilty.

A reasonable doubt is a doubt based upon reason and common sense after careful and impartial consideration of all the evidence in the case.

Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. The law does not require proof that overcomes every possible doubt. If, after your consideration of all the evidence, you are firmly convinced that a defendant is guilty of the crime charged, you will find him guilty. If you are not so convinced, you must give him the benefit of the doubt and find him not guilty.

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CLERK, CIRCUIT COURT
BY _____ DEPUTY

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INSTRUCTION NO. 5

A person is responsible for his own conduct and he is also responsible for the conduct of another person in committing an offense if he acts with the other person with the common purpose of committing that offense, or if, for the purpose of committing that offense, he aids or encourages the other person in committing it.

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BY _____ DEPUTY

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INSTRUCTION NO. 6

As to Count I, if you find and believe from the evidence beyond a reasonable doubt:

First, that on or about September 17, 1995 at approximately 11:25 p.m. at about the 4200 block of Dr. Martin Luther King, in the City of St. Louis, State of Missouri, Carlos Wade or Tyrone Morant caused the death of John Allen by shooting him, and

Second, that Carlos Wade knew or was aware that his conduct was causing or was practically certain to cause the death of John Allen, and

Third, that Carlos Wade did so after deliberation, which means cool reflection upon the matter for any length of time no matter how brief,

then you are instructed that the offense of murder in the first degree has occurred, and if you further find and believe from the evidence beyond a reasonable doubt:

Fourth, that with the purpose of promoting or furthering the commission of that murder in the first degree, Carlos Wade acted together with or aided Tyrone Morant in committing that offense,

then you will find Carlos Wade guilty under Count I of murder in the first degree.

However, unless you find and believe from the evidence beyond a reasonable doubt each and all of these propositions, you must find Carlos Wade not guilty of murder in the first degree.

If you do find Carlos Wade guilty under Count I of murder in the first degree, you are to assess and declare the punishment at imprisonment for life without eligibility for probation or parole.

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CLERK, CIRCUIT COURT
BY DEPUTY

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NO

INSTRUCTION NO. 7

As to Count I, if you do not find Carlos Wade guilty of murder in the first degree, you must consider whether he is guilty of murder in the second degree.

As to Count I, if you find and believe from the evidence beyond a reasonable doubt:

First, that on or about September 17, 1995 at approximately 11:25 p.m. at about the 4200 block of Dr. Martin Luther King, in the City of St. Louis, State of Missouri, Carlos Wade or Tyrone Morant caused the death of John Allen by shooting him, and

Second, Carlos Wade knew or was aware that his conduct was causing or was practically certain to cause the death of John Allen,

then you are instructed that the offense of murder in the second degree has occurred, and if you further find and believe from the evidence beyond a reasonable doubt:

Third, that with the purpose of promoting or furthering the commission of that murder in the second degree, Carlos Wade acted together with or aided Tyrone Morant in committing that offense,

then you will find Carlos Wade guilty under Count I of murder in the second degree.

However, unless you find and believe from the evidence beyond a reasonable doubt each and all of these propositions, you must find Carlos Wade not guilty of murder in the second degree.

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NOV 22 1996

MAVIS T. THOMPSON
CLERK, CIRCUIT COURT
BY _____ DEPUTY

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If you do find Carlos Wade guilty under Count I of murder in the second degree, you will assess and declare one of the following punishments:

1. Life imprisonment.

2. Imprisonment for a term of years fixed by you, but not less than ten years and not to exceed thirty years.

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MAVIS T.
CLERK, CR
BY

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INSTRUCTION NO. 8

FILED

NOV 22 1996

MARY

BY

As to Count I, if you find and believe from the evidence beyond a reasonable doubt:

First, that on or about September 17, 1995 at approximately 11:25 p.m. at about the 4200 block of Dr. Martin Luther King, in the City of St. Louis, State of Missouri, Tyrone Morant or Carlos Wade caused the death of John Allen by shooting him, and

Second, that Tyrone Morant knew or was aware that his conduct was causing or was practically certain to cause the death of John Allen, and

Third, that Tyrone Morant did so after deliberation, which means cool reflection upon the matter for any length of time no matter how brief,

then you are instructed that the offense of murder in the first degree has occurred, and if you further find and believe from the evidence beyond a reasonable doubt:

Fourth, that with the purpose of promoting or furthering the commission of that murder in the first degree, Tyrone Morant acted together with or aided Carlos Wade in committing that offense,

then you will find Tyrone Morant guilty under Count I of murder in the first degree.

However, unless you find and believe from the evidence beyond a reasonable doubt each and all of these propositions, you must find Tyrone Morant not guilty of murder in the first degree.

If you do find Tyrone Morant guilty under Count I of murder in the first degree, you are to assess and declare the punishment at imprisonment for life without eligibility for probation or parole.

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FILED
NOV 22 1996
MARIE T. THOMPSON
CLERK
BY DEPUTY

INSTRUCTION NO. 9

As to Count I, if you do not find Tyrone Morant guilty of murder in the first degree, you must consider whether he is guilty of murder in the second degree.

As to Count I, if you find and believe from the evidence beyond a reasonable doubt:

First, that on or about September 17, 1995 at approximately 11:25 p.m. at about the 4200 block of Dr. Martin Luther King, in the City of St. Louis, State of Missouri, Tyrone Morant or Carlos Wade caused the death of John Allen by shooting him, and

Second, Tyrone Morant knew or was aware that his conduct was causing or was practically certain to cause the death of John Allen,

then you are instructed that the offense of murder in the second degree has occurred, and if you further find and believe from the evidence beyond a reasonable doubt:

Third, that with the purpose of promoting or furthering the commission of that murder in the second degree, Tyrone Morant acted together with or aided Carlos Wade in committing that offense,

then you will find Tyrone Morant guilty under Count I of murder in the second degree.

However, unless you find and believe from the evidence beyond a reasonable doubt each and all of these propositions, you must find Tyrone Morant not guilty of murder in the second degree.

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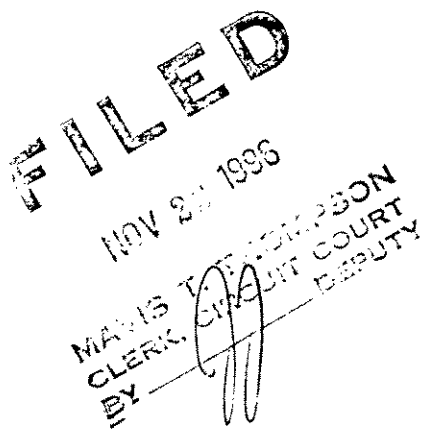
If you do find Tyrone Morant guilty under Count I of murder in the second degree, you will assess and declare one of the following punishments:

1. Life imprisonment.

2. Imprisonment for a term of years fixed by you, but not less than ten years and not to exceed thirty years.



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INSTRUCTION NO. 10

As to Count II, if you find and believe from the evidence beyond a reasonable doubt:

First, that Carlos Wade committed the offense of murder in the first degree, as submitted in Instruction No. 6, and

Second, that Carlos Wade or Tyrone Morant committed that offense by or with or through the use or assistance or aid of a deadly weapon,

then you are instructed that the offense of armed criminal action in connection with the offense of murder in the first degree has occurred, and if you further find and believe from the evidence beyond a reasonable doubt:

Third, that with the purpose of promoting or furthering the commission of that armed criminal action in connection with the offense of murder in the first degree, Carlos Wade acted together with or aided Tyrone Morant in committing that offense,

then you will find Carlos Wade guilty under Count II of armed criminal action in connection with the offense of murder in the first degree.

However, unless you find and believe from the evidence beyond a reasonable doubt each and all of these propositions, you must find Carlos Wade not guilty of that offense.

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77
NOV 22 1996
MAVIS T. THOMPSON
CLERK, CIRCUIT COURT
BY DEPUTY

If you do find Carlos Wade guilty under Count II of arm criminal action in connection with the offense of murder in the fir degree, you will assess and declare the punishment at:

1. Life imprisonment.

2. Imprisonment for a term of years fixed by you, but n less than three years.

78

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MAVIS T. THOMPSON
CLERK, CIRCUIT COURT
BY _____ DEPUTY

A-140

Electronically Filed - Supreme Court - March 22, 2013 - 05:48 PM CDT

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CLERK, CIRCUIT COURT
BY DEPUTY

INSTRUCTION NO. 11

As to Count II, if you do not find Carlos Wade guilty of armed criminal action in connection with the offense of murder in the first degree, you must consider whether he is guilty of armed criminal action in connection with the offense of murder in the second degree.

As to Count II, if you find and believe from the evidence beyond a reasonable doubt:

First, that Carlos Wade committed the offense of murder in the second degree, as submitted in Instruction No. 7, and

Second, that Carlos Wade or Tyrone Morant committed that offense by or with or through the use or assistance or aid of a deadly weapon,

then you are instructed that the offense of armed criminal action in connection with the offense of murder in the second degree has occurred, and if you further find and believe from the evidence beyond a reasonable doubt:

Third, that with the purpose of promoting or furthering the commission of that armed criminal action in connection with the offense of murder in the second degree, Carlos Wade acted together with or aided Tyrone Morant in committing that offense,

then you will find Carlos Wade guilty under Count II of armed criminal action in connection with the offense of murder in the second degree.

79

However, unless you find and believe from the evidence beyond a reasonable doubt each and all of these propositions, you must find Carlos Wade not guilty of that offense.

A-141

Electronically Filed - Supreme Court - March 22, 2013 - 05:48 PM CDT

If you do find Carlos Wade guilty under Count II of armed criminal action in connection with the offense of murder in the second degree, you will assess and declare the punishment at:

1. Life imprisonment.

2. Imprisonment for a term of years fixed by you, but not less than three years.

FILED

NOV 22 1996

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CLERK, CIRCUIT COURT
BY _____ DEPUTY

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A-142

Electronically Filed - Supreme Court - March 22, 2013 - 05:48 PM CDT

INSTRUCTION NO. 12

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As to Count II, if you find and believe from the evidence beyond a reasonable doubt:

First, that Tyrone Morant committed the offense of murder in the first degree, as submitted in Instruction No. 8, and

Second, that Tyrone Morant or Carlos Wade committed that offense by or with or through the use or assistance or aid of a deadly weapon,

then you are instructed that the offense of armed criminal action in connection with the offense of murder in the first degree has occurred, and if you further find and believe from the evidence beyond a reasonable doubt:

Third, that with the purpose of promoting or furthering the commission of that armed criminal action in connection with the offense of murder in the first degree, Tyrone Morant acted together with or aided Carlos Wade in committing that offense,

then you will find Tyrone Morant guilty under Count II of armed criminal action in connection with the offense of murder in the first degree.

However, unless you find and believe from the evidence beyond a reasonable doubt each and all of these propositions, you must find Tyrone Morant not guilty of that offense.

If you do find Tyrone Morant guilty under Count II of armed criminal action in connection with the offense of murder in the first degree, you will assess and declare the punishment at:

1. Life imprisonment.

2. Imprisonment for a term of years fixed by you, but not less than three years.

A-143

81

Electronically Filed - Supreme Court - March 22, 2013 - 05:48 PM CDT

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NOV 22 1990

MARY BETH ON
CLERK, CIRCUIT COURT
BY _____ DEPUTY

INSTRUCTION NO. 13

As to Count II, if you do not find Tyrone Morant guilty of armed criminal action in connection with the offense of murder in the first degree, you must consider whether he is guilty of armed criminal action in connection with the offense of murder in the second degree.

As to Count II, if you find and believe from the evidence beyond a reasonable doubt:

First, that Tyrone Morant committed the offense of murder in the second degree, as submitted in Instruction No. 9, and

Second, that Tyrone Morant or Carlos Wade committed that offense by or with or through the use or assistance or aid of a deadly weapon,

then you are instructed that the offense of armed criminal action in connection with the offense of murder in the second degree has occurred, and if you further find and believe from the evidence beyond a reasonable doubt:

Third, that with the purpose of promoting or furthering the commission of that armed criminal action in connection with the offense of murder in the second degree, Tyrone Morant acted together with or aided Carlos Wade in committing that offense,

then you will find Tyrone Morant guilty under Count II of armed criminal action in connection with the offense of murder in the second degree.

However, unless you find and believe from the evidence beyond a reasonable doubt each and all of these propositions, you must find Tyrone Morant not guilty of that offense.

A-144

82

Electronically Filed - Supreme Court - March 22, 2013 - 05:48 PM CDT

If you do find Tyrone Morant guilty under Count II of armed criminal action in connection with the offense of murder in the second degree, you will assess and declare the punishment at:

1. Life imprisonment.

2. Imprisonment for a term of years fixed by you, but not less than three years.

FILED

NOV 22 1996

MAVIS T. THOMPSON
CLERK, CIRCUIT COURT
BY

Electronically Filed - Supreme Court - March 22, 2013 - 05:48 PM CDT

INSTRUCTION NO. 14

As to Count III, if you find and believe from the evidence beyond a reasonable doubt:

First, that on or about September 17, 1995 at approximately 11:25 p.m. at about the 4200 block of Dr. Martin Luther King, in the City of St. Louis, State of Missouri, Carlos Wade or Tyrone Morant attempted to kill or cause serious physical injury to Johnnie Bell by shooting at him,

then you are instructed that the offense of assault in the first degree has occurred, and if you further find and believe from the evidence beyond a reasonable doubt:

Second, that with the purpose of promoting or furthering the commission of that assault in the first degree, Carlos Wade acted together with or aided Tyrone Morant in committing that offense,

then you will find Carlos Wade guilty under Count III of assault in the first degree.

However, unless you find and believe from the evidence beyond a reasonable doubt each and all of these propositions, you must find Carlos Wade not guilty of that offense.

If you do find Carlos Wade guilty under Count III of assault in the first degree, you will assess and declare the punishment at imprisonment for a term of years fixed by you, but not less than five years and not to exceed fifteen years.

FILED

NOV 22 1996

MAVIS THOMPSON
CLERK, CIRCUIT COURT
BY

A-146

84

Electronically Filed - Supreme Court - March 22, 2013 - 05:48 PM CDT

INSTRUCTION NO. 15

As to Count III, if you find and believe from the evidence beyond a reasonable doubt:

First, that on or about September 17, 1995 at approximately 11:25 p.m. at about the 4200 block of Dr. Martin Luther King, in the City of St. Louis, State of Missouri, Carlos Wade or Tyrone Morant attempted to kill or cause serious physical injury to Johnnie Bell by shooting at him,

then you are instructed that the offense of assault in the first degree has occurred, and if you further find and believe from the evidence beyond a reasonable doubt:

Second, that with the purpose of promoting or furthering the commission of that assault in the first degree, Tyrone Morant acted together with or aided Carlos Wade in committing that offense,

then you will find Tyrone Morant guilty under Count III of assault in the first degree.

However, unless you find and believe from the evidence beyond a reasonable doubt each and all of these propositions, you must find Tyrone Morant not guilty of that offense.

If you do find Tyrone Morant guilty under Count III of assault in the first degree, you will assess and declare the punishment at imprisonment for a term of years fixed by you, but not less than five years and not to exceed fifteen years.

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NOV 2.. 1996

MARIS THOMPSON
CLERK, CIRCUIT COURT
BY

A-147

85

Electronically Filed - Supreme Court - March 22, 2013 - 05:48 PM CDT

INSTRUCTION NO. 16

As to Count IV, if you find and believe from the evidence beyond a reasonable doubt:

First, that Carlos Wade committed the offense of assault in the first degree, as submitted in Instruction No. 14, and

Second, that Carlos Wade or Tyrone Morant committed that offense by or with or through the use or assistance or aid of a deadly weapon,

then you are instructed that the offense of armed criminal action in connection with the offense of assault in the first degree has occurred, and if you further find and believe from the evidence beyond a reasonable doubt:

Third, that with the purpose of promoting or furthering the commission of that armed criminal action in connection with the offense of assault in the first degree, Carlos Wade acted together with or aided Tyrone Morant in committing that offense,

then you will find Carlos Wade guilty under Count IV of armed criminal action in connection with the offense of assault in the first degree.

However, unless you find and believe from the evidence beyond a reasonable doubt each and all of these propositions, you must find Carlos Wade not guilty of that offense.

FILED

NOV 22 1996

MAVIS F. THOMPSON
CLERK, CIRCUIT COURT
BY _____ DEPUTY

86

A-148

Electronically Filed - Supreme Court - March 22, 2013 - 05:48 PM CDT

If you do find Carlos Wade guilty under Count IV of armed criminal action in connection with the offense of assault in the first degree, you will assess and declare the punishment at:

1. Life imprisonment.

2. Imprisonment for a term of years fixed by you, but not less than three years.

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NOV 2[illegible] 1983
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CLERK, CIRCUIT COURT
BY _____ DEPUTY

87

A-149

Electronically Filed - Supreme Court - March 22, 2013 - 05:48 PM CDT

INSTRUCTION NO. 17

As to Count IV, if you find and believe from the evidence beyond a reasonable doubt:

First, that Tyrone Morant committed the offense of assault in the first degree, as submitted in Instruction No. 15, and

Second, that Tyrone Morant or Carlos Wade committed that offense by or with or through the use or assistance or aid of a deadly weapon,

then you are instructed that the offense of armed criminal action in connection with the offense of assault in the first degree has occurred, and if you further find and believe from the evidence beyond a reasonable doubt:

Third, that with the purpose of promoting or furthering the commission of that armed criminal action in connection with the offense of assault in the first degree, Tyrone Morant acted together with or aided Carlos Wade in committing that offense,

then you will find Tyrone Morant guilty under Count IV of armed criminal action in connection with the offense of assault in the first degree.

However, unless you find and believe from the evidence beyond a reasonable doubt each and all of these propositions, you must find Tyrone Morant not guilty of that offense.

FILED
NOV 21 1998
MARIS
CLERK

88

A-150

Electronically Filed - Supreme Court - March 22, 2013 - 05:48 PM CDT

If you do find Tyrone Morant guilty under Count IV of armed criminal action in connection with the offense of assault in the first degree, you will assess and declare the punishment at:

1. Life imprisonment.

2. Imprisonment for a term of years fixed by you, but not less than three years.

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NOV 22 1996
MARY E. ...
BY ...

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Electronically Filed - Supreme Court - March 22, 2013 - 05:48 PM CDT

INSTRUCTION NO. 18

As to Count V, if you find and believe from the evidence beyond a reasonable doubt:

First, that on or about September 17, 1995 at approximately 11:25 p.m. at about the 4200 block of Dr. Martin Luther King, in the City of St. Louis, State of Missouri, Carlos Wade or Tyrone Morant attempted to kill or cause serious physical injury to Angela Hickman by shooting at her,

then you are instructed that the offense of assault in the first degree has occurred, and if you further find and believe from the evidence beyond a reasonable doubt:

Second, that with the purpose of promoting or furthering the commission of that assault in the first degree, Carlos Wade acted together with or aided Tyrone Morant in committing that offense,

then you will find Carlos Wade guilty under Count V of assault in the first degree.

However, unless you find and believe from the evidence beyond a reasonable doubt each and all of these propositions, you must find Carlos Wade not guilty of that offense.

If you do find Carlos Wade guilty under Count V of assault in the first degree, you will assess and declare the punishment at imprisonment for a term of years fixed by you, but not less than five years and not to exceed fifteen years.

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NOV 22 1996

MAVIS T. THOMPSON
CLERK, CIRCUIT COURT
BY _____ DEPUTY

A-152

90

Electronically Filed - Supreme Court - March 22, 2013 - 05:48 PM CDT

INSTRUCTION NO. 19

As to Count V, if you find and believe from the evidence beyond a reasonable doubt:

First, that on or about September 17, 1995 at approximately 11:25 p.m. at about the 4200 block of Dr. Martin Luther King, in the City of St. Louis, State of Missouri, Carlos Wade or Tyrone Morant attempted to kill or cause serious physical injury to Angela Hickman by shooting at her,

then you are instructed that the offense of assault in the first degree has occurred, and if you further find and believe from the evidence beyond a reasonable doubt:

Second, that with the purpose of promoting or furthering the commission of that assault in the first degree, Tyrone Morant acted together with or aided Carlos Wade in committing that offense,

then you will find Tyrone Morant guilty under Count V of assault in the first degree.

However, unless you find and believe from the evidence beyond a reasonable doubt each and all of these propositions, you must find Tyrone Morant not guilty of that offense.

If you do find Tyrone Morant guilty under Count V of assault in the first degree, you will assess and declare the punishment at imprisonment for a term of years fixed by you, but not less than five years and not to exceed fifteen years.

FILED

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91

A-153

MAVIS T. [illegible]SON
CLERK CIRCUIT COURT
BY [illegible] DEPUTY

Electronically Filed - Supreme Court - March 22, 2013 - 05:48 PM CDT

INSTRUCTION NO. 20

As to Count VI, if you find and believe from the evidence beyond a reasonable doubt:

First, that Carlos Wade committed the offense of assault in the first degree, as submitted in Instruction No. 18, and

Second, that Carlos Wade or Tyrone Morant committed that offense by or with or through the use or assistance or aid of a deadly weapon,

then you are instructed that the offense of armed criminal action in connection with the offense of assault in the first degree has occurred, and if you further find and believe from the evidence beyond a reasonable doubt:

Third, that with the purpose of promoting or furthering the commission of that armed criminal action in connection with the offense of assault in the first degree, Carlos Wade acted together with or aided Tyrone Morant in committing that offense,

then you will find Carlos Wade guilty under Count VI of armed criminal action in connection with the offense of assault in the first degree.

However, unless you find and believe from the evidence beyond a reasonable doubt each and all of these propositions, you must find Carlos Wade not guilty of that offense.

FILED
NOV 22 1996
92
MAVIS A. THOMPSON
CLERK, CIRCUIT COURT
BY _____ DEPUTY

Electronically Filed - Supreme Court - March 22, 2013 - 05:48 PM CDT

If you do find Carlos Wade guilty under Count VI of armed criminal action in connection with the offense of assault in the first degree, you will assess and declare the punishment at:

1. Life imprisonment.

2. Imprisonment for a term of years fixed by you, but not less than three years.

FILED
NOV 22 1996
93
MAVIS T. THOMPSON
CLERK, CIRCUIT COURT
BY _____ DEPUTY

Electronically Filed - Supreme Court - March 22, 2013 - 05:48 PM CDT

INSTRUCTION NO. 21

As to Count VI, if you find and believe from the evidence beyond a reasonable doubt:

First, that Tyrone Morant committed the offense of assault in the first degree, as submitted in Instruction No. 19, and

Second, that Tyrone Morant or Carlos Wade committed that offense by or with or through the use or assistance or aid of a deadly weapon,

then you are instructed that the offense of armed criminal action in connection with the offense of assault in the first degree has occurred, and if you further find and believe from the evidence beyond a reasonable doubt:

Third, that with the purpose of promoting or furthering the commission of that armed criminal action in connection with the offense of assault in the first degree, Tyrone Morant acted together with or aided Carlos Wade in committing that offense,

then you will find Tyrone Morant guilty under Count VI of armed criminal action in connection with the offense of assault in the first degree.

However, unless you find and believe from the evidence beyond a reasonable doubt each and all of these propositions, you must find Tyrone Morant not guilty of that offense.

FILED
NOV 22 1996
94
MAVIS THOMPSON
CLERK, CIRCUIT COURT
BY _____ DEPUTY

Electronically Filed - Supreme Court - March 22, 2013 - 05:48 PM CDT

If you do find Tyrone Morant guilty under Count VI of armed criminal action in connection with the offense of assault in the first degree, you will assess and declare the punishment at:

1. Life imprisonment.

2. Imprisonment for a term of years fixed by you, but not less than three years.

FILED
NOV 22 1996
MAVIS T. THOMPSON
CLERK, CIRCUIT COURT
BY _____ DEPUTY

95

A-157

Electronically Filed - Supreme Court - March 22, 2013 - 05:48 PM CDT

INSTRUCTION NO. 22

The following term used in these instructions is defined as follows:

Serious physical injury - Means physical injury that creates a substantial risk of death or that causes serious disfigurement or protracted loss or impairment of the function of any part of the body.

FILED
NOV 22 1996
MAVIS THOMPSON
CLERK, CIRCUIT COURT
BY _____ DEPUTY

96

Electronically Filed - Supreme Court - March 22, 2013 - 05:48 PM CDT

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INSTRUCTION NO. 23

One of the issues in this case is whether the defendant, Carlos Wade was present on or about September 17, 1995 at approximately 11:25 p.m. at about the 4200 block of Dr. Martin Luther King, in the City of St. Louis, State of Missouri. On that issue, you are instructed as follows:

1. The state has the burden of proving beyond a reasonable doubt that the defendant was present at the time and place the offense is alleged to have been committed.

2. If the evidence in this case leaves in your mind a reasonable doubt that the defendant, Carlos Wade was present on or about September 17, 1995 at approximately 11:25 p.m. at about the 4200 block of Dr. Martin Luther King, in the City of St. Louis, State of Missouri, then you must find the defendant, Carlos Wade not guilty.

97

FILED

NOV 22 1996

CLERK CIRCUIT COURT

DEPUTY

A-159

INSTRUCTION NO. 24

One of the issues in this case is whether the defendant, Tyrone Morant was present on or about September 17, 1995 at approximately 11:25 p.m. at about the 4200 block of Dr. Martin Luther King, in the City of St. Louis, State of Missouri. On that issue, you are instructed as follows:

1. The State has the burden of proving beyond a reasonable doubt that the defendant was present at the time and place the offense is alleged to have been committed.

2. If the evidence in this case leaves in your mind a reasonable doubt that the defendant, Tyrone Morant, was present on or about September 17, 1995 at approximately 11:25 p.m. at about the 4200 block of Dr. Martin Luther King, in the City of St. Louis, State of Missouri, then you must find the defendant, Tyrone Morant not guilty.

FILED
NOV 22 1996
MAVIS J. THOMPSON
CLERK, CIRCUIT COURT
BY _____ DEPUTY

98

A-160

Electronically Filed - Supreme Court - March 22, 2013 - 05:48 PM CDT

INSTRUCTION NO. 25

The evidence of prior shootings against Johnny Bell and John Allen by the defendant, Carlos Wade, may be considered by you only on the case against Carlos Wade and not on the Case against Tyrone Morant.

FILED

NOV 22 1996

MAVIS T. THOMPSON
CLERK, CIRCUIT COURT
BY _____ DEPUTY

99

A-161

Electronically Filed - Supreme Court - March 22, 2013 - 05:48 PM CDT

INSTRUCTION NO. 26

You must give separate consideration to each defendant and to each count submitted against him. Each of the defendants is entitled to have each or any count submitted against him decided on the evidence and the law which is applicable to him. Each of the offenses submitted and the evidence and law applicable to it should be considered separately. Any evidence which was or has been limited to one defendant or one offense or one purpose should not be considered by you as to another defendant or another offense or for any other purpose.

You may find any one or both of the defendants guilty or not guilty of any count submitted against him.

You should return a separate verdict as to each defendant on each count submitted against him.

FILED
NOV 22 1993
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CLERK, CIRCUIT COURT
BY

100

A-162

Electronically Filed - Supreme Court - March 22, 2013 - 05:48 PM CDT

Instruction No. 27

When you retire to your jury room you will first select one of your number to act as your foreperson and to preside over your deliberations.

You will then discuss the case with your fellow jurors. Each of you must decide the case for yourself, but you should do so only after you have considered all the evidence, discussed it fully with the other jurors, and listened to the views of your fellow jurors.

Your verdict, whether guilty or not guilty, must be agreed to by each juror. Although the verdict must be unanimous, the verdict should be signed by your foreperson alone.

When you have concluded your deliberations, you will complete the applicable forms to which you unanimously agree and return them with all unused forms and the written instructions of the Court.

FILED
NOV 22 1996
MAVIS T. THOMPSON
CLERK, CIRCUIT COURT
BY DEPUTY

101

A-163

Electronically Filed - Supreme Court - March 22, 2013 - 05:48 PM CDT

Instruction No. 28

The attorneys will now have the opportunity of arguing the case to you. Their arguments are intended to help you in understanding the evidence and applying the law, but they are not evidence.

You will bear in mind that it is your duty to be governed in your deliberations by the evidence as you remember it, the reasonable inferences which you believe should be drawn therefrom, and the law as given in these instructions.

It is your duty, and yours alone, to render such verdict under the law and the evidence as in your reason and conscience is true and just.

The state's attorney must open the argument. The defendant's attorneys may then argue the case. The state's attorney may then reply. No further argument is permitted by either side.

FILED
NOV 22 1996
MAVIS T. THOMPSON
CLERK, SUPREME COURT
BY DEPUTY

102

A-164

Electronically Filed - Supreme Court - March 22, 2013 - 05:48 PM CDT

VERDICT

As to Count I, we, the jury, find the defendant Tyrone Morant guilty of murder in the first degree as submitted in Instruction No. 5.

We assess and declare the punishment for murder in the first degree at imprisonment for life without eligibility for probation or parole.

William L. Gerard
FOREPERSON

FILED

NOV 22 1996

MAVIS T. THOMPSON
CLERK, CIRCUIT COURT
BY _____ DEPUTY

103

A-165

Electronically Filed - Supreme Court - March 22, 2013 - 05:48 PM CDT

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NOV 22 1993

MAVIS THOMPSON
CLERK, CIRCUIT COURT
BY Tyrone DEPUTY

VERDICT

As to Count II, we, the jury, find the defendant Morant, guilty of armed criminal action in connection with the offense of murder in the first degree as submitted in Instruction No. 12.

We, assess and declare the punishment for armed criminal action in connection with the offense of murder in the first degree at imprisonment for a term of 30 years.

William L. Howard

FOREPERSON

Select one of the following paragraphs and write it in the above blanks. If your selection is paragraph 2, insert the time period.

1. Life imprisonment.

2. Imprisonment for a term of _____* years.

* Insert period of time, but not less than three years.

Note: Unless you have found the defendant guilty of murder in the first degree as submitted in Instruction No. 8, you may not complete this verdict finding the defendant guilty of armed criminal action as submitted in Instruction No. 12.

104

A-166

Electronically Filed - Supreme Court - March 22, 2013 - 05:48 PM CDT

FILED
NOV 22 1996
MAVIS T. THOMPSON
CLERK, CIRCUIT COURT
BY _____ DEPUTY

VERDICT

As to Count III, we, the jury, find the defendant Tyrone Morant guilty of assault in the first degree as submitted in Instruction No. 15.

We assess and declare the punishment for assault in the first degree at Imprisonment for a term of 15 years.

William L. Howard
FOREPERSON

The following paragraph should be written in the above blank. Insert the time period.

Imprisonment for a term of ____* years.

*Insert period of time, but not less than five years nor more than fifteen years.

A-167

105

Electronically Filed - Supreme Court - March 22, 2013 - 05:48 PM CDT

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OF
JURY

VERDICT

As to Count IV, we, the jury, find the defendant, Tyrone Morant, guilty of armed criminal action in connection with the offense of assault in the first degree as submitted in Instruction No. 17.

We, assess and declare the punishment for armed criminal action in connection with the offense of assault in the first degree at imprisonment for a term of 30 years.

William L. Howard
FOREPERSON

Select one of the following paragraphs and write it in the above blanks. If your selection is paragraph 2, insert the time period.

1. Life imprisonment.

2. Imprisonment for a term of _____* years.

* Insert period of time, but not less than three years.

Note: Unless you have found the defendant guilty of assault in the first degree as submitted in Instruction No. 15, you may not complete this verdict finding the defendant guilty of armed criminal action as submitted in Instruction No. 17.

106

A-168

Electronically Filed - Supreme Court - March 22, 2013 - 05:48 PM CDT

FILED
NOV 22 1988
CLERK, CIRCUIT COURT
BY DEPUTY

VERDICT

As to Count V, we, the jury, find the defendant Tyrone Morant guilty of assault in the first degree as submitted in Instruction No. 19.

We assess and declare the punishment for assault in the first degree at imprisonment for a term of 15 years.

William L. Howard
FOREPERSON

The following paragraph should be written in the above blank. Insert the time period.

Imprisonment for a term of ____* years.

*Insert period of time, but not less than five years nor more than fifteen years.

107

A-169

Electronically Filed - Supreme Court - March 22, 2013 - 05:48 PM CDT

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MAR 22 2013
MAVIS
CIRCUIT COURT

VERDICT

As to Count VI, we, the jury, find the defendant Tyrone Morant, guilty of armed criminal action in connection with the offense of assault in the first degree as submitted in Instruction No. 21.

We, assess and declare the punishment for armed criminal action in connection with the offense of assault in the first degree at life imprisonment for a term of 30 years.

William L. Howard
FOREPERSON

Select one of the following paragraphs and write it in the above blanks. If your selection is paragraph 2, insert the time period.

1. Life imprisonment.

2. Imprisonment for a term of _____* years.

* Insert period of time, but not less than three years.

Note: Unless you have found the defendant guilty of assault in the first degree as submitted in Instruction No. 19, you may not complete this verdict finding the defendant guilty of armed criminal action as submitted in Instruction No. 21.

Electronically Filed - Supreme Court - March 22, 2013 - 05:48 PM CDT

INSTRUCTION NO. 13

As to Count II, if you do not find Tyrone Morant guilty of armed criminal action in connection with the offense of murder in the first degree, you must consider whether he is guilty of armed criminal action in connection with the offense of murder in the second degree.

As to Count II, if you find and believe from the evidence beyond a reasonable doubt:

First, that Tyrone Morant committed the offense of murder in the second degree, as submitted in Instruction No. 9, and

Second, that Tyrone Morant or Carlos Wade committed that offense by or with or through the use or assistance or aid of a deadly weapon,

then you are instructed that the offense of Armed criminal Action in connection murder in the second degree has occurred, and if you further find and believe from the evidence beyond a reasonable doubt:

Third, that with the purpose of promoting or furthering the commission of that Armed criminal Action in connection murder in the second degree, Tyrone Morant acted together with or aided Carlos Wade in committing that offense,

then you will find Tyrone Morant guilty under Count II of armed criminal action in connection with the offense of murder in the second degree.

However, unless you find and believe from the evidence beyond a reasonable doubt each and all of these propositions, you must find Tyrone Morant not guilty of that offense.

NOV 8 2013

CIRCUIT COURT DEPUTY

A-171

109

Electronically Filed - Supreme Court - March 22, 2013 - 05:48 PM CDT

Electronically Filed - Supreme Court - March 22, 2013 - 05:48 PM CDT

INSTRUCTION NO. B

One of the issues in this case is whether the Defendant, Tyrone Morant was present at 4236 Dr. Martin Luther King Drive on September 17, 1995 at 11:25 p.m. On that issue, you are instructed as follows:

1. The state has the burden of proving beyond a reasonable doubt that the Defendant was present at the time and place the offense is alleged to have been committed.

2. If the evidence in this case leaves in your mind a reasonable doubt that the defendant was present at 4258 Cote Brilliante on September 17, 1995 at 11:25 p.m., then you must find the Defendant, Tyrone Morant, not guilty.

FILED

NOV 2 1995

MAVIS T. THOMPSON
CLERK, CIRCUIT COURT
BY _____ DEPUTY

Refused:

Judge

308.04 ALIBI

111

A-172

The defence exhibit of the position of the Victims at the shooting site the one at the deposition the 8 x 15 sheet

William A. Howard

Home photo of Tyrones House

William A. Howard

Pictures of the Scene that night and the all body picture. except Bldg

William A. Howard

Pictures of Day time Shooting of 4236 Martin Luther King

William A. Howard

FILED

NOV 22 1996

MAVIS T. THOMPSON
CLERK, CIRCUIT COURT
BY _____ DEPUTY

112

A-173

Electronically Filed - Supreme Court - March 22, 2013 - 05:48 PM CDT

MISSOURI CIRCUIT COURT
TWENTY-SECOND JUDICIAL CIRCUIT
(St. Louis City)

State of Missouri

VS.

Tyrone Dessute Mount

CASE NO. 951-04326(6) DIVISION 11 11-21 19 96

COURT ORDER

Jury trial resumed

State by Asst. Circ. Attorney Mark W Hagemeister #40365

Deft in person and by Atty. Sandra Moore Dawson #30585

Jury continues deliberations at 9:40a.m.

Deliberations not concluded.

The jury will continue deliberations tomorrow, November 22, 1996 at 9:30a.m.

So Ordered

Judge #17636

FILED

NOV 21 1996

MAVIS T. THOMPSON
CLERK, CIRCUIT COURT
BY _____ DEPUTY

NANCY KUTTA

CR. C00603

(113)

102-305 (Rev 1-90)

A-174

Electronically Filed - Supreme Court - March 22, 2013 - 05:48 PM CDT

MISSOURI CIRCUIT COURT
TWENTY-SECOND JUDICIAL CIRCUIT
(St. Louis City)

State of Missouri

VS.

Tyrone Mylant

CASE NO. 95/4326B/ DIVISION 11-23 19 96

COURT ORDER

Defendant Mylant re-
quests an additional 10
days to file post trial
motion is granted

respectfully

[signature] Judge

11/22/96

So Ordered:

[signature] Judge

FILED

NOV 22 1996

MA[illegible]
CLERK, CIRCUIT COURT
BY

114

A-175

102-305 (Rev 1-90)

Electronically Filed - Supreme Court - March 22, 2013 - 05:48 PM CDT

OF MISSOURI)
) SS
CITY OF ST. LOUIS)

FILED
JAN 3 1997
MARIS T. THOMPSON
CLERK, CIRCUIT COURT
BY DEPUTY

IN THE CIRCUIT COURT OF ST. LOUIS CITY
TWENTY-SECOND JUDICIAL CIRCUIT
STATE OF MISSOURI

STATE OF MISSOURI,)
Plaintiff,)
v.)
TYRONE MORANT,)
Defendant.)

Case No.: 951-4326B
Division 11

MOTION FOR JUDGMENT OF ACQUITTAL
NOTWITHSTANDING THE VERDICT OF THE JURY
OR IN THE ALTERNATIVE FOR A NEW TRIAL

COMES NOW defendant, Tyrone Morant, by way of his attorney, Sandra Moore-Dyson and for his Motion for Judgement of Acquittal or in the Alternative, his Motion for a New Trial, states as follows:

1.) The trial court erred to the prejudice of the Defendant by refusing to grant the Defendant's Motion to Sever the trial in that evidence presented against the co-defendant was so injurious to the outcome of the case and of such a nature the Jury could not and were not able to compartmentalize the evidence as to each defendant. The Prosecution further assured that the Jury would not be able to differentiate by using language and terminology designed to cause the Jury to conclude the Defendants were gang members. Most references were made as to Carlos Wade as being one to get his "props", that his family was afraid of him. That Carlos Wade ran his household. These statements were not in reference to the

Overruled p.115
A-176 1/10/97 Judge

Electronically Filed - Supreme Court - March 22, 2013 - 05:48 PM CDT

Defendant Tyrone Morant. However were indistinguishable.

2.) The trial court erred to the prejudice of the Defendant by overruling Defendant's pre-trial motions to Suppress Evidence Statements and Identification. The show-up identification of defendant, Tyrone Morant, at or near the scene was suggestive as well as a show up type viewing of the defendant in the show up room, but without a proper line-up. By so ruling, the court denied the Defendant his right to a fair and impartial jury trial, pursuant to the Sixth and Fourteenth Amendments of the United States Constitution and Article I, Sections 10, 18(a), and 22(a) of the Missouri Constitution.

3.) The trial court erred to the prejudice of the Defendant by overruling Defendant's Motion to Declare Mistrial, when witness Johnny Bell blurted out references to participation in gangs himself and the Defendants.

4.) The trial court erred in overruling Defendant's Motion for Judgment of Acquittal at the Close of the Entire Case for the reason that the state failed to make a submissible case and prove beyond a reasonable doubt that Defendant committed the offense charged. ~~No evidence of agency was presented with regard to the Felony murder theory.~~ By so ruling, the court effectively denied the Defendant's right to a fair and impartial jury trial pursuant to the Sixth and Fourteenth Amendments of the United States Constitution and Article I, Sections 10, 18(a), and 22(a) of the

Electronically Filed - Supreme Court - March 22, 2013 - 05:48 PM CDT

Missouri Constitution.

5.) The trial court erred in denying Defendant's Motion to Dismiss the Indictment. By so ruling, the court effectively denied the Defendant's right to a fair and impartial jury trial pursuant to the Sixth and Fourteenth Amendments of the United States Constitution and Article I, Sections 10, 18(a), and 22(a) of the Missouri Constitution.

6.) The trial court erred to the prejudice of the Defendant by overruling Defendant's timely objections, the Jury Instructions in general. Said instructions were misleading in that the jurors felt that even though the Defendant did not commit the crimes, the fact that others did, per the instructions, they had to find the Defendant guilty inspite of the fact that there was no evidence that he acted with others.

WHEREFORE, Defendant prays that this court enter a judgment of acquittal notwithstanding the verdict or in the alternative grant a new trial.

Respectfully submitted,

Sandra Moore-Dyson, #31709
Attorney for Defendant
509 Olive, Ste. 805
St. Louis, MO 63101
(314) 421-5001

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Electronically Filed - Supreme Court - March 22, 2013 - 05:48 PM CDT

CERTIFICATE OF SERVICE

This certifies that a copy of the foregoing Motion for Judgment of Acquittal Notwithstanding the Verdict of the Jury or in the Alternative for a New Trial was hand delivered or mailed via U. S. Postal Service this 10th day of January, 1997 to: the Office of the Circuit Attorney at 1320 Market Street, Room 130, St. Louis, Missouri 63103.

Sandra Moore-Dyson

MISSOURI CIRCUIT COURT
TWENTY-SECOND JUDICIAL CIRCUIT
(St. Louis City)

State of Missouri

VS.

Tyrone Vincent

CASE NO. 951-06326 B DIVISION 11 1-10 1997

COURT ORDER

Defendants motion for Judgement of Acquittal notwithstanding the Verdict or in the Alternative for a new trial is Hereby heard & submitted and Overruled.

ATTY Keyes
40365

respectfully
Sandra Uphaus-Dyson
3120

So Ordered.

Judge

119

A-180

Electronically Filed - Supreme Court - March 22, 2013 - 05:48 PM CDT

MISSOURI CIRCUIT COURT
TWENTY-SECOND JUDICIAL CIRCUIT
(St. Louis City)

FILED
JAN 14 1997
MAVIS T. THOMPSON
CLERK CIRCUIT COURT
BY DEPUTY

State of Missouri

VS.

Tyrone Worsett

CASE NO. 957-4326-B DIVISION 11 1-10 19 97

COURT ORDER

After Hearing on Oral Motion to Determine Indigency of the Defendant, the Court finds that the Defendant is indigent for purposes of filing & prosecuting his appeal. Present Counsel will prepare necessary motion to proceed in forma pauperis and the notice of appeal within the requisite statute period

So Ordered: A-181 respectfully

Judge Presiding

Tyrone Worsett #31709

120

102-305 (Rev 1-90)

Electronically Filed - Supreme Court - March 22, 2013 - 05:48 PM CDT

FILED

FORM B

JAN 10, 1997

MAVIS T. THOMPSON
CLERK CIRCUIT COURT
BY _____ DEPUTY

STATE OF MISSOURI }
} SS
CITY OF ST. LOUIS }

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
STATE OF MISSOURI

STATE OF MISSOURI,
Plaintiff,

vs.

TYRONE DESANTE MORANT,
Defendant.

Cause No. 951 - 4326 B

Division No. 11

SENTENCE AND JUDGMENT

Now on this 10th day of January, 19 97, comes Mr. Mark Hagemeister, Attorney for the State of Missouri, and Defendant in person and by Ms. Sandra Moore-Dyson, Attorney for Defendant, in open court.

COUNT I

Whereupon, said Defendant is informed by this Court that he/~~she~~ has heretofore on the 22nd day of November, 19 96,

[X] Been found guilty by the (~~Court~~/Jury) Offense date: 9/17/95
[ ] Pleaded guilty

to ~~the~~ the offense of (charge and degree) Murder first degree, a Class A felony, and being now asked by the Court if he/~~she~~ has any legal cause to show why Sentence and Judgment should not be pronounced against him/~~her~~ according to the law, and still failing to show such cause, it is therefore the Sentence, Order and Judgment of this Court that Defendant, Tyrone Desante Morant, (having been found guilty/~~having pleaded guilty~~), as aforesaid, (and in accordance with the punishment heretofore assessed by the jury), be and is hereby ordered committed to the Missouri Department of Corrections for a period of life ~~years, said sentence to be served concurrently/consecutively) to the sentence imposed in (offense, cause number, court and date of conviction~~)

without eligibility for probation or parole.

- Y21

A-182

FILE COPY

Electronically Filed - Supreme Court - March 22, 2013 - 05:48 PM CDT

STATE OF MISSOURI }
City of St. Louis } ss.

I, Freeman R. Bosley, Jr., Clerk of the Circuit Court of the City of St. Louis, certify that the foregoing is a full, true and complete copy of the Sentence and Judgment in Cause Number, 95A-43268

the State of Missouri, Plaintiff, vs. Tyrone Desante Mason defendant, as fully the same appears of record and on file in my office.

(SEAL)

WITNESS my hand and the seal of said Court hereto affixed, at office, in the City of St. Louis, this 16th day of January 1996

Marvin D Thompson
Clerk of the Circuit Court

By M Weber
Deputy Clerk

122

A-183

Electronically Filed - Supreme Court - March 22, 2013 - 05:48 PM CDT

SUPPLEMENTAL SENTENCE AND JUDGMENT FORM

Cause No. 951-4326 B Division No. 11

Offense date: 9/17/95

COUNT II

Whereupon, said Defendant is informed by this Court that he/~~she~~ has heretofore on the 22nd day of November, 19 96,

[X] Been found guilty by the (~~Court~~/Jury)
[ ] Plead guilty

on Count II to the offense (offense and degree) Armed criminal action, a Class A felony and being now asked by the Court if he/~~she~~ has any legal cause to show why Sentence and Judgment should not be pronounced against him/~~her~~ according to the law, and still failing to show such cause, it is therefore the Sentence, Order and Judgment of this Court that Defendant, Tyrone Desante Morant (having been found guilty/~~having pleaded guilty~~) as aforesaid, (and in accordance with the punishment heretofore assessed by the Jury) be and is hereby ordered committed to the Missouri Department of Corrections for a period of 30 years, said sentence to be served (~~concurrently~~/consecutively) to the sentence imposed in (offense, cause number, court and date of conviction): Count I.

305-Z REV. 2/91

A-184

FILE COPY

Electronically Filed - Supreme Court - March 22, 2013 - 05:48 PM CDT

STATE OF MISSOURI, }
City of St. Louis } ss.

I, Freeman R. Bosley, Jr., Clerk of the Circuit Court of the City of St. Louis, certify that the foregoing is a full, true and complete copy of the Sentence and Judgment in Cause Number, 951-4326B

the State of Missouri, Plaintiff, vs. Thomas Dewayne Mercer

defendant, as fully the same appears of record and on file in my office.

WITNESS my hand and the seal of said Court hereto affixed, at office, in the City of St. Louis, this 10th day of January 19 97

(SEAL)

Marcia D Thompson

Clerk of the Circuit Court

By N Welch

Deputy Clerk

124

A-185

Electronically Filed - Supreme Court - March 22, 2013 - 05:48 PM CDT

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SUPPLEMENTAL SENTENCE AND JUDGMENT FORM

Cause No. 951-4326B Division No. 11

Offense date: 9/17/95

COUNT III

Whereupon, said Defendant is informed by this Court that he/~~she~~ has heretofore on the 22nd day of November, 19 96,

[X] Been found guilty by the (~~Court~~/ Jury)
[ ] Plead guilty

on Count III to the offense (offense and degree) Assault first degree, a Class B felony and being now asked by the Court if he/~~she~~ has any legal cause to show why Sentence and Judgment should not be pronounced against him/her according to the law, and still failing to show such cause, it is therefore the Sentence, Order and Judgment of this Court that Defendant, Tyrone Desante Moran (having been found guilty/~~having pleaded guilty~~) as aforesaid, (and in accordance with the punishment heretofore assessed by the Jury) be and is hereby ordered committed to the Missouri Department of Corrections for a period of 15 years, said sentence to be served (~~concurrently~~/consecutively) to the sentence imposed in (offense, cause number, court and date of conviction): Count II.

305-Z REV. 2/91

A-186

FILE COPY

STATE OF MISSOURI }
City of St. Louis } ss.

I, Freeman R. Bosley, Jr., Clerk of the Circuit Court of the City of St. Louis, certify that the foregoing is a full, true and complete copy of the Sentence and Judgment in Cause Number 951-4326B

the State of Missouri, Plaintiff, vs. Byron Desante Morant

defendant, as fully the same appears of record and on file in my office.

WITNESS my hand and the seal of said Court hereto affixed, at office in the City of St. Louis, this 10th day of January 19 97

(SEAL)

Morris S Thompson
Clerk of the Circuit Court

By N Webb
Deputy Clerk

126

A-187

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SUPPLEMENTAL SENTENCE AND JUDGMENT FORM

Cause No. 951-4326 B Division No. 11

Offense date: 9/17/95

COUNT IV

Whereupon, said Defendant is informed by this Court that he/~~she~~ has heretofore on the 22nd day of November, 19 96,

[X] Been found guilty by the (~~Court~~/ Jury)
[ ] Plead guilty

on Count IV to the offense (offense and degree) Armed criminal action, a Class A Felony and being now asked by the Court if he/~~she~~ has any legal cause to show why Sentence and Judgment should not be pronounced against him/~~her~~ according to the law, and still failing to show such cause, it is therefore the Sentence, Order, and Judgment of this Court that Defendant, Tyrone Desante Morant (having been found guilty/~~having pleaded guilty~~) as aforesaid, (and in accordance with the punishment heretofore assessed by the Jury) be and is hereby ordered committed to the Missouri Department of Corrections for a period of 30 years, said sentence to be served (~~concurrently~~/consecutively) to the sentence imposed in (offense, cause number, court and date of conviction): Count III.

127

305-Z REV 2/91

A-188

FILE COPY

STATE OF MISSOURI }
City of St. Louis } ss.

I, Freeman R. Bosley, Jr., Clerk of the Circuit Court of the City of St. Louis, certify that the foregoing is a full, true and complete copy of the Sentence and Judgment in Cause Number, 951-04326B

the State of Missouri, Plaintiff, vs. Wayne Desante Mount

defendant, as fully the same appears of record and on file in my office.

(SEAL)

WITNESS my hand and the seal of said Court hereto affixed, at office, in the City of St. Louis, this 16th day of January 19 97

Marcus L. Thompson
[redacted]
Clerk of the Circuit Court

By M Welch
Deputy Clerk

128

A-189

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SUPPLEMENTAL SENTENCE AND JUDGMENT FORM

Cause No. 951-4326 B Division No. 11

Offense date: 9/17/95

COUNT V

Whereupon, said Defendant is informed by this Court that he/she ~~has~~ heretofore on the 22nd day of November, 19 96,

[X] Been found guilty by the (~~Court~~/Jury)
[ ] Plead guilty

on Count V to the offense (offense and degree) Assault first degree, a Class B felony and being now asked by the Court if he/~~she~~ has any legal cause to show why Sentence and Judgment should not be pronounced against him/~~her~~ according to the law, and still failing to show such cause, it is therefore the Sentence, Order and Judgment of this Court that Defendant, Tyrone Desante Morant (having been found guilty/~~having pleaded guilty~~) as aforesaid, (and in accordance with the punishment heretofore assessed by the Jury) be and is hereby ordered committed to the Missouri Department of Corrections for a period of 15 years, said sentence to be served (~~concurrently~~/consecutively) to the sentence imposed in (offense, cause number, court and date of conviction): Count IV.

129

305-Z REV. 2/91

A-190

FILE COPY

Electronically Filed - Supreme Court - March 22, 2013 - 05:48 PM CDT

STATE OF MISSOURI, City of St. Louis } ss.

I, Freeman R. Bosley, Jr., Clerk of the Circuit Court of the City of St. Louis, certify that the foregoing is a full, true and complete copy of the Sentence and Judgment in Cause Number, 951-4326B

the State of Missouri, Plaintiff, vs. Tyrone Desante Mozee

defendant, as fully the same appears of record and on file in my office.

WITNESS my hand and the seal of said Court hereto affixed, at office, in the City of St. Louis, this 10th day of January 19 97

(SEAL)

Marie B Thompson
Clerk of the Circuit Court

By _____
Deputy Clerk

130

A-191

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Electronically Filed - Supreme Court - March 22, 2013 - 05:48 PM CDT

SUPPLEMENTAL SENTENCE AND JUDGMENT FORM

Cause No. 951-4326 B Division No. 11

Offense date: 9/17/95

COUNT VI

Whereupon, said Defendant is informed by this Court that he/~~she~~ has heretofore on the 22nd day of November, 19 96,

[X] Been found guilty by the (~~Court~~/Jury)
[ ] Plead guilty

on Count VI to the offense (offense and degree) Armed criminal action, a Class A felony, and being now asked by the Court if he/~~she~~ has any legal cause to show why Sentence and Judgment should not be pronounced against him/her according to the law, and still failing to show such cause, it is therefore the Sentence, Order and Judgment of this Court that Defendant, Tyrone Desante Morant (having been found guilty/~~having pleaded guilty~~) as aforesaid, (and in accordance with the punishment heretofore assessed by the Jury) be and is hereby ordered committed to the Missouri Department of Corrections for a period of 30 years, said sentence to be served (~~concurrently~~/consecutively) to the sentence imposed in (offense, cause number, court and date of conviction): Count V.

131

305-Z REV. 2/91

A-192

FILE COPY

STATE OF MISSOURI }
City of St. Louis } ss.

I, Freeman R. Bosley, Jr., Clerk of the Circuit Court of the City of St. Louis, certify that the foregoing is a full, true and complete copy of the Sentence and Judgment in Cause Number, 951-4326B the State of Missouri, Plaintiff, vs. Tyrone Delsonte Mosley defendant, as fully the same appears of record and on file in my office.

WITNESS my hand and the seal of said Court hereto affixed, at office, in the City of St. Louis, this 10th day of January 19 97

(SEAL)

MAVIS T. THOMPSON
CLERK OF THE CIRCUIT COURT
CIVIL COURTS BUILDING
ST. LOUIS, MO 63101

By R. Welch
Deputy Clerk

132

A-193

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FORM B

Defendant has been advised of his/~~her~~ rights under Rule 24.035/29.15 and the Court has found (~~probable cause~~/no probable cause) to believe that Defendant has received ineffective assistance of counsel.

Defendant shall receive credit for jail time prior to transfer to the Department of Corrections.

It is further ordered and adjudged by this Court that the $5.00 Crime Victim Compensation Fee be assessed against the Defendant, payable to the Circuit Clerk, and that execution issue thereon.

[X] It is further ordered and adjudged by this Court that court costs be taxed against Defendant and execution issue thereon.

[X] It is further ordered and adjudged by this Court that the State of Missouri have and recover of the Defendant the sum of $ ~~408.00~~ for Crime Victim Compensation.

Defendant remanded to the custody of the Sheriff to be transported and delivered to the MDC, forthwith.

SO ORDERED:

Circuit Judge

Dated: January 10, 1997

[X] See attached Supplemental Sentence and Judgment Form(s) which is/are made a part hereto.

133

A-194

7.

FILE COPY

Electronically Filed - Supreme Court - March 22, 2013 - 05:48 PM CDT

STATE OF MISSOURI, }
City of St. Louis } ss.

I, Freeman R. Bosley, Jr., Clerk of the Circuit Court of the City of St. Louis, certify that the foregoing is a full, true and complete copy of the Sentence and Judgment in Cause Number, 951-4326B

the State of Missouri, Plaintiff, vs. Tyrone Desate Mount

defendant, as fully the same appears of record and on file in my office.

(SEAL)

WITNESS my hand and the seal of said Court hereto affixed, at office, in the City of St. Louis, this 16 day of January 19 97

Maria D Thompson

[redacted]

Clerk of the Circuit Court

By

Deputy Clerk

134

A-195

Electronically Filed - Supreme Court - March 22, 2013 - 05:48 PM CDT

FILED
1997
CLERK
BY DEPUTY

MISSOURI CIRCUIT COURT
TWENTY-SECOND JUDICIAL CIRCUIT
(St. Louis City)

STATE OF MISSOURI,

Plaintiff,

vs.

TYRONE SANTE MORANT,

Defendant.

Cause No. 951-4326B

Division No. 11

ORDER

The court, having found the above named defendant to be indigent and having sustained defendant's motion to appeal in forma pauperis, hereby appoints Ms. Deborah Wafer, District Public Defender, Appellate Division, to represent defendant.

SO ORDERED:

Judge

Dated: January 14, 1997

cc: Ms. Deborah Wafer, P.D., Appellate Div.
Mr. Mark Hagemeister, Assistant Circuit Attorney
Ms. Sandra Moore-Dyson, Attorney at Law
Defendant

135

A-196

Electronically Filed - Supreme Court - March 22, 2013 - 05:48 PM CDT

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IN THE MISSOURI COURT OF APPEALS
EASTERN DISTRICT

APPEAL NO. 71966

CRIMINAL CASE INFORMATION FORM
This form must be filed with the Notice of Appeal with the Circuit Clerk

Party	Attorney
STATE OF MISSOURI	Attorney General Supreme Court Building Jefferson City, MO 65102 (573) 751-3321
v.	
TYRONE DESANTE MORANT	Deborah B. Wafer Bar No. 29351 1221 Locust #410 St. Louis, MO 63103 (314) 340-7658

A BRIEF STATEMENT OR DESCRIPTION OF THE CASE (Set forth charge(s) and sentence(s) imposed and summary of facts upon which conviction is based.)

Appellant's counsel did not represent appellant at trial and at present has no knowledge of the facts upon which the conviction is based.

Is this a ___Misdemeanor _X__Felony or ___Municipal Conviction?
Is the Defendant presently incarcerated? _X__Yes ____No
Has an Appeal Bond been filed? ____Yes _X__No

If Yes, Amount $_____

_____
Name of Surety

_____
Address of Surety

_____
City, State, Zip Code

ATTACH COPY OF APPEAL BOND, IF ANY.

FILED
FEB 18 1997
MAVIS T. THOMPSON
CLERK, CIRCUIT COURT
BY _____ DEPUTY

136

A-197

FILED
CIRCUIT CLERK'S OFFICE
MAVIS T. THOMPSON
1997 JAN 22 P 3:36
ROOM 305
CLERK

STATE OF MISSOURI)
)SS
CITY OF ST. LOUIS)

IN THE CIRCUIT COURT FOR THE CITY OF ST. LOUIS
STATE OF MISSOURI

STATE OF MISSOURI)
Plaintiff,)
vs.)
TYRONE SANTE MORANT,)
Defendant,)

Cause No. 951-4326B (6)
Divison No. 11

CIRCUI
MAVI
'97 JAN 22 P2
FILE ROOM
CL

MOTION TO PERFECT APPEAL AS A POOR PERSON

Comes now the Defendant in the above-entitled cause and states to the Court that he wishes to take an appeal from the judgment and sentence of Divison 11 of the Twenty-Second Judicial Circuit but that he is totally without funds or resources of any nature to enable him to obtain a transcript on appeal or to pay any expenses incidental to said appeal.

WHEREFORE, Defendant prays the Court permit him to perfect his appeal as a poor person.

Respectfully submitted,

Sandra Moore-Dyson
Attorney for Defendant
509 Olive, Suite 805
St. Louis, MO 63101
(314) 421-5001

CERTIFICATE OF SERVICE

This certifies that a copy of the foregoing Motion to Withdraw was mailed via U. S. Postal Service this 16th day of January, 1997 to: Mark Hagemeister, Assistant Circuit Attorney, 1320 Market Street,

A-198 (137)

Electronically Filed - Supreme Court - March 22, 2013 - 05:48 PM CDT

Sandra Moore-Dyson

Electronically Filed - Supreme Court - March 22, 2013 - 05:48 PM CDT

In the Missouri Court of Appeals
Eastern District

FILED
FEB 18 1997
MAVIS T. THOMPSON
CLERK, CIRCUIT COURT
BY mt DEPUTY

STATE OF MISSOURI,

Respondent,

vs.

TYRONE D. MORANT,

Appellant.

No. 71966

Circuit Court of the
City of St. Louis,
No. 951-4326B(6)

TO THE CLERK OF THE CIRCUIT COURT OF THE CITY OF ST. LOUIS IN THE ABOVE ENTITLED CAUSE:

Appellant's motion for leave to file a late Notice of Appeal is GRANTED. Appellant is granted fifteen days after receipt of this order by the Clerk of the Circuit Court to file a Notice of Appeal.

STATE OF MISSOURI,
City of St. Louis } ss.

I, DEIRDRE O'MEARA SMITH, Clerk of the Missouri Court of Appeals, Eastern District, certify that the foregoing is a true copy of the ~~opinion~~ order delivered by this court in the foregoing entitled cause on the 14th day of February, 1997, as fully as the same appears on file in my office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, at office, in the City of St. Louis this 14th day of February, 1997.

Deirdre O'Meara Smith
Clerk, Missouri Court of Appeals, Eastern District

A-200

139

Electronically Filed - Supreme Court - March 22, 2013 - 05:48 PM CDT

FEB 11 RECD

In the Missouri Court of Appeals
Eastern District

FILED
FEB 18 1997
MAVIS T. THOMPSON
CLERK, CIRCUIT COURT
BY ____ DEPUTY

MOTION RULINGS OF FEBRUARY 10, 1997

71804 Lockwood, Lynn, Resp. vs. Lockwood, Dale, App.
On the court's own mtn., the above styled appeal is hereby dismissed for failure to comply with Eastern District Rule 300 and notice of this court mailed on January 17, 1997.

71806 State of Missouri, Resp. vs. Tinker, Bennie, App.
On the court's own motion, the above styled appeal is hereby dismissed for failure to comply with Eastern District Rule 300 and notice of this court mailed on January 17, 1997.

71809 Boatmen's Trust Co., Resp. vs. Rohlfing, Stanford, App.
On the Court's own mtn., the above styled appeal is hereby dismissed for failure to comply with Eastern District Rule 300 and notice of this court mailed on January 17, 1997.

71966 State of Missouri, Resp. vs. Morant, Tyrone, App.
App. mtn for leave to file a late NOA is granted. App. is granted 15 days after receipt of this order by the Clerk of the Circuit Court to file a NOA is the Circuit Court.

72000 State of Missouri, Resp. vs. Flency, Markess, App.
App. mtn for leave to file a late NOA is granted. App. is granted 15 days after receipt of this order by the Clerk of the Circuit Court to file a NOA in the Circuit Court.

72001 State of Missouri, Resp. vs. Breakfield, Nicholas, App.
App. mtn for leave to file a late NOA is granted. App. is granted 15 days after receipt of this order by the Clerk of the Circuit Court to file a NOA in the Circuit Court.

IMPORTANT NOTICE: PLEASE BE ADVISED THAT YOUR EXTENSION OF TIME MAY NOT HAVE BEEN GRANTED FOR THE TIME REQUESTED. PLEASE BE SURE TO VERIFY YOUR EXTENSION DUE DATE. IF A MOTION FOR EXTENSION OF TIME TO FILE THE ~~TRANSCRIPT~~ WAS REQUESTED, NOTIFY THE COURT REPORTER OF THE DUE DATE.

A-201

140

Electronically Filed - Supreme Court - March 22, 2013 - 05:48 PM CDT

Electronically Filed - Supreme Court - March 22, 2013 - 05:48 PM CDT

IN THE CIRCUIT COURT IN AND FOR THE CITY OF ST. LOUIS

STATE OF MISSOURI

STATE OF MISSOURI, Respondent, v. TYRONE DESANTE MORANT, Appellant.	)	Appeal No. 71966 Circuit No. 951-4326B Division No. 11

NOTICE OF APPEAL TO THE MISSOURI COURT OF APPEALS
EASTERN DISTRICT

Notice is hereby given that Tyrone DeSante Morant appeals to the Missouri Court of Appeals, Eastern District. Leave to appeal as a poor person has been granted.

Clerk's filing stamp :

FILED
FEB 18 1997
MAVIS T. THOMPSON
CLERK, CIRCUIT COURT
BY mk DEPUTY

Deborah B. Wafer
Attorney for Appellant

Case Information

Appellant's Attorney:

Deborah B. Wafer
District Defender
1221 Locust St., Suite 410
St. Louis, MO 63103
TEL: (314) 340-7658

Respondent's Attorney:

Attorney General
Supreme Court Building
Jefferson City, MO 65102

Appellant: Tyrone DeSante Morant
Reg. No. 525825
Missouri Departmnt of Corrections

Court Reporters: Carol Vagen, Nancy Kutta, Sherry Marshall

Date of Judgment: January 10, 1997; copy of judgment attached.

141

A-202

Brief Description of Case: Appellant was convicted after jury trial of one count of murder first degree, two counts of assault first degree and three counts of armed criminal action. He was sentenced to a total term of life imprisonment without probation or parole.

MEMORANDUM OF THE CLERK

I have this day mailed a copy of this Notice of Appeal to the Attorney General, Box 899, Jefferson City, MO 65102, and served a copy thereof on the Circuit Attorney of the City of St. Louis and mailed a copy together with a copy of the memorandum granting leave to appeal as a poor person to the Clerk, Missouri Court of Appeals, Eastern District.

MAVIS T. THOMPSON

Circuit Clerk

DATE: Feb 18, 1997

By Michelle Holman

142

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Electronically Filed - Supreme Court - March 22, 2013 - 05:48 PM CDT

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STATE OF MISSOURI
CITY OF ST. LOUIS } ss.

I, MAVIS T. THOMPSON, CLERK OF THE CIRCUIT COURT, CITY OF ST. LOUIS, within and for the City and State aforesaid (said Court being a Court of Record, having a Clerk and official Seal), do hereby certify that the annexed and foregoing are full, true copies of certain portions of the trial record, proceedings, and evidence previously adduced writing and filed in the Circuit Court of the City of St. Louis, to-wit: Judges Docket Sheets; Notice of Appeal; Sentence and Judgment; Court Order dated 1/10/96; Court order dated 1/10 Motion For Judgment Of Acquittal Notwithstanding The Verdict Of The Jur Or In The Alternative For A New Trial (Overruled); Motion To Sever Tria Attachment A; Memorandum Of Law; Jury Trial Resumes dated 11/22/96(4 pa Verdict (Cts. I,II,III,IV,V,& VI); Memorandum of Court Defendant's Mora requests for an additional 10 days to file post trial motion; Memoranc of Court dated 11/14/96; Instruction No. (1-28); Instruction No.(13 Rep Instruction No. (B) Refused; Memorandum filed on November 19,1996(defen exhibit); Jury Trial Resumes dated 11/21/96; Sworn Jury List; Jury Pane List; Jury Trial Resumes dated 11/20/96 and 11/19/96; Defendant's Motio Judgment Of Acquittal At The Close Of All The Evidence(Overruled); in the cause aforesaid, as fully as the same remains among the records and files of said Court in my office.

(continued on next page)

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, at office, in the City of St. Louis,

this 16th day of April, 19 97

MAVIS T. THOMPSON
CLERK, CIRCUIT COURT

By Michelle Holmes Deputy

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STATE OF MISSOURI }
CITY OF ST. LOUIS } ss.

I, MAVIS T. THOMPSON, CLERK OF THE CIRCUIT COURT, CITY OF ST. LOUIS, within and for the City and State aforesaid (said Court being a Court of Record, having a Clerk and official Seal), do hereby certify that the annexed and foregoing are full, true copies of certain portions of the trial record, proceedings, and evidence previously adduced writing and filed in the Circuit Court of the City of St. Louis, to-wit: (continued from previous page)

Jury Trial Resumes dated 11/18/96; Order, Defendant's Motion to sever t submitted and(overruled); Motion To Sever Trial And Suggestions In Suppo Thereof; Motion To Sever Trial; Endorsements; Motion To Server Defendants; Motion To Suppress Statements; Motion To Suppress Identification(Overruled Motion To Suppress Evidence; Request For Discovery; Court Order Arraignedm Request For Disclosure; Indictment.

in the cause aforesaid, as fully as the same remains among the records and files of said Court in my office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, at office, in the City of St. Louis,

this 16th day of April, 1997

MAVIS T. THOMPSON
CLERK, CIRCUIT COURT

By Mackelee Holmes
Deputy

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IN THE MISSOURI COURT OF APPEALS
EASTERN DISTRICT

STATE OF MISSOURI, Respondent, vs. CARLOS WADE and TYRONE MORANT, Appellants.	)	Appeal No. 71991 and 71966

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
STATE OF MISSOURI
Honorable Floyd McBride, Judge

STATE OF MISSOURI, Plaintiff, vs. CARLOS WADE, and TYRONE MORANT Defendants.	)	Cause No. 951-4326A and 951-4326B

TRANSCRIPT ON APPEAL

MR. MARK HAGEMEISTER
Assistant Circuit Attorney
1320 Market Street
St. Louis, MO 63103
on behalf of the State of Missouri;

MS. BEVERLY BEIMDIEK
Public Defender
1320 Market Street
St. Louis, MO 63103
on behalf of the Defendant Wade;

CAROL A. VAGEN, RPR, CCR
OFFICIAL COURT REPORTER
TWENTY-SECOND JUDICIAL CIRCUIT

Exhibit 4

MS. SANDRA MOORE-DYSON
509 Olive
St. Louis, Mo. 63101

on behalf of Defendant Morant.

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(The following Pretrial Motions were held on October 18, 1996. The State was represented by Mr. Mark Hagemeister, Assistant Circuit Attorney. The Defendant, Carlos D. Wade, was present in person and represented by his attorney, Ms. Beverly Beimdiek, Special Public Defender. Mr. Tyrone Morant was present and in person and represented by his attorney, Ms. Sandra Moore-Dyson.)

THE COURT: Let the record show that the following cases are before the Court this afternoon, Cause Number 951-04326A, State of Missouri versus Carlos B. Wade, let the record show the defendant is present in person and by his attorney, Ms. Beverly Beimdiek, Special Public Defender, and Cause Number 951-04326B, State of Missouri versus Tyrone D. Morant, let the record further show the defendant is present in person and by his attorney, Miss Sandra Moore-Dyson.

The matter before the Court is the defendant Wade's Motion in Limine, is that correct, counsel?

MS. BEIMDIEK: Yes, Your Honnr. 1 have a motion related to jury instructions also.

THE COURT: Very well.

MS. BEIMDIEK: At this time 1 ask the Motions in Limine we take up at this time.

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THE COURT: We'll take both of them up since notice has been given. Any objection, Mr. Hagemeister?

MR. HAGEMEISTER: No, sir.

THE COURT: Let's take up the motion, defendant's Motion in Limine first. Paragraph one of the motion is an attempt to exclude evidence relating to alleged prior uncharged acts of shootings between Carlos Wade and John Allen and Johnnie Bell. Is that an issue in this cause, Mr. Hagemeister?

MR. HAGEMEISTER: Yes, Judge.

THE COURT: Ms. Beimdiek, you may be heard as to paragraph one.

MS. BEIMDIEK: Thank you, Your Honor. The State has now indicated they do, 1 assume, intend to offer evidence that there was an alleged prior shooting and that involved the defendant and the victim and a surviving State's witness.

1 would ask all of those references be excluded as constituting evidence of uncharged crimes and being highly prejudicial, probative value being less than the prejudicial affect of any testimony relating to several prior shootouts that Johnnie Bell has described through depositions that have been conducted in this matter.

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I have some cases that I believe are on point relating to evidence of uncharged crimes, one of them is State vs. Bernard, Missouri Supreme Court decision, says the admission of evidence of uncharged crimes, that the law relating to the admission of evidence of uncharged crimes, wrongs, or acts is that evidence of prior uncharged crimes is inadmissible for purposes of showing tendency of the defendant, 894 S.W.2d 10, 1993.

There's a new opinion on June 24th, 1996, a Southern District appellate decision that talks about allowing in evidence of uncharged crimes. That matter was reversed for allowing that in. I can make the cases available to the Court and to opposing counsel.

THE COURT: What is the holding in the Supreme Court decision?

MS. BEIMDIEK: This case was reversed. This was a sex case and evidence of other sex offenses were admitted at trial. The Court reversed saying that was improper.

THE COURT: But there is an authority, is there not, for admission of evidence of uncharged crimes if they show a motive or intent or absence of accident or common scheme or plan?

MS. BEIMDIEK: I think the Court then has to

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weigh the prejudicial effect in that scenario. I ask the Court to do that and consider the extremely prejudicial effect of allowing evidence that Carlos Wade has in some way been involved in prior shootings. He's on trial for a shooting, and that would, clearly that would be very prejudicial to him.

THE COURT: It certainly would. However, it may be admissible under certain circumstances. Do you anticipate, Mr. Hagemeister, that there is evidence that would show the motive or intent of this defendant --

MR. HAGEMEISTER: Yes, Judge.

THE COURT: -- to murder John Allen as alleged in Count I?

MR. HAGEMEISTER: Yes, Judge.

THE COURT: What do you anticipate that evidence to be? When would --

MR. HAGEMEISTER: Do you want me to give you examples?

THE COURT: No. When did this alleged prior shooting occur, date wise?

MR. HAGEMEISTER: Well, it begins approximately two to three years prior, where these two defendants, along with a couple of their friends, get into altercations with the victim and the witness

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in this case. There are shots fired at the victim's house.

People have identified Carlos and Tyrone as the two, the two defendants as having assaulted the two, the victim and the witness in this case, just a month or two prior, that they had come by in a black Cherokee with a friend named Demetrius and shot at them just a week after that.

THE COURT: Well, is it your contention that the State will adduce evidence that both defendants at some prior point in time shot at the deceased?

MR. HAGEMEISTER: Correct. And the witness. And at the witness. On more occasions than I believe the Court would care to hear at this point. And with different witnesses, in many of the occasions, to back up the statements of the witness as to the ongoing dispute between he and his, and the victim and the two defendants.

Not to mention the fact that there are allegations that at least one of the two defendants has been involved in a shooting of the victim's little brother, which has left him paralyzed, and that there is some ongoing motivation on their part against John Allen due to an ongoing number of shootings, Brian Jennings, Dwight A-June Bagga, Antonia Hickman, Otis

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K-Dog, which I have the real names on another sheet, this is my quick sheet.

We have also multiple drivebys, multiple coming through gangways and shooting at people as they sit on the porch in front of their homes, and just an ongoing soap opera of people setting people up to get them shot.

THE COURT: Well, obviously those incidents are not admissible in this case if the person shot at was not one of the victims.

MR. HAGEMEISTER: Or witnesses.

THE COURT: Or witnesses alleged by the State. Well, Bell is a victim, too.

MR. HAGEMEISTER: Yes, that's correct, sir.

THE COURT: Or am I wrong?

MR. HAGEMEISTER: You're correct.

THE COURT: Was it Count III that is assault first degree against Mr. Bell, Johnnie Bell?

MR. HAGEMEISTER: Yes, sir. It also indicates part of one of the ID's is a voice identification of a defendant, Carlos Wade, muttering a comment something along the lines of, MF sissies.

With regard to those statements, it will become necessary for the State to explain why it is that this particular statement brings, besides the

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actual voice pattern, the actual words being used are words that the witness can testify are only used by this defendant in describing he and the victim because he calls them sissies due to their lack of retaliation for prior bad acts by Carlos Wade and his associates against the victim's friends and family. That will become necessary to explain as part of an identification of the shooter by the witness.

THE COURT: Let the record show with reference to paragraph one of defendant's Motions in Limine sustained in part and overruled in part. The Court will not exclude such evidence, however, it's not to be mentioned or attempted to be introduced into evidence until the Court has had an opportunity to determine whether the evidence is admissible.

MR. HAGEMEISTER: Yes, sir.

THE COURT: Further, you have ten days to submit a short memorandum and this will apply to all sections of this motion and the other motion to be heard of your legal position and your authorities. Is that clear?

MR. HAGEMEISTER: Yes, Your Honor.

MS. BEIMDIEK: Yes, Your Honor.

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THE COURT: These cases are set for trial, to my recollection, on November the 12th of this year?

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Is that correct?

MR. HAGEMEISTER: Yes, sir.

THE COURT: Number 2. Is that an issue in the case?

MR. HAGEMEISTER: Yes, sir.

THE COURT: That will be sustained as stated that is clearly hearsay, what she heard on the street, and would not be admissible.

MR. HAGEMEISTER: With regard to the second half of that paragraph, the State takes opposition to the statement by the defense that because the State has provided no information suggesting Angela Hickman is an eyewitness to the shooting, Hickman may have relevant testimony --

THE COURT: The Court is not ruling on what relevant and admissible testimony the witness may have. The Court is ruling on, when you say it's an issue that she's expected to say this, she heard, quote, through information on the street that Carlos was one of the subjects responsible for shooting John Allen.

MR. HAGEMEISTER: I understand that, Judge, that's obvious to me, too.

THE COURT: That's ruled upon. Number 3. Is that an issue?

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MR. HAGEMEISTER: Yes, Judge. There are notes in my file regarding threats being made, I believe one of them was actually by the brother of Carlos Wade and he actually had indicated that if our second victim, Angela Hickman, testified and caused Carlos to go to jail, that Angela would go to hell.

There's also indications, I'm having it researched now as to whether or not somebody who has been threatened, had people call Demetrius Butler, who is calling on Johnnie Bell's pager quite a few times, there's an indication that he apparently was shot in the arm the same night of the homicide and there were threats made over the pager --

THE COURT: You're saying these are not made by the defendants but by relatives of the defendants?

MR. HAGEMEISTER: Relatives and friends. But there is also the potential that they would be admissible to show that -- a lack of bias on the part of the witness. If the defense, if there's a question as to why that person would get up on the stand and make this up, especially considering the fact that by doing it she's incurring the rath of the defendants, it goes to her credibility.

THE COURT: Miss Beimdiek?

MS. BEIMDIEK: Judge, I believe that it is

clearly hearsay to offer evidence that someone other than the defendant has made any statements to discourage a witness from talking. Now if that witness, if the State wants to bring in whoever they believe made these threats and ask them in open court if they have done so and if they did so at the request of Carlos Wade that would be a different matter.

But no witness has been endorsed who is also the subject of any communication or alleged communication with these witnesses and at this time I strongly -- any testimony from any surviving victim or witness would constitute hearsay.

THE COURT: Very well. Paragraph 3 is sustained.

MR. HAGEMEISTER: Object.

THE COURT: Next paragraph, Paragraph 4. Well, again, we have clear hearsay alleged that by, from one Det. Hornak, is that an issue?

MR. HAGEMEISTER: Only to the respect of it will be important to explain to the jury why the detective went and subsequent to hearing and getting this information, pulled the LID photo of the defendant Carlos Wade to place it into a photo spread which will go to the issue on a motion to suppress identification and suggestiveness.

With regard to why he went ahead and pulled that photograph, it becomes necessary for us to explain he didn't pull that name out of thin air.

MS. BEIMDIEK: I think that's not going to present a problem because I believe the State has a surviving witness who will say they provided that information. That's -- I can't challenge that.

MR. HAGEMEISTER: All right.

THE COURT: Provide what information?

MS. BEIMDIEK: They told the detectives the name of the people they believed were responsible for the shootings.

THE COURT: The witnesses to the shooting?

MS. BEIMDIEK: Yes. And obviously there will be a lot to testify to what they were told they'd be allowed to testify. Hornak will say he got this from some other source who will not be coming to testify. I'm unaware who the source will be if the person is not allowed to come in and be questioned. If they had information about who was responsible, I don't think it would --

MR. HAGEMEISTER: I have to correct something. The witnesses didn't give a last name, they only gave a first name. To explain how he pulled that, Carlos, out of all the different possible

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Carloses that he could pull, it becomes necessary to explain how it was that he chose this particular Carlos Wade. Who happens to ride in the same car that was used in the shooting. Lives in the same neighborhood.

THE COURT: Motion in Limine is sustained as to Paragraph 4. Paragraph 5?

MR. HAGEMEISTER: It's impossible for us to -- I will not highlight the fact that the man had an LID photo, but I cannot hide the fact that a photo was used in the photo spread.

THE COURT: Well, I don't believe that's the thrust of counsel's objection here. This is the same as a mugshot. The photograph may be used, but you may not show it was on file with the inference that the defendant is a prior offender. The photograph is just included in an array and if it's identified, it's admissible. If you have a problem with that, Counselor --

MS. BEIMDIEK: As long as it's not referred to in the language a mugshot. We had a photograph on file.

THE COURT: The Court finds there's no real issue here, Mr. Hagemeister, but for the purposes of this proceeding I'll sustain 5. 6?

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MR. HAGEMEISTER: I will write no mugshot or on file. Is there anything else I need to write on here?

THE COURT: This Court is not saying this, but it can be reversible error for a photograph showing a mugshot description of some prior offense to be introduced into evidence.

The Court is of the opinion it's not necessary to show that a photograph was on file. If a person is identified from an array of photographs, the photograph is there, it's immaterial where the photograph came from.

Paragraph 6, Number 1, revisited. Are we into that?

MR. HAGEMEISTER: Yes, sir.

MS. BEIMDIEK: I think, if I may, it's slightly different in that this victim is not a witness to the homicide that's charged currently. He was not present at the time of the homicide that's currently charged and, let me check, I think he is endorsed by the State.

MR. HAGEMEISTER: If he isn't, she has notice of him and he will be. Goes to the prior bad acts by these two against the family of the victim. And it also explains the utterances by the defendant,

Carlos Wade, as the car drove up and shot at the victim and two witnesses.

THE COURT: Same ruling in respect to 1.

MR. HAGEMEISTER: Thank you.

THE COURT: It's sustained, except that it's not to be gone into until the Court has had an opportunity to determine the admissibility of such evidence. You infer that Antonio Hickman --

MR. HAGEMEISTER: I believe is the younger brother of John Allen, if not -- I have to check my notes, Judge, I didn't have as much time after this long morning docket to --

THE COURT: As I say, the Court will sustain that also as previously indicated. It appears that that is not a prior uncharged act against any victim or any person alleged by the State to be a victim.

MR. HAGEMEISTER: No, it's a close family member of the victim --

THE COURT: And therefore would not be admissible.

MR. HAGEMEISTER: Judge, I believe when we get into the point of trial where Mr. Bell is on the stand and he's explaining the words that he heard Carlos Wade utter from the car involving the driveby, he was explaining the relevance of those words and

part of his explanation will include this prior bad act, which will go to show the identity of the person uttering those words.

THE COURT: It will be sustained. If all you expect to establish by the witness is that someone believes that Carlos Wade was involved in the shooting of someone, that amounts to no more than speculation.

MR. HAGEMEISTER: Well, Judge, the fact is that the defendants consistently, over a period of time, have addressed the victims as being sissies because of their lack of retaliation for their prior bad acts against the friends of the victims --

THE COURT: We're not getting off into collateral matters. These defendants are charged in five or six counts of murder first degree, ACA, assault first, ACA again, assault first, ACA, with specified victims.

We're not going into, and the exception is very narrowly drawn as Miss Beimdiek has pointed out by the Supreme Court, even where the uncharged crime is allegedly an act by the defendant, it must be clearly established as probative value as to motive, intent, absence of accident or common scheme or plan. Does not extend to unrelated matters. And we're -- I'm not going to waste a lot of time at trial with all

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these collateral avenues.

MR. HAGEMEISTER: If a person is a defendant in a case and calls someone a coward everytime he shoots at that person, then the reason why he calls him a coward becomes relevant, and the reason why they call him the coward is because of the fact that the victims never retaliated for the prior bad act against Antonio, who is a relative of the victims who is in the same family and group of people as the victim.

THE COURT: That's not coming in, Counselor.

MR. HAGEMEISTER: I'll make a motion if I believe the door has been opened for that evidence. I won't introduce it until I have the permission of the Court.

THE COURT: Well, the Court has ruled on 6. Let's go on to 7, gang membership. Is that an issue, Mr. Hagemeister?

MR. HAGEMEISTER: It's going to be near impossible to prevent the jurors from assessing that there's gang activity here.

THE COURT: Well, certainly the jurors are allowed to make that determination by direct evidence or by inference.

MR. HAGEMEISTER: That's correct. And the only point I would make is I don't have a very strong

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feeling about it, I do think that there will be people testifying who, it will be necessary to get into their potential biases according to the affiliations of the groups that they hang out with and who is a rival to that group.

THE COURT: The law is clear that gang affiliations may not come into evidence unless there's a direct nexus with the crime charged. Is there such a nexus here?

MR. HAGEMEISTER: Bias.

THE COURT: 7 is sustained.

MR. HAGEMEISTER: Judge, I've had several cases where affiliations with other witnesses in a group and rivalries between that group and another group have all been relevant as far as their credibility on the stand. Are you saying that that's not something I can impeach a witness with?

THE COURT: No, I don't believe I said that.

MR. HAGEMEISTER: Thank you.

THE COURT: I said that if there is no direct evidence of a nexus of a connection with gang related activity, then it will not be gone into.

MR. HAGEMEISTER: Okay. If I find that nexus, I'll address the Court.

THE COURT: Does that conclude the hearing

on the Motions in Limine?

MS. BEIMDIEK: Yes, Your Honor.

THE COURT: Will you, please, Miss Beimdiek, since this was your motion, make up a memorandum showing the rulings of the Court.

MS. BEIMDIEK: Yes, Your Honor.

THE COURT: Next motion is a motion, I believe, in which you want the State to provide you with the State's instructions prior to trial?

MS. BEIMDIEK: Yes, Your Honor.

THE COURT: Is that an issue or are you objecting to that request?

MR. HAGEMEISTER: No, Judge, I don't have any problem with getting those typed up. I believe there will be boiler plate instructions. I'm only including murder first. I generally prepare murder seconds and any lesser includes for the Court, but if she's asking for the ones I intend to be introduced, unless you want to get a murder II out for you, you're going to base your converses on it --

MS. BEIMDIEK: I may. I would ask that anything that he reasonably believes he would offer be provided to me a reasonable time before trial.

MR. HAGEMEISTER: I never really offer the murder II. I do it as a courtesy to the Court because

it matches the standard form and I have the secretary working on the others anyway.

THE COURT: If that's your practice and if you have no objection, I don't see that you need the armed criminal action instruction, do you?

MS. BEIMDIEK: I would like it.

THE COURT: It's a boiler plate instruction, if the first instruction is given and the gun is used, but since there is no --

MR. HAGEMEISTER: It will be acting with another on all counts.

THE COURT: Then there's nothing for the Court to rule on. Mr. Hagemeister is willing to give you, prior to trial, the basic instructions he intends to submit to the Court. Of course he's not bound by that due to possible changes in the evidence.

MS. BEIMDIEK: I understand that. Under the new rules I feel like I need to have access to them prior to trial. The only request I have is that a date be selected by which I have access to those instructions.

THE COURT: Oh, would the Friday before trial be sufficient?

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MS. BEIMDIEK: That's fine.

MR. HAGEMEISTER: Would you remind me,

please?

MS. BEIMDIEK: I'll write up an order. That would be November the 8th, because Monday is a holiday.

THE COURT: Anything further?

MS. BEIMDIEK: Not from us, Your Honor.

MR. HAGEMEISTER: Not from the State.

MS. MOORE-DYSON: Your Honor, for the defendant Tyrone Morant, I filed a motion to sever. Initially I believe it had been filed by the previous attorney; and I think we found out later it had not been filed, but she anticipated filing it and it deals with some of the statements that were the subject of the Motion in Limine today, and also based upon depositions of a Johnnie Bell taken on August 6th of 1995. I realize it had not been set for today and I ask if I could refile that motion. I have a copy of it if the Court has not received it.

THE COURT: No, I don't have it, but, yes, ma'am, you may refile it.

MS. MOORE-DYSON: I'll notice everybody.

THE COURT: Do you have any objection to taking it up now?

MR. HAGEMEISTER: No, sir.

THE COURT: Let's proceed. Give me the

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motion, please. Thank you.

MS. MOORE-DYSON: Your Honor, I believe probably that some of your rulings with regard to the motion today may have a bearing on, may have a bearing on whether or not you should sever.

But there are a lot of the statements with regard to those prior acts alleged to have been committed by Carlos Wade, with reference to other victims, that if they come out in the Court, in the trial would have a serious prejudicial value to my client, who is not alleged to have been, even though Mr. Hagemeister asserts to the Court that the statements will show that Carlos Wade and Mr. Morant here were involved in a lot of these other shootings, I believe that the statements that, by the victim Johnnie Bell, only go to incidents of shootings that involve just Carlos Wade. If those things come in, the trial would have a seriously prejudicial value to my client.

THE COURT: Is that correct, Mr. Hagemeister?

MR. HAGEMEISTER: No. I believe Mr. Morant is inculpated in most of the prior bad acts and I believe that any bad acts in which only Mr. Wade has been implicated can be adequately addressed by

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instructions.

It not very difficult for this jury to understand, especially if they're writing on a piece of paper: On this one it was Demetrius and Carlos and Tyrone, on this one it was Carlos and Tyrone, on this one it was Demetrius, Carlos and Tyrone, on this one it was just Carlos.

They know it was just Carlos on that one bad act. That does not prejudice Tyrone. As that continues down the list, any juror that has the ability to read their summons and come into court will be able to separate that.

THE COURT: Assuming, arguendo, you're permitted to get into evidence that the defendant Wade, at a prior point in time, shot at the deceased.

MR. HAGEMEISTER: With Mr. Morant.

THE COURT: You're saying you anticipate --

MR. HAGEMEISTER: Morant was with Mr. Wade on prior shootings.

THE COURT: You anticipate that the evidence will be that the second defendant also fired at the deceased?

MR. HAGEMEISTER: Yes, sir, while with the first defendant on more than one prior incident.

THE COURT: Counselor, I tend to agree with

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the attorney for the defendant that the Court may well have to sever these cases if evidence is going to be introduced of prior uncharged crimes that show motive or intent of the defendant Wade and they would not be admissible as against the defendant Morant.

MR. HAGEMEISTER: Even when Mr. Wade was with Mr. Morant? Mr. Morant, if he had his own trial, would have the exact same evidence adduced in an individual trial against Mr. Morant, if they are severed.

Johnnie Bell will still take the stand and say that, yes, Tyrone Morant has shot at us before on such and such a date with such and such a person and on such and such a date with such and such a person, and he would be testifying to the exact same information --

THE COURT: On the same dates?

MR. HAGEMEISTER: -- as he would be testifying on the same date against Mr. Wade. Why have two separate trials when the exact same evidence will be adduced in each trial?

MS. MOORE-DYSON: Your Honor?

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THE COURT: Yes, ma'am.

MS. MOORE-DYSON: I believe he's misquoting. We are referring to the deposition of Johnnie Bell in

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which he indicates that prior to this specific incident to which they're being charged he knew of Tyrone Morant, but Tyrone Morant is not involved in any of those prior shootings.

MR. HAGEMEISTER: Maybe it was Miss Hickman that will testify to that and not Mr. Bell. I believe it was Mr. Bell though. And I don't believe Mr. Bell is bound by his deposition. The man is not the -- the man is not a rocket scientist. And he has made statements at different times indicating prior bad acts by both of these people. I have a history of back and forth between these two and the other parties that you can probably fill a car trunk with.

THE COURT: Well, it's the State that wants to try these cases together. Generally this Court does not permit a joint trial where, at the outset of the trial, it's clear to the Court that there is evidence that may be admissible and possibly prejudicial as to one defendant and not to the other.

MR. HAGEMEISTER: I understand that, Your Honor. I merely believe that there is evidence, there's more evidence of prior bad acts by Carlos Wade --

THE COURT: Sir, you are using a generic phrase and I have not received a direct answer to my

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question. Are you alleging that the uncharged, you call them bad acts, uncharged crimes that you contend show motive or intent on the part of Carlos Wade were the same as and participated by the defendant Morant?

MR. HAGEMEISTER: Yeah, they were on some occasions and on other occasions Mr. Wade was by himself.

THE COURT: Then you are to submit to me, the Court -- this is the Court's initial thinking on this matter without deciding, that if you continue to desire a joint trial of these defendants, then any uncharged crimes that may be admissible to show motive and intent are going to have to be the same incidents.

MR. HAGEMEISTER: I understand.

THE COURT: In which both defendants participated.

MR. HAGEMEISTER: I understand, Judge. I'd like an opportunity --

THE COURT: I'm giving you time to check that so that we can proceed in order that the defendants receive due process of law.

MR. HAGEMEISTER: I understand, Judge.

THE COURT: The Court notes from the files that neither defendant is charged with being a prior offender or a prior and persistent offender, and that

if submissible cases are made on one or more counts, that the jury, if they determine beyond a reasonable doubt that either defendant is guilty, will assess punishment. Is that also correct?

MR. HAGEMEISTER: Yes, I believe that is correct, Judge. I don't really have all the information to answer that question, to be frank. I do want to point out to the Court that upon discovering and discussing these prior bad acts with the witnesses, it is the State's intention to proceed with charging Carlos Wade and Tyrone Morant for each of the bad, prior uncharged acts --

THE COURT: The Court is not concerned with that, the Court is concerned with the trial of the --

MR. HAGEMEISTER: I understand. I wanted that on the record so it doesn't look like that's something to be chosen to be done after the trial.

THE COURT: The Court is not determining at this time that the prior uncharged acts that you allege are admissible.

MR. HAGEMEISTER: I understand.

THE COURT: I am expecting to receive counsel's memorandum in support of the various positions. It would seem to the Court at this point that any, any act, uncharged crime, by firing a weapon

at the deceased by either defendant would show, clearly show motive or intent and would be admissible, but I'm going to give counsel an opportunity to research that and give me a memorandum, hut I want to know beforehand what prior dates and incidents you have reference to so the Court knows what it's ruling on.

MR. HAGEMEISTER: Yes, sir.

THE COURT: You're to make that available to defense counsel, a copy of your memorandum showing what dates you're alleging these uncharged events took place, the nature of the event, and against whom they were directed, and whether by one defendant or both defendants.

MR. HAGEMEISTER: Yes, sir.

THE COURT: Let the record show that defendant Morant's Motion to Sever or Motion for Separate Trial, having been heard and submitted, is taken under advisement by the Court, and you are to provide the Court with your memorandum in support of your various positions.

MR. HAGEMEISTER: Yes, sir.

THE COURT: Anything further on behalf of the State?

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MR. HAGEMEISTER: No, sir.

THE COURT: Anything further on behalf of the defendants?

MS. MOORE-DYSON: No, Your Honor.

THE COURT: Thank you, counsel. Please prepare the necessary memoranda for the Court.

MS. BEIMDIEK: Judge, one other matter we can do off the record. I know we had discussed before and I know this Court has some concerns about granting writs of body attachment in the event that a witness is unavailable, particularly a witness who may have been served by a liaison.

I thought I would find out now if the Court or the State has any concerns as to drafting a document, which I've delivered with each subpoena, called a Notice of Receipt of Subpoena, asking, and with note attached asking the police officer to sign it and return it to me and indicate they have gotten the subpoena through the liaison channels.

THE COURT: That's acceptable to the Court. In fact, that's the procedure I suggested when this came up before this Court.

MS. BEIMDIEK: Right.

THE COURT: With the practice of the police department designating an officer to receive subpoenas for other officers who may be out pursuing their jobs.

I find nothing wrong with that procedure for efficacy.

However, I feel that a form, as you've indicated, signed by the officer acknowledging service of the subpoena, would then constitute the basis for writ of body attachment.

MS. BEIMDIEK: Okay. Those are the steps I've taken. I thought this was unacceptable to the Court --

THE COURT: Miss Beimdiek, I didn't want to raise that, but I'm sure you understand, in looking at the Supreme Court Rule, that we must have such personal service of a subpoena.

MS. BEIMDIEK: Okay. Hopefully we will.

THE COURT: Court's adjourned until Monday morning at 9:30.

MS. BEIMDIEK: Thank you, Your Honor.

THE COURT: Thank you.

(The proceedings were adjourned for the day)

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(The following proceedings were had on November 12, 1996 in chambers:)

THE COURT: Let the record show the matters before the Court bear Cause Nos. 951-4326A, State of Missouri vs Carlos D. Wade, and 951-4326B, State of Missouri vs Tyrone Desante Morant.

Both defendants are jointly charged in Count I, murder in the first degree of John Allen, Count II, armed criminal action, Count III, assault first degree, Count IV, armed criminal action, Count V, assault first degree, Count VI, armed criminal action.

Let the record show that the defendant Tyrone Desante Morant's Motion to Sever was heretofore heard and submitted and said motion is overruled by the Court as per memorandum filed.

The Court has had a preliminary discussion with counsel about conduct of voir dire. Before we get to this, is the State ready to proceed in the causes just enumerated by the Court?

MR. HAGEMEISTER: I sure hope so.

THE COURT: I take that as a yes. Is the defendant Wade ready to proceed?

MS. BEIMDIEK: Yes, Your Honor.

THE COURT: And the defendant Morant?

MS. MOORE-DYSON: Yes, Your Honor.

THE COURT: Let the record show that counsel have stipulated and agreed to the following, and if I state it incorrectly, jump in and correct me, that they request two alternates. That we will qualify 42. That in addition to the peremptory challenges to each side, each side will have two challenges to arrive at the two alternate jurors, is that correct?

MR. HAGEMEISTER: The State will have two.

THE COURT: Each side, you will have two and each defendant, so that by side I mean both defendants, that's a total of four challenges out of six venirepersons to arrive at two alternates.

MR. HAGEMEISTER: Yes, sir.

THE COURT: Plus 36; a total of 24 peremptory challenges, plus a jury of 12 is the way we arrived at the number of 42 venirepersons to be qualified, is that not correct?

MS. BEIMDIEK: Yes, Your Honor.

MS. MOORE-DYSON: Yes, Your Honor.

THE COURT: Counsel have stipulated and agreed they do not wish, if a challenge for cause is sustained, that the challenged venireperson be replaced, that we leave a gap, so the Court will go along with the stipulation.

If a challenge for cause is sustained, the venireperson will be removed and the Court leaves it to counsel to keep track of where we are with respect to the numbers of the array. Was that the stipulation? Have I not stated it correctly for the record, you may --

MR. HAGEMEISTER: That's correct.

THE COURT: -- amend it.

MS. MOORE-DYSON: That's correct.

MS. BEIMDIEK: That's correct.

THE COURT: All right. It's also agreed there's certain motions filed by the defendants, and of the motions filed, both defendants are requesting hearing on their Motions to Suppress Identification Testimony, is that correct?

MS. BEIMDIEK: Yes, Your Honor.

MS. MOORE-DYSON: Yes, Your Honor.

THE COURT: Those are the only motions you're requesting hearing on prior to trial?

MS. MOORE-DYSON: Yes, Your Honor.

MS. BEIMDIEK: Yes.

THE COURT: The Court has agreed that these motions will be heard post voir dire and prior to commencement of the evidentiary portion of the trial.

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The Court, in response to a question, has

already indicated that the Court expects you in a clear case for a challenge for cause to make the challenge promptly. This is not to restrict you in any way from testing the rulings of the Court by renewing the challenge for cause. Any further questions with respect to voir dire?

MS. MOORE-DYSON: No.

MR. HAGEMEISTER: No, sir.

THE COURT: Let the record show the Court has heretofore, in a pretrial setting, ruled on the Motions in Limine filed by the defendant Wade, is that correct, Miss Beimdiek?

MS. BEIMDIEK: Judge, with respect to the first paragraph which was under submission, I believe, off the record, the Court indicated it would overrule that motion, so I think we need --

THE COURT: The first motion related to the alleged --

MS. BEIMDIEK: Uncharged crimes.

THE COURT: -- or conduct or bad acts. I took that under submission until I knew, with more particularity, what the State was talking about. Isn't that correct?

MS. MOORE-DYSON: That's correct.

THE COURT: And we went over it this morning

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and the State has filed what it alleges to be admissible evidence with respect to other acts allegedly committed by the defendant Wade, and in one or two instances by the defendant Morant, against the deceased or one Bell, the alleged victim of the assaults, is that correct?

MR. HAGEMEISTER: Yes, Your Honor.

THE COURT: And we went over that this morning and the Court advised counsel that for such items listed to be admitted, that the State must have direct proof that the defendant or the defendants were the perpetrators of the conduct, the shooting.

MR. HAGEMEISTER: Right.

THE COURT: And so to that extent the first paragraph of your Motion in Limine is overruled in part and sustained in part. It's sustained as to those instances where testimony could be adduced that the defendant was merely present at a place where an act occurred and there is no direct evidence that this defendant was the actor against the deceased. That's about as clear as I can make it counsel.

MS. BEIMDIEK: Okay. If I may for the record, Judge, indicate I will still lodge an objection to any evidence of uncharged crimes. I'll rest my argument upon the memorandum I filed with the

Court on October 28th, 1996, the case and the cases therein which I provided, which to me suggest this is still a weighing process, the evidence of uncharged crime is not automatically admissible, the Court has to decide whether the probative effect outweighs the prejudicial impact. It's my position that the prejudicial impact of these alleged incidents outweighs any probative value.

MS. MOORE-DYSON: I would basically join in that portion with regard to the two acts my client is alleged to have committed as well. We have no way of knowing exactly what the witnesses are going to say. They previously testified, as the depositions indicate, that the actions or acts occurred one way, and then they come back and they get on the stand and they say it differently in order to override the Court's objections or stipulation, then we have no way to anticipate what is going to be said, so the acts will come in without us knowing what's going on, actually.

So, in other words, they have testified one way in the depositions and then in order to make sure that it's admissible, they testify, well, I think he was the one who shot or he was the one who was shooting, where previously they have testified, in

some instances testified they saw the person there but no shooting. We have no way to say specifically that this act should be excluded and this one not until after it's heard.

MR. HAGEMEISTER: They've deposed Johnnie Bell.

THE COURT: Let the record show that the Court finds that what the State anticipates its evidence to be and the Court's ruling at this time is that the defendants Motion in Limine is overruled.

The Court finding that if the State's witnesses testify as to prior conduct or uncharged crimes in that the defendant or defendants shot or assaulted, shot at or assaulted decedent, Mr. Allen, and assaulted Mr. Bell at a prior time, that such conduct would constitute admissible evidence showing motive, intent, and absence of mistaken identity and would be admissible.

The Court has already ruled on the Motion in Limine with respect to mere presence and has sustained the defendant's position.

So the Court has, in its opinion, has ruled on, as far as I can, prior to trial and cannot make definitive rulings until I've heard the evidence with respect to each of these alleged prior incidents. But

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I appreciate counsel going over them with me generally in chambers as to what the State expects the evidence to be and the defendants' position in relation thereto.

MS. BEIMDIEK: I had one more matter, if I could. As to the uncharged crimes, I ask that the State be ordered to provide all discovery that it has relating to any of these incidents wherein the police were summoned to respond to any of these shootings. Are there any?

MR. HAGEMEISTER: I have no information that any police reports were made.

MS. BEIMDIEK: The only report, I have one July 11 of '96, at my request it was generated.

MR. HAGEMEISTER: Which is?

MS. BEIMDIEK: Hornak's follow-up investigation with Johnnie Bell.

MR. HAGEMEISTER: Are you talking about reports of prior uncharged crimes or just plain police reports?

MS. BEIMDIEK: Well, I'm talking about reports reflecting any of the prior shootings. The only report I have is one that was prepared well after the homicide happened.

MR. HAGEMEISTER: You know you have

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everything that I have because we went through that whole discovery process.

MS. BEIMDIEK: Okay. I want to be certain there aren't additional reports out there that the victims are going to say, yes, I contacted the police after these shootings happened and a report was filed.

MR. HAGEMEISTER: Well, my investigator went and tried to find reports for any prior bad acts involving these people with these defendants and wasn't able to find any. Johnnie Bell says he never called the police.

MS. BEIMDIEK: Okay.

MR. HAGEMEISTER: He wanted to handle it himself.

MS. BEIMDIEK: Okay.

THE COURT: Anything further on behalf of any party before we proceed to voir dire?

MS. BEIMDIEK: No, Your Honor.

MS. MOORE-DYSON: No, Your Honor.

MR. HAGEMEISTER: No.

THE COURT: Let the record show that the defendants were not present in court at the beginning of this proceeding and will you let me know when you're ready to proceed after the sheriffs have returned to the courtroom with the defendants.

MS. BEIMDIEK: Sure.

MS. MOORE-DYSON: Yes, Your Honor.

THE COURT: Thank you very much.

(Proceedings were had off the record)

(The following proceedings were had in the presence of the jury panel)

THE COURT: You may be seated. Good afternoon, ladies and gentlemen. I'm Judge Floyd McBride. I would like to welcome you to Division 11 of the Circuit Court of the City of St. Louis.

(Panel of 65 venirepersons called. MAI 300.02 partially read to the jury panel. Panel sworn. MAI 300.02 completed.)

THE COURT: Ladies and gentlemen of the panel, no one can estimate with any degree of particularity how long it will take to try a given lawsuit. It is the Court's opinion that the trial of this case will in all probability extend into next week.

Now, I would like you to think about the next question I'm going to ask you and then if you have a positive response, please raise your hand. Is there anyone on this panel who, if selected as a juror for a trial that could extend into next week, would suffer an undue hardship? Before you answer the

question or raise your hand, I want you -- the Court will not consider mere inconvenience as a valid excuse for not serving if selected.

Now having given some thought, I would like to start with the members of the panel in the jury box. Who had a positive response to the Court's last question? Anyone?

VENIREPERSON LINDSAY: I'm on vacation next week. I have plans a long time.

THE COURT: Thank you, Mr. Lindsay. Anyone else? Now in this section chairs?

VENIREPERSON DAVIS: I have a husband who is a respiratory cripple and --

THE COURT: Well, I don't want to get your response right now. I don't mean to cut you off, but I am, but I'll get back to you. That is -- you are Annie -- rather Ms. Davis?

VENIREPERSON DAVIS: Yes.

THE COURT: Anyone else in the six chairs? That takes us to the first row, is that Miss Shrout?

VENIREPERSON SHROUT: Yes, it is.

THE COURT: Anyone else in the first row? Second row? Third row? Is that Miss Leisure?

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VENIREPERSON TAYLOR: No, Taylor

THE COURT: I'm sorry, Ella J. Taylor?

VENIREPERSON TAYLOR: Yes.

THE COURT: Thank you, ma'am. Just a moment. Anyone else in that row? Fourth row? That's Miss Bruton?

VENIREPERSON JONES: No. Miss Jones.

MR. HAGEMEISTER: They're all staggered because of the early dismissal of the juror in the fourth row.

THE COURT: Thank you, Counselor. Miss Jones? Is it Mr. Goodman?

VENIREPERSON GOODMAN: Yes, sir.

THE COURT: Anyone else in the fifth row? Next row? That's Mr. Wamser?

VENIREPERSON WAMSER: Yes.

THE COURT: Anyone else in that row? Next row? Is that Mr. Morris?

VENIREPERSON MORRIS: Yes.

THE COURT: First row on my left. Mr. Coleman?

VENIREPERSON COLEMAN: Yes, sir.

THE COURT: Anyone else in that row? The last row? Ms. Thrower?

VENIREPERSON THROWER: Yes.

THE COURT: Anyone else I've missed or who on further reflection wishes to ask the Court to

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consider being excused as a juror in this cause?
Counsel approach the bench.
(The following proceedings were had at the bench out of the hearing of the jury:)
THE COURT: Let the record show that I intend to call each venireperson who has responded in the affirmative to the question of whether jury service in this case will be an undue hardship. I will ask them to state their reasons they're asking to be excused.
If I do not hear an objection from you, I will assume that the Court may excuse them for good cause shown, if they stated good cause. Is that agreeable to the parties?
MS. MOORE-DYSON: Certainly, Your Honor.
MR. HAGEMEISTER: That's fine.
THE COURT: So that will obviate the necessity of asking you over and over again if there's any objection. I'll expect to hear from you if you have any.
MS. BEIMDIEK: If you want to give them additional inquiry, is that permissible?
THE COURT: Oh, sure. I had only one in the jury box, Miss Davis, Juror No. 752. Miss Davis.
Mr. Lindsay, will you approach the bench.

You are Lester L. Lindsay?
VENIREPERSON LINDSAY: Right.
THE COURT: You are Juror No. 1418?
VENIREPERSON LINDSAY: Right.
THE COURT: I understood you to say you had a vacation planned and had been planned for some time?
VENIREPERSON LINDSAY: Yeah, since the beginning of the year.
THE COURT: And you've already made arrangements for housing and transportation, is that correct?
VENIREPERSON LINDSAY: Um-hum. Plus I been in the system for 28 years and I don't think I can --
MR. HAGEMEISTER: Sorry, Less, you got to cancel your vacation.
THE COURT: Let the record show that this venireman is known to the Court and to counsel as a deputy sheriff for the City of St. Louis. Any objection?
MR. HAGEMEISTER: None.
MS. BEIMDIEK: No.
THE COURT: Let the record show for good cause shown Mr. Lindsay is excused in this particular case. Thank you, sir. Will you report back to the jury assembly room.

VENIREPERSON LINDSAY: Um-hum.
THE COURT: Next indication I have is on page 3, Annie M. Davis, Juror No. 752.
Miss Davis, will you approach the bench, ma'am. You may state your reason, ma'am.
VENIREPERSON DAVIS: I, I have a husband who is a respiratory cripple. My neighbors watch for him during the day when I work. The respiratory is something that gets worse at night and I don't have anybody should I be away from home during that time.
THE COURT: During these episodes that your husband needs your presence or someone's presence to help care for him?
VENIREPERSON DAVIS: Yes.
THE COURT: Any questions of the venirewoman?
MS. BEIMDIEK: Miss Davis, do you realize this isn't a locked up jury?
VENIREPERSON DAVIS: No, I didn't realize that.
MS. BEIMDIEK: Does that change your feeling that you would go home during the evening?
VENIREPERSON DAVIS: Yes, because the neighbors are there, you know, and they are about him during the day.

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THE COURT: The Court's hours generally are from 9:00 a.m. to five o'clock or on to 5:30, except perhaps the last day, I can't predict after the case is submitted, but does that make any difference to you?
VENIREPERSON DAVIS: No.
THE COURT: Do you think you would be able to serve if selected as a juror in this case?
VENIREPERSON DAVIS: Yes.
THE COURT: Thank you, ma'am. You may return to your seat. Deborah J Shrout, Juror No. 817.
Miss Shrout, will you approach the bench ma'am. You may state your reason.
VENIREPERSON SHROUT: Actually it's a hardship on my students. We were scheduled to leave Thursday evening. I'm taking a class to Chicago for a national convention. We have bought our tickets. I don't know at this late date I can find another teacher to go.
THE COURT: I see. I see you teach in the Kirkwood School District?
VENIREPERSON SHROUT: Yes, high school.
THE COURT: Any questions of Miss Shrout?
MR. HAGEMEISTER: No.
MS. BEIMDIEK: Are your tickets for next

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Thursday or this --

VENIREPERSON SHROUT: This Thursday.

MS. BEIMDIEK: No further questions.

THE COURT: Let the record show that for good cause shown Deborah J. Shrout, Juror No. 817, is excused in this particular case.

Ma'am, you're instructed to return to the jury assembly room on the 8th floor. I would suggest advising them of your unavailability from Thursday on.

VENIREPERSON SHROUT: Thank you. Thank you.

THE COURT: Thank you. Ella J. Taylor, Juror No. 784.

Ms. Taylor, will you approach the bench. You may state your reason, ma'am.

VENIREPERSON TAYLOR: My husband he has oxygen deficient emphysema. He's on oxygen 24 hours a day. I work about ten minutes from home and I've been here 32 years and I can leave any time I'm needed, so, yes, it would be a hardship. I mean, you know --

THE COURT: Thank you, ma'am. Any questions?

MR. HAGEMEISTER: No.

MS. MOORE-DYSON: No.

MS. BEIMDIEK: Do you have somebody who is able to care for him while you're here?

VENIREPERSON TAYLOR: Yes, some people that kind of help out. You do more things that go into next week, it would be too hard. That's why I didn't get an excuse before.

MS. BEIMDIEK: Is there any risk that your concern for his well being will interfere with your ability to listen to the evidence in this case?

VENIREPERSON TAYLOR: Just that his condition, it's genetic, he's been on oxygen for 13 years.

MS. BEIMDIEK: I guess what I'm asking, are you going to be thinking about him and not thinking about the evidence?

VENIREPERSON TAYLOR: I'm sure I will, but that's up to you.

THE COURT: Did I understand you to say that you have no one that you have --

VENIREPERSON TAYLOR: I have no children.

THE COURT: -- arranged to care for him?

VENIREPERSON TAYLOR: No, I rely on neighbors to call on.

THE COURT: Any further question of this venirewoman?

MS. BEIMDIEK: No, Your Honor.

THE COURT: Let the record show that for

good cause shown Ella J. Taylor, Juror No. 784, is excused from service in these cases. Ma'am, will you return to the jury assembly room on the eighth floor. Thank you.

Mattie M. Jones, 597. Miss Jones? You may state your reason, ma'am.

VENIREPERSON JONES: I have hypertension. When I sit any length of time, my feet and legs swell enormously. I have sent doctor's statement here before, but they still send me a summons wanting me to come and serve.

I have to take medication every day at twelve noon because my fluid backs up. So at work I'm at liberty to make my moves, but here now I don't think I would be.

THE COURT: And you say that prolonged sitting for maybe an hour and a half to two hours causes your leg to swell?

VENIREPERSON JONES: Yeah, I been here since eight this morning. They are swollen now.

THE COURT: Have you been treated for this condition for hypertension for some time, ma'am?

VENIREPERSON JONES: Yes, I have.

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THE COURT: Any questions?

MS. MOORE-DYSON: You use a dieretic?

VENIREPERSON JONES: Yes.

MS. MOORE-DYSON: That keeps you running?

VENIREPERSON JONES: Yes, it keeps me moving.

MS. BEIMDIEK: If the Court granted you breaks to use the restroom --

VENIREPERSON JONES: It's no certain time. It could be whenever the feel I have to move. At work they give me liberty to do that.

MS. BEIMDIEK: Thanks.

THE COURT: Let the record show that for good cause shown Mattie M. Jones, Juror No. 597, is excused as a juror in these cases. Ma'am, will you return to the jury assembly room on the 8th floor and thank you.

Robert J. Goodman, Juror No. 61. Mr. Goodman. You may state your reason, sir.

VENIREPERSON GOODMAN: I'm a ship captain on Lake Michigan in Gary, Indiana. I'm scheduled to return to the ship on Monday afternoon.

THE COURT: I see. We don't get many river boat captains, but you're a Great Lakes captain?

VENIREPERSON GOODMAN: Yes, sir.

THE COURT: Winter storms up there as bad as I've read?

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VENIREPERSON GOODMAN: Oh, yeah, and then some.

THE COURT: Any questions?

MS. BEIMDIEK: Do you reside in the City of St. Louis?

VENIREPERSON GOODMAN: Yes, I do.

MS. BEIMDIEK: And if you were to tell your employer that you have to come back on Tuesday or Wednesday of next week?

VENIREPERSON GOODMAN: My relief is at its maximum days.

MS. BEIMDIEK: For regulations to get on the boat?

VENIREPERSON GOODMAN: Yes.

THE COURT: Anything further of this venireman? Let the record show for good cause shown Robert J. Goodman, Juror No. 61, is excused in these cases. Thank you, sir. You may return to the jury room on the 8th floor.

VENIREPERSON GOODMAN: Thank you.

THE COURT: Thank you. James L. Wamser, Juror 1419. Mr. Wamser, you may state your reason sir.

VENIREPERSON WAMSER: I'm on a two month schedule for my doctor for a physical. I have a heart

condition. Friday is the big day, the 15th. It was scheduled two months in advance.

THE COURT: Scheduled two months in advance?

VENIREPERSON WAMSER: Yes.

THE COURT: You've been under the doctor's care for your heart condition for some time?

VENIREPERSON WAMSER: Oh, yeah, two or three years. I've had a couple of attacks.

THE COURT: Thank you. Any questions?

MS. BEIMDIEK: No.

THE COURT: Let the record show for good cause shown James L. Wamser, Juror No. 1419, is excused in these cases. Sir, I'll ask you to return to the jury assembly room on the 8th floor.

VENIREPERSON WAMSER: Thank you, Your Honor.

THE COURT: Thank you. Good luck to you. Have I missed anyone up to this point, Counselor?

MS. MOORE-DYSON: Judge --

THE COURT: Let the record show that the Court, at the request of the defense counsel, Jamesanna Jones, Juror No. 444, to the bench.

Jamesanna Jones, will you approach the bench, ma'am.

MS. MOORE-DYSON: That's not the one.

THE COURT: I'm sorry. No, no, no. You

will be seated. The Court was mistaken. Her name is what?

MS. MOORE-DYSON: Sherry, page 9.

THE COURT: Madaline Cherry? Miss Cherry, Juror No. 1412, will you approach the bench, please. How are you, ma'am?

VENIREPERSON CHERRY: All right.

THE COURT: Did I see you raise your hand?

VENIREPERSON CHERRY: No.

THE COURT: I thought maybe you might have wished to affirm rather than be sworn, or am I mistaken?

VENIREPERSON CHERRY: You're mistaken. I didn't raise my hand.

THE COURT: Very well. In other words you would prefer to be affirmed rather than swear? Because of your religious belief?

VENIREPERSON CHERRY: Yes.

THE COURT: Miss Julius, Miss Cherry wishes to affirm rather than swear, would you please put her under oath.

THE CLERK: Yes, I will.

(Juror affirmed by Clerk)

VENIREPERSON CHERRY: Yes, I do

THE COURT: Ma'am, while you are here, is

there anything about your religion that would prevent you from sitting in judgment as a juror if you're selected as a juror in these cases?

VENIREPERSON CHERRY: No.

THE COURT: Thank you.

VENIREPERSON CHERRY: Okay.

THE COURT: Any questions of this venirewoman?

MS. MOORE-DYSON: No.

THE COURT: Thank you very much. Thomas R. Morris, 1104. Mr. Morris, you may state your reason, sir.

VENIREPERSON MORRIS: Yes, sir. My mother-in-law is in a home in Fredericktown. All her stuff has to be out of her apartment by the end of the month. We have traveling arrangements made while moving for a truck driver to help us move the stuff out. Another thing, I don't have any vacation time left and he said if it goes into next week, I won't get --

THE COURT: So next week you had planned on devoting to moving your mother-in-law's belongings because she's going into a nursing home?

VENIREPERSON MORRIS: She's in there. We have three months to gets things out and this is the

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last month. I also understand this is an assault charge. I was assaulted back in 1983, April '83, so I don't think I could be fair.

THE COURT: Do you feel because of your personal experience of being assaulted you could not put that experience aside and be a fair and impartial juror?

VENIREPERSON MORRIS: Not really. It's something you don't forget.

THE COURT: Any questions?

MS. BEIMDIEK: No questions.

MR. HAGEMEISTER: Mr. Morris? I don't have any questions.

THE COURT: Let the record reflect for good cause shown Thomas R. Morris, Juror No. 1104, is excused from further service in these cases.

Sir, I request that you return to the jury assembly room on the 8th floor.

VENIREPERSON MORRIS: Okay. Thank you.

THE COURT: Next one I have, counsel, is Larry Roy Coleman, Juror No. 529.

Mr. Coleman, will you approach the bench, sir. You may state your reasons, sir.

VENIREPERSON COLEMAN: I am in the process of moving my grandparents from Florida because of my

recent father's death. We have to move them back and forth due to their health.

THE COURT: Next week was part of this planned move?

VENIREPERSON COLEMAN: Right. We are actually starting Thursday.

THE COURT: You say your grandparents are in Florida and you're going to move them here?

VENIREPERSON COLEMAN: Right, due to their health.

THE COURT: Any questions?

MS. BEIMDIEK: No questions.

THE COURT: Let the record reflect that for good cause shown Larry Roy Coleman, Juror No. 529, is excused from further service in these cases. I will ask you to return to the jury assembly room on the 8th floor, sir. Thank you.

VENIREPERSON COLEMAN: Thank you.

THE COURT: Dawn M. Thrower, 665. Ms. Thrower.

MS. BEIMDIEK: Judge, while we're on that page, 842 was a police officer. I think they're exempt by statute.

VENIREPERSON THROWER: Here you are. Anyway, it is with my work, they probably can for a

couple days, but then they have to cancel patients. We see emergencies throughout the day. It's kind of a problem. We work in a small office and they cover for each other.

THE COURT: Let the record show that this Venirewoman has given the Court a letter signed by Harvey A. Layer, D.D.S. If I can make out the doctor's writing, there is no one to replace you, in effect, the doctor states only one assistant. It will make it impossible to run his practice.

VENIREPERSON THROWER: Um-hum.

THE COURT: Anything further?

MS. BEIMDIEK: No.

THE COURT: Thank you, ma'am. I'll return your letter from your employer.

VENIREPERSON THROWER: Okay.

THE COURT: Let the record reflect that for good cause shown Dawn M. Thrower, Juror No. 665, is excused from service in these causes.

Ma'am, you're instructed to return to the jury assembly room on the 8th floor.

VENIREPERSON THROWER: Thanks.

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THE COURT: Now we've been through those asking to be excused.

MS. BEIMDIEK: Right.

THE COURT: Who did you wish to --

MS. BEIMDIEK: This gentleman is a police officer. I think the statute exempts him from service.

THE COURT: Any objection?

MR. HAGEMEISTER: I think it's not been reported. You make that call, Judge.

THE COURT: Since the State has no objection, I would think that since no objection to him being excused, I will have him return to the jury assembly room.

Let the record show that the joint defendants motion that Douglas C. Loemker, Juror 842, be excused because he is a St. Louis metropolitan police officer. The State doesn't object. The motion is sustained, the oral motion is sustained. The venireman will be returned to the jury assembly room Loemker or Loemker?

VENIREPERSON LOEMKER: Loemker.

THE COURT: Sir, will you report back to the jury assembly room on the 8th floor.

VENIREPERSON LOEMKER: Thank you.

THE COURT: Is that it?

MS. BEIMDIEK: That's it.

THE COURT: Now you wanted gaps left. We

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have quite a few gaps. Do you mind if I consolidate a little bit to facilitate hearing voir dire? I'm referring to, from the third row and beyond, moving them up.

MS. BEIMDIEK: Okay. I prefer we not juggle the people within rows, but I don't mind pushing ones up.

MR. HAGEMEISTER: You can't without juggling people in rows.

THE COURT: Why don't we bring the last two rows up a row?

MR. HAGEMEISTER: That would be great.

MS. BEIMDIEK: That's fine.

MR. HAGEMEISTER: That's fine.

THE COURT: Miss Cherry's row move forward to the row in front of you, keeping your same positions. Thank you, Counsel.

(The following proceedings were had in the presence of the jury panel:)

THE COURT: Ladies and gentlemen of the panel, I would like you to take note of your physical surroundings. You are, in my opinion, in a beautiful old courtroom with ceilings approximately 5 feet high.

Many of you are thinking I speak with a loud voice, I do. I expect your answers to be of the same

tenor in order that the parties, counsel, and the court reporter and the Court may hear your answers.

Those of you who are parents, I would like you to just suppose, just supposin' you've called the kids for dinner for the third time and they haven't answered, that's the tone of voice I wish to hear.

It is the court reporter's duty to get everything that's spoken during the course of the trial into the record. Obviously she cannot do this if you shake your head in response to a question. Ergo, do not shake your head, make verbal answer to the question addressed to you.

At this time I'd like to introduce the attorneys appearing for the parties. Mr. Mark Hagemeister, Assistant Circuit Attorney, appearing for the State of Missouri.

MR. HAGEMEISTER: Good afternoon.

THE COURT: Appearing for the defendant Carlos D. Wade is Ms. Beverly Beimdiek, Public Defender.

MS. BEIMDIEK: Good afternoon.

THE COURT: Appearing for the defendant Tyrone Desante Morant is Miss Sandra Moore-Dyson, attorney at law.

MS. MOORE-DYSON: Good afternoon.

THE COURT: Counsel for the State will question you first and then counsel for the defendant counsel may proceed.

You may proceed, Mr. Hagemeister.

MR. HAGEMEISTER: Thank you, Judge.

VOIR DIRE EXAMINATION

MR. HAGEMEISTER: First of all, I tend to talk this way, we don't usually have groups this big, if I don't speak loud enough for anybody over here to hear me, please tell me.

Second of all, there are a lot of standard questions asked in this case. The bad news is you hear me for a long time. You might want to set your coats down and get comfortable.

The good news is the defense attorneys, you will have already answered a lot of questions that they would ask because I've already asked them, so they won't take as long.

I have to go through all these questions. They are standard questions I ask in every case and there's some questions I'm asking because they are important issues in this case.

If you don't understand the question, please raise your hand. If I talk slowly and keep beating a dead horse, please understand I have to speak to make

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sure that every single person in this room understands what I'm saying.

If there is one person in the room that you're trying to explain something to that doesn't understand and ends up being on the jury, I will apologize in advance to some of you, you might think of me as talking down to you, and that is something everyone in this position has to do.

If anyone has an answer that is personal, I ask you to ask to approach the side-bar if it's not something you care to talk about in front of the entire group. I ask that that be something personal because otherwise we will be here a long time.

Is there anyone here that knows me? Do I look familiar to anyone besides you, Mr. Snipes? A witness in the David Fuehrman case? That was a witness I handled.

Is there anything about the fact that you were a witness that I put on the stand in this case that's going to affect your ability to sit and listen to a totally unrelated case?

VENIREPERSON SNIPES: (Shook head)

MR. HAGEMEISTER: You can be fair?

VENIREPERSON SNIPES: (Shook head)

MR. HAGEMEISTER: If you think because

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you've been a witness I handled in the past, you have an obligation under the law to tell us. I'm not trying to put words in anyone's mouth. If I say something and it's not something you agree with, don't let my attempt to keep this moving along change anybody answers.

So if you think there's any chance that you might not be able to be fair to the defendants, you have to tell us, all right, Mr. Snipes?

VENIREPERSON SNIPES: All right.

MR. HAGEMEISTER: The case for which you have been called is a criminal case with a charge of murder in the first degree, armed criminal action, assault first degree, and armed criminal action, assault first degree, armed criminal action, six different counts, each to be considered separately, each defendant is charged with all six counts. You will be able to find out that their charge is acting with another.

There will be evidence in this case, however, it's important to the State to make sure that everyone here understands that real life is not like TV. People watch TV shows, they see evidence piled on evidence, piled on evidence, it's important that everyone does not have that expectation in every case

in real life.

Does everyone here understand that the State is required to prove its case beyond a reasonable doubt? It's after lunch. I'll ask you to start raising your hands when I see people nodding off. Everyone understands that? Okay.

Does everyone understand you'll be given instructions at end of the case that tell you what I have to prove as the person who presents the evidence? Okay.

Do you understand that you're not here to determine whether or not Carlos Wade and Tyrone Morant are evil people, or whether or not they're deserving of some great punishment or small punishment according to what you think of them as -- you're supposed to consider the facts of the case.

If you believe that on the date in question they did the things that the law says you can't do, then you find that they did the things that the law says you can't do. Obviously that's going to be beyond a reasonable doubt with regard to everything the State has to prove. Is there anybody who doesn't understand that? You'll be here listening to witnesses, determining facts. That's what a jury does.

Does everyone here understand that as a juror you have all the power? You have the power to make a decision with regard to every piece of evidence that goes before you? Every witness that takes the stand? You have the power to say, I believe that witness, he's telling the truth; I believe that witness is telling a lie; or I believe that witness is mistaken, he's making a mistake, not trying to lie to us, but just not really sure what he's talking about? You all understand you have that power?

You all understand that when somebody gets up and says something on the stand you can believe that they were telling the truth about this and they were lying about that if you choose to. You have that power. You can believe that they were telling the truth about this and they are mistaken about something that they said. You have that power.

And you can all understand how in every case there's going to be people that aren't going to be able to remember everything exactly after more than a year? But that's where you have your tough job.

Does everyone understand it's your decision as to whether or not you believe the witness? Everyone understand that? I'm beating a dead horse. All right.

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Now, when you look at these different witnesses you will be given instructions as to what you're allowed to look at. The instructions don't say leave your common sense at home. You can use your lifetime of experiences.

You all understand somebody might have a reason to lie if they have a bias? You can understand bias? Is there anybody who doesn't understand that? Somebody knows somebody, somebody is friends with somebody, somebody has something to gain, somebody has something to lose?

A witness takes the stand and has a reason to lie, you should consider that. We need jurors who consider that. You also look at does it make sense to me? Is it, are they consistent, is it inconsistent, is it inconsistent because it's a lie or is it inconsistent because it's a mistake?

These are all the tough jobs that jurors have to do. But jurors have done it every day the last two hundred years. Is there anybody who feels that they can't do that if they get chosen to be on the jury panel, they can't look at a person and say I believe this person is telling the truth or I believe this person isn't? Is there anybody who thinks they're going to have a problem with that right off?

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All right, sir. What is your name?
VENIREPERSON JACKSON: Earl Jackson.
MR. HAGEMEISTER: Mr. Jackson, since you are the first person to raise your hand, I will ask you to speak up and set the pace. Tell me what you think.
VENIREPERSON EARL JACKSON: I have a problem --
THE REPORTER: I'm sorry, I can't hear him.
THE COURT: Did you say you have a bias against law enforcement officers?
VENIREPERSON EARL JACKSON: Yes, sir, against their testimony, yes.
MR. HAGEMEISTER: You had some experience in the past that made you not trust policemen?
VENIREPERSON EARL JACKSON: Yes, sir.
MR. HAGEMEISTER: Okay. So in a group of 60 people, you are one of the people who don't trust policemen. You will run into people who automatically believe policemen just because he is one. We need to know that, too. We need to treat everyone on the stand equally.
Do we have anybody here who works for the post office? As you were growing up and as the postman goes by you he kicks your dog, you don't hate every single postman, do you?

VENIREPERSON EARL JACKSON: No.
MR. HAGEMEISTER: You understand every person is different. Do you think if a policeman takes the stand you're going to think that he's like the guys you heard about or are you going to be treat them --
VENIREPERSON EARL JACKSON: I had personal experience, so I'm speaking personal experience.
MR. HAGEMEISTER: Okay. So what you're saying, no matter what policeman it is that takes the stand, he's not going to start at the same level as a person who is not a policeman?
VENIREPERSON EARL JACKSON: Yes, sir.
THE COURT: Anybody feel the same as Mr. Jackson? Anybody feel at all like they have a problem with police officers' testimony? Okay.
Mr. Jackson, if you can't treat every witness equally, then you can't really follow the rules, which means I have to say, Judge, I ask to strike Mr. Jackson for cause.
THE COURT: Any objection?
MS. BEIMDIEK: Judge, I ask that we be given an opportunity to question the jury prior to the Court's ruling.
THE COURT: Approach the bench.

(The following proceedings were had at the bench out of the hearing of the jury:)
THE COURT: Let the record show that -- are you Mr. Elmer Jackson?
VENIREPERSON EARL JACKSON: Earl.
MR. HAGEMEISTER: Top of page 6, Mr. --
THE COURT: Mr. Earl Jackson, Juror No. 368. You may proceed, Miss Beimdiek.
MS. BEIMDIEK: Thank you, Your Honor.
Mr. Jackson, I understand your feelings about police officers. Do you also understand that the Judge will give you an instruction that says that you can't allow some personal experience to affect the way you judge a witness, you have to be able to set that aside? If the Judge instructed you that, will you be able to follow the Court's instruction?
VENIREPERSON EARL JACKSON: I don't think I would, no.
MS. BEIMDIEK: Thanks.
THE COURT: Anything further of this venireman?
MS. BEIMDIEK: No.
THE COURT: Let the record show that the challenge of Earl Jackson, Juror No. 368, for cause by the State is sustained.

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Mr. Jackson, you may return to the jury assembly room on the 8th floor. Thank you, sir.
VENIREPERSON EARL JACKSON: Thank you.
MS. BEIMDIEK: Thank you, Judge.
THE COURT: Thank you.
(The following proceedings were had in the presence of the jury panel)
MR. HAGEMEISTER: Anybody else have anything they can think of right off the top of their heads? All right.
Does everyone agree that sometimes crimes are committed in the City of St. Louis? Everyone agree with that?
Everyone agree there's probably a thousand different ways you can commit a crime, whether you're stealing a bike, or you're stealing a candy bar, or you're punching out a teacher, or whatever that goes on in the city nowadays, there's thousand different cases, probably a hundred thousand?
Does everyone agree each of those cases you have different police officers responding? Does everyone agree that every police officer treats a case different? Police officer might be hard working, fair, neutral, covers all his bases police officer, or he might be the guy that doesn't really do any time on

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the jnb, he kind of sits around. There's that. Does everyone agree with that?

Does everyone agree he could be somebody who brings his own personal biases into his job and he can be a mean guy or he can be a nice guy who is fair to everyone? Does everyone agree with that? Everyone understands you have to look at the guy and decide what you think about that police officer? Is that fair? Okay.

Does everynne understand in every single criminal case the police officers are going to get there at different times, or the criminals are going to do different things after they commit the crime?

For example, you agree that sometimes a guy snatches a purse and the cops catch him running the street with the purse, correct?

Sometimes the guy puts a gun in somebody's face and gets away? Thrnws the gun in the river, takes the money, loses the purse. Does everyone agree with that?

So when you have a criminal case, you can't expect the same evidence in every single case, does everynne agree with that?

So when the guy gets rid of the gun, but the witness, the woman who had her purse stolen says, I

saw the gun, it was clear as day, it was sticking in my face. I don't have my purse anymore. She says, that person did it. I saw that person. I had the ability to see him. It was light enough. It was -- my eyes are good enough. I'm sure that's him. But the police never recover him with the purse or him with the gun, does that mean that she wasn't robbed with the gun? Okay.

So if she gets up on the stand and testifies, he stuck a gun in my face, he took my purse, he's charged with taking somebody's purse by sticking a gun in their face and you believe that witness beyond a reasonable doubt as to all the things the instructions say, you've considered her ability to observe any biases she might have, she doesn't even know the guy, but you have considered all those things and you believe at the end of the case beyond a reasonable doubt that this guy committed the crime, you have to find him guilty, would you agree with that?

MS. BEIMDIEK: Judge, I believe at this time, I believe his line of questioning is designed to seek a commitment from the jury.

THE COURT: Objection sustained.

MR. HAGEMEISTER: Well, if you have

instructions that say the State has to prove, and this has nnthing to do with this case, this is a hypothetical --

MS. BEIMDIEK: Judge, I object because I think this is beyond the scope of voir dire.

THE COURT: The hypothetical posing facts of the snatching of the purse is sustained. Let's move on.

MR. HAGEMEISTER: Okay. If you have instructions that show that the State has to prove what we call elements, that somebody did this, that they did this, that they did this, and obviously it was this particular somebody, and you get a witness on the stand who testifies, you get a witness who testifies all these things happened and you believe that witness beyond a reasonable doubt, that all those things happened and that particular persnn is the person that did them, do you find the person guilty? That's what a case is. Does everyone agree? Okay.

Obvinusly if you don't believe him, he's not guilty. Walk him out the door. If you don't think the witness has established everything, the identity of the person or whatever the case may be, he's not guilty.

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But the fact, does anyone here have a

problem with the fact that sometimes people commit crimes and that all the pieces of evidence are not recovered? Does anyone have a problem with that?

Does anybody think that the woman should have to chase him down and say I got to get that gun from you because otherwise nobody will believe ynu have one? Does anybody think that?

Anybody think that the victim should have to go and wrestle the weapons, the stolen property and the person down before they can ever get a conviction?

MS. BEIMDIEK: Judge, again I renew my objection. He's gone back to the use of the hypothetical.

MR. HAGEMEISTER: Okay. I'll change. I'll withdraw that, Your Honor.

THE COURT: Very well.

MR. HAGEMEISTER: Somebody kills somebody, and a case where somebody kills somebody and they leave, do you make the victims go and find the people, get their guns from them and hold them until the police come before you can find them guilty? Is that what is required to find somebody guilty of murder? Anybody here's opinion? Okay.

Is there anybody who thinks that should be required? Raise your hand. I assume that nobody

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thinks that should be required.

So if you see a witness say somebody shot, and you believe that witness, you can believe somebody's shot, is that a fair statement? Especially if there's other stuff to support it, but even if there's a witness saying, is that enough if you believe that witness beyond a reasonable doubt?

You have a confused look, sir. Can you tell me what I can do for you?

VENIREPERSON CAMPBELL: No, go ahead.

MR. HAGEMEISTER: I realize it's sometimes hard to grasp.

VENIREPERSON NATHANIEL WARD: It ain't hard to grasp, it's the way you saying it.

MR. HAGEMEISTER: I realize it's the way I'm saying it. The fact is that jurors have to understand that you don't always get the gun and that doesn't mean that somebody wasn't killed with a gun, the guy has bullet holes in him. Does everyone agree with that?

Does anybody think that if they don't see a gun in the courtroom, they can't find a person guilty of shooting a person?

Okay. This Mr. Ward? You would want to have the victims stop the guy when he's shooting at

them and take the gun from them --

VENIREPERSON NATHANIEL WARD: I'm saying if this a person dead, it doesn't mean that person shot them, it means there was a gun present that shot him.

MR. HAGEMEISTER: That's a smart observation. I'm not saying because a person is dead you convict the next person in line.

VENIREPERSON NATHANIEL WARD: Okay.

MR. HAGEMEISTER: I'm saying if I don't have the gun in the courtroom during the trial, but I have other evidence that you can believe beyond a reasonable doubt that says somebody did it, and you believe that other evidence, does the fact that I don't have the gun keep you from convicting?

VENIREPERSON NATHANIEL WARD: No.

MR. HAGEMEISTER: Is there anybody who feels that you have to have the gun before you can get a conviction? Okay.

So we have a case where a crime is committed. The police officers go out and try to get evidence, fair? Everyone with me? Without being too obvious. So in every case when a police officer goes out, the evidence you get is determined by how smart the crooks were, how good the cops are, and just how lucky the situation was.

So when you have a criminal case, every juror has to use their common sense to look at the case and say, well, I expect this evidence in this case, but I don't understand why they don't have this evidence. I would expect this evidence, but I don't understand why they don't have this.

Does everyone understand you change what you require according to the facts of the case? You are not going to have six witnesses in every single case, would everyone agree with that?

Does everyone agree that sometimes criminals decide to commit a crime against somebody when nobody is looking? Would anybody agree with that?

Is everyone awake? Everyone is here. Is everyone awake? Yep, you're here with me. Are you with me, ma'am? Okay. What was the last question? I'm just kidding.

I do jokes because we have to go on like this for an hour and a half. I don't want anyone to forget the seriousness of this case. There is a boy who is dead. It will be up to me to present evidence to show that these two killed him. I will provide that evidence in the form of witnesses.

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Does everyone understand that a witness that takes the stand and testifies, that that testimony is

considered evidence? Does everyone agree with that?

Does everyone understand that if there is one witness, the guy getting mugged in the parking lot by himself, if it's somebody alone in their bedroom, having a crime committed against them, a guy who works the all night Amoco station, and there's just one person that sees the people who committed the crime, and we can get an identity of those people, and he testifies that the crime was committed against them, that that has to be enough?

MS. BEIMDIEK: Judge, I object. It's a misstatement of the law.

VENIREPERSON NATHANIEL WARD: No, no, huh-uh.

THE COURT: Just a moment. The objection will be sustained. Restate your question.

MR. HAGEMEISTER: Mr. Ward, what do you think? What do you say?

VENIREPERSON NATHANIEL WARD: That ain't got to be enough. People lie on the stand all the time, even though you're sworn in.

MR. HAGEMEISTER: Okay.

VENIREPERSON NATHANIEL WARD: You might have one witness on the stand that's testifying they may have shot somebody or killed, whatever. But that

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don't mean that's true. Witnesses you got, they can all lie.

MR. HAGEMEISTER: Okay. I understand. If you think that, if you think that you're automatically going to figure that they could be lying?

VENIREPERSON NATHANIEL WARD: You don't automatically think that. I'm saying no matter how many people you put on the stand, ain't telling how many are going to lie.

MR. HAGEMEISTER: Okay. What do you think the system should be?

VENIREPERSON NATHANIEL WARD: It ain't got nothing to do with the system.

MS. BEIMDIEK: Objection.

THE COURT: Sustained.

VENIREPERSON NATHANIEL WARD: It ain't got nothing to do with the system. It's about serving on the jury.

MR. HAGEMEISTER: I'm take it you think all witnesses could lie, is that a fair statement of what you said?

VENIREPERSON NATHANIEL WARD: Anybody can lie.

MR. HAGEMEISTER: Okay. If you think that, then it doesn't matter who I put on the stand?

VENIREPERSON NATHANIEL WARD: No, that ain't true.

MR. HAGEMEISTER: What is it that you're going to, what's going to make you believe somebody, they say I really, really promise?

VENIREPERSON NATHANIEL WARD: No, I'm saying -- see, you trying to turn everything, you're a lawyer. Okay.

MR. HAGEMEISTER: I'm sorry.

MS. MOORE-DYSON: Your Honor, I object. I think he's gone a bit far.

VENIREPERSON NATHANIEL WARD: If you sway me on --

THE COURT: Objection overruled. You may finish your answer.

VENIREPERSON NATHANIEL WARD: If you sway me on the stand, I'm the witness to say these two fella shot somebody, I could be a person in the neighborhood got a grudge against them.

MR. HAGEMEISTER: You're right.

MS. MOORE-DYSON: That's right.

VENIREPERSON NATHANIEL WARD: I could lie to get them off the street.

MR. HAGEMEISTER: Yes, that's why we have juries. If it were that easy, that's why we have

juries. Can you sit there and listen and say --

VENIREPERSON NATHANIEL WARD: You can't say just because he said that, that's enough evidence to convict them.

MR. HAGEMEISTER: Here's what I'm saying. What I'm saying is, let's say you get somebody up on the stand. Can everyone hear me okay? You get somebody on the stand and that person comes in and says what they saw.

Now, if you're in the jury, you're looking at this person because you're going, hey, I got a tough decision I got to make here, so you say, do we have any nonjurors chiming in here? All right.

So you got to say, why do I believe this person? You look at it critically. You should do that, you're on the jury, you should be looking at it, because if you have a reasonable doubt, they'd rather have ten guilty people go free than one innocent go to jail.

VENIREPERSON NATHANIEL WARD: Okay.

MR. HAGEMEISTER: But say I'm looking at this witness, they're under oath, and you look at what reason that person might have to lie.

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VENIREPERSON NATHANIEL WARD: That ain't got nothing to do with what I said.

MR. HAGEMEISTER: I'm getting there.

VENIREPERSON NATHANIEL WARD: You beating around the bush.

MR. HAGEMEISTER: I know, but I got to make sure everybody understands what I'm saying. I realize I'm going slow, but there's somebody here I'm going just the right speed for.

So there's -- so you end up saying, why should you believe this person? The question is why shouldn't you believe that person? They're under oath, taking the stand, going through all this hassle, and you say, why shouldn't I believe them?

VENIREPERSON NATHANIEL WARD: Okay.

MR. HAGEMEISTER: Do you base what you shouldn't believe them on what they say or do you base it on something you saw on Hard Copy one time?

VENIREPERSON NATHANIEL WARD: No, no. What you said, your first comments, you all got to realize this ain't TV, this is real life. This ain't --

MR. HAGEMEISTER: I hear you.

VENIREPERSON NATHANIEL WARD: This ain't Perry Mason. This gots something to do with these brothers' life, for real. Somebody on the stand say they did something and that's enough evidence, no, it's not. He said, she said, ain't enough evidence.

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MR. HAGEMEISTER: That's your opinion. I respect you for speaking up. I really do. Apparently, Mr. Ward, Mr. West was clapping. I think he agrees with you. Is that a fair statement?

VENIREPERSON WEST: Yes.

MR. HAGEMEISTER: Is there anybody else that feels like Mr. Ward does?

VENIREPERSON WASHINGTON: Yes.

VENIREPERSON LUCAS: I do.

MR. HAGEMEISTER: You're saying you could not ever base it on one person's testimony alone?

VENIREPERSON LUCAS: Exactly.

VENIREPERSON NATHANIEL WARD: What I say, if we believe that person.

VENIREPERSON LUCAS: As a prosecuting attorney, you have to prove that those guys did it.

VENIREPERSON NATHANIEL WARD: Witness can't prove they did it, you have to prove it.

VENIREPERSON LUCAS: You have to prove --

THE COURT: Just a moment.

MR. HAGEMEISTER: I have to make sure I do this one at a time.

THE SHERIFF: Order in the Court.

THE COURT: Order in the Court.

MR. HAGEMEISTER: And --

THE COURT: Just a moment. Had you finished your answer, sir?

VENIREPERSON LUCAS: Yeah.

THE COURT: I wanted one answer at a time.

MR. HAGEMEISTER: I apologize. This is Mr. Lucas. You're saying that one witness could never be enough?

VENIREPERSON LUCAS: Yeah, one witness could.

MR. HAGEMEISTER: I will get back to you. Go head.

VENIREPERSON LUCAS: One could be enough if you can prove to me that that witness telling the truth and nothing but the truth.

MR. HAGEMEISTER: Let me ask you this. Kid runs into a store, takes a tablet, runs out of the store. The clerk comes in. He's got no video or photographs. He doesn't have inventory. He sees the kid run in, run out. The kid is gone. He never finds the note pad again. He tells the police, little Johnnie ran into my store and took my note pad. He gets up on the stand and he says that. That's it. That's the whole case. Thank you, sir. State ends its case. Now if that's the case --

VENIREPERSON LUCAS: Like I was saying at

first, you have to prove to me, like that guy have to prove to somebody else, that this kid actually ran in here and did this.

MR. HAGEMEISTER: How does he prove it? I said he told you.

VENIREPERSON LUCAS: Okay.

MR. HAGEMEISTER: How does he prove --

VENIREPERSON LUCAS: That's the lawyer's job. I'm not getting on nothing or nothing.

MR. HAGEMEISTER: But I'm saying --

VENIREPERSON LUCAS: Look like kind of beating around the bush.

MR. HAGEMEISTER: No, I'm lost. I got to be frank with you. If I put the guy on the stand and that's the only evidence you have in this case and he says it, I don't get up there and say, hey, he's a good guy, he's telling the truth.

VENIREPERSON LUCAS: No, I understand that. I understand that.

MR. HAGEMEISTER: That's the whole case.

VENIREPERSON LUCAS: It's up to me. I have to look at this. I have to look at being the judge of this, right? Because I'm the juror. I happen to believe, you know, without no doubt that this guy is telling the truth.

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MR. HAGEMEISTER: That's right.

VENIREPERSON LUCAS: Or not telling the truth.

MR. HAGEMEISTER: It's got to be on that guy. If you automatically think one guy doesn't cut it for me, you got to let us know.

VENIREPERSON LUCAS: Right.

MR. HAGEMEISTER: Because it's no different than the guy running in the store and taking the tablet and leaving, which sometimes happens, and all you got is the guy saying it was little Johnnie, I've seen him before.

VENIREPERSON LUCAS: Right.

MR. HAGEMEISTER: He is going to say, I know him, he swiped candy bars in here before. You're going to say, hey, he knows him, does that mean he didn't steal the tablet because there's a chance --

VENIREPERSON NATHANIEL WARD: It's possible. It's possible.

MR. HAGEMEISTER: It's possible. If nobody brings it up, could you bring it up in your own head or take it from the evidence? You say, it's possible, it's possible that everybody knows everybody. But with this particular case you have to have it come from the witness stand. You have to have something

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you take from the evidence that makes you think that he's biased against the little guy that stole the tablet.

VENIREPERSON NATHANIEL WARD: Right. Right.

MR. HAGEMEISTER: You can say he might be biased because he is not guilty, otherwise nobody ever gets convicted, fair?

VENIREPERSON NATHANIEL WARD: Yeah, you right, you right.

MR. HAGEMEISTER: The same thinking applies with stealing the tablet as the kid coming into the store and on the mean streets, boys being boys, pulling out his gun and killing somebody, leaving them dead and running out. They never recover the gun. They can't match the bullet. All there is is the store owner coming in saying, it was little Johnnie, he came in, pulled out his 90, blew the person away and he ran out. That's all you have in that case.

If you're a prosecutor putting on the evidence, what can you do but say I'll call the store owner, put him on the stand. Guy takes his oath. The guy walked in, blew the kid away in the middle of my store and ran away.

Also there's no other evidence to get. The cops aren't that good. What do you do? That is all

you can do. That has to be enough if everyone believes him beyond a reasonable doubt.

MS. MOORE-DYSON: Your Honor --

MS. BEIMDIEK: I renew my objection. Excuse me. That's a misstatement of the law. I think the jury is entitled to consider the totality of the evidence as they hear it.

THE COURT: Also repetitive. The Court will sustain the objection.

MR. HAGEMEISTER: Obviously you consider everything that comes out in a case.

VENIREPERSON LUCAS: Right.

MR. HAGEMEISTER: Other witnesses may come up and testify to other things. You got to take all that into account. But in the end run, does everyone here agree that there are going to be situations in the world today where people commit a crime when there isn't ten witnesses watching?

They mug somebody on the street, they rob the guy working alone at night, or they go into somebody's bedroom alone at night and commit the crime, and they're smart enough, or strong enough, or lucky enough they get away and take the evidence with them. Does everyone agree that's possible in the world today? That happens.

VENIREPERSON NATHANIEL WARD: It happens a lot.

MR. HAGEMEISTER: There are times where, frankly, the police officers, if they were better, might have been able to find more evidence, but they don't. Possible?

VENIREPERSON NATHANIEL WARD: Yeah, it's possible.

MR. HAGEMEISTER: I am not saying that's in this case, I'm saying across the board.

Is there anyone here that thinks in a criminal case when you have one witness, and that witness takes the stand, and that witness testifies, and that witness testifies to all the things that the State is supposed to prove in the jury instructions, and you've looked at that witness, and you've said is that witness telling me the truth, are they lying or are they mistaken, and at the end of the case you decide they're not mistaken, they had a chance to see what they say they saw, they're not lying, they might have some knowledge of the person or the places, but I don't know what their biases are, I don't know why they lie, and I can't come up with that off the top of my head because that should be brought out if they have a bias, and you believe that witness beyond a

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reasonable doubt as to everything that the State has to prove, is there anyone here that says that if after putting on that one witness, now this is if you believe that witness beyond a reasonable doubt, considering everything that you see, but all I am putting on is one witness, is there anybody here that says I can't do it, I can't say guilty, I can't apply the law in that situation, I would just be too afraid to say that that person is guilty?

VENIREPERSON NATHANIEL WARD: Are you saying without any physical evidence?

MR. HAGEMEISTER: Without anything else at all. I mean maybe you got a -- well, it depends on the case.

VENIREPERSON NATHANIEL WARD: Right, exactly.

MR. HAGEMEISTER: If they are shooting through an Amoco window, there's a hole in the Amoco window, but they get away --

VENIREPERSON NATHANIEL WARD: Okay.

MR. HAGEMEISTER: -- you're looking at the one witness who says this crime was committed against me and this person did it, and you believe that witness, and that's all you have, just like so many muggings, so many rapes, so many stealings of gas

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stations, or whatever there is, and all these crimes going on in St. Louis, there's nobody else around, or maybe there were people around but, God knows, they're not going to come inside and testify, so all you get is one witness, does that mean you cannot convict or can you still convict, can you still convict, sir?

VENIREPERSON WEST: Me?

MR. HAGEMEISTER: Mr. West?

VENIREPERSON WEST: Yes.

MR. HAGEMEISTER: Mr. Lucas? Everybody in this box, you can still convict if you believe everybody beyond a reasonable doubt? Fair?

VENIREPERSON LUCAS: Yes.

MR. HAGEMEISTER: Anybody have any problems with what I'm saying? Have any problems?

VENIREPERSON CUNIGAN: No.

MR. HAGEMEISTER: Everyone here understand what I was saying? Okay. Now obviously everyone in every criminal case wants to know that there's just evidence being shoved at you so you can go home and go, that was easy as pie.

But it doesn't always happen that way. I have to prepare you for that. Sometimes it's a tough call. But if you believe that witness, that can be enough to convict somebody of murder in the first

degree and just sentence that person or two people to life in prison without parole, life in prison without the possibility of parole.

Now who here is going, that changes things? Is there anybody saying that? Anybody think that the rules of law should change, they should apply differently to different people, to the dead boy in the case? I'm going to get back to you, Mr. Ward, in a minute. Thanks.

VENIREPERSON NATHANIEL WARD: You would be wasting to talk to me.

MR. HAGEMEISTER: I appreciate that. This is Miss Cherry?

VENIREPERSON CHERRY: Yes.

MR. HAGEMEISTER: What were you going to say?

VENIREPERSON CHERRY: Not in this case I don't think anybody come out, I think the law should change.

MR. HAGEMEISTER: I don't necessarily disagree with you. The fact is that under the law you have to find somebody guilty beyond a reasonable doubt, whether they're stealing a candy bar, I know this sound ridiculous, whether they're stealing a candy bar or killing somebody in cold blood, you still

have to apply the same standard.

You can't say -- does everyone understand? You can't say that because this is a more serious crime that the constitution should change, the State should prove its case beyond all doubt. That burden doesn't go up. Does everyone agree with that? Straight across the board. Whether you're stealing a candy bar or killing somebody in cold blood on the street. Does everyone agree with that? I know it's hard to believe. Somebody has a hand they want to raise on this? All right. Maybe I'm wrong.

Mr. Ward, you were going to say something?

VENIREPERSON NATHANIEL WARD: I forgot what it is.

MR. HAGEMEISTER: Do you think you could?

VENIREPERSON NATHANIEL WARD: This is what I was going to say. You say if he testify and say that one them brothers did what they did, you never proved that both of them shot, you said there's a dead body.

MR. HAGEMEISTER: If all the guy does is get on the stand and say there's a dead guy who's been shot and he doesn't name them as being the shooters, they're not guilty.

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VENIREPERSON NATHANIEL WARD: If he can't say both of them as shooter, one is an accessory and

one did the crime.

MR. HAGEMEISTER: My next point.

VENIREPERSON NATHANIEL WARD: Okay, go ahead.

MR. HAGEMEISTER: There's an instruction that says acting with another. The acting with another instruction says that you and I go and rob a bank. You go in and rob the bank. I drive the get-away car. I know you're robbing the bank, but I'm driving the getaway car. I'm looking out. I can be held guilty for robbing the bank. Does anyone disagree with that? Okay.

Now even though I'm not the one who stuck the gun in the teller's face, I know what's going on, I'm assisting or aiding or encouraging in this act. Does anyone think they should not be finding that second person guilty in that situation? Anybody? Are you with me? Okay.

When it comes to a shooting, the same rule applies. But if you don't find that the second person knew that he was going to rob the bank, he's not guilty. The second person is not guilty. He's dropping him off to cash a check, he comes out with the money hid and the gun, he didn't know, he's not guilty. Even if he drives off with the guy. He might

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be helping the guy escape a crime, but he's not guilty of robbing the bank because he didn't know.

The same applies to murder, does everyone understand that? When you have a situation where a guy gets killed, he's got a bullet in him or all the way through him, you don't have the gun recovered to know what gun shot it, you can't always show exactly which person was the better shooter, would that be a fair statement?

VENIREPERSON NATHANIEL WARD: You never said two guns was present.

MR. HAGEMEISTER: I can't get into the facts of the case.

VENIREPERSON NATHANIEL WARD: Okay.

MR. HAGEMEISTER: But I can ask questions that get you to be -- show if you're able to be a fair juror.

VENIREPERSON NATHANIEL WARD: Okay, okay.

MR. HAGEMEISTER: Okay. If you, if you think that the person was encouraging, aiding, acting together with, even if he wasn't the shooter, but he was still, under the instructions, and I don't want to go into the actual instructions, but you're going to get an instruction that says what it is to be an accessory, if you get that instruction and you find

that it says that if you're in the car going, shoot him, shoot him, shoot him, that that's enough to convict him, and you disagree with that law, all I did was go, shoot him, shoot him, shoot him, he didn't actually put the bullet in him, you disagree with the instruction that's given to you, but you've sworn an oath to follow that instruction, if that instruction says aiding and assisting and encouraging being a lookout or a guy pushing him to do it, if that says something that you believe he did that act, and it requires you to find a person guilty of murder in the first degree and give him life without parole, do you say, I'm sorry, I know I gave an oath to follow this instruction, but Nathaniel Ward's law is applying right now?

VENIREPERSON NATHANIEL WARD: There ain't no Nathaniel Ward law.

MR. HAGEMEISTER: I'm not trying to be insulting, I'm using you as a particular juror, I'm saying I don't like that rule, I am not going to follow it even though I have given an oath to follow it.

Is there a chance anybody would do that? They would look at their instructions and say under this instruction just the guy driving the car could be

found to be assisting in the driveby, or whatever the case may be, and therefore held guilty of murder in the first degree and get life without possibility of parole and I don't like that rule, I think he should get something less, or I think he shouldn't be charged or whatever the case may be?

But under the law as it's given to you, if you follow it, it says you have to find that person guilty. Do you still follow that law? Is there anybody here that says I am not going to follow the instruction if you disagree with it? That's okay to say that. You are not going to get in trouble for saying it.

The question is will you follow the instructions as they're given to you? It's not for me to -- who will follow the instructions as they are given to you? The Court will give them to you. It's the legislature and the Supreme Court that gave them to them, and people a lot smarter than I'll ever be. You have to make sure when you go down there you read those instructions carefully and you follow those instructions.

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Next subject.

THE COURT: I believe we'll take a break there, Mr. Hagemeister, if you have a gap.

MR. HAGEMEISTER: I have a gap whenever you say, Judge.

THE COURT: Thank you, sir. Ladies and gentlemen of the panel, we will have out afternoon recess at this time.

Eyes right. Look to your right. Did everyone hear me? Some of you aren't looking to your right. Look to your right. Now look to your left. Thank you. When you return to the courtroom, please take the same seats next to the same persons or we will have quite a bit of time to undue improper reseating. We will be in afternoon recess. The bailiff will tell you when to return to the courtroom. Thank you.

(The Court duly admonished the jury panel and a recess was taken.)

(The following proceedings were had out of the presence of the jury panel:)

THE COURT: Let the record show that the Court is still in recess and the panel is not present in the courtroom. The Court has been advised by the bailiff that a member of the array stated to the bailiff that Mr. Ward was discussing the voir dire examination during the recess, is that correct, Mr. Bailiff?

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THE BAILIFF: That's correct, sir.
THE COURT: You are so advised.
MR. HAGEMEISTER: I move to strike for cause.
MS. MOORE-DYSON: Your Honor, I ask that he be brought to the bench and that matter be discussed and perhaps we can determine what was said or to the extent before that be granted.
THE COURT: Very well. Defense counsel's request is granted. We will bring Mr. Ward in and you may voir dire him regarding this alleged incident. Any objection?
MR. HAGEMEISTER: No, Your Honor, but I ask that the Court ask Mr. Ward instead of the State, in case he isn't removed for cause, who it was that he was having that discussion with.
THE COURT: Very well. The Court will inquire and then if you have any questions, you may inquire. Is that agreeable to the parties?
MS. MOORE-DYSON: Yes, sir.
MS. BEIMDIEK: Yes, Your Honor.
THE COURT: Bring Mr. Ward in, Mr. Bailiff. Let the record show that we are referring to Nathaniel Ward, Juror No. 388.
Mr. Ward, will you take your seat, sir.

VENIREPERSON NATHANIEL WARD: Sure.
THE COURT: Mr. Ward, were you discussing this case or the voir dire examination during the recess?
VENIREPERSON NATHANIEL WARD: No.
THE COURT: You didn't talk to anyone about the proceedings that we've partially completed here today?
VENIREPERSON NATHANIEL WARD: Hum-um.
MS. MOORE-DYSON: You did understand the instruction of the Court when the Court released the jury asking you not to discuss the case at all among yourselves or with anybody, is that correct?
VENIREPERSON NATHANIEL WARD: Right.
MS. MOORE-DYSON: In the hallways you didn't discuss it with any of the jurors, didn't mention anything that was said, make a comment about the prosecutor, myself or Miss --
VENIREPERSON NATHANIEL WARD: Hum-um. We was talking about something altogether different.
MS. MOORE-DYSON: You were speaking to who?
VENIREPERSON NATHANIEL WARD: Just a couple of jurors.
MS. MOORE-DYSON: You weren't talking about this case?

VENIREPERSON NATHANIEL WARD: No.
MS. MOORE-DYSON: You weren't talking to a crime similar to what may have been talked about by Mr. Hagemeister?
VENIREPERSON NATHANIEL WARD: Hum-um.
THE COURT: Thank you. You may remain seated.
MR. HAGEMEISTER: Judge, I have a question. I'm sorry.
THE COURT: I thought you were finished.
MR. HAGEMEISTER: I guess you don't know any reason why one of the jurors would have brought it to the Judge's attention that you were talking to somebody?
MS. MOORE-DYSON: Was it a juror?
MR. HAGEMEISTER: Why anybody else would say you were doing that?
VENIREPERSON NATHANIEL WARD: No.
MR. HAGEMEISTER: You just -- do you know who it was that you were talking to out in the hallway?
VENIREPERSON NATHANIEL WARD: Just the dude sitting behind me.
MR. HAGEMEISTER: It wasn't about this case?
VENIREPERSON NATHANIEL WARD: No.

MR. HAGEMEISTER: Somebody thought they heard something, they were wrong? If somebody else thought they heard you talking about the case, they were wrong?
VENIREPERSON NATHANIEL WARD: If you want to dismiss me, that's cool, I got to go to work tonight. That's cool. If I say I was talking about the case, can I get dismissed?
THE COURT: Sir, the Court will remind you you're under oath. You stated under oath you were not discussing the case.
VENIREPERSON NATHANIEL WARD: Okay.
THE COURT: The Court's not attempting to put words in your mouth, but the Court expects a complete and truthful answer.
VENIREPERSON NATHANIEL WARD: No, I wasn't talking about the case. I was talking about something altogether different.
THE COURT: Thank you. What conversation you had was with the venireperson seated directly behind you?
VENIREPERSON NATHANIEL WARD: Yeah.
THE COURT: That would be Mr. West, is that correct?
VENIREPERSON NATHANIEL WARD: Yes. I guess

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that's his name.

THE COURT: Thank you. Anything further on behalf of any party before we proceed?

MR. HAGEMEISTER: I renew the position.

MS. MOORE-DYSON: Your Honor, I believe if the -- he's indicated that he has not spoken and he's under oath. If the prosecutor wants to strike him, he'd be more than able to do so, I don't think there's enough cause presented that he should be.

THE COURT: Well, the question at this point, do you have any further questions of this venireman?

MS. MOORE-DYSON: No, no.

THE COURT: I believe, Mr. Ward, I will ask you to step back momentarily in the hallway so I may discuss this matter with counsel. I thank you for your cooperation.

Any further requests before the Court rules on the State's motion?

MR. HAGEMEISTER: Well, if need be, I would ask the person who reported it to the bailiff come in and put it on the record; if he was talking about the case, what he was saying.

MS. MOORE-DYSON: If that person is a juror, Your Honor, that would be putting that person in an

akward position with the rest of this panel.

THE COURT: The Court does not know the identity of the person.

MR. HAGEMEISTER: Well, the bailiff probably does.

THE COURT: The bailiff told me that he does not know because, I believe the -- or if he does know, the venireperson requested to be anonymous. So I will respect that request at this point. However, the Court will call Mr. West in since no one of the parties has requested. Any objection?

MR. HAGEMEISTER: I request Mr. West be brought in.

MS. BEIMDIEK: No objection. I think that's fine, Your Honor.

THE COURT: Bring in Mr. Darryl N. West, Juror No. 205.

THE SHERIFF: Your Honor, Mr. Ward would like a meeting with you again.

THE COURT: We'll talk to Mr. West first. Will you approach the bench, Mr. West. Let the record show this is Darren L. West, Juror No. 205.

Mr. West, during the recess, did Mr. Ward discuss this case with you?

VENIREPERSON WEST: No, sir.

THE COURT: Thank you. Any questions?

MS. MOORE-DYSON: No, Your Honor.

MS. BEIMDIEK: No, Your Honor.

MR. HAGEMEISTER: No.

VENIREPERSON WEST: Is that it?

THE COURT: Thank you.

VENIREPERSON WEST: Okay.

THE COURT: Mr. Ward's request to return to the courtroom is granted. Please bring Mr. Ward in.

VENIREPERSON NATHANIEL WARD: Do I have to sit in my seat?

THE COURT: You can approach the bench.

VENIREPERSON NATHANIEL WARD: I wanted to talk to you though.

THE COURT: You may do so in the presence of counsel.

VENIREPERSON NATHANIEL WARD: Do I have to?

THE COURT: Yes, sir. I hope you understand that I also am governed by rules and I cannot hold a conversation with you without the presence of the attorneys for the parties.

VENIREPERSON NATHANIEL WARD: Okay. That's fine. That's cool.

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THE COURT: If you have anything further to add, you may state it now.

VENIREPERSON NATHANIEL WARD: I want to know if I can get taken off this?

THE COURT: All right.

VENIREPERSON NATHANIEL WARD: I'm asking to be taken off this.

MR. HAGEMEISTER: I'm not opposed.

THE COURT: Any objection?

MS. BEIMDIEK: I'd like to inquire what reason you --

VENIREPERSON NATHANIEL WARD: I ain't got no reason, I just don't want to do it. I ain't got no particular reason. I just don't feel like I should be here and then I got, you know, it's up to me or whoever, all us to decide the fate of two people. I don't want to do it. I really don't.

MS. MOORE-DYSON: Your Honor, I think that's something we can state on -- there are questions that will eventually be asked but we haven't gotten to that point.

THE COURT: Sir, the Court will advise you that your request not to be on the case is not good cause for an excuse. However, if you feel that you could not be fair to the State or to the defendants, and accord the defendants a fair trial and the State of Missouri a fair trial, you should let the Court

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know.

VENIREPERSON NATHANIEL WARD: What if I say I don't want to take a chance of being fair or not being fair?

THE COURT: Are you telling the Court, I'm not putting words in your mouth, sir, you discussed it, the matter at some length during the voir dire with Mr. Hagemeister, do you feel there's a reasonable likelihood, because of the opinion you've, opinions you've expressed that you could not be a fair and impartial juror?

VENIREPERSON NATHANIEL WARD: Say that again.

THE COURT: Is there a reasonable likelihood, because of your opinions, you couldn't set that aside, and, because of those opinions, there's a reasonable likelihood you could not be fair and impartial?

VENIREPERSON WARD: I don't understand what you're saying.

THE COURT: Well, the purpose, sir, of this proceeding is to select twelve jurors who can be fair and impartial and follow the law.

VENIREPERSON NATHANIEL WARD: Okay.

THE COURT: You stated you do not want to

serve.

VENIREPERSON NATHANIEL WARD: Okay. I can do what you asked me to do. I can be fair and impartial, but I'm saying I do not want to take the chance of maybe something coming up and I feel different later on.

THE COURT: Well, that's what I'm asking. Do you think there's a reasonable probability that may happen because of your opinion?

VENIREPERSON NATHANIEL WARD: It's possible. It is possible.

THE COURT: Thank you. Mr. Ward, I appreciate your candor. You may take your seat now.

Let the record show that the Court will reserve ruling on defendant's challenge for -- the State's challenge for cause of this venireman.

Bring the rest of the panel in. Counsel are also advised that the Court is going to inquire if any member of the panel discussed with any other member of the panel. Any objection?

MS. BEIMDIEK: None.

MR. HAGEMEISTER: None.

MS. MOORE-DYSON: Your Honor, this person has been isolated. Could you ask that question generally -- off the record.

(Proceedings were had off the record)

(The following proceedings were had in the presence of the jury panel:)

THE COURT: Ladies and gentlemen of the panel, prior to the recess, the Court read you a fairly lengthy instruction that until the case is submitted to the jury for determination, you're not to discuss the case among yourselves or with others or form or express any opinion about the case.

The Court is now directing its question to every member of the panel. Have any of you discussed this case during the afternoon recess that we just concluded? If so, raise your hand. Let the record show that there's no response to the Court's question. You may proceed, Mr. Hagemeister.

MR. HAGEMEISTER: Thank you, sir. We all have procedural rules to follow to make sure everyone is given a fair trial and that is nobody is to be talking about it. If somebody finds out somebody is talking about it, you're supposed to come forward to us and tell us.

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Having said that, I'll go back to my last question. The question about one witness. When I had the discussion earlier, I was directed this way and I could hear people that seemed like they wanted to say

something. One of the clerks said I could hear some people saying something. I wanted to make sure I did not let anybody have an opportunity to talk because my attention was directed over here.

Is there anybody that has an opinion about the topic we had before the break? Somebody over here, I heard somebody say something at some point. Okay. Everyone feels it's been covered enough? Okay.

Now, the -- we talked about the one witness, how you should be an analytical and critical juror. You should look at that one witness and find out if there is bias or reason for that person to lie.

That applies to all witnesses. They have a reason to get up there and tell you a story, you can decide, you have the power as a juror to say, I will pretend like he didn't testify. Everything they said, in one ear and out the other. I don't believe what they said because they have a reason to lie. You have to power.

You have to base that on a bias that came from the evidence. Every decision you make in this case has to be testified to or a logical inference from what was testified to.

Logical inference is you hear raindrops, you hear thunder, you walk outside, it's wet, you didn't

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see it raining but you figure it was raining. You can make that logical inference in every criminal case and is almost necessary, you have to figure out what happened from all the pieces of the puzzle.

But you can't create pieces of the puzzle. You can't go to the jury room and say, well, what if this, if it doesn't come from the stand or from logical inferences.

And people do it all the time in trials. They come up after a trial and say, well, we thought maybe he was upset because the other guy was going out with an old girlfriend and I'm like, where did you get that? There was never any testimony like that at all. Somebody totally did that off the top of their head in the jury room and it affected the case.

Can everybody here promise me you'll base your decision solely from the evidence and not something you saw on some TV show that has nothing to do with this case? Can everyone make that promise? Thank you.

I usually say this at the beginning, but I'll say it now. As attorneys, we present evidence. You make the decision. That's it. Did they do the things that were said to have been done? There's no interest there except for putting on the evidence for

you to decide.

Now, when you look at the case, you have to make your decision as an impartial person. You can't bring in any of your own preconceived ideas, prejudices, or sympathies into the case. Sometimes it's hard for somebody to admit that they're prejudiced. Sometimes it's hard for somebody to admit that they're sympathetic. If you try this case ten times with the same evidence, you should get the same result every time if the juries are logical and objective.

Is there anybody here that thinks, I'm sorry, I can't make a decision that will result in a young man spending his life in prison? Is there anybody that feels that way? Is there anybody -- we have a hand. What is your name?

VENIREPERSON LEISURE: Tracy Leisure.

MR. HAGEMEISTER: Okay. On page 6. What were you going to say?

VENIREPERSON LEISURE: I have personal family and things like that that I did have a problem with, you know, giving somebody life in prison without the possibility of parole.

MR. HAGEMEISTER: You have somebody you know that may have had to spend some time in prison?

VENIREPERSON LEISURE: Well, I have a family member that is in prison.

MR. HAGEMEISTER: Okay. And you feel like he was treated fairly by the system?

VENIREPERSON LEISURE: No, I don't.

MR. HAGEMEISTER: You think it might affect your ability to be impartial?

VENIREPERSON LEISURE: As much as I wouldn't want it to be, it is a possibility.

THE COURT: I didn't hear your remark, ma'am.

VENIREPERSON LEISURE: I said as much as I would not want it to be, it is a possibility.

MR. HAGEMEISTER: So there's a chance that you might, instead of applying the standard of beyond a reasonable doubt, you might personally make Tracey Leisure's standard, I have to be beyond all doubt before I can convict somebody and even then you might not want to do it? Don't let me put words in your mouth, I'm trying to move it along.

VENIREPERSON LEISURE: It's just, with my personal experiences with different things, that I do feel that even though I wouldn't want to be sympathetic, I might be, or even though I -- I do want to be fair, but with, like I said, with personal

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experiences, I may not be able to be.

MR. HAGEMEISTER: I got the legal answer out of you up here. The legal answer being would it be fair to say because of your personal experiences, even if the evidence were reversed, you might find him guilty of something less or not guilty altogether more because of your personal experiences rather than from the evidence?

VENIREPERSON LEISURE: Yes.

MR. HAGEMEISTER: Okay. Then I ask she be struck for cause.

THE COURT: Any objection?

MS. MOORE-DYSON: I object to that. I don't think she said she couldn't be fair, she said she would be influenced by her experience. I think that doesn't necessarily say she couldn't be.

MS. BEIMDIEK: I have no objection, Your Honor.

THE COURT: I just want to make sure I heard you, Ms. Leisure. I believe you stated even if you believed the evidence beyond a reasonable doubt, that there's a reasonable likelihood you cannot follow the range of punishment, and the punishment for murder in the first degree would be life in prison without the possibility of probation or parole? Is that what you

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said?

VENIREPERSON LEISURE: Right, that's correct.

THE COURT: Let the record show that the State's challenge for cause of Ms. Leisure is sustained. Tracy L. Leisure, Juror No. 29.

Miss Leisure you are excused at this time and instructed to report to the jury assembly room tomorrow morning at 9:00 a.m. Thank you. Thank you and good evening.

MR. HAGEMEISTER: Does anyone else feel the same way as Miss Leisure? Does anyone else feel that because of the fact there is a stiff punishment for killing somebody that -- is that a hand raised? Okay. That they don't feel qualified to sit on that panel? Is there anybody here -- okay. Miss Turner?

VENIREPERSON TURNER: Um-hum. Well, me and my family, we just live in a situation like this with my only brother. I just don't -- I don't feel right sittin'.

MR. HAGEMEISTER: You're in a situation like this?

VENIREPERSON TURNER: Our only brother got killed.

MR. HAGEMEISTER: Somebody got killed and it

might affect your ability to give them a fair trial?

VENIREPERSON TURNER: I just don't want to sit.

MS. MOORE-DYSON: Your Honor, could we have her come up to the bench, please?

THE COURT: Yes.

(The following proceedings were had at the bench out of the hearing of the jury:)

THE COURT: Let the record show you are Sheron D. Turner, Juror No. 1014?

VENIREPERSON TURNER: Right.

THE COURT: Had you finished your answer?

VENIREPERSON TURNER: No.

THE COURT: You may finish your answer.

VENIREPERSON TURNER: Another thing, another thing --

THE COURT: I'm sorry?

VENIREPERSON TURNER: I know what's going. Those two -- I don't want to --

MR. HAGEMEISTER: I move to strike for cause.

THE COURT: Any objection?

MS. MOORE-DYSON: No objection, Your Honor.

MS. BEIMDIEK: No objection.

THE COURT: The State's challenge for cause

of Sheron D. Turner, Juror No. 1014, is sustained. Ma'am, you too are released at this time and instructed to return tomorrow morning at 9:00 a.m. in the jury assembly room on the 8th floor. Thank you and good evening.

VENIREPERSON TURNER: Thank you.

THE COURT: Anything further at this time?

MS. MOORE-DYSON: No, Your Honor.

(The following proceedings were had in the presence of the jury panel:)

MR. HAGEMEISTER: Which leads to my next question. Obviously, if you have a family member or somebody who has been a victim of a vicious crime that you could potentially have some type of a grudge you might carry into the jury room, and maybe, not even knowing to yourself, subconsciously hold that against somebody else simply because they had been charged. If there's just a chance that you might do that, then you have to let us know because these two people deserve a trial as well.

That would be the very last juror with his hand raised, I believe Michael Cummings? A-239

VENIREPERSON CUMMINGS: Yes, it's personal though.

THE COURT: Are you requesting to approach

the bench?

VENIREPERSON CUMMINGS: Yes, sir.

THE COURT: You may do so.

(The following proceedings were had at the bench out of the hearing of the jury:)

THE COURT: Let the record show this is Michael Cummings, Juror No. 812. You may finish your answer.

VENIREPERSON CUMMINGS: I would be fair. I am upset about my brother being killed on the Metro Link from a violent crime. I'm still upset about this, so I wouldn't be right.

THE COURT: My condolences. Do you feel you couldn't keep this personal experience, the murder of your brother out of your mind?

VENIREPERSON CUMMINGS: Hum-um. I doubt it. I'm very upset about my brother.

THE COURT: Because of that you feel you could not be fair and impartial?

VENIREPERSON CUMMINGS: I wouldn't be fair, hum-um. Not then.

MR. HAGEMEISTER: I move to strike.

THE COURT: Any objection?

MS. MOORE-DYSON: No, Judge.

MS. BEIMDIEK: How long ago was the loss of

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your brother?

VENIREPERSON CUMMINGS: About two or three years. They never catched --

MS. BEIMDIEK: Was that near Deboliver?

VENIREPERSON CUMMINGS: Yes, sir. They never catched who did it. I am really upset about.

THE COURT: Any objection to the State's challenge for cause of this venireman?

MS. BEIMDIEK: No, Your Honor.

THE COURT: Thank you for your candor.

VENIREPERSON CUMMINGS: He didn't have no money. So I'm very upset.

THE COURT: Again, my condolences and thank you for your candor. Challenge for cause is sustained.

Mr. Cummings, you're instructed to return to the jury assembly room on the 8th floor tomorrow morning at 9:30 a.m.

VENIREPERSON CUMMINGS: Sorry.

MS. BEIMDIEK: That's all right.

(The following proceedings were had in the presence of the jury panel:)

MR. HAGEMEISTER: Something else that sometimes happens in trials. The jury comes up to you afterwards and they say, why didn't you ask me if my

father hasn't killed my mother? I say I try not to make this go six hours and I try to ask as many questions as I can. I can't always think of all the questions.

So I'm going to ask each and every one of you, since you're under oath and have a duty to be fair to the State of Missouri and to the defendants, to examine your own histories and tell me if there's anything that you think that the attorneys should know about and the Judge should know about, even if we don't ask it. If anybody thinks of anything at any time, please raise your hand.

In many criminal trials the jury gets the instructions. The instructions are tried to be made as simple as they can be made, but they don't always coincide with what everyone thinks the instructions should be. I'm going to talk about that.

Sometimes jurors go down and they say, I see the person stoled somebody's whatever, usually you figure why he's stealing it. He wants it. He wants a VCR, he wants the money. He wants whatever it is, charge cards, toy, whatever it is he's stolen.

When you have a crime of murder, the jury often-times says, well, why is he or they killing the person? But when you read those instructions you will

see that the people who, in their wisdom have made the law, have not put in there a requirement that the State prove why a person committed a crime.

Now, sure it goes to help prove the case, and sure everyone wants to hear it, but it doesn't have to be proven beyond a reasonable doubt if it's not in the instructions. Does everyone agree with that? Okay.

So you might get ideas from the case as to why. There might be more than one idea as to why. But you didn't have to all decide this, this is why. You can't put somebody from the Psychic Friends Network to say what somebody was thinking when they committed the crime.

Does everyone agree that you won't require the State to prove beyond a reasonable doubt the particular reason that the person was pulling the trigger? Does everyone agree with that? Is anybody going to require it?

Mr. Snipes, are you awake?

VENIREPERSON SNIPES: Yes.

MR. HAGEMEISTER: You're the only one I know his name. All right. We have a jury list that everyone filled out questionnaires on. These questionnaires indicate to us people who have been on

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jury service and people's jobs. There's no addresses or phone numbers. The Court keeps them at the end of the case. But I ask the questions as I go through and ask some people questions person to person.

Mr. Campbell, it says you are retired. Can you tell me what you did before you retired?

VENIREPERSON CAMPBELL: Second level manager for the phone company.

MR. HAGEMEISTER: You weren't working at a prison or anything where you have some personal knowledge of the criminal justice testimony?

VENIREPERSON CAMPBELL: No.

MR. HAGEMEISTER: Mr. Patterson, same question.

VENIREPERSON PATTERSON: I worked for the railroad. Supervisor. Retired.

MR. HAGEMEISTER: Okay. You were never a policeman, attorney?

VENIREPERSON PATTERSON: Never was.

MR. HAGEMEISTER: Miss Carper? Okay. What are you studying?

VENIREPERSON CARPER: Political science.

MR. HAGEMEISTER: Are you going for a law degree? Lot of people do.

VENIREPERSON CARPER: I'm working on a

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doctorate.

MR. HAGEMEISTER: Okay. Mr. Burton, what did you do before you retired?

VENIREPERSON BURTON: I was a clerk for, shipping clerk for Brown Shoe.

MR. HAGEMEISTER: Circuit clerk?

VENIREPERSON BURTON: Shipping clerk.

MR. HAGEMEISTER: I got the legal system on the brain.

Miss Henry? Where is Miss Henry? Grace Henry?

VENIREPERSON HENRY: Here.

MR. HAGEMEISTER: Ma'am, did you, what did you do before you retired?

VENIREPERSON HENRY: I didn't hear you.

MR. HAGEMEISTER: What did you do before you retired?

VENIREPERSON HENRY: I was a housewife.

MR. HAGEMEISTER: Ma'am, I have to ask this. I don't mean to be offensive or anything, have you been able to hear all the questions I've asked so far?

VENIREPERSON HENRY: I can't hear you.

VENIREPERSON SNIPES: No, she didn't hear you.

MR. HAGEMEISTER: I didn't mean to get you

up here. Have you been able to hear all the questions?

VENIREPERSON HENRY: No.

MR. HAGEMEISTER: Judge, the State challenges for cause.

THE COURT: Any objection?

MS. BEIMDIEK: None, Your Honor.

MS. MOORE-DYSON: None, Your Honor.

THE COURT: Hearing no objections, the Court sustains the challenge for cause. What's the venirewoman's name, Counselor?

MR. HAGEMEISTER: Grace Henry, page 7.

THE COURT: State's challenge for cause of Grace Henry, not objected to, is sustained. Miss Henry is Juror No. 662.

MR. HAGEMEISTER: Ma'am, if you can't hear something, it may affect the defendant's right to a fair trial as well. We have to make sure that everyone hears all the evidence and all the questions and that's why I had to make the challenge. Do you understand?

VENIREPERSON HENRY: Yes.

MR. HAGEMEISTER: I'm sorry, Judge, to interrupt.

THE COURT: Do you have a release for

Miss Henry?

THE SHERIFF: Yes, sir, I do.

THE COURT: Thank you, Miss Henry. Will you follow the direction of the bailiff, Miss Henry. Thank you very much. Mr. Ward?

VENIREPERSON NATHANIEL WARD: Yes.

MR. HAGEMEISTER: I'm sorry, different Mr. Ward. What did you do before you retired?

VENIREPERSON BOB WARD: I worked on the railroad.

MR. HAGEMEISTER: Jamesanna Jones, you work for the City of St. Louis, is that in the court system?

VENIREPERSON JONES: No.

MR. HAGEMEISTER: Can you tell me what division of --

VENIREPERSON JONES: I work for the Community Development Agency.

MR. HAGEMEISTER: Thank you, ma'am. Mr. Hammett, what did you do before you retired?

VENIREPERSON HAMMETT: I worked for the U.S. government.

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MR. HAGEMEISTER: You have some exposure to the court system?

VENIREPERSON HAMMETT: No

MR. HAGEMEISTER: Nothing about that job will affect your ability to be a fair juror?

VENIREPERSON HAMMETT: No.

MR. HAGEMEISTER: Who here has ever been a witness in a criminal trial? Go section by section. Is that the only one, the one that you were on with me, Mr. Snipes, that's the only case?

VENIREPERSON SNIPES: No.

MR. HAGEMEISTER: You were on other cases, too, as a witness. Is that going to affect your ability to sit on this case as a juror?

THE COURT: I can't hear you, sir.

VENIREPERSON SNIPES: No.

THE COURT: Thank you.

MR. HAGEMEISTER: Mr. Snipes, you weren't the victim on the case, you were a witness, you were just a witness, not a victim?

VENIREPERSON SNIPES: Right.

MR. HAGEMEISTER: Anybody else in the front here? Somebody else had their hand raised. Is that Mr. Burton?

VENIREPERSON BURTON: Yes.

MR. HAGEMEISTER: What kind of case was it?

VENIREPERSON BURTON: It was a shooting case.

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MR. HAGEMEISTER: You saw the shooting?
VENIREPERSON BURTON: No.
MR. HAGEMEISTER: You were a witness?
VENIREPERSON BURTON: I was on that case five days.
MR. HAGEMEISTER: You were a juror?
VENIREPERSON BURTON: Jury.
MR. HAGEMEISTER: Okay. And without, without telling me what the verdict was, did you reach a verdict?
VENIREPERSON BURTON: Yes.
MR. HAGEMEISTER: Anything about that case affect your ability to be a juror in this case?
VENIREPERSON BURTON: No.
MR. HAGEMEISTER: Thank you. Miss Berry? Where is Miss Berry? You are a witness in a criminal trial.
VENIREPERSON BERRY: No.
MR. HAGEMEISTER: You have to speak up.
VENIREPERSON BERRY: I thought you said -- anyway, I misunderstood the question.
MR. HAGEMEISTER: They have, you are checked off as saying, yes, a witness in the criminal trial, is that correct?
THE COURT: Will you stand up, ma'am,

please, so we can here you.
VENIREPERSON BERRY: I was a crime victim's coordinator and I help victims.
MR. HAGEMEISTER: I see. I'll scratch that out. They have it in here wrong. The charge of murder in the first degree carries a range of punishment from life without possibility of probation or parole.
I imagine you'll have an instruction submitted to you on murder second degree, which has a range from five years to ten years to life. Armed criminal action has a minimum of three years with no maximum. Assault first degree is a Class B felony, has a range of punishment from five to 15 years.
There is the possibility in this case for the jury to have to make a decision on the count of assault second degree and armed criminal action with regard to the term of years.
Is there anybody that's uncomfortable with deciding punishment and having to come up with the time period of years on the counts that require you to come up with the time period of years? All right. Is everyone still awake? Raise your hand. I'm trying to catch you.
People who have been victims of crime

sometimes carrying that with them unknowingly. If you, as a victim of a crime or having a family member as a victim of a crime, you go down to that jury room and you picture somebody who shot at your son, or you picture somebody who held a gun to your head and stole your wallet or your purse, or you picture somebody who broke into your house, everyone here understands that these two aren't on trial for any of those acts, this is a totally separate case, but is there a chance that any of you, when you go down there, will strike back at these two for something that happened to you a long time ago? Because, obviously, that would not be giving them a fair trial.
Is there anybody here who has had a family member who they think has been treated incorrectly by the system? A friend, somebody close to them, or you yourself who think that the system hasn't worked for somebody or for yourself some time in your life?
Is there anybody here, obviously I have to ask, anybody here ever been arrested for murder themselves and maybe not charged?
I'll ask the question across the board as I do in every case. I'm going to go row by row on this. I'm going to ask you, regardless of whether or not your attorney said it was a closed record, regardless

of whether or not you got a probation or what they call suspended imposition of sentence and you served your probation and then they closed the record, regardless of what anybody ever told you about the status of your record, has anybody here ever been arrested for anything?
I'm going to go row by row on this. The only thing I want to exclude from this is somebody pulling you over writing you out a traffic citation and handing it to you and getting back in his car and driving off. Anything more than that I have to ask you about because, obviously, it may affect your ability to be an impartial juror.
Miss Bradford?
VENIREPERSON BRADFORD: No.
MR. HAGEMEISTER: Anybody close to you?
VENIREPERSON BRADFORD: Yes, my son.
MR. HAGEMEISTER: And I have to ask what that was for?
VENIREPERSON BRADFORD: A concealed weapon.
MR. HAGEMEISTER: Do you think he was treated fairly?
VENIREPERSON BRADFORD: I didn't.
MR. HAGEMEISTER: He doesn't have a grudge against the policeman for doing what he was supposed

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to, or the prosecutor or the Judge or any of those people?

VENIREPERSON BRADFORD: No, I don't.

MR. HAGEMEISTER: Mr. West?

VENIREPERSON WEST: No.

MR. HAGEMEISTER: Anybody close to you?

VENIREPERSON WEST: Yeah, brother.

MR. HAGEMEISTER: What was it for?

VENIREPERSON WEST: Possession.

MR. HAGEMEISTER: Do you think he was treated fairly?

VENIREPERSON WEST: Um, yeah.

MR. HAGEMEISTER: With a hand motion like that, that's kind of a yeah.

VENIREPERSON WEST: Yeah.

MR. HAGEMEISTER: What could they have done different? What did they do wrong?

VENIREPERSON WEST: Well, they didn't do nothin' wrong. The guy wasn't -- he shouldn't have been out there doing what he was doing. He got caught up. That's all.

MR. HAGEMEISTER: The policeman didn't do anything wrong in popping him with the case?

VENIREPERSON WEST: No.

MR. HAGEMEISTER: Any anything wrong with

the arrest?

VENIREPERSON WEST: No.

MR. HAGEMEISTER: Miss Otten?

VENIREPERSON OTTEN: No.

MR. HAGEMEISTER: Miss Reimler?

VENIREPERSON REIMLER: Yes.

MR. HAGEMEISTER: Nothing?

VENIREPERSON REIMLER: I have a son that was arrested once for driving while he was intoxicated.

MR. HAGEMEISTER: Son with a DWI. Was he --

VENIREPERSON REIMLER: He was not treated unfairly. I was glad it happened.

MR. HAGEMEISTER: I'm asking everybody about yourself and family members or somebody close to you. Was there anybody for you, Miss Otten?

VENIREPERSON OTTEN: No.

MS. MOORE-DYSON: Your Honor, could we ask the venirepersons to speak up louder.

THE COURT: Yes. The venireman's last answer was that her son was arrested for a driving while intoxicated, is that correct?

VENIREPERSON REIMLER: (Nodding head in response)

THE COURT: And she did not feel he was treated unfairly. Have I misstated your answer?

VENIREPERSON REIMLER: No.

MR. HAGEMEISTER: Mr. Ward?

VENIREPERSON NATHANIEL WARD: Yeah.

MR. HAGEMEISTER: You or somebody close to you?

VENIREPERSON NATHANIEL WARD: Me.

MR. HAGEMEISTER: For what?

VENIREPERSON NATHANIEL WARD: Assault.

MR. HAGEMEISTER: Weapon?

VENIREPERSON NATHANIEL WARD: No. Domestic.

MR. HAGEMEISTER: Third degree?

VENIREPERSON NATHANIEL WARD: Yeah.

MR. HAGEMEISTER: Was there any probation or anything like that, did they throw it out?

VENIREPERSON NATHANIEL WARD: Threw it out.

MR. HAGEMEISTER: Miss Bradford, they have you down as saying yes of convicted of misdemeanor, is that a speeding ticket?

VENIREPERSON BRADFORD: Yes.

MR. HAGEMEISTER: Mr. Ward, anything else?

VENIREPERSON NATHANIEL WARD: (Shook head)

MR. HAGEMEISTER: No other arrests?

VENIREPERSON NATHANIEL WARD: (Shook head)

MR. HAGEMEISTER: Mr. Campbell?

VENIREPERSON CAMPBELL: No.

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MR. HAGEMEISTER: Mr. Patterson?

VENIREPERSON PATTERSON: Not I. A lot of family members, family members throughout the years.

MR. HAGEMEISTER: Any of them stick out in your mind as being treated unfairly?

VENIREPERSON PATTERSON: No.

MR. HAGEMEISTER: Any bad feelings about the criminal system?

VENIREPERSON PATTERSON: No.

MR. HAGEMEISTER: Mr. --

THE COURT: I didn't hear your answer, sir.

VENIREPERSON PATTERSON: No.

THE COURT: Thank you.

MR. HAGEMEISTER: Mr. Washington, you or somebody close to you?

VENIREPERSON WASHINGTON: Yeah.

MR. HAGEMEISTER: You have to speak louder, sir. What were they arrested for?

VENIREPERSON WASHINGTON: Driving a stolen car.

MR. HAGEMEISTER: They call that tampering.

VENIREPERSON WASHINGTON: Yeah.

MR. HAGEMEISTER: Were you treated fairly?

VENIREPERSON WASHINGTON: Yeah, I didn't know, I had bought it from somebody. I didn't know

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they had tagged the car and sold it to me.

THE COURT: Can you hear him, Counsel?

MS. MOORE-DYSON: Barely.

THE COURT: I will ask you to keep your voice up, sir.

VENIREPERSON WASHINGTON: They arrested me and brought me to court and asked me where I got the vehicle from. A guy told me he had --

MR. HAGEMEISTER: Did they charge you?

VENIREPERSON WASHINGTON: No.

MR. HAGEMEISTER: They wanted to know if you knew it was stolen?

VENIREPERSON WASHINGTON: No.

MR. HAGEMEISTER: If it was your car stolen, you would want them to do that to the guy who was driving it, too.

VENIREPERSON WASHINGTON: Exactly.

MR. HAGEMEISTER: Anything else, family member?

VENIREPERSON WASHINGTON: Yeah, brother.

MR. HAGEMEISTER: What was that?

VENIREPERSON WASHINGTON: He got into it with a police officer.

MR. HAGEMEISTER: Okay.

VENIREPERSON WASHINGTON: Driving down the

sidewalk, tried to run him over.

THE COURT: I'm sorry. He was driving down the what?

VENIREPERSON WASHINGTON: He was driving down the sidewalk trying to run them over. He was under the influence of PCP. Try to hit one officer with his leg.

MS. BEIMDIEK: I'm sorry?

THE COURT: Can you stand, sir, and repeat your last answer again. The Court has requested at least --

VENIREPERSON WASHINGTON: He was driving --

THE COURT: Keep your voices up.

VENIREPERSON WASHINGTON: He driving down the sidewalk in his car trying to run over a police officer. Jumped out the car and tried to hit him with his leg. I think he hit the police officer. I didn't get the whole story. He was charged, if I'm not mistaken he's still going to court on it. I'm not sure.

MR. HAGEMEISTER: Do you think they did what they were supposed to do in that case?

VENIREPERSON WASHINGTON: They say he was under the influence of PCP. That's what the doctor said.

MR. HAGEMEISTER: You marked yes on misdemeanor and felony. Is that the tampering case that got dismissed?

VENIREPERSON WASHINGTON: Yes.

MR. HAGEMEISTER: You weren't convicted?

VENIREPERSON WASHINGTON: No.

MR. HAGEMEISTER: That's wrong. Any misdemeanors, such as speeding tickets?

VENIREPERSON WASHINGTON: I had tickets, but that was, that's like ten years ago.

MR. HAGEMEISTER: Okay. So you searched your memory and there's no other arrests? Mr. Lucas?

VENIREPERSON LUCAS: No, no.

MR. HAGEMEISTER: Thank you, sir. Miss Trotter?

VENIREPERSON TROTTER: No, but my son was in, he got knocked up hijacking.

MR. HAGEMEISTER: Hijacking? Did they treat him fairly in the system?

VENIREPERSON TROTTER: Yes, sir.

MR. HAGEMEISTER: Miss Davis?

VENIREPERSON DAVIS: Yes. Domestic. It was dismissed. That's been about 45 years ago.

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MR. HAGEMEISTER: Nothing else besides that?

VENIREPERSON DAVIS: No.

MR. HAGEMEISTER: Anybody else in the family?

VENIREPERSON DAVIS: No.

MR. HAGEMEISTER: Miss Elmer Jackson?

VENIREPERSON ELMER JACKSON: No.

MR. HAGEMEISTER: Miss Cunigan?

VENIREPERSON CUNIGAN: No. A brother was arrested for drunk driving and hit a pole. He was treated fairly.

MR. HAGEMEISTER: Miss McCulley?

VENIREPERSON MCCULLEY: No and yes. My brother. For robbery. 25 years ago. He was treated fairly.

MR. HAGEMEISTER: He was treated fairly?

VENIREPERSON MCCULLEY: Um-hum.

MR. HAGEMEISTER: He got 25 years for robbing somebody?

VENIREPERSON MCCULLEY: No, I said 25 years ago. He was a kid, him and a couple of boys.

MR. HAGEMEISTER: Okay. Mr. Lawson?

VENIREPERSON LAWSON: No. And I got a misdemeanor curfew violation when I was in college.

MR. HAGEMEISTER: Mr. Hoelscher?

VENIREPERSON HOELSCHER: No. No.

MR. HAGEMEISTER: Mr. Arens?

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VENIREPERSON ARENS: I wasn't, but my brother was arrested for having a stolen gun. The investigation found it wasn't stolen. It was a gun. The store purchased at was running an insurance scam, sold the gun, and a year later reported it stolen.

MR. HAGEMEISTER: The police found out that he wasn't good for any crime?

VENIREPERSON ARENS: Right.

MR. HAGEMEISTER: He was discharged?

VENIREPERSON ARENS: Right.

MR. HAGEMEISTER: Actually, you have a better feeling about the police because they found out about him?

VENIREPERSON ARENS: Right.

MR. HAGEMEISTER: Mr. Howard?

VENIREPERSON HOWARD: Yes. No, I never been. My nephew was arrested for speeding tickets.

MR. HAGEMEISTER: I am not going to write anything for that. Anything else?

VENIREPERSON HOWARD: No.

MR. HAGEMEISTER: Mr. Esposito?

VENIREPERSON ESPOSITO: 1963 I went to the penitentiary.

MR. HAGEMEISTER: For?

VENIREPERSON ESPOSITO: Armed robbery.

MR. HAGEMEISTER: Armed robbery?

VENIREPERSON ESPOSITO: Yes.

MR. HAGEMEISTER: And how long were you there?

VENIREPERSON ESPOSITO: Eight years.

MR. HAGEMEISTER: Were you treated fairly?

VENIREPERSON ESPOSITO: Oh, yes, sir.

MR. HAGEMEISTER: I don't know why I asked that question because I have to ask you to be struck under the law. My apologies. That's Sal Esposito on page 4.

THE COURT: Any questions of the venireman, Miss Beimdiek?

MS. BEIMDIEK: No, Your Honor.

THE COURT: Miss Moore-Dyson?

MS. MOORE-DYSON: No.

THE COURT: Sustained. Thank you, Mr. Esposito, for coming down. I appreciate it.

Counsel approach the bench.

(Proceedings were had off the record)

(The following proceedings were had in the presence of the jury panel:)

THE COURT: I see flickering eye lids, I want to see eyeballs. Are you with us, ma'am? Miss Cowan?

VENIREPERSON COWAN: Yes.

THE COURT: Thank you.

VENIREPERSON COWAN: I was just talking to her.

THE COURT: Ladies and gentlemen of the panel, we will adjourn for the evening at this time.

The Court again reminds you what you were told at the first recess of the Court, until you retire to consider your verdict you must not discuss this case among yourselves or with others, or permit anyone to discuss it in your hearing.

You should not form or express any opinion about the case until it's finally given to you to decide. And you are not to read, view or listen to any newspaper, radio or television report of the trial.

You are released at this time and instructed to return to Division 11 tomorrow morning at 9:30 a.m. Please remember 7-11, seventh floor, Division 11. You are not, repeat not to report back to the jury assembly room. Thank you. Good evening.

(The proceedings were adjourned for the day)

(The following proceedings were had in the presence of the jury panel on November 13, 1996:)

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THE COURT: Good morning. You may be

seated. Counsel approach the bench.

(The following proceedings were had at the bench out of the hearing of the jury panel:)

THE COURT: Counsel, as you know, the Court has been advised that Veniremen West, Darren L., Juror No. 205, has something to say to the Court.

MS. BEIMDIEK: Mr. Washington, Your Honor.

THE COURT: I thought you said West. I beg your pardon. What page is that on?

MS. BEIMDIEK: Page 3 --

MR. HAGEMEISTER: Page 2, No. 5.

MS. BEIMDIEK: Page 2 --

MR. HAGEMEISTER: I'm sorry, No. 4.

THE COURT: What page are you on?

MS. BEIMDIEK: Page 2, No. 4. Page 2. I'm sorry. Mrs. Washington, Yolando G. Washington, Juror No. 933, is that correct?

MS. BEIMDIEK: Mr. Washington, yes.

THE COURT: So it is. Mr. Washington, will you approach the bench, sir. I understand, sir, you had something to say to the Court?

VENIREPERSON WASHINGTON: I got a problem because I work my job days and my fiance works at night. When I babysit at night, she goes to work at night. She can't take days off her job because she's

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already had a lot of days off due to the fact that she had a death in the family. She, she took off two weeks to go to the funeral and they won't let her have any off.

THE COURT: How many children do you have?

VENIREPERSON WASHINGTON: I have three.

THE COURT: How old?

VENIREPERSON WASHINGTON: 12, 3 and 2.

THE COURT: 12, 3 and 2?

VENIREPERSON WASHINGTON: Um-hum. And only one of them is by me. It's mine. But it's her kids, so I take care of them.

THE COURT: Is the 12 year old in school?

VENIREPERSON WASHINGTON: Yes, she's in school.

THE COURT: I'm not clear. Are you saying because of your wife's inability to, she's used up available time to be off from work?

VENIREPERSON WASHINGTON: Don't get me wrong. I don't mind coming down here, it's just that I work days and she works nights. I can't keep her out of work to watch the kids, and she can't have no more days off the job because she went to Atlanta two weeks because of a death in the family.

THE COURT: What you're saying, there's no

one to care for the children?

VENIREPERSON WASHINGTON: Not at this time, because everybody is working, but it's been a last minute thing, I can't get a babysitter.

THE COURT: Any questions?

MS. BEIMDIEK: The question is who is watching?

VENIREPERSON WASHINGTON: She is now, but she has to go to work at one.

MS. BEIMDIEK: She works at night?

VENIREPERSON WASHINGTON: She works at night.

MS. BEIMDIEK: Is your concern that we're going to be a locked up jury?

VENIREPERSON WASHINGTON: No, it's not that, she can't get no one to babysit.

MS. BEIMDIEK: Does she always work nights, or is working nights this week?

VENIREPERSON WASHINGTON: She works nights, I work days.

THE COURT: Why isn't she available during the day to watch the children if she works nights?

VENIREPERSON WASHINGTON: Because she works nights, I mean at Shop N Save, and I work days.

THE COURT: Well, but if she works nights,

she's home during the day, isn't she?

VENIREPERSON WASHINGTON: No, I'm home at day, she works at night.

MS. BEIMDIEK: Where is she during the day?

VENIREPERSON WASHINGTON: She there, but she goes to work at three.

THE COURT: Oh, all right.

MS. BEIMDIEK: Between three and five.

THE COURT: When you say nights, we weren't sure if you were talking about 11 to 7, or 6 to midnight, we didn't know. But her normal work shift is three in the afternoon?

VENIREPERSON WASHINGTON: She leaves at 2:30 because of rush hour traffic.

THE COURT: You don't have anyone to care for the children between the time she leaves for work --

VENIREPERSON WASHINGTON: Right, because it's a last minute thing and the people I had in mind have jobs.

THE COURT: Any further questions of this venireperson?

MR. HAGEMEISTER: No.

MS. MOORE-DYSON: No.

MS. BEIMDIEK: Are there any family members

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able to assist you that you haven't contacted?

VENIREPERSON WASHINGTON: Well, it's a last minute thing. I can't afford to pay anyone. See what I'm saying?

MS. BEIMDIEK: Have you made any efforts to contact any family members to see if they could help out for the couple of hours?

VENIREPERSON WASHINGTON: Everyone works, that's what I'm saying. Don't get me wrong, I would be glad to do it, but I do what I got to do. I can't afford a babysitter.

MS. BEIMDIEK: Right.

THE COURT: Any objection to this venireman being excused for good cause shown?

MR. HAGEMEISTER: No, sir.

THE COURT: Let the record reflect that for good cause shown Orlando G. Washington, Juror No. 933, is excused in this particular case.

You're instructed, Mr. Washington, to return to the jury assembly room on the 8th floor.

VENIREPERSON WASHINGTON: All right.

THE COURT: Thank you. Anything further at this time?

MS. BEIMDIEK: No, Your Honor.

THE COURT: Thank you.

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(The following proceedings were had in the presence of the jury panel:)

THE COURT: You may proceed, Mr. Hagemeister.

MR. HAGEMEISTER: Thank you, Judge. Good morning, everybody. We're most of the way done, so I apologize for taking so much time. We have a very large jury panel. It's a very important case.

I was in the middle of asking questions of jurors as to prior arrests, any type other than a traffic ticket.

As I recall from my notes, Mr. Duff, the question, you or close family member, anybody been arrested?

VENIREPERSON DUFF: The answer is no and no.

MR. HAGEMEISTER: Thank you. Miss Carper?

VENIREPERSON CARPER: No and no. But I thought of something else that I'd like to speak, if I may, to privately.

MR. HAGEMEISTER: Sure.

THE COURT: Yes, ma'am, you may approach.

VENIREPERSON CARPER: It may be a problem.

THE COURT: Please approach the bench.

(The following proceedings were had at the bench out of the hearing of the jury:)

THE COURT: You are Miss Carper, Juror 407?

VENIREPERSON CARPER: Yes, sir. Yes, Your Honor.

THE COURT: You may state your answer.

VENIREPERSON CARPER: When he was asking the question yesterday about what I was doing my graduate work in, I got the feeling that maybe there was a problem if I was aiming for the law. I recalled that 25 years ago when I was in the military, I served in the courtroom as a military court reporter. I'm not sure if that's going to be a problem or not.

THE COURT: Well, is it a problem for you?

VENIREPERSON CARPER: I don't think so.

THE COURT: Is there anything about your service in the military or as a court reporter for courts martials --

VENIREPERSON CARPER: For all levels of courts martial, right.

THE COURT: Is there anything about that that would prevent you from being a fair and impartial juror and in following the law?

VENIREPERSON CARPER: No, no. If anything, it's just had me develop a deeper respect for the law and the work that the Judges and the lawyers have to do. On both sides.

THE COURT: Thank you, ma'am.

MS. MOORE-DYSON: May I ask a question? In judging the facts, would you use your prior experience in the courtroom, would you judge the facts for the facts or would you apply the law that you might have gleaned from your prior experience?

VENIREPERSON CARPER: I would just judge from the facts and the evidence presented to me.

MS. MOORE-DYSON: You wouldn't apply any legal significance to you?

VENIREPERSON CARPER: No, no.

MS. MOORE-DYSON: Okay.

THE COURT: Anything further?

MS. BEIMDJEK: You have to spin around. Along those lines, if the Judge's instructions differ from anything you learned during your experience, would you be able to set aside whatever you believe the law was and decide the law as given to you by this Court?

VENIREPERSON CARPER: Absolutely.

MR. HAGEMEISTER: My turn. Is there any chance that because you've seen so many different crimes, you've seen so many bad things that people have done to each other that you might lower your burden and not give them a fair trial?

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VENIREPERSON CARPER: Oh, no, no. In fact, most of the cases that the military did were absent without leave, you know, unauthorized absence.

MR. HAGEMEISTER: Okay.

VENIREPERSON CARPER: Very few of heavy duty cases, or occasionally we had cases where it was possession of drugs, but usually absent without leave.

MS. MOORE-DYSON: Okay.

VENIREPERSON CARPER: That was 90 percent of the cases.

MR. HAGEMEISTER: Great.

THE COURT: Thank you, ma'am.

MS. MOORE-DYSON: Thank you.

(The following proceedings were had in the presence of the jury panel:)

MR. HAGEMEISTER: Miss Thomas?

VENIREPERSON THOMAS: Drugs --

THE COURT: Will you please stand, ma'am.

VENIREPERSON THOMAS: Drug, my boyfriend was arrested for drugs.

MR. HAGEMEISTER: Was he treated fairly by the police, prosecutor and Judge?

VENIREPERSON THOMAS: Yes, sir.

MR. HAGEMEISTER: Mr. Hessling?

VENIREPERSON HESSLING: I have never been,

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but my brother for receiving stolen property. He was treated fairly.

MR. HAGEMEISTER: Thank you for standing up, sir. Mr. Harris?

VENIREPERSON HARRIS: No, but I have a son.

THE COURT: Will anyone, all members of the panel seated in the second row and beyond, please stand so that we can hear you.

VENIREPERSON HARRIS: I said no, but I have a stepson in jail now for parole violation and theft.

MR. HAGEMEISTER: What did he get paroled on?

VENIREPERSON HARRIS: Traffic violations. Minor offenses.

MR. HAGEMEISTER: You know, I usually see parole for a guy who has already been in prison. Are you mistaking parole for probation?

VENIREPERSON HARRIS: It might be probation.

MR. HAGEMEISTER: He got probation on a minor traffic offense and then he got arrested for something else. Is that what you said?

VENIREPERSON HARRIS: I'm not sure whether that was or not.

MR. HAGEMEISTER: Is there anything about that that would affect your ability to sit on this

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case?

VENIREPERSON HARRIS: No.

MR. HAGEMEISTER: Thank you, sir. Miss Templin?

VENIREPERSON TEMPLIN: Yes. No. My husband was arrested for DUI.

MR. HAGEMEISTER: Anything about that?

VENIREPERSON TEMPLIN: No.

MR. HAGEMEISTER: Thank you. Mr. Payton?

VENIREPERSON PAYTON: No, no.

MR. HAGEMEISTER: Mr. Burton?

VENIREPERSON BURTON: No, I don't.

MR. HAGEMEISTER: No, for you and close friends or family members?

VENIREPERSON BURTON: No.

MR. HAGEMEISTER: Mr. Dodson?

VENIREPERSON DODSON: I never been arrested, but my brother has for drugs.

MR. HAGEMEISTER: Treated fairly?

VENIREPERSON DODSON: I am not sure, it was in North Carolina.

MR. HAGEMEISTER: Miss Hock?

VENIREPERSON HOCK: No and no.

MR. HAGEMEISTER: Mr. Snipes?

VENIREPERSON SNIPES: No, no.

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MR. HAGEMEISTER: Miss Prothero?

VENIREPERSON PROTHERO: No, no.

MR. HAGEMEISTER: Miss Bruton?

VENIREPERSON BRUTON: I have a son arrested for drunk driving.

MR. HAGEMEISTER: Treated fairly?

VENIREPERSON BRUTON: Yes.

MR. HAGEMEISTER: Mr. Putney?

VENIREPERSON PUTNEY: Yes. I was arrested for not paying for parking tickets.

MR. HAGEMEISTER: Anything else?

VENIREPERSON PUTNEY: I have a good friend murdered a police officer in Texas. That's, that was the worst one. I recently has a friend murdered in St. Louis.

MR. HAGEMEISTER: A friend that was murdered. The friend that was murdered, the fact that these two have been charged with murdering somebody, is there anyway when you go to the jury room that you will picture your friend as you last saw him or you'll find -- is there any chance that will impress upon you or --

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VENIREPERSON PUTNEY: Not really because --

MR. HAGEMEISTER: I'm sorry?

VENIREPERSON PUTNEY: They never found

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anybody connected with it, so there's no way that it could have an effect.

MR. HAGEMEISTER: They never had a suspect concerning witnesses?

VENIREPERSON PUTNEY: No, there was not.

MR. HAGEMEISTER: So it was one of those assault cases because nobody came forward --

VENIREPERSON PUTNEY: The only thing they have is the murder weapon.

MR. HAGEMEISTER: They couldn't track that to somebody?

VENIREPERSON PUTNEY: No, they didn't.

MR. HAGEMEISTER: What about the friend that was charged with or convicted of murdering a policeman, is there anything about that case that affects you?

VENIREPERSON PUTNEY: He was sentenced to death. But I mean he was delusional. I mean the punishment didn't fit the crime, but unfortunately I don't think that was really him that did it, his body pulled the trigger.

MR. HAGEMEISTER: He didn't know what he was doing?

VENIREPERSON PUTNEY: He was put in Texas because he testified.

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MR. HAGEMEISTER: So he would have been better off with mental health?

VENIREPERSON PUTNEY: He absolutely would have been. At the time he shot, he blamed the police officers from not protecting him from the people who were after him. He pulled out his gun and shot and killed one of the police officers, but there was nobody after him.

MR. HAGEMEISTER: This isn't a death penalty case, so it's not an issue, but do you believe anything about that case would make you sympathetic, make you less likely to want to convict somebody?

Do you think maybe they were being stupid, they didn't understand that their actions were causing somebody else to lose everything they've ever had?

VENIREPERSON PUTNEY: I think in this case the system failed.

MR. HAGEMEISTER: That's what I am getting at. Is there a chance because you look at the person and you say this person doesn't appreciate, at the time they commit the crime they were taking everything you can take from a person, you're ending your life and stealing the next 50 years from that person, if you don't understand that by pulling the little trigger and the little gadget that you're causing

somebody else to die, does that make you sympathetic to the point where you would not follow the instructions of law that you give an oath to follow that might say you know what you're doing, have you thought about it?

VENIREPERSON PUTNEY: I'm not quite sure I understand, no.

MR. HAGEMEISTER: I talk a lot.

VENIREPERSON PUTNEY: I think in his case the sentence was wrong.

MR. HAGEMEISTER: You're going to carry that into the jury room in this case and if you come to the conclusion, for example, take that the defendant is 17, he doesn't understand by pulling that trigger and aiming in that direction and killing somebody that he's taking everything you can take from that person and that, therefore, the law says he gets life without parole, do you think that you might jump in and go, he didn't appreciate the magnitude of his actions when he committed it and, therefore, I'm going to be sympathetic and I'm not going to sentence him to what the law says if I find these facts I have to sentence him to?

VENIREPERSON PUTNEY: In all honesty, it's possible.

MR. HAGEMEISTER: So you're saying if the facts came, if you personally came to the conclusion, which is something that people do by their very nature, if I -- I find myself sometimes doing it, if you are sympathetic to the facts that a person, because he's young, didn't understand what he was doing by killing somebody, you may not find him guilty of murder in the first degree, even if you believe the State has proved beyond a reasonable doubt all of the facts that it has to prove, you believe he did all the things that the instructions for murder first degree is, and find all those facts have been done, it was him, he shot him, he thought about it, it was coolly deliberated, whatever the facts are, and then you say he did all of those things, I believe that beyond a reasonable doubt, but I cannot, Mr. Putney, cannot sentence a person to life without parole when he is a young person who hasn't matured enough to understand that he's taking everything from somebody?

VENIREPERSON PUTNEY: No. I say if I'm put back to deliberate, I cannot say that would be in the back of my mind.

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MR. HAGEMEISTER: I don't want to put words into your mouth. I'm saying the legal things that would disqualify you as a juror and you understand

that?

VENIREPERSON PUTNEY: Right.

MR. HAGEMEISTER: If you agree with it, then I have to make a challenge to strike you for cause. Is this someplace where I should make that challenge?

VENIREPERSON PUTNEY: Well --

MR. HAGEMEISTER: Are you saying you don't think you're qualified?

VENIREPERSON PUTNEY: All I can tell you is the way I feel; and if I'm back in the room, I can't say it wasn't in the back of my mind.

MR. HAGEMEISTER: I wasn't putting words in your mouth. If there's something you say --

VENIREPERSON PUTNEY: I understand.

MR. HAGEMEISTER: Sometimes lawyers say that, they say a lot of things and you agree with the very last thing they said and then you've agreed with everything they said before that by saying that, I don't want to say that.

VENIREPERSON PUTNEY: You're asking me if I can be impartial, I'm telling you honestly I just don't know.

MR. HAGEMEISTER: Judge, I have to make a challenge for cause.

THE COURT: Any objection?

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MS. BEIMDIEK: No, Your Honor.
MS. MOORE-DYSON: No.
THE COURT: I didn't hear you.
MS. MOORE-DYSON: No, Your Honor.
THE COURT: State for the record who you're challenging, Counselor.
MR. HAGEMEISTER: Joseph Putney, Juror No. 1000.
THE COURT: Sustained. Anybody feel the same way as Mr. Putney? Please stand, sir.
VENIREPERSON PAYTON: When you mentioned something, I had a friend died about four years ago, two years. And he was just working at a church fund raiser, a fish fry, and it was two youths messing with the signs, knocking them down, he walked up there and asked them to stop tearing down the signs. They pulled up and pull a gun and shot him. They run off. There was a bunch of witnesses. The gun is never recovered. They got the youths in juvenile and then they got off on a technicality
MR. HAGEMEISTER: The witnesses got off before --
VENIREPERSON PAYTON: They were witnesses, but through Juvenile Court we never heard what happened because it's closed and everything. Because

they were juveniles there was -- they got off. I don't know how.
MR. HAGEMEISTER: Well, I guess the question for you is not that you might be sympathetic and that you might not be able to say, you know, if you go down into the jury room and you're not able to say this is a totally separate case, if you're not able to say that you'll go down there and only consider the evidence against them and not something bad that happened to you or a friend of yours back in your past history, you, that is in your own mind in the jury room, they had nothing to do with that, so is the evidence in this case enough to prove him guilty beyond a reasonable doubt in this case alone? Can you limit it to that?
VENIREPERSON PAYTON: I don't know. I am a human. I got to be thinking about that stuff.
MR. HAGEMEISTER: Okay. So if there's a chance that you think --
VENIREPERSON PAYTON: There is a chance.
MR. HAGEMEISTER: If there's a chance you might convict him because of something happened last year?
VENIREPERSON PAYTON: It's a possibility. It's running through my mind. He brought it back, you

know.
MR. HAGEMEISTER: I -- there's a difference between being sympathetic and taking a past experience -- I don't want to get all theoretical. If you're sympathetic in that situation, you're probably sympathetic all throughout. In your case you're upset by that situation, that doesn't mean that you're still upset enough that you're going to convict somebody on an unrelated crime.
VENIREPERSON PAYTON: To me it's like sometimes the system doesn't work properly. They have, they had witnesses, I know there was witnesses, it was a fish fry, there was people going in and out of the church they knew.
MR. HAGEMEISTER: You understand there's plenty of witnesses and none of them said a word?
VENIREPERSON PAYTON: My friend walked up to and asked them not to tear down the signs.
MR. HAGEMEISTER: Sir, by the fact that you know there was witnesses, you have a lifetime experience. That doesn't disqualify you necessarily, in fact it can make you a better juror by understanding the fact that you can have 20 witnesses and none of them want to come forward and testify against these guys that are killing people for saying

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the wrong thing to them. You understand that. Which makes you a person with good common sense.
That doesn't disqualify you as a juror. What disqualifies you as a juror is if you hold against somebody totally not involved with killing your friend when you go to the jury room and decide whether or not the State's proven everything it has to prove in the instructions beyond a reasonable doubt.
The question is would you hold the State to the burden of proving its case beyond a reasonable doubt and the person in good conscience, or is there a chance that maybe the State, you don't believe it was proven beyond a reasonable doubt, but you go ahead and say guilty because you were mad and you want to get somebody for something?
VENIREPERSON PAYTON: I don't know. I'm human. I don't know.
MR. HAGEMEISTER: If there's a chance you might convict them because you're mad about the other thing, I need something on the record that makes it look like I'm not trying to get rid of you, I am trying to be fair.
VENIREPERSON PAYTON: That is a possibility.
MR. HAGEMEISTER: I move to strike this juror for cause.

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MS. BEIMDIEK: No objection, Your Honor.
MS. MOORE-DYSON: No objection, Your Honor.
MR. HAGEMEISTER: We have to get legal response.
THE COURT: Again, for the record, you are referring to Venireman Robert R. Payton, Juror No. 28?
MR. HAGEMEISTER: I believe so.
THE COURT: Is that your name, sir?
VENIREPERSON PAYTON: Yes, sir.
THE COURT: Sustained. Will you see the bailiff, sir.
MR. HAGEMEISTER: Can't be fair to the defendants.
THE COURT: Thank you.
MR. HAGEMEISTER: The previous gentleman, Mr. Putney.
THE COURT: Mr. Putney.
MR. HAGEMEISTER: Mr. Ward?
VENIREPERSON WARD: No and no.
MR. HAGEMEISTER: Miss Jones?
VENIREPERSON JONES: No and no.
MR. HAGEMEISTER: Mr. Wedge?
VENIREPERSON WEDGE: I'll answer your question.
THE COURT: Please stand, sir.

MR. HAGEMEISTER: I'll get to him.
VENIREPERSON WEDGE: I had a DWI two years ago. My brother was arrested in Georgia for rape and my father was arrested for child molestation.
MR. HAGEMEISTER: And in each one of those cases were each of the three of you treated fairly by the system?
VENIREPERSON WEDGE: I think myself and my brother was. My father, I don't think so. I think the system failed because he was not brought up on the charges and he --
MR. HAGEMEISTER: Okay.
VENIREPERSON WEDGE: The district attorney did not want to press the issues, he said there was not enough evidence.
MR. HAGEMEISTER: In your opinion there was a decision made after the arrest by a prosecutor where the prosecutor said in his own opinion he didn't think there was enough evidence that he could prove this case beyond a reasonable doubt to the jury?
VENIREPERSON WEDGE: That's right.
MR. HAGEMEISTER: He unilaterally on his own made the decision, I'm not going to issue this case, I am not going to give the victims a chance to a jury of their peers?

VENIREPERSON WEDGE: That's true.
MR. HAGEMEISTER: Because the prosecutor wasn't giving equal access to the Court as a victim?
VENIREPERSON WEDGE: We weren't.
MR. HAGEMEISTER: Just like the gentleman I spoke with, that's a life experience that gives you an outlet that makes you have common sense, but does it affect your ability to give these two a fair trial? Does it make you more likely a victim or less likely, or will you hold the State to a burden of beyond a reasonable doubt?
VENIREPERSON WEDGE: No, I think they changed my judgment toward defendants. I just hold a grudge against the system.
MR. HAGEMEISTER: If anything, you might appreciate the fact that there's cases where the prosecutor says give the victims their day in court. But does that mean that you're going to be more favorable to those victims? Or are you still going to hold them to the same scrutiny that you would want any person who is a citizen to be held when you're judging whether or not you believe that? You don't think they're guilty just because they've been charged?
VENIREPERSON WEDGE: No.
MR. HAGEMEISTER: You would make the State

prove its case?
VENIREPERSON WEDGE: Yes.
MR. HAGEMEISTER: You would hold the State to its burden?
VENIREPERSON WEDGE: Yes, I would.
MR. HAGEMEISTER: You are not giving anybody any benefits because you have to understand there has to be some significant amount of evidence to get past the charge in this case?
VENIREPERSON WEDGE: Yes.
MR. HAGEMEISTER: Then you can be fair or not?
VENIREPERSON WEDGE: Yes, I can be fair.
MR. HAGEMEISTER: Mr. Naum?
VENIREPERSON NAUM: No, no.
MR. HAGEMEISTER: Thank you. Miss Cherry?
VENIREPERSON CHERRY: No, no.
MR. HAGEMEISTER: Miss Cummings?
VENIREPERSON CUMMINGS: No and no.
MR. HAGEMEISTER: Miss Baroli?
VENIREPERSON BAROLI: DUI five years ago. My son was in prison.
MR. HAGEMEISTER: Father?
VENIREPERSON BAROLI: I think for robbery.
MR. HAGEMEISTER: Treated fairly?

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VENIREPERSON BAROLI: I was. I don't know about him.

MR. HAGEMEISTER: You think you could be a fair juror?

VENIREPERSON BAROLI: Yes.

MR. HAGEMEISTER: I haven't had a chance to talk to you back there. Is there any questions back there that anybody has an answer to so far? Kind of a quiet section.

Miss Lang?

VENIREPERSON LANG: My brother was arrested, maybe ten years ago for sexual misconduct. I think it was handled fairly.

MR. HAGEMEISTER: Anything else, you or yourself or anybody else?

VENIREPERSON LANG: No.

MR. HAGEMEISTER: Mr. Canada?

VENIREPERSON CANADA: No, no.

MR. HAGEMEISTER: Mr. Abel?

VENIREPERSON ABEL: No, no.

MR. HAGEMEISTER: Mr. Kretzer?

VENIREPERSON KRETZER: No, no.

MR. HAGEMEISTER: Mr. Lindsey?

VENIREPERSON LINDSEY: No, no.

MR. HAGEMEISTER: Miss Berry?

VENIREPERSON BERRY: No, no.

MR. HAGEMEISTER: Miss Clayborn?

VENIREPERSON CLAYBORN: No and yes. My mother was arrested for drugs.

MR. HAGEMEISTER: Was she treated fairly?

VENIREPERSON CLAYBORN: Yeah.

MR. HAGEMEISTER: Mr. Hammett?

VENIREPERSON HAMMETT: No, yes. My brother-in-law was convicted of conspiracy and fraud.

MR. HAGEMEISTER: Conspiracy to do what?

VENIREPERSON HAMMETT: Murder.

MR. HAGEMEISTER: Was he treated fairly?

VENIREPERSON HAMMETT: Yes, he was, more than enough. I said more than I would give him.

MR. HAGEMEISTER: Since it was a murder case, you have a little more familiarity with these type of cases, does it affect your ability to be fair to these two defendants?

VENIREPERSON HAMMETT: No, sir.

MR. HAGEMEISTER: Miss Wright?

VENIREPERSON WRIGHT: No. And 25 years ago I have a cousin AWOL from service and I think he wrote some bad checks.

MR. HAGEMEISTER: Anything about that affect your decision in this case?

VENIREPERSON WRIGHT: No.

MR. HAGEMEISTER: Miss Cowan?

VENIREPERSON COWAN: No, no.

MR. HAGEMEISTER: Yesterday we talked about the one witness, in some cases, having to be enough because the fact that some witnesses don't come forward -- I'm sorry. Mr. Ward?

VENIREPERSON NATHANIEL WARD: Can I have a side-bar?

MR. HAGEMEISTER: It's up to the Judge.

THE COURT: Yes.

(The following proceedings were had at the bench out of the hearing of the jury:)

THE COURT: You may make your statement or answer the question.

VENIREPERSON NATHANIEL WARD: I think that I had a run-in with them before. I think my cousin is with them.

MR. HAGEMEISTER: What is your cousin's name?

VENIREPERSON NATHANIEL WARD: Antonio -- don't they live by Sumner High School?

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MR. HAGEMEISTER: On Martin Luther King and --

VENIREPERSON NATHANIEL WARD: Exactly. My

cousin ran with them, Antonio Butz.

MR. HAGEMEISTER: Does he have a nickname?

VENIREPERSON NATHANIEL WARD: I don't think so, I don't know. But they did a little -- hang out right by us.

MS. MOORE-DYSON: What is the street behind Sumner?

MR. HAGEMEISTER: I make a motion --

VENIREPERSON NATHANIEL WARD: I don't know. But I know my cousin took him. I'm not saying I know, I seen their face by face, but it's the little dude here, I guess he whipped him or whatever.

MS. MOORE-DYSON: Somebody you saw in the hallway and you recognize that person?

VENIREPERSON NATHANIEL WARD: Yeah, not these two people, but with they family or whatever, the little crippled one.

MS. MOORE-DYSON: You recognize the crippled guy in --

VENIREPERSON NATHANIEL WARD: Yes.

THE COURT: Any objection?

MS. BEIMDIEK: When you saw the guy you called the little crippled guy, what feelings did you have about him?

VENIREPERSON NATHANIEL WARD: I ain't got no

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problems.

MS. BEIMDIEK: You recognize him?

VENIREPERSON NATHANIEL WARD: I felt like I should tell something.

MR. HAGEMEISTER: Do you think your personal knowledge of the guys, that these guys hang around with, and the kinds of things you know about this would affect your ability to be fair?

VENIREPERSON NATHANIEL WARD: No, I'm saying I don't know, I don't know these two, per se, but I could know a lot of other people who know them.

MR. HAGEMEISTER: What do you know from those people?

THE COURT: I didn't hear your answer to the last question. Do you think your knowledge of these people would affect your ability to be fair and impartial?

VENIREPERSON NATHANIEL WARD: No, I don't think so.

THE COURT: Thank you.

MR. HAGEMEISTER: If you are caught in a situation where you find the, believe the evidence beyond a reasonable doubt, and you find them guilty of murder in the first degree, do you think you would be worried about any of those people that you know?

Would that affect your judgment?

VENIREPERSON NATHANIEL WARD: I'm not worried about nobody.

MR. HAGEMEISTER: All right.

THE COURT: Anything further?

MS. MOORE-DYSON: No.

MS. BEIMDIEK: No, Your Honor.

MR. HAGEMEISTER: I still have to make the motion.

THE COURT: Any objection?

MS. BEIMDIEK: I do object. I think he's indicated he could be fair.

MS. MOORE-DYSON: I object.

MR. HAGEMEISTER: I have one last question.

THE COURT: Yeah.

MR. HAGEMEISTER: The guy you know in the hallway, is that a witness?

MS. BEIMDIEK: Carlos' brother?

VENIREPERSON NATHANIEL WARD: He got him, he got a brother name Tallo.

MS. BEIMDIEK: Yeah, that's his brother.

VENIREPERSON NATHANIEL WARD: I know him.

MR. HAGEMEISTER: If there's people from his family that come to the stand and testify, are you more likely to believe them or less likely to believe

them?

VENIREPERSON NATHANIEL WARD: I can't say.

MR. HAGEMEISTER: You might not be able to treat them like somebody you didn't know though?

VENIREPERSON NATHANIEL WARD: Exactly.

MS. BEIMDIEK: Tallo I must say is an endorsed witness.

THE COURT: I can't hear you.

MS. BEIMDIEK: Tallo is an endorsed witness for Carlos in this case. Perhaps that might disqualify this juror.

MR. HAGEMEISTER: He also said he couldn't treat him like any other person, he might treat them different than somebody he didn't know.

THE COURT: And you're referring to a person who you expect to be a witness in this case?

MS. BEIMDIEK: He's certainly endorsed.

THE COURT: All right. I'll ask again, does the defendant Wade have any objection to the State's challenge?

MS. BEIMDIEK: I will withdraw my previous objection.

MS. MOORE-DYSON: I still have the objection.

THE COURT: Pardon?

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MS. MOORE-DYSON: I still have an objection. Even though he's indicated that he could be fair, the second question indicates he might give them different weight. Are you certain that you could not judge what they say and determine --

VENIREPERSON NATHANIEL WARD: I can do that.

MS. MOORE-DYSON: You wouldn't, because you know these people, believe these people because you know them or disbelieve them because you know them?

VENIREPERSON NATHANIEL WARD: Hum-um.

MS. MOORE-DYSON: You'd listen to and make a decision based on the facts?

VENIREPERSON NATHANIEL WARD: I can do that.

THE COURT: I thought I understood you to say because you know the witness you may give more weight to the testimony of that --

VENIREPERSON NATHANIEL WARD: No, it ain't giving no weight to nothing. I'm saying that, okay, if he is on the stand and he see me, I mean that would be really messed up, because I mean I done ran through a couple of lots with Tallo. Tallo grow up with me, he didn't grow up with them little kids.

THE COURT: As I recall yesterday, sir, I'm not putting words in your mouth, but you stated you did not want to be a juror on this case and you

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repeatedly stated you could be fair. You also stated --

VENIREPERSON NATHANIEL WARD: That was before this, though.

THE COURT: Now you feel there's a question as to whether you may or may not be fair?

VENIREPERSON NATHANIEL WARD: Um?

THE COURT: Is that a fair statement?

VENIREPERSON NATHANIEL WARD: It's a fair statement.

THE COURT: In other words, I know that you can't be sure, but do you think there may be a likelihood that you may not be fair as the evidence continues, not continues, but begins and ends in this case?

VENIREPERSON NATHANIEL WARD: I'm going to tell you the honest to God truth, I don't even want to hear the evidence.

THE COURT: I understand that. Let the record -- you have a seat next to the Sheriff for just a moment, Mr. Ward, while I check my notes.

Let the record show that the State has made a challenge for cause of this venireman earlier in the voir dire. The State has challenged Mr. Ward and the Court has reserved ruling. Is that not correct,

counsel?

MR. HAGEMEISTER: That's correct.

MS. BEIMDIEK: That's correct.

THE COURT: The Court recalls yesterday this venireman said that there was a reasonable likelihood that he could not be fair. One of the last things he said in response to a question by the Court, was that not correct?

MR. HAGEMEISTER: I don't recall exactly that conversation, Judge, but I know that he had a problem with there being one witness.

THE COURT: Well, it was after he stated that he did not want to serve on the case and repeatedly said he could be fair, and I asked if there was a likelihood if he was selected as a juror that his experiences and opinions would prevent him from being fair and impartial, and it's the Court's recollection that he said it's possible it would.

At any rate, I understand the defendant Morant is objecting to the State's challenge of Nathaniel Ward, Juror No. 388?

MS. MOORE-DYSON: Um-hum.

THE COURT: Anything further?

MS. BEIMDIEK: No, Your Honor.

THE COURT: Let the record show that the

Court finds that the venireman was hostile in his response to certain of the prosecutor's questions. That he repeatedly stated he could be fair and later on wanted to be excused because he didn't want to serve in this case. And after that statement he has indicated there's a possibility he could not be fair.

The Court finds the venireman's answers in their totality to be equivocal. Accordingly, the challenge for cause is sustained and Nathaniel Ward, Juror No. 388, is released.

Mr. Ward, will you see the bailiff.

(The following proceedings were had in the presence of the jury panel:)

THE COURT: You may proceed, counselor.

MR. HAGEMEISTER: Miss Cunigan?

VENIREPERSON CUNIGAN: I have a cousin that was speedin' and during his speedin' he suffered a heart attack. So it was witnessed that they saw them, two teenagers, but no one came forward to testify so -- but I don't have any trouble.

MR. HAGEMEISTER: Somebody was going to charge him for having a heart attack while he was driving?

VENIREPERSON CUNIGAN: Huh-uh. He was beatin' and speedin' and had a heart attack --

THE REPORTER: I'm sorry, ma'am, I didn't hear.

VENIREPERSON CUNIGAN: He suffered a heart attack during a beatin'.

MR. HAGEMEISTER: A beatin'?

VENIREPERSON CUNIGAN: Beatin'.

MR. HAGEMEISTER: She said two teens beat her relative and beat him to a heart attack and he was speedin' in the car.

After he had the heart attack?

VENIREPERSON CUNIGAN: No. He was speedin' and he had a heart attack while they was beatin' him.

MR. HAGEMEISTER: I'm sorry. I really apologize. You know, I'm going to do that throughout the trial, because I have a problem hearing sometimes. If that's going to bother anybody, I need to know that up front. But is that going to affect your ability to be fair?

VENIREPERSON CUNIGAN: No.

MR. HAGEMEISTER: Miss Bradford?

VENIREPERSON BRADFORD: Yes, I think I remember reading something about this case in the papers. I thought I bring that up.

MR. HAGEMEISTER: Did you form any opinions as to --

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VENIREPERSON BRADFORD: No, I didn't.
MR. HAGEMEISTER: And this would have been September of '95 that this crime that was charged occurred, and it would have been in the area of Martin Luther King around the 4200 block, is that the same thing you read about?
VENIREPERSON BRADFORD: Yes, I believe so.
MR. HAGEMEISTER: And do you recall that article very well without going into what it said? I don't know what it said.
VENIREPERSON BRADFORD: No, I don't recall very well, but I just bring it up in case --
MR. HAGEMEISTER: No, that's fine.
VENIREPERSON BRADFORD: -- something was said and it was refreshing my memories more.
MR. HAGEMEISTER: Okay. Does it affect your ability to be fair to these two?
VENIREPERSON BRADFORD: No, it doesn't.
MR. HAGEMEISTER: Does it affect your ability to be fair to the people of the State of Missouri, the victims in this case?
VENIREPERSON BRADFORD: No.
MR. HAGEMEISTER: Somebody else has a question? You are Mrs. Templin.
VENIREPERSON TEMPLIN: Yes. Yesterday you

asked if anybody knew you or saw you. I said you looked familiar but I could not place it. After you started talking, I guess two years ago I was on a jury that you had case for. I don't mean to be offensive or anything like that, Counselor.
MR. HAGEMEISTER: If you're going to talk about the facts --
VENIREPERSON TEMPLIN: No.
MR. HAGEMEISTER: -- it would be better if you approach if -- go ahead.
VENIREPERSON TEMPLIN: It's just that I don't know if I can stand being on a jury with you as a counselor. I don't want to be offensive.
VENIREPERSON WEST: Oh, man.
VENIREPERSON TEMPLIN: It makes me nervous when I constantly listen to somebody ask the same question over and over, I guess.
MR. HAGEMEISTER: I don't do the same --
VENIREPERSON TEMPLIN: By the time I got to jury deliberation I was like this. I was a nervous wreck, but it didn't effect my vote.
MR. HAGEMEISTER: There's some cases that require a lot of arguing and some don't. Some cases require a lot of particular jury selection questions, and some cases you can go through the same ones. I'm

sure you heard me use some of the same standard ones. I haven't gotten to the standards and other stuff yet.
The question I have for you, is there a chance that it will affect your judgment in the case?
VENIREPERSON TEMPLIN: I don't think so. It's just that I feel like I've been beaten after the trial has been done because I have listened. I do.
MR. HAGEMEISTER: I think everyone feels that.
VENIREPERSON TEMPLIN: I'm saying, jeez, can't he ask the question and get it over with? You do browbeat.
MR. HAGEMEISTER: You know why I do that?
VENIREPERSON TEMPLIN: Yes, I feel I understand, but it doesn't make me feel any better.
MR. HAGEMEISTER: Thank you. I'll put that on my list of things to work on. I appreciate that. Obviously, it's something I need to work on. Can you be fair?
VENIREPERSON TEMPLIN: I think so.
MR. HAGEMEISTER: I can't strike you for cause if you're not saying it's going to affect you. It's not that you want to be struck.
VENIREPERSON TEMPLIN: Oh, no, it's not like that. I want to make you aware I start getting a

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little edgy.
MR. HAGEMEISTER: I'll try to finish it up as fast as I can. We have jury instructions that tell you what the law is. There's some of you that will think that you might have an issue.
For example, sometimes somebody looks at a case and they say, even though they can't base it on any of the evidence, they come up with, well, it was okay for him to do that, that should be an exception to the law. He thought he had a right to do that, so I should consider that.
Or maybe you come up with some idea of self-defense or something. Even though it's never been brought out from the evidence on the stand. Then if you don't have the instruction that says you can consider that, you can't consider that. Does everyone understand that?
Do you all agree with that, if you're not given an instruction on self-defense, or justification, or any of the other issues that some people come up with, even though there's no evidence, they go down and come up with it on their own, that it's not something you can consider? You'll promise me you will always consider the instructions given?
The reason I bring this up is some cases

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where there's people shooting each other in some areas of the city, I'm just saying sometimes your witnesses, or at least in this case, or your victims, at least two of the people that you're going to hear about aren't saints. You're going to hear evidence that lets you know that two of the victims aren't saints.

And you're going to find out facts, without going into the specifics of the case, that you're going to want to try to make something out of. But if you're not doing the jury instruction that says you're to consider these things, can you all promise that you won't consider them? Is everyone okay with that? Okay.

There's an expression that they have, I didn't use in the last trial that I had with you, which was when you cast a play in hell you are -- I am not saying this neighborhood is hell -- you don't get angels for actors.

When you have a case like that, and maybe somebody who is not the person you want to have watching your back, or marrying your daughter, or going on vacation with, is a witness to a crime. Does everyone agree that even that person has equal rights to the criminal justice system? Even a person who maybe carries a gun on the streets or who maybe isn't

the best grade A student, taxpayer, whatever the case maybe, still has equal rights under the law to have his case heard by the jury. If you agree with that raise your hand. Thank you.

I have to admit you have me a little flustered now. Is there anything I've done that anybody else has found offensive, besides the fact of beating a dead horse?

VENIREPERSON LUCAS: I kind of --

MR. HAGEMEISTER: Mr. Lucas?

VENIREPERSON LUCAS: I kind of agree with her. You go on and on instead of going and moving on.

MR. HAGEMEISTER: I've been told this before. I'm trying to work on it. I appreciate it.

VENIREPERSON LUCAS: Otherwise it's fine.

MR. HAGEMEISTER: I'm good at other things.

VENIREPERSON LUCAS: I bet you are.

MR. HAGEMEISTER: Is there -- is it going to affect your ability?

VENIREPERSON LUCAS: No, no.

MR. HAGEMEISTER: If I can't present a case impartially, and my victims can't get a fair trial because I'm the attorney presenting the case, I am not doing my job and we should stop it if everyone can't be fair to the victims in the ease.

VENIREPERSON LUCAS: I'm not talking about that, you know. Just, you know, how even though you could kind of --

MR. HAGEMEISTER: Irritating.

VENIREPERSON LUCAS: I don't mean nothin' by it, but some of us work at nights and we come here and kind of lure us into sleep instead of going on.

MR. HAGEMEISTER: Anybody feel the same way as Mr. Lucas?

VENIREPERSON WEST: Yeah.

MR. HAGEMEISTER: I heard you clapping earlier, Mr. West. Anybody else that has any issues they thought of that I asked a question about that they haven't already brought up?

Remember my question yesterday about not being able to think of every question, is there anybody that thought of anything that might affect your ability to be fair? I appreciate it once again. Thank you.

VENIREPERSON TEMPLIN: I'm sorry.

MR. HAGEMEISTER: I apologize again.

VENIREPERSON TEMPLIN: I'm sorry.

THE COURT: Thank you, Mr. Hagemeister. Ladies and gentlemen of jury, we will have our morning recess at this time. We're in morning recess. The

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bailiff will advise you when to return to the courtroom. You may go down to the first floor, if you care to do so, for refreshments; however, if you do that, I request that you return fairly promptly to this floor. Thank you. We are in morning recess.

(The Court duly admonished the jury and a recess was taken.)

(The following proceedings were had in the presence of the jury panel)

THE COURT: You may remain seated.

VENIREPERSON WEDGE: Can I approach the bench, sir?

THE COURT: In a moment, sir.

MR. HAGEMEISTER: I wanted to ask Miss Templin, at the side-bar, what case she was on.

THE COURT: Very well. Miss Templin, will you approach the bench.

(The following proceedings were had at the bench out of the hearing of the jury panel:)

MR. HAGEMEISTER: Miss Templin, do you recall the case you were on that you referred to during voir dire?

VENIREPERSON TEMPLIN: It was, I think a possession of cocaine. No. I can't remember.

MR. HAGEMEISTER: Do you remember the facts

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of that case at all or --

VENIREPERSON TEMPLIN: All I can remember is this kid had money to get his teeth fixed and instead of getting his teeth fixed he ended up getting cocaine.

MR. HAGEMEISTER: That's the one they ended --

VENIREPERSON TEMPLIN: Only witnesses were police officers, you know, for the prosecutor, not the defense.

THE COURT: Thank you. Anything further?

MR. HAGEMEISTER: Do you remember who the defense attorney was?

VENIREPERSON TEMPLIN: No, I couldn't tell you that.

MR. HAGEMEISTER: Man, woman?

VENIREPERSON TEMPLIN: No. Like when I walked in yesterday, you looked familiar but I can't place you when you started talking.

MR. HAGEMEISTER: Is there anything about that case that you didn't like the way it was handled?

VENIREPERSON TEMPLIN: No, it's just that you have a tendency to make people nervous because you tend -- I don't want to be reprimanded because I'm bored or sleeping, it's just that some people make me

very nervous.

THE COURT: Ma'am, I don't mean to cut you off, but you have expressed an opinion and the Court would like to ask you is there anything about that opinion that would prevent you from being fair and impartial if you're selected as a juror?

VENIREPERSON TEMPLIN: No.

THE COURT: Could you follow the Court's instructions as to the law?

VENIREPERSON TEMPLIN: Yes.

THE COURT: Anything further?

MS. BEIMDIEK: No, Your Honor.

THE COURT: Thank you.

MR. HAGEMEISTER: How did they find the drugs in that case?

VENIREPERSON TEMPLIN: I don't remember how they found it. We did find him guilty. But I can't tell you exactly. This was over two years ago.

MR. HAGEMEISTER: I have no memory of it.

THE COURT: Thanks.

MR. HAGEMEISTER: Thanks.

THE COURT: I believe there was another request, remain here, Counsel, to approach the bench.

You are Douglas A. Wedge, Juror No. 395?

VENIREPERSON WEDGE: Yes.

THE COURT: You may make your statement.

VENIREPERSON WEDGE: After thinking about it, I don't have a thing as far as with my family's past, I can be fair and honest.

But with the crimes committed against me, I've been thinking since yesterday that I don't know if I can because I've had a gun put to my throat, a knife pulled on me by other black young men.

I live across the street from gang members and seeing the activities there. I've been really thinking, seeing if I can be fair and honest, and I don't know if I can.

THE COURT: Thank you, sir.

MR. HAGEMEISTER: Do you think you would ever convict anybody if you didn't believe they were guilty beyond a reasonable doubt?

VENIREPERSON WEDGE: I don't think I could or not. I don't know if I would hold a grudge -- I mean somebody being a young black man thinking they're a gang member --

THE COURT: I don't want to put words in your mouth. Are you saying because of your personal experiences, is there a possibility you cannot set those aside and be a fair and impartial juror?

VENIREPERSON WEDGE: That's correct.

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THE COURT: Anything further?

MR. HAGEMEISTER: No, sir.

MS. BEIMDIEK: I make a motion.

THE COURT: Sustained. Thank you, Mr. Wedge, for your candor. The challenge of this, Defendant Wade's challenge of Douglas A. Wedge, Juror 395, is sustained. Will you see the bailiff.

VENIREPERSON WEDGE: Yes.

THE COURT: Anything further?

MS. BEIMDIEK: No, Your Honor.

(The following proceedings were had in the presence of the jury panel:)

THE COURT: You may proceed, Miss Beimdick.

MS. BEIMDIEK: Thank you, Your Honor.

VOIR DIRE EXAMINATION

MS. BEIMDIEK: Good morning. I'm Bev or Bevy Beimdiek and I represent Carlos Wade. I am going to try to heed the advice of several of our jurors and try to keep it short, but I do have some important questions to ask.

Raise your hand if you ever watched, you don't have to raise your hand yet, if you've ever watched any crime show on TV, any of the law, the courtroom dramas, either on TV or the movies? Pretty much everybody.

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You've never seen this part of the trial, right? Anybody ever seen this part of the trial covered on television? Miss Cherry, you have. And Mr. Snipes, you have, too.

Most of us probably haven't seen it and that's because, to be polite, this part of the trial is about as interesting as watching paint dry for many people, right? You all pretty much agree with that feeling. Okay. I apologize. A lot of people feel that way.

I also must tell you for Carlos and for Tyrone this is a very important part of the trial because twelve of you will be selected to serve as jurors in this case. You will decide Carlos' future.

While I recognize this has been a long and tedious process, it is a critical process, to select the twelve jurors who can be the most fair, who don't come to this process with a lot of baggage that will affect their decision making process.

If you bear with me, I'll try to get through it as quickly as I can. Please understand, were you seated in Carlos' chair, you would want a carefully selected juror to hear the case.

There are no wrong answers. Everybody here has been forthright. We appreciate that. The wrong

answer is the one you withhold or keep from us because you think it's not important or embarrassing to you or any number of reasons you have.

This isn't like school where you should be afraid of giving a wrong answer. The only wrong answer is the withheld answer. We want your honest answers here.

You will not be allowed to take notes. Even though we have a court reporter typing down everything that's said, a lot of times jurors, when they're beginning to decide the case, will send up a note and say we'd like a transcript of a particular witness. Unfortunately, the court reporter is unable to prepare a transcript that quickly.

So what you, as jurors, are called upon to do is use your collective memories to decide the facts of the case. I tell you that because, as we said, this will be a rather lengthy case, it could go into next week, and I need to know for any of you that presents a problem, keeping track of memory things, facts, that you may say I'm terrible remembering things and I'm worried that next Tuesday when we're in the jury room, or whatever day it might be, that you might say I didn't take notes, we can't get a transcript, and I don't remember what a particular

person said about a particular topic. Is there anybody who is worried about that right now?

Mr. Hagemeister asked if you recognized him and I don't remembering any of you responding. I'll ask if you recognize me or Carlos at this time? Nobody. I assume nobody recognizes Sandra Moore-Dyson who represents Tyrone, is that fair to say?

What about other court personnel? You've seen a lot of people in this courtroom, all who play important roles. Some of you may know other defense lawyers, other prosecutors, people who work with Mr. Hagemeister, judges, court reporters, the whole spectrum.

I'll start with the jury box. Does anybody know anyone who works in the court system? Miss Bradford?

VENIREPERSON BRADFORD: Yes. Ruby Dyers.

MS. BEIMDIEK: Mr. or Mrs. Dyers?

VENIREPERSON BRADFORD: Mr. Dyers.

MS. BEIMDIEK: What does he do?

VENIREPERSON BRADFORD: Something to do with probation. I forgot exactly what it is. I know he has something to do with probation.

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MS. BEIMDIEK: Do you talk to him about his work?

VENIREPERSON BRADFORD: No, I don't.

MS. BEIMDIEK: Would that affect you at all in this case?

VENIREPERSON BRADFORD: No, it wouldn't.

MS. BEIMDIEK: Anybody else in the jury box? Anybody in the chairs? On this side of the courtroom? Miss Templin?

VENIREPERSON TEMPLIN: I have a cousin who is a lawyer. I used to work for lawyers.

MS. BEIMDIEK: Is your cousin a lawyer practicing in St. Louis?

VENIREPERSON TEMPLIN: He was. I haven't seen him, God knows when.

MS. BEIMDIEK: It's fair to say you don't talk about his work?

VENIREPERSON TEMPLIN: Exactly.

MS. BEIMDIEK: What was your job when you worked for a lawyer?

VENIREPERSON TEMPLIN: Secretary. They were both into corporate law.

MS. BEIMDIEK: No criminal?

VENIREPERSON TEMPLIN: No.

MS. BEIMDIEK: Miss Lang?

VENIREPERSON LANG: Yes, I know Judge Phil Hageney, and Ed Sweeney was in our neighborhood.

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MS. BEIMDIEK: Let's start with the Judge first. Do you speak with him about the work he does?

VENIREPERSON LANG: No, I don't

MS. BEIMDIEK: What about Ed Sweeney?

VENIREPERSON LANG: No

MS. BEIMDIEK: Is he or are you active in any neighborhood organizations?

VENIREPERSON LANG: Not really, no

MS. BEIMDIEK: Let me ask you this. Let's assume you go into the jury room and deliberate. In your mind you're thinking, you may be leaning towards not guilty. In the back of your mind, is there a chance the next time I see Mr. Sweeney who works with Mr. Hagemeister and he asks if he, heard I was on a jury, am I going to be embarrassed or uncomfortable to say I returned a verdict of not guilty because you're going to worry about seeing Ed Sweeney and telling him that down the road?

VENIREPERSON LANG: No, I don't think so.

MS. BEIMDIEK: You can vote however you feel the evidence guides you, regardless of the fact that you know Mr. Sweeney?

VENIREPERSON LANG: Yes.

MS. BEIMDIEK: Thank you. Anybody else? On the left side, anybody know any court personnel? Is

it Berry? Who do you know?

VENIREPERSON BERRY: Judge Tillman, Judge Shaw.

MS. BEIMDIEK: Okay.

VENIREPERSON BERRY: Judge Calvin, Andre Harris.

MS. BEIMDIEK: He was in here yesterday.

VENIREPERSON BERRY: Yeah. I have a cousin who is an attorney.

MS. BEIMDIEK: Is your cousin a lawyer in St. Louis?

VENIREPERSON BERRY: Yes.

MS. BEIMDIEK: Man or woman?

VENIREPERSON BERRY: Man.

MS. BEIMDIEK: What kind of law does he practice?

VENIREPERSON BERRY: Corporate.

MS. BEIMDIEK: Of the judges that you named, do you have occasion to talk to them about the work they do?

VENIREPERSON BERRY: Hum-um.

MS. BEIMDIEK: Earlier I think you said you were a crime victim coordinator. Are you still working in that capacity?

VENIREPERSON BERRY: That was in Texas.

MS. BEIMDIEK: You wouldn't have any contact with those people because of your work. While I've got you, let me ask about this if I could. Did you work for a prosecutor's office?

VENIREPERSON BERRY: District attorney.

MS. BEIMDIEK: They are all called different things different places. Tell me what you did with the people you worked with.

VENIREPERSON BERRY: I lived in a town, population 25,000.

THE COURT: Please stand, ma'am. I am --

VENIREPERSON BERRY: I lived in a town of 25,000 people, so I was crime victim's coordinator for that small county which solved helping victims of crime fill out paperwork for insurances, counseling, loss of wages, help prepare victims get on the stand.

MS. BEIMDIEK: Did you actually come to court with some victims?

VENIREPERSON BERRY: Yes.

MS. BEIMDIEK: Obviously you figured out we will have witnesses come into court in this case?

VENIREPERSON BERRY: Right.

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MS. BEIMDIEK: My concern is because of your background that you may tend to side with them even before they get on the stand and say this is obviously

a very difficult thing or very traumatic thing in their life and give them more believability at the beginning before they even talk. Is there any risk of that in this case?

VENIREPERSON BERRY: I don't believe there is.

MS. BEIMDIEK: Do you feel because of your work with the system you have any negative feelings towards people charged with crimes?

VENIREPERSON BERRY: Um, sometimes.

MS. BEIMDIEK: Sometimes. Okay. You thought about that for a second. You probably don't spend a lot of time thinking about it. Again my concern is that you may transfer some of your negative feelings about generally people charged with crimes and hold it against Carlos in this case? Can you assure me that that won't present a problem for you in this case?

VENIREPERSON BERRY: That won't present a problem.

MS. BEIMDIEK: Thanks. Anybody else on Miss Berry's side who knows anybody who works in the court system?

End of Volume I

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VOLUME II

MS. BEIMDIEK: What about, this is sometimes a strange question, anybody know other jurors? Either from work or neighborhood or you realized when you showed up? Way in the back. Let me check your name. Is that Miss Cummings?

VENIREPERSON CUMMINGS: Yes.

MR. HAGEMEISTER: Who did you know?

VENIREPERSON CUMMINGS: This gentleman here.

MR. HAGEMEISTER: Mr. Dodson.

Miss Cummings, let me start with you. How do you all know each other?

VENIREPERSON CUMMINGS: He grew up with my brother.

MS. BEIMDIEK: Mr. Dodson, you can listen to this, too. You're both on this jury, hypothetically, at this point.

You go down to the jury room and you start talking about the case. One of you feels one way and the other feels the other way. Is there any risk that you're going to say, I'm going to go with him or go with her because we have this other history and however they feel I'm going to go together?

VENIREPERSON CUMMINGS: No.

MS. BEIMDIEK: Mr. Dodson, the same with

you, you can --

VENIREPERSON DODSON: Right.

MS. BEIMDIEK: And not be swayed by the opinion of another?

VENIREPERSON DODSON: Yes.

THE COURT: I didn't hear Miss Cummings' answer.

VENIREPERSON CUMMINGS: No.

THE COURT: Thank you.

MS. BEIMDIEK: Miss Bruton, who do you know?

VENIREPERSON BRUTON: Jamesanna Jones.

MS. BEIMDIEK: Who is seated behind you?

VENIREPERSON BRUTON: Right.

MS. BEIMDIEK: I think she was excused from the jury service, was she not?

VENIREPERSON BRUTON: No.

MS. BEIMDIEK: I'm sorry.

MR. HAGEMEISTER: That was Mattie Jones.

MS. BEIMDIEK: We have two Joneses. I apologize. Miss Jones you're 444? Okay. How do you all know each other?

VENIREPERSON JONES: Her cousin in the same block I am.

MS. BEIMDIEK: You have a cousin, a friend. All right. You've heard the discussion I had with the

other jurors about knowing each over, is there any risk that you would join in with the way the other one feels because you have this relationship?

VENIREPERSON JONES: No

MS. BEIMDIEK: Miss Jones, I see you shaking your head no. That's not a problem for you either, Ms. Bruton?

VENIREPERSON BRUTON: No.

VENIREPERSON JONES: No.

MS. BEIMDIEK: Thank you. I want to go through a series -- I'm sorry, Miss Trotter?

VENIREPERSON TROTTER: I know Mr. Lucas. I been knowing him ever since he was a little kid about five or six.

VENIREPERSON LUCAS: You don't have to give my age.

MS. BEIMDIEK: Same question I asked the others, is there any chance you would say he's my best friend?

VENIREPERSON TROTTER: It wouldn't affect me.

MS. BEIMDIEK: Mr. Lucas?

VENIREPERSON LUCAS: No.

MS. BEIMDIEK: Miss Otten?

VENIREPERSON OTTEN: That's my uncle,

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Mr. Kretzer.

MS. BEIMDIEK: First uncle?

VENIREPERSON OTTEN: First.

MS. BEIMDIEK: Okay. Mr. Kretzer, are you claiming you are related to this woman? Same question. You're related to one another. You go down there and Mr. Kretzer says I remember the witness said such and such, and, Miss Otten, you say I don't think that is what they said at all, is there any chance you are going to give more believability to his recollection because he is a relative of yourself?

VENIREPERSON OTTEN: No.

MS. BEIMDIEK: Mr. Kretzer, same to you.

VENIREPERSON KRETZER: I don't think so.

MS. BEIMDIEK: Is there any, I'm sensing a little bit of doubt, or is that the way you're phrasing it, you're okay with being on a jury with a relative?

VENIREPERSON KRETZER: It might be a little doubt.

MS. BEIMDIEK: A little doubt? Can you tell me why you might have a little doubt about being on the jury with your niece?

VENIREPERSON KRETZER: Well, I feel uncomfortable, you know.

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MS. BEIMDIEK: Do you feel like if she voted one way you might worry about disagreeing with her?

VENIREPERSON KRETZER: Yeah.

MS. BEIMDIEK: Thanksgiving might be a little hostile this year?

VENIREPERSON KRETZER: Yeah.

MS. BEIMDIEK: For you that might present a little bit of a problem?

VENIREPERSON KRETZER: Yeah, I think it might.

MS. BEIMDIEK: You may not -- would you tend to give way to her way, or would you expect her to give way to how you feel?

VENIREPERSON KRETZER: I might give away to hers.

MS. BEIMDIEK: And even if you felt one way, you may go with another decision because of her decision?

VENIREPERSON KRETZER: I might.

MS. BEIMDIEK: Thanks. Anybody else knows one another on the jury?

Next line of questions I'm going to, this will take a little while, so I'll try to tell you what the questions are. You can be thinking about your answer and we'll try to breeze through.

I want to know if you've been on a jury before. I don't mean this process, I mean getting picked to sit in the box and listen to evidence. I will ask you if you were on a civil jury or criminal jury. I will ask if you were able to reach a verdict in your case and if you served as the foreman or forewoman of your jury. Then I'll ask if you talked to any of the lawyers after the case.

So you can all be thinking about those questions. I'll start back here. Starting with Miss Bradford, any jury service?

VENIREPERSON BRADFORD: Yes.

MS. BEIMDIEK: What kind of case?

VENIREPERSON BRADFORD: Criminal and civil.

MS. BEIMDIEK: Do you remember the charge in the criminal case?

VENIREPERSON BRADFORD: One was assault and one was for bringing a weapon into the courtroom.

MS. BEIMDIEK: Okay. Did you reach verdicts in both of those cases?

VENIREPERSON BRADFORD: Yes, we did.

MS. BEIMDIEK: Were you the foreperson of --

VENIREPERSON BRADFORD: No.

MS. BEIMDIEK: In the civil case were you the foreperson?

VENIREPERSON BRADFORD: No.

MS. BEIMDIEK: Did you speak to any of the lawyers involved in the case after the case was over?

VENIREPERSON BRADFORD: Briefly.

MS. BEIMDIEK: Was there anything about your discussion with the lawyers that left you with bad feelings about the justice system in general or would affect your ability to serve on this case?

VENIREPERSON BRADFORD: No.

MS. BEIMDIEK: Mr. West?

VENIREPERSON WEST: Yes, um-hum.

MS. BEIMDIEK: You served on a criminal or civil jury?

VENIREPERSON WEST: Civil jury.

MS. BEIMDIEK: Just once?

VENIREPERSON WEST: Yes.

MS. BEIMDIEK: Were you the foreman of your jury?

VENIREPERSON WEST: No.

MS. BEIMDIEK: Did you reach a verdict?

VENIREPERSON WEST: Yes.

MS. BEIMDIEK: Thank you. Miss Otten?

VENIREPERSON OTTEN: No.

MS. BEIMDIEK: Miss Reimler?

VENIREPERSON REIMLER: Reimler. Yes, I

served on two criminal cases and one civil.

MS. BEIMDIEK: Do you recall the charges in the criminal case?

VENIREPERSON REIMLER: Murder and I think the other one was theft. Theft.

MS. BEIMDIEK: Were you the foreperson of either of those juries?

VENIREPERSON REIMLER: The second.

MS. BEIMDIEK: You were? Okay. Did you discuss the case with any of the lawyers afterwards?

VENIREPERSON REIMLER: Maybe just briefly.

MS. BEIMDIEK: Anything that would affect your ability to serve on this case?

VENIREPERSON REIMLER: No.

MS. BEIMDIEK: Mr. Campbell?

VENIREPERSON CAMPBELL: Civil.

MS. BEIMDIEK: Were you the foreman of your jury?

VENIREPERSON CAMPBELL: No, I wasn't.

MS. BEIMDIEK: Did you return a, return a verdict?

VENIREPERSON CAMPBELL: Yes, we did.

MS. BEIMDIEK: Mr. Patterson?

VENIREPERSON PATTERSON: Both.

MS. BEIMDIEK: Do you remember the charge in

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criminal?
VENIREPERSON PATTERSON: Car theft.
MS. BEIMDIEK: Did you reach a verdict?
VENIREPERSON PATTERSON: No, hung jury.
MS. BEJMDIEK: And were you the foreperson of your jury?
VENIREPERSON PATTERSON: No.
MS. BEIMDIEK: Now sometimes people on hung juries come away with a bad feeling. They feel they failed or didn't complete their task, were you left with any feelings like that?
VENIREPERSON PATTERSON: I was not.
MS. BEIMDIEK: Did you speak to the lawyers afterwards?
VENIREPERSON PATTERSON: No, I did not.
MS. BEIMDIEK: You are still able to serve in this case? There's nothing about that that would cause --
VENIREPERSON PATTERSON: Yes.
MS. BEIMDIEK: Mr. Lucas?
VENIREPERSON LUCAS: Civil.
MS. BEJMDIEK: Did you reach a verdict?
VENIREPERSON LUCAS: Yes.
MS. BEIMDIEK: Were you the foreman?
VENIREPERSON LUCAS: No.

MS. BEIMDIEK: Miss Trotter?
VENIREPERSON TROTTER: Civil.
MS. BEIMDIEK: Verdict?
VENIREPERSON TROTTER: Yes, we did.
MS. BEIMDIEK: Were you the forewoman?
VENIREPERSON TROTTER: No.
MS. BEIMDIEK: Miss Davis?
VENIREPERSON DAVIS: No, I didn't.
MS. BEIMDIEK: Miss Jackson?
VENIREPERSON ELMER JACKSON: Civil case.
MS. BEIMDIEK: Reach a verdict?
VENIREPERSON ELMER JACKSON: Yes.
MS. BEIMDIEK: Were you the foreperson?
VENIREPERSON ELMER JACKSON: No.
MS. BEIMDIEK: Miss Cunigan?
VENIREPERSON CUNIGAN: No.
MS. BEIMDIEK: Thank you. Miss McCulley?
VENIREPERSON MCCULLEY: Yes.
MS. BEIMDIEK: What kind of case?
VENIREPERSON MCCULLEY: Car theft.
MS. BEIMDIEK: Did you reach a verdict?
VENIREPERSON MCCULLEY: Yes.
MS. BEIMDIEK: Were you the foreman?
VENIREPERSON MCCULLEY: No.
MS. BEIMDIEK: Mr. Lawson?

VENIREPERSON LAWSON: Civil.
MS. BEIMDIEK: Reach a verdict?
VENIREPERSON LAWSON: Yes.
MS. BEIMDIEK: Foreman?
VENIREPERSON LAWSON: No.
MS. BEIMDIEK: Mr. Hoelscher?
VENIREPERSON HOELSCHER: No.
MS. BEIMDIEK: Thanks. Mr. Arens?
VENIREPERSON ARENS: No.
MS. BEIMDIEK: Mr. Howard?
VENIREPERSON HOWARD: Yes. It was civil and they settled out of court.
MS. BEIMDIEK: Thanks. Mr. Duff?
VENIREPERSON DUFF: Civil. We did render a verdict. I was not the foreperson. And I did talk to the lawyers afterwards, but nothing would influence me in this cause.
MS. BEIMDIEK: Very good. Thank you. Miss Carper?
VENIREPERSON CARPER: No.
MS. BEIMDIEK: Miss Thomas?
VENIREPERSON THOMAS: No.
MS. BEIMDIEK: Mr. Hessling?
VENIREPERSON HESSLING: Civil, reached a verdict, I was not the foreperson, and I didn't talk

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to the lawyers.
MS. BEIMDIEK: You're all getting good at this. Thank you. Mr. Harris?
VENIREPERSON HARRIS: Yes, civil and criminal.
MS. BEIMDIEK: Do you recall the charge in the criminal case?
VENIREPERSON HARRIS: Drug possession.
MS. BEIMDIEK: Did you all reach a verdict?
VENIREPERSON HARRIS: Yes, we did.
MS. BEIMDIEK: Were the foreman of your jury?
VENIREPERSON HARRIS: No.
MS. BEIMDIEK: Talk to the lawyers afterwards?
VENIREPERSON HARRIS: Yes.
MS. BEIMDIEK: Anything that would affect your ability to sever on this case?
VENIREPERSON HARRIS: No.
MS. BEIMDIEK: Thank you. Miss Templin?
VENIREPERSON TEMPLIN: Civil and criminal, federal.
MS. BEIMDIEK: Busy.
VENIREPERSON TEMPLIN: They call me every other year.

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MS. BEIMDIEK: I know you've been on a criminal case before. You talked at side-bar. It was a drug case?

VENIREPERSON TEMPLIN: Yes.

MS. BEIMDIEK: You reached a verdict?

VENIREPERSON TEMPLIN: Yes.

MS. BEIMDIEK: Thanks. I won't ask you anything about your ability to serve on this case.

Mr. Burton?

VENIREPERSON BURTON: I was on civil and criminal case.

MS. BEIMDIEK: Civil and criminal?

VENIREPERSON BURTON: Yes.

MS. BEIMDIEK: Do you remember the charge in -- you said it was a shooting case, I think you mentioned that earlier?

VENIREPERSON BURTON: Yes.

MS. BEIMDIEK: Did you all reach --

VENIREPERSON BURTON: Civil was an automobile accident.

MS. BEIMDIEK: Okay. In the criminal case did you all reach a verdict?

VENIREPERSON BURTON: Yes, we did.

MS. BEIMDIEK: Were you the foreman of your jury?

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VENIREPERSON BRUTON: No.

MS. BEIMDIEK: Did you speak to any of the lawyers in the case afterwards?

VENIREPERSON BURTON: No.

MS. BEIMDIEK: Mr. Dodson?

VENIREPERSON DODSON: Civil.

MS. BEIMDIEK: Reach a verdict?

VENIREPERSON DODSON: Yes.

MS. BEIMDIEK: Foreman?

VENIREPERSON DODSON: No.

MS. BEIMDIEK: Thanks. Miss Hock?

VENIREPERSON HOCK: No.

MS. BEIMDIEK: Mr. Snipes?

VENIREPERSON SNIPES: No.

MS. BEIMDIEK: Mr. Prothero?

VENIREPERSON PROTHERO: Yes. It was a criminal case. We did reach a verdict and I did not speak with the lawyers afterwards.

MS. BEIMDIEK: You weren't the foreperson?

VENIREPERSON PROTHERO: No, I was not.

MS. BEIMDIEK: Miss Bruton?

VENIREPERSON BRUTON: No.

MS. BEIMDIEK: Thanks. Mr. Ward -- I'm sorry, Mr. Harris.

VENIREPERSON HARRIS: You asked did I speak

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to the lawyers, I didn't speak to the lawyers.

MS. BEIMDIEK: Mr. Ward?

VENIREPERSON WARD: Civil case. No foreman. Reached a verdict. I didn't speak to the lawyers.

MS. BEIMDIEK: Thank you very much. Miss Jones?

VENIREPERSON JONES: Civil case. Reached a verdict. I was not the foreperson.

MS. BEIMDIEK: Thank you. Mr. Naum?

VENIREPERSON NAUM: Five civil cases, one criminal. I spoke to the lawyers after on criminal case. I was the foreman on the jury. And what was the other question?

MS. BEIMDIEK: What was the charge?

VENIREPERSON NAUM: Robbery.

MS. BEIMDIEK: Okay. And did you all reach a verdict in the criminal case?

VENIREPERSON NAUM: Hung jury.

MS. BEIMDIEK: Same question that I asked Mr. Patterson earlier. Did you feel there was any disappointment on your part or any sort of bad feelings about the justice system because of the hung jury that you served on?

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VENIREPERSON NAUM: No, but the Judge spoke to us all and said we did the right thing by not

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letting him go because he was guilty. This is what he said afterwards.

MS. BEIMDIEK: Is that going to affect you in this case?

VENIREPERSON NAUM: No way.

MS. BEIMDIEK: Thank you. Miss Cherry?

VENIREPERSON CHERRY: No.

MS. BEIMDIEK: Miss Cummings?

VENIREPERSON CUMMINGS: No

MS. BEIMDIEK: Miss Baroli?

VENIREPERSON BAROLI: Grand jury.

MS. BEIMDIEK: You served on a grand jury. Good. You beat me to my next question. How long ago were you on the grand jury?

VENIREPERSON BAROLI: Pardon?

MS. BEIMDIEK: I have a couple questions about the grand jury. How long ago did you serve on that?

VENIREPERSON BAROLI: About three years ago. It was in Ohio.

MS. BEIMDIEK: In Ohio. I can't speak to the grand jury in Ohio. I know from what I understand about grand juries is that the prosecutor comes in and presents what they want you to hear, is that about the way it was for you?

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VENIREPERSON BAROLI: We decided whether they were going to go to court.

MS. BEIMDIEK: Yes. Did you feel that your decision in anyway determined whether or not the accused person was in fact guilty?

VENIREPERSON BAROLI: (Shook head)

MS. BEIMDIEK: You have to answer out loud.

VENIREPERSON BAROLI: I didn't understand you.

MS. BEIMDIEK: Did you feel it was your role as a member of the grand jury to determine whether the accused person was guilty?

VENIREPERSON BAROLI: No.

MS. BEIMDIEK: Okay. The fact that we're here and you've gotten past that stage of this case, will that in anyway make you think, well, I know he must have done it because I served on this grand jury and heard lots of evidence in cases and I know if they get past the grand jury they must be guilty?

VENIREPERSON BAROLI: No.

MS. BEIMDIEK: No? You understand you only hear one side at the grand jury, you hear the side of evidence they want you to hear?

VENIREPERSON BAROLI: Yes.

MR. HAGEMEISTER: Objection to misstatement

of law. The defense has a right to call witnesses to the grand jury.

THE COURT: The objection is sustained to the last question. Let's move on.

MS. BEIMDIEK: Thank you.

THE COURT: Unless you have a further question of this venirewoman.

MS. BEIMDIEK: Other than serving on a grand jury, you haven't served on any other kind of jury?

VENIREPERSON BAROLI: No.

MS. BEIMDIEK: Thanks. Miss Lang?

VENIREPERSON LANG: I was on a criminal jury and we found --

MS. BEIMDIEK: What was the charge?

VENIREPERSON LANG: Not guilty.

MS. BEIMDIEK: I am sorry. What was the charge?

VENIREPERSON LANG: It was a drug case.

MS. BEIMDIEK: Okay. Were you the foreman of your jury?

VENIREPERSON LANG: No, I wasn't.

MS. BEIMDIEK: And did you speak to any of the lawyers afterwards?

VENIREPERSON LANG: No.

MS. BEIMDIEK: Thanks. Mr. Canada?

VENIREPERSON CANADA: I was on a civil jury three times. We got verdicts all three times. No, I was not the foreman. No, I didn't talk to the lawyers.

MS. BEIMDIEK: Thank you. Mr. Abel?

VENIREPERSON ABEL: Yes, criminal case and a grand jury.

MS. BEIMDIEK: Were you on the grand jury here in St. Louis?

VENIREPERSON ABEL: Yes.

MS. BEIMDIEK: Okay. Let's talk about the criminal case first. What was the charge?

VENIREPERSON ABEL: I believe it was second degree murder.

MS. BEIMDIEK: Did you all reach a verdict?

VENIREPERSON ABEL: Yes, we did.

MS. BEIMDIEK: Were you the foreman of your jury?

VENIREPERSON ABEL: No.

MS. BEIMDIEK: Your grand jury service, you heard the other discussion, is that going to affect the way you look at the evidence in this case, the fact that you have prior grand jury service?

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VENIREPERSON ABEL: No.

MS. BEIMDIEK: Thanks. Mr. Kretzer?

VENIREPERSON KRETZER: No.

MS. BEIMDIEK: Miss Lindsey?

VENIREPERSON LINDSEY: No.

MS. BEIMDIEK: Miss Berry?

VENIREPERSON BERRY: No.

MS. BEIMDIEK: Miss Clayborn?

VENIREPERSON CLAYBORN: No.

MS. BEIMDIEK: Mr. Hammett?

VENIREPERSON HAMMETT: No.

MS. BEIMDIEK: Miss Wright?

VENIREPERSON WRIGHT: Civil cases. One settled out of court at the end of the week. Another we reached a verdict.

I guess one was, we spent our time in the hall, I guess it was criminal. They were plea bargaining, so we didn't -- I was never a foreperson.

MS. BEIMDIEK: Thanks. Anything about any of those experiences, particularly the one that settled after you spent a week listening to evidence that leaves any bad taste in your mouth?

VENIREPERSON WRIGHT: No.

MS. BEIMDIEK: Thanks. Miss Cowan?

VENIREPERSON COWAN: No.

THE COURT: Anyone else that served on a grand jury that we haven't talked to yet? If you

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served on one, you know what they are.

We know Mr. Snipes has been a witness in a case. I want to know if anybody else has been a witness where they had to come down, take an oath and get on the witness stand? Anybody into jury box? Anyone in the chairs? Okay. On the bench? Mr. --

VENIREPERSON HOWARD: Howard.

MS. BEIMDIEK: I'm sorry. Mr. Howard. What were you a witness for?

VENIREPERSON HOWARD: A car accident.

MS. BEIMDIEK: Civil case?

VENIREPERSON HOWARD: Um-hum.

MS. BEIMDIEK: Was that here in St. Louis?

VENIREPERSON HOWARD: Yes.

MS. BEIMDIEK: Did you feel you were treated as a witness --

VENIREPERSON HOWARD: Yeah.

MS. BEIMDIEK: I sense a little --

VENIREPERSON HOWARD: They kind of messed me around, but, yeah.

MS. BEIMDIEK: Do you think because you've sat in that chair, and you know how it feels to sit there, and how it feels to be questioned by all the lawyers in the case that in some way you're going to have more empathy or more sympathy for the witnesses

coming in and testifying in this case?

VENIREPERSON HOWARD: As far as I feel sorry for them being on there, yeah, because they're going to come tell the truth like I had to.

MS. BEIMDIEK: You feel you are going to say to yourself, I can decide if they're telling the truth, I can decide if I believe they're not telling the truth?

VENIREPERSON HOWARD: Right. I have no problem with that.

MS. BEIMDIEK: You are not going to automatically give them any believability because you sat where they're sitting?

VENIREPERSON HOWARD: No, just that I've been there.

MS. BEIMDIEK: Any bad feelings about the way lawyers treated you?

VENIREPERSON HOWARD: No.

MS. BEIMDIEK: Mr. Duff, did you have your hand up?

VENIREPERSON DUFF: I think I was involved as a witness in a labor hearing. It wasn't really a courtroom.

MS. BEIMDIEK: Okay. Any bad feelings you have about lawyers in general because of that

experience?

VENIREPERSON DUFF: No.

MS. BEIMDIEK: Thanks. Anybody else in the next row? Mr. Snipes' row? Anybody? I want to talk to Mr. Snipes, but anybody else?

Mr. Snipes, what kind of case was that that you were a State's witness?

VENIREPERSON SNIPES: Murder.

MS. BEIMDIEK: How long ago was that?

VENIREPERSON SNIPES: Oh, it was earlier this year.

MR. HAGEMEISTER: Earlier this year. Were you an eyewitness?

VENIREPERSON SNIPES: Yes.

MR. HAGEMEISTER: So you were actually present when somebody was killed?

VENIREPERSON SNIPES: Yes.

MR. HAGEMEISTER: All right.

MS. BEIMDIEK: Were there defense lawyers that asked you questions when you came down and testified?

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VENIREPERSON SNIPES: Yeah.

MS. BEIMDIEK: How do you feel you were treated by those lawyers or that lawyer?

VENIREPERSON SNIPES: They tried to dog me,

but I told them the truth.

MS. BEIMDIEK: You said they tried to dog you. Maybe you had negative feelings about that lawyer in that case?

VENIREPERSON SNIPES: I mean I didn't have nothin' against them, but I figured they were trying to put something in my head to say, but I was telling the truth.

MS. BEIMDIEK: Okay. I don't know if you heard my discussion with Mr. Howard about wanting to know the fact that you sat there and you were an eyewitness to the case and the charges are exactly the same in this case, are you going to say I have been there, I know I told the truth when I came in and testified for the State, so I'm sure that those witnesses also are coming in and telling --

VENIREPERSON SNIPES: I can't say they are telling the truth.

MS. BEIMDIEK: You can judge them separately, even though you have sat where they sat and for you, you told the truth?

VENIREPERSON SNIPES: I can sit there and listen to them and try to tell --

MS. BEIMDIEK: Okay. Can you consider they might not be telling the truth in this case?

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VENIREPERSON SNIPES: I can try.
MS. BEIMDIEK: You can try. All right. When you get down to the jury room and it comes down to saying I didn't believe them, I thought what they said didn't make sense, or whatever it is, I want to return a verdict of not guilty, can you consider that because of your own personal experiences as a witness in a homicide case?
VENIREPERSON SNIPES: Yes.
MS. BEIMDIEK: Can you seriously consider it?
VENIREPERSON SNIPES: Um-hum.
MS. BEIMDIEK: Okay. Thanks. Anybody else on this side who has been a witness in a case? Miss Prothero?
VENIREPERSON PROTHERO: Yes, ma'am. Two different civil cases over the years.
MS. BEIMDIEK: How did you feel you were treated by all the lawyers in those cases?
VENIREPERSON PROTHERO: Just fine.
MS. BEIMDIEK: You don't have any negative feelings?
VENIREPERSON PROTHERO: No.
MS. BEIMDIEK: Same question about understanding how it feels to be a witness and

starting off saying I've been there and I'm going to disbelieve them because I know how hard it is to be questioned by lawyers, is there any chance for you that will happen?
VENIREPERSON PROTHERO: No, none at all.
MS. BEIMDIEK: Thanks. Anybody else on this side? Anybody on this side in the courtroom who has been a witness in a case? Nobody. Okay. Thanks.
Anybody who has any legal training, either been to law school, or taken business law classes, anything like that during their educational process? Jury box, chairs?
Miss Carper, we talked about that earlier. Is that the extent of your legal background?
VENIREPERSON CARPER: Yes.
MS. BEIMDIEK: Thank you. Miss Thomas.
VENIREPERSON THOMAS: I have my degree in criminal justice.
MS. BEIMDIEK: You have a degree in criminal justice. The question I have for you because of that is, you have your own personal experience with the law and maybe your opinions and things you've learned in classes. If the law that this Judge gives you is different than the law as you recall learning in your classes, which law will you go with when you make a

decision?
VENIREPERSON THOMAS: The one the Judge gives me.
MS. BEIMDIEK: Would you be able to set aside any criminal justice knowledge that you may have?
VENIREPERSON THOMAS: Yes.
MS. BEIMDIEK: I apologize, I should have -- are you currently working in any way in the criminal justice field?
VENIREPERSON THOMAS: No.
MS. BEIMDIEK: I thought I saw --
THE COURT: Miss Cowan? Everybody up. Up.
MS. BEIMDIEK: I think I asked on this side. Miss Berry?
VENIREPERSON BERRY: I have my paralegal certificate --
THE COURT: Would you please stand.
VENIREPERSON BERRY: My paralegal certificate from the State of Texas.
MS. BEIMDIEK: Okay. We sort of talked about your whole, your experience. Have any of your answers changed because of your paralegal degree?
VENIREPERSON BERRY: No.
MS. BEIMDIEK: Anything else I missed? I

want to know about anybody, either you, yourself, or a close family member or close friend who has been a victim of a crime.
I'd like to limit it to more violent crimes; however, if you are the victim of a property crime, by that I mean a burglary, a stealing, something like that, and you feel it's going to affect your decision making process in this case, I want you to go ahead and tell me about that.
Back row, anybody who has been the victim of a violent crime or a nonviolent crime that will affect their decision in this case? Middle row? First row?
MS. BEIMDIEK: Miss Trotter?
VENIREPERSON TROTTER: My son got shot, but it wouldn't affect me in this case.
MS. BEIMDIEK: How long ago did that happen?
VENIREPERSON TROTTER: About two years ago.
MS. BEIMDIEK: Was he seriously injured?
VENIREPERSON TROTTER: In some -- he okay.
MS. BEIMDIEK: He's okay now?
VENIREPERSON TROTTER: Yes.
MS. BEIMDIEK: Did they make any arrests in this case?
VENIREPERSON TROTTER: No, they didn't find no witnesses.

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MS. BEIMDIEK: Do you feel the police did a good job or a bad job?

VENIREPERSON TROTTER: They did a good job.

MS. BEIMDIEK: Do you hold any ill feelings?

VENIREPERSON TROTTER: None at all.

MS. BEIMDIEK: Any feelings because they didn't get the guy you want to go to the jury room and convict Carlos to sort of make things even for what happened to your son?

VENIREPERSON TROTTER: No.

MS. BEIMDIEK: Thank you. Anybody on the chairs, either themselves or family member or close friend been the victim of a violent crime? Benches? Second row? Mr. Harris?

VENIREPERSON HARRIS: My wife, she was kidnapped in her car.

MS. BEIMDIEK: How long ago did that happen?

VENIREPERSON HARRIS: About three years ago, maybe less.

MS. BEIMDIEK: Did they make any arrest in that case?

VENIREPERSON HARRIS: They arrested the guy.

MS. BEIMDIEK: Did she feel like the system treat her fairly?

VENIREPERSON HARRIS: They did a very good

job.

MS. BEIMDIEK: They did a good job?

VENIREPERSON HARRIS: We were satisfied.

MS. BEIMDIEK: Any chance that because -- I assume that had a very powerful impact on your wife?

VENIREPERSON HARRIS: Yes, it did.

MS. BEIMDIEK: Is there any chance that you'll carry over her bad feelings about being a victim of a crime and bring them to this case as you decide it?

VENIREPERSON HARRIS: No, it wouldn't affect me at all.

MS. BEIMDIEK: Thank you. Anybody else in that row? Mr. Snipes, did I see your hand up?

VENIREPERSON SNIPES: Yes. My sister --

MS. BEIMDIEK: What happened to your sister?

VENIREPERSON SNIPES: They found her beaten and raped in her apartment.

MS. BEIMDIEK: I'm sorry. Did she survive?

VENIREPERSON SNIPES: Yeah.

MS. BEIMDIEK: How is she doing now?

VENIREPERSON SNIPES: She's in a nursing home.

MS. BEIMDIEK: Did they make any arrests in that case?

VENIREPERSON SNIPES: No.

MS. BEIMDIEK: How did that make you feel?

VENIREPERSON SNIPES: Well, I feel kind of bad because I know she knows who did it, but she won't tell.

MS. BEIMDIEK: How do you feel? Or has the justice system gotten involved in her case at all?

VENIREPERSON SNIPES: Well, we haven't heard anything else probably in quite awhile.

MS. BEIMDIEK: Do you think there's any chance that if you get selected to serve on this jury that you will go down there and say, well, you know, I'm going to convict Carlos because of what happened to my sister?

VENIREPERSON SNIPES: I can't convict that man because of what happened to my sister.

THE COURT: I didn't hear your answer.

VENIREPERSON SNIPES: No.

THE COURT: Thank you.

MS. BEIMDIEK: You can separate the two events?

VENIREPERSON SNIPES: (Nodding head in response)

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MS. BEIMDIEK: Thank you very much. Anybody else in the next row? Miss Prothero?

VENIREPERSON PROTHERO: My brother was robbed at gunpoint about three years ago.

MS. BEIMDIEK: Were any arrests made in this case?

VENIREPERSON PROTHERO: No, they couldn't find the person.

MS. BEIMDIEK: Is that going to affect you at all in this case?

VENIREPERSON PROTHERO: No, it won't.

MS. BEIMDIEK: Did you feel the police did a good job or a bad job?

VENIREPERSON PROTHERO: I think they did a fine job, they just had very little to go on.

MR. HAGEMEISTER: Thanks. Miss Bruton, did you have your hand up?

VENIREPERSON BRUTON: Yes. I have a great niece that was shot in the back three times three weeks ago.

THE COURT: Ma'am, will you stand. Did you say a grand niece?

VENIREPERSON BRUTON: A great niece

THE COURT: A great niece that was shot?

VENIREPERSON BRUTON: In the back three times with a high powerful rifle and no one was ever found.

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MS. BEIMDIEK: Did you say that just happened very recently?

VENIREPERSON BRUTON: Three weeks ago.

MS. BEIMDIEK: I'm sorry. Did she survive that shooting?

VENIREPERSON BRUTON: She's still in the hospital.

MS. BEIMDIEK: How do you feel about how the police have handled the case so far?

VENIREPERSON BRUTON: They didn't have any information to go on.

MS. BEIMDIEK: Okay. Do you think because of how recent that incident is for you -- was this somebody you were pretty close to?

VENIREPERSON BRUTON: I don't know.

MS. BEIMDIEK: Is there any risk that your niece's experience will cloud your ability to listen to the evidence in this case?

VENIREPERSON BRUTON: No.

MS. BEIMDIEK: No? Okay. You can set those two aside?

VENIREPERSON BRUTON: Yes.

MS. BEIMDIEK: Thank you. Anybody else in that row? Next row? Miss Cherry's row? In the last row? Mr. Abel?

VENIREPERSON ABEL: Last year my brother shot himself, but the police weren't involved.

MS. BEIMDIEK: I'm sorry to hear that. Thank you.

VENIREPERSON ABEL: He survived.

MS. BEIMDIEK: Good. Anybody in Mr. Kretzer's row? In the last row, Miss Cowan's row? Thank you.

I want to talk a little bit about some of the legal principles that you'll be hearing in this trial. The first is called the presumption of innocence. Has everybody heard of that phrase? I see you all nodding your head.

I will jump around here and sort of play school teacher because there's people I feel I haven't spent a lot of time talking to. I'm warning you now not to jump out of your skin when you hear me call your name.

Miss Otten, the presumption of innocence, what does that mean to you?

VENIREPERSON OTTEN: Until they're proven guilty.

MS. BEIMDIEK: Who do you expect to prove that they're guilty?

VENIREPERSON OTTEN: The jury.

MS. BEIMDIEK: Okay. Who else, anybody else that has a duty to present enough evidence to convince the jury?

VENIREPERSON OTTEN: Witnesses.

MS. BEIMDIEK: Under the law the State, the law says that the State has the burden of proving beyond a reasonable doubt that they are guilty. Does that make sense to you? Have I confused you?

VENIREPERSON OTTEN: Yes.

MS. BEIMDIEK: I'm sorry. We talk about the presumption of innocence. You understand what that means is that Carlos, as he sits here today, is presumed to be innocent, is that right?

VENIREPERSON OTTEN: Yes.

MS. BEIMDIEK: You can afford him that presumption, is that fair?

VENIREPERSON OTTEN: Yes.

MS. BEIMDIEK: Can everybody else provide Carlos the presumption of innocence that he is not guilty as he sits here now? Everybody raise their hand if they can do that. Thanks.

You understand, I guess, Miss Otten, that the presumption of innocence says until there's enough evidence to change your mind, you have to say not guilty?

VENIREPERSON OTTEN: Right.

MS. BEIMDIEK: And this isn't a civics test to cause panic, I'm making sure that the pre --

THE COURT: The Court, sua sponte, Counselor, the statement is not a correct statement of the law. The panel is to disregard counsel's last remark.

MS. BEIMDIEK: Okay, Judge. Miss Reimler?

VENIREPERSON REIMLER: Yes.

MS. BEIMDIEK: I'll get it right one of these times. We talked a minute about ago about the fact that there was a grand jury that heard evidence in this case, and we also obviously are going to hear that Carlos has been arrested in this case and we've gotten beyond that point. Do you understand that an arrest is merely an accusation?

VENIREPERSON REIMLER: Um-hum, yes.

MS. BEIMDIEK: Okay. And despite an arrest, the accused person, in this case Carlos, is still presumed innocent?

VENIREPERSON REIMLER: Yes.

MS. BEIMDIEK: Okay. Mr. Arens, I want to talk to you for a second about that. Correct me if I'm wrong, I think that you indicated you had a brother who got arrested?

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VENIREPERSON ARENS: Yes.
MS. BEIMDIEK: Once there was some checking done it was determined that he hadn't committed a crime?
VENIREPERSON ARENS: Right.
MS. BEIMDIEK: So for him the system, the safety nets in the system worked early for him?
VENIREPERSON ARENS: Right.
MS. BEIMDIEK: In this case do you think that because we've gotten beyond that and here we are today picking a jury rhat you're going to say to yourself, well, you know, the system weeds out the innocent guys early on and the fact that Carlos is sitting here today, well, that says to me that he probably is guilty?
VENIREPERSON ARENS: No, I wouldn't do that.
MS. BEIMDIEK: So even though it worked for your brother in an early stage, can you still presume Carlos innocent until he's proven otherwise?
VENIREPERSON ARENS: Yes.
MS. BEIMDIEK: Thanks. Have you all heard the term burden of proof? 1 see everybody nodding their heads.
Mr. Lawson?
VENIREPERSON LAWSON: Yes.

MS. BEIMDIEK: I told you I would call on people I haven't heard from. What does the burden of proof mean to you?
VENIREPERSON LAWSON: It's whoever has to prove something has to prove it.
MS. BEIMDIEK: Okay. In a criminal case do you know who has the burden of proof?
VENIREPERSON LAWSON: The State.
MS. BEIMDIEK: And why do you think that is?
VENIREPERSON LAWSON: That's the law.
MS. BEIMDIEK: Do you agree with that?
VENIREPERSON LAWSON: Yes.
MS. BEIMDIEK: Okay. Anybody disagree? Anybody think the State shouldn't have the burden of proof? Everybody agree, yes, they should have the burden of proof? Okay.
Now the Judge will instruct you, Mr. Lawson, and everybody about exactly what the burden of proof is. Essentially what it boils down to is they have to present enough evidence to leave you firmly convinced beyond a reasonable doubt. Is that -- everybody heard that term beyond a reasonable doubt term also? Anybody not familiar with that phrase? Okay.
Now, reasonable doubt is determined by you, each individual juror has to decide when they are

firmly convinced. I think Miss Otten and Mr. Kretzer talked earlier about the fact that while you might be able to decide for yourself when you were firmly convinced beyond a reasonable doubt, Mr. Kretzer might, I'm understanding that you might tend to defer in some way to your relative's decision in this question, is that fair?
VENIREPERSON KRETZER: No, not really.
MS. BEIMDIEK: Not really?
VENIREPERSON KRETZER: Not really.
MS. BEIMDIEK: Did 1 misunderstand you earlier? 1 thought you said you would.
VENIREPERSON KRETZER: I would, I probably would.
THE COURT: Probably would what, sir? I can't hear you.
VENIREPERSON KRETZER: I probably would lean over towards her way.
THE COURT: Thank you.
MS. BEIMDIEK: If she said she was firmly convinced beyond a reasonable doubt, you might join on with her?
VENIREPERSON KRETZER: (Nodding head in response)
THE COURT: Please answer for the record,

sir.
VENIREPERSON KRETZER: (No response)
THE COURT: What was your last answer?
VENIREPERSON KRETZER: Yes.
THE COURT: Thank you.
MR. HAGEMEISTER: Judge, 1 move to strike Mr. Kretzer for cause.
MS. BEIMDIEK: No objection.
MS. MOORE-DYSON: No objection, Your Honor.
THE COURT: Sustained. Mr. Kretzer, will you see the bailiff. You may proceed, Counselor.
MS. BEIMDIEK: Thank you, Your Honor. Now the next question is whether or not I should have to do the State's job in proving any evidence to you.
Mr. Hessling, do you have some expectation that either myself or Carlos or I have some burden of proof here?
VENIREPERSON HESSLING: No.
MS. BEIMDIEK: Anybody feels different than the way Mr. Hessling feels, that you have some expectation that I'm the defense lawyer or Miss Moore-Dyson is the defense lawyer and we should come in and prove to you that each of our clients are innocent? Anybody feel that way?
Miss Carper, do you feel that way?

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VENIREPERSON CARPER: No.
MS. BEIMDIEK: You can hold the State to their burden and not transfer any of that job to our side?
VENIREPERSON CARPER: The burden is on the State.
MS. BEIMDIEK: Do you understand it always remains there?
VENIREPERSON CARPER: Yes.
MS. BEIMDIEK: Anybody disagree with that, that the burden is always on the State to prove guilty beyond a reasonable doubt?
Now, we talked earlier about the fact, and I think Mr. Hagemeister touched on this, the fact that because this is a murder case, because it's so serious, and because probably of crime in general that we all hear about on the news, in the newspaper, is there anybody who is going to say, well, I know that the Judge's instructions told me I have to be firmly convinced beyond a reasonable doubt, but, for me, I'm sick and tired of this crime in my neighborhood, I'm sick and tired about hearing about it on the news, I will lower that burden a little bit and I will go ahead and return a guilty verdict even though I may not be as firmly convinced as the law requires?

I'm going to go way to the back.
Mr. Canada, any chance for you you would lower the burden on the State because this is such a serious case?
VENIREPERSON CANADA: I don't think so, no.
MS. BEIMDIEK: You don't think so? Can you assure me that you would hold them to the high burden beyond a reasonable doubt and wouldn't give them a break simply because you feel bad there's a person who was killed in this case?
VENIREPERSON CANADA: Yeah, I can.
MS. BEIMDIEK: Is there any doubt in your mind about that? I'm sensing a little hesitance.
VENIREPERSON CANADA: No, there's no doubt.
MS. BEIMDIEK: Okay. Thank you. Anybody else who is going to risk lowering the burden in this case?
Miss Berry?
VENIREPERSON BERRY: No.
MS. BEIMDIEK: Okay. Mr. Hammett?
VENIREPERSON HAMMETT: No.
MS. BEIMDIEK: You said earlier that you had a family member who had been accused of a crime.
VENIREPERSON HAMMETT: That's right.
MS. BEIMDIEK: I think your words, he was

treated more than fairly?
VENIREPERSON HAMMETT: He was.
MS. BEIMDIEK: Sounded to me you felt like he was guilty.
VENIREPERSON HAMMETT: Well, I have to say he was.
MS. BEIMDIEK: Okay. Do you feel like -- it sounds like you may have some strong feelings about the system having too many rights for people charged with crimes?
VENIREPERSON HAMMETT: No.
MS. BEIMDIEK: That is not how you feel? Can you fell me why it was that you felt he was treated more than fairly?
VENIREPERSON HAMMETT: Well, the crime itself, he was in with another man and they were both guilty, I know. The State proved it.
MS. BEIMDIEK: And the State did prove it?
VENIREPERSON HAMMETT: Yes, they did.
MS. BEIMDIEK: Thanks. Did you go to that trial?
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VENIREPERSON HAMMETT: Yes, I did.
MS. BEIMDIEK: Thank you. Now, we talked about the fact that the State has the burden and that Carlos and I have no burden whatsoever. One of the

things that means is that Carlos has the right not to testify in this case.
Is there anybody who says to yourself, well, I cannot decide this case if Carlos doesn't get up on that witness stand and testify? Anybody who feels that way?
Miss Otten?
VENIREPERSON OTTEN: No.
MS. BEIMDIEK: Miss Reimler?
VENIREPERSON REIMLER: No.
MS. BEIMDIEK: No? Mr. Campbell?
VENIREPERSON CAMPBELL: No.
MS. BEIMDIEK: Mr. Patterson?
VENIREPERSON PATTERSON: No.
MS. BEIMDIEK: I am not trying to beat a dead horse. I want to be sure that everybody understands that Carlos has the right not to testify.
Mr. Hoelscher?
VENIREPERSON HOELSCHER: Yes? What?
MS. BEIMDIEK: Do you expect or feel like you can't decide this case --
VENIREPERSON HOELSCHER: No.
MS. BEIMDIEK: -- if Carlos doesn't testify?
VENIREPERSON HOELSCHER: No, no.
MS. BEIMDIEK: Thanks. Mr. Duff, do you

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feel you would be unable to make a decision in this case if you didn't hear from Carlos?

VENIREPERSON DUFF: Not hearing from him would not affect my decision.

MS. BEIMDIEK: Good. Okay. Miss Thomas?

VENIREPERSON THOMAS: No, I can make a decision.

MS. BEIMDIEK: Is there any risk you are going to think he's hiding something from me or some reason why he's not testifying, he must be guilty?

VENIREPERSON THOMAS: No.

MS. BEIMDIEK: Mr. Hessling?

VENIREPERSON HESSLING: No.

MS. BEIMDIEK: Miss Hock?

VENIREPERSON HOCK: No.

MS. BEIMDIEK: Mr. Ward?

VENIREPERSON WARD: I have a problem with that.

MS. BEIMDIEK: Okay. Tell me why.

VENIREPERSON WARD: I feel if a man won't get up and say something in his defense, he must be guilty.

MS. BEIMDIEK: All right. You sound like you feel pretty strongly about that.

VENIREPERSON WARD: Yes, I do.

MS. BEIMDIEK: I can tell. Have you given some thought to this before court today?

VENIREPERSON WARD: I was on another panel but I wasn't impaneled, but I had a problem with it then, too. It was a rape case.

MS. BEIMDIEK: Your feelings haven't changed at this point?

VENIREPERSON WARD: They have not.

MS. BEIMDIEK: In that case, if they tell you that the law says that in this case Carlos has the right not to testify and that you can't use that against him as evidence of guilt --

VENIREPERSON WARD: I understand that, but I still have a problem. I think every man should take his day in court.

MS. BEIMDIEK: So for you even --

VENIREPERSON WARD: He has the opportunity to get on the stand.

MS. BEIMDIEK: You would, is what you will --

VENIREPERSON WARD: He has the opportunity to get on the stand and does not say he didn't, get on the stand --

MS. BEIMDIEK: So for you, were you in his chair, you would want to take the stand?

VENIREPERSON WARD: I would want him to take the stand. I want him to take the initiative to defend himself.

MS. BEIMDIEK: Even if the law tells you he doesn't have to, for you personally this is something you have strong feelings about?

VENIREPERSON WARD: Yes, yes.

MS. BEIMDIEK: You wouldn't be able to set that aside?

VENIREPERSON WARD: Yes.

MS. BEIMDIEK: Thank you. I appreciate your honesty. I make a motion, Your Honor.

MR. HAGEMEISTER: Not opposed.

THE COURT: Sustained. Sir, will you see the bailiff. Let the record show that the last challenge for cause sustained by the Court, without objection from counsel, was Bob A. Ward, Juror Number 354. Proceed.

MS. BEIMDIEK: Thank you, Judge. As I said in the beginning, there are no wrong answers. I appreciate everybody giving his honest answers.

Is there anybody else who feels the way that Mr. Ward honestly feels, that for him he feels like Carlos should get up and take this opportunity to convince you that he didn't do it? Anybody who feels

that way?

It's okay if you feel that way. Like I said, the only thing is that if you don't share that feeling with us here today -- Miss Lang? You're okay with that?

VENIREPERSON LANG: Yes, ma'am.

MS. BEIMDIEK: Mr. Snipes, you have your hand up. Do you feel like he should testify?

VENIREPERSON SNIPES: Yes.

MS. BEIMDIEK: All right. And even if the Judge told you that he, a, has the right not to, and if he chooses not to, you can't use that against him?

VENIREPERSON SNIPES: No, I couldn't.

MS. BEIMDIEK: You feel you would follow that instruction?

VENIREPERSON SNIPES: I don't have any problem with the instruction, but I feel like the man --

THE COURT: I didn't hear you.

VENIREPERSON SNIPES: I feel like the man said here.

THE COURT: You may have the feeling, but the question is what would you follow, your feeling and opinion, or the law as the Court gives it to you if the instruction on that point if it differs from

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your opinion? Which would you follow?
VENIREPERSON SNIPES: If he had a right not to testify, he has a right.
THE COURT: You could follow that law if the Court gives it to you without regard to your opinion?
VENIREPERSON SNIPES: (No response.)
THE COURT: Do you recall yesterday the Court read an instruction, part of which said you must follow the law even though you may disagree with it?
Now I understood you to say, and let the record show I'm having trouble hearing, that you would expect or prefer that a defendant take the stand and testify, is that what you said?
VENIREPERSON SNIPES: Yes, I did. Me personally.
THE COURT: Yes. Well, given the fact that you have that opinion, if the Court instructs you as to the law and that law was contrary to your belief and opinion, would you follow the law as the Court gave it to you?
VENIREPERSON SNIPES: Yes, I would.
THE COURT: Thank you.
MS. BEIMDIEK: If I can follow-up, Mr. Snipes, briefly. Would you be able to set aside those feelings that you have about the fact that you

think that Carlos should testify and completely ignore the way you personally feel?
VENIREPERSON SNIPES: Yes.
MS. BEIMDIEK: You can assure me of that?
VENIREPERSON SNIPES: Yes.
MS. BEIMDIEK: Okay. Earlier I think you said you agreed with Mr. Ward.
VENIREPERSON SNIPES: I agree, I mean me personally, if I was in their position.
MS. BEIMDIEK: Let's assume that he doesn't testify and you go into that jury room, can you even consider voting not guilty if you haven't heard from Carlos?
VENIREPERSON SNIPES: Yes.
MS. BEIMDIEK: Can you seriously consider it?
VENIREPERSON SNIPES: Seriously. If he got enough evidence, I can listen to it and give a --
MS. BEIMDIEK: Do you understand the evidence has to come from the prosecutor to prove that he's guilty?
VENIREPERSON SNIPES: Yes.
MS. BEIMDIEK: And if you don't get evidence from our side, does that mean I am going to go guilty because they didn't offer me any evidence?

VENIREPERSON SNIPES: No.
MS. BEIMDIEK: No?
VENIREPERSON SNIPES: (Shook head)
MS. BEIMDIEK: Anybody else? I know this is a hard area. Some people haven't spent a lot of time thinking about it. We need to go over it now.
Is there anybody feels the way Mr. Ward feels and can't follow the law, or Mr. Snipes, who maybe has some concerns about it? Anybody else on Mr. Snipes' side of the courtroom? How about on the left side of the courtroom? Miss Wright?
VENIREPERSON WRIGHT: I am okay with it.
MS. BEIMDIEK: Miss Cowan?
VENIREPERSON COWAN: No problem.
MS. BEIMDIEK: Miss Clayborn? Even if you don't hear from Carlos you can still vote not guilty even if you aren't convinced beyond a reasonable doubt?
VENIREPERSON CLAYBORN: Um-hum.
MS. BEIMDIEK: Thank you. I don't remember if the person who said it is still here, it might have been Mr. Lucas, this wasn't Perry Mason.
VENIREPERSON LUCAS: It wasn't me.
MS. BEIMDIEK: I think they're gone. We're all influenced by television and what we hear and see.

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On Perry Mason, everytime I watched it, toward the end of the 60 minutes in the back of the courtroom somebody stands up and confesses to the crime and everything would sort of end favorably for Mr. Mason's client.
I am not Perry Mason. I'm going to confess that to you today. Does anybody expect me to be Perry Mason and solve this whole crime for you before you can say that Carlos is not guilty? Anybody?
I do expect that we will call some witnesses on Carlos' behalf. I expect that most of his witnesses will be members of his own family. Is there anybody who's going to say, well, of course they're going to come in and say he was with them, he wasn't at the scene of the crime, they are his family, I'm not going to believe anything they say, they're doing what any family member who said --
MR. HAGEMEISTER: I object. It's perfectly permissible for every juror to do just that.
THE COURT: The objection will be overruled, if I understand your question that the testimony rejected just because the witness is a family member, is that your question?
MS. BEIMDIEK: Whether it's automatic.
THE COURT: If you're referring to automatic

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rejection of testimony because of family member, then the objection is overruled. Restate your question, please.

MS. BEIMDIEK: I will. The question is whether somebody is just, as they get sworn in and they say, I say how do you know Carlos? He's my brother or he's my son. Immediately in your mind you're going to say, huh-uh, this isn't flying with me. I am not buying this family coming in and saying he wasn't there. I know they're all lying for him because they love him.

MR. HAGEMEISTER: I have the same objection. It's perfectly permissible for them to immediately think that.

THE COURT: Counselor, just state your legal objection, not a speaking objection.

MR. HAGEMEISTER: She's misstating the law.

THE COURT: Overruled on that ground.

MS. BEIMDIEK: Thank you. Mr. West, I saw you looking toward me with that question. Is there any risk for you that you'll just automatically reject any of their testimony before you even listen to it because it's his family?

VENIREPERSON WEST: (Shook head)

MS. BEIMDIEK: Can you consider their

testimony as you would any other witness?

VENIREPERSON WEST: Yes.

MS. BEIMDIEK: Okay. Is there any hesitation on your part for that?

VENIREPERSON WEST: No.

MS. BEIMDIEK: Okay. Thanks. Mr. Dodson, I thought I saw you nodding your head when we were talking about testimony of family members.

VENIREPERSON DODSON: I know family members to lie and to tell the truth. I guess I have to go on the evidence. I would kind of throw theirs out, their testimonies, because of they being so close to that person, I would have to go on some other evidence, I would have to throw that out.

MS. BEIMDIEK: You, for yourself, I don't want to put words in your mouth, are you saying that you would not be able to listen to the testimony of Carlos' family and decide for yourself whether they're telling the truth?

VENIREPERSON DODSON: I don't think I could, no.

THE COURT: I didn't hear you.

VENIREPERSON DODSON: I don't think I could.

THE COURT: You would automatically rule out the testimony of the witness who was a family member

before that witness testified? Is that what you're saying?

VENIREPERSON DODSON: Yes.

THE COURT: Thank you.

MS. BEIMDIEK: Now let me ask you this. In the State's case I expect that at least one of the relatives, surviving witnesses is a relative of the person who is dead, okay?

VENIREPERSON DODSON: Say that again.

MS. BEIMDIEK: One of the witnesses that you will hear from from the prosecutor is a relative of the person who was killed.

VENIREPERSON DODSON: Okay.

MS. BEIMDIEK: Does that feeling that you have hold true for the State's case also, that you will discount what she says because she's very close to the situation only?

VENIREPERSON DODSON: Go for that, too.

MS. BEIMDIEK: So for you, you discount family members on both sides?

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VENIREPERSON DODSON: Correct.

MS. BEIMDIEK: Is there anybody else who feels the way Mr. Dodson feels?

Miss Hock? I know you didn't have your hand up, you are sitting next to him, so I will ask. Can

you consider the testimony of family members and judge it as you would the testimony of any other witness?

VENIREPERSON HOCK: Yes, I think I can. Having raised four children, I don't always believe when they say they're innocent. I don't know if that bears on that or not. I can see guilt and I can see innocence and I can believe and go on evidence.

MS. BEIMDIEK: You probably had to resolve a lot of disputes in your day.

VENIREPERSON HOCK: I sure have. I have to decide on the evidence that I saw and heard.

MS. BEIMDIEK: Okay. Let me ask you this. Let's say you hear from members of the Carlos' family who say that he was with them. Couldn't have been at the scene of the crime, he was with them. Do you have to hear from every family member who was present with him in order to return a verdict of not guilty?

VENIREPERSON HOCK: No, I don't think so.

MS. BEIMDIEK: Okay.

VENIREPERSON HOCK: Because I can hear other people, too, I'm going to hear the other side who says he wasn't with them. I think I have to judge for myself.

MS. BEIMDIEK: Okay. Is there any magic number for you that will say --

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VENIREPERSON HOCK: No, no.
MS. BEIMDIEK: -- twelve people said he was at home, I heard from every one of them, that's enough for me, or you know the State's witnesses said he was there, that's enough for me? I mean you got to weigh whether you believe the State's evidence beyond a reasonable doubt.
VENIREPERSON HOCK: Yes, I do.
MS. BEIMDIEK: You may also consider any evidence that we may offer.
VENIREPERSON HOCK: Yes, I will.
MS. BEIMDIEK: Okay. Is there anybody else, other than Mr. Dodson, that we should talk about how they're going to feel about the testimony of family members?
Ms. Cherry, can you consider the testimony of family members?
VENIREPERSON CHERRY: The evidence itself, I just, I will go with it.
MS. BEIMDIEK: Can you consider a family member is telling the truth when they say Carlos was home with them?
VENIREPERSON CHERRY: No, just going with it.
MS. BEIMDIEK: Well, what I'm asking is can

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you consider the possibility that they are telling you the truth when they tell you that?
VENIREPERSON CHERRY: Yes.
MS. BEIMDIEK: And you can also consider they're not?
VENIREPERSON CHERRY: Right. Both ways.
MS. BEIMDIEK: Just like you can consider the State's witnesses are telling the truth or they're not?
VENIREPERSON CHERRY: Yes.
MS. BEIMDIEK: Mr. Naum, same question to you about family, can you consider that Carlos' family is telling you the truth?
VENIREPERSON NAUM: I would listen to all the evidence and the witnesses and make my determination from the facts that I hear.
MS. BEIMDIEK: Nobody starts off though not being believed or being believed because of who they are in relation to people in this case?
VENIREPERSON NAUM: I listen to the truth and base my decision on the facts.
MS. BEIMDIEK: That's all we ask for.
Miss Lindsay, I don't think we've talked at all. You thought you would get away from me. Same question, family members, can you consider they're

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telling the truth?
VENIREPERSON LINDSEY: Yes, I can.
MS. BEIMDIEK: You can judge for yourself as to what they say makes sense?
VENIREPERSON LINDSEY: Yes.
MS. BEIMDIEK: Same for the State's witnesses?
VENIREPERSON LINDSEY: Yes.
MS. BEIMDIEK: You've all gotten a little bit of a taste of how the courtroom works. There's objections that are made. Sometimes we go over and have conferences with the Judge. That can delay the way a case goes.
Somebody talked about sitting in the hallway during a lot of a trial. We know that is frustrating for jurors because they give up their time, their jobs, their family members to come and serve.
My question is is there anybody who is going to hold those delays against Carlos or Tyrone in this case because you feel like the lawyers are somehow causing problems, making things difficult? Anybody feel that way?
Can you all assure me if you get annoyed or frustrated that you will not hold it against Carlos in this case? Okay. If you want to be annoyed, you can

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be annoyed at me or Mr. Hagemeister? He seems to be a good target these days.
It's obvious to you there are two lawyers in this courtroom because there are two people on trial. While only one jury will decide the case, does everybody understand you have to separately hear the evidence as it applies to Carlos and separately hear the evidence as it applies to Tyrone, you will to have make separate decisions as to each of the two people here in court?
Is it Miss Hock? I thought I saw you nodding your head. Is there some question you have?
VENIREPERSON HOCK: Well, they are not being tried as one, it's separate, right?
MS. BEIMDIEK: You must return separate verdicts as to each of the two people.
VENIREPERSON HOCK: Okay.
MS. BEIMDIEK: And Miss Moore-Dyson will be representing Tyrone, I will be representing Carlos. We aren't the dream team. This isn't some big ambush over here. We are sharing a table. We are trying the case together because we're all in front of one jury, but it's tried separately as to each of the two people.
Mr. Lucas?

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VENIREPERSON LUCAS: Are they charged for the same crime?

MS. BEIMDIEK: Yes, with the same incident.

VENIREPERSON LUCAS: But we have to find one, this one, that. I understand.

MS. BEIMDIEK: Right. You can have verdicts that are different if that's what you decide when you listen to all the evidence, okay?

But the law says you have to consider each individual case separately. Anybody think that's a problem for them? Okay. It's not as complicated as it sounds.

I expect in this case that you will see and hear testimony that's very upsetting --

THE COURT: Counsel approach the bench, please.

(Proceedings were had off the record)

(The following proceedings were had in the presence of the jury panel)

THE COURT: Pardon the interruption, Miss Beimdiek.

MS. BEIMDIEK: That's okay. I promise we're getting toward the end. The Judge wants to know when you're all going to get lunch.

I was telling you that I expect there will

be upsetting testimony and some photographs that are going to be graphic. You will be asked as jurors to look at those photographs. They are not pleasant. They are not easy to look at.

Testimony of witnesses who have seen something horrible can sometimes be very upsetting and hard to listen to.

Is there anybody for whom that presents a problem? Either I can't look at horrible pictures or you will listen to that or the evidence and say I am going to convict because this is just horrible what happened to this person in this case and what these witnesses have gone through?

Mr. Canada, is that okay with you? I mean is that going to present any problem for you?

VENIREPERSON CANADA: No, not at all.

MS. BEIMDIEK: Miss Cunigan, is that going to present any issues for you?

VENIREPERSON CUNIGAN: No.

MS. BEIMDIEK: You can listen to all the evidence? Let's assume you hear a witness who cries on the stand. Is that going to cause you to say I'm going to convict because this was unsettling, a mother lost a son, a relative lost a relative?

VENIREPERSON CUNIGAN: No.

MS. BEIMDIEK: No? You can consider the evidence separately and not be swayed simply because of the graphic nature of what you hear?

VENIREPERSON CUNIGAN: Yes.

MS. BEIMDIEK: Does anybody feel different? Everybody can listen to the evidence and not be swayed by the emotional aspects of it?

Now, I expect that there will be witnesses for the prosecutor who will come into court, take the oath, swear to tell the truth, and they will point to Carlos and they will say he's the one that shot, okay?

That is not a surprise. This isn't like LA Law where there's a big surprise witness. I expect that will happen.

The question for you as jurors is can you get beyond what you hear in court and assess that witness and how you believe that witness based on all the factors that will lead us to getting to this point?

By that I mean the Judge will give you an instruction. The instruction tells you you can consider a witness' interests, bias, motives, opportunity to observe, the circumstances of the entire case and decide for yourself if you believe them when they make an identification. Can everybody

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assure me they can do that as they listen to the witnesses's testimony? Yes? Everybody can consider that?

You can consider their bias, are they mad at somebody in this case, do they have a grudge in this case?

Somebody over here earlier talked about you can come in and say things because you're mad at somebody. Everybody can consider that, right? You can consider somebody's personal physical condition, have they been drinking, have they been doing drugs? You're allowed to consider all of those things. Can all of you assure me that you will be able to do that in this case?

Miss Wright?

VENIREPERSON WRIGHT: Yes.

MS. BEIMDIEK: Okay. You can consider just because the witness says Carlos did it or Tyrone did it, does that settle it for you?

VENIREPERSON WRIGHT: No.

MS. BEIMDIEK: You can consider all the things that I just talked about?

VENIREPERSON WRIGHT: Yes.

MS. BEIMDIEK: Miss Templin, am I beating a dead horse here?

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VENIREPERSON TEMPLIN: You're doing fine.
MS. BEIMDIEK: I was going to ask another question about that, but I think I'm going to give it a rest. This is my last chance to talk to you all.
If, as you sat here over the past two days, day and a half, you said to yourself, boy, I know they will ask me about this, whatever it is, and they haven't, now is the time to tell us that there's something you kept thinking, I know they'll want to know this and I'm sure they'll ask me about something that I think might affect me in this case.
Is there anybody who's got one of those things hanging out there? Because this is the chance to do it. Miss Templin?
VENIREPERSON TEMPLIN: I think I'm surprised more than anything that these are young kids, that you have never asked if any of us have young kids their age and if that would affect your decision.
MS. BEIMDIEK: That's a great question for you it sounds like -- do you have kids?
VENIREPERSON TEMPLIN: I have two and both teenagers. It's -- I don't think it affects my decision, but it's very hard to see it happen.
MS. BEIMDIEK: I'm trying to decide for you whether or not that is something you will use as

evidence of guilt against them or evidence of how it's going to be very difficult to return a guilty verdict in this case. Only you can answer that.
VENIREPERSON TEMPLIN: I don't think -- I think I'll -- I think I been at jury duty too many times not to be objective. And stuff like that, I thought it was a very unusual question that you never asked.
MS. BEIMDIEK: You're right.
VENIREPERSON TEMPLIN: Since these are under age children, or look like they are, I'll put it that way.
MS. BEIMDIEK: That's a good question. For you, you're saying it probably won't affect you but you thought it was something that we would discuss here?
VENIREPERSON TEMPLIN: Yes.
MS. BEIMDIEK: Is there anybody who feels that the age of the accused, that Carlos and Tyrone are young men, will affect their ability to listen to the evidence in this case? Anybody in the jury box?
Miss Bradford?
VENIREPERSON BRADFORD: No.
MS. BEIMDIEK: Either way, positive or negative, it's not going to have an effect on you?

VENIREPERSON BRADFORD: That's right.
MS. BEIMDIEK: Miss Davis?
VENIREPERSON DAVIS: No.
MS. BEIMDIEK: Miss McCulley, it's okay with you?
VENIREPERSON MCCULLEY: Yes.
MS. BEIMDIEK: Judge the evidence despite the evidence of Carlos and Tyrone's --
VENIREPERSON MCCULLEY: Um-hum.
MS. BEIMDIEK: Anybody else on Miss Templin's side? Anybody on this side of the courtroom? Okay.
Anybody else, other than Miss Templin, that you thought you should bring to our attention at this time?
Mr. Canada?
VENIREPERSON CANADA: Is there a question, a little while ago, if you had business law classes?
MS. BEIMDIEK: Yes.
VENIREPERSON CANADA: I raised my hand and you didn't answer me. I had twelve hours.
MS. BEIMDIEK: Great. Okay. Didn't mean to overlook you back there. Anybody else? Okay. I appreciate your patience. Thank you very much.
THE COURT: Thank you, Miss Beimdiek.

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Ladies and gentlemen of the jury, we'll have our luncheon recess at this time.
The Court again reminds you what you were instructed at the very first recess of the Court, you're not permitted to discuss this case among yourselves or with others or remain in the presence of anyone who is discussing the case when the Court is not in session. You're not to form or express any opinion about the case until it's finally given to you to decide. We will be in luncheon recess. You are to return to Division 11 at 2:15 p.m. Thank you.
(A luncheon recess was taken.)
(The following proceedings were had in the presence of the jury panel)
THE COURT: Please remain seated. You may proceed, Miss Moore-Dyson.
MS. MOORE-DYSON: Thank you.
VOIR DIRE EXAMINATION
MS. MOORE-DYSON: Good afternoon, ladies and gentlemen. I am forced, by being the last on the list, to be brief and I'm going to try very hard not to be boring.
This is a very important part of the, this entire trial and probably the most important. This part is called voir dire. We never say it quite

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right. It simply means to speak the truth.

I'm hoping and I believe that most of you have, throughout this process, been speaking the truth because people have given us some information that was personal to them. Some at some point was embarrassing and we tried to accommodate all of that by having you speak in private if necessary.

The purpose of our questions is not to get into your personal lives. We're not trying to find fault in you. If any of you don't make the panel, you're all doing a great service to our clients and there's nothing wrong with you, and to the community as well.

I represent Tyrone Morant. Do any of you know him? His mother is Hattie Morant. Do any of you know any Morant at all? You're not familiar with them.

Are any of you familiar with me after seeing me here for the last couple days? I have an office on Olive, formerly on Broadway. I've been practicing in the City of St. Louis for about 15 years. Anybody familiar with me? Okay.

I'm not going to cover anything that any of the other attorneys have covered. I'm trying not to touch on because I know you all are tired of hearing

that.

There was a question or comment from Miss Bradford where you think you read about this case some time ago in the newspaper. I'd like to ask all of you, this occurred in September of 1995, do any of you recall either hearing a newspaper report or a news cast report on TV, anything at all about this case? Did you see it in the World? Did you see pictures in the World?

VENIREPERSON SNIPES: I might have read it, but --

MS. MOORE-DYSON: You think you read about it --

VENIREPERSON SNIPES: Possibly.

MS. MOORE-DYSON: Miss Bradford told us that she didn't form an opinion, but she's afraid that as the evidence develops it may come back to her. At this point you don't recall ever having formed an opinion of having read that newspaper article, do you?

VENIREPERSON BRADFORD: No, I don't.

MS. MOORE-DYSON: How about you, Mr. Snipes?

VENIREPERSON SNIPES: I read the World every week, so I'm sure I did.

MS. MOORE-DYSON: You said you formed an opinion based upon what you read in the paper that

time?

VENIREPERSON SNIPES: Just by the paper. I'm not saying I got one now.

MS. MOORE-DYSON: My concern is if you formed an opinion at the time you read the paper.

VENIREPERSON SNIPES: I didn't form no opinion, whether they did it or not.

THE COURT: I didn't hear you. Did you say you did or did not form an opinion?

VENIREPERSON SNIPES: No.

THE COURT: Thank you.

MS. MOORE-DYSON: Now, did anybody else, do you recall hearing about the case on the news or the TV? Okay. So I don't have to ask you whether or not you formed an opinion about that.

Miss Bradford, you indicated that you didn't form an opinion at that time?

VENIREPERSON BRADFORD: No, I did not.

MS. MOORE-DYSON: As of now, having heard no evidence from the witness stand, you don't have an opinion as to whether or not they did or did not commit this crime?

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VENIREPERSON BRADFORD: No, I don't.

MS. MOORE-DYSON: Okay. Now I'm going to ask you, there are several of you who indicated on

your questionnaire that you have people in your family who were related who are police officers or have some type of police affiliation. Can I have a showing of hands for those people who do? Okay. I'll start at the back row.

Miss Bradford, can you tell me who in your family is a police officer?

VENIREPERSON BRADFORD: Distant cousin.

MS. MOORE-DYSON: A distant cousin?

VENIREPERSON BRADFORD: Yes.

MS. MOORE-DYSON: Do you have contact with that cousin?

VENIREPERSON BRADFORD: Occasionally, yes.

MS. MOORE-DYSON: Do you discuss his or her work?

VENIREPERSON BRADFORD: No, I don't.

MS. MOORE-DYSON: If a police officer were to testify in this particular case, would you give more deference, would you give more weight to what that police officer has to say than anybody else?

VENIREPERSON BRADFORD: No, I wouldn't.

MS. MOORE-DYSON: So you would weigh what the police officer said based upon what he's saying, is that correct?

VENIREPERSON BRADFORD: Yes.

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MS. MOORE-DYSON: What he said is not going to be anymore important than one of these young man's mothers?

VENIREPERSON BRADFORD: No.

MR. HAGEMEISTER: Judge, I have to object, that after hearing the testimony she can decide she believes a police officer more than a mother.

THE COURT: Objection sustained. Counsel, your statement was an incorrect statement of the law.

MS. MOORE-DYSON: Okay. What I'm asking, you would not give a police officer more weight just because he's a police officer than anybody else, is that correct?

VENIREPERSON BRADFORD: Right.

MS. MOORE-DYSON: Okay. We're not talking about what they say. If what they say you believe it more than anybody else, of course you can give it more weight, but just because they're a police officer you won't say that what he's saying is more important or has more weight?

VENIREPERSON BRADFORD: No.

MS. MOORE-DYSON: Mr. West, who in your family?

VENIREPERSON WEST: Excuse me?

MS. MOORE-DYSON: Who in your family is a

police officer?

VENIREPERSON WEST: Cousins.

MS. MOORE-DYSON: You have more than one?

VENIREPERSON WEST: Yeah, um-hum.

MS. MOORE-DYSON: Are you close with those cousins?

VENIREPERSON WEST: Well, I see them every blue moon.

MS. MOORE-DYSON: Do you discuss their work?

VENIREPERSON WEST: No, hum-um.

MS. MOORE-DYSON: Would you, just because you have cousins who are police officers, would you give more weight to a police officer's testimony than you would anybody else's just because they're a police officer?

VENIREPERSON WEST: No.

MS. MOORE-DYSON: Anybody else? Miss Otten?

VENIREPERSON OTTEN: My cousin's husband used to be a police officer for the City of St. Louis, but then they moved to Florida and then they came back to St. George, but I don't know if he came back to be a police officer or is security guard, but I don't have no contact with them.

MS. MOORE-DYSON: Would you give, because of a relative who is a police officer, would you give

more weight to a police officer's testimony than anyone else?

VENIREPERSON OTTEN: No.

MS. MOORE-DYSON: That is Miss Davis?

VENIREPERSON DAVIS: My nephew-in-law, my niece's husband is a police officer.

MS. MOORE-DYSON: Nephew-in-law. Would you give more weight to the testimony of a police officer simply because he's a police officer?

VENIREPERSON DAVIS: No.

MS. MOORE-DYSON: Thank you. Next to Miss Davis, that's Miss --

VENIREPERSON ELMER JACKSON: Jackson.

MS. MOORE-DYSON: Miss Jackson.

VENIREPERSON ELMER JACKSON: Yes, I have a son in the police academy.

MS. MOORE-DYSON: Okay. Because you have a son in the police academy, would you believe the police officer's testimony over anybody else's simply because they're police officers?

VENIREPERSON ELMER JACKSON: No.

MS. MOORE-DYSON: Anybody else? Mr --

VENIREPERSON HOWARD: Howard.

MS. MOORE-DYSON: Howard.

VENIREPERSON HOWARD: I work with a lady

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whose husband is a detective, and I'm a martial arts instructor, so I have taught police in the past and I'm teaching expolicemen now.

MS. MOORE-DYSON: With that contact with police officers, you have he discussed their work?

VENIREPERSON HOWARD: Sometimes. Sometimes now. There are some of them I would invite my house, and there's some I wouldn't have anywhere near my house.

MS. MOORE-DYSON: You wouldn't give them --

VENIREPERSON HOWARD: Depends on the person.

MS. MOORE-DYSON: It depends on what they are saying?

VENIREPERSON HOWARD: Correct.

MS. MOORE-DYSON: Anyone else? Mr. Canada, I remember your name.

VENIREPERSON CANADA: I have two cousins.

MS. MOORE-DYSON: Two cousins?

VENIREPERSON CANADA: Yeah. And, no, I would not give them extra because they are an officer.

MS. MOORE-DYSON: Ms --

VENIREPERSON WRIGHT: Carolyn Wright, my ex-husband.

MS. MOORE-DYSON: Anymore or less weight?

VENIREPERSON WRIGHT: No.

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MS. BEIMDIEK: Miss Cowan?

VENIREPERSON COWAN: Sister.

MS. MOORE-DYSON: Would you give her more or less weight?

VENIREPERSON COWAN: No.

MS. MOORE-DYSON: When I ask if you give more deference to a person, I'm not saying to you that you consider the whole person, what is important is that you judge what they say, okay?

I'm going to talk to you a little bit about, I think it has been touched upon with regard to a witness. We've talked about relationships, witnesses who might be related to victims and/or to persons on trial here. We've also talked about witnesses who have certain professions such as the police officers.

I'd like to talk about another aspect of a witness as well. A person can sit on that witness stand and they will make statements. Those statements they make is evidence. Whether or not you believe that evidence is what your job is, okay? Now, would you believe that simply because a person said something that it's true?

Do you realize that you would have to, based upon the totality of the evidence, establish that from where that person might have been positioned at the

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time, could they see it? Okay.

Do you realize that because a person said I saw something and you heard the evidence where they happened to be located at the time and didn't seem like that was possible that you can consider that?

Now, you understand that just what they're saying is not all of the evidence. You will be presented with maybe pictures of the area.

Now, do you realize that you need to use that evidence as well in conjunction with what they say? Okay. Do you also realize that is part of determining whether or not they're credible, is that right?

Now some of these people we've indicated, we heard people say they can lie just as easily even though they're under oath. You realize that sometimes people are not lying but may not be stating the correct statement of the facts? Okay.

It may be based upon whether or not they could see something. It may be based upon what they feel in their hearts, what somebody else might have told them. What they believe, but they couldn't see it.

You realize that you have to judge that witness' credibility based upon what they say, based

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on where they said they were, if they had the ability to see and/or hear what they're saying, okay? Not simply because they're saying it.

This is what you have to -- that's your job. I can't tell you that, Mr. Hagemeister can't tell you that, and Bevic can't tell you that. What we say is not evidence. We are not going to sit on that stand. We are not going to be sworn to tell the truth. None of us were there.

It is Mr. Hagemeister's job to prove beyond a reasonable doubt that Tyrone Morant, my client, and Carlos Wade committed the crimes that they've been charged with, okay? Beyond a reasonable doubt. That is a burden of proof. That's a legal term. That's legal terminology.

He said to you that you can't, there's certain things that you can't bring into the jury box. Common sense is one of the things that you just ought to bring in there, okay? Don't leave -- he said we have to understand that each one of us have our certain biases, we have our life experiences, some of us have certain prejudices.

We don't want you to decide this case on your prejudice by saying that I don't like young black men or I don't like teenagers, period, so I'm going to

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find them guilty. That's not what we mean. What we're saying, don't leave your common sense at home, okay? Don't leave it there. Listen to what these people say and weigh that evidence.

Now a lot of you have indicated you have been victims of crime. I'm not going to go through every single one of you because most of us talked about the violent crimes. We had family members either shot, robbed, guns put to their throats and so forth. Some of you have been victims yourself.

I'd like to ask any of you have you been a victim of a crime where it had to do with property? Okay. Could you just stand up and say your names so I don't have to look it up.

VENIREPERSON BURTON: Burton. My house was broken into.

MS. MOORE-DYSON: Did the police find out who did it?

VENIREPERSON BURTON: No.

MS. MOORE-DYSON: Because that happened to you, would you have a bad feelings against this young man as a result of that?

VENIREPERSON BURTON: No, I wouldn't.

MS. MOORE-DYSON: You would be able to weigh the evidence from the witness stand?

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VENIREPERSON BURTON: Yes.
MS. MOORE-DYSON: Next person.
VENIREPERSON HOCK: Mrs. Hock. We were burglarized. It was partially our fault because we let the person in, so I couldn't hold that against this young man
MS. MOORE-DYSON: I understand, Miss Hock. I realize that you've indicated there were a couple of times that you have been involved with the police and whether they caught the person or not?
VENIREPERSON HOCK: They caught them.
MS. MOORE-DYSON: They did?
VENIREPERSON HOCK: But they didn't get anything valuable. I don't think it was prosecuted. They were very vigilant. We said we were partially at fault for letting them in.
MS. MOORE-DYSON: Now, you would not form any opinion favorable to the prosecution?
VENIREPERSON HOCK: No.
MS. MOORE-DYSON: Or --
VENIREPERSON HOCK: Not either side, no.
MS. MOORE-DYSON: You can judge this case on the merits based on what was said?
VENIREPERSON HOCK: Yes.
MS. MOORE-DYSON: Anyone else?

Miss Templin?
VENIREPERSON TEMPLIN: We had our car stolen once and we had it vandalized once. In either case they found the car but nobody there. Stuff like that.
I was probably more ticked off at the officer than I was anybody else because the first words out of his mouth, is your car paid for or was it repossessed? That ticked me off.
MS. MOORE-DYSON: Okay. But even though you were ticked off at the officer, if an officer came there and sat there and what he said sounded true and you believed what he said, would you discount it just because that particular officer ticked you off?
VENIREPERSON TEMPLIN: No.
MS. MOORE-DYSON: Miss --
VENIREPERSON PROTHERO: Prothero. It was my automobile vandalized, but whoever did it got away. It was on a parking lot at work.
MS. MOORE-DYSON: That experience would not cause you to say I'm not going to let anybody else get away if I get a chance?
VENIREPERSON PROTHERO: No, they couldn't have done anything about it.
MS. MOORE-DYSON: Mr. Canada?
VENIREPERSON CANADA: My car window broke

out once, but nobody saw anything. They didn't get anything.
MS. MOORE-DYSON: You're not angry because there was nobody to testify or bring that person to justice, are you?
VENIREPERSON CANADA: No, I didn't see the person. It happened while I wasn't at home.
MS. MOORE-DYSON: You wouldn't think in this situation that you couldn't allow these people to get away even if nobody says that they saw something, would you?
VENIREPERSON CANADA: It wouldn't have anything to do with this case.
MS. MOORE-DYSON: Could you state your name, please.
VENIREPERSON WRIGHT: Carolyn Wright. My car was stolen and it was also vandalized.
MS. MOORE-DYSON: Did they catch the person who did it?
VENIREPERSON WRIGHT: No.
VENIREPERSON HOWARD: I forget, I had somebody try to break in my car. The neighbors saw him and the police caught him and got him.
MS. MOORE-DYSON: You think the police did a good job?

VENIREPERSON HOWARD: Um-hum.
MS. MOORE-DYSON: Nothing that happened in this particular case would cause you to decide anything, decide this case on anything other than the evidence?
VENIREPERSON HOWARD: No, no.
MS. MOORE-DYSON: This particular crime happened in an area in north St. Louis, an area in the 4200 block of Martin Luther King, bordered by Wittier. A couple blocks away there are a couple other streets Aldine and Cote Brilliante. Are any of you familiar with that area? Okay. I will start with the jury box.
Miss Bradford, would your familiarity with the particular area, okay, cause you to judge this case on anything other than what you hear in this courtroom today?
VENIREPERSON BRADFORD: No, it wouldn't.
MS. MOORE-DYSON: Not the fact that you know about other things that happen --
VENIREPERSON BRADFORD: No, it's in that area roughly, close to it.
MS. MOORE-DYSON: You would judge this case by what you hear today, is that correct?
VENIREPERSON BRADFORD: Right.

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MS. MOORE-DYSON: Not about what you heard in the neighborhood?

VENIREPERSON BRADFORD: No.

MS. MOORE-DYSON: Mr. West?

VENIREPERSON WEST: Same.

MS. MOORE-DYSON: Mr. Lucas?

VENIREPERSON LUCAS: Same.

MS. MOORE-DYSON: You would judge the case based upon the evidence?

VENIREPERSON LUCAS: Yes.

MS. MOORE-DYSON: Mr. Campbell, would you judge the case on the evidence?

VENIREPERSON CAMPBELL: Yes.

MS. MOORE-DYSON: Mr. Patterson?

VENIREPERSON PATTERSON: Same on the evidence.

MS. MOORE-DYSON: Anyone else? Miss Thomas? Would you judge this case on the evidence or what you know about the area?

VENIREPERSON THOMAS: The evidence.

MS. MOORE-DYSON: Mr. Burton?

VENIREPERSON BURTON: On tbe evidence.

MS. MOORE-DYSON: Anyone else? Mr. Snipes?

VENIREPERSON SNIPES: On the evidence.

MS. MOORE-DYSON: Ma'am, your name?

VENIREPERSON CUMMINGS: Miss Cummings.

MS. MOORE-DYSON: You would judge on the evidence?

VENIREPERSON CUMMINGS: Yes.

MS. MOORE-DYSON: Miss Cowan?

VENIREPERSON COWAN: On the evidence.

MS. MOORE-DYSON: Okay. Now, Miss Davis?

VENIREPERSON DAVIS: Yes. I had my hand up for the question before. I had my purse snatched and house burglarized and 1 do know about the area, but --

THE REPORTER: I'm sorry, ma'am, I can't hear you.

VENIREPERSON DAVIS: Only the evidence that's presented. Did you hear the first part?

THE COURT: Does the purse snatching --

VENIREPERSON DAVIS: Purse snatching.

THE COURT: What else?

VENIREPERSON DAVIS: House burglarized.

THE COURT: Would that prevent you from deciding --

VENIREPERSON DAVIS: No.

THE COURT: Thank you. Let's move on.

MS. MOORE-DYSON: There's guns or we know there was a gun, at least one gun used in this particular crime. Is there anyone here who belongs

to, who belongs to an organization, NRA or anything that has to do with guns?

Is there anyone here who has an adverse, who is so against the use of guns that the fact that guns were used in this case would cause them to judge the case by anything other than what they hear on the witness stand?

Anybody just hate guns, the fact that they can get in anybody's hands these days? Is there anyone here? I take it by your silence there isn't.

I'd like to make one last statement, maybe two. I want to get back to reasonable doubt. 1 am not going to describe to you or tell you what reasonable doubt is, but just based on the experience I've had, people, when we're talking about the burden of proof and we've already talked about the fact that it belongs to the State, they've got to prove beyond a reasonable doubt that these young men are guilty.

Now reasonable doubt does not mean benefit of the doubt, does not mean that you have to give the State as much weigbt as you, or the benefit of the doubt like you do the defendants, okay? It means beyond a reasonable doubt. That means that evidence that comes off of that stand, you are the reasonable person, in your mind that the State has proved that

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this young man, Tyrone Morant and/or, I am going to say and/or, I represent Tyrone Morant, I do not represent Carlos Wade, as Miss Beimdiek explained to you before, you can find Tyrone Morant not guilty and find Carlos guilty, or Carlos not guilty and Tyrone Morant guilty.

Each one of these persons have been accused of the same crime, but you have to determine, based upon this evidence, whether or not that evidence proves each one of them guilty beyond a reasonable doubt, okay? Not, well, maybe, probably he did and he didn't, or, well, since I can't find him guilty, or I think the other one is guilty, I am going to give it to the other one.

Is there anybody who thinks if I find either one of them guilty I'm going to find both of them guilty? You understand these are the same crimes, two different circumstances, you've got to determine, based upon the evidence, whether or not he has proved both of them individually guilty beyond a reasonable doubt. Not one or the other; or because the other is, the other won might be also. You don't have to give us a joint verdiet. Okay.

Now 1 am going to ask you a couple things. And the reason why I'm going to ask this last question

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is because many times you start listening to a case and halfway through the case you will find that, oh, my God, I know that person. Oh, I just met that person, or something to that affect.

We can't say anything about who you might meet while the trial is going on. I'd like to find out from you whether or not you know any of the State's witnesses, okay? There will be a couple of people testifying who are also victims themselves. Do you know --

MR. HAGEMEISTER: Judge, I object to her phrasing these as State's witnesses. They may be names that are mentioned sometime during the trial.

MS. MOORE-DYSON: Okay. Names that are mentioned sometimes during the trial.

THE COURT: Very well.

MS. MOORE-DYSON: Do you know a Johnnie Bell? Anybody here know Johnnie Bell or familiar with a Johnnie Bell?

Do you know an Angela Hickman or any Hickmans that may live in that area? Anyone here know anyone by that name? Do you know Antonio Hickman? Annie Hickman? Do you know Ina Dancey? Banita Hickman?

There will be several police officers who

will also, who may also testify. Some of you who know police officers, I'd like for you to listen carefully to these names and let me know whether or not you know any of these people. Bill George, George Weindel, George Taylor, David Ellison, Jeffrey Fuesting. Does anybody know Det. Harnak? Or Det. Pappass? Okay. How about Det. Michael Strong? Donnell Tangsley? Steven Clemmons? Samuel Jefferson?

VENIREPERSON THOMAS: I know Samuel Jefferson.

MS. MOORE-DYSON: How do you know him?

VENIREPERSON THOMAS: We went to high school and grade school together.

MS. MOORE-DYSON: Have you seen him since high school?

VENIREPERSON THOMAS: Um-hum.

MS. MOORE-DYSON: Do you see him frequently?

VENIREPERSON THOMAS: No, but when we have a class reunion, I see him.

MS. MOORE-DYSON: Would your acquaintances with Mr. Clemmons --

VENIREPERSON THOMAS: Samuel Jefferson.

MS. MOORE-DYSON: Would your acquaintance with Mr. Jefferson cause you to believe --

VENIREPERSON THOMAS: No.

MS. MOORE-DYSON: John Allen, does anyone know the victim John Allen by any chance? Does anyone know a Tanneta Crawford?

MR. HAGEMEISTER: Tinitra.

MS. MOORE-DYSON: Marlon Mitchell? I asked earlier does anyone know anyone from the Morant family? Or anyone from the Wade family? Okay.

You're familiar with the area. They live in that particular area. So if you know of people with that last name, I want you to think about it and if you can let us know, does it mean anything?

You've all indicated that you can judge this case by the weight of the evidence that comes from that witness stand. We would like to know whether or not there's anybody that's associated or that will be testifying in this case that would cause you to do anything but that?

Simply knowing a person doesn't mean you won't be fair. We would like to know if you know anyone connected with or who is going to testify in this case? I take it from your silence there is not.

I thank you right now and hopefully I have not bored you or taken you beyond what, taxed you beyond what you can handle. Thank you so much.

THE COURT: Thank you, Miss Moore-Dyson.

Counsel approach the bench.

(The following proceedings were had at the bench out of the hearing of the jury:)

THE COURT: Any further challenges for cause on behalf of the State?

MR. HAGEMEISTER: Judge, I have a few, but I'd like to do it out of the hearing of the jury.

THE COURT: No, sir.

MR. HAGEMEISTER: Okay. Well --

THE COURT: We have been close to a full day on voir dire. Let the record show, why would you want to make a challenge for cause out of the hearing of the jury?

MR. HAGEMEISTER: Well, because it goes to somebody's prior arrest and I don't want it to be --

THE COURT: We're going to be --

MR. HAGEMEISTER: -- spoken so loud.

THE COURT: We proceed in the courtroom here, Counselor, not in camera.

MR. HAGEMEISTER: I didn't want anybody to overhear some of these matters.

THE COURT: I will ask you again, any further challenges for cause to state them.

MR. HAGEMEISTER: Yes, Judge. This comes to my -- has come to my attention that there are arrests

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and convictions, excuse me, outstanding wanteds on at least three of the jurors, maybe four, Mr. Glenn Lucas, Miss Madaline Cherry, Timothy Lawson, and Sharon Cowan.

THE COURT: I assume the prosecutor's statement constitutes challenge of those venirepersons for cause. Any objection?

MR. HAGEMEISTER: I do challenge all four of those for cause, Judge. I think it's an obligation of the Court to allow them to clear up whatever they have. It's not -- I'm doing what I think I am supposed to do under the law. If you don't want to handle it now, it's fine with me. I think I'm required under the law to do a challenge for cause on those.

MS. BEIMDIEK: If I may. I think that he indicated that he didn't ask them to disclose traffic offenses. I don't know if these wanteds are for nonpayment of a traffic ticket.

THE COURT: Neither do I.

MS. BEIMDIEK: I think it's unfair to strike somebody when they weren't asked if anybody knows they are wanted. They may not know.

MR. HAGEMEISTER: I know one is insufficient check, one is maybe a prostitution of some kind, one

is a financial responsibility, and one is a city ordinance violation. None of those are traffic tickets that I can think of off the top of my head. That's my obligation as an officer of the Court.

THE COURT: Was your obligation -- are you aware of the statutes for qualifications for jury service?

MR. HAGEMEISTER: I can't say I am off the top of my head.

THE COURT: You're not?

MR. HAGEMEISTER: No.

THE COURT: The Court will advise you that a conviction of a misdemeanor --

MR. HAGEMEISTER: I'm not saying it's a conviction, I'm saying there's law enforcement officials currently looking for these people.

THE COURT: Where did you get this information and conclusions?

MR. HAGEMEISTER: In the court records.

THE COURT: In this court's files?

MR. HAGEMEISTER: Judge, no, I'm trying to do what I understand --

THE COURT: What court record are you referring to?

MR. HAGEMEISTER: Judge, I think if you ask

the jurors that --

THE COURT: No, please answer my question. You referred to a court record. What court record are you --

MR. HAGEMEISTER: At the risk of antagonizing the Court --

THE COURT: I am trying to find out what you are talking about, Counselor.

MR. HAGEMEISTER: I'd like to finish this, sir.

THE COURT: At the -- I'd like you to answer my question. What court record are you referring to?

MR. HAGEMEISTER: The Regis court record.

THE COURT: That's not a court record of this court.

MR. HAGEMEISTER: Well, Judge, the fact is that I run the risk at this point of making the jurors unhappy because of the fact that the Court is speaking loudly enough for people in the back of the room to probably hear him.

THE COURT: Well --

MR. HAGEMEISTER: That's why I am in a tight spot at this point.

THE COURT: Well --

MR. HAGEMEISTER: Which is what I have been

trying to say for the last five sentences.

THE COURT: Miss Beimdiek doesn't know what you are talking about.

MR. HAGEMEISTER: She has seen the records.

THE COURT: We'll take a recess at this point. I will go on to you, Miss Beimdiek, do you have any further challenges for cause?

MS. BEIMDIEK: I do, Your Honor. Mr. Dodson, No. 1337.

MR. HAGEMEISTER: Not opposed.

THE COURT: Sustained. Mr. Dodson, will you see the bailiff, please. Anything further?

MS. BEIMDIEK: No further strikes for me, Your Honor.

THE COURT: Any further challenges for cause on behalf of the defendant Morant, Miss Moore-Dyson?

MS. MOORE-DYSON: Yes, Your Honor, Mr. Snipes. I believe that Mr. Snipes has indicated, if you look at the totality of his answers, each time he comes back and says, yeah, he can consider certain things, but he indicated in several different areas with regard to if the defendant does not testify he's --

THE COURT: I can't hear you.

MS. MOORE-DYSON: If the defendant does not

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testify he's also indicated that being a crime victim that certain things would, he would not be able to -- he thinks -- he hesitates real heavily whether or not he could let that influence his decision.

I think the last one that I asked was -- there were a couple of things that indicated that he will not be fair in my opinion to the defendants in this particular case and that he has a hesitancy of serving.

THE COURT: Any objection?

MR. HAGEMEISTER: Yes, Your Honor. He stated that it's -- there are witnesses that he could believe or not believe. He said if the defendant didn't testify, he would follow the law. The Court asked specifically and he answered correctly.

THE COURT: Let the record show that the Court finds that the responses of Mr. Snipes, Douglas W., 304, were equivocal, therefore the objection is overruled. The challenge for cause is sustained.

Mr. Snipes, will you see the bailiff, sir.

THE COURT: Let the record show that since the prosecutor feels my voice is too loud in trying to determine from him what he is talking about, we will take a recess. Counsel are instructed to confer with

whatever unknown charges Mr. Hagemeister is referring to with respect to certain jurors.

(The following proceedings were had in the presence of the jury panel:)

THE COURT: Ladies and gentlemen of the jury, you're again reminded what you were instructed at the first recess of the Court. We will have our afternoon recess at this time.

You are not to discuss this matter among yourselves or with others and not to remain in the presence of anyone who is discussing the case when the Court is not in session. You are not to form or express any opinion about the case until it's finally given to you to decide.

Before you leave for the recess, I'd like you to remain seated. Mr. Bailiff, will you approach the bench.

THE COURT: The Court's in recess. Just remain seated.

(The jury panel left the courtroom)

THE COURT: Let the record show that prior to the recess the State made certain peremptory challenges based on information gleaned from the Regis records. The Court, during the recess, advised counsel that, for the State, that it, since the Court

felt no sufficient foundation had been laid and there were objections to challenges for cause, that the Court would permit the State to further voir dire venirepersons cited by the prosecutor.

However, it's my understanding, based on what you told me, Counselor, you wish to withdraw the challenges, I forget the persons challenged prior to recess, is that correct?

MR. HAGEMEISTER: Judge, I realize that we were coming short on our jury pool, that if these people were struck for cause that we would be coming short, so I chose to exercise those challenges as peremptory challenges.

THE COURT: So there's nothing before the Court at this time on any further challenges for cause on behalf of any party to this litigation, is that correct?

MR. HAGEMEISTER: That's correct.

MS. MOORE-DYSON: That is correct, Your Honor.

MS. BEIMDIEK: Yes, Your Honor.

THE COURT: Let the record further show that there were 42 venirepersons to be qualified for a jury of twelve, twelve strikes to the State's, six peremptory challenges to each of the defendants for a

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total of 36. The other six, there would be two challenges per side to arrive at two alternate jurors. The Court has been advised that you have exercised your peremptory challenges, is that correct, or certain of them?

MR. HAGEMEISTER: Yes, sir.

THE COURT: And waived certain peremptory challenges to arrive at a jury of twelve and two alternates, is that correct?

MR. HAGEMEISTER: That's correct, Judge. I'd like the record to reflect that when we had a jury pool prior to making peremptory challenges, that the State was willing to waive one of its peremptories and one of its alternate peremptories at that point.

It become unnecessary for the State to waive one of its alternate peremptories when the defendants' counsels, of their own volition, waved some of their peremptory challenges, so I did exercise both of my alternate challenges.

THE COURT: How many peremptory challenges did you waive as to the first 36?

MR. HAGEMEISTER: One.

THE COURT: And Defendant Wade, is there a waiver of any peremptory challenges of the first 36?

MS. BEIMDIEK: We waive the first.

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THE COURT: To arrive at the jury of twelve?
MS. BEIMDIEK: We waived three. Within this framework I am not sure that's correct. Exercises three peremptory challenges within the first pool.
MR. HAGEMEISTER: Defendant A?
MS. BEIMDIEK: Yes. And then Miss Moore-Dyson can speak to hers.
MS. MOORE-DYSON: Have we exercised two in the first pool and the balance in the other?
THE COURT: Let the record show that the prosecutor, in arriving at a jury of twelve, has waived one peremptory challenge and as I understand it defendant Wade has waived three peremptory challenges?
MS. MOORE-DYSON: Four.
THE COURT: And Defendant Morant four peremptory challenges, is that correct?
MS. MOORE-DYSON: That's correct.
MR. HAGEMEISTER: I want the record to reflect it was unnecessary for the defendants to waive peremptory challenges as the State has agreed that he would waive before they made their peremptory challenges and that they chose to do that even though there was no need to do that for us to get a pool.
MS. BEIMDIEK: That's correct.
THE COURT: The Court wants to make clear

for the record is that by stipulation and agreement you exercised certain challenges and waived others and it was stipulated and agreed that there would be twelve jurors and two alternates, is that correct?
MS. BEIMDIEK: That's correct.
MS. MOORE-DYSON: That's correct.
THE COURT: Is there anything any party further wishes to put on the record? Let the record show that the Court finds that since the defendants and the State, defendants, by and true their counsel, have waived certain peremptory challenges and are satisfied to proceed in order to have a jury of twelve and two alternates, is that correct?
MS. BEIMDIEK: Yes, Your Honor.
MS. MOORE-DYSON: Yes, Your Honor.
MR. HAGEMEISTER: To the point where we have surplus jurors at this point.
THE COURT: Very well. Anything further before we seat the jury?
MS. BEIMDIEK: Yes, Your Honor. At this time I'd like to make a Batson motion as to the strikes exercised by the State. I calculated they, within the pool that we ultimately have the twelve jurors from, they exercised -- I'm sorry, eight peremptory challenges -- seven peremptory challenges,

I misspoke.
THE COURT: Well, state the motion or what relief you're asking from the Court.
MS. BEIMDIEK: I ask that the State provide reasons for the strikes they have exercised, six of those seven jurors are African-American and I would ask that the Court now require the State to provide reasons for the strikes of those jurors.
THE COURT: Is the Defendant Morant joining in the oral motion?
MS. MOORE-DYSON: Yes, Your Honor.
THE COURT: Now, a Batson challenge, so we have some clarity of the record, I understand the joint motion of the defendant to quash, set aside, and vacate certain of the prosecutor's peremptory challenges on the grounds that such peremptory challenges were exercised for impermissible racial reasons?
MS. BEIMDIEK: That is correct, Your Honor.
THE COURT: Is that the motion before the Court?
MS. MOORE-DYSON: That is correct.
THE COURT: Is it a joint motion?
MS. BEIMDIEK: Yes.
THE COURT: Very well. Mr. Hagemeister, you

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may state your specific reasons for your peremptory challenges.
MR. HAGEMEISTER: Your Honor, the first challenge was of Shirley Bradford. Miss Bradford is a black female who read an article about this trial. She was antagonized by my questions.
She has -- she knows the neighborhood. She, in fact at one point I accidentally call her sir, and I saw her joking quite a bit with Darren West, who was the person we earlier had a problem about conversing about the case in the hallway, at least according to the anonymous juror who reported to the bailiff. There no similarly situated white jurors.
THE COURT: Miss Beimdiek, anything with reference to Miss Bradford?
MS. BEIMDIEK: I would point out there are other jurors, Miss Campbell, I'm sorry, Mr. Campbell, who is a black juror, and several others who indicated they knew the neighborhood. Mr. Campbell also engaged in conversation with Mr. West.
MR. HAGEMEISTER: Not to my knowledge.
THE COURT: I didn't hear you. You say the other venirepersons you claim are similarly situated were African-Americans?
MS. BEIMDIEK: He is a black male, yes. I'm

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saying if that's the State's reason, it should be universally applied in that category.

MR. HAGEMEISTER: I'd be happy to strike Mr. Campbell now that it's not necessary for me to waive my, my peremptory strikes, if that's what the defense chooses me to do. I would have struck him for knowing the neighborhood as well.

MS. MOORE-DYSON: I would -- no.

MR. HAGEMEISTER: I had to waive a peremptory and he was one of the people I would have --

THE COURT: Do the defendants' accept the prosecutor's offer?

MS. BEIMDIEK: No, Judge, I don't think Mr. Hagemeister had to waive a peremptory. He exercised his peremptory. Once those were completed, we exercised ours, and in the -- from the panel he suggested. I am not saying he had to strike that juror, I'm indicating the reasons he gives as to Miss Bradford could also have applied to Mr. Campbell.

MR. HAGEMEISTER: One of the four or five reasons I gave.

THE COURT: Anything further on behalf of the Defendant Morant with respect to this venireperson?

MS. MOORE-DYSON: I think in all the answers that Miss Bradford gave in response to his questions, first of all, she indicated that she brought up on her own that she had, she believes she had read the article and felt that the Court should know about it just in case some of the information that came out might have refreshed her memory.

She indicated correctly she had not formed an opinion and that would not influence her. She was sitting next to Mr. West. I think any juror sitting next to another juror most likely will converse with person. Didn't seem there was anything improper about that.

Mr. Hagemeister referred to her as a male, I don't think that that -- she didn't react negatively to that. I think she has a haircut very short. An older woman, her voice is a little low. I'm sure it has probably happened before. She didn't react negatively to that.

I don't see any reason, any nonracial reason why he would have struck her. But I cannot give you a white juror similarly situated with those same types of situations.

THE COURT: Anything further with respect to this venireperson?

MS. BEIMDIEK: No, Your Honor.

MS. MOORE-DYSON: No, Your Honor.

THE COURT: Very well. Next?

MR. HAGEMEISTER: Darren West. The second juror on page 1. Mr. West, when I came to introducing Miss Dyson, showed that he was enamored by Miss Dyson. Clapped for her at least once. Clapped when the other juror mentioned about how I had drug on during jury selection.

He was alleged to have been conversing with Nathaniel Ward. He knows the neighborhood. He has arrests that he didn't mention and he's currently wanted.

THE COURT: I believe this is one of those that you allege, based on Regis records, was wanted for an ordinance violation.

MR. HAGEMEISTER: I believe that my Batson -- my strike would have survived the challenge without his prior arrests or his wanted, but I would add those as reasons.

You'll notice there was, there was a juror by the name of Timothy Lawson who was similarly situated white juror that I have indications that he might be wanted, not even a confirmed wanted on him, and I'm striking him as well because it's my belief

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these people are supposed to be brought to the attention of the authorities and are susceptible to challenges for cause. But I didn't want to inconvenience the Court or let the jury know at side-bar that I was pointing out that they had active wanteds.

THE COURT: All of these you cited, based on your allegation of the Regis record, were for police court matters, is that correct?

MR. HAGEMEISTER: Actually, Mr. West is a city ordinance violation. I believe that the other juror, Mr. Lawson --

THE COURT: Counselor, ordinance violations are handled in the 22nd Judicial Circuit -- pardon, it's probably my many, many, many years of police court, but it was for an ordinance violation, is that right?

MR. HAGEMEISTER: In Mr. West it was, he was arrested for no state operator's license, for another peace disturbance, for there are arrests and times he's been booked that he did not mention.

THE COURT: And did I --

MR. HAGEMEISTER: One as recently as '95.

THE COURT: Did I understand you to say you felt he did not answer your question with respect to

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those arrests?

MR. HAGEMEISTER: That's correct.

MS. BEIMDIEK: Your Honor, I think as to the allegations that this juror was enamored with Miss Dyson, the case law requires Mr. Hagemeister to put that on the record. I did not observe that.

MR. HAGEMEISTER: I believe somebody would have seen when Miss Dyson stood up and was introduced, he clapped to the point where Miss Bradford grabbed his hands and put them back down in his lap.

Somebody had to have seen that. Anybody see that? I make notes of these things. Maybe other people aren't paying as much attention. I wrote it down at the time. I'm not going to stand up in front of the jury and say he loves her, he loves her.

MS. BEIMDIEK: If it happened, I did not witness it. He had a duty to come forward and make any record of any nonverbal behavior and none was made.

As to the fact that he joined in the criticism by another juror, I would note that that juror, Miss Templin, is a white female who was not struck by the State. If the State was concerned about any criticism of them or anybody joining in with that criticism, then I think the State should have struck

Miss Templin who was vociferously critical.

THE COURT: Thank you. Miss Moore-Dyson?

MS. MOORE-DYSON: I'll join in with Miss Beimdiek. I didn't see or notice that. I didn't see it. I agree that the mere making the criticism -- everybody, I think the entire jury, kind of joined in on that and agreed. I don't think that he alone did it, all agreed with that.

MR. HAGEMEISTER: I would point out that Miss Templin, Templin, whatever her name, is distinguishable. She is not wanted. She does not know the neighborhood. She doesn't have arrests that she didn't mention. She was not conversing with Nathanial Ward. And she approached what she believed to be my offensive behavior in a more lady like fashion.

Also Mr. West has never been on a trial which I have tried and found the defendant guilty. I believe they're totally separate.

MS. MOORE-DYSON: Your Honor, the other thing that might be mentioned here is the fact that everybody who mentioned that they knew the neighborhood was black. Everybody. So if that's one of the factors, that clearly is a racial reason.

MR. HAGEMEISTER: That doesn't make it

racial, that's unfortunate.

MS. MOORE-DYSON: Every person that raised their hand that was familiar with the area was black.

THE COURT: Anything further with respect to this venireperson?

MS. BEIMDIEK: No, Your Honor.

MS. MOORE-DYSON: No, Your Honor.

THE COURT: Next person that's challenged by this motion or joint motion?

MR. HAGEMEISTER: Mr. Patterson was struck because he was antagonistic to the State. He was smiling at the defense and he also has a jury trial on a criminal case where he hung.

And prior to the defense making its motions, I also struck the only other juror who had previously tried a criminal case and hung it, which was Louis Naum. Now that was prior to them waiving peremptory strikes and as it turns out he falls out of the pool. It was one of my exercised peremptories.

THE COURT: Patterson, you say?

MR. HAGEMEISTER: Yes, on page 2, the second juror down.

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THE COURT: Juror No. 252.

MR. HAGEMEISTER: I've been working on this case quite a while and I prefer not to have to try it

twice.

THE COURT: Miss Beimdiek?

MS. BEIMDIEK: Judge, I would again note that I'm unaware of any antagonistic behavior to the State. Again smiling at defense counsel was something I think that should have been put on the record if it existed at the time.

MS. MOORE-DYSON: And the reference to he hung the jury, with either of those jurors, I don't think any one person, there was no evidence adduced that indicated that he hung the jury. He indicated that the jury was hung. Now that doesn't mean that it was by any action or inaction on his part.

MR. HAGEMEISTER: It's not a risk I have to take. I didn't take it with Mr. Naum as well.

MS. MOORE-DYSON: All right.

THE COURT: Mr. Naum was Caucasian or African-American?

MR. HAGEMEISTER: He was Caucasian, Judge, and still is.

THE COURT: Is that correct?

MS. BEIMDIEK: Yes, Your Honor.

MS. MOORE-DYSON: Yes, Your Honor.

THE COURT: Anything further with respect to Venirepersons 252?

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MS. BEIMDIEK: No, Your Honor.
MS. MOORE-DYSON: No.
THE COURT: Are there more?
MR. HAGEMEISTER: Yes, Judge. Glenn Lucas. Glenn Lucas was one that I would have asked to be struck for cause. He has an outstanding wanted. He has an assault arrest that he did not mention. He has a problem with just being, there just being one witness. He spoke at length as well, Mr. Ward did about his problem with there just being one witness in a case. Even though he arguably didn't say enough to be struck for cause, it's obviously something I would be negligent if I didn't point out.

On Mr. Lucas' prior arrest record the State noticed, if I can find it here, he has two current outstanding wanteds on traffic charges, a warrant for failing to appear, and no state driver's.

I want the record to reflect that he has been arrested one, two, three, four, five, six, seven, at least seven times, according to my records, and one of those times was for an assault. And in this case the defendants are being tried for an assault. Maybe his assault wasn't the same degree, but then there's not somebody I want deciding this case.

THE COURT: Miss Beimdiek?

MS. BEIMDIEK: Judge, I believe that the record, before the Court is silent as to these matters, the State has, claims to have run Regis record checks. I've looked at them. The Court has noted that Regis record checks may not always be accurate.

I think the juror should be given an opportunity to confront this information and indicate are their matters, did they knowingly withhold information from the Court.

As I pointed out, a wanted can result from missing a Court date you didn't know you had or failing to pay a fine that you didn't know had been imposed, and so I think to use that as a reason when these jurors have not been allowed to respond is unfair and violates their rights.

THE COURT: I recall that both defense counsel objected to Mr. Hagemeister's challenge of these Venirepersons and I offered further voir dire for that purpose and it was turned down. So the Court recognizes Regis not as a court record, not as a record in the court file, but it is a public record.

That is why, and let the record show that the Court, with the agreement of counsel, took the recess for the purpose of defense counsel and the

prosecutor could confer and go over this record, isn't that correct?
MS. MOORE-DYSON: Yes, Your Honor.
MS. BEIMDIEK: Yes.
MR. HAGEMEISTER: Judge, the records were made available to the defense as soon as I had them. They were run uniformly across the board on every single juror and not picking somebody at random.

The date of birth coincides with the birth date given on the questionnaire by the defendant. The pedigree information and the sheet coincides with the appearance of the defendant in court and the State has a good faith basis to believe it is talking about the same defendant.

It has been a practice of the State to make sure that there are people not evading its questions during jury selection, and as it turns out Mr. Lucas did.

I also believe that when a person is a fugitive, it is up to the officers of the Court to bring it to the attention of the Court so that those people can be referred to the proper authorities. Not to mention the fact that he has a problem with one witness.

THE COURT: That is certainly correct when

that is concerned.
MR. HAGEMEISTER: And he was irritated by my questioning and he has a problem with one witness.
THE COURT: Anything further with respect to Juror 214?
MS. MOORE-DYSON: Your Honor, first of all, I believe that what the State has done with regard to running the Regis record goes beyond what is necessary with regard to the qualifying a jury. These persons are not defendants. They are venirepersons who are doing a civic duty.

If it were known or it becomes a practice that venirepersons are run by the State, I mean if it was a concern of the Jury Commissioner that these people, that these things be done, I believe it would be more properly done by the Jury Commissioner, that way we don't have to deal with that in a courtroom setting. I don't believe any of the things -- I don't believe he asked any of these questions, have you been arrested for, the questions were have you been convicted of.

MR. HAGEMEISTER: Entirely incorrect, Judge. I made a point of telling them anybody that's been arrested for anything more than a police officer walking up and handing them a traffic ticket. I made

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a point as I do in every case now to point out that if, even if the lawyers said it was a closed record, even if you got probation and it was closed, even if you got whatever, even if they were never charged, I said you have to tell us if you've ever been arrested.

THE COURT: Let the record show that the Court's recollection coincides with your statement, Counselor, that you did do that.

MR. HAGEMEISTER: Thank you, Judge.

THE COURT: Anything further with respect to this venireperson?

MS. BEIMDIEK: No, Your Honor.

MS. MOORE-DYSON: No.

THE COURT: Next?

MR. HAGEMEISTER: Timothy Lawson on page 3 is not in a class that requires an explanation.

On page 5, Miss Thomas.

THE COURT: I'm sorry, which one doesn't require an explanation?

MR. HAGEMEISTER: Mr. Lawson on page 14.

THE COURT: That's the next one?

MR. HAGEMEISTER: The next one is Phyllis Thomas on page 5. She's familiar with the neighborhood. She has a degree in criminal justice and she knows one of the police officers who is

involved in this case. I believe there are no similarly situated white jurors.

THE COURT: I'm sorry, what was the name again?

MR. HAGEMEISTER: Phyllis Thomas, Juror No. 1152, the second juror on page 5.

THE COURT: Thank you.

MR. HAGEMEISTER: I don't know Mr. Jefferson myself. I can't picture his face. If I knew him and could vouch for everything about him -- at this point she may turn out to be a good juror.

The fact is I can't recollect anything about him and the risk is there that he may not be the somebody that she would rely on and the fact that he was involved in this case may affect her decision. Especially considering she has a degree in criminal justice and she knows the neighborhood.

THE COURT: Miss Beimdiek?

MS. BEIMDIEK: No response as to that juror.

THE COURT: Miss Moore-Dyson?

MS. MOORE-DYSON: I think her responses were that she would not give his testimony any more weight than anyone else and basically the acquaintance was, though friendly, was not something that, where they sat down and discussed his business. That's the only

responsive.

MR. HAGEMEISTER: For all I know that's because she doesn't like the man.

THE COURT: Anything further with respect to this venirewoman?

MS. BEIMDIEK: No, Your Honor.

THE COURT: Next?

MR. HAGEMEISTER: Singleton Harris. Again, somebody with a arrest and not just an arrest in this case, actually a conviction. That he failed to mention to the Court.

You'll see that on Mr. Lawson, that's the similarly situated white juror, that I struck him as well. Anybody that had arrests that kept them from the State, I struck.

Mr. Harris not only has that conviction, he also has one, two, at least two, one looks like a third, but I don't want to say it for sure on the record, arrests that he didn't mention. Again these records were run unilaterally on all the jurors and were made as accessible to the defense as they were to the State.

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MS. BEIMDIEK: I did look at these records. I am not an expert at reading them. I am asking what conviction you believe he has.

MR. HAGEMEISTER: Patronizing prostitution.

MS. BEIMDIEK: Again, Your Honor, I believe that the juror should have been afforded an opportunity to respond to that. I realize the Court indicated previously that you offered us an opportunity to further inquire; however, I don't think that they are my challenges for cause, that I'm not called upon to justify. It is the State's challenges and they must be factually supported and not speculative at this point.

So while I don't think I have a burden to rehabilitate a juror who on the record has not yet demonstrated any basis for challenge, I think the State had the duty to do so and failed to.

MS. MOORE-DYSON: I think personally the State, the reason for not doing it in that manner was so that he could not look bad or become the bad person to the jurors in general and he indicated that he wanted to do it first in camera and then decided to do it by peremptory challenges so that he could besmudge their reputations without their knowing about it. Basically he's getting an opportunity to do so.

If you read those records, many times you have same neighbors, nicknames, and they may not be the same persons, or you might have persons using

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someone else's name and getting arrests records on there. There's no way that can be said that these people are one and the same. If those are your reasons and the only for having those people struck, I think that is unfair.

MR. HAGEMEISTER: Singleton Harris, listed black male, 5'10", 150 pounds, 46 year old coincide perfectly with the person represented in court with the age given on the jury roster.

I don't want to look like the bad guy for reading out people who are dishonest during jury selection in front of the jurors who make the panel. I would be foolish and I wouldn't be fairly representing the victim and the State of Missouri where I call them up to the side-bar and embarrass these separate jurors.

I would be happy to have done it in camera and I still am happy to do it in camera, but I know I would have a good faith basis.

THE COURT: Anything further with respect to Veniremen 816?

MS. BEIMDIEK: No, Your Honor.

MS. MOORE-DYSON: No, Your Honor.

THE COURT: Anything further?

MR. HAGEMEISTER: Judge, on page 6 the State

has no peremptory challenges and the last juror on page 6 is going to be No. 12 on the panel.

So the last strike that the State could potentially be called upon to justify would be its strike of Loretta Bruton. Miss Bruton had a niece shot three times in the back three weeks ago. She has prostitution arrests that she did not mention. She was wearing a hat in court. She knew one of the other jurors. And she was somebody who was short in stature and sat behind somebody and from the times that I talked to her --

THE COURT: I thought it was a member of the family that had been shot --

MR. HAGEMEISTER: A niece.

THE COURT: -- several times within three weeks.

MR. HAGEMEISTER: That was her niece, that's correct. This is a shooting case and, again, she has arrests that she failed to mention to the Court. As I try to find the page that it's on, I can tell you how many there were.

MS. BEIMDIEK: Judge, I have no challenges to this juror.

THE COURT: Very well.

MS. BEIMDIEK: Or any responses to that

juror given the reasons provided by the State.

THE COURT: Then that Venireperson 817 is not --

MS. BEIMDIEK: 187.

THE COURT: -- is not one of the venirepersons subject to your motions?

MS. BEIMDIEK: No.

THE COURT: Is that correct?

MS. MOORE-DYSON: That's correct.

THE COURT: For the defendant Morant?

MS. MOORE-DYSON: Right. I probably would have joined in the fact that she had a recent shooting in her family, that would have been a concern to me as well.

THE COURT: Anything further?

MS. BEIMDIEK: The last alternate strike exercised by the State was Miss Jones, No. 444.

MR. HAGEMEISTER: What page is that?

MS. BEIMDIEK: 8.

MS. MOORE-DYSON: 8.

MR. HAGEMEISTER: She was inattentive, Judge. Any arguments from defense counsel on that?

MS. MOORE-DYSON: I am not going to challenge that one.

MR. HAGEMEISTER: I say with a small

chuckle.

MS. BEIMDIEK: I'm not going to challenge that one.

THE COURT: Well, you all had your say. Anything further with respect to this motion?

MS. MOORE-DYSON: No, Your Honor.

MS. BEIMDIEK: No, Your Honor.

THE COURT: Is the defendant's joint Motion to Quash, set aside, and vacate certain peremptory challenges exercised by the State heard and submitted on behalf of the Defendant Wade?

MS. BEIMDIEK: Yes, Your Honor.

THE COURT: Said motion heard and submitted on behalf of the Defendant Morant?

MS. MOORE-DYSON: Yes, Your Honor.

THE COURT: And is the motion heard and submitted on behalf of the State?

MR. HAGEMEISTER: Yes, sir.

THE COURT: Let the record show that the defendants' joint Motion to Quash, set aside, and vacate certain of the peremptory challenges of the prosecutor on the grounds that said peremptory challenges were exercised for impermissible racial reasons has been heard and submitted.

The Court now finds beyond a reasonable

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doubt that:

1. The prosecutor has given specific and racially neutral reasons for his peremptory challenges of Shirley K. Bradford, Juror No. 1132, Darren L. West, Juror No. 205, William Patterson, Juror No. 252, Glenn A. Lucas, Juror No. 214, Phyllis Thomas, Juror No. 1152, Singleton L. Harris, Juror No. 816, and Jamesanna Jones, Juror No. 444.

2. The prosecutor's challenges were neither pretextural nor exercised for impermissible racial reasons.

Accordingly, the joint motion of the defendants Carlos D. Wade and Tyrone D. Morant to quash, set aside, and vacate the prosecutor's subject peremptory challenges is hereby overruled.

Please prepare a memorandum for the clerk showing that the motion has been heard, submitted and overruled.

MR. HAGEMEISTER: Judge, could we go off the record.

(Proceedings were had off the record)

MR. HAGEMEISTER: Judge, the State understands that the law has provided equal rights for members of the jury of the opposite race of the defendant to serve on those juries. I would point out

that the defendant Carlos Wade's attorney made three strikes, all of white jurors, with the defendants being African-American.

To be honest with the Court, I can see two arguments that can be made on the first two, but on the third one I can see no reason on William Hoelscher.

THE COURT: Which are you seeking by your oral motion to --

MR. HAGEMEISTER: William Hoelscher.

THE COURT: Only that one?

MR. HAGEMEISTER: That's correct.

THE COURT: With respect to the Defendant Wade?

MR. HAGEMEISTER: That's correct.

THE COURT: That you're asking the Court to quash, set aside, and vacate?

MR. HAGEMEISTER: Yes, sir. And ask that the defense attorney provide a race neutral reason.

THE COURT: Miss Beimdiek?

MS. BEIMDIEK: Judge, Mr. Hoelscher was, I think, curt with the State in giving answers. He was strictly reserved to yes and no answers without any editorializing, any behavior that suggested he had given any additional thought to the questions.

I decided to go at him with questions as well and received the same treatment, if not what I perceived to be even more curt answers, strictly yes, strictly no, arms folded as he gave the answers.

Yes, I probably should have made a record of his demeanor at the time. I think his answers at least are on the record as being simply yes or no answers, offering slightly nothing further despite --

THE COURT: So based on that you determined, what?

MS. BEIMDIEK: That he was hostile to me. He might have been hostile to the entire situation. I think he was a little hostile to the State. I perceived him to be anxious to get this over with, to not prolong it by giving additional answers. I think that's a knee jerk decision. It transfers to knee jerk decisions in the jury room.

THE COURT: Mr. Hagemeister, anything further with respect to Mr. Hoelscher?

MR. HAGEMEISTER: No, that's my argument, Judge.

THE COURT: Thank you.

MR. HAGEMEISTER: With regard to Defendant B's strike, the State makes the same motion on the strike by defense counsel Moore-Dyson on Roy

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Hessling on page 5.

MS. MOORE-DYSON: Your Honor, my decision was based primarily on the fact that he himself had been a victim of a crime. He head relatives who were also victim, not a victim of a crime but had been arrested. He stated that he felt that their relative who had been arrested had been treated fairly and so forth. I just tended not to believe him at that particular point.

He also has had civil jury experience which basically was basically neutral. Of the people that I was considering, I did not, and as neutral as I can be with him, I just did not -- I got some wrong vibes from him actually. I can't say anything more specifically than that. He was not that responsive. I didn't get that much feedback on him. From the pool that I had, he was just one of many that, for those reasons that I excluded.

MR. HAGEMEISTER: I will respond, with the Court's permission.

THE COURT: Certainly.

MR. HAGEMEISTER: He had a brother arrested for receiving stolen property. He believed that brother was treated fairly. There is no record of him having been a victim of a crime.

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There are similarly situated African-American jurors, namely Joyce Trotter, son arrested for a carjacking, Karol McCulley, brother arrested for a robbery, Daniel Arens, who had a brother arrested, I believe, I didn't get to finish that note, but that's where I put that.

MS. MOORE-DYSON: Arens is white.

MR. HAGEMEISTER: Strike Arens. Hubert Burton, who he himself was burglarized. I'm sorry. Strike that. That was a victim.

Those two African-American females both had relatives, I would say even closer relatives charged and their relatives were treated fairly. I don't see how they can be differentiated from the person that she struck.

MS. MOORE-DYSON: Your Honor, there was several whites in the panel I did not choose to strike and some of those situations were similar as well. What I basically -- sometimes you boil down to just the feeling and the answers that the people give. The person gave a neutral answer, but somehow you felt it was untrue by their mannerisms, the way they may have hesitated.

I can't specifically remember why I made the notations that I made at the time. I went basically,

in making my strikes, on the notations that I made at the time in reviewing that particular pool.

So I can, I can't even remember specifically why I made it, but I did make a notation of those things and that's the reason why I made it at this time.

MR. HAGEMEISTER: Judge, I believe when they came up with the reverse Batson, they applied the same law against defense counsel as against the State.

MS. MOORE-DYSON: I agree.

MR. HAGEMEISTER: When the State is held to this minimal burden that Miss Moore-Dyson is imposing on herself, I believe that the whole idea of having a Batson challenge in the first place will become mute. If she says I don't remember what it was, I just wanted to strike him when there --

MS. MOORE-DYSON: Your Honor, that was not stated at all. What I stated, I wrote down certain things with regard to each person as they were questioned and notes that I saw.

As I was reviewing those particular notes and reviewing those different things, I remembered that there was a negative feeling, I could not specifically remember exactly what, but it was based upon how the question was answered that goes right to

the same types of decisions that the prosecutor was making with regard to, I couldn't take a chance, they said these things but I don't believe them, or I said certain things. I believe that being a human being, subjectively we make those decisions. That was not made on the fact that he was white.

THE COURT: Thank you. Anything further?

MR. HAGEMEISTER: Nothing, sir.

THE COURT: Is the State's oral motion to quash, set aside, and vacate certain of defense counsels' peremptory challenges heard and submitted on behalf of the State?

MR. HAGEMEISTER: It is.

THE COURT: Heard and submitted on behalf of the Defendant Wade?

MS. BEIMDIEK: Yes, Your Honor.

THE COURT: Heard and submitted on behalf of Defendant Morant?

MS. MOORE-DYSON: Yes, Your Honor.

THE COURT: Let the record show the Court now finds beyond a reasonable doubt that:

1. Defense counsel have given specific and racially neutral reasons for their peremptory challenges of William D. Hoelscher, Juror No. 960, and Roy L. Hessling, Juror No. 113.

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2. Defense counsels' challenges were neither pretextural nor exercised for impermissible racial reasons.

Accordingly, the State's oral motion to quash, vacate, and set aside defense counsels' peremptory challenges of Jurors 960 and 113, having been heard and submitted, is hereby overruled.

I'll also need a memo on that ruling. You may do that after we have seated the jury. It's obvious we won't be able to get to the defendants' motions. It's the Court's intention to conduct hearing outside the presence of the jury tomorrow morning, is that agreeable to the parties?

MR. HAGEMEISTER: Yes, sir.

MS. BEIMDIEK: Yes, sir.

MS. MOORE-DYSON: Yes, sir.

THE COURT: I expect you to return at 9:30 and the jury return at 10:00. Do you think a half hour is sufficient time?

MR. HAGEMEISTER: I have two witnesses.

MS. BEIMDIEK: I'd say 10:15 to be safe, because both of us will ask questions.

THE COURT: Very well. Why don't we make it 10:30 to ensure that you have sufficient time. Is that agreeable?

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MR. HAGEMEISTER: Can we wait to swear the jury in until tomorrow?

THE COURT: Counselor, certainly. I never swear a jury in when they're -- if I'm not ready to proceed with opening statements.

MR. HAGEMEISTER: Thank you, sir.

THE COURT: Your request will be granted. Now I understand, pardon me for being repetitious, did I give you an opportunity, have we taken care of everything with respect to the jury?

MR. HAGEMEISTER: Judge, I want to put on the record the State has informed both defense counsel this morning that it intended to call a G.W. Wells as a witness. There's no surprise. Mr. Wells is addressed in the deposition taken by defense counsel, which both defense counsel have copies of.

He was the person who resided in the residence that the victims walked out of prior to being shot. He was present during a fight that occurred between the two defendants and two of the victims and I would be happy, of course, to allow the defense attorneys to have any time they need to speak to that witness prior to his testifying.

THE COURT: Anything further?

MS. MOORE-DYSON: Your Honor, I'm going to

object to that, to that witness being brought in for two reasons. One, we have a situation where my client is alleged to have been at involved in a fight. There's a lot of dispute coming from his witness as to whether or not he was there at all.

I had no way to prepare for the fact that there was a second so-called witness to this particular event and didn't know that particular one.

The depositions referred to him being at the apartment, but it said nothing about nor does it address -- I had no warning there was a second witness that would place my client at a fight with somebody else.

I object to that person being endorsed. The prosecutor knew about him all this time and he could have been endorsed as a witness.

MR. HAGEMEISTER: He was listed, I believe, in the deposition, at least I know he was, maybe in the police report.

THE COURT: Listed as what?

MR. HAGEMEISTER: As being a potential witness in this case.

MS. MOORE-DYSON: No, he's not.

MR. HAGEMEISTER: Not listed as an endorsed, but named in the police report as being involved in

the actual activities just prior to the homicide. The only testimony he's going to give.

THE COURT: Is the gentleman's name in the police report?

MS. BEIMDIEK: I don't believe it's in the report, Your Honor.

MS. MOORE-DYSON: No, no, it's not in the police report.

MR. HAGEMEISTER: I have to check if it's in the police report. They've had the deposition for quite some time.

MS. MOORE-DYSON: The man --

MR. HAGEMEISTER: I'm sorry.

MS. MOORE-DYSON: I'm sorry.

MR. HAGEMEISTER: All he's going to do is say on one of the prior instances where there was a fight at Bill's auto shop, auto sales, that both of the defendants were there fighting with the two victims. He's relevant, but that's not something that is going to require any great degree of questioning by either defense counsel.

MS. MOORE-DYSON: Your Honor, this is one of those prior uncharged acts that he had problems with from the beginning. If it's going to be one that you're going to allow, you indicated that he, and he

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indicated in chambers that the witness Bell would testify to this, at that time he didn't mention that this person, G.W. Wells, was also going to testify.

We had no idea there would be a second person to testify to these actions. We have no way of knowing whether or not these stories were concocted after the fact. Obviously they had talked to the prosecutor about it.

THE COURT: Well, is it conceded by defense counsel the man is referred to in the deposition?

MS. MOORE-DYSON: As that was, they were at his house, that was all that was said. They were at his house.

THE COURT: Well, is he referred to as the owner or occupant of the house?

MS. MOORE-DYSON: Yes, Your Honor.

THE COURT: Where the alleged fight occurred?

MS. MOORE-DYSON: That's true.

MS. BEIMDIEK: If I may, Judge, that was about the extent of it. We asked what house they were in, G.W. Well's home is what they said. I asked if he still lived at that address and they said no. He was not a witness to the shooting. There was no reason for us to interview him.

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At this point I would not have known where to find him. I asked if he still lived at that address on Martin Luther King. No, he doesn't live there now. This was Johnnie Bell's deposition at page 36.

That was the extent of the mention of this witness. He never was mentioned during any deposition about his being a witness in these other altercations that Johnny Bell was apparently party of. He never put on --

MR. HAGEMEISTER: Judge, he's across the hall. He'll stay as long as they want him to stay.

MS. BEIMDIEK: The point is this isn't trial by ambush. If one of our theories is that these alleged prior incidents, that I think are prejudicial to begin with, are fabricated, the State now has an unfair advantage on the morning of trial to say, oh, by the way, I have one more witness who will say this happened.

That's what discovery is all about. This isn't, as I said, some kind of ambush where we wait until he feels he's at a disadvantage and now he'll offer this up.

I believe he intends to offer Mr. Wells to testify that one of the witnesses was not smoking

marijuana, which is alleged by his other witness that she was. He was going to come in and say he was up in that apartment right before she left and she wasn't smoking.

If the State was aware of this information, again they had a duty to make it, provide it to us before the morning of trial. This guy was not listed as a witness. I don't believe he's named in any police report, not listed as a witness in any police report. He was never endorsed. His name was mentioned among many names of people without any further particularity provided. I move to exclude him as a witness.

MR. HAGEMEISTER: I met him for the first time last week, Judge.

THE COURT: The Court will reserve ruling and counsel for the parties are directed to examine the police report to determine if this gentleman's name is mentioned in discovery materials that were furnished as a matter of course to defense counsel.

Anything further before we bring the jury panel in?

MR. HAGEMEISTER: No, sir.

MS. BEIMDIEK: No, Your Honor.

(The following proceedings were had in the

presence of the jury panel:)

THE COURT: Mr. Bailiff, please seat the jury.

(Jury and one alternate seated but not sworn)

THE BAILIFF: Your Honor, this is your jury.

THE COURT: Thank you, Mr. Bailiff. What was the last number?

THE BAILIFF: 87.

THE COURT: Counsel, approach the bench.

(The following proceedings were had at the bench out of the hearing of the jury panel:)

THE COURT: Mr. Hagemeister, are the members of the panel just seated the jurors and alternate juror you have selected on behalf of the State to try the issues in this cause?

MR. HAGEMEISTER: They are, Judge.

THE COURT: Miss Beimdiek, are the members of the panel just seated the jurors and alternate juror you have selected on behalf of the Defendant Wade to try the issues in this cause?

MS. BEIMDIEK: Yes, Your Honor.

THE COURT: Miss Moore-Dyson, are the members of the panel just seated the jurors and alternate juror you have selected on behalf of the

Defendant Morant to try the issues in this cause?

MS. MOORE-DYSON: Yes, Your Honor.

THE COURT: Thank you, Counsel. I'll see you tomorrow morning at 9:30 a.m.

(The following proceedings were had in the presence of the jury panel:)

THE COURT: I would like to thank the members of the panel not selected as jurors in these cases for your service in Division 11. I ask you to remain seated until after the jury has left and the Sheriff will direct you as to your duties for the remainder of the day.

Ladies and gentlemen of the jury, you are again reminded what you were instructed at the first recess of the Court. You are not permitted to discuss this case among yourselves or with others or remain in the presence of anyone who is discussing the case when the Court is not in session. You're not to form or express any opinion about the case until it's finally given to you to decide. You are not to listen to or view any radio, television or read any newspaper report of the trial.

Since there are matters that will come to the Court's attention tomorrow morning, you are instructed to return to Division 11 tomorrow morning

at 10:30 a.m. Please remember again 7-11, seventh floor, Division 11. Thank you and good evening. You may leave. The Court will be adjourned until tomorrow morning at 9:30a.m.

(Proceedings were adjourned for the day)

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CONTINUATION OF
MOTION HEARING

(The following proceedings were had before the selection of the jury and were held on November 14, 1996:)

THE COURT: Let the record show that outside the presence and hearing of the jury we will proceed to hear the defendants Motions to Suppress Identification Testimony. Are the defendants ready to proceed?

MS. BEIMDIEK: Yes, Your Honor.

MS. MOORE-DYSON: Yes, Your Honor.

THE COURT: State ready to proceed?

MR. HAGEMEISTER: Yes, Your Honor.

THE COURT: You may proceed.

MR. HAGEMEISTER: The State calls Angela Hickman.

THE COURT: Is it stipulated and agreed that the defendant waives Motion to Suppress Identification Testimony and Defendants' Motion to Suppress Identification testimony are consolidated for purposes of hearing?

MS. BEIMDIEK: Yes, Your Honor.

MS. MOORE-DYSON: Yes, Your Honor.

THE COURT: Mr. Hagemeister, is that so

stipulated?

MR. HAGEMEISTER: Yes, sir.

THE COURT: Proceed.

ANGELA HICKMAN

having been first duly sworn, testified:

DIRECT EXAMINATION

BY MR. HAGEMEISTER

Q State your name.

A Angela Shirrell Hickman.

Q Miss Hickman, I want to direct your attention to September 17th, 1995, and a shooting that occurred approximately 11:25 p.m. on that night. Were you present at the 4200 block of Martin Luther King during that shooting?

A Yes.

Q Who was with you?

A Me, John Allen and Johnnie Bell.

Q Who was shot?

A John Allen.

Q Did you have a chance to see the people that were shooting?

A Yes, I did.

Q Did they ever catch one of those people on that evening?

A Yes, they caught -- it was really the one

they called Tyrone, but I didn't know his name at the time, but they called one --

Q So you're saying it was like after midnight?

A Yes, it was after midnight.

Q And which would have been about a half hour or a little more than a half hour after the shooting?

A Yes, about a half hour, a little bit more.

Q And the person they caught, how did you -- where did you see that person?

A They asked me to come down about at Whittier and Martin Luther King, which was down the street from where it happened, and asked me to point him out in the lineup.

Q And what do you mean a lineup?

A Well, they had each one of them get out of the car one by one and ask me did I recognize anyone as being one of the shooters that had been in the car.

THE COURT: I'm sorry, you said this was at Whittier and what?

THE WITNESS: Martin Luther King.

THE COURT: Thank you.

BY MR. HAGEMEISTER

Q There were police officers there getting these two people out of the car?

A Yes.

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Q The two people they got out of the car, did you look at them?

A Yes.

Q And did you recognize either one of them?

A I recognized one for just -- I knew him, but I don't know if he was in the car. But the other one was in the car and I identified him.

Q I want to make sure this is straight. What do you mean by in the car?

A He was in the car that did the shooting.

Q Okay. Was he shooting?

A Yes.

Q And the one that he identified was Tyrone Morant?

A Yes.

Q Do you see him in the courtroom today?

A Yes.

Q Can you tell us where he's sitting and what he's wearing?

A Right there in the white shirt, he has on a tie, and -- but he has his hair cut because it wasn't --

Q There's two people with white shirts and ties. Is he on the left or right?

A On the left.

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MR. HAGEMEISTER: May the record reflect the witness has identified Tyrone Morant.

THE COURT: The record may so reflect.

BY MR. HAGEMEISTER

Q Did the police officer give you any ideas or tell you that they wanted you to pick out one of those two guys or asked you if you recognized anybody?

A They asked me if I recognized anybody.

Q You told them that was one of the guys that was shooting?

A Yes.

Q And did you know who the other shooter was?

A Yes, I did.

Q How did you know him?

A He stayed across the street from me.

Q What's his name?

A His name Carlos, but I didn't know his last name at the time.

Q And do you see him in the courtroom today?

A Yes, I do.

Q Can you point him out and tell me what he's wearing?

A Right there. He the one in the white shirt with the tie, on the right side.

MR. HAGEMEISTER: Can the record reflect

that the witness identified Carlos Wade.

THE COURT: The record may so reflect.

BY MR. HAGEMEISTER

Q You didn't see Carlos Wade on that night?

A Which night?

Q After the shooting, did they catch him that night?

A No.

Q When did you point him out to the police?

A The morning I went down to the office.

Q And they had a photo spread for you?

A Yeah.

Q Or they showed you some pictures?

A Yes.

Q When you looked at those pictures, did you see a picture of Carlos?

A Yeah.

Q Did you point out that picture to the police officer?

A Yeah.

Q He didn't give you any indication as to which person you should point out, did he?

A No.

Q You knew that person from how long before?

A He was staying across the street from me for

almost a year, so I knew him.

Q And you never knew his last name?

A No.

Q And when you picked him out in the picture, did the police officers ever that day make arrangements for you to go out and try to point him out on the street?

A Yes, they made arrangements for me to go show him where he stayed.

Q When you went out on the street, did you see him and point him out to the police?

A Yes.

Q And then he was arrested?

A Yes.

Q Was Carlos also a shooter?

A Yes.

Q And how many people were shooting altogether?

A Two.

Q So it would be just Carlos and Tyrone?

A Yeah.

Q Those were the shots that caused the death of John Allen?

A Yes.

MR. HAGEMEISTER: I have no further

questions.

THE COURT: Miss Beimdiek?

MS. BEIMDIEK: Thank you, Judge.

CROSS-EXAMINATION

BY MS. BEIMDIEK

Q Miss Hickman, before the shooting happened you were at 4236 Martin Luther King?

A Yes.

Q And you were inside that house with Johnnie Bell and John Allen?

A Yes.

Q And you were smoking some marijuana in that house?

A No, I was not smoking any marijuana.

Q Do you know if anybody else was smoking marijuana in that house?

A I can't say if I know they was smoking.

Q Would you have seen them smoking if they were?

A No, cause it's a house and I was all over the house.

Q When you left the house you came outside and a car came up almost immediately, isn't that right?

A Yes, it was almost immediately. We had -- I had stepped into the street and then a car pulled up.

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Q You had stepped off the curb right in front of the address on Martin Luther King?
A Yes.
Q The lights were off on that car?
A Yes, all the lights was off.
Q And almost immediately you heard shots fired?
A No, not almost immediately. After I stepped off the curb, the car pulled up; and by me having my head turned backwards, I was looking at them. When I turned back around, the car was already in front of me.
Q How many people were in that car?
A I seen around about three or four.
Q Do you know for certain how many people were in that car?
A No, it was around about three or four.
Q Now, do you wear eyeglasses?
A Yes.
Q Did you have your eyeglasses on that night?
A No, I had in some contacts.
Q Are you wearing your contacts today?
A No, I only need them for reading.
Q You only need your contact lenses for reading?

A Yes.
Q That's because you can't see up close?
A It's because I can't see like in small words or if it's too far away and stuff.
Q I'm not sure I understand.
A I only need them for readin'. I don't use them for like pictures or faces or places.
Q You have a harder time seeing things close to you and easier time seeing things far away?
A Some things like words, small words, then, you know, I probably have a problem seeing that, but not pictures or anything like that. I just use them for reading.
Q What's the name of your eye doctor?
A The one on Grand, the health clinic. I got some glasses from there, then I got some contacts when I was out of town.
Q I'm sorry, you were out of town so you got your contact lenses?
A Yes.
Q You didn't get your contacts here in St. Louis?
A No.
Q You weren't wearing your glasses that night?
A I was wearing some contacts that night.

Q Now, did you know who was seated in the front seat of that car, in the front passenger seat?
A Yes.
Q Who did you believe was seated?
A Carlos.
Q In the front passenger seat? Who do you believe was seated in the rear passenger seat?
A Tyrone. I don't believe -- I know it was him because I seen him.
Q Was this a two or four door?
A It was a two-door car.
Q Do you remember previously telling the police this was a four-door car?
A It was two cars, it was a gray car and a four-door blue car. I said that it was a gray car first and later on the blue car came by.
Q Miss Hickman, I'm only asking what you told the police about the car that did the shooting. Do you understand my question?
A I understand what you're saying.
Q Do you ever remember telling the police that this car was a four-door car?
A No. If I said no, I don't remember, but I know that the car was a two-door gray car, later on a four-door blue car, powder blue car.

Q Later on a four-door car drove by?
A No.
Q You never told the police it was a four-door car that did the shooting in this case?
A No, I don't recall that.
Q Now, after the shooting happened, you called 911?
A Yes.
Q The operator at 911 asked you who had done the shooting?
A Yes.
Q You told her some dudes shot your nephew?
A She was asking a lot of questions and plus another car was coming around.
Q Miss Hickman, I'm asking simply what you told the operator.
MR. HAGEMEISTER: Objection, she's not allowing the witness to answer the question.
THE COURT: Overruled. Do you understand the question?
THE WITNESS: What was it you said?
THE COURT: Please repeat the question.
BY MS. BEIMDIEK
Q I'm asking you when the operator at the 911 call asked you who shot or who was shooting, do you

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remember telling the operator some dudes were shooting?

A I don't remember exactly what I told who was doing the shooting. I don't remember exactly what I told them at the time.

Q Now, after the police arrived, you were asked to go and look at a car of people that had been stopped, is that right?

A Right.

Q What color was that car?

A Burgundy or red, a bright color.

Q Up until that time -- let me ask you this. How much time passed from the time the shooting happened until the police took you to look at that car?

A Oh, about, it was around 30, 45 minutes.

Q You were still at the scene?

A Yes.

Q At Martin Luther King?

A Yes.

Q You were talking to the police?

A Yes.

Q The next thing that happened, you went looking for the burgundy car?

A Yes.

Q Before you looked at that car and made an identification, you had not given the police the name of Carlos?

A Yes, I had.

Q Do you know to whom you gave that statement or that name?

A No, I don't remember to whom.

Q You don't know which officer it was?

A Right, but I gave his name.

Q Miss Hickman, do you remember when we took your deposition back on August 6th of 1995?

A I don't remember exactly what day it was, but I remember.

Q Page 36. I asked you the question: "So that was the first, after they had Tyrone, the first time you named Carlos was at that time?" And your answer was: "Yes." Do you remember telling me that under oath at your deposition?

A That the first time I named Tyrone was when?

Q Carlos. I asked you at the deposition if at the time after they had Tyrone, the first time you named Carlos was at that time? Your answer was yes.

MR. HAGEMEISTER: Judge, I believe that the defense attorney is misstating her question. The answer was much more extensive than yes. There was an

explanation after the yes.

THE COURT: Thank you. Proceed.

BY MS. BEIMDIEK

Q Do you remember telling me that was the situation, that you didn't name Carlos' name until after you identified --

A I don't remember.

Q You don't remember that?

A No.

Q Now, it wasn't until the next morning that you identified a photograph of Carlos, is that right?

A That's right. But it, it didn't happen until twelve because at twelve it was already the morning.

Q I understand. The shooting happened just before midnight. You went down to the police station that night, did you not?

A Yes, that morning.

Q Now we're into the next morning. Was it during that time period that you looked at a photograph of cars?

A Yes, I looked at a photograph.

Q Angela, did you actually see the shooting take place?

A Yes.

Q You saw the shots being fired?

A Yes.

Q Do you remember telling the police when you went down that night or earlier that morning, when they were taperecording your statement, that you did not actually see the shooting happen?

A It happened like, okay, when they pulled up in the car, I was standing right by the car. So when they -- they was like, where they at? They was like, where, where? Right there. They was asking where was it at.

When they stuck the gun out the car and pointed at, John stepped up to where I was at cause he knew what was going to happen or something, but when he stepped up, he told me to run.

Q Angela, my question that I asked you, and this time if you can answer it, please, did you tell the police you did not actually see the shooting?

A Did I tell the police that?

Q When they taped your statement, did you tell the police you did not actually see the shooting?

A I don't recall if I told them that or not.

MS. BEIMDIEK: That is all I have.

THE COURT: Thank you. Miss Moore-Dyson?

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CROSS-EXAMINATION

BY MS. MOORE-DYSON

Q Did you ever give the police a description of any of the people who did the shooting?

A Did I give them a description?

Q Yes.

A I think, yes.

Q What description did you give them?

A Of who?

Q Of the persons doing the shooting.

A I told them that Tyrone was --

Q Hold on one second.

A I said I didn't know his name -- pardon me?

Q You didn't know his name at the time so you didn't tell them Tyrone did anything?

A No, no.

Q What physical description?

A I said it was round and thin and kind of chubby with bushy hair.

Q What about the other --

A The other was, was brown skinned, but I knew him personally from living across the street.

Q You couldn't tell them how tall they were at that time?

A That's correct.

Q Did you tell them what he had on?

A I said dark clothes.

Q You didn't know exactly what he had on?

A Not exactly. I knew they had on dark colors.

Q Did you tell the police that you saw the gold teeth?

A No, I didn't say nothing gold teeth.

Q But the people who drove up in the car and who did the shooting were talking, isn't that correct?

A They was mumbling.

Q But they were talking loud enough for you to hear and you were outside the car, isn't that correct?

A That's correct.

Q They were asking, where are they, where were they?

A Yes, but I wasn't looking at their mouth, I mean, looking see if they, they had --

Q The center of their face?

A Yes.

Q If the person had gold teeth, all the way, way across the street at night, and you had sufficient light, you would have seen that, is that correct?

MR. HAGEMEISTER: Objection, calls for speculation.

THE COURT: Overruled. She may answer if she understands the question.

A I'm saying that looking at it at this time you don't just stare at nobody golds in they mouth.

BY MS. MOORE-DYSON

Q You weren't really -- you weren't staring at them, you mainly glimpsed at them shortly, you were trying to get out of the way of the car?

A No, I was still standing there until John told me to run.

Q And he stepped in front of you?

A No, he stepped on the side of me.

Q Okay. Then you, what did you do, did you run or fall?

A When he stepped on the side of me, he told me run.

Q Okay. What did you do?

A When I turned to run, they started shooting, they had already started shooting.

Q Did you turn away from the car or toward the car?

A I turned away from the car.

Q Which way did you run?

A I ran away from the car.

Q Okay.

A-300

A But I didn't get far away from the car before they started shootin', I was still back there.

Q Did you see the car coming?

A No, I didn't see the car coming.

Q Did they come up very quickly?

A They came you up very quickly.

Q John saw the car, saw what was about to happen and told you to run?

A John seen the car, he heard what they said and stepped up there to where I was at.

Q Did he move fast or slow?

A I can't exactly say fast or slow because I was standing there looking at the car.

Q You were looking at the car, you weren't looking at John. First you said you were looking back at them.

THE COURT: Just a moment. Give her an opportunity to answer. You may answer.

A Okay. When I -- I was turned looking at them. When I turned back around, the car was in front of me.

BY MS. MOORE-DYSON

Q Okay. At them, you're talking about Johnnie?

A Yes.

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Q And they were behind you?
A Yes, behind me.
Q On the street, on the curb?
A Johnnie was on the curb, John was somewhat in the streets.
Q Okay. So you were looking at them when the car first drove up, is that correct?
A Yes.
Q And was it at that time that John said something to you?
A No. I had turned back around cause the car, I had turned around and seen the car in front of me.
Q Okay. And they started shooting right away, is that correct?
A No, they -- they was like, There was those sissies right there.
Q First you said they were asking, where were they?
A Yes, they was saying, where they was at? One was saying, Where's those sissies? Where? Where? Where? In right there.
Q When after the incident happened, you ran across the street to call the police, is that correct?
A Yeah -- no, after the incidents happened, I ran to John.

Q Did you recall flagging somebody down?
A A policeman.
Q Was there another person who stopped, a lady in a nurse's uniform, do you recall that?
A I don't recall that. I don't recall that.
Q You don't recall a lady in a nurse uniform going over to him and checking his pulse?
A I can't remember.
Q You were excited at that point, is that correct?
A I wouldn't say I -- I couldn't believe it happened.
Q You were upset, is that correct?
A No, I can't believe it happened at that time.
Q Okay. Let me ask you this. How long, how long did you get a chance to look at the faces of the people in the car?
A The car was, it was there for about seven, eight minutes, something like that.
Q They pulled up and stopped?
A Yes, they stopped.
Q They stopped and started shooting?
A When they stopped, they leaned out the car, they leaned out the car. That's when how you seen who

they were.
Q Two people on the passenger side leaned out of the car?
A Yes.
Q They stopped?
A Um-hum.
Q They didn't start shooting immediately?
A No, not immediately.
Q They started shooting at that point, but at this point you see they have guns, is that correct?
A Right.
Q You're still standing there looking at them?
A Cause if I would have ran, I got shot; if I stayed, I got shot. So I was standing there. That's when John stepped up to where I was at and told me to run.
Q Did you ever tell the police -- you said when the police came around on Whittier, you indicated in your deposition on page 36 that about 20 minutes later the police brought them, had them step out of a car, is that right?
A It was -- I don't know exactly how much time it was after.
Q Shortly thereafter, right, they put you in a van, is it?

A I think it was a police car.
Q Okay. When they -- did they pull each person out one at a time?
A Yes.
Q Did they have them standing there together?
A One at the time.
Q Were they in handcuffs?
A I couldn't see.
Q Did they have their hands behind them?
A I didn't pay attention.
Q Did the police tell you, we got some guys or we got the guys?
A They told me to come and take a look at some peoples they stopped. They wanted me to see if anyone there was in the car.
Q Are these the only people they showed you that night?
A Oh, I think, yeah, it was only one they showed me.
Q Now, they stood -- when Tyrone stood in front of the car, you said you didn't know him, is that correct?
A I didn't know his name and I didn't know him personally, but I knew that he was in the car.
Q Have you ever seen him at Carlos' house?

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A 1 seen him over there, but I didn't know him.
Q You knew he hung out with Carlos, is that correct?
A Yeah.
Q And at the time when the police pulled him out of the car, you believed that Carlos had something --
A I didn't believe, I knew Carlos had something to do with it.
Q When they pulled him out of the car, did you recognize the other person that was there?
A I seen the other one over there over at his house, but I ain't recognize him as being in the car because I didn't see everybody in the car.
Q Where was Tyrone sitting in the car?
A In the back seat.
Q In the back seat. Did he do any talking?
A I can't say if he did any talking cause he was sitting behind Carlos.
Q He was in the back seat?
A Yeah.
Q Now, when you told the police, gave them his description, did you saying anything about his eyes, his eyebrows, his nose, his mouth, anything of that

nature?
A I don't think so.
Q You told him it was a chubby guy, is that correct?
A Um-hum.
Q Is that the only chubby person that hangs out with Carlos?
A No.
Q At the time you're saying that you saw that -- you, you recognized this person as being the person in the backseat of the car?
A Yeah.
Q Did you see him again later that night or the next morning?
A What you mean?
Q Did you see Tyrone at the police station the next morning?
A Yes.
Q How did that come about?
A Cause they had him in a lineup. It was like they had him behind a two-way glass or mirror.
Q By himself, is that right?
A No, I think he was with someone else.
Q I want you to think about that really hard. Was he there behind this two-way glass by himself?

Was he standing up?
A I think he was sitting down.
Q At a table?
A Yes.
Q Was anybody there with you?
A Yes, someone else was there with me.
Q Who else?
A Johnnie Bell.
Q Okay. And did Johnnie Bell look at him through the window?
A I don't know cause they took me to one place and took him somewhere else.
Q Did you have an opportunity to talk to Johnnie Bell prior to that?
A Before that you mean?
Q Yes.
A No.
Q And you had not told Johnnie Bell about the night before, about your identifying Tyrone?
A No.
Q You indicated that you -- he was in the room by himself?
A I didn't say that, I said I don't know for sure if he was in the room by himself. I think he was with someone else.

A-302

Q You walked up to the window and he was the only person there, not the only person there but they were not -- there was not a lineup, there were not four or five guys in a lineup, is that correct?
A That's correct.
Q Just him, is that right?
A No, I am not saying just him, I think there was someone else in the room with him also.
Q There wasn't a lineup?
A No.
Q Did they have him come up to the window and have you look at him?
A I walk past and back past.
Q And then you picked him out as the same person you had seen the night before, is that correct?
A Yes. It was all in the morning. It happened after twelve o'clock.
Q You had an opportunity to go home after?
A No, I didn't have -- right after the shooting it was after twelve already. I was at the police station from the shoot -- we didn't go home.
Q So about what time do you recall seeing him sitting there?
A Oh, it was about 2:00, 2:30, something like that.

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Q You were at the police station all this time?
A Yes. All this time, what you mean?
Q From 12:00 to 2:00.
A No, we got there and got situated, I guess situated and whatever, but I wasn't there from 12:00 to 2:00 because we stayed outside waiting for the paramedics and all that for a long time.
Q Was that at the scene before you actually saw him at, on Whittier?
A I ain't understand you.
Q You stayed and waited on the paramedics on Dr. Martin Luther King, is that correct?
A That's correct.
Q This was prior to your viewing Tyrone at the scene on Whittier?
A I viewed him fist. Then they took me back down there to wait for some more our family to get there, to wait for his mother to get there.
Q They took you from the scene directly to Whittier, is that correct?
A Right.
Q Had you -- you were in a van, is that correct?
A I wasn't -- I think I was in a police car.

Q And they, the persons that you were seeing couldn't see you, could they?
A No.
Q You said you were in a police car?
A Yes.
Q And you were sitting in the back seat?
A Yes.
Q Front seat?
A Back seat.
Q You looked at them through the back window?
A Yeah.
Q And you're saying that you picked him out saying that's Tyrone at that point?
A I didn't know who his name was or nothing like that.
Q Were they one at a time or both of them standing there?
A They had them to get out one by one, step into the light.
Q Did you tell the police that you were definitely sure that was the person?
A Yes, I told them I was definitely sure that was the person. And I still am.
Q You stood there looking -- when people are coming past shooting, you never indicated that you

tried to duck, fall down on the ground and looked before -- before looking and didn't see the people, is that correct?
A I don't understand.
MR. HAGEMEISTER: Objection, I don't understand the question.
THE WITNESS: I didn't either.
THE COURT: Overruled. She may answer if she understands.
THE WITNESS: I didn't understand.
BY MS. MOORE-DYSON
Q Did you ever tell the police when they came around the corner and started shooting that you fell to the ground with your face to the curb?
A When they came around the corner, I didn't just fall. The car stopped and all this happened.
Q Did you ever tell the police that happened?
A Yes, I told the police.
Q You told them that that's what happened, right?
A Told them what?
Q That you fell to the ground with your face to the curb?
A After, you know, after the guns was going off, yes, I fell.

A-303

Q Okay. You have contacts, you had those on. How long had you had them on that day?
A How long?
Q Yeah.
A All day.
Q You had your contacts in all day?
A Yeah.
Q Do they irritate your eyes if you have them in for several hours?
A Sometimes.
Q And you'd been in a room where they had been smoking something?
A I wasn't in the room where they was smoking.
Q Were your eyes irritated that night?
A No.
Q Was the lights, the lighting on Dr. Martin Luther King, were the street lights on?
A Yes, they was on.
Q None of them were blown out?
A No.
Q You got a good view of these people?
A Yes, I did.
Q They were sitting inside the car?
A Yes.
Q Did either of them have on any hoods?

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A No.
Q There were no hoods on any of the jackets?
A On their jacket?
Q On their coats. Did any of them have a hood on?
MR. HAGEMEISTER: Objection. Are you talking about over the head or are you talking about --
MS. MOORE-DYSON: On their clothing.
A They -- I can't say what's he got on behind him.
BY MS. MOORE-DYSON
Q You're saying they were sitting in the car with their backs back and you couldn't see the hoods?
A Until they leaned down, I could see if a hat fell around.
Q You didn't see a hood?
A I didn't see a hood. I'm not saying they didn't wear one, I'm saying I didn't see it.
Q When you saw Tyrone at the scene, did he have on a hood?
A I can't recall.
Q Okay. So the clothing that he had on was not, other than -- do you know whether or not the clothing he had on at the time you picked him out was

dark or light?
A It was dark.
Q The clothing matched what you told the police the person had on?
A I can't recall, but I know his clothes he had on in the car was dark.
Q The clothes he had on was dark?
A Dark, dusty looking.
Q Did the other guy have on dark clothing as well?
A I think one of them had dark shirt.
Q And the other one had on?
A I can't remember. I can't recall.
Q Was it a red jacket?
A I can't recall exactly he had on.
Q Did both of them have on dark clothing?
A Who?
MR. HAGEMEISTER: Objection, asked and answered.
THE COURT: Overruled.
MS. MOORE-DYSON: Thank you.
THE COURT: Did both the people you saw have on dark clothing, I believe is the question?
MS. MOORE-DYSON: Yes.
A Both which two peoples?

BY MS. MOORE-DYSON
Q At the car.
A While I was at the car or --
Q While you were in the car viewing the other two people that the police officers took out of the car.
A So you asking did all three have on dark clothing?
Q There were three people?
A Yes.
Q All three people that came out of the car?
A Yes.
Q The police officers took three people out of a detective's car, the burgundy car, and brought them one at a time for you to look at?
A That is correct.
Q Did all three of those persons have on dark clothing?
A No, I recall two having on dark clothing.
Q And do you know which two that was?
A Yes, one was Tyrone. I don't know the other one name. I didn't even know his name.
Q Were all three of them heavyset?
A No.
Q Were two of them slim?

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A If I'm not mistaken I think so, but I'm not for sure.
Q There were two slim guys and one heavyset guy, is that correct?
A I'm not sure how much they weighed.
Q There was one clearly heavier than the two?
A There was one, I know.
Q That was Tyrone who was heavier than the other two?
A Not just he was heavy, I didn't identify him cause he was heavy.
Q Tyrone was heavier than the other two?
A I don't know exactly how many the other two guys was weighing.
Q But they were not as heavy as Tyrone?
A I don't know, I was looking at they face, not how much they weighed.
Q Were their faces as heavy as Tyrone's?
A I don't recall.
Q Was the clothing that was not dark, was it red, or do you recall?
A I don't recall.
Q When you saw Tyrone in the -- at the police station, was he still wearing the same clothing you saw on him before?

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A Yes.
Q Was the other person wearing dark clothing?
A He had on the same thing, but I don't remember what the other guy still had on.
Q He was a person slimmer than Tyrone?
A I can't say. I don't know how much he weighed.
MS. MOORE-DYSON: I have nothing further.
MR. HAGEMEISTER: No redirect.
THE COURT: Thank you. You may stand down, ma'am. Call your next witness.
MR. HAGEMEISTER: The second witness knew the defendant Carlos Wade and therefore the State won't call him at this time. I guess I can call and ask him that one question, if it pleases the Court.
THE COURT: It's up to you, Counselor. Let's move on.
MR. HAGEMEISTER: I'll call him.

JOHNNIE BELL

having been first duly sworn, testified:

DIRECT EXAMINATION

BY MR. HAGEMEISTER

Q State your name, please.
A Johnnie Bell.
Q Mr. Bell, were you present when John Allen

was shot and died on September 17?
A Yeah.
Q Do you know who shot him?
A Yeah.
Q Did you see the people who shot him or did you have some other way of knowing who shot them?
A I heard 'em talking.
Q Who did you hear talking?
A Carlos Wade.
Q How do you know it was Carlos Wade that was talking?
A Because I know his voice.
Q How do you know his voice?
A He used to go to school with me and I talked to him on a lot of occasions.
Q What did you hear him say?
A In the car?
Q Yeah.
A He said, he said, I heard, "There go them sissy motherfuckers."
Q Do you see Carlos Wade in the courtroom today?
A Yes.
Q Can you point him out, where he is, what he's wearing, where he's sitting? Who is he sitting

next to?
A His lawyer.
Q Which lawyer?
A Right here.
Q I know. I got to make sure you point out the person. Where exactly is he sitting?
A Right here. He got on a white shirt with gray tie.
Q All right. There's two guys with white shirts. The guy on the left or the guy on the right?
A On the right.
MR. HAGEMEISTER: May the record reflect that the witness identified Carlos Wade.
THE COURT: The record may so reflect.

BY MR. HAGEMEISTER

Q The police officers asked you to look at some photos a couple days after that?
A Yeah.
Q Did you look at those photos?
A Yes, I looked at them.
Q Did you see Carlos' picture in there?
A Yeah.
Q Did you pick him out?
A Yeah, I picked him out.
Q Did the police officer tell you you needed

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to pick anybody out or anything like that, or did he ask you to look at them?
A He just asked me to look at them.
MR. HAGEMEISTER: I have no further questions.
THE COURT: Thank you. You may inquire, Miss Beimdick.
MS. BEIMDIEK: Thank you.

CROSS-EXAMINATION

BY MS. BEIMDIEK

Q Mr. Bell, before the shooting happened at 4236 Martin Luther King were you in a house --
A Yeah.
Q You were there with Angela Hickman?
A Yeah.
Q And Mr. Allen?
A Yes.
Q You all were smoking marijuana in that house?
A Yeah.
Q You were smoking?
A Yeah, I was smokin'.
Q Angela was smoking?
A No, she wasn't smokin'.
Q You never testified at your deposition she

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was the one that was smoking, that provided --

A Yeah, I remember testifying that in my deposition. But the reason that I did that, because I didn't want to be in the room testifying, telling you all anything, really, because I don't want him to go to jail.

Q Why is that?

A Cause my partner ain't in jail, my partner dead. I can't go see my partner, why the fuck should they go see him?

MR. HAGEMEISTER: Johnnie --

BY MS. BEIMDIEK

Q So because of those feelings you lied about who was smoking marijuana?

A I wasn't really paying no attention to the question you was asking me.

Q Now, this car that pulled up, can you tell me who was seated in the front passenger seat?

A Nope.

Q Can you tell me who was seated in the back passenger seat?

A No. I told you already all I heard his voice in the car.

Q Do you remember telling the police that you were almost positive that that was Carlos Wade's

voice?

A Yes, I am positive it was his voice.

Q I'm sorry?

A I am positive it was his voice.

Q Do you remember saying almost?

A I remember saying positive, I don't remember saying I was almost positive.

Q When the police first asked you about this incident, you told them you didn't see the shooters, is that right?

A Yeah, that's right.

Q It wasn't until several days later that you gave him the name of Carlos?

A Yeah.

Q Do you remember which day that was?

A I don't remember what day it was.

Q Do you remember how many days after the shooting it was that you came up with Carlos' name?

A Maybe two or three, I don't know.

Q Was that when the police came back to interview you a second or third time?

A I'm not sure.

Q Well, let me ask it this way. Did you go down to the police volunteering information about who did the shooting?

A Yep.

Q You went to them?

A They came to me.

Q They came to you?

A Yeah.

Q You didn't actually -- so the only thing you could hear was the comments, "And there goes those sissy motherfuckers?"

A Yeah.

Q You didn't see anybody in the car?

A I seen, but I couldn't see who they was.

MS. BEIMDIEK: That's all I have.

MR. HAGEMEISTER: No redirect.

THE COURT: Just a moment, I believe Miss Moore-Dyson --

MR. HAGEMEISTER: He's not identifying Mr. Morant.

THE COURT: Well, do you have any questions?

MS. MOORE-DYSON: He's not identifying Mr. Morant at all?

MR. HAGEMEISTER: No.

THE COURT: Well, just a moment. Do you have any questions of this witness, Miss Moore-Dyson?

MS. MOORE-DYSON: Yes.

MR. HAGEMEISTER: Judge, I object to --

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THE COURT: Overruled.

MR. HAGEMEISTER: On a Motion to Suppress where the person hasn't identified her client, it's merely a deposition at this point.

THE COURT: Overruled.

CROSS-EXAMINATION

BY MS. MOORE-DYSON

Q You never told the police you saw Tyrone in the car, did you?

A No.

Q Did you later, did Angela later tell you that Tyrone was in there or tell you who Tyrone was?

A She ain't tell me who Tyrone was. I don't know, I don't even know Tyrone.

Q You never talked to Tyrone before, never seen him before?

A I had a fight with him once.

Q But you never saw, you never --

A I seen him before.

Q Didn't you tell the police you never saw --

A I said I ain't know who he was.

Q Did you ever tell them you had a fight with him before?

A They didn't ask me.

Q You never identified Tyrone in anyway, is

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that correct?

A No.

Q Did Angela ever tell you that when you -- you did go down and view Tyrone at the police station?

A Yeah, but I ain't know -- when they asked me was in the car, I couldn't see he was in the car because I didn't see nobody.

Q You said, "He be with him?"

A I said, "He be with him."

Q You were standing outside the door and you were looking at --

A Yeah.

Q And the police, you told the police that, "He be with him", is that correct?

A Yeah.

Q And you were talking about Tyrone hangs out with Carlos, is that correct?

A Yeah.

Q But you had not seen him that night, is that correct?

A I ain't seen him that night.

Q Where was Angela in relation to you when the incident occurred?

A Where was she?

Q Yes. When they drove up, where was Angela

standing?

A I am not sure where she was standing. I think she was like in the street and I was like standing back from her.

Q She was already in the street?

A Yeah.

Q Okay. When the car drove up, was she in the lane where they drove up in?

A In the rain?

Q Yeah. In other words, if she was standing in the street, was she standing out in the lane where the police, where the cars drive?

A Yes, she was standing out there.

Q So when the car drove, did she jump back on to the curb?

A No, she stood right there.

Q She was standing in front of the car, is that correct?

A I don't know what you mean by the front.

Q If the car is coming this way, was she standing in front of the car, to the side of the car, or what? They're coming head-on?

A She was standing, like, on the side.

MR. HAGEMEISTER: Judge, this is a deposition. What does this have to do with the Motion

to Suppress Identification?

MS. MOORE-DYSON: His ability to see and her ability to see.

MR. HAGEMEISTER: He agrees that he couldn't see.

THE COURT: Objection overruled. He may answer if he knows where Ms. Hickman was standing.

A Well, I couldn't tell exactly where she was standing.

BY MS. MOORE-DYSON

Q But you did testify in your deposition as to where she was standing, is that correct?

A I think so. I'm not sure.

Q You're not sure now?

A No, I'm not sure.

Q When did the shots come, immediately or did they --

A After they got through talking, the shots came, or doing whatever they was doing, I don't know what they was doing.

Q What did you do when the shots -- when they drove up?

A I ran.

Q Okay. Did everybody else run or fall to the ground, what?

A I don't know what Angela did because I wasn't trying to pay no attention because they were shooting at me.

Q Everybody went for protection, is that correct?

A I don't know what they did. I can't say what nobody else did, I can only say what I did.

Q Was it -- did this happen -- how long were they there when they drove up and someone said what they had to say and start shooting, or did they stay there for awhile?

A I can't tell how long we was. They shooting, I'm supposed to stop and counts how long we was --

Q Was it quick?

A I can't say if it was quick or not. I'm saying they shoot at me, I supposed to try to see how long it was before they -- what I supposed to stand there and let them kill me? And I couldn't be sitting there telling you this, is that right?

Q You're right. So it happened quick, right?

A Yeah, it happened quick.

MS. MOORE-DYSON: Nothing further.

MR. HAGEMEISTER: No redirect. No further evidence from the State.

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THE COURT: You may stand down.

MS. BEIMDIEK: I ask the Court admonish this witness that any outbursts or personal attacks on the defendants in front of the jury would be improper.

THE COURT: The Court will now advise the witness if he reappears as a witness that he is to confine his remarks to the questions addressed to him by counsel for the parties. Do you understand, sir?

THE WITNESS: Yeah, I understand.

THE COURT: Thank you. Anything further?

MS. BEIMDIEK: No, Your Honor.

MS. MOORE-DYSON: Nothing further.

MR. HAGEMEISTER: Nothing.

THE COURT: Defendants's Motions to Suppress Identification Testimony heard and submitted on behalf of the defendants?

MS. BEIMDIEK: Yes, Your Honor.

THE COURT: Heard and submitted on behalf of the State?

MR. HAGEMEISTER: Yes, Your Honor.

THE COURT: As I recall from the testimony, there was no lineup conducted at the police station, is that correct?

MR. HAGEMEISTER: Well, all there was was a photo lineup which was shown to each of the two

victims in this case.

THE COURT: I am not talking about the photo lineup. Is the Court's recollection of the testimony correct, Miss Hickman testified she identified the defendants at the scene?

MR. HAGEMEISTER: One defendant. And she named the other.

THE COURT: And that approximately 20 minutes to 45 minutes later at Whittier and Martin Luther King she identified both defendants, was that the testimony?

MR. HAGEMEISTER: No, Your Honor.

MS. MOORE-DYSON: Just one.

MR. HAGEMEISTER: The way the State understands the facts to be is that the witness Hickman sees both of the defendants during the crime. Shortly thereafter, 20 to 45 minutes, she's brought down to Whittier where one of the defendants, Tyrone Morant, has been brought so that she can look at him.

They go down. She points out Tyrone Morant as being one of the shooters. She has also mentioned she knows Carlos from across the street from the last year and he was the second shooter.

The next morning the police officers put a lineup together of photos because they find out what

Carlos' last name is and she looks at those photographs and picked out Mr. Wade.

THE COURT: I am not talking about the photo spread. Thank you. The Court had difficulty hearing or understanding the witness in some parts of her testimony. Is the statement of the prosecutor your recollection, Counsel, of Miss Hickman's testimony?

MS. BEIMDIEK: Yes, Your Honor.

THE COURT: I'm getting from the testimony that there was someone in the lineup room, but no lineup?

MR. HAGEMEISTER: Yes, Judge. This wasn't a lineup. It was more of a showup. It was shortly after the crime. It was within, the first one was within 45 minutes at least.

THE COURT: Are you talking about the photo spread?

MR. HAGEMEISTER: No, I'm talking about on that night the crime occurs, approximately 11:30, approximately midnight they've caught Mr. Morant and he's picked out on the street a half a block from the crime. It's right after the crime she says that's him.

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Later on they have him in the room behind the one-way mirror and she does it again for good

measure. That's all they do for Mr. Morant.

MS. MOORE-DYSON: No lineup.

MR. HAGEMEISTER: It's right after the crime and she says that's him. He was caught in the neighborhood and she says that's him. It's correct police procedure.

MS. MOORE-DYSON: Highly suggestive.

MR. HAGEMEISTER: She didn't pick out the second guy as being in the car.

MS. MOORE-DYSON: He's claiming --

MR. HAGEMEISTER: She didn't pick him out as --

MS. MOORE-DYSON: Dark clothing is all she said.

THE COURT: As I understood her testimony, and I believe you agreed to it, that when she appeared at Martin Luther King and Whittier she identified the defendant Morant as one of the shooters?

MR. HAGEMEISTER: Correct.

THE COURT: Now you want to go further and then go to the police station later after the defendant Morant is in custody?

MR. HAGEMEISTER: Well, they had them both down there and Mr. Morant in the room. They took her by again. She saw the same two people she had seen on

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the street again in a better lighting situation, or I don't know why they did it again. They're doing it again when they really don't need to, but that doesn't mean the first one is bad.

THE COURT: How do you answer the defendants' position that that was highly suggestive, since defendants had been taken into custody?

MR. HAGEMEISTER: Well, I answer that by saying if I were to steal the court clerk's purse and run out of the courtroom and 20 minutes later they see me standing outside out front and I match the description that was given, that they can bring me up alone to her.

THE COURT: We've already had that done. We're talking about a so-called lineup that is not a lineup or was referred to as a lineup. So, Counsel, you're to give me authority for your position.

MR. HAGEMEISTER: Judge, it is the State's understanding that if it's shortly after the crime, or we're only arguing about the showup at the police station, not the issue up on Martin Luther King and Whittier?

THE COURT: That's right, I'm talking about the police.

MR. HAGEMEISTER: The one at the police

station was redundant.

THE COURT: Yeah. Certainly. Well, that's the Court's point. Very well. Each prepare a memorandum showing that each defendant's Motion to Suppress Identification Testimony was heard and submitted and taken under advisement by the Court.

The Court agrees with the prosecutor that, and the defense, that the last identification by the witness Hickman at the police station after the defendants were arrested and in custody is redundant and did not constitute a lineup, and it appears to the Court at this time to be highly suggestive after Miss Hickman had already identified --

MR. HAGEMEISTER: The same person.

THE COURT: -- the same person twice.

MR. HAGEMEISTER: Once prior to that.

THE COURT: Well, what about the photo spread?

MR. HAGEMEISTER: That was the second defendant.

THE COURT: That was the second defendant. At any rate --

MR. HAGEMEISTER: It was done the next morning.

THE COURT: So you will be aware of the

Court's ruling, the motions will be overruled with respect to the identification testimony of Miss Hickman at the scene and her identification at Whittier, of the one defendant at Whittier and Martin Luther King, and any identification by photo spread.

MR. HAGEMEISTER: Should I instruct Miss Hickman she should not go into the showup at the police station?

THE COURT: The Court's ruling is that the motion is sustained as to the showup at the police station. So the motion, making the record clear that, so you understand the Court's ruling for the purposes of the memorandum to be filed, please show that the defendants' motion having been heard and submitted are now overruled in part and sustained in part.

The only part sustained is the repetitive identification after these defendants were in custody and in a lineup room and the Court specifically finds that no lineup was conducted.

MR. HAGEMEISTER: That's only with regard to Mr. Morant?

THE COURT: Yes.

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MS. BEIMDIEK: Your Honor, I had one additional matter. I would like to make a record, very briefly.

THE COURT: Very well.

MS. BEIMDIEK: It's my understanding that this morning, as both defendants were being brought into the court from the jail, still wearing the jail uniform and in handcuffs and I believe shackles, that one of the jurors, I believe it's Mr. Howard, Juror No. 1219, was in the hallway immediately behind them and had an opportunity to observe them in handcuffs and shackles.

At this time I'm not asking for any relief, I'm simply making a record of what I believe took place and would ask the Court to ensure that the defendants are not viewed in this capacity on any other occasions.

THE COURT: Counselor, you're asking the Court for the impossible. The Court has already instructed the sheriffs -- it would seem fruitless to point out, but I will for the record, that the elevators we have, generally half of them are not working. That the courthouse is undergoing renovation.

And the Court had given specific instructions to the deputy sheriffs that the defendants are not to be observed by the jury in handcuffs or shackles. Such occasional lapses the

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Court has no control over.

And as counsel are surely aware of the continued construction of this building, one fourth of the building at a time, these problems will be exacerbated and the Court will, of course, heed your request and again remind the sheriffs that they are to do everything they can to avoid any such confrontation with a member of the jury while the defendants are in their custody in transit to the court. I'll give you a few minutes and we'll proceed.

MR. HAGEMEISTER: Thank you.

(Proceedings were had off the record)

(The following proceedings were had in the presence of the jury.)

THE COURT: Good morning. Will the jury please remain standing, everyone else may be seated. Madam Clerk, please swear the jury.

(Jury and one alternate sworn by clerk)

(Instructions MA1 300.06, 302.01, 302.02 read to the jury:)

THE COURT: You may proceed, Mr. Hagemeister.

End Volume II

VOLUME III

OPENING STATEMENT

MR. HAGEMEISTER: Thank you, Judge. Miss Beimdiek, Miss Moore-Dyson, ladies and gentlemen of the jury. Thank you for all your attention so far. This is my opportunity to go through the evidence that the State will be bring before you in this case.

On September 17th, 1995, at approximately 11:25 p.m, the three victims in this case, John Allen, who is now dead, Johnnie Bell, who will testify, and Angela Hickman, who will testify, were all together at a house on Martin Luther King. It was a second story above one of these buildings there along the street in the 4200 block.

They'll tell you that John Allen, the deceased, was a nephew of Angela Hickman. Angela Hickman lived right nearby at that time.

Johnnie Bell is an old and very good friend of John Allen's. They were visiting G.W. Wells, another relative of John Allen's. This is a neighborhood where John Allen and Johnnie Bell have come and played for many years. Many years prior to the defendant Wade even moving into that neighborhood.

They'll testify they went there that night and they played cards. Johnnie Bell will tell you

that he was getting high and so were some of the other people there.

Angela will tell you that she doesn't get high. She likes to visit her nephew when she can come around. She testifies he has to sneak into this neighborhood because of the danger to him if the people who now live there and control that neighborhood see him in the neighborhood. So she likes to see him whenever she can.

Angela Hickman will tell you as they walked out the front door at 4236 Martin Luther King, a car, gray colored, pulled up with its lights out in front of that residence, which is a building on the bottom.

Carlos Wade was sitting in the front seat, passenger side, Tyrone Morant in the back seat on the passenger side, somebody she couldn't see is the driver. She's not even sure there was somebody in the back seat behind the driver, but that that car pulled up.

There was words uttered from inside that car, "There go those sissy ass niggers. Get 'em. Get 'em." Something along that line.

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She'll testify that John Allen came up next to her, she was the closest to the car, and said, "Run, run." But that she was able to look into that

car. Two big Mercury vapor lights on each side lighting all the whole area of the street. I think everyone, you all can take your own knowledge as to how bright those lights are, we'll show you pictures, the fact that there were lights on that street.

As she stood almost in front, she could touch the car. She looked into that car. She saw Carlos, who she knows from living across the street from her for almost a year at that time, in the front passenger seat, and then she saw Tyrone, who she never knew by name but in her days of sitting out on her front porch had seen across the street hanging out with Carlos and his other friends. She'll tell you that it wasn't just for a second.

It's good there was a criminal justice system and that people can join together and meet and listen to evidence. And you'll hear evidence this isn't like many of the cases where the person shoots and they go on.

MS. BEIMDIEK: Judge, I object, it's argumentative.

THE COURT: Sustained.

MR. HAGEMEISTER: The evidence will show that this is a case where the witness had an opportunity to see, time to look. Was facing the

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direction at a very close range and able to see faces that were not covered. Faces that were not of strangers, faces that she knew, one even by name, and another face she recognized immediately.

She will testify that those two people sitting right there in the courtroom today pulled out guns and started shooting. And that as soon as they started shooting, she started to run. She sees the guns coming out, she starts hearing the shots, she only goes a few steps. She does what she thinks is the best course of action at that point, which is she hits the ground, lies against the curb and pretends like she's dead.

Angela Hickman is an amazing woman. Not only does she react in an intelligent way under the circumstances, but as soon as the car pulled off, she got up. She went to go and see if John Allen was okay. As he laid in the street bleeding, she realized, I got to get a paramedic as soon as possible. She ran across the street and called from the pay phone.

She heard a car squealing down the street. She thought maybe they were coming back. She was off that 911 phone and runs back across the street and hides with Johnnie Bell, who had taken over watching

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for John Allen while she was on the pay phone.

She'll testify it was these two. She doesn't really have any reason to lie. She doesn't have her own animosity towards Carlos. She doesn't even really know Tyrone, she had just seen him on several occasions across the street. She knows him. She knows who he is. She knows he's one of the friends.

But she also knows Carlos has lots of other friends, many of them which she knows by name. Many of which she's seen several times as well. So she doesn't name any of those other people. She said it was him, a person she has absolutely nothing to gain by calling a murderer.

She will testify that on that evening, after she came back across the street, she hales down a police officer. Her primary concern is seeing that her nephew lives. Her sister's son. She can't believe it's happened, but she's trying to deal with it as well as she can. She's an amazing woman.

She'll testify that the police came, she's worried about having him cared for. But that she saw another car that was used by Carlos and his friends drive by and she told the police officer, that's one of the cars that those guys use.

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That not long thereafter the police officers come to her and say we want you to go down the street and see if you recognize one of the individuals we picked up.

She was taken down the street, and as is often done in these neighborhoods in these situations, the police car she was seated in was situated so the people she was looking at could not see who was looking at her, a precaution often used by the police department in these situations. And they faced the police car at the other car, which was the car they put the two guys in.

They took the three people out that she recognized, two of them as having been in that group, friends of Carlos', and in that group that she knew to be antagonistic to John Allen and Johnnie Bell.

But she says the only one she recognizes is the one, Tyrone Morant. She said, I don't know his name, but that's him. She'll tell you that she had previously described him, brown skinned, bushy haired, chubby guy. She'll tell you he got his hair cut since then.

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And she says that second guy, he's one that hangs out with him, but I can't say that I saw him tonight. She's not going to point out the wrong guy.

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MS. BEIMDIEK: Objection, argumentative.

THE COURT: Sustained. The jury is instructed to disregard counsel's statement that she's not going to pick out the wrong guy.

MR. HAGEMEISTER: Excuse me. She'll tell you she doesn't want to pick out somebody that had nothing to do with it. He could have been in the car, but she didn't see him so she didn't say. Even though she knows he's with a guy that she saw shooting, but she doesn't want to piek out the wrong guy, so she doesn't pick him out.

On the third guy she'll say she's never even seen the third guy. He's just let go immediately.

The next morning she also says at that time that the second shooter was Carlos. The second shooter was Carlos. He lives across the street. I mean there's no question. It's Carlos. He was in the front seat and he was the one shooting. She doesn't know his last name. She says where he lives and they end up dealing with their family things that night.

The police pick her up the next morning and they put together four photographs. They have her look at them. She says, that's Carlos right there. She picks him out. They said, do you know where he can be found? Yeah, he's up in the neighborhood.

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He's right across the street. There's places he hangs out.

She comes down to the warrant office to assist in the handling of charges, the application for a warrant.

And the police officers put her in a van you can't see into. She has her two family members or friends there for moral support, who didn't see anything, and they go out on the streets and she sees Carlos. She sees him standing out in front of a house waiting for, who knows what.

The van goes further on down the street and she's, she says, that's the car, that's the car, that's the car right there. She sees the gray car used in the shooting. She points it out to the police, gray two-door Honda Accord with the vent windows in the back. Kind of easily recognizable car. That's the car, that's its, that's it. She gets excited.

The police officers go around the block because they don't want the people in the van to have -- to arrest the people and don't want to put the witness at risk for pointing them out. By the time they call to get a uniformed officer or police car to come up and pick these people up, lo and behold --

MS. BEIMDIEK: Objection, argumentative.

THE COURT: Very well. It will be sustained as to the phrase lo and behold. Otherwise overruled. Let's move on.

MR. HAGEMEISTER: You'll see that Carlos Wade has gotten into that car. And when the car is pulled over, he's in it, the same car used in the shooting, the same person that was shooting the night before, who had been associated with the same cars the next day with police officers and witnesses and the independent picking out Carlos, independent picking out the car. They go around and the car has picked up Carlos.

The most amazing thing about Angela Wells -- Angela Hickman is that -- Johnnie Bell does not assist the police department because Johnnie Bell has been dealing with Carlos and Carlos' friends for the past two or three years.

We won't just have one witness in this case. One witness will, as to the stepping up and taking the stand, one witness who, the evidence will show, came forward and did the right thing to bring these two people to justice. Angela Hickman single-handedly kept Johnnie Bell from exacting --

MS. MOORE-DYSON: Your Honor, I object to

this. There's no evidence presented as to what Angela Bell did with Johnnie Bell.

MR. HAGEMEISTER: Angela Hickman.

MS. MOORE-DYSON: Hickman. It's not even relevant to this case.

THE COURT: Objection sustained.

MR. HAGEMEISTER: Johnnie Bell will tell you that he, he didn't help the police that night. He'll say I didn't. He never calls the police. In the five previous times.

MS. BEIMDIEK: Judge, I object as to the previous motion with the Court.

THE COURT: Approach the bench.

(The following proceedings were had at the bench out of the hearing of the jury:)

THE COURT: I assume you're referring to uncharged conduct, is that correct, Counselor?

MR. HAGEMEISTER: I'm going to, yes.

THE COURT: Well, the objection is sustained as to the number 5.

MS. BEIMDIEK: Judge, at this time I have to request a mistrial. I believe the Court's ruling was that the Court would determine individually evidence admissibility and I think the detriment of the number five or the five prior times is going to cause this

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jury to believe that there were five prior incidents. I think the damage is done, so at this time I request a mistrial.

MR. HAGEMEISTER: Judge, the State has a good faith basis to believe the witness will take the stand and mention these five, maybe six different prior occasions where Carlos Wade, himself, was a shooter or a fighter with John Allen and Johnnie Bell.

MS. MOORE-DYSON: Your Honor, those were not previously indicated in any of the information that we have, five or six times. The ones we know about are the ones we asked that he articulate and put in his motion.

MR. HAGEMEISTER: They're in there.

MS. MOORE-DYSON: There's not six times.

MR. HAGEMEISTER: Okay, there's five.

THE COURT: The Court has ruled and the defendant Wade's oral motion for mistrial is overruled.

MS. MOORE-DYSON: Your Honor, there's one other issue. He keeps referring in his opening statement to antagonistic between these people she knew and he's clearly laying a foundation for gang activity.

THE COURT: Laying a foundation for what?

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MS. MOORE-DYSON: Gang, foundation for gang activity.

THE COURT: The Court has already clearly advised counsel. And the Court, have I not, Counsel, we've gone over the incidents?

MR. HAGEMEISTER: I have not used --

THE COURT: I will advise counsel as to prior uncharged conduct that the law in Missouri in murder cases and assault cases, prior instances of assaults upon the deceased or the victim of an assault are admissible to show motive, intent, and in some cases absence of mistaken identity.

The Court has already cautioned the prosecutor prior to trial that any of these uncharged conducts or uncharged crimes are only to be those in which the defendant or defendants actually engaged in prior bad conduct or uncharged crime against the deceased. Now, I can't make it any clearer than that.

MR. HAGEMEISTER: And that's exactly what I'm following, Judge.

THE COURT: The Court has heretofore directed counsel with respect to defense counsel's action to late endorsement of a witness, the Court would -- did not have sufficient information to rule upon the State's requested late endorsement at close

of business yesterday. I directed you to go through the police report. You are not to go into whatever that witness would testify since the Court hasn't ruled on that motion.

MR. HAGEMEISTER: Thank you, Judge. Are you saying I can't discuss any of the prior ones even though I know he will put this defendant there?

THE COURT: No. That's why I've gone to this trouble to try to tell you. I thought it was clear.

MR. HAGEMEISTER: Which ones I would be able to talk about and I'm only talking about those.

THE COURT: But I sustained the objection to your number because we don't know --

MR. HAGEMEISTER: Tying it into the specifics of each one that he is going to identify Carlos as having done this.

THE COURT: Yes, whatever you expect your evidence to be as long as --

MR. HAGEMEISTER: Admissible.

THE COURT: What I previously ruled to be admissible. I appreciate counsel's cooperation and the State providing me with the incident. I thought I fairly clearly laid it on --

MR. HAGEMEISTER: I will only address the

ones I have in my memorandum.

MS. BEIMDIEK: Briefly, so I don't have to continue to interrupt Mr. Hagemeister's opening statement, I ask that my objection to this comment be a continuing objection to all of his uncharged crime, any prior shootings and any history between the --

THE COURT: I very rarely grant a continuing objection.

MS. MOORE-DYSON: I join in that.

THE COURT: I will grant the joint continuing objection by defendants and your record is complete because I have already clearly indicated that prior bad acts or uncharged crimes of assaultive nature against the deceased by --

MR. HAGEMEISTER: Or the other victims.

THE COURT: -- or the other alleged victims would be admissible to show motive, intent and absence of mistaken identity.

MR. HAGEMEISTER: Thank you.

MS. BEIMDIEK: Thank you.

(The following proceedings were had in the presence of the jury.)

THE COURT: The jury is instructed to disregard the prosecutor's last reference to 5.

MR. HAGEMEISTER: Johnnie Bell will tell you

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that this isn't a case where it's one time. He will tell you when he was there as the car pulled up, he didn't see, he didn't see the people in the car, because, unlike Angela, when he's in this neighborhood, he is on the lookout because he has to be.

And when a car pulled up and people started saying stuff, "There's those sissy ass niggers", that he knew who that was. He knew that voice. He's heard it several, several times before. He'll tell you that he heard the voice of Carlos Wade. And that it's Carlos Wade that uses that terminology to describe him. He knows that is what Carlos Wade says and it was his voice that said it.

He had the jump on everything. He knew what was going on. John was going up to take care of Angela. He's turning and running. He'll tell you that he turned around and ran over something and fell and then ran for cover.

He'll also tell you he doesn't want to help the police. He never likes to call the police. That the police don't help him. They got no business with him. He doesn't have to call the police. That's not how he handles things, not unlike many people who live on the mean streets.

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And although boys will be boys, you'll hear that in this neighborhood, with this boy, and that boy, that means more. That means using guns and killing John Allen. Luckily not hitting Johnnie Bell and Angela Hickman.

Johnnie Bell will tell you that Carlos has shot at him before. He will go through times that Carlos has shot at him before. And will ask you to consider that evidence to show the motive of Carlos for killing John Allen.

Johnnie Bell will tell you Carlos shot at he and John Allen before. He will go through the specifics of those prior times and he'll tell you that. He can't put Tyrone at any of those shootings and that evidence should not be considered against Tyrone.

But with regard to Carlos' motive and intent, and the statements that Carlos made, in recognizing Carlos' voice, he'll tell you he didn't ever talk to the police about this because he wanted to take care of it himself. He was going to take care of it himself. It wouldn't even be in this courtroom today if it were up to Johnnie Bell.

Why didn't Johnnie Bell take care of it himself? Because Angela Hickman said --

MS. MOORE-DYSON: Objection, Your Honor.

THE COURT: I didn't hear you.

MS. MOORE-DYSON: You previously sustained my objection with regard to what Angela Hickman, what involvement she might have had with Johnnie Bell for what Johnnie Bell would or didn't do.

MR. HAGEMEISTER: We have not discussed that it's relevant to the case.

THE COURT: Objection sustained.

MR. HAGEMEISTER: I ask for a side-bar.

THE COURT: Pardon me?

MR. HAGEMEISTER: Can I have a side-bar?

THE COURT: Certainly.

(The following proceedings were had at the bench out of the hearing of the jury:)

MR. HAGEMEISTER: Johnnie Bell does not make statement to the police on the first night, he only does it three days later. And the reason he does it three days later, he decided he's not going to go after them and shoot them. The reason he decided that was because Angela Hickman told him if he did, she would report him.

THE COURT: Counsel, you've already, in your opening statement, indicated the evidence established that Mr. Bell was not cooperating with the police.

The objection is sustained as to the speculation of what he intended to do in the matter of regulating problems in his life by use of force.

MR. HAGEMEISTER: It's not speculative, it's something he'll testify to.

THE COURT: Well, the Court is ruling now that the defendants' objection is sustained.

MR. HAGEMEISTER: Judge, I don't understand the basis for the objection, much less the basis --

THE COURT: It's a general objection and so utterly inadmissible, she does not need a specific objection, but your offer of proof is overruled and denied.

One, any attempt to get in the law of the jungle as practiced by a witness is not relevant to any of these proceedings and will not be admitted upon proper objection is what I'm trying to say.

MR. HAGEMEISTER: Well --

THE COURT: Let's move on.

MR. HAGEMEISTER: Judge, I have to make a motion on the record, please.

THE COURT: I've already permitted you to state --

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MR. HAGEMEISTER: I have to make an offer of proof.

THE COURT: Well, we're not in the evidentiary portion of the trial, but proceed.

MR. HAGEMEISTER: Thank you. We have a witness who changes his testimony from not testifying to testifying. The reason he does that is important to the State's case. It is not something that is going to be kept out. They asked him --

THE COURT: That was not the statement you made. You made a statement as to Angela Hickman.

MR. HAGEMEISTER: And the reason he changes from not testifying to testifying is because of Angela Hickman. They're both going to testify and be available for cross-examination.

THE COURT: The Court's ruling remains the same.

(The following proceedings were had in the presence of the jury.)

MR. HAGEMEISTER: Suffice it to say Johnnie Bell changes his mind and goes to the police department three days later and tells what he heard and what he saw and tries to do the right thing. He doesn't go back and try to shoot the shooters.

Eventually the police department looks into it more. They give it to the Circuit Attorney's office, who has investigators that look into it.

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Finally, when it comes around time to investigate this case, it's determined that this isn't a one time event.

And it's discovered from Mr. Bell, who is now trying, despite his natural tendencies, to cooperate, it's discovered about the prior acts by Carlos against Johnnie Bell and John Allen.

MS. BEIMDIEK: Judge, I object and ask it be continuing again.

THE COURT: I thought I ruled on that previously.

MS. BEIMDIEK: You did. It was cautionary.

THE COURT: All right. Noted and overruled. I believe your statement was to a prior act, sir?

MR. HAGEMEISTER: Yes.

THE COURT: Noted and overruled.

MR. HAGEMEISTER: Johnnie Bell will tell you there was a time when he and John Allen were on Fair on his mother's porch when Carlos and another person, not Tyrone, drove by and Carlos shot at them. He'll admit to you that I believe on that one he shot back. He or John Allen shot back. Several times. They were on their own porch. It was Carlos coming over to John Allen's neighbor, John Allen's house and shooting on that occasion.

He will testify there was a time they were on John Allen's grandmother's porch, across the street from Carlos' house, when Carlos and another person came through an alley, and he says he is not sure who the second person was in this one, but he has an idea, but it wasn't Tyrone, and they shot up on the porch to the point where they had to jump and run for cover. To the point by the time they came back out to shoot back, they didn't see their targets.

You'll see a picture of the dents in the bricks on that porch showing that there was somebody shot at on that porch. It's been painted over since then.

You'll hear testimony about a time where they were in the neighborhood of 4200 block of Martin Luther King. He'll go through step by step all the times where Carlos has been involved in either shooting at him and John Allen, or coming up on one occasion with Tyrone, the only one prior occasion where Tyrone was there, and starting a fist fight in the middle of the street, in the middle of the day, in the 4200 block of Martin Luther King, right across the street from where the homicide occurred.

He'll tell you that in that case it was Carlos and Tyrone and Demetrius, a friend of Carlos'

and Tyrone's that came up and had that fist fight with him.

He will tell you about threats Carlos made about him not coming up --

MS. BEIMDIEK: Judge, I object at this time and ask to approach.

THE COURT: Very well.

(The following proceedings were had at the bench out of the hearing of the jury:)

MS. BEIMDIEK: Your Honor, at this time I believe the State has indicated in its opening statement that the defendant Carlos Wade made threats to Tyrone Morant. I do not believe this is supported by any evidence that I have received. Tyrone Morant did indicate that others may have contacted him to discourage --

MR. HAGEMEISTER: Not since then, before.

MS. BEIMDIEK: Are we talking prior to?

MR. HAGEMEISTER: Yes.

MS. BEIMDIEK: Well, then my request would be that he not make any statement as to prior threats.

MR. HAGEMEISTER: I won't. Subsequent you mean.

THE COURT: Very well. Let the record show there's nothing for the Court to rule on.

(The following proceedings were had in the presence of the jury.)

MR. HAGEMEISTER: You'll hear evidence of at least one, prior evidence of a threat by Carlos of Mr. Bell and Mr. Allen.

It will be the State's requirement to prove in this case that on September 17th of 1995, in the City of St. Louis, State of Missouri, the defendants, Carlos Wade acting together with Tyrone Morant, after deliberation, knowingly killed John Allen by shooting him and that they committed that felony by, with and through the use, assistance and aid of a deadly weapon, and we will prove that.

We will also prove that on that 17th day of September 1995, in the City of St. Louis, State of Missouri, the defendants, Carlos Wade and Tyrone Morant, attempted to kill or cause serious physical injury to Johnnie Bell and Angela Hickman by shooting at them. And that they committed those felonies by, with and through the use, assistance and aid of a deadly weapon.

That all happened in the City of St. Louis. We will prove that the 4200 block of Martin Luther King is in the City of St. Louis.

At the end of the case, having heard not

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just one witness who does not have bias, who will tell you on the stand that when she sits out on her porch, she actually has conversations with the people across the street, that's also with Carlos.

That she's always trying to get them to settle down, stop being boys and stop doing all the stupid things. That they refer to her affectionately as Little Chocolate. That she's not involved in any group with Johnnie Bell or John Allen, she's merely a relative.

And that when the boys' play gets out of hand, the woman steps up and says, we're all going to do the right thing. And stops it. Goes to the police and does it the right way. It's the woman, Angela Hickman, that guarantees that justice is done in this case, that is the reasonable mind that --

MS. BEIMDIEK: Judge, I object. This is argumentative.

THE COURT: Sustained.

MR. HAGEMEISTER: At the end of the case we ask you to find the two defendants guilty of murder in the first degree in that there was no accident. There was no fight.

MS. BEIMDIEK: Objection, argumentative.

THE COURT: Sustained.

MR. HAGEMEISTER: The evidence will show they pulled up. They decided to shoot several shots at close range at a group of three people. They thought about it. They pulled out guns they previously loaded. They pulled them out. They aimed them, closer than this, at humans, young humans. They pulled the trigger several times.

There were metal fragments found on the sidewalk. It wasn't one shot, it was several shots. They'll tell you it was several shots. And that it caused John Allen, a very young man, to lose everything he could ever have.

We'll ask you to find the defendants guilty of murder in the first degree. Thank you.

THE COURT: Thank you. You may proceed, Miss Beimdiek.

MS. BEIMDIEK: Thank you, Your Honor.

OPENING STATEMENT

MS. BEIMDIEK: Sunday night, September the 17th, about 11:25 p.m., Angela Hickman and Johnnie Bell and John Allen are visiting somebody in the 4200 block of Martin Luther King. They're smoking marijuana. They're hanging out.

11:25, they leave. As they come out of that building, a car sweeps in, within seconds, shots are

fired. Instinctively they take cover.

When the car leaves, they realize John Allen has been shot. Angela goes to get help and she calls 911. She tells the 911 operator to get some help over there quickly. She tells the operator where they are. The operator says to Angela, "Who's shooting at you?" And Angela tells the operator, "Some dudes."

Sunday night, September the 17th, a block and a half away, at 4205 Aldine, a woman named Hattie Alberty is at home with her family. She hears shots ring out a block and a half or so from where she lives. She's not sure how close the shots are, but they're loud enough to concern her. Instinctively she begins a head count of her children to make sure that everybody is safe and accounted for in her house.

As she does that, she looks around and she sees Carlos, her son, in her house as these shots are being fired at 4200 Martin Luther King.

The next day Carlos gets arrested around five o'clock that afternoon. Miss Alberty sees that arrest. She tries to get some information as to about what on earth is going on. The police don't give her much help.

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The police tell Carlos' sister he better get a good lawyer. And the family begins the process of

trying to make everybody understand that Carlos could not have done any of these crimes because Carlos was at their house when they heard those shots being fired.

But they do what the police told them. They scrounge up as much money and they can. They go and hire a lawyer. They begin to follow that lawyer's advice about making sure they remember what happened that night, that they remember that Carlos was home with them.

Lawyers are expensive and they run out of money. Eventually their case comes to the public defender's office. Carlos' family will still be here during this trial telling people now, who have a chance to do something about this, that these accusations are false and they know they are false because they know where Carlos was when those shots were fired.

I'm asking you to listen to all the evidence and to return verdicts of not guilty as to all of these charges at the end of this case. Thank you.

THE COURT: Thank you, Miss Beimdiek. Miss Moore-Dyson, you may proceed.

OPENING STATEMENT

MS. MOORE-DYSON: Good morning. Tyrone

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Morant, where was he that night? You're going to hear the evidence put on by the prosecutor. I think it's real important, more important that you listen to that evidence than even the evidence that we'll put on.

We talked in voir dire about relatives and we all know that relatives will say what is favorable to their relative. Now it's not to say they'll lie for them, but we know they'll say what's favorable to them.

I think you will be able to discern that coming from that stand, listen to exactly what was happening, where each one of those witnesses were when it happened.

Listen to what happened when identification of Tyrone Morant was made. Angela Hickman does not know Tyrone Morant. She's seen him before, possibly.

My client will testify that on that day, it was a Sunday, he's a teenage boy, he's about 17, 18 years old. He just basically hung out that day with his friends. One or two at different times of the day.

Significantly, that evening someone was, guy by the name of Aaron was giving a barbecue in his backyard and he had gone to the barbecue with another of his friends. He saw a bunch of people from the

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neighborhood and some of his other friends at that barbecue.

They stayed there. Around about seven or eight o'clock, he and another friend of his, Anthony Rhodes, went back to his house. There was several people, his cousin Kim, some of the children, his mother was not at home.

At round about ten o'clock, his mother arrived. When she arrived, he and Anthony were still there. They were in his room listening to some music.

At some poiot he went to the basement to get clothes out of the dryer. Got his clothes out of the dryer. He and Anthony went upstairs and sat in his room listening to the music a little longer.

His mother was in the kitchen preparing something to eat. His bedroom door is at the kitchen door. The basement door is at the kitchen door. The front door, the only other one to exit in the two-family duplex is down the hall from the kitchen, directly inside where she could see them.

She prepared her food. She had a conversation with Tyrone. She went back to her room right at the front of the house. Her bedroom is what would normally be the living room, but she changed that to her bedroom and she will tell you it's because

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she has a teenage boy.

She lives in an area where there's a lot of problems with teenagers. She sits at her bedroom at that front door for a reason, because she wants to hear what's going on in the neighborhood. She wants to hear when her son is standing on the front. She wants to hear what they're saying.

They will tell you she eavesdrops a lot. She eavesdropped on him that particular night. For that reason she wanted to see if there was anything going on wrong with him.

At ten o'clock, at about twelve o'elock, 11:45, after she prepared her meal, she went back to her room. It was around about this time that Tyrone asked her, after she had prepared her meal, if she would give him some of what she had prepared. She told him, no, you are not getting any of this. I only prepared enough for one. You didn't tell me you wanted some.

He said, I am going down to the store to get something to eat. There's a store about two blocks away from their house. It was late. She couldn't stop him, but I don't believe she even tried to stop him at that point. She felt that going to the store and coming right back wouldn't be a problem at that

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time.

As he was leaving, a friend of hers drove up. Her friend is a dancer. She dances at nightelubs. She was bringing her children for Hattie to watch that night. She's done that frequently. She has strange hours because they work up to one -- or from twelve on dancing. So she brings her children for Hattie to watch.

She saw Tyrone, as he was leaving, and his friend Anthony Rhodes walking out the front door. At that point she even indicated that she had come down Dr. Martin Luther King and she had seen there was a lot of poliee, police cars circling the block at that particular point.

Where you think you're going, boy? Where you going? She said you better stay in the house, something happened around there on Dr. Martin Luther King. He said, shoot, I'm not involved in that, I'm going to the store. So he proceeds to the corner and that's where the police picked him up.

Mary didn't see the police pick him up at that particular point. She goes into the house at this point. Hattie makes sure that the rest of the children are in bed and she puts Mary's children in the bed at the same time. She doesn't even know her

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son has been arrested. She doesn't know.

Anthony saw them arrest him. He had decided he wasn't going to go to the store. Another friend had called up, Kenney G., they call him GG, walked up just as they were coming out the door and he suggested they go to the store. So they both went to the store.

Anthony said, I'm not going to the store. And he said while he's standing in front of the house, he sees a police pick them up.

Why didn't he call the police or why didn't he tell his mom that Tyrone had been picked up? Why? In that neighborhood, anytime anything goes on wrong, the police just round up everybody on the streets. They just pick up everybody.

What do they do? They take him to the station or drive him around the block.

MR. HAGEMEISTER: Objection, Judge.

MS. BEIMDIEK: This is testimony that will be heard, Your Honor. And they let him go.

THE COURT: The objection will be sustained, unless your evidence is as to what happened on this occasion.

MS. MOORE-DYSON: On this particular night.

THE COURT: Then your objection is overruled, if that's what you expect the evidence to

be.

MS. MOORE-DYSON: In other words, when he saw the police officer pick him up, it's not unusual, to me it would be unusual, I would run and tell somebody.

MR. HAGEMEISTER: Objection.

THE COURT: Objection is now sustained. The jury is instructed to disregard counsel's last remark as to what would be unusual to her.

MS. MOORE-DYSON: To this young man, when he saw him pick him up, he didn't decide this was a factor that would make him alert Mrs. Morant inside the house that Tyrone had been picked up. He said he thought he would be out in the morning. He didn't do anything. At that point after, after that particular point, he didn't see Tyrone anymore.

The next day he'll testify that the police swung around and told him, you know, your boy's in trouble. He said, for what? The police told him he had been picked up for a murder. He said, no, it couldn't have been him. Couldn't have been him. They didn't question him anymore. He said he tried to talk to them a couple of times after that. They never questioned him anymore.

MR. HAGEMEISTER: I have to object and ask

for a side-bar.

MS. MOORE-DYSON: This is the testimony that will be --

THE COURT: Counsel. Approach the bench.

(The following proceedings were had at the bench out of the hearing of the jury:)

THE COURT: What is your objection to?

MR. HAGEMEISTER: Defense counsel is arguing now what I would assume is something she could maybe say as a prior consistent statement, which doesn't mean it's going to be admissible.

MS. MOORE-DYSON: What?

MR. HAGEMEISTER: She says this, she said that. This is no exception to the hearsay rule. It's not something that's been disclosed to the State. It's not like it's some piece of evidence --

THE COURT: The Court doesn't understand the objection. The objection was made after the last statement and so I'll overrule it. Let's proceed.

(The following proceedings were had in the presence of the jury.)

MS. MOORE-DYSON: Mrs. Morant will testify she went, after her friend left and she put the kids in bed, she went into her room. Having eaten, she was sleepy, she went to sleep.

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About two o'clock she started getting these phone calls. They were collect calls because somebody was saying, "Collect call." She kept hearing the name "Tyrone." She thought it was his friends calling her because they do it from time to time, they go to a telephone booth and call collect. But she just hung up on them. She said it happened twice.

Finally she went back to the room to see why Tyrone wasn't answering the phone and get on him about stopping his friends from calling there like that. That's when she first noticed he was not home yet.

When the phone rang again it was another collect call and the name "Tyrone" came out, she realized this was her son calling collect. When he told her he was calling, she said you shouldn't have been out that late at night. She thinks it's a simple matter.

Mom, you don't understand, I've been arrested for a murder. She said that's when she hit the fan. She asked -- he told her he was at the police station. She asked him, let me speak to the police officer, I can tell them where you were. He said the police officer, the detective didn't want to speak to her.

She said that morning, early, she went down

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to the police station to tell them that Tyrone was at home and would he speak to her. They wouldn't allow her to see her son. It was about eight o'clock the next morning and he was in the interrogation room.

He offered, he will testify that he heard voices from the other side of the room. That's not him. He be with them. That's what he heard.

He also will testify they kept him in the interrogation room all night. When his mother went down to talk to him or to see him, he was still in the interrogation room.

They never came to her house to ask her what was going on. They never came to her house to search for anything.

He will testify they asked him if he'll take a powder test on his hands to see if a gun had been recently shot. He said, I'll do that. But they never did that.

That's the testimony that we'll have. The prosecutor is going to say there were, there were prior incidences. He indicated there was one where a person said there was a fist fight where Tyrone was there, offered as a motive to why he would want to kill somebody. He was there.

You're being asked to judge the merits of

this case, not what goes on in north St. Louis by other people. What happened on that night.

There is no question that a young man lost his life and that there are a lot of people hurt by that. But there is a question, a very serious question as to who did that. Carlos Morant -- Carlos Wade or Tyrone Morant.

I represent Tyrone Morant. I want you to listen specifically and particularly to any evidence that has to do with Tyrone Morant. What they say about him. Listen to -- he's asking for motives why they might want to kill.

MR. HAGEMEISTER: Objection, she's arguing.

THE COURT: Sustained.

MS. MOORE-DYSON: I want you to listen to that evidence as it is presented and I assure you that when you listen to it and listen to it carefully --

MR. HAGEMEISTER: Same thing, same objection.

MS. MOORE-DYSON: -- you can return no verdict but not guilty.

THE COURT: Overruled. Thank you.

Ladies and gentlemen of the jury, we will have our luncheon recess at this time. You are released at this time and instructed to return to

Division 11 at 1:30 p.m. Thank you.

(The Court duly admonished the jury and a luncheon recess was taken.)

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(The following proceedings were had on November 14, 1996 out of the presence of the jury.)

THE COURT: Please remain seated. You may proceed, Mr. Hagemeister.

STATE'S EVIDENCE

MR. HAGEMEISTER: The State calls Dr. Michael Graham.

DR. MICHAEL GRAHAM

having been first duly sworn, testified:

DIRECT EXAMINATION

BY MR. HAGEMEISTER

Q State your name, please.

A Dr. Michael Graham.

MR. HAGEMEISTER: Judge, it the State's understanding that both defense attorneys are willing to stipulate that the person Dr. Graham examined was John Allen, the same John Allen that was shot on September 17, '95 in the 4200 block of Dr. Martin Luther King, and those gunshot wounds did in fact cause the gunshot wounds to John Allen.

THE COURT: Is it so stipulated?

MS. BEIMDIEK: Yes, Your Honor.

MS. MOORE-DYSON: Yes.

THE COURT: So stipulated.

BY MR. HAGEMEISTER

Q Please tell us what your occupation is.

A I'm a forensic pathologist. I'm the chief medical examiner for the city.

Q When a person is killed in the City of St. Louis, is that body brought to your place of business?

A If they die as a result of violence and the death was at the hands of another, yes.

Q Okay. I've asked you to bring with you a report that you prepared with regard to the victim in this case, John Allen. Did you bring that report?

A I brought a copy of it.

Q And you have a number that is case number on that report?

A Yes.

Q What is that case number?

A 95-1972.

Q And when these bodies are brought down to the medical examiner's office, do you take photographs of those bodies or are they taken?

A Somebody is there, yes.

Q In this case were photographs taken?

A Yes.

Q Have you had a chance to look at those photographs?

A Yes.

Q Is there a placard from the medical examiner's office with a number on it that you use to identify which body it is that that photograph is of?

A Yes.

Q I'm going to hand you what I've marked as State's Exhibits No. 1 and 2. Can you tell me what those are photographs of?

A State's Exhibit 1 is a photograph of Mr. Allen's back depicting a gunshot wound, exit wound. State Exhibit 2 is a picture of the front of his body showing the gunshot wound of entrance.

Q And you say that it entered in the front and exited out the back?

A Yes.

Q And have you decided to a reasonable degree of medical certainty as to what his cause of death was?

A Yes.

Q What was it?

A The gunshot wound that passed through his chest.

Q What else did it pass through inside? A-320

A The major organs and structures that it hit would include the heart, the aorta, and the lung.

MR. HAGEMEISTER: No further questions.

THE COURT: Thank you. You may inquire.

MS. BEIMDIEK: Thank you.

CROSS-EXAMINATION

BY MS. BEIMDIEK

Q Dr. Graham, in addition to determining the cause of death, toxicology tests are also done, is that not correct?

A That's correct.

Q What is a toxicology test?

A It's a chemical analysis of body fluid looking for alcohol, drugs or poisons.

Q That was done in Mr. Allen's case?

A Yes.

Q And in fact in the urine drug screen that was part of this toxicology test, there was a substance that was found, is that right?

A Yes.

Q And the scientific substance is set out in your report, is that correct?

A Yes.

Q All right. Simply, it's marijuana?

A It's one of the active ingredients of marijuana.

Q If you found one of the active ingredients

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of marijuana in somebody's urine, you could conclude they had consumed marijuana?

A They had used marijuana at some point, yes.

MS. BEIMDIEK: Thank you. Nothing further.

THE COURT: Thank you, Miss Beimdiek. Miss Moore-Dyson?

CROSS-EXAMINATION

BY MS. MOORE-DYSON

Q Dr. Graham, did you do an examination of the clothing of the victim?

A I looked at the clothing and described the actual examination would be done by the police laboratory.

Q You looked at it at that particular point?

A I described what he was wearing and I sent it to the police laboratnry.

Q Did you examine his hands as well?

A Yes, I did.

Q And was there, in your report you indicated there was a black material on the dorsum of each hand, did you make a determination as to what that was?

A I didn't know what it was. It was black. It looked dirty. I took some samples and sent them to the police department, but I'm not sure what it was.

Q You never did get it back?

A I don't recall ever getting a report.

Q Okay. Could you tell just from looking at it whether or not it was gun powder or something of that nature?

A It didn't look like the classical appearance of gun powder to me.

Q But it could have been?

A I don't know whether it was or not. It didn't really look like it to me, but I wouldn't exclude it absolutely.

Q Did you make a determination of how, or perhaps where you made a determination as to the direction of the bullet, is that correct?

A Yes.

Q And could you, from that determination could you determine where, approximately where the shooter might have been?

A He has to be in a position where the bullet can go in the front of the chest and come out the right back.

Q Okay.

A But you can put two people in almost an infinite number of positions as long as that relationship is maintained. So I mean I can say he wasn't standing way directly behind him because you

couldn't hit the front of the chest. As far as directly in front or a little to the left, there's no way of saying.

Q The person was definitely in front of them?

A Could be over to the side.

Q Would you determine from the wound how far that he might have been from the individual?

A No, the gun was not in contact with his body when the trigger was pulled. Everything else I use to estimate range of fire could potentially be on the clothing, and without knowing what is on them, I don't know.

Q You never got a report regarding the clothing?

A That's correct.

Q You indicate that the gunshot came from, it was from up to --

A As going through his body, it went towards his feet.

Q It came from above and went downward?

A That's assuming he's standing directly upright, yes.

Q If he was standing up, the gunshot wound went down, is that correct?

A Yeah, from his head to his feet.

A-321

MS. MOORE-DYSON: I have nothing further.

THE COURT: Thank you, Miss Moore-Dyson. Anything further?

MR. HAGEMEISTER: May I approach again?

THE COURT: Yes.

REDIRECT EXAMINATION

BY MR. HAGEMEISTER

Q You guys happen to have a photograph of the dirt on the, the marks on his hand?

MS. BEIMDIEK: I'm sorry, I can't hear you.

BY MR. HAGEMEISTER

Q You happen to have photographs of the dark stuff on his hand?

A Yes.

Q I've handed you State Exhibit 3, is that the also the same person?

A Yes.

Q And now I'll show you what has been marked as State Exhibit No. 4. You weren't ever at the crime seen itself?

A That's correct.

Q But when you look at State's Exhibit No. 4, is not that same hand basically resting on that same portion of the street?

A Yes.

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Q Would that be consistent with getting dirt on your hands?

A The street is basically colored in the same, I guess types of coloration that I see on the back of the hand.

Q In all the cases you have examined did you ever see gun powder in that type of a formation on the back of the knuckles and the back of the hand like that or would it normally be somewhere else?

A I have seen it certainly on the back of the hand, but I haven't seen it look like that.

Q I guess finally the, if you look at State's Exhibit No. 2, it looks like the bullet shot enters approximately where the left nipple is?

A That's exactly where it is.

Q And in the back, could you show approximately where it is?

A About this region.

Q Okay. And it was on the right side?

A Yes.

Q It entered on the left and exited on the right?

A Yes.

Q If you were sitting there shooting at me, and I were John Allen, would it be --

MS. MOORE-DYSON: Your Honor, I object to that positioning because it has no relation to the positioning of the people in the --

THE COURT: Objection is prematurely made, I have not heard the question. State your question. And will you state your legal objection --

MS. MOORE-DYSON: Yes, sir.

THE COURT: -- to the question, if you have one.

BY MR. HAGEMEISTER

Q Would it be consistent if I went like this?

A If you were bent over, yes.

MS. MOORE-DYSON: Your Honor --

THE COURT: Proceed.

MS. MOORE-DYSON: I don't know if "I went like this" --

THE COURT: Objection overruled, not timely made. The witness has answered. Move on.

BY MR. HAGEMEISTER

Q In fact nobody knows exactly the angle of the two people, merely that the bullet shot would have had to have come in and gone downward, left to right?

A That's what it did. The only thing you can say about the relationship between the shooter and the victim was that that relationship has to be such that

that wound can be sustained.

MR. HAGEMEISTER: Nothing further.

THE COURT: Miss Beimdiek, anything further?

MS. BEIMDIEK: Nothing further, Your Honor.

THE COURT: Miss Moore-Dyson?

MS. MOORE-DYSON: Yes.

RECROSS-EXAMINATION

BY MS. MOORE-DYSON

Q You indicated to the prosecutor when he said, "went like this", what he actually did was bent over toward what would have been the shooter, is that correct?

A He bent at the waist towards me, yes.

Q You're stating that if in fact that, if a person was bent over that that is, that's a possibility that that bullet wound entered, could have entered in that manner and gone in that direction, is that what you're saying?

A Yes.

Q Okay. Could that person have been falling forward?

A Yes.

Q The picture that you, that can I see, No. 4, that you showed, Defendant's Exhibit 4, does it indicate that the body fell forward or backwards?

A-322

MR. HAGEMEISTER: Calls for speculation.

THE COURT: Overruled. The witness may answer if he knows.

A He's lying on his back, but what he was doing when he was being shot, you can't tell from the position after he died.

BY MS. BEIMDIEK

Q Okay. You can't tell whether or not the type of gun or the bullets that were being shot, that it would have forced the body forward or backward?

A Handguns don't force bodies in any direction.

Q If the person were leaning forward and shot in the manner he was, it was a possibility he could fall forward?

A He could fall forward, backward, sideways, straight down.

Q You have no opinion on that?

A I have no opinion as to exactly how he fell.

MR. HAGEMEISTER: May I have one last question?

FURTHER REDIRECT EXAMINATION

BY MR. HAGEMEISTER

Q With regard to him leaning forward, he would have to be turned a little away also, not straight on

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for it to do that entering on the left side and exiting on the right side?

A It depends on how you are holding the gun.

MR. HAGEMEISTER: Fair enough. Thank you.

THE COURT: Anything further of this witness?

MS. BEIMDIEK: No, Your Honor.

THE COURT: You may stand down, Doctor.

THE WITNESS: Thank you.

MR. HAGEMEISTER: Ask that State's Exhibits 1, 2 and 3 be admitted into evidence.

THE COURT: State's Exhibits 1, 2 and 3 are admitted into evidence.

MS. BEIMDIEK: Your Honor, I do have an objection as to No. 4.

MR. HAGEMEISTER: I have not offered.

THE COURT: 1, 2, 3.

MS. BEIMDIEK: I'm sorry. No objection.

THE COURT: Call your next witness.

MR. HAGEMEISTER: The State calls Angela Hickman.

ANGELA HICKMAN

having been first duly sworn, testified:

DIRECT EXAMINATION

BY MR. HAGEMEISTER

Q State your name, please.

A My name is Angela Shirrell Hickman.

Q Miss Hickman, I want to talk about September 19, 1995 at around 11:30, 1:15 p.m. that night, I want to talk about that. Who with were you?

A John Allen and Johnnie Bell.

Q Where were you?

A In the, over my cousin house on Dr. Martin Luther King.

Q What is his name?

A G.W. Wells.

Q Where is that on Martin Luther?

A I know it's in between Whittier an Aldine.

Q Is that the 4200 block?

A Yes, it is.

Q Is that in the City of St. Louis?

A Yes, it is.

Q And you said you were with who?

A Johnnie Bell and John Allen.

Q When you were, when you left that place something happened, right?

A Yes.

Q Can you describe for the jury what happened as you walked out of that residence?

A As we walked out the house, I came out the house first and then Johnnie -- then John, then Johnnie Bell. I stepped out into the street, but we was having a conversation at the time, so I looked back to respond to the question that was asked and when I turned around it was a car in front of me.

Q Okay. What happened next?

A When I turned around I seen the car and it was like, I couldn't see exactly who was there, so I know I heard, sissies is right there. Somebody in the car was saying something along that line.

Q What are you doing at this point, where are you in relation to the car?

A I am standing on the passenger side of the car.

Q Are you on the sidewalk or in the street?

A In the street.

Q Is the car far from you, close to you?

A No, it's close. Within feets from me.

Q Is the car this far away from you? A-323

A Right here.

Q How far away is it?

A It's right here.

Q Okay.

MR. HAGEMEISTER: Can the record reflect that the witness has reached out and pointed to an area within arm's length of her body.

THE COURT: The record may reflect the witness has indicated the distance of probably 18 to 24 inches.

MR. HAGEMEISTER: Thank you.

BY MR. HAGEMEISTER

Q What did you see in this car?

A I see, I seen Tyrone, well, I didn't know his name, I seen him and Carlos.

Q Where were they in the car?

A Carlos was in the front seat and Tyrone was in the back seat.

Q All right. How do you know Carlos?

A Cause he stays, he used to stay across the street from me on Aldine.

Q How long was he living across the street from you?

A Less than a year.

Q Did you -- were you friendly with them, did you see them out there, or did you say hello when you went by them or --

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A I seen them out there. I used to sit and talk to his brother.
Q You used to sit and talk to his brother?
A Yes.
Q Where would he be when you would be out talking to people?
A Most of the time he be gone.
Q Most of the time he wouldn't be there?
A Yes.
Q There were times that you saw him at the house?
A Yes, coming and leaving, yes.
Q You knew he was the brother of the guy that you were friends with?
A Yes.
Q And you knew his name was Carlos?
A Yes.
Q Did you know his last name?
A No, I didn't know his last name.
Q Did you know that Carlos -- any of his friends, did you know any of their names?
A I didn't know none of their real names. Most of the peoples goes by nicknames.
Q What other friends' names did you know?
MS. BEIMDIEK: Objection, relevance.

THE COURT: Sustained.
MR. HAGEMEISTER: Judge, it goes to what names she could have possibly come up with.
THE COURT: If that is an offer of proof, it's overruled and denied. The Court's ruling remains the same.
BY MR. HAGEMEISTER
Q You knew some of his friends and some of their nicknames?
A Yes.
Q And this Tyrone, where had you seen him before?
A Across the street, over across at Carlos house.
Q Did you know his name?
A No.
Q Did you know his street name?
A No.
Q You never talked to him?
A No.
Q Carlos and Tyrone that you say were in that car on that day, you eventually found out Tyrone's name later?
A Yes.
Q Do you see those two in the courtroom today?

A Yes.
Q And where are they sitting and what are they wearing?
A Right here and right there. One on the left and one on the right. Both in white shirt and tie.
Q The person in the white shirt on the left, who is that?
A Tyrone.
Q And the person in the white shirt on the right, who is that?
A Carlos.
MR. HAGEMEISTER: Can the record reflect that the witness has identified Tyrone Morant and Carlos Wade as being in the car that was shooting?
MS. BEIMDIEK: Judge, I object as to my previous motion.
THE COURT: Objection is overruled.
MR. HAGEMEISTER: Will the record reflect she has identified the two defendants?
THE COURT: The record may so reflect.
MR. HAGEMEISTER: Thank you.
BY MR. HAGEMEISTER
A-304
Q Did you have any reason to dislike Carlos, had he ever done anything to you?
A No.

Q What about Tyrone, had he ever done anything to you?
A No.
Q And when you were watching, when you were standing next to the car and you heard this statement made, do you have an opinion as to who made the statement?
A No.
MS. MOORE-DYSON: Objection, Your Honor.
THE COURT: Sustained.
BY MR. HAGEMEISTER
Q Did you -- were you watching or did you see who made the statement?
MS. MOORE-DYSON: Objection, Your Honor, question asked and answered.
THE COURT: Overruled on that ground.
BY MR. HAGEMEISTER
Q Were you paying attention to the point where the statement was made to the car?
A No, I wasn't paying attention to what statement had been made.
Q And when you looked in the car and you saw it was Carlos and Tyrone, did that give you any cause for alarm?
A No, not at the time.

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Q What happened next?
A That's when John had stepped up to where I was at.
Q This is John who?
A Allen.
Q You call John Allen, John?
A Yes, John.
Q And you call Johnnie Bell, Johnnie?
A Yes.
Q John Allen is the one that's dead now?
A Yes, he is.
Q Johnnie Bell is in the other room now?
A Yes.
Q Just so it's clear for everybody, John stepped up, John Allen?
A Yes, he stepped up on the side of me.
Q What did he do?
A When they was saying sissies, they stuck the gun out of the car. That's when he told me, run.
Q All right. Did you see who had the guns?
A Yes, I did.
Q Who did?
A Carlos and Tyrone.
Q And where -- when you say Carlos was in the front seat on the passenger side?

A Yes, and Tyrone was in the back.
Q Was that the side of the car that was facing you?
A Yes.
Q So could you see who the driver was?
A No, I couldn't see who the driver was.
Q Did you stop and look down into the car to try to figure out who all was in the car besides Carlos and Tyrone?
A No, I didn't try that.
Q Why didn't you?
A I just didn't look in the car.
Q All right. When John Allen walked up, what did he say to you?
A He told me, run.
Q What did you do?
A I before I -- I turned to run as the bullets, they just started shooting.
Q How many guns did you see sticking out?
A Two.
Q Who was holding them?
A Carlos and Tyrone.
Q How many times do you think they shot?
A I can't say exactly. They shot a few times.
Q More than once?

A Yes, more than once.
Q What did you do when you ran?
A I fell, I fell down and laid down, too.
Q Why did you do that?
A Because I thought maybe if I laid down they think I got shot, too.
Q So you basically played dead?
A Yes.
Q Could you see anything as you were lying down playing dead?
A No, cause at that time I thought John was playing also.
Q John Allen?
A Yes.
Q You knew he had fallen down, too?
A Yes, but I thought he was just playing and just -- I didn't actually know he was shot.
Q At that time did you know where Johnnie Bell was?
A No, I didn't see Johnnie Bell.
Q He wasn't in the area that you were looking?
A No, I didn't see him.
Q Okay. Well, did he come out with you?
A Out the house?
Q Yes.

A-325

A Yes, he came out the house with me.
Q Was he close to you guys when the car originally pulled up?
A He was on the sidewalk.
Q Was he closer to the front of the car or the back of the car?
A Probably I have to say the back of the car.
Q And you were closer to the front of the car?
A I was in the, in between the middle of the car.
Q All right. And this car could -- did the back seat passenger stick the gun out?
A He leaned, it's a two-door car, he leaned up with his arm out the car to angle the gun. That's how I seen his face.
Q And you described that person to the police later?
A Yes.
Q And how did you describe him?
A I said he was brown skinned and kind of chubby with bushy hair.
Q When you look at Mr. Tyrone Morant today, is his hair the same as it was on that day?
A No.
Q What about Mr. Wade, does he look the same

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as he did on that day?
A Yeah, he looks the same, his hair shorter.
Q When you -- after you played dead, what did the car do?
A It pulled up to where I was at, slowed down, I guess looked to see if I was dead or whatever, then it took off real fast.
Q So when the car pulls up close to where you are, you basically are -- are you saying that you kind of went up forward when you ran?
A Yeah, I didn't get very far.
Q Where are you lying, in the street or in the sidewalk or whatever?
A See, it happened so fast I couldn't get all the way back on the sidewalk, I was left laying halfway in the street and halfway on the curb.
Q And the car pulls up next to you?
A Yes.
Q Laying there being quite and still?
A Yes.
Q Then the car pulls off?
A Yes.
Q And what do you do after the car pulls off?
A I made sure it was gone before I got up.
Q All right.

A Then when I noticed it was gone, I got up and went over to John.
Q That's when you realized he had been shot?
A Yes.
Q What did you do?
A I tore his jacket open and I seen the hole. I ran across the street and called the police.
Q What's Johnnie Bell doing then?
A I don't know. I didn't even take time to look for him. I was trying to call the police.
Q When you go and call the police, can you describe your conversation on the phone?
A I really can't describe cause they was asking me a lot of questions and I was concerned about John because he was still laying down.
Q All right. What is your -- what's going on in your mind at this time?
A I was telling them my nephew just got shot.
Q You want an ambulance?
A Yes, I said send the paramedics and policemen.
Q How does that conversation go?
A Before I could finish the conversation with the police, another car was coming. I heard it skidding around the corner.

Q So what are you thinking then?
A I'm thinking it's coming back around.
Q So what do you think you should do?
A Johnnie, he called me from across the street telling me to run back over there, to get back inside the house just in case they was coming back.
Q So is that what you do?
A Yes. As I was running back across the street, when I was -- I seen John, Johnnie talking to John.
Q All right.
A Then when I got over there, he had got up and he took me back inside the house.
Q He, you left John there?
A Yeah.
Q Did you try to drag him or anything like that?
A No.
Q You both run for cover?
A Yes.
Q And what is the car that was squealing?
A It was a blue, four-door car.
Q And what does it do?
A It just come around, I guess to check to see if they had shot anyone.

A-326

Q You don't know what they are thinking?
A No, I am not sure.
Q What do you see it doing?
A It slowed down to make sure that somebody was laying down. It slowed down right next to --
Q Slowed down next to the body?
A Yes.
Q Nobody hopped out to help out?
A No, no.
Q Then where did it go?
A He took up to Martin Luther King.
Q Would you recognize that car?
A Yes.
Q How do you recognize that?
A From being across the street on Aldine.
Q That was one of the cars you see sometimes parked at Carlos'?
A Yes.
Q When that car was gone, what did you do?
A I had went back outside and at that time a police was arriving. So I stopped the policeman, told her that my little nephew had just got shot.
Q All right. Now, are you thinking rationally at this point?
A Yes, cause I was holding him and trying to

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stop the bleeding.
Q What are you holding him --
A I took his jacket and was pushing his jacket on him. She told me to get the hole.
Q And do you know that there's a hole in his back at this point?
A No, I didn't know it went through.
Q So who tells you to get the hole?
A The policeman. She said if I want to save his life, I should put pressure on the hole.
Q You realize that John is close to dying?
A Yes.
Q When you guys are caring for John, is Johnnie there?
A I can't say.
Q You just weren't concentrating?
A I wasn't concentrating on Johnnie, I was concentrating on John.
Q What -- is John able to say anything when you're talking to him?
A He was trying to say something, but I was running across the street to the pay phone to call the paramedics.
Q What about later on when you were holding the coat on him?

A He was mumbling something but I couldn't understand what he was saying.
Q All right. And the police officer that's there with you, how long is it until the ambulance arrives?
A It wasn't long after. It was shortly after.
Q And do they get down the street and start working on him?
A No.
Q Is there anything they do or do they come up and --
A They said he was dead.
Q And they did their test to see that he was dead?
A Yes.
Q And then you, did you ever see any other cars or talk to the police after that?
A The police, they came down and asked me to come with them, they wanted me to see somebody.
Q All right. So what did you do?
A I got in the car with them. We drove to Whittier and Martin Luther King.
Q And what did you do at Whittier and Martin Luther King?
A It was a car stopped, it was a car and they

asked me did I know anybody in the car.
Q How did they go about seeing if you knew anyhody in the car?
A They asked me would I get out of the car one by one.
Q Who to get out of the car?
A The guys in the car.
Q Who is there getting them out of the car?
A Policemen.
Q When the policemen are getting them out of the car, did you see any of the people involved in the shooting?
A Yes.
Q Who do you see?
A Tyrone.
Q That's the person you identified as being on the left in the white shirt?
A Yes.
Q And does he look the same as when you saw him in the car?
A Other than his haircut.
Q I mean at the time they get him out?
A Oh, yes, he looked the same.
Q All right. And then they get somebody else out of the car?

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A Yes.
Q Do you know who that other person was?
A No, I didn't know him by name, but I know he hangs across the street also.
Q There's how many people do you think hang out across that street?
A A lot of 'em.
Q Five, ten, twenty?
A Oh, about thirty, forty, a lot of them; probably more than that.
MS. BEIMDIEK: Judge, I object. The question is too vague for the witness to give an accurate answer.
THE COURT: Sustained.
BY MR. HAGEMEISTER
Q Well, how many different people have you seen in your year of living across the street from Carlos, how many different people do you think you've seen over there?
MS. BEIMDIEK: Objection relevance.
THE COURT: Sustained.
BY MR. HAGEMEISTER
Q Well, you recognized him as being one of the people you seen being across --
A I recognize him as being one of the people

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in the car.

Q I am not talking Tyrone, I am talking the second guy.

A Okay.

Q The second guy, you recognized him as being one of the people from across the street?

A Yes.

Q And do you know if he was in the car when he did the shooting or not?

A I don't know if he was in the car. I couldn't see everybody in the car.

Q So the second guy you know no better than Tyrone?

A Right.

Q And Tyrone you don't know better than the second guy?

A Right.

Q The only one of the two you picked out was Tyrone?

A Right.

Q Why did you pick him out?

A Cause I seen him in the car.

Q Okay. So when you -- what about the police officers, at any point are they questioning you about who you saw as being the other shooter?

A Yes. They asked me who he was with the shooter, I told him it was Carlos, but I didn't know his last name.

Q When was the first time you told him it was Carlos?

A The night it happened.

Q Did you tell them when they were taking care of John, or when you were holding the jacket, or was it after that?

A I thinking when I was sitting in the paddy wagon, they asked me that in the paddy wagon. He was talking to me while I was in the paddy wagon.

Q Okay. You're talking that's the police car that took you down to see the two guys?

A Yes.

Q That's -- you're calling that a paddy wagon?

A Yeah.

Q And that police car that takes you down to see those guys, Tyrone and the other guys?

A Yeah.

Q How is it situated with the two guys that they're -- there was more than two, right?

A Yes, there was.

Q You saw three guys altogether in that car?

A Yes, I saw three.

Q The third guy that you saw around that car, did you recognize him?

A No.

Q Okay. How are you situated compared to Tyrone and this second guy and the third guy? How is the paddy wagon, as you call it, situated?

A It was pointed so the headlights could be on them.

Q They, you would have more light on them and they wouldn't be able to see you?

A Right.

Q Was there any question that that was the guy that was in the back seat shooting?

A Was there any question?

Q In your mind?

A No, I knew for sure.

Q And when you told the police about it being Carlos as the other shooter, did you tell them how you knew him?

A Yes.

Q And that was from him living across the street?

A Yes.

Q When you told them Carlos, did you give them a last name?

A No, cause I didn't know his last name.

Q What did they do with you and Johnnie next?

A Take us to the police station.

Q And are you guys having any chance to talk to each other?

A No, cause they took him somewhere and they took me somewhere else. I didn't get a chance to talk to him.

Q You guys didn't discuss anything?

A No. Right after the shooting I got in the paddy wagon. I don't know what they did with him.

Q All right. You get down to the police station, you told them all the same things you just told us again?

A Yes.

Q You go through it all?

A Yeah.

Q Is there a point where they let you go for the evening?

A We left that morning, early in the morning.

Q Now how early is early?

A About two, something like that.

Q Two something?

A Yeah.

Q Are you guys leaving together or separate?

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A I think we left together.
Q Okay. That's you and Johnnie you're talking about?
A Yes.
Q And did you and Johnnie talk about anything at all at that point?
A He wasn't saying nothin'.
Q Well, describe his demeanor.
A He was mad and upset. All he was just saying that he --
MS. MOORE-DYSON: Objection.
MS. BEIMDIEK: Objection, hearsay, Your Honor.
THE COURT: Sustained.
BY MR. HAGEMEISTER
Q Just describe how he was acting, not what he was saying.
A He was very upset.
Q Okay. What happens the next morning?
A We was asked to come back down to the police station.
Q Did you both go back down?
A No. He didn't go back.
Q Did you go down?
A Yes, I went down.

Q And did you go down alone or with somebody else?
A I went down there with two of my girlfriends.
Q Were they witnesses at all?
A No, they weren't witnesses.
Q And why were they with you?
A Cause I didn't want to be alone by myself.
Q When you went down there, what did you do at the police station at that time?
A They showed me some pictures and after that they asked me would I go show them where he stayed.
MR. HAGEMEISTER: May I approach the witness?
MS. BEIMDIEK: Judge, I'd like to see those pictures.
THE COURT: Yes.
BY MR. HAGEMEISTER
Q When they showed you these photographs, did you recognize anybody in any of the photographs?
A Yes.
Q Who did you recognize?
MS. BEIMDIEK: Judge, again I object subject to my previous motion.
THE COURT: Overruled.

BY MR. HAGEMEISTER
Q Who did you recognize?
A Carlos.
Q Can you tell us which one of the photographs you picked out?
A This one.
Q Did the police officer ask you to sign the back of that photograph?
A Yes, he asked me put my initials.
Q Are those your initials on the back of that photograph?
A Yes.
Q That's State's Exhibit 9A. The other three photographs you can't --
A I said I didn't know them.
MR. HAGEMEISTER: Those are State's Exhibits 9B, 9C and 9D. I ask that State's Exhibits 9A through 9D be admitted into evidence.
MS. BEIMDIEK: Objection, I don't think the proper foundation has been laid for the admission of those photographs.
THE COURT: May I see the exhibits. Approach the bench.
(The following proceedings were had at the bench out of the hearing of the jury:)

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THE COURT: You're objecting, Counselor, to State's Exhibits 9B, C and D that were not identified.
MS. BEIMDIEK: Well, and to A as well. I think there's probably a chain of custody issue. This is evidence that she actually put a signature on. I think there has been no foundation as to the origin of these photos, how she came to see them, circumstances of that, and so for all those reasons, plus my Motion to Suppress Identification, I would object.
THE COURT: Defendant Wade's objection to State's Exhibit 9A overruled -- however -- and it's admitted in evidence -- it will not be viewed by the jury until it is cut off because there is, this is a mug photo, is that clear?
MR. HAGEMEISTER: Or in the alternative could we make sure it's covered entirely?
THE COURT: No. No. Let the record show that the Court has been over this problem many times over the years and the Court's concerned, since the rulings that mugshots are not admissible in evidence, that if a jury, after submission of the cause were to ask for it, they could remove the cover.
MR. HAGEMEISTER: With a Sheriff in the room?
THE COURT: The Sheriff is not in the room

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when the jury is deliberating.

MR. HAGEMEISTER: I understand.

THE COURT: And the defendant's objection to State's Exhibits, Wade's objection to B, C, and D are overruled. They will be admitted into evidence for the sole purpose of showing that the witness was shown more than one photograph. Otherwise they have no particular relevance.

MR. HAGEMEISTER: Permission to remark State Exhibit 9A when the scissors are put to it, it still has a marking.

THE COURT: Let's see. I've already considered that, Counselor, all we have to do is move the stamp.

MR. HAGEMEISTER: Thank you, sir.

THE COURT: And put it higher and Bob's your uncle. That's not necessary at this time.

MR. HAGEMEISTER: I withdraw that.

THE COURT: Unless you want to publish it to the jury first.

MR. HAGEMEISTER: I won't do it right now.

THE COURT: All right.

MS. BEIMDIEK: Thank you, Judge.

MR. HAGEMEISTER: Thank you.

(The following proceedings were had in the

presence of the jury:)

BY MR. HAGEMEISTER

Q Did you have any problem picking out Mr. Wade from that photo lineup?

A No.

Q You've known him for a year?

A Yes.

Q Or almost?

A Almost.

Q After you conducted that lineup, was that with Det. Hornak?

A I think it was with Det. Hornak.

Q Are you not sure?

A I'm not for sure.

Q And then you went through some procedures over at the Circuit Attorney's office?

A Yes.

Q And then after that did you and Mr., or one of the detectives arrange something?

A Yes, they arranged for me to get in a van and to show them where he stayed.

Q Where he stayed?

A Carlos.

Q And you had told them the night before he stayed across the street?

A Yes.

Q Was it to show where he stayed or where he hung out?

A Where he stayed, where he stayed.

Q And where did you go?

A We went Aldine and Whittier.

Q And did you ever see Carlos Wade on that day after doing all the things you did?

A Yes, he was standing in front of his house.

Q Okay. And who else went with you in that van?

A Menetra and Tenetra Crawford.

Q Were there any police officers with you?

A Yes.

Q And the van that they used was it a van that people could look into?

A No, you can just see out. They told me you can see out, but they can't see in.

Q Did you point out Carlos to the police officers then?

A Yes.

Q And after you pointed out Carlos -- let me re-ask this question. Which direction was the van going when you originally pointed out Carlos?

A It would be going north of Whittier.

Q North on Whittier from where?

A Coming from Martin Luther King.

Q You go north on Whittier?

A Yes.

Q Is Whittier closer to where the crime scene happened?

A Yes.

Q And where was he when you saw him?

A He was on the porch of his house.

Q Which is at Aldine and Whittier?

A Yes. It's on Aldine.

Q How far from Whittier?

A Around houses from Aldine.

Q I'm sorry?

A His house is a couple houses from Whittier, not far from Whittier.

Q So if you're on Whittier you can see his house?

A Yes.

Q And you point him out to the police?

A Yes.

Q And after that what do you see?

A I seen the gray car come past the van and they was in.

Q And you guys weren't out looking for the

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gray car?
A No, we wasn't.
Q When you saw the gray car, what did you do?
A I told them that was the gray car.
Q That what?
A That did the shootin' in.
Q Could you tell it was the same car?
A Yes, I could.
Q Did you know that car?
A Yes, I know it.
Q Where was that car when you saw it on that day?
A On that day I seen it coming south of Whittier.
Q Okay. And do you know who was in it or could you see at that point?
A I couldn't see who was in it.
Q So what did the van do?
A It went up and turned and went up Cote Brilliante.
Q What were the policemen doing?
A They had called it in and told them.
MS. BEIMDIEK: Objection, hearsay.
THE COURT: Sustained.
BY MR. HAGEMEISTER

Q Well, after the policemen did whatever they did, where did the van go?
A It went up Cote Brilliante to Annie Malone.
Q And then where?
A It slowed down cause the police had stopped them on Annie Malone and right off Martin Luther King.
Q Annie Malone is the next street parallel to Whittier?
A Yes.
Q One street west of Whittier?
A Yes.
Q So everyone has a mental picture of this, if this is Martin Luther King, and this is Whittier, where is Aldine?
A Aldine is the block over from Martin Luther King.
Q It runs the same way?
A Yes.
Q That would be Aldine?
A Yes.
Q And what about Annie Malone, where is that?
A It's a block up from Whittier.
Q And it runs parallel to Whittier?
A Yes.
Q Where is Cote Brilliant?

A Cote Brilliante the next block over from Aldine.
Q You said that the home of Carlos was at Aldine but you could see it from Whittier?
A Yes.
Q It was a couple houses from the corner?
A Yes.
Q Is it on the northside of the street or the southside of the street?
A On the northside of the street.
Q So that would be Carlos' house, approximately?
A Yeah.
Q I realize this isn't to scale?
A Yes.
Q Okay. Maybe the houses are bigger than that, we'll go with that. Where is your house?
A Across the street.
Q Directly across?
A On the southside, yes.
Q And who lives there with you?
A My mother.
Q Who is?
A Betty Hickman.
Q Anybody else?

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A My two kids stay there.
Q Betty, Angela, the kids aren't part of this case?
A No.
Q This is where you saw Carlos?
A Yes.
Q Where did you see the gray car when you were in the van the first time?
A Going down Whittier and turned up Aldine.
Q Okay. So it would have been right in this area getting -- taking a right?
A Yes, it was a one-way street.
Q And it actually goes this direction, kind, it takes a right right there?
A Yes.
Q You don't see Carlos getting in that car?
A No, I didn't see him get in.
Q You're saying the van goes to Cote Brilliant and down to Annie Malone. When it comes down to Annie Malone, what did you do?
A They had stopped the gray car that I seen that was the car that had been in the shooting.
Q Where was the car stopped?
A On Annie Malone right before Martin Luther King.

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Q So about right down here? I realize that car is probably not the same size, there's smaller blocks than they look like, is that a fair statement?
A Yes, that's fair.
Q When they pull over the car, who do you see in the car?
A They, the van slowed down, they had take everybody out of the car and seen Carlos get out.
Q So Carlos was caught by the police in the same car that was involved into shooting just less than 24 hours?
MS. BEIMDIEK: Judge, I object --
A Yes.
MS. MOORE-DYSON: -- leading.
THE COURT: Sustained.
BY MR. HAGEMEISTER
Q Was it the same car?
A Yes.
Q Was Carlos in it?
A Yes.
Q Was that car used in the shooting 24 hours earlier?
MS. BEIMDIEK: Objection, leading.
A Yes.
THE COURT: Overruled.

BY MR. HAGEMEISTER
Q What kind of relationship did you have with the people across the street?
A I didn't have a problem with them.
Q Did they have -- were they friendly with you?
A Yeah, I talked to his brother. We sit out sometimes and talk.
Q What do you guys talk about? Not specifics, just what kind of topics.
MS. BEIMDIEK: Objection, relevance.
THE COURT: Sustained.
BY MR. HAGEMEISTER
Q Do you get involved at all in the stuff that goes on?
MS. MOORE-DYSON: Objection, Your Honor, relevance.
THE COURT: Sustained.
MR. HAGEMEISTER: Goes to lack of bias.
THE COURT: Objection sustained as to the stuff.
MR. HAGEMEISTER: All right.
BY MR. HAGEMEISTER
Q Were you aware of any prior history between Carlos and John Allen and Johnnie Bell?

MS. BEIMDIEK: Judge, I object to the form of the question, it calls for hearsay.
MS. MOORE-DYSON: Speculation as well.
THE COURT: Approach the bench.
(The following proceedings were had at the bench out of the hearing of the jury:)
THE COURT: What do you anticipate your witness to say, Counselor?
MR. HAGEMEISTER: I just want to get out the fact that sometimes she speaks to two different parties and tries to get them to calm down.
THE COURT: Objection sustained.
MS. BEIMDIEK: Thank you.
(The following proceedings were had in the presence of the jury.)
BY MR. HAGEMEISTER
Q Where is G. W. Wells' residence?
A Martin Luther King, in the 4200 block of Martin Luther King.
Q Would it be fair to say it's close to the middle of Whittier and Annie Malone?
A Yes, it is.
Q It's not a building standing by itself?
A No, it's a lot of buildings.
Q Is there -- are the buildings separated?

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A No, they altogether.
Q So it's kind of like one big front?
A They all connected.
Q And is it the same way across the street?
A Yes.
Q And what's across the street?
A It's a flower shop, a auto shop and a real long fence.
Q And the auto shop is whose auto shop?
A Bill's Auto Shop.
Q That would be across the street, maybe a little west?
A Yes, a little west.
Q So I'll put a star at about where G.W. Wells is. When the -- has there ever been a time where you've ever seen Carlos committing any acts against John Allen or Johnnie Bell in the past?
A No.
MS. MOORE-DYSON: Objection, Your Honor. May we approach the bench? Never mind, she answered the question.
THE COURT: Very well. The Court deems the objection is withdrawn. Proceed.
MS. MOORE-DYSON: Yes, sir.
MR. HAGEMEISTER: All right.

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BY MR. HAGEMEISTER

Q Did you ever see Carlos running from somebody shooting at him?

MS. BEIMDIEK: Objection.

MS. MOORE-DYSON: Objection.

A Yes.

MS. BEIMDIEK: I think the witness indicated she hasn't seen any.

THE COURT: Sustained.

MR. HAGEMEISTER: I have to ask for a side-bar.

(The following proceedings were had at the bench out of the hearing of the jury:)

MR. HAGEMEISTER: There is a time approximately a month before the homicide when Johnnie Bell will testify that Carlos came through an alley on Martin Luther King and shot at him, and that as they were running away, John Allen chased them and shot at them. This witness can testify that after the shots were being fired, she left her residence, went through that lot and saw Carlos running away.

MS. BEIMDIEK: Again, I don't think -- there's been no disclosure by the State.

THE COURT: We've been over this ad nauseam. I outlined to you that no witness will be permitted to

testify as to a prior bad act or uncharged crime unless that witness actually saw or participated in the alleged assault. So again the offer of proof is overruled and denied.

All you anticipate this witness to say is that after shots were fired somewhere she saw someone running in?

MR. HAGEMEISTER: Yes.

THE COURT: Is that correct?

MR. HAGEMEISTER: I would establish it was the same time Johnnie Bell would testify to.

THE COURT: Objection sustained. Let's move on.

(The following proceedings were had in the presence of the jury.)

BY MR. HAGEMEISTER

Q Where was the pay phone that you used?

A It was right next to Bill's Auto.

Q So it would be right across the street?

A Yes, across the street.

Q That's the one you used to call the paramedics?

A Yes.

Q What is your nickname among the people who live across the street?

A They call me the Chocolate --

MS. MOORE-DYSON: Objection, relevance.

THE COURT: Sustained.

MR. HAGEMEISTER: I'll just be another few seconds, Judge.

BY MR. HAGEMEISTER

Q Did you speak with Johnnie Bell after the day that you both -- the morning where you both left the police station, and then you go home, and then not long thereafter you go back down and you have the photos, and then you go to the warrant office, and then you go out in the van, at any time after the shooting or after you went out in the van, did you talk with Johnnie Bell about how he wanted to handle this?

MS. MOORE-DYSON: Objection, Your Honor. We have already discussed this.

THE COURT: State your legal objection.

MS. MOORE-DYSON: Legal objection is relevance.

THE COURT: Sustained.

BY MR. HAGEMEISTER

Q Did you speak with any of the other witnesses to this crime? A-333

MS. MOORE-DYSON: Objection, relevance,

Your Honor.

THE COURT: Sustained.

MR. HAGEMEISTER: I have nothing further.

THE COURT: Thank you. You may stand down, ma'am.

Ladies and gentlemen of the jury, we will have our afternoon recess at this time.

(The Court duly admonished the jury and a recess was taken.)

(The following proceedings were had in the presence of the jury.)

THE COURT: Please remain seated. Please return, Miss Hickman, to the stand. You may proceed, Miss Beimdick.

MS. BEIMDIEK: Thank you, Judge.

CROSS-EXAMINATION

BY MS. BEIMDIEK

Q Miss Hickman, you had been at that house on Martin Luther King for awhile that evening?

A Yes.

Q And were you smoking any marijuana there?

A No.

Q Do you know what a blunt is?

A Yes, I know what a blunt is.

Q What's a blunt?

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A It's a cigar.
Q What do you put in a blunt?
A It's -- a blunt's, when you buy it, that's what's on the paper.
Q Do people who put marijuana inside those cigars also call them blunts?
A I can't speak for that.
Q You don't know anything about that?
A I don't smoke marijuana.
Q As you left that house that night, you walked out the door?
A Yes.
Q And a car pulled up almost immediately?
A It wasn't almost immediately. I had to walk out to the street.
Q By the time you walked to the street, the car pulled up?
A Yes, it was in front of me.
Q The car had no lights on?
A No, the car didn't have any lights on.
Q Almost immediately somebody started mumbling in the car?
A Yes, they was mumbling something.
Q They were mumbling something. Now, you wear eyeglasses, don't you?

A Yes.
Q And you weren't wearing your glasses on that night?
A No, I was wearing contacts on that night.
Q Can you tell me why it is that you wear contacts?
A Because for reading.
Q You don't have your contacts on today?
A No.
Q Can you tell me where it was you got your contact lenses?
A Um, in Chicago.
Q You got your eyeglasses here, but you got your contacts in Chicago?
A Yes.
Q How long ago?
A How long ago for what?
Q Did you get your contacts.
A I been having 'em.
Q Well, what year did you get them?
A I don't remember. I had 'em probably the beginning of the year.
Q Beginning of this year?
A No.
Q Beginning of 1995?

A Probably the beginning.
Q You think that's when you got them?
A I'm not exactly sure the day I got them.
Q I am not asking for the day, I am asking for the year.
A I'm not sure.
Q You weren't wearing your glasses that night, it's your testimony you were wearing the contact lenses?
A Yes.
Q You are not wearing the contacts today?
A No.
Q Now, I think on direct you told Mr. Hagemeister that the car was just right in front of you, like an arm's length away?
A Yes.
Q Do you remember telling the police officers who interviewed you right that night how far you were from the car?
A I think, yeah, if I am not mistaken, I, I am pretty sure they asked me how far the car was from where I was at.
Q This was an interview conducted down at the police station, very early in the morning after the shooting had happened at 11:25?

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A Yes, it was.
Q That was with an officer by the name of Det. Pappas?
A I'm not sure. I know I was interviewed.
Q They tape-recorded that interview?
A Yes.
Q Do you remember telling the officer at that interview shortly after the incident that you were five to seven feet away from the car?
A I'm not sure.
Q You don't remember saying that?
A I'm not sure if I said that.
MS. BEIMDIEK: Your Honor, with the Court's permission I'd like to play that portion of the tape. I have the mark on my tape, so I will only play that portion for purposes of impeachment at this time.
THE COURT: Very well.
MS. BEIMDIEK: It will take me just a second to get it adjusted to that portion.
BY MS. BEIMDIEK
Q Miss Hickman, you remember being at the police station, at the homicide office on the early morning hours of September the 18th?
A Yes.
Q Okay. Do you remember they taped a taped

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statement of you, it started at 2:40 in the morning?

MR. HAGEMEISTER: I'll stipulate there was a taped statement, Your Honor.

MS. BEIMDIEK: Thank you.

BY MS. BEIMDIEK

Q You'd recognize your voice if you heard it on tape, wouldn't you?

MR. HAGEMEISTER: I stipulate it's her voice.

MS. BEIMDIEK: Thank you. At this time I am going to play the portion of the tape dealing with the distance you told the police you were from the people in the car. I'll give you a chance to listen to this.

(Portion of tape played for jury)

BY MS. BEIMDIEK

Q Do you hear your voice saying you were five, six, or seven feet away from the people doing the shooting?

A Yes. They also asked me was I close enough to touch the car.

Q Miss Hickman, my question to you right now is whether or not you told the police that you were five to seven feet away from the car?

A Yes, but the question --

Q Ma'am, I'm going to ask the questions here

and you're going to answer them, all right?

MR. HAGEMEISTER: Objection, Judge, witness is trying to answer the question and the --

THE COURT: The witness has answered the question. Move on.

MS. BEIMDIEK: Thank you, Judge.

BY MS. BEIMDIEK

Q So on direct when you say you were inches away from the car, that is different from what you told the police that night shortly after the shooting happened?

A They asked me to describe exactly how far away I was from the car.

Q And your answer to the police was five to seven feet?

A When they told me to be specific, they asked me could I reach, if I reached out would I be able to touch the car and I said I would.

Q You said that on the tape?

A I'm not sure if I said it on the tape or on the paper.

Q What paper?

A The deposition.

Q Okay. I'm only asking you now, Miss Hickman, about the statement you made the very

night of the shooting, just hours after it happened.

A I can't remember everything I said.

Q All right. Right now do you remember saying that you were five to seven feet away the night the police tape-recorded your statement immediately after the shooting happened?

A Yeah, I can recall saying that.

Q Okay.

A I wasn't through talking.

Q Thank you. Now, you said you started hearing somebody saying, making some remarks, is that correct, from the car?

A Yes.

Q Was it your testimony today on direct that you don't know who it was that said that?

A Yes.

Q Do you also remember saying at a deposition, page 23, that it was the driver who said, "There go those sissies?"

A But I don't know who the driver was.

MR. HAGEMEISTER: Judge, I object. She's misstating the statement of the witness in the deposition which was --

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THE COURT: Just a moment. Objection sustained. If you're referring to the question on

line 8 --

MS. BEIMDIEK: Judge --

THE COURT: -- please refer to the answer on line 9.

MR. HAGEMEISTER: Thank you.

MS. BEIMDIEK: The question was, if I may I will restate the question at the bottom of the page.

THE COURT: All right.

BY MS. BEIMDIEK

Q The question I am asking is not about mumbling, I'm asking about somebody in the car said, "There's those sissies right there." Do you remember hearing somebody say that?

A Yeah.

Q Do you know who it was that said that?

A I couldn't see who said it.

Q Do you know from what direction it was coming?

A It was coming from the front, but I don't know who it was.

Q Do you remember previously saying it was the driver of the car that said that?

A I said it was coming from the front seat and it wasn't one of the passengers.

Q Miss Hickman, is it your testimony you never

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said it was the driver of the car who said, "There go those sissies?"

A Yes, I said that.

Q You did say it was the driver?

A Yes, if I am not mistaken, I said that.

Q Would you like to see the deposition?

A Yes.

MS. BEIMDIEK: May I approach the witness, please?

THE COURT: You may. I believe you're referring to page 24.

MS. BEIMDIEK: Page 23 on to the top of 24.

THE COURT: We're off of 23, aren't we on 24, so the Court can follow you?

MS. BEIMDIEK: Yes.

MR. HAGEMEISTER: It's actually both.

MS. BEIMDIEK: For context it --

THE COURT: We've already been on 23. Let's proceed.

BY MS. BEIMDIEK

Q I ask you to read the bottom portion.

A Here --

Q You don't need to read it out loud, just to yourself.

A Oh.

Q Do you now remember saying that it was the driver who said, "There go those sissies?"

A I still don't recall if I said that was the driver, but I did say it was coming from in the car.

Q Do you grow that's what you said at your deposition?

A What I said?

Q That you said it was the driver who said, "There go those sissies?"

A I don't recall that.

Q Did you just read what was typed up?

A Yes.

Q Does it not say in your own words that it was the driver that said, "There go those sissies?"

MR. HAGEMEISTER: Objection, Judge. None of the statements in the deposition are her words. She's merely agreeing to what Miss Beimdiek is saying.

THE COURT: Overruled.

BY MR. HAGEMEISTER

Q Let's go through it. Do you remember the question was, "Let me stop you there. You could hear somebody saying, there's those sissies right there?"

MR. HAGEMEISTER: Judge, I object. She's taking that out of context. Start two questions earlier.

THE COURT: Overruled.

BY MS. BEIMDIEK

Q I asked you, "You heard somebody saying, there's those sissies right there." Your answer was, "Yes." The next question I said was, "That's the first thing you think you heard?" Your answer was, "Yes, that was the first thing." My question was, "That was the driver who said that?" Your answer was, "Yes." Do you remember that now?

A No, I don't remember that.

Q Now, as this car pulled up and you were out in front of Martin Luther King, were you ever able to get the driver's license or the license plate off of that car?

A No, I wasn't able to get the license plate.

Q Were you able to describe the clothing of the people that were in that car, the clothing that they were wearing?

A I said that the two I saw was wearing dark clothing.

Q That was the extent of the description you could provide?

A Yeah.

Q You couldn't be more specific?

A Then they clothing.

A-336

Q They were wearing clothes and they were dark?

A Yes.

Q That was the best you can do?

A They asked what color and I said dark clothes.

Q Did you say there were four people in the car?

A Three or four.

Q Do you remember testifying at your deposition that there were four people in the car?

A There was three or four people in the car.

Q Do you remember testifying at your deposition that there were four people in that car?

A No, it was three or four peoples in the car.

MS. BEIMDIEK: Page 26, line 17.

MR. HAGEMEISTER: The State will stipulate.

MS. BEIMDIEK: Well, I'm going to ask her the question.

MR. HAGEMEISTER: I'm just trying to make it easy.

BY MS. BEIMDIEK

Q Do you remember saying at the deposition, "Yes, there was two in the front and two in the back", do you remember giving that answer at your deposition

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in your own words?

A No, I don't remember cause it was a while back.

Q I'm sorry, it was a while back?

A Yes.

Q It's hard to remember things now, isn't it?

A Um-hum.

Q Yes?

A Yes, about what I said.

Q Um-hum. Now, is it your testimony that both people on the passenger side of the car leaned out of those car windows and fired shots?

A Yes.

Q Did they both lean out of their own individual windows?

A It wasn't their own individual windows. He had to lean up and out.

Q The person in the back seat, you're saying today, had to lean up and out of the front window?

A Yeah.

Q The back window didn't come out?

A No, I don't think so.

Q Now, as you came out of this house, the car pulled up, you heard somebody saying something about sissies. John told you to run, is that correct?

A He stepped to where, stepped up to where I was at.

Q At that time he told you to run?

A Yes, he did.

Q And you turned around?

A I turned.

Q And as you turned to run, you began to hear shots being fired?

A They was shooting before I even turned all the way around.

Q As the shots were being fired, you got down on the ground immediately?

A Not immediately. I ran like a couple feets.

Q And then you hit the ground?

A Yes.

Q As you were running, you had your back to the car, you were running from the car, isn't that true?

A I turned away from the car.

Q Turned away from the car and began to run. Then as you got a couple feet away you fell down on to the ground?

A Yeah.

Q It all happened very quickly?

A Something.

Q And the car drove away?

A No, it didn't drive away. It pull up to where I was at, pulled up a little bit and slowed down, then it took off.

Q You weren't facing the car at this point, as you're lying on the sidewalk you're facing towards the building, towards 4236 Martin Luther King, or at least toward one of the buildings on the southside of the street?

A I don't remember exactly.

Q Now, immediately after you determined it was safe, you went to John Allen?

A Yes.

Q You realized he had been shot?

A Yes.

Q You were trying to speak to him?

A Yes, I was.

Q You couldn't understand anything he said?

A No. I wasn't trying to really understand. After I found out he was shot, I ran across the street to the pay phone.

Q As he tried to speak the best you -- the best he could say, I think you described it as "Um"?

A He was saying, but it happened, so I was immediately ran to the phone to get help.

A-337

Q Do you remember we talked about this at the deposition, page 30, beginning at line 18. We talked about what you did afterwards, after the shooting.

Do you remember saying, "I got up. I walked over next to where my nephew John was and I told him he would be okay. He was, um, um, um, um, I couldn't understand what he was saying. So I opened up his jacket seeing he was shot, so I ran across the street and called the police." Do you remember saying that?

A Yes.

Q You were unable to understand anything that he was saying?

A I wasn't really trying to understand what he was saying, I was trying to get help after I found out he got shot.

Q Did you tell me that at the deposition?

A I don't remember.

Q Do you remember at the beginning of the deposition that I told you I wanted your answers to be full and complete?

MR. HAGEMEISTER: Objection, Your Honor, the witness doesn't know what Miss Beimdiek expects.

THE COURT: Objection sustained to the last remark.

MS. BEIMDIEK: Your Honor, if I may, when we

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began the deposition, we made -- I did make clear to the witness what I expect and I think I'm entitled to cross her as to that.

THE COURT: You are, so proceed.

BY MS. BEIMDIEK

Q Do you recall at the beginning of the deposition that I advised you that any answer you gave I wanted to be full and complete?

THE COURT: Did you understand that, ma'am?

THE WITNESS: No, I really -- I was kind of upset. I know at the end she asked me did I want to sign it, but I didn't because I ain't read through it.

BY MS. BEIMDIEK

Q Do you remember I said, "If I ask you a question and I don't give you a chance to fully answer it, will you stop me and tell me I have more information to give you?" And you said, "Yeah?"

A But you wouldn't let me stop most of the time and complete finish.

Q Is that right? Do you remember me asking at the end of the deposition, page 53, question: "Are there any questions that you had additional information but I cut you off and didn't give you a chance to fully answer the questions?" Your answer, "No." Do you remember saying that at the deposition?

A No, I don't remember.

Q Would you like to see it typed up?

A I mean if you -- I know it's on there, but I don't remember saying that.

Q So at the time when I asked you if you had additional information to any question and I cut you off, you said no?

A I don't recall that.

Q You don't recall saying that?

A Cause I know you was cutting me off for so many things I was saying.

Q Why didn't you say that when I offered you a chance at the end of the deposition to tell me?

A That's what I am saying, I don't remember if I said no because I know you was cuttin' me off.

MR. HAGEMEISTER: Judge, I object to the defense attorney questioning her on this line. She can look in the deposition and see where there's half sentences.

MS. BEIMDIEK: Well, Mr. Hagemeister can bring that up on cross-examination if he believes I am.

THE COURT: The objection is overruled as stated. The jurors are instructed to disregard the comments of Mr. Hagemeister and Ms. Beimdiek not

amounting to a question by Miss Beimdiek directed to this witness. Let's proceed.

MS. BEIMDIEK: Thank you, Judge.

BY MS. BEIMDIEK

Q Now, Miss Hickman, you went across the street and you dialed 911?

A Yes.

Q And you wanted to get some help for your nephew?

A Yeah.

Q You also wanted the police to come?

A Yes.

Q Because you wanted to get the people that were responsible for this?

A Yes, but I was more concerned about him at that time.

Q I understand that. The woman who answered the phone when you called 911 asked you some questions?

A Yes.

Q One of the things she asked you was, "Who is shooting at you", do you remember her asking you that?

A No.

Q Do you remember telling her, "Some boys?"

A No.

Q You don't recall giving that answer?

A No.

MS. BEIMDIEK: Judge, I'm sorry, I don't have this portion of the tape marked. I can do it outside the presence of the jury if the Court opposes.

MR. HAGEMEISTER: I'm not opposed to any section of the tape.

MS. BEIMDIEK: At this time I think I can only play that portion.

MR. HAGEMEISTER: I will stipulate to any portion she closes to play.

THE COURT: You may proceed, Miss Beimdiek.

(Portion of tape played to jury)

BY MS. BEIMDIEK

Q Could you hear your telling the operator that it was some boys shooting at you?

A Yes.

Q You also told her you needed to get off the phone?

A Yes.

Q When she specifically asked you who was shooting though the best you could tell her was, "Some boys?"

A Cause I had to get off the phone.

Q I understand that. You didn't say to her at

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that time, it's the guy from across the street shooting at me, you didn't say that to her?

A No, I didn't say it's the guy.

Q Now right after you got off the phone, you went back across the street and eventually you flagged down a policewoman, did you not?

A When I went back across the street, as I was going back across the street, before I got off the phone, as you hear I said, I got to get off the phone somebody was coming back around.

Q I understand, Miss Hickman. I am asking you about the time you flagged down a police officer, do you remember doing that?

A Yes.

Q That was after you got off the phone with 911?

A Yes.

Q And it was a woman police officer?

A Yes.

Q Yes?

A Yes.

Q And her name was Patricia Lane, do you know that?

A I don't know it.

Q And she -- you told her what had happened,

didn't you?

A I'm pretty sure.

Q And she asked you who was doing the shooting?

A Um-hum.

Q And do you remember telling her some dudes were shooting at you?

A I know I told her -- I don't know if she asked me the question, I'm not for sure. But when she got out of the car, she was -- she really wasn't asking no questions, she was telling me if I wanted --

Q Did she ever ask you, I'm sorry, did she ever ask you who was doing the shooting?

A I don't recall.

Q When you flagged her down, did you say come help me?

A I told her my little nephew got shot.

Q Did you tell her it was some dudes that shot your nephew?

A We were trying to help him.

THE COURT: Ma'am, I'll ask you to listen to the question and answer the question. Please repeat your question again, Miss Beimdiek.

MS. BEIMDIEK: Thank you, Judge.

BY MS. BEIMDIEK

Q Did you tell her it was some dudes that shot your nephew?

A I don't know if I told her that or not.

Q You don't remember if you said that or not?

A I don't know.

Q Did you tell her it was the guy across the street, the guy that I lived across the street from for a year, that's who was one of the guys shooting at me, did you tell her that?

A I don't recall telling her that.

Q The police came and asked you to go down the street and look at some people?

A Um-hum.

Q That was about 45 minutes after the shooting happened?

A Yes, it was a while after.

Q It was a while after. You had a chance now to sort of gain your composure as best you could?

A Yes.

Q The police took you down to Whittier and Martin Luther King?

A Yes.

Q And at that time you looked at some people and made some selections?

A Yes.

A-339

Q It was only after you did that that you told the police that one of the guys in the car was named Carlos, is that right?

A No, I had told them that when I was sitting inside the paddy wagon.

Q Which officer did you tell that to?

A I don't know his name, but he was inside the paddy wagon.

Q Do you remember again at your deposition in August, August the 6th of 1996, page 36, line 14, I asked you, "So that was the first -- after they had Tyrone the first time, you named Carlos at that time?" Your answer was, "Yes." Do you remember saying that?

A No, I had named him once in the paddy wagon.

Q Do you remember also adding on your own, without my cutting you off, to that same sentence when you said, "Yes, because they was talking to me then, but they wouldn't talk to me at first, they seen I was real upset", do you remember saying that?

A I remember saying that.

Q Do you also remember saying, yes, that the first time you named Carlos was after you selected Tyrone?

A No, I don't remember saying that one.

Q Would you like to read that portion of your

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deposition that I just read out loud to you?
A No.
Q All right. You agree with me that that's what's typed up in the deposition?
A Yes, it probably was typed up on me.
Q Are you saying that the court reporter typed it up incorrectly?
A I'm not saying what happened.
Q Well, at the end of the deposition we offered you the opportunity to review the deposition for accuracy and you agreed that you would trust that the court reporter --
A You asked me what would I sign it and trust her, but I didn't sign it or nothing.
Q Have you ever reviewed the deposition prior to trial today?
A I recently did.
Q When you looked it over, did you make any attempt to tell Mr. Hagemeister, hey, on page 36 where I said that I didn't identify Carlos until after I picked out Tyrone, where I said, yes, that's a mistake, somebody typed that up wrong?
A We discussed it.
Q You told Mr. Hagemeister that?
A Yes.

Q What day did you tell him that?
A I don't remember exactly what day, but I did tell him that. I don't remember exactly the day, but I did tell him.
Q Did you ever fill out any forms, write anything down to say this was some kind of mistake?
A No.
Q Now, I think you said on direct that the car that you saw coming down Martin Luther King that did the shooting was a two-door car, is that correct?
A Yes.
Q That's your testimony here today?
A Yes.
Q You remember again we talked about the interview that the police did with you that very night of the shooting starting at about two o'clock in the morning?
A Yes.
Q Just hours after the shooting?
A Yes.
Q And the police asked you to describe the car that had done the shooting?
A Yes.
Q Do you remember telling the police that it was a four-door car that did the shooting?

A Yes, I remember.
Q When the event was just hours from your memory you told the police this was a four-door car?
A Yes, I remember.
Q And you also told the police there were four people in that car?
A I don't remember that.
Q I'm sorry?
A I don't remember that, but I remember telling them that it was a four-door car.
Q Okay. In addition to describing it was a four-door car, do you also remember telling the police it was a large car?
A It was two cars.
Q I'm simply asking about the description you gave the police about the car that did the shooting.
A What was the question?
Q The question was did you tell the police it was a large four-door car?
A Yes.
Q You told them that that very night at the police station?
A That morning.
Q I'm sorry?
A That morning.

A-340

Q I'm sorry?
A That morning.
Q You're correct, two o'clock in the morning. That morning. Now, showing you a diagram marked Defendant's Exhibit A, can you see that from where you are?
A Yes, a little bit. Move it up here.
Q Would you like --
THE COURT: You may step down if you would like to to look at the diagram.
THE WITNESS: Okay.
BY MS. BEIMDIEK
Q Does this diagram fairly and accurately depict the layout of the streets, including Martin Luther King, Aldine, Cote Brilliante and Annie Malone?
A Yeah.
Q And I've also depicted again, it's not to scale, but what would be 4236 Martin Luther King Drive?
A Okay.
MR. HAGEMEISTER: Judge, I'm going to object to the diagram because it makes it look like all the streets stop at Whittier and Annie Malone.
MS. BEIMDIEK: Judge, I think the State's Exhibit --

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MR. HAGEMEISTER: The streets continue on, it's not a closed subdivision.

THE COURT: Let the record show the objection is overruled. I understood the witness to say that the diagram, Defendant's Exhibit A, correctly indicates the layout of the streets around Cote Brilliante, Whittier, and Aldine, is that correct, ma'am, is that what I heard you say?

THE WITNESS: Yes.

THE COURT: Let's proceed.

MS. BEIMDIEK: Thank you, Judge.

BY MS. BEIMDIEK

Q Now I indicated 4236, which is approximately the address of the home you were in, is that correct?

A Yes. I'm not sure if that's the address.

Q If the police report says it was 4236, you wouldn't disagree with that?

A No, I mean I would disagree because sometimes they get the address wrong. It was in the 4200 block.

Q All right. All right.

THE COURT: Can you hear the witness?

BY MS. BEIMDIEK

Q Now I will flip over to Defendant's Exhibit C, which I've drawn to represent some traffic

lanes, all right? I'm going to ask you to consider that this is Martin Luther King, the segment of the street just chopped off of Martin Luther King, reflecting the address where the shooting occurred, okay? Does that make sense to you?

A Yeah.

Q We're still facing north.

MR. HAGEMEISTER: Judge, I have to object. I realize it's not to scale, but she has the residence, the width of the entire building that they came out of less than a half of a car lane in width. It doesn't represent the size of the building relative to the streets.

I don't know that it will confuse anybody later, but I wouldn't be doing my job if I didn't object. The building is the size of a mailbox.

THE COURT: Will you turn back to Mr. Hagemeister's plat. Where is the building there?

MR. HAGEMEISTER: My buildings aren't to scale but --

THE COURT: No.

MR. HAGEMEISTER: -- but not the same as Miss Beimdiek.

THE COURT: Let the record show that you've waived your -- your building is even smaller.

MR. HAGEMEISTER: My street is a heck of a lot smaller too, though.

THE COURT: The objection is overruled. Ma'am, again I'm having trouble hearing you. Turn back to the exhibit that you were referring her attention to. Is it B?

MS. BEIMDIEK: A.

THE COURT: Now --

MS. BEIMDIEK: C is the next one I'm going to.

THE COURT: Turn to C. Weren't you on C?

MS. BEIMDIEK: I was at C. I thought you told me to go back.

THE COURT: I did. You followed my direction admirably.

Now, ma'am, did you say that represents the approximate location of the building in the 4200 block?

THE WITNESS: No, I can't say -- no, I mean it don't look like that.

THE COURT: Any objection -- the objection will be sustained.

MS. BEIMDIEK: All right.

A-341

BY MS. BEIMDIEK

Q If we take out the building for now.

A This wasn't the building.

Q Let's not worry about the building. All I've drawn are some lines on a page. I've used the blue line to delineate the sidewalk area between each side of Martin Luther King, a center line divided the eastbound and westbound traffic.

A Right.

Q If this area represents Martin Luther King, just a segment where the shooting happened, can you describe for me where the car was, and you can put it anywhere because all I am interested is where the car was and where you were as the shooting happened?

A Okay. This the sidewalk.

Q This is the northside of the street and this is the southside of the street?

A Okay.

THE COURT: Pardon me. Just for the sake of the record, will you put Martin Luther King somewhere to indicate --

BY MS. BEIMDIEK

Q This whole street is Martin Luther King according to my diagram, all right?

A Yes.

Q The whole street.

THE COURT: Pardon the interruption,

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Miss Beimdiek.

MS. BEIMDIEK: That's all right. Thank you.

BY MS. BEIMDIEK

Q If this is just a segment of Martin Luther King, this isn't a trick question, I'm trying to -- let's assume we've taken this segment and transferred it to this larger piece of paper so we can see better, all right?

A Okay.

Q And the car, as it pulled up, was in the right lane of traffic, wasn't it, going eastbound on Martin Luther King?

A Yes, it was going eastbound.

Q So it's going this direction --

A Yes.

Q -- on Martin Luther King? It was on the lane closest to the building when you exited it?

A Yes.

Q If I put a big box --

MR. HAGEMEISTER: Object to the defense attorney putting the big box where she wants it instead of the witness.

THE COURT: Let the record again show that objection has been waived since you were putting boxes in response to the witness' question. The Court will

of course note that it's best for the witness to indicate where the object was rather than counsel, but since you're both busy with show and tell and drawings, I'll leave you to it.

Now, ma'am, is that approximately where the car came up?

THE WITNESS: Yes, it was coming out of this lane.

THE COURT: The Court will sustain the objection at this time. If you ask the witness further to indicate anything on your plat, I expect the witness to indicate it.

MS. BEIMDIEK: That's fine, Judge.

BY MS. BEIMDIEK

Q Now, in relation to where we put the car when it came to a stop, could you point on the diagram where the building was that you exited as this car pulled up?

A Okay. The car was coming this way. This the car?

Q That's the car.

A This supposed to be --

Q The building can be wherever you want it to be. That's the sidewalk.

A Right about here.

Q I'm asking where the building was first.

A The building on this side.

Q So the building is where I scratched it out in the first place?

A Probably. It was in between the building, in between the car.

Q Okay. Now is it okay if I mark on there 4236, is that the address you believe you came out?

A I don't know.

Q You don't know. Okay. That's fine. We know it's the 4200 block?

A Yes.

Q You came out of the building and you crossed into the sidewalk, is that correct?

A The sidewalk, right after you come out the house is the sidewalk.

Q Right on the sidewalk. The front of the building on this diagram touches the sidewalk because as you come out the door you're on the sidewalk?

A Yeah.

Q You walked on to the sidewalk and took a few steps into the street. Show me where into the street you went?

A-342

A Right about here.

Q I'm going to mark with a red X. Now did you

stay there as the car pulled up?

A Yes, cause I ain't see the car coming, I was heading across the street.

Q The car would have hit you if you stayed right there. Did you move out of the way?

A No, I didn't move out the way.

Q This is the inside of the car. Does this indicate you got inside?

A No. I say this suppose to be the car because this was too big.

Q That's too big to be the car?

A That's why I asked you that's supposed to be the car.

Q I told you that's supposed to be the car.

A This ain't no room on the streets. This ain't no room.

Q Let's try it again.

MR. HAGEMEISTER: I ask the Court to see if all the jurors can see.

BY MS. BEIMDIEK

Q Now I show you what's marked defendant's Exhibit D.

MS. BEIMDIEK: Can you all see?

THE COURT: If any juror has trouble seeing these drawings, you may stand. That will facilitate

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your view.
BY MS. BEIMDIEK
Q Now, this diagram again is Defendant's Exhibit D, is that right?
A Um-hum.
Q Now, this diagram, again I indicated the building we're talking about. Now is that building approximately the size that it would be in relation to the street, or do you want me to make the building larger?
A It's okay.
Q I reflect it comes right up to the edge of the sidewalk?
A Um-hum.
Q I'm going to have you draw with your finger an outline of the size of the car in relation to that, that building and where it was?
A Right about here.
Q Right in there. Now, the reason I did this larger, I want to make it big enough so everybody can see the way the passengers are positioned in the car. So you want to put a car approximately the size that you indicated --
MR. HAGEMEISTER: Judge, I object to --
A This ain't no room.

MR. HAGEMEISTER: -- placing the car again --
A Where she putting the car, I don't have no room to be in the streets.
THE COURT: The objection is sustained.
BY MS. BEIMDIEK
Q Let's do it this way, Angela. Can I make -- this is the car. That is all we are talking about. The square represents the car. There was a driver in the car, is that correct?
A Right.
Q You don't know who the driver was?
A No.
Q There was a passenger in the front seat of the car?
A Right.
Q Do you know who that passenger was?
A Yes.
Q Who do you think that passenger was?
A It was Carlos.
Q You're saying that was Carlos?
A Yes.
Q That there was something in the back seat of the car, do you know who that person was?
A Yeah.

Q Who was seated behind Carlos?
A I didn't know his name at the time, but now I know it's Tyrone.
Q The police told you it was Tyrone?
A Yes.
Q Do you know if there was a fourth person behind the driver?
A No, I can't remember.
Q That we established when you talked to the police you said there were four people in the car?
A I agreed, I said --
Q You can have a seat.
A I said there was three or four peoples in the car.
Q We established, I think you told the police when you gave your taped statement, there were four people in the car?
A No, I said I didn't -- I don't remember if it was three or four people.
Q All right. Well, I am going to put a question mark here because you don't know if there was somebody there or not. That's the way you believe those people were positioned in that car as you saw it, is that right?
A Um-hum.

Q Do you remember telling the police as they interviewed you that early morning, however, you did not actually see the shooting happen?
A As the -- I don't know. I don't know. I know I told them this, that when the shootin' started and I turned, that I seen the guns and in who hands and everything.
Q You told the police you saw whose hands the guns were in?
A Yes.
Q Do you remember telling the police that you didn't actually see the shooting?
A No -- yeah, cause when they stuck the guns out, that's when John told --
Q Told you to run?
A Yes.
Q That was almost, the car pulled up, somebody said, "There's those sissies", you saw guns, John told you to run, and you turned and ran, and the shots started?
A They started before I turned.
Q Before you could turn?
A Yeah.
Q Now, I think you indicated that there was a second car that came down that street right after the

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shooting happened?

A Yes.

Q Do you remember that the first time you ever mentioned that to the police was in the afternoon of September the 18th when you were at the warrant office with Det. Hornak?

A No, I don't recall that, cause I told them about it and the police had went to follow the car or something and lost it. They saying they couldn't catch up with it.

Q Do you remember describing that car as a smaller car with plastic shutters in the back?

A No.

Q You don't remember telling that to Det. Hornak?

A Unless he got the cars mixed up.

Q Or unless you have the cars mixed up?

A Or unless I have.

Q Do you remember telling Det. Hornak at the warrant office that the second car that drove by shortly after the shooting was smaller with plastic shutters and was gray?

A No, I don't remember nothing about no small plastic shutters.

Q You don't remember saying that? Is that

right?

A I don't remember saying plastic shutters at all.

Q Now, the night that you and Johnnie went down to the police station after the shooting happened and you stayed there into the early morning hours?

A Yes.

Q And as you were leaving, I think you said you and Johnnie Bell left together?

A Yes.

Q At some point as you were leaving, did you tell Johnnie Bell that it was Tyrone who was in the front seat of the car?

A No, I didn't tell them.

Q You didn't tell him that?

A No.

MS. BEIMDIEK: Thank you. That's all I have.

THE COURT: Thank you, Miss Beimdiek. You may proceed, Miss Moore-Dyson.

CROSS-EXAMINATION

BY MS. MOORE-DYSON

Q Now, you indicated that earlier that day you had been at home all day, is that right?

A Yes, at my house.

Q What had you been doing?

A Nothing.

Q Nothing at all? You were fully rested by the time you were sent for, is that correct?

A What you mean by sent for?

Q You were rested at that time?

A Yes.

Q By the time you left to go to G. Wells' house?

A Yes.

Q G. Wells is someone related to you?

A My sister's cousin on her father's side.

Q Okay. And when you got there, was John Allen already there?

A Yes, he was already there.

Q Johnnie Bell was already there?

A Yes, he was already there.

Q How many rooms in that house?

A I think four or five, I'm not sure.

Q Four or five. It's located upstairs over one of those businesses, is that correct?

A Yes, it's above it.

Q I'm going to hand you a couple of pictures I marked as Defendant's Exhibits AA, BB, CC, and DD. I am going to ask you if you recognize the scenes

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depicted on those pictures?

A Yes, I recognize them.

Q Is that the 4200 block of Dr. Martin Luther King?

A Yes.

Q And do they, do any of those pictures show the building where G.W. Wells lives?

A Yes.

Q And could you point that building out to me?

A The building on the house, the building up here.

Q And what color is the front of that building?

A Orange.

Q Okay. Now, can you point out to me in relation, on this particular picture, Exhibit BB, where the shooting actually took place?

A Right in front, right in front of it.

Q In front of the orange building?

A Yes, it was right in front of it.

Q Okay. Where is the front door?

A That's it. You can't hardly see it.

Q This one?

A Right there.

Q It happened right here?

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A Yeah.
Q Okay. You and John Allen and Johnnie Bell walked right outside that door and you stepped into this first lane, is that correct, off the sidewalk into that first lane?
A Yes, I stepped off the sidewalk.
Q Okay. Now that first lane is approximately -- can you approximate, if you can't, don't worry about it, is it approximately this wide, the first lane?
A I don't know.
Q About how far from where you're sitting did you step into the street from the curb? Can you walk out and tell me?
A Like this, this the sidewalk. I was about right here.
Q So that is about five feet from the curb, isn't it?
A Right here.
Q Approximately?
A Three, four, five, somewhere.
Q So you stepped out into the street and you were about to go across the street to this telephone booth right here?
A No, I wasn't going to the telephone booth, I

was going home.
Q Okay. This is exhibit, Defendant's Exhibit DD that I'm referring to, you were not going to --
A No, I was going home.
Q Where do you live from there?
A Can I see that?
Q This is the building. I think that's Bill's Auto.
A You can't see the house because it's back some and across the lot.
Q Behind that building, is that correct?
A Yes.
Q Do you know whether or not Johnnie was about to use that phone?
A John was.
Q John was?
A Yes.
Q So you and John were both going to head in the same direction across the street?
A No, I was going --
Q A little further up?
A No, I was going back cause I have to go across this real big lot, so I had to go back east and he was going west.

Q West?
A Yes.
Q You all were going in slightly different directions?
A Yes.
Q Were you going to walk alone?
A Yes, cause when once you cross the lot is my backyard.
Q They weren't walking you home?
A No, they want to, they was going to the pay phone.
Q Then this incident occurred, you walked out into the street and a car drove up. You were facing what direction when you stepped into the street?
A When I stepped into the street? I was talking to John and Johnnie because they was behind me.
Q Behind you on the sidewalk?
A John was in the streets right behind me, but Johnnie was still on the sidewalk.
Q When you say behind you, were you facing in this direction, that would be east?
A I was facing toward the building cause I had turned around to talk to them.
Q So you were facing the building?

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A Yeah.
Q They were facing east?
A Yes.
Q Okay. So when the car drove up, you didn't see it initially when it first drove up, is that correct?
A No, I didn't see it.
Q At that point did you hear them make some statements?
A What you mean?
Q When they first drove up, when they making statements?
A I had turned around -- no, I didn't hear no statement at first cause I had turned around.
Q What was Johnnie doing when the car first came up, was he standing or stooping?
A I was looking back at the car, so I can't see what he was doing behind me.
Q Did you ever see John bend over?
A No.
Q Did he look into the car and see anybody he recognized?
A I can't say that.
Q You never saw him bend over at all?
A I don't know what he did. I can't say what

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he did.
Q When the car drove up you were looking back at him, is that correct?
A That's correct.
Q At that time he was not bending over, is that right?
A No, I didn't see him bend over.
Q When you heard the voices, what did you do?
A I had seen the car before I heard the voices cause 1 had turned back around and looked right and the car was right in front of me.
Q There was nothing about the car -- did it screech?
A No, it just pulled up.
Q Didn't startle enough to jump back?
A It came up so quick, I didn't know the car was there.
Q Did it make a noise?
A No.
Q Skid on its tires?
A Not at that time.
Q It drove up slowly?
A Yes, it drove up slowly. I'm not sure.
Q You're not sure. So you turned around and is that when you looked into the car?

A When 1 turned around they, the car was right there.
Q The car was in front of you like this?
A Yes.
Q Passenger side to you, is that correct?
A Yes.
Q You were standing toward the front of the car?
A 1 was like in the middle of the car.
Q And the car is about five feet from you, about as far as from me to the jury box?
A I don't know exactly how many feets, but I can --
Q Does this look like it might be the amount of space?
A No.
Q Closer?
A He was closer.
Q Here?
A Probably closer.
Q You were standing here?
A Probably right from.
Q Now, when the car is here, you're standing, isn't that correct?
A Yes.

Q And you're in the street?
A Yes.
Q You are not up on the curb?
A No.
Q How high was the car?
A It wasn't real big car. It was a short car.
Q Was it at eye level to you? Could you see the top of the roof of the car at the time while you're standing there?
A I'm not sure.
Q Okay. You were standing straight up, you weren't bent?
A No, 1 wasn't bent.
Q The car is right in front of you, you're real close to it?
A Yeah.
Q Okay. The car is right here. Could you see directly into the windows or could you see on maybe a split view or just a top of the windows?
A When the car pulled and 1 looked around, 1 wasn't lookiog at the top of the car, 1 was looking at who was in the car.
Q You're this close to the car. What's at eye level to you?
A 1 -- 1 don't know what the top of the car or

who in the car.
Q But the car is lower than eye level, isn't that correct? Am 1 correct with saying that? It would help you out if I show you a picture? 1 show you State's Exhibit -- but it's not marked.
MR. HAGEMEISTER: Making it 11 and 12. I'll do it.
(The Court Reporter marked for identification State's Exhibits 11, 12, 13)
BY MS. MOORE-DYSON
Q I've shown you State's Exhibits 11, 12, and 13. Is this the car that you eventually told the police was the car that you saw them in?
A Yes.
Q And that is a gray Honda, is that correct?
A 1 don't know what kind of car.
Q It's a small car?
A Yes.
Q Hatchback?
A Yeah.
Q Okay. With a sort of half diamond shaped back window?
A Yeah.
Q The front is a little -- it's a two-door?
A Yeah.

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Q Not four-door?
A No.
Q But it is gray?
A Yeah.
Q Now that car is parked in the street. If you were to stand next to that car, if you can tell me, would your head be level with the windows or would you have to look down into the car in order to see it?
A I'm saying I don't know if I was looking at the roof of the car at the time it pulled up or not.
Q But if you were standing this close to the car and looking straight ahead without bending, you would be looking at the top of the car, isn't that correct, you're rather close?
A Yeah, if I was looking straight ahead.
Q If you were further back and looking straight ahead, you would have a better view into the car itself?
A Probably so.
Q You were standing this close to the car, is that right?
A Um, probably.
Q At that point, in order for you to see inside that car you would have to be bent over?
A I didn't have to see in because they stuck

their head out.
Q Two people stuck their heads out of this car?
A Yes.
Q They stuck their whole head out of the car?
A And they arms.
Q Their heads and their arms?
A Yes.
Q You indicated to the police the windows were rolled down, isn't that correct?
A Yes.
Q You stated that in your deposition?
A The windows down.
Q Both windows were down?
A I don't know if the window was on the other side.
Q I am talking about on the passenger side where you were, both windows were down, is that correct?
A No. I know both of them couldn't because he leaned up toward the front, so the back wasn't down.
Q This car has one large window and the little diamond shaped window, whether or not that window rolls down in that type car?
A I don't know.

Q But you're saying it was rolled down or wasn't?
A It was.
Q It wasn't rolled down?
A No.
Q There was a person --
A He leans up in the front so the window --
Q On the passenger side you had two people, two men, these two young men, leaning out of the same window --
A Right.
Q -- is that right? Now, initially you told them it was a four-door car, isn't that correct?
A Right.
Q You also told them they had both windows down front and back and leaning out the two windows, isn't that correct?
A Yeah, it was two cars and I got confused.
Q The car doing the shooting was the four-door with the two windows rolled down, isn't that what you told the police?
A I told them --
Q Later on the next day is when you first saw --
MR. HAGEMEISTER: She is not allowing the

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witness time to answer questions, Judge, objection.
THE COURT: Overruled, since the witness answered and we moved on to the next question, but I'll ask you to give the witness time to answer your questions, Counselor.
MS. MOORE-DYSON: Okay. I will. Sorry about that, Your Honor.
BY MS. MOORE-DYSON
Q Now, you described the big gray car, is that correct, with the four doors, initially to the police, that's the first car you told them about?
A I think I said it was blue.
Q Light blue or gray, that's what you said?
A Yeah.
Q Is that right?
A Yeah.
Q And you said it was a large car, that's the first car you told them about, isn't that correct?
A Yeah.
Q Now when you saw Tyrone Morant later that night when the police brought him to you, did you recognize that car?
A When the one he was in --
Q Yes.
A No, I don't know where car come from.

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Q I'm going to direct your attention to page 39 of the deposition. The question, No. 2, at the top, line 2 says, "Did you recognize that burgundy car also as one that", and you answer before she completed, "Yes", your answer was. Again, "Had you ever seen Carlos in that burgundy car?" You said, "Yes." "Had you ever seen that burgundy car parked anywhere near Carlos' house on Aldine?" You indicate, "Yes." That's in regard to the burgundy car?

A Yes.

Q Did you know that was a detective's car?

A I knew it was detectives out there.

Q But you told them --

A But --

Q -- but you told them you had --

MR. HAGEMEISTER: She is not allowing the witness to answer the question.

THE COURT: Objection sustained. You may finish your answer.

A It's the burgundy comes across the street from the house and that's how we mix them.

Q You told them that burgundy car was a car that you've seen Carlos in before, isn't that correct?

A I said that one looked like that.

Q That one or one that looked like it, but

that it wasn't the car involved in the shooting that night, is that right?

A I wasn't sure.

Q Now, this gray car, do you know who this car belongs to?

A No.

Q You said you have seen this car in the neighborhood before?

A Yes.

Q Do you know whether or not the person who owns it lives in the neighborhood?

A No, I don't know.

Q You never saw Carlos drive that car, did you?

A No, never seen him drive it.

Q Ever seen Tyrone drive it?

A No.

Q Ever seen Tyrone in the car?

A No, not other than that night.

Q Other than that particular night?

A Yes.

Q When you initially called 911, it's quite obvious from the tape that you were quite upset, and under the circumstances understandably. The shooting had occurred, is that right?

A Yes.

Q You were calling 911, you want the police to get there right away, is that right?

A Right.

Q You were concerned when you called that 911 was to get them there to take care of your nephew?

A Right.

Q You were not concerned at that time about who it was, you wanted them to get there?

A Yes, and save my nephew.

Q To save your nephew's life. That's understandable. At the time you knew who it was, isn't that right?

A Yes.

Q You also knew where Carlos lived?

A That's right.

Q You also knew that Tyrone, you knew -- you didn't know his first name, you knew who he was, is that correct?

A Yes.

Q Now, you knew where Tyrone lives is across the street from where you lived?

A Where who lives?

Q Right across the street.

A Tyrone don't.

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Q Not Tyrone, Carlos?

A Yes.

Q When the police got there and you knew it was Carlos, did you tell them to go to Carlos' house?

A Yes, I told them it was Carlos.

Q Did you tell them to go to his house?

A Not to his house. And they said Carlos, who? I didn't know his last name but he stayed across the street from me.

Q Did you give them a description of Carlos?

A Of Carlos, no, because I told him I knew who he was.

Q Did you give them a description of Tyrone?

A Yes.

Q And in that description in the police report you gave them the description prior to -- they were taking down what you were saying and making a decision -- in other words they were taking down that description as you were giving it to them, correct?

A I guess so.

Q Did you tell them what they were wearing?

A I said dark clothing.

Q Did you tell them anything else about it?

A About who?

Q About their clothing?

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A No, I don't think so.
Q Okay. When you talked to the police at one point, and at your deposition you indicated that they asked you, "Did you recognize", on page 25, "Did you recognize anyone else in the car?" And you said, "No."
A In which car?
Q In the car, we are talking about the car where the shooting occurred.
A Yes.
MR. HAGEMEISTER: Objection. What line are you talking about?
MS. MOORE-DYSON: Page 21, line 23.
MR. HAGEMEISTER: Page 21?
MS. MOORE-DYSON: 21, right, line 23, page 21.
MR. HAGEMEISTER: I withdraw that.
BY MS. MOORE-DYSON
Q "Did you recognize anybody in the car when you saw that car?" That was the question. And your answer was, "Only Carlos, that's the only person."
MR. HAGEMEISTER: Judge, she is taking the question out of context. I object vehemently as to her taking that question out of context.
MS. MOORE-DYSON: The question stands on its

own. There's nothing ambiguous about the question, "Did you recognize anybody in the car when you saw the car?"
MR. HAGEMEISTER: Judge, I ask to refer herself to line 14 on that same page.
THE COURT: The vehement objection is overruled. Let's proceed.
BY MS. MOORE-DYSON
Q Do you recall Miss Beimdiek asking you that question?
A What was that?
Q "Did you recognize anybody in the car when you saw that car?"
A Did I recognize?
Q Do you recall her asking you that question?
A Not --
MR. HAGEMEISTER: Same objection, Judge, taken out of context.
THE COURT: Just a moment. What line are you on?
MS. MOORE-DYSON: Line 23, page 21.
THE COURT: Objection overruled. Proceed.
MR. HAGEMEISTER: Judge, I ask the Court to refer itself to line 14 on that same page. She's making as if this is at the time of the shooting.

MS. MOORE-DYSON: I didn't refer to any time.
MR. HAGEMEISTER: My objection exactly.
THE COURT: Counselor, you will have an opportunity on redirect, if necessary, to read any portion you think applicable.
MR. HAGEMEISTER: Thank you.
THE COURT: The jury is instructed to disregard the last remarks of counsel, again not amounting to questions. The Court's ruling remains the same. Let's proceed.
BY MS. MOORE-DYSON
Q Do you recall answering, "Only Carlos, that's the only person?" Do you recall that answer?
A That's the only person I knew.
Q That you -- the question was that you recognized?
A Well, that's the only person I knew personally.
Q Did you tell her that you didn't understand that question?
A I don't know if I told her that or not.
Q With regard to other persons, on page 25 she asked you, line 21, "Could you see who was in the back seat?" And your answer was, "It was -- I just seen

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his face, but I didn't know him, I don't know him."
Is that the answer?
A I don't know him.
Q Okay. You didn't know that person's name, is that correct?
A That's correct.
Q When did the police tell you his name?
A I don't remember when they told me his name, but they told me his name was Tyrone.
Q When they brought you to, was that Whittier, was it Whittier and Aldine where they took you?
A Whittier and Martin Luther King.
Q They took him out of a car, is that correct?
A That's correct.
Q They took him out. Was he the first person they took out of the car?
A I'm not sure if he was first.
Q Did he have on dark clothing?
A Yes.
Q And they stood him there, is that correct?
A Yes.
Q Did you understand there were other persons they were going to show you coming out of that car?
A She said they wanted me to take a look some guys they had picked up.

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Q They wanted you to take a look at some guys they picked up, is that correct, and Tyrone stepped out of the car, is that correct?

A Yes, he got out of the car. I don't know if he was first, second, or third.

THE COURT: Just a moment. Let the record show the interruption was due to the siren. You may state your answer now, Miss.

A I'm saying I don't know which order they got out of the car in.

BY MS. MOORE-DYSON

Q Where were you when they got out of the car?

A In the police car.

Q Was the police car pointed in a direction of the -- where did they place him, first?

A In the streets, kinds of like in the streets, so he headlights was on him so I can see.

Q Was he in front -- wait a minute. Was he in front of the car that they took him out of?

A No, he was, cause we parked in back of that car, so they brought him in a light, light of the car we was in.

Q He was standing in the back of the car that he was in?

A Yes.

Q The van that you were in was facing that car, is that correct?

A Yes.

Q Where were you, in the front seat or the back seat of the van?

A I was in the back seat.

Q Okay. You were in the back seat of the van. It was a van, is that correct?

A No, it was a car, police car, van, it was a police car.

Q You called it a paddy wagon before. It wasn't just a regular car?

A They took me out the paddy wagon, put me in the police car and drove me down.

Q Okay. Then you were facing, but you were in the back seat of the car, is that correct?

A Yes.

Q And from -- it's dark inside the car, is that right?

A Yeah.

Q They had the headlights on this person in front of you?

A Yes.

Q From that distance you indicated to them that's one of them?

A They used the headlights and some more lights they had.

Q There was flashlights on them, right?

A Not the flashlights on top of the car, they used more lights that shine on him.

Q You told them that that's one of them?

A Yes.

Q Did you tell them that looks like one or definitely?

A I said that was definitely one of 'em.

Q Okay. Now, had you told -- did you know where Tyrone lived?

A No, and I still don't.

Q You didn't know anything about Tyrone, did you?

A No.

Q Didn't know nothing at that time about him at all, is that correct?

A That's correct. I just know him from hanging across the street, but I don't know anything about him.

Q You indicated that you wore glasses, is that right?

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A Yes.

Q Do you have them on now, do you?

A No.

Q You didn't have them on that night, is that correct?

A No.

Q You had your contacts?

A Contact.

Q Contact lenses on, is that right?

A Yes.

Q You indicated that you had, earlier today you indicated that you had them on all day, is right?

A Yes.

Q You had not gone to sleep all day, is that right?

A I don't know if I took a nap that day or not.

Q You hadn't taken the contacts out, is that right?

A I don't know if I took a nap that day or not.

Q You indicated that you know what a blunt is and to your knowledge it's just a cigar, is that right?

A You can go to the store and buy one.

Q You can buy what's made, what you make a blunt out of, isn't that correct?

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A Yeah.
Q A blunt is something they make, that they make out of a cigar, isn't that correct?
A I don't know what they make out of a cigar, but I know you go to the store and asked for a blunt, they give you a blunt.
Q Was anybody in G. W. Wells' house smoking these little cigars that you called blunts?
A I don't know.
Q You know what a cigar smells like?
A Yes.
Q Did you smell a cigar that night?
A I didn't smell the smell. I don't know if they were smoking or not.
Q How is the light on that, on Dr. Martin Luther King? Where is the lights, the street lights located?
A One of them on this side of his house, one on that side of the house, and one right across the street.
Q Okay. I'm going to show you what's marked as, what I'm going to mark as DD. Does that accurately reflect where the lights were on that particular night?
MR. HAGEMEISTER: I'd like to see it.

MS. MOORE-DYSON: Okay.
MR. HAGEMEISTER: Thank you.
MS. MOORE-DYSON: Also EE shows this.
MR. HAGEMEISTER: Thank you.
BY MS. MOORE-DYSON
Q Does this accurately reflect where those lights were on that particular night, the street lights?
A Yes.
Q Thank you. So the street lights, I imagine this would be west?
A Yes, that would be west.
Q To the west is a building, I would say a building and a half down from where the incident occurred, is that right?
A Yes, a building that way.
Q And the other one maybe two buildings down?
A Yes.
Q So there's no light directly in front?
A This one on this side of the street, on the other side, side that shines right over.
Q Okay. There's Bill's across the street. Do you see it there?
A No cause Bill's is kind of like this from where it happened.

Q Catty-corner from there?
A Yes.
MR. HAGEMEISTER: That will be State's 14.
BY MS. MOORE-DYSON
Q Bill's is like catty-corner there in front of where you all were, is that correct?
A I think it's down some.
Q There's no light there though, is it?
A Yeah, it's a light across from --
Q The light would be in front of, is that the nearest light?
THE COURT: For the record, what are you handing the witness?
MS. MOORE-DYSON: FF.
THE COURT: Is the exhibit marked?
MS. MOORE-DYSON: It will be.
THE COURT: Well, I wanted it marked before it's handed to the witness.
BY MS. MOORE-DYSON
Q Exhibit FF, does that reflect, does that show the nearest light on the other side of the street?
A This the same side of the street that the lights you just gave me.
Q Right. I am referring to you, can see the

light across the street?
A No, I think that's over here.
Q Okay. Were all those lights working that night?
A Yeah.
Q You're saying that those lights, the two lights on the same side of the street where you were at least, oh, a couple, a building and a half down on either side, is that correct?
A Yeah.
Q But there was one you believe across the street from there?
A Right.
Q Which would have been behind where the car was?
A Yeah, but they over like this so you can see.
Q They don't hang all the way over the street?
A You know, they come --
Q But that's where it was located?
A Yes.
Q There was nothing, the lights were not on inside the car?
A No.
Q Were the lights on outside the car?

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A When they pulled up, they cut the lights on.
Q On or off?
A On, because it was on when it was coming.
Q They didn't have any lights on inside the car?
A I don't recall.
Q There was no lights directly right where you were, is that right?
A What you mean right where I was?
Q You were standing right in front of the car, there was no light behind you, is that right?
A I don't know if the shop behind me had the lights on.
Q You don't recall that?
A I don't know. I don't know.
Q The shop wasn't open at eleven o'clock at night?
A Some shop leaves they lights on.
Q Okay. The description that you gave the police, did you give it to them before or after you saw Tyrone? Or did you just pick him out?
A Before? Before. Before.
Q And you're sure this is the car that the shots were fired from?
A Yes.

Q You're certain of that?
A Yes.
Q It wasn't the large gray car you told them about at first?
A The large blue car came around after that car. I had got it confused. But this car was first, then the other car.
Q You were confused when you gave the report, is that right?
A I was confused about that car.
Q But you gave the deposition this year, is that correct?
A Um --
MR. HAGEMEISTER: Objection to the form of the question. Is there something in the deposition that she's --
MS. MOORE-DYSON: I'm going to.
THE COURT: Objection sustained.
BY MS. MOORE-DYSON
Q Did you state at the deposition that it was a large gray car?
A Gray or blue, that was the second car.
Q Gray or blue?
A Yes.
Q Okay.

THE COURT: Let's proceed.
BY MS. MOORE-DYSON
Q Did you see when the car drove away, did it drive away very quickly?
A No, it pulled down some, slowed down and it took off.
Q Did they -- they didn't squeal the tires or leave skid marks?
A After, after they slowed down, they took off real fast.
Q But that was past where the -- past where the shooting took place?
A They pulled up to where I was at. Then they took off real fast.
Q Okay. One last segment and I'm going to let you go here. When did John ever say, those the sissies? Did Johnnie, talking about Johnnie, did John say, those the sissies?
A John?
Q Yes.
A I don't think he said -- I don't think he said that.
Q What exactly did he say to you when he saw them coming up?
A When he saw them coming, I don't know if he

saw them or not, so I can't say, but when they said, "There is the sissies", and somebody was like right there and he was passing words, that's when John stepped up.
Q John stepped up and he stepped up to where you were, is that right?
A On the side of me.
Q He told you to run?
A Yeah.
Q And when you fell down, you fell down face forward?
A I don't know if I fell face forward. I just -- but I didn't fall immediately. I waited. They had stuck the guns out and when he say run, the guns was already on the outside of the car.
Q You were just standing there?
A Yes.
Q Standing there and John was, had John gotten shot then?
A Not then.
Q Did you see John actually get shot?
A No, cause I turned away when -- they was shooting and I turned away to be ready to run and then the shots, they started shooting so fast, I just fell.
Q Did you see him fall, did you see John fall?

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A No, I didn't see.
Q So you didn't actually see who shot John?
A But I seen the guns, the hands.
Q Were there gloves on either of the persons hands, do you recall?
A I don't know if they had gloves on.
Q You could see their hands, but you couldn't tell whether or not there was gloves on?
A I seen the gun.
Q You were focussed on primarily --
A The gun and they faces.
Q You were this close to the car and the car was right just a couple feet in front of you?
A Right.
Q You never leaned over?
A I don't know. It happened, it happened and I don't know if I leaned over or went back or whatever.

MS. MOORE-DYSON: I have nothing further.
THE COURT: Thank you, Miss Moore-Dyson.

REDIRECT EXAMINATION

BY MR. HAGEMEISTER

Q Was it light enough for you to see faces?
A Yes, it was.
Q Were the faces trying to hide themselves?

A No.
Q Was there anything covering the faces?
A No.

MS. BEIMDIEK: Objection, leading.
THE COURT: Overruled.

BY MR. HAGEMEISTER

Q Were you able to see okay that night, was everything a fog for you?
A No, it wasn't no fog, I could see good.
Q The street lights were bright enough that you could tell who was in the car?
A Yeah.
Q You understand your testimony is going to be used for this jury to decide whether or not to put these two away for the rest of their lives?

MS. BEIMDIEK: Objection.
MS. MOORE-DYSON: Objection.
THE COURT: Sustained. Jury is --
MR. HAGEMEISTER: Lack of bias.
THE COURT: The jury is instructed to disregard counsel's last statement.

BY MR. HAGEMEISTER

Q Were you sure that it was these two?
A I'm positive it was these two.
Q Do you know how important your testimony is?

A Yes.

MS. BEIMDIEK: Objection, bolstering.
MS. MOORE-DYSON: Objection, Your Honor --
THE COURT: Sustained as to the last question.

BY MR. HAGEMEISTER

Q When you went to the 911 call, did she start quizzing you about the, as Miss Beimdiek asked you, if the woman started asking you questions about who it was and how it happened?
A I don't remember all the questions she was asking and how she was asking 'em, I was just trying to hurry up and tell her what was going on and get back on the other side to help John.

MR. HAGEMEISTER: Your Honor, I ask the Court for permission to play the 911 tape.
THE COURT: Very well.
MS. BEIMDIEK: Can we approach, just briefly?
THE COURT: Yes.
(The following proceedings were had at the bench out of the hearing of the jury:)
THE COURT: How long is this tape?
MR. HAGEMEISTER: Less than a minute.
MS. BEIMDIEK: I want to inquire the extent

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of the amount that was to be played.

MR. HAGEMEISTER: Just until she hangs up.
MS. BEIMDIEK: Okay.
THE COURT: Is there any necessity to approach the bench? You've heard this tape before.
MR. HAGEMEISTER: She just played some parts of it.
(The following proceedings were had in the hearing of the jury:)

BY MR. HAGEMEISTER

Q That was your voice on the tape?
A Yes.
Q That was the statement you made on that night shortly after the shooting?
A I guess cause I don't remember exactly what was said.
Q Okay.

(Tape played for the jury)

THE COURT: For the record, what exhibit was that?
MR. HAGEMEISTER: State's Exhibit No. 14.
THE COURT: Anything further of this witness?
MR. HAGEMEISTER: Yes, Judge. May I give her a glass of water?

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THE COURT: Certainly.

MR. HAGEMEISTER: And a cardbnard paper towel.

THE COURT: Let's proceed.

BY MR. HAGEMEISTER

Q Miss Hickman, when you made that call, were you thinking it's important that you name and say everything that you saw on that night, otherwise somebody might go free on a murder charge?

A What?

MS. BEIMDIEK: I object to the improper form of the question.

THE COURT: State your objection.

MS. BEIMDIEK: Imprnper form. The tail end portion about going free on a murder charge.

THE COURT: Sustained.

BY MR. HAGEMEISTER

Q Were you thinking that you better make sure you get all the information that the defense attorneys asked you about on that tape?

A No, I just wanted some help for my little nephew.

Q And, quickly, when you were asked the question about whether or not you told somebody Carlos' name before you went down and identified

Tyrone, they asked you about that?

A Yes.

Q I never went over your deposition with you, did I, I never went through and said is this right, is this wrong?

A No.

Q I just asked you what happened, fair?

A Right.

Q Okay. With regard to that deposition, there were some questions asked and some of them I objected to as being out of context. I want to go back and address those at this time.

Firstly, on page 23 and 24 there was a question about who made the statement about, "There them sissies is right there. There they is right there. Get out of the car and do it." That was on line 13. And then that was your answer. Miss Beimdiek says, "Let me stop you there", in which would be one interruption --

MS. BEIMDIEK: Judge, I object. I think if he reads it in its entirety, I don't believe it's construed as an interruption, that's his interpretation, it's not what --

THE COURT: What page are we on?

MR. HAGEMEISTER: Page 23, question on line

19.

THE COURT: Objection sustained as to counsel's interpretation.

BY MR. HAGEMEISTER

Q Well, you're saying, "He was like, there this right there. Get out of the car and do it because he wasn't going to get out of the car. Let me stop you there", was the next thing out of her mouth. "You could hear somebody saying there's those sissies right there? Yes."

This is what she went over with you on cross-examination and you answer, "Yes." "That's the first thing you heard?" And you answer, "Yes, that was the first thing." And then it's her that says, "That was the driver who said that?" And you said, "Yes."

But what she didn't ask you in cross-examination was the two questions right before you made that statement about the sissies right there. Was not her question on line 4, I'll start with three questions prior to that answer, "What's the first thing you notice when this car pulled up? Answer: Because they was, he was mumbling something. Question: Who was mumbling? You don't say the driver there, you say the guy that was on the driver's side,

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I don't know who it was, he was telling them to get out of the car."

You don't know exactly who it was that made that statement?

A No.

Q It was only her later on saying it was the driver and you just agreed with it?

A Probably so.

Q When she asked you if that map was accurate, this map here, I guess marked Defendant's Exhibit A, yeah, this might be how Martin Luther King goes, is that correct?

A This way.

Q And Aldine is in the same relationship, right?

A Yes.

Q But does Martin Luther King end at Whittier?

A No.

Q Does Aldine end at Whittier?

A No.

Q Does it end at Annie Malone?

A No.

Q So if she asked you if that map is accurate and you say yes, are you lying?

A It don't, it continues.

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Q You didn't mention that. You kind of went along with what she was saying because she said it authoritative like?

MS. BEIMDIEK: Oh, Judge, I object to that.

THE COURT: Objection sustained to authoritative assertion.

BY MR. HAGEMEISTER

Q Did she say it like she knew it was the truth, that it was an accurate map?

A I would believe so.

Q And you agreed with her?

A Yes.

Q When somebody says this is accurate, isn't it, you agree?

MS. BEIMDIEK: Objection, relevance.

THE COURT: Sustained.

BY MR. HAGEMEISTER

Q When somebody says that was the driver of the car, right, you just go ahead and agree? I'll go to the other page.

Page 21. Miss Moore-Dyson asked you these questions and I objected vehemently. She asked you the question, "Did you recognize anybody when you saw that car?" You said, "Only Carlos." The only person and she brought that out.

What she didn't mention was that was on line 23 -- on line 14 the question, which geared you towards this whole area of conversation was, "So this gray car which you had seen before on Aldine? Yeah."

"Before John Allen was shot, when was the last time you had seen that car? Answer: Probably earlier that day or the day before. Question: Do you know who was driving it when you saw it? Answer: I don't know the person driving the car. Question: Did you recognize anybody in the car when you saw that car? Only Carlos, the only person."

That was the question that she asked you out of context, not pointing out to the jury that it was about when you had seen it earlier?

A Yeah.

Q And was that correct, the way I went through that?

A Yeah.

Q And then you said the question after that, "Did you actually see him in that car? Yes. On the day that John Allen was shot? Yes. Where was that that you saw him? On Martin Luther King."

The next question. "I'm not talking about the time of the shooting, I'm talking about before the shooting." You said, "Before, have I seen him in the

car earlier that day?" "Yes." And you say, "No." When you guys get it all figured out. You said, "Had you ever seen Carlos in that car before the day of the shooting? Yes, I have seen him, but not on the day of the shooting. Yes, I seen him in the car before, but earlier that day. I did not see him in the car before it happened."

A Right. That's how I was, that's how I was saying.

Q "But days before the shooting you had seen the car? Yes. Had he been driving the car or riding in the car? He was riding in the car. I had never seen him drive the car."

Those were your answers?

A Yes, I never seen him drive.

Q When she asked you, "Did you recognize anybody in the car when you saw that car", and you said, "Only Carlos", you were talking about in the past when you had seen --

A Yes.

MS. MOORE-DYSON: Objection to counsel telling her what she saw.

THE COURT: Sustained.

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BY MR. HAGEMEISTER

Q Did all the questions and answers I talked

about refer to what you had seen prior to the day of the shooting?

A She was asking me questions before it happened and after it happened. Some she was talking about before.

Q When she was asking you the question on the stand, did she point out to you that last part of the technique she was going through?

A That is why I said some of the stuff wasn't like that, like she just made it appear.

Q They made it appear like it was talking about the time of the shooting?

A Right.

Q If there were three people in the car, did Carlos Wade and Tyrone Morant kill John Allen?

A If there was three people?

Q If it turns out there was just three?

A Yes, they did it.

Q If there was four people in the car, maybe somebody in the back corner you didn't see, did Carlos Wade and Tyrone Morant shoot John Allen?

A Yes.

Q If there was a guy in the trunk?

A They still --

Q Did Tyrone Morant and Carlos Wade shoot and

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kill John Allen?

A Yes.

Q When you stood next to the car and the car pulls up, are you looking down at the person or are you looking up like a soldier?

A When it first pulled up, I don't know what position I was in at that time.

Q Did you go like this and look down at them or did you look at them --

MS. MOORE-DYSON: Your Honor, I object to the constant leading of the witness.

THE COURT: Objection is sustained.

BY MR. HAGEMEISTER

Q How was it that you remember, do you remember seeing faces?

A Yes, cause they put they head out the car.

Q Could you see their heads when they were in the car?

A Yeah, I could see features, but I didn't see actually the face until they got on the outside.

Q Okay. And the faces that you saw, were they faces of strangers?

A I didn't know Tyrone, but Carlos wasn't --

Q You know how sometimes if you go to some restaurants and see somebody you went to school with

or something --

MS. BEIMDIEK: Objection irrelevant.

A Yeah.

THE COURT: Sustained. The jury is instructed to disregard the witness' answer.

BY MR. HAGEMEISTER

Q Would you describe Mr. Morant, if you'd seen him, if you had gone to another country and you had run into Mr. Morant, would you recognize him enough to go up and say hello?

MS. MOORE-DYSON: Your Honor, objection.

A I don't know --

THE COURT: Just a moment. State your legal objection.

MS. MOORE-DYSON: Relevance.

THE COURT: Sustained.

BY MR. HAGEMEISTER

Q Do you know who the guy was?

A Yes.

Q Do you know if he was somebody you recognized from school or neighborhood or from church, do you know where you recognized him from?

A Yes, I know where I recognized him from.

Q From where?

A From being across the street.

Q So the face was familiar to you?

A Right.

Q You didn't have to look at it for ten seconds and memorize it, you memorized it in the past, you just had to recognize it?

A Yes.

Q You didn't have to go through a whole, that's a new face, and get it figured out in your mind, since you saw him you knew that was the guy that hangs out across the street that you've seen --

A Right.

Q -- before?

A Right.

Q And with Carlos, even more so?

MS. MOORE-DYSON: Your Honor, I object to the prosecutor constantly -- he's testifying.

THE COURT: Sustained.

MS. BEIMDIEK: Join.

THE COURT: The objection is sustained.

BY MR. HAGEMEISTER

Q Any question that was the car that was used in the shooting?

A No.

Q If I were to ask you which car drove by after John Allen was already lying in the street,

which car would you say?

A The big blue car.

Q Okay. And if I were to ask you which car was it that you told the police they should follow?

A The blue car.

Q If I were to ask you which car didn't drive by but pulled up and stopped and shot, what do you say?

A Which car that didn't drive by?

Q The car that drove up and stopped and then shot and then drove on.

A. The gray car.

Q Would you call that car a car that drove by or the car that stopped?

A That's the car that stopped.

Q If anybody asked you what the car was that drives by, what would you say?

A The car that drove by was the blue car, the car that stopped.

Q Somebody else that thinks that this is kind of considered a driveby shooting?

MS. BEIMDIEK: Objection, relevance to what somebody else thinks.

THE COURT: I will reserve ruling until I've heard the question.

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BY MR. HAGEMEISTER

Q Do you agree that if they ask you what car it was that drived by, you might not understand -- would you understand which car they are talking about?

A No.

MS. BEIMDIEK: Objection, speculative.

THE COURT: Sustained. The jury is instructed to disregard the witness' answer.

BY MR. HAGEMEISTER

Q I hand you State Exhibit 15, 16 and 17. State's Exhibit 15, what is State's Exhibit 15 of?

A It's the side of the Westend Auto Supply.

Q And where is that in relation to where the shooting was?

A On the other side of the street.

Q Do you see a street light in that picture?

A Yes, I see it. See, this is the street light I was telling wasn't on the picture. That's the one.

Q Okay. And you can see a little pickup truck right there, can't you?

A Yeah.

Q And you can see a little white like front of a plate?

A That's the other side where I said the light

comes from.

Q Okay. Then I'll show you State's Exhibit 16 and 17. 16, can you see the same little pickup?

A Yep.

Q So that puts that light in relation across the street?

A Yeah.

Q States Exhibits 17, what is that a picture of?

A A picture of the light on the other side and the building and the house.

Q So if these two pictures here were taken from the same point, see the little brown building, you put them right on top of each other, the best you can do with a little Polaroid, would that be a fair example of kind of, they're spaced opposite, there's one here about a building and a half from the crime scene and one across the street halfway from these two?

A That is what I said, opposite side.

Q I would ask if that fairly and accurately reflects the area where the homicide occurred?

A Yes.

MR. HAGEMEISTER: I would ask that State's Exhibits 15, 16 and 17 be admitted into evidence.

MS. BEIMDIEK: No objection.

THE COURT: Admitted.

BY MR. HAGEMEISTER

Q There's arrows pointing here, do you agree with that?

A Yes.

Q I'm sorry I lead you, I was trying to make it faster. What are there on the pictures?

A Buildings and --

Q What are these?

A Where the arrows going to the street.

Q Thank you.

THE COURT: Let's proceed.

MR. HAGEMEISTER: Yes, sir.

BY MR. HAGEMEISTER

Q I show you State's Exhibit No. 8. It's a picture of Mr. Allen. Is that the location where his body was?

A Um-hum.

Q You have to answer out loud.

A Yes.

MS. BEIMDIEK: I'm sorry, what number is that?

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MR. HAGEMEISTER: State Exhibit No. 8. I have no further questions for this witness.

THE COURT: Miss Beimdiek?

RECROSS-EXAMINATION

BY MS. BEIMDIEK

Q Miss Hickman, Mr. Hagemeister asked you if when I was asking about words that the driver spoke if you just agreed with me when I said it was the driver who said, "There go those sissies." You said you did, you just agreed with it when I asked the question. Do you remember just telling him that?

A Yeah.

Q Page 24, top of the page. Mr. Hagemeister read you the question, "That was the driver who said that, that was in reference to, there go those sissies questions?" You said, "Yes." The very next question. "Did you recognize that voice? Had you ever heard it before?" Your answer was, "No. I could tell it was coming from the front of the car." Do you remember our discussing this?

A Probably so.

Q I'm sorry?

A Probably so.

Q I then said, "Could you tell if it was coming from the driver or the passenger?" Your answer was, in your own words, "It was coming from the driver because the passenger was looking." Now did I tell

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you to say that or were those your own words?
A Like I say, that I know it was coming out the car, I don't know if it was coming, where from in the car.
Q I'm sorry?
A I don't know where it was coming from.
Q Do you agree in the deposition in your own words you said, "It was coming from the driver", those were your words, not my words?
A I don't know. I don't know.
Q You don't remember saying that?
A No.
Q Would you like a chance to read that portion of the deposition?
A No.
Q Do you agree that if it's typed up in this booklet that that is what you said?
A No.
Q You disagree with that?
A Right.
Q It's your position that the court reporter took it down wrong?
A I don't know how it was done.
Q I'm sorry?
A I'm saying I don't know how she took it

down. That's why I didn't sign it.
Q Did Mr. Hagemeister explain to you the rules about reading and reviewing depositions?
A I don't think so.
Q Now, I think Miss Moore-Dyson asked you about whether the car windows were rolled down or up, do you remember that, just a few minutes ago when she was questioning you?
A Yes.
Q You said you thought the one on the driver's side was down -- I'm sorry, you thought the one on the passenger side was down, you couldn't speak as to the drivers side?
A I say the one on the passenger side was down and I couldn't speak to the driver.
Q Right. Do you remember the very next question on page 24, "Were the windows on the car rolled down or rolled up?" You said, "They was down." Do you remember saying that on the question about windows?
A Window down.
Q I'm sorry?
A Well, I guess windows was down.
Q You didn't stop me and say, well, the one window on the passenger side was down, but I don't

know about that driver's side window, you didn't offer that information to me at this deposition, did you?
A No.
Q You agreed and told me that there were windows that were down?
A I don't know if I agree with windows.
Q You said "they", not "it", you said, "they" was down.
MR. HAGEMEISTER: Objection, Your Honor, the answer was in the same form as the question.
MS. BEIMDIEK: The question was, "Were the windows on the car rolled down or rolled up?"
THE COURT: Objection is overruled. Is that what you said, ma'am?
THE WITNESS: I know the one down, on the passenger side was down.
THE COURT: No, that's not what Miss Beimdiek asked you. She asked you if that was your statement.
THE WITNESS: I don't know.
BY MS. BEIMDIEK
Q You don't recall saying "they" was down?
A No.
Q Again is it referring, telling me that the court reporter typed it up wrong?

A I'm saying I don't know how it went down, that's why I didn't sign them.
Q You're saying that the court reporter typed it down wrong?
A I'm saying I don't know how she typed it.
MS. BEIMDIEK: Nothing further.
A I wouldn't signed it.
THE COURT: Thank you, Miss Beimdiek. Miss Moore-Dyson.
RECROSS-EXAMINATION
BY MS. MOORE-DYSON
Q Mr. Hagemeister pieced together a couple of pictures and indicated that they accurately reflected that street. Can you tell me which direction is, when you look at the side, State's Exhibit 15 and 16, on Exhibit 15, which direction is that picture pointed?
A This one?
Q Yes, this one, State's Exhibit 15.
A It's the --
Q Which direction is that?
A It's going west.
Q Okay. Now, you remember what's across the street from where you were, is that correct?
A This?
Q Bill's Auto?

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A Bill Auto is --
Q Catty-corner?
A Yes.
Q What is, is, is in the building right across the street from it, from where you were?
A I don't know what that building.
Q Is that the florist shop?
A No, that's not it.
Q The florist shop is right next to Westend Auto Supply, is that correct?
A Yeah.
Q And then there's a lot with a big fence on it, is that correct?
A Right.
Q This big fence is near the corner, isn't that right?
A No, it's not near the corner, it's near the lot.
Q Near the lot?
A Yes. It's a lot right here, right where this is a lot.
Q Now, is this the same light that you're pointing to right here as on this picture?
A No, this light is at the corner.
Q And that's not the florist shop right there

that I'm pointing to?
A On this picture?
Q Yes.
A On this picture it is.
Q That's the florist shop. Is there a light, but --
A I see the light bulb.
Q It's further down there, right?
A Right.
Q Okay. Past the florist shop, right next to Bill's, is that right?
A No, the florist shop down some.
Q Further away from you? Is that correct?
A Bill's Auto is going, is -- you cross the street and go west. But the florist shop, if you cross the street, you go east, so the house like this, Bill shop this way and the florist shop.
Q How many buildings down is that light? That light isn't right in front of Bill's shop?
A Which light?
Q The light, the street light that you're referring to across the street?
A No, it's not in front of the building.
Q It's not in front of the florist shop, is it?

A I don't know.
Q Is it in front of this building right next to Bill's?
A No, it's not.
Q And is where you were, is it closer across the street from this place here?
A No, cause it's down some.
Q We're going that direction?
A No, this way.
Q Going back this way?
A This direction.
Q Okay. How many buildings right in front of you?
A I don't know how many buildings.
Q Okay. You could see that light on that small picture, on 15 and 16, right? You can see that light, it's way down the street, isn't it?
A No, it's not way down the street, right across from there. See, it's across from there. See, right there. Right --
Q Do you see the orange front building on this picture?
A No, you can see this one. See, right there?
Q Um-hum.
A It's across.

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Q Does his marks help you to see those lights?
A No, I knew where they was at at first.
MS. MOORE-DYSON: I have nothing further.
THE COURT: Thank you.
MS. MOORE-DYSON: One last question. No, nothing further.
THE COURT: Thank you, Miss Moore-Dyson. Anything further?
MS. MOORE-DYSON: I'd like to move to admit some exhibits. I can wait.
THE COURT: No, go ahead.
MS. MOORE-DYSON: I ask to admit Defendant's Exhibits AA through GG into evidence.
THE COURT: Any objection?
MR. HAGEMEISTER: Those are all her photos of the streets?
THE COURT: Defendant -- yes.
MR. HAGEMEISTER: I have no objection.
THE COURT: Defendant Morant's Exhibits AA through GG inclusive are admitted in evidence.
MR. HAGEMEISTER: Judge, I have four questions.
THE COURT: What?
MR. HAGEMEISTER: I have three or four questions on areas she opened.

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THE COURT: Very well.

FURTHER REDIRECT EXAMINATION

BY MR. HAGEMEISTER

Q First of all, I didn't draw in the street lights on that picture.

A Did you draw them?

Q Yes. Those are real street lights?

A They on the streets.

Q Okay. Second of all, when you say catty-corner, there's no street that separates, a lot of people are thinking of catty-corner as being an intersection, you are saying across and a little over?

A Like this the house and I was to walk to Bill's shop, he walk this way, if this the house, I walk this way.

Q Okay. We already showed you State Exhibits 15 through 17. She was talking about that lot just to clear that up. What is that a picture of?

A It's a lot with the gate.

Q States Exhibit 19, what's this a picture of?

A The side of the lot and our old house.

Q Can you step down real quick. On the picture you have on top there, that one, where would that be on here? Do it from the side so the jury can see you.

MS. BEIMDIEK: What are you asking her to identify?

MR. HAGEMEISTER: The end of the stretch of buildings.

MS. BEIMDIEK: Okay.

MR. HAGEMEISTER: Then the lot.

BY MR. HAGEMEISTER

Q Where is the fence on here and where is the lot? Do this one first, it will be easier.

A This Annie Malone going like this.

Q No, this is Dr. Martin Luther King.

THE COURT: For the record, if we can have some clarity of what you are talking about, what exhibit are you referring to?

MR. HAGEMEISTER: State's Exhibit No. 18.

BY MR. HAGEMEISTER

Q Do you see a little building there?

A Yes.

Q What is that?

A My old house.

THE COURT: Speak up, ma'am.

THE WITNESS: My old house.

THE COURT: Thank you.

BY MR. HAGEMEISTER

Q Where is that on here? It's not shown.

A If this Annie Malone -- oh, here it is, right here. It's closer right here.

Q And if this is your old house, where is your old house on that map?

A On Whittier and Aldine.

Q And did we mark that earlier?

A Right here, right down Whittier and Aldine.

Q Is it on that side of the street or on the other side the street?

A It's on the southside of the street.

Q Okay. And this is north, so it would be here?

A Right.

Q Don't let me --

A Right, it's here.

Q Is that the back of that house in that picture?

A Yes, that's the back of the house.

Q If you put that picture there, it would be right on top of your house?

A Right.

Q Is there a fence that goes down? I realize the picture is not to the same scale as the map. If you had to draw that fence, where would you put it?

A I put it down. The house over here.

Q The house is over some?

A The gate stop here and this is the lot.

Q You have to do it to the side?

A The gate stop about here. Our house here. And when the gate stop, you can walk across the lot, started back to our house.

Q So this lot right here is about right there?

A Right.

Q And the house would be over and everything else would be over if it's all to scale?

A Right.

Q And the buildings would be over. Then to the right of this lot, is that Whittier?

A Yes, that's Whittier.

Q So it's almost like Whittier goes, you can almost see part of Whittier?

A Where the lot stop is Whittier.

Q Is that Whittier right there? That car is on it?

A Yes, that's Whittier.

Q Now the other picture. Is that the same fence?

A Yes, that's the same fence.

Q And this building right here, where would that be on this picture? This is on State's Exhibit

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No. 19.
A It would be, it would be on Martin Luther King.
Q Okay. The buildings stop and then a fence starts?
A Right.
Q Thank you. So even though it's not to scale, if I were to go like this and then put the fence in close to what it is, even though it's all moved over a little bit?
A Yes, it's moved over cause you can walk across the lot and get to my house.
Q This is where the lot would be?
A Yes.
Q Now with the last question, sit back down for one second. You've never told anybody you could ever even see the driver, have you?
A No, I never told you.
Q Did I ask you the question, okay, standing --
MS. BEIMDIEK: What page, please?
MR. HAGEMEISTER: Page 17, line 1 of Miss Beimdiek's question. "And I was on this side of the car right here. The driver was on this side, therefore I couldn't see the driver, I could only see

who was on the passenger side."
A Right.
Q Is that what you said?
A Yes.
Q And you also repeat that when I asked you the question about, "If you were standing at the front door, would you be looking at the passenger or the driver's side?" And you say, "The passenger side cause I couldn't see the driver's side?"
A Right.
Q And then not 15 or 20 -- well, a page later, three pages later, she starts asking you about who was mumbling and you said you figure it was the guy on the driver's side, "I don't know who it was was telling them to get out of the car." That was that statement?
A Right.
Q Then she says, "The person driving?" And you make the statement about was telling, "I guess the one in the back, Tyrone, to get out of the car. He was like, there them sissies is right there. I guess he could see us", right?
MS. BEIMDIEK: Your Honor, I object. This is not a question, he's just reading the --
MR. HAGEMEISTER: Goes to the redirect.
THE COURT: I believe you said five minutes

ago you had a last question.
MR. HAGEMEISTER: Well --
THE COURT: I will sustain the objection because I'm not clear whether you're reading from the deposition or paraphrasing.
MR. HAGEMEISTER: I'm actually reading verbatim from the deposition.
THE COURT: The Court finds it repetitious and will sustain the objection. Move on.
MR. HAGEMEISTER: Okay.
BY MR. HAGEMEISTER
Q She asks you on the last round of questions, Miss Beimdiek did, "Could you tell if it was coming from the driver or the passenger?" You said, "It was coming from the driver because the passenger was looking." Now what did you mean by that?
A He was, he was looking, so I ain't see him talking.
Q So you were looking right at the passenger?
A Yes.
Q Who was that?
A Carlos.
Q And you were looking right at his face?
A Right.
Q And you could tell as you were hearing the

words or could you not?
A That he wasn't the one talking?
Q Unless he was doing it without moving his lips, it wasn't him?
A Right.
Q That's the point you were trying to make?
A Yes.
MR. HAGEMEISTER: Thank you.
THE COURT: Anything further of this witness?
MS. BEIMDIEK: Very briefly.
FURTHER RECROSS-EXAMINATION
BY MS. BEIMDIEK
Q You are not telling the jury it was Carlos Wade that says, "There are those sissies, get them?"
A I didn't hear you.
Q You were not telling this jury Carlos Wade says, "There are those sissies, get them?"
A No.
FURTHER RECROSS-EXAMINATION
BY MS. MOORE-DYSON
Q You're not telling the jury at that point that it was Tyrone Morant who said that either?
A I don't know, but I know it wasn't the one in the front seat.

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Q You know it wasn't the one in the back seat, isn't that correct?
A I don't know if it was in the back seat.
Q You stated it was coming from the front side, isn't that correct?
A I'm saying I don't know if he --
Q You didn't see him say it?
THE COURT: Just a moment. You may finish your answer.
A I'm saying that I don't know if he said it or not, but I know for sure Carlos didn't say it.
BY MS. MOORE-DYSON
Q Page 55, lines 4 through 15. Making it 2. "Okay, you said one person was talking in the car." Answer: "I heard -- no, I hear the driver, was coming from the front, so it was the driver, he was saying, telling him to get out of the car and so forth."
"Question: So Tyrone, you said, Tyrone, you are saying was in the back? Answer: In the back. Behind the passenger? Yes. Question: Okay. Did you see him speaking? Answer: No, I couldn't see his mouth move."
Isn't that what you said?
A Yeah.
Q So you are saying that Tyrone was not the

one saying those, "I see those sissies, there those sissies are?"
A I'm saying I didn't hear him say.
Q You didn't see him say it?
A No, I didn't see him say it.
MS. MOORE-DYSON: Nothing further.
MR. HAGEMEISTER: Nothing further.
THE COURT: Thank you. You may stand down, Miss.
Ladies and gentlemen of the jury, we will adjourn for the evening. The Court again reminds you what you were instructed at the first recess of the Court, you are not permitted to discuss this case among yourselves or with others, remain in the presence of anyone who is discussing the case when the Court is not in session.
You are not to form or express any opinions about the case and you are not to read, view, or listen to any newspaper, television, or radio report of the trial.
You are released at this time and instructed to return to Division 11 tomorrow morning at 9:30 a.m. Thank you and good evening.
(The proceedings were adjourned for the day)
End Volume III

VOLUME IV
(The following proceedings were had in the presence of the jury on November 15, 1996.)
THE COURT: Good morning, ladies and gentlemen. You may be seated. Counsel approach the bench.
(The following proceedings were had at the bench out of the hearing of the jury:)
MS. BEIMDIEK: Your Honor, I requested an opportunity to put several things on the record at this time. First of all, I want to advise the Court that I observed yesterday afternoon Juror No. 12, Miss Hock, Juror No. 94, to appear to be sleeping. She did not just have her eyes closed, her head nodded forward as if she was falling asleep. I want the Court to be aware of my observations. My client and the co-defendant both observed that as well.
The next issue I want to put on the record, the Court previously discussed with us the indication of the State to endorse and call as a lay witness G.W. Wells. I think the record has not been completed to demonstrate, in response to the Court's inquiry, Mr. Wells is not named in the police reports. His name nor his address are in -- are not included in the reports. For this reason I ask that he be excluded.

THE COURT: Let the record show the Court's recollection is that the venireperson in question was not sleeping but was inattentive. What are you asking the Court, what relief are you seeking?
MS. BEIMDIEK: Of that juror?
THE COURT: Yeah.
MS. BEIMDIEK: Nothing at this time, I simply wanted the Court to be aware if there are further incidents, I will ask that she be replaced with an alternate.
THE COURT: Let the record show that the Court's recollection of the events is not -- does not agree with counsel's remarks. Let the record further reflect that the Court, although it's an unhappy duty to interrupt counsel during the course of the trial, I must have at least three or four times during the course of the trial yesterday interrupted trial to have the jurors stand because the Court noticed that one or more of the jurors were closing their eyes, open their eyes, and then the Court observed no juror sound to sleep or sleeping.
As the Court has advised you before, Counsel, I cannot guarantee you an attentive jury. Of course the law requires me, if a juror is sleeping, to excuse that juror and replace upon proper request that

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juror, either upon the proper motion by counsel for one of the parties or upon the Court's own motion.

Now, with respect to the second matter, it's the Court's recollection that Mr. Wells, whom the State seeks to endorse as a witness, allegedly would testify briefly, is that correct, sir, that Defendant Wade was in a fist fight with the deceased?

MR. HAGEMEISTER: And Defendant Morant. Both defendants.

THE COURT: The Court at this point is not aware whether that would be cumulative testimony.

MS. MOORE-DYSON: Your Honor, as a matter nf fact, I believe that there's other information that Mr. Hagemeister is going to try to introduce that same information with the mother. None of this information has been shared with us prior to, that any of these two, these other two people were witnesses to this particular event.

The party that was involved in it, Mr. Johnnie Bell, never ever mentioned this incident in his deposition and we had no knowledge of it until brought to our attention by Mr. Hagemeister earlier.

Now all the sudden we have several witnesses to this particular incident that we didn't know were going to be witnesses to that event.

THE COURT: Counsel, these vague references are of no help to the Court. First of all, you refer to Miss -- just a moment, let the Court finish, please. You referred to the mother of Mr. Wade or Mr. --

MR. HAGEMEISTER: Mr. Allen.

MS. MOORE-DYSON: Mr. Allen.

THE COURT: And is she endorsed as a witness?

MR. HAGEMEISTER: She is.

THE COURT: All right. Further, the Court recollects and the Court, of course, has not read the deposition of Johnnie Bell, who testified in the motion, and the Court understands the State intends to call him --

MR. HAGEMEISTER: Yes.

THE COURT: -- as to whether this fist fight was covered in the deposition.

MS. MOORE-DYSON: It was not.

THE COURT: Pardon?

MS. MOORE-DYSON: It was not.

MR. HAGEMEISTER: Judge, they only asked him about prior shootings. This was not a shooting.

MS. MOORE-DYSON: They were --

MR. HAGEMEISTER: They had him there to ask,

but it didn't come out.

THE COURT: The Court would prefer, unless counsel objects, to -- I've reserved ruling and I will give you the reason for the Court's request so I continue to reserve ruling.

It's the Court's understanding that one or more witnesses will be offered by the State to prove prior uncharged crimes or bad acts by these defendants against the deceased amounting to assault by gunfire, is that correct?

MR. HAGEMEISTER: Yes, for Mr. Wade. But there's only one prior incident where we allege Mr. Morant was actually there taking an active role in an assault and that would have been the time they had the fight. There was no guns used. And he was with Mr. Wade.

THE COURT: Well, what is your request, Miss Beimdiek?

MS. BEIMDIEK: My request is, first of all, G.W. Wells be excluded and Annie Hickman, the mother of the deceased, be excluded. She was endorsed by the State, however, that endorsement was filed prior to any disclosure to us about any of these other incidents that the State has now come up with that suggests some fight.

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I believe that she was endorsed for the sole purpose of identifying her son. Identity has been established. That would be the only relevant thing that I expect to be testified to.

This morning was the first time I learned that now she was a witness to this fist fight that occurred at this Bill's Auto Shop that has never been disclosed to us. A tape-recorded statement of Johnnie Bell, who was a witness now, that the State claims, to this fight at Bill's Auto, never mentions that in an audiotape prepared on July 11, 1996 and disclosed to me. So this constant --

THE COURT: The witness was endorsed.

MS. BEIMDIEK: Yes, she was. I'm not disputing that.

MR. HAGEMEISTER: Exactly.

MS. BEIMDIEK: Prior to the State ever telling us about these other matters. I believe that at the time she was endorsed, the State endorsed her for the sole purpose of establishing the identity of the victim.

I think later the State came into possession of information that she was a witness to this fist fight. I think the State has itself indicated it was unaware of this fist fight.

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MR. HAGEMEISTER: It's on my memorandum.
THE COURT: Then you're asking me to rule now?
MS. BEIMDIEK: I'm -- well, if he intends to call either of those witnesses this morning, yes, I am.
THE COURT: Very well. Since counsel wishes the Court to rule now, the Court will give the reasons that the Court wished to delay. The State's request to endorse Mr. Wells is not timely made. The Court, of course, under the Supreme Court Rule and case law, has within its discretion to permit a late endorsement if the Court finds that there's no prejudice to the defendant and does not come as a surprise to counsel for the defendant.
The Court would be of the opinion that Mr. Wells would not be a substantial witness if he were to testify as to a fist fight between the Defendant Wade and the deceased, in view of the fact that the State intends to introduce several witnesses counsel for the State has advised the Court will testify there had been shootings involving this Defendant Wade and the decedent, is that correct?
MR. HAGEMEISTER: Yes, but Mr. Wells is the third witness that places Mr. Morant at a fist fight

with these two victims.
THE COURT: So the Court finds that the testimony would not be substantial as to the Defendant Wade giving, given the anticipated testimony as to the prior shootings. However --
MS. MOORE-DYSON: As to Mr. Morant, Your Honor, until we received the memorandum, I had no idea that there had been a fist fight that involved my client. As a matter of fact, in both testimonies of Hickman and Mr. Bell, they indicated they didn't even know him, had never seen him. Now all the sudden he recognizes him as being at the fist fight.
I believe this is an attempt by the prosecutor to have a prior incident to involve my client where previously they had not. This is a surprise to me.
THE COURT: Anything further before the Court rules? Have you all had your say?
MS. BEIMDIEK: No, Your Honor.
MR. HAGEMEISTER: I would point out I think when they asked Mr. Bell the questions, I don't have the deposition in front of me, they were asking about prior shootings and Tyrone had never shot. I am not trying to introduce any evidence Tyrone has ever shot.
This is a separate incident of a fist fight

and not specifically requested of Mr. Bell to talk about prior experiences, from my recollection, but the fact is that Mr. Wells is relevant to show the prior uncharged antagonism between Mr. Morant and John Allen and Johnnie Bell, and he's not simply cumulative because he's not a relative and he has less bias than the other two witnesses who would testify to that prior fist fight.
MS. MOORE-DYSON: Your Honor, if you recall Johnnie Bell's testimony earlier in the Motion to Suppress, he indicated that he was there. He did not indicate that he participated. Simple presence alone is not sufficient to establish the motive and intent that is required for the prior bad acts.
MR. HAGEMEISTER: He never said that in the Motion to Suppress. He never said that.
MS. MOORE-DYSON: Yes, he did.
MR. HAGEMEISTER: It was him that he was fighting with.
MS. MOORE-DYSON: He said he was there. This --
MR. HAGEMEISTER: I have to ask to --
THE COURT: Anything further?
MR. HAGEMEISTER: No, Your Honor.
MS. MOORE-DYSON: I ask that you reserve

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your ruling on that particular one until I can show you specifically what was said at that point.
THE COURT: The Court doesn't have that luxury at this time because Miss Beimdiek is seeking a ruling now and I'm prepared to rule now.
MS. BEIMDIEK: I will withdraw my request. My position is I want a ruling before Mr. Hagemeister announces the name of the witness to the jury.
MR. HAGEMEISTER: I won't announce the name of the witness until I've been given permission.
MS. BEIMDIEK: I'm happy to wait. I don't want a name called out and then deal with this.
THE COURT: Let the record show that the Court has now had equivocal answers from defense counsel for Defendant Wade, so the Court does not know just what point these witnesses will appear to testify. The Court will rule now. The defendants' joint objections to the State's late endorsement of the Defendant Wells --
MR. HAGEMEISTER: Witness.
THE COURT: I'm sorry, witness Wells are sustained.
MR. HAGEMEISTER: I will call Annie Hickman first today.
THE COURT: Pardon?

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MR. HAGEMEISTER: I will call Miss Hickman first today and I will ask her to testify as to her observations.

THE COURT: And the defendants' objections to the endorsed witness -- did you say the mother?

MR. HAGEMEISTER: Annie Hickman.

THE COURT: -- are overruled. However, the defense counsel will be given an opportunity, prior to the witness' testifying, to interview the State's witness, Miss Hickman. Is that understood?

MR. HAGEMEISTER: That would have to be right now.

MS. MOORE-DYSON: Okay.

THE COURT: Very well.

MS. BEIMDIEK: Thank you. Do you have Johnnie Bell ready? We can do Bell and do her after so we don't have to break right now.

MR. HAGEMEISTER: I wanted her to be able to watch. It changes my order.

THE COURT: Anything further for the Court to rule on?

MR. HAGEMEISTER: No.

MS. BEIMDIEK: No.

(The following proceedings were had in the presence of the jury.)

THE COURT: Please remain seated, ladies and gentlemen. Is the State ready to proceed?

MR. HAGEMEISTER: Yes, Your Honor.

THE COURT: Is the Defendant Wade?

MS. BEIMDIEK: Yes, Your Honor.

THE COURT: Defendant Morant ready to proceed?

MS. MOORE-DYSON: Yes, Your Honor.

THE COURT: Proceed.

MR. HAGEMEISTER: Judge, first off, so I don't forget, I ask that the Court admit the State's photographs, I believe 1 through 3 have already been admitted, the pictures of the victim at the morgue. Number 9A and 9B, the photos used in the photo spread shown to Miss Hickman. I ask that State's exhibit, the map marked as State's Exhibit 10 be admitted. 11 through 13 --

THE COURT: Just a moment, Counselor.

MR. HAGEMEISTER: I'm sorry.

THE COURT: Go back to the photographs. 1 through 3, is 4 a photograph?

MR. HAGEMEISTER: 4 is a photograph, but I haven't asked --

THE COURT: 1 through 3 have been admitted. Exhibit 4, any objection to State's Exhibit 4?

MR. HAGEMEISTER: I haven't established that foundation yet, Judge.

THE COURT: Very well. That's why I'm going over them seriatim.

MR. HAGEMEISTER: Well --

THE COURT: Let's go to 5.

MR. HAGEMEISTER: 4 I haven't got to yet or 5. 4 through 8 I'm not ready to ask they be admitted.

THE COURT: All right.

MR. HAGEMEISTER: 9A through 9D were the photographs shown to Miss Hickman.

THE COURT: They have been admitted.

MR. HAGEMEISTER: Thank you.

THE COURT: State Exhibit 10, any objection?

MS. BEIMDIEK: No objection, Your Honor.

MS. MOORE-DYSON: I have objections to it.

THE COURT: Let me see the exhibit.

MS. MOORE-DYSON: I think the use of those exhibits may tend to confuse the jury more than to explain certain things. I don't believe that the houses in the back accurately reflect, are accurately reflected on the map.

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MR. HAGEMEISTER: I intend the jury to use the map along with the photographs to create in their own minds a vision of that area, and I agree that it's

not to scale, but it is relative, everything is relative.

THE COURT: Yes, most things are. What is the number of the exhibit?

MR. HAGEMEISTER: 10.

THE COURT: Let the record show that Exhibit 10 has been identified as being an accurate depiction, not to scale, of the area of certain streets in the City of St. Louis, State of Missouri.

The Court finds that Defendant Morant has waived any objection to this exhibit, it has been displayed to the jury during most of the testimony of the witness Angela Hickman. Accordingly, the objection is overruled. Exhibit 10 is admitted in evidence.

MR. HAGEMEISTER: State's Exhibits 11, 12 and 13, which were used by Miss Moore-Dyson in her questioning of Miss Hickman, three photographs of the gray Honda Accord and its interior.

THE COURT: The numbers again?

MR. HAGEMEISTER: 11, 12 and 13.

THE COURT: Any objection to photographs State's Exhibits Number 11, 12 and 13?

MS. BEIMDIEK: Judge, not as to 11 and 12. I don't believe there was a proper foundation as to

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13.

THE COURT: May I see 13, please.

MR. HAGEMEISTER: Judge, I'll call a witness for the interior of the Honda. Miss Hickman did not ever testify.

THE COURT: Very well. You're withdrawing the tender of 13?

MR. HAGEMEISTER: Yes, at this time.

THE COURT: So the Court will admit 11 and 12.

MR. HAGEMEISTER: Thank you. State's Exhibit No. 14, the tape recording of Miss Hickman calling the 911 operator, State's Exhibit No. 14.

THE COURT: Admitted. It's already --

MR. HAGEMEISTER: State's Exhibits 15, 16 and 17 three Polaroids indicating the whereabouts of the street lights on 4200 block of Martin Luther King. They were identified.

THE COURT: What numbers?

MS. BEIMDIEK: I believe those were already admitted, 15, 16 and 17.

THE COURT: 15, 16 and 17 are admitted and are now admitted.

MR. HAGEMEISTER: State's Exhibits 18 and 19, photos showing the fence at the end of the row of

buildings and the lot on the other side.

THE COURT: Just give me the exhibit numbers, Counselor.

MR. HAGEMEISTER: 18 and 19.

THE COURT: I don't need the running narrative.

MR. HAGEMEISTER: 18 and 19.

THE COURT: Any objection to State's Exhibits 18 and 19?

MS. BEIMDIEK: No, Your Honor.

MS. MOORE-DYSON: No, Your Honor.

THE COURT: Admitted.

MR. HAGEMEISTER: The State is going to call Annie Hickman at this time.

THE COURT: Very well.

ANNIE HICKMAN

having been first duly sworn, testified:

DIRECT EXAMINATION

BY MR. HAGEMEISTER

Q State your name, please.

A I can't hear you.

Q What's your name?

A Annie Hickman.

THE COURT: Ma'am, will you move up so you can speak into the microphone.

MR. HAGEMEISTER: You can move that.

THE COURT: No, that's fine where it is. Let's try it there.

BY MR. HAGEMEISTER

Q Your son is John Allen?

A Yes.

THE COURT: I'm sorry, will you repeat your name.

THE WITNESS: Annie Hickman.

THE COURT: Thank you.

BY MR. HAGEMEISTER

Q And what relation are you to Angela Hickman?

A Her sister.

Q And Johnnie Bell?

A My son friend.

Q How long have Johnnie Bell and John Allen been friends?

A I don't know.

Q Year, two years, ten years?

MS. BEIMDIEK: Objection, the witness indicated she doesn't know.

THE COURT: Overruled. She may answer. Did you understand the question, ma'am?

THE WITNESS: Yes.

THE COURT: You may answer.

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A It been longer than a year. I say it could have been longer than that, I don't know.

BY MR. HAGEMEISTER

Q I want to direct your attention to approximately two, maybe three weeks before the shooting of John Allen that resulted in his death, to a Bill's Auto shop?

MS. BEIMDIEK: Your Honor, at this time I want to renew my objection to this line of testimony. I ask that it be continuing.

THE COURT: Request for continuing objection is denied. Repeat your question so I may rule.

MR. HAGEMEISTER: I'm directing our -- her attention to the events that occurred approximately two to three weeks prior to the shooting at Bill's Auto.

THE COURT: Objection overruled.

BY MR. HAGEMEISTER

Q Were you present during an event that happened there?

A Yes.

Q And who else was present?

A My son and Johnnie Allen and Johnnie Bell.

Q And why were you at that auto shop?

A I took my car get it fixed.

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Q And who was going to fix it for you?
A My boyfriend.
Q What's his name?
A Sam Lee Thompson.
Q He works at Bill's Auto?
A Yes.
Q When you were at that auto shop on that day, did anything unusual happen?
A Yes.
Q What happened?
A Well, three dude came, wanted jump on Johnnie Bell.
Q All right. Did you see that happen yourself?
A Yes.
Q And when these people came up, how did -- did they actually jump on those two?
A Yes.
Q Was there a fight that took place?
A Yes.
Q And where there any weapons used in that fight?
A No, but a jack and a chair --
MS. BEIMDIEK: I object to testimony about a jack. I don't believe it's been mentioned to

either --
THE COURT: I didn't hear you.
MS. BEIMDIEK: I don't believe the weapon, the jack is attributed to either defendant in court today.
MR. HAGEMEISTER: The State will testify that --
THE COURT: Objection sustained.
BY MR. HAGEMEISTER
Q And tell me who it was that were the three people that came up and jumped on John Allen and Johnnie Bell?
A I didn't know they name at first. It was Carlos, Tyrone and the dude named Demetrius.
MS. BEIMDIEK: Your Honor, again I renew my objection pursuant to my motions with the Court.
THE COURT: Read back the witness' answer.
(Portion read by reporter)
THE COURT: Overruled.
BY MR. HAGEMEISTER
Q Who fought with who?
A Tyrone fight with Johnnie Bell, Carlos was fightin' John.
Q Okay. And do you see either, any of those people involved in that fight in the courtroom today?

A Yes.
Q Can you describe who they were and where they're sitting and who they were fighting?
A Tyrone over there behind the lady fight Johnnie Bell.
Q All right.
A Carlos, he was fighting John Allen, my son.
Q All right. And when you said Tyrone behind the lady, what is he wearing?
A Stripy shirt.
Q What?
A A stripy shirt.
Q What is Carlos wearing?
A A checkered shirt.
MR. HAGEMEISTER: Can the record reflect that the witness has identified Tyrone Morant and Carlos Wade?
THE COURT: The record may so reflect.
BY MR. HAGEMEISTER
Q Tyrone was fighting Johnnie Bell and Carlos was fighting John Allen?
A Right.
Q Did anybody get seriously injured in this fight?
A No.

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Q And how did the fight end?
A My cousin broke it up and Sam broke it up.
Q And what do you mean by they broke it up?
A They stopped the fight.
Q Stepped in between them?
A Um-hum.
Q And you said something about a chair?
A Yes.
Q What was that?
A Huh?
Q What happened with the chair?
A Johnnie Bell has the chair, John took it from Johnnie Bell and they ran, ran off and left their car, jumped in, John hit the window.
Q John Allen was hitting the window of the car they drove off in?
A Right.
Q You said you didn't know their names on that day?
A No.
Q You later on found out their names?
A Yes.
Q Do they look the same as they looked that day?
A No.

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Q How do they look different?
A Carlos had French braids at the time.
Q What about Tyrone?
A Tyrone had hair, more than he got now.
Q All right. This was during the hours of daylight?
A Yes.
Q And you didn't have any problems seeing them? Were their faces covered?
A No.
Q Was there a conversation between them?
A Yes.
Q And did you ever call the police about that?
A No.
Q Why not?
A Cause won't nobody hurt.
Q Won't nobody hurt?
A No.
Q So what did you do after the fight?
A I got my son and took him home.
Q And did anybody go after them after they left, after the fight was broken up, or what did you do right after the fight?
A After the fight?
Q I mean right after.

A G. Wells and Sam broke up the fight.
Q What happened?
A John and Johnnie Bell, they made them get in the car inside the shop. Then we pulled off.
Q Who made them do that?
A Sam and G.W.
Q Okay. Did you ever see those people again after they ran off?
A No.

MR. HAGEMEISTER: I have no further questions for this witness.

THE COURT: Thank you. You may inquire.

MS. BEIMDIEK: Thank you.

CROSS-EXAMINATION

BY MS. BEIMDIEK

Q Miss Hickman, you don't know the date that this fight happened?
A No.
Q And you're not certain of the time?
A No.
Q Now, did the people who were engaged in fight, you said they came in a car?
A Right.
Q And that car, you're not able to tell me what color the car was?

A It was different colored car. Like it was spray painted.
Q Had a lot of spray painting on it?
A Yeah.
Q Other than that, you're not able to tell me about the car the people engaged in this fight were in?
A No.
Q You didn't tell anybody about the fight after it happened, right?
A Right.
Q And when your son was killed, you didn't mention this fight to the police --
A No.
Q -- when they spoke to you?
A No.
Q And in fact you didn't tell the prosecutor, Mr. Hagemeister, about this fight until some time this month, is that right?
A Right.
Q When he came to your home?
A Right.
Q That was the first time you mentioned it?
A Right.
Q Nobody had any guns during this fight?

A No.
Q You didn't call the police because of this fight?
A Right.

MS. BEIMDIEK: That is all I have.

THE COURT: Thank you. You may inquire.

CROSS-EXAMINATION

BY MS. MOORE-DYSON

Q Miss Hickman, you indicated that John had been friends with Johnnie Bell for at least a year, is that correct?
A I said I didn't know. It could be a year or more, I don't know.
Q Had he come to your house?
A Yes.
Q And did you approve of your son's friendship with Johnnie Bell?
A I don't know my son friend, I can't pick him for him.
Q You didn't really like Johnnie Bell?
A I won't say I don't like him.
Q You didn't approve of him?
A No.
Q Now, when the young men drove up, you said they circled and they came and they got out of the

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car?
A Right.
Q Did they start the fight?
A Yes.
Q Were there words before the fight?
A Yes.
Q And where were you exactly standing -- you were how many feet away from them when the fight --
A I was between Johnnie and John.
Q You were between them?
A Yeah.
Q And did they pass -- did they come around you to get to your son?
A They didn't have to come around, they, they standing in front of them.
Q They started to fight. What did you do when the fight started?
A I call for Sam and G.
Q You were paying more attention to the fight between the -- there were two guys on your side, is that correct?
A Right.
Q And you were paying more attention to that particular fight, is that right?
A Right.

Q It's your child, isn't it?
A Right.
Q You said you noticed the three guys when they came up and you had seen them, but you didn't know who they were, is that right?
A I seen 'em, but I ain't know they were going to do anything.
Q You didn't know these young men?
A No, I didn't.
Q Didn't know them at all?
A No.
Q Didn't know anything about --
A I seen it.
Q Didn't know their names?
A Right.
Q When did you first learn their names?
A In the paper when I seen their faces.
Q Your son Josh didn't tell you that was Tyrone and Carlos?
A No.
Q And John Allen -- John Bell didn't tell you who they were?
A No.
Q You have no idea up until the prosecutor came to your house who they were, is that right?

A No, I know before they picture was in the paper, the faces.
Q After your son was killed?
A Right.
Q Up until that time you didn't know who they were?
A No.
Q Okay. You indicated that your boyfriend Sam Lee Thompson took your son inside, is that correct?
A Told him to go inside, yeah.
Q And at that point you didn't feel that a -- a car had been damaged outside the place, is that right?
A Car wasn't damage.
Q He hit --
A He hit it with a chair, but he didn't break the window.
Q Did they leave that car?
A They ran off from the car as he chased it with a chair. But they came back and Sam had Johnnie and John go in the shop.
Q All right. Did you, did you feel you needed to call the police because perhaps they'd come back and try something more?
A No, cause John was inside the shop. It was

older people inside the shop, wouldn't them, them come in the door when John and Johnnie was there.
Q And as mentioned before, you never did, you didn't think -- you thought it was just kids fighting, is that correct?
A Right.
Q It didn't look serious enough that anybody was going to get physically hurt?
A No.
Q Other than fighting?
A Right.
Q Your son didn't tell you that those guys were after me?
A No, Johnnie don't talk to me about what was going on.
Q You didn't know of anything that caused that fight?
A No.
Q You didn't see anything that your son or John Bell did on that particular day to cause those guys to just come up and hit them, is that right?
A No.
Q So there was nothing leading up to the fight that you saw that would have caused them to break out into the fight, is that right?

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A That's right.
Q And when the prosecutor came to your home the other day, did he mention the fight to you, asked you had you seen it?
A Yes.
Q You didn't tell him about -- you didn't tell him that, I saw that fight between these two guys?
A I told him I seen the fight.
Q But after he mentioned it to you?
A Yeah.
Q Okay. And you have -- you're saying that the fight happened at the end of August, is that correct?
A Yeah.
Q In 1995?
A Right.
Q And you had not remembered or anything about the fight until you were asked, is that correct?
A What you say?
Q You hadn't remembered anything or decided to point these two guys out until the prosecutor brought it to your attention, is that correct?
A Right.
MS. MOORE-DYSON: I have nothing further.
THE COURT: Thank you.

REDIRECT EXAMINATION
BY MR. HAGEMEISTER
Q I came to your house. Did I ask you to tell me if there were any witnesses to things that had gone on in the past?
A Did you ask me --
MS. BEIMDIEK: Objection, hearsay, leading.
THE COURT: Sustained.
MS. BEIMDIEK: Overbroad.
BY MR. HAGEMEISTER
Q Miss Moore-Dyson asked you if I came to you?
A Um-hum.
Q And asked you to be a witness to that fight?
A You didn't ask me to be no witness to the fight.
Q Who mentioned to me that they were there and saw it?
A I said I saw the fight, but Johnnie Bell told you about it before I did.
MS. BEIMDIEK: Objection, calls for hearsay.
THE COURT: Sustained.
BY MR. HAGEMEISTER
Q When I went to your house, did I -- was there a time where we wanted to know if there were any witnesses to anything that had ever happened?

MS. BEIMDIEK: Objection, overbroad.
THE COURT: Sustained.
BY MR. HAGEMEISTER
Q Did you ever -- who told who about how the fight happened?
A Johnnie Bell and I told you.
Q Okay. How old was John Allen when he was killed?
A Twenty.
Q Do you have, despite the fact that they're charged, these two are charged with murdering your son, any reasons, besides that, to get up here and make up anything about them?
A No.
MR. HAGEMEISTER: I have no further questions.
THE COURT: Thank you.
MS. BEIMDIEK: Nothing further.
THE COURT: Thank you, Miss Beimdiek.
MS. MOORE-DYSON: Nothing further.
THE COURT: Thank you, Miss Moore-Dyson. You may stand down, ma'am. Call your next witness.
MR. HAGEMEISTER: The State calls Johnnie Bell. I ask that Miss Hickman be permitted to stay in the courtroom.

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THE COURT: Any objection?
MS. MOORE-DYSON: No, Your Honor.
THE COURT: Very well. Permission granted.
JOHNNIE BELL
having been first duly sworn, testified:
DIRECT EXAMINATION
BY MR. HAGEMEISTER
Q State your name, please.
A Johnnie Bell.
THE COURT: Will you move closer to the microphone, Mr. Bell.
A Johnnie Bell.
BY MR. HAGEMEISTER
Q Mr. Bell, do you know somebody who calls you sissy?
A Yeah.
MS. BEIMDIEK: Judge, I object, irrelevant. May we approach?
THE COURT: Yes.
(The following proceedings were had at the bench out of the hearing of the jury:)
MS. BEIMDIEK: Your Honor, I believe this is a question designed to elicit a matter about which the Court has ruled the State cannot get into and that is the term "sissy" in conjunction with some gang

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relationship is what he's trying to -- gang language. If he wants to ask this question, he needs to make it a specific question as to this instance, not as to some broad scope.

THE COURT: Objection is sustained. The question is overbroad. It is the Court's recollection the evidence has been adduced by State witnesses, when the car pulled up, some remark was made, there are the sissies and some profanity. This question does not relate to what has been testified to any evidence as to what happened on September 17th, 1995. The objection is sustained.

MR. HAGEMEISTER: Opportunity to respond, please?

THE COURT: Yes.

MR. HAGEMEISTER: If a person pulls up in a car and right before they shoot at me they say, you stole my car, it goes to the identity of that person. This person consistently calls him sissy. That's the only reason I'm addressing it. If you want me to lead him through it, that's fine. It goes to ID. It has nothing to do with the other.

THE COURT: The Court's ruling remains the same. Assuming, arguendo, your position is true, you have not laid the foundation and the foundation would

be, of course, that on the day in question someone in the car --

MR. HAGEMEISTER: But he also knows these people have done it in the past.

THE COURT: Counselor, all I'm saying, you have not laid the foundation. If your theory is that a person involved in this incident consistently called this witness a given name, sissy, then your -- the inference is that he, as he testified on the motion, recognized the voice.

MR. HAGEMEISTER: He also recognized the person. If my pet name for you is Conchi --

THE COURT: Yes, I understand that the question is overly broad at this time and no foundation has been laid for it.

MR. HAGEMEISTER: Thank you.

THE COURT: Court's ruling remains the same.

(The following proceedings were had in the presence of the jury.)

BY MR. HAGEMEISTER

Q Mr. Bell, do you know what a pet name is?

A A pet name?

MS. BEIMDIEK: Objection, relevance.

MS. MOORE-DYSON: Same objection, Your Honor.

MR. HAGEMEISTER: I'm --

THE COURT: Sustained.

BY MR. HAGEMEISTER

Q Have you ever called anybody by some name that, it's a girlfriend you always call her honey buns?

MS. BEIMDIEK: Objection relevance.

MS. MOORE-DYSON: Objection relevance.

THE COURT: Sustained.

BY MR. HAGEMEISTER

Q When John Allen was shot and killed, was there a name from that car, was there a name uttered from that car?

A Yes.

Q What was that name?

A "Sissy."

Q Okay. All right. On this planet, in your experience --

MS. MOORE-DYSON: Objection.

THE COURT: Reserve ruling until I've heard the question.

BY MR. HAGEMEISTER

Q Who in this world calls you "sissy?"

MS. MOORE-DYSON: Objection, Your Honor, that is not relevant.

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MR. HAGEMEISTER: Goes to identification.

MS. MOORE-DYSON: "Who in this world."

THE COURT: Objection is sustained.

BY MR. HAGEMEISTER

Q Have you ever heard anybody call you "sissy" before?

A Yes.

Q Who?

A Carlos Wade.

Q Anybody else on this planet call you "sissy?"

MS. MOORE-DYSON: Objection, Your Honor, as to anybody else in this world.

THE COURT: Sustained.

MS. MOORE-DYSON: They're not on trial here.

BY MR. HAGEMEISTER

Q Have you ever been called "sissy" by others?

A Nope.

Q You were present at the time of the killing of John Allen?

A Yes.

Q Were you shot at as well?

A Yes.

Q How do you know you were shot at?

A Cause I heard the bullets going past my

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head.
Q And that was in the 4200 block of Martin Luther King?
A Yeah.
Q Was this in the City of St. Louis?
A Yes.
Q And when you were shot at, who else was there?
A Angela, me and John.
Q That was on September 17th, 1995?
A Yeah.
Q When you heard, what did you hear coming from that car?
A I heard, "Them sissy ass niggers, I want get out there", and they start shootin'.
Q What did you do?
A I ran.
Q How quick did you run?
A I probably ran fast as I could.
Q How quick after the car pulled up did you run?
A When they started shootin'.
Q When you ran after hearing those statements made, did you have an opinion as to who was in that car?

A Yeah.
Q And who did you have an opinion was in that car?
A Carlos Wade.
MS. MOORE-DYSON: Your Honor, I object as to -- my objection is an opinion. The question is did he see anybody.
THE COURT: State your legal objection.
MS. MOORE-DYSON: Legal objection is to relevance as to whether or not, what his opinion was.
THE COURT: Objection will be sustained.
BY MR. HAGEMEISTER
Q When you ran, why did you run?
A Cause they were shootin' at me.
Q Did you wait until they pulled out the guns and started shootin' to run?
A Yeah.
Q Or as soon as they said the sissy thing?
A As soon as they started shootin'.
Q How many people were shooting?
A Two of 'em.
Q How do you know Carlos Wade?
A He used to go to school with me.
Q Has he never shot at you before?
A Yeah.

MS. BEIMDIEK: Objection, Your Honor, subject to my previous motion.
MS. MOORE-DYSON: My objection is that the proseeutor is leading the witness.
THE COURT: Sustained on the latter ground.
BY MR. HAGEMEISTER
Q When has he shot at you before?
A Which time? Or how many times?
Q First time you remember him shooting at you, where were you?
A On Fair and Ashland.
Q Who were you with?
A John.
Q What's at Fair and Ashland? Is that right, Fair and what?
A Ashland.
Q What's at Fair and Ashland?
A He used to stay on Fair and --
Q Who he?
A John.
Q John Allen?
A Yeah.
Q You were at his house?
A Yeah.
Q Was anybody else there with you?

A No.
Q And what happened?
A Carlos and about two of his partners pulled up in a car and he had shot at us.
Q Who shot at you?
A Carlos Wade.
MS. BEIMDIEK: Judge, again I renew my objection to this line of testimony. It's completely irrelevant.
MR. HAGEMEISTER: Goes to --
THE COURT: Overruled.
BY MR. HAGEMEISTER
Q When you say Carlos Wade, do you see that Carlos Wade in the courtroom today?
A Yes.
Q Can you point him out and tell me what he's wearing?
A Wear --
MS. BEIMDIEK: Excuse me --
A The white --
THE COURT: Just a moment.
MS. BEIMDIEK: I renew my objection pursuant to my previous objection with the Court.
THE COURT: Overruled.
BY MR. HAGEMEISTER

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Q Wearing what?
A The brown and white plaid shirt.
MR. HAGEMEISTER: May the record reflect the witness has identified the defendant Carlos Wade.
THE COURT: The record may so reflect.
BY MR. HAGEMEISTER
Q So you're on Fair at John Allen's house. Where on the house?
A Sitting on the porch.
Q What happens?
A They pull up and start shootin'.
Q Did you see Carlos shoot?
A Yeah, I seen him shoot.
Q All right. Now, when they start shooting, what do you guys do?
A Run to the gangway.
Q All right. Anything else?
A No.
Q Anybody shoot back?
A Oh, yeah, John had shot back.
Q John Allen?
A Yeah.
Q He had a gun on him?
A Yeah.
Q How many times do you think he shot back?

A Maybe about twelve.
Q Anybody get hurt on that time?
A No.
Q Did you guys call the police?
A No.
Q Why didn't you call the police?
A Cause we rather deal with it ourself. The police ain't going to do nothing.
Q What do people in that neighborhood think of --
MS. MOORE-DYSON: Objection as to what other people think.
MS. BEIMDIEK: Objection --
THE COURT: Sustained.
BY MR. HAGEMEISTER
Q Is there any other reason why you don't call the police?
A We don't need to involve the police, cause we don't really need the police. But they can't do nothin' about that.
Q Any other times that Carlos shot at you?
A Yeah.
Q When was the next time?
MS. BEIMDIEK: Your Honor, again renew my objection to this line of testimony.

THE COURT: Overruled.
A On, on Aldine.
BY MR. HAGEMEISTER
Q Whose house was it on Aldine?
A Hickman house.
Q What happened on Betty Hickman's house?
A They came out one of they gangways and we sit on the porch and they shot about, shot at us, but they didn't hit us, they hit the wall.
Q You saw Carlos shooting that time?
A Yeah, I seen him shoot.
Q You never saw Tyrone on either one of those times?
A No.
Q When you saw Carlos shootin', did he hit anybody?
A No, he ain't hit nobody.
Q And who all was on the porch?
A Just me and John.
Q And what happened?
A We ran off the side of the porch, ran into the back.
Q Anybody shoot back?
A No.
Q Why not?

A We ain't had no time to shoot back.
MR. HAGEMEISTER: May I approach the witness?
THE COURT: Yes, sir.
BY MR. HAGEMEISTER
Q I will show you a photograph I marked as State Exhibit No. 21.
MS. BEIMDIEK: I'm sorry, can I see that, please?
MR. HAGEMEISTER: Yeah.
BY MR. HAGEMEISTER
Q What is this a picture of?
A Betty Hickman house.
Q Is that the house that you were on when you were shot at?
A Yeah.
MR. HAGEMEISTER: Can I ask the witness to step down, please?
THE COURT: May I see the exhibit? Yes.
MR. HAGEMEISTER: The record should reflect that I had it marked as 19 and I scratched it out and marked it as 21 so I wouldn't double them up.
BY MR. HAGEMEISTER
Q Can you step down, please. Mr. Bell, show me where Betty Hickman's house is on this map, State

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Exhibit No. 10. Step to the side over here so the jury can see where you're pointing at.

A Right here.

Q What side of that house is that a picture of?

A The front of the house.

Q You say you were up on this porch in this picture?

A Yeah.

Q Did you tell me about that shooting at any point?

A Did I tell you about it?

Q Yeah. When I talked to you in the past, have you told me about it?

A Yes.

Q Did we go up to that actual house together?

A Yes.

Q Was I shown the marks on the walls?

A Yeah.

Q I'll show you State Exhibit No. 22. Do you remember that photograph being taken?

A Yes.

Q And what is that a picture of?

A The bullet holes where they had shot the house up.

Q They don't look like bullet holes now, do they?

A No, cause they got painted over.

Q How long ago was that shooting?

A It was probably about couple months before they did this.

Q Were the police called on that?

A No.

Q I'll show you a picture marked as State's Exhibit No. 20. What is that a picture of?

A Carlos Wade house, I guess both of them Carlos Wade house; one his sister house, the other one his house.

Q Between those two houses, what do you see?

A A gangway like in between.

Q Where are those two houses located in relation to Betty Hickman's house?

A Across the street.

Q Across what street?

A Across the Aldine.

Q Is it to the right, to the left, straight across, what?

A Straight across.

Q So one of those houses would be this house marked with a C on this map?

A Yes.

Q Is that where they shot from?

A Yes.

Q Anybody get hurt on that time?

A No.

Q Are you thinking maybe you guys should call the police?

A No.

Q Why didn't you call the police now?

A Cause they ain't going to do nothin'.

Q So when -- is there any other time that Carlos shoots at you?

A Yeah.

Q When was that?

MS. BEIMDIEK: Your Honor, again I renew my objection to this line of testimony.

THE COURT: Overruled.

BY MR. HAGEMEISTER

Q When?

A On Sarah and Martin Luther King.

THE COURT: I didn't hear you, sir.

THE WITNESS: On Sarah and Martin Luther King.

THE COURT: Thank you.

BY MR. HAGEMEISTER

Q Tell me about that.

A They pulled up in a black truck. We sittin' at the bus stop. They threw us a gang sign --

MS. BEIMDIEK: Your Honor, I object. May I approach?

THE COURT: Objection sustained.

MS. BEIMDIEK: May I approach, please?

THE COURT: Yes.

(The following proceedings were had at the bench out of the hearing of the jury:)

MR. HAGEMEISTER: I instructed this witness.

MS. BEIMDIEK: Your Honor, I move for a mistrial. It has been abundantly clear by the Court that the word "gang", testimony about gangs was completely inadmissible. The State was instructed to advise its witness.

I accept Mr. Hagemeister told this witness not to say what he said. This witness has clearly disobeyed the Court's order. I think it is extremely prejudicial for this testimony to have come in. This witness deliberately caused this problem and it has violated Carlos Wade's due process rights.

MR. HAGEMEISTER: Judge, we already have enough indicia that the State could have made the argument this was motivated from that. If the Court

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wants to instruct the witness, I am not opposed.

But I make the argument by the time we are through with this trial, I would have had enough evidence that the inference was there that, and it could have been argued, I've argued it in trials in the past and it was not too prejudicial because it was an actual motive.

THE COURT: The Defendant Wade's oral motion for mistrial is overruled.

(The following proceedings were had in the presence of the jury.)

THE COURT: Ladies and gentlemen of the jury, you're instructed to disregard the witness' last answer. Proceed.

MS. BEIMDIEK: Thank you, Your Honor.

BY MR. HAGEMEISTER

Q Were the police called for that?

A Nope.

Q Any other times that Carlos was shooting at you?

A On Martin Luther King.

Q Where?

A Martin Luther King.

Q Where on Martin Luther King?

MS. BEIMDIEK: Your Honor, again I renew my

objection to this line of testimony.

THE COURT: I'll reserve ruling until I find -- Martin Luther King and Sarah, is this --

MR. HAGEMEISTER: This is a separate incident.

THE COURT: Please ask a more definitive question so the Court can rule.

MR. HAGEMEISTER: Thank you.

BY MR. HAGEMEISTER

Q Did Carlos shoot at you on Martin Luther King on a totally separate occasion?

A Yes.

THE COURT: Objection overruled.

BY MR. HAGEMEISTER

Q Where did he come from on that one?

A Between like the auto shop and this other place.

Q There is another place? I mean the jury doesn't know this street, you have to describe it.

A It's like -- I think it's a flower shop.

Q Where are you?

A Sittin' on the car across the street on Martin Luther King.

Q Are you alone?

A No.

Q Who are you with?

A John.

Q And how many people?

A I think it was just me and him sittin' on the car talkin'.

Q When Carlos shoots at you, what do you do?

A Run.

Q Anybody shoot back?

A Yeah.

Q Who?

A I did.

Q How many times?

A Probably about 15 or something like that.

Q A full clip?

A Yeah.

Q Anybody get hurt on that one?

A No.

Q How long have you and John Allen been friends?

A Since we went to school, grade school.

Q All right. And when you -- when the shooting happened and John was lying in the street, did you ever go talk to him?

A Yeah.

Q And were you able to understand anything

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that he said?

MS. BEIMDIEK: Your Honor, I object. Can we approach at this time, please?

THE COURT: If you feel it's necessary again, Counselor.

MS. BEIMDIEK: Yes, I do.

(The following proceedings were had at the bench out of the hearing of the jury:)

MS. BEIMDIEK: I expect that this answer will be designed as hearsay on the part of the statement allegedly made by the decedent in this case naming the shooter. I think it's improper hearsay.

MR. HAGEMEISTER: My argument to that would be that we've already elicited testimony that the defendant was dead at the scene -- I'm sorry, the victim, and this would be a dying declaration.

THE COURT: What do you anticipate the witness to say?

MR. HAGEMEISTER: That he couldn't understand most anything that he was saying, but he did understand him to say Carlos.

THE COURT: Let the record show that the objection is sustained.

MR. HAGEMEISTER: Judge, does that not fall under the exception to the hearsay rule?

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THE COURT: The Court finds that the objection is sustained, no proper foundation has been laid.

(The following proceedings were had in the presence of the jury.)

BY MR. HAGEMEISTER

Q Was John Allen in fact shot by the people in the car on the night of September 17th?

A Yes.

Q Did you see him when he was lying in the street?

A Yes.

Q Was he bleeding?

A Yes.

Q Was he in pain?

MS. BEIMDIEK: Objection, leading.

A Yes.

THE COURT: Sustained.

BY MR. HAGEMEISTER

Q Describe how he was.

A He was hurtin'. He was trying to talk.

Q All right. Did he end up dying right there?

A Yeah.

Q Shortly before he died did he say anything to you?

MS. BEIMDIEK: Same objection.

MS. MOORE-DYSON: Objection.

THE COURT: Sustained.

BY MR. HAGEMEISTER

Q Was there a point at which he passed away right there on the street?

MS. MOORE-DYSON: Objection as to whether or not this -- I don't believe this witness has the ability to determine whether or not a person is dead or alive. He's not a doctor.

THE COURT: State your legal objection, Counselor.

MS. MOORE-DYSON: Objection as to foundation.

THE COURT: Objection will be sustained.

BY MR. HAGEMEISTER

Q Did the paramedics come and work on him?

A No.

Q Did they check him to see if they should work on him?

A Yeah.

Q After they checked him, did they work on him?

A No.

Q So they left him? Did they leave him there?

A Yeah, they left him there.

Q Was he moving or breathing after they left him there?

A No.

Q Was he trying to say anything more after they left him there?

A No.

Q Before the ambulance and the paramedics responded and checked on him, did you have an opportunity to hear him say anything?

A Yeah.

MS. BEIMDIEK: Your Honor, same objection.

THE COURT: Is this the same ground we've been over before, Counselor?

MR. HAGEMEISTER: I don't know what else I need to do for a foundation for this, Judge.

THE COURT: Well, then the objection will be sustained.

MR. HAGEMEISTER: I ask for a recess.

THE COURT: Any objection?

MS. BEIMDIEK: Yes, Your Honor. I don't understand, the State has the burden of proof here.

MR. HAGEMEISTER: That's why I want take a recess.

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THE COURT: Very well. If you request a

recess, the Court will grant it. The jury is instructed to disregard counsel's remarks not in answer to the Court's question. You may stand down, sir.

Ladies and gentlemen of the jury, we will be in morning recess.

(The Court duly admonished the jury and a recess was taken.)

(The following proceedings were had out of the presence of the jury:)

THE COURT: Let's proceed. Counsel for the State has requested an opportunity to make a further record.

MR. HAGEMEISTER: Yes, Judge. May I grab one case book?

THE COURT: No, sir. I've given you a half hour. You've submitted to the Court certain authorities you contend and the Court has reviewed those cases briefly. Proceed.

MR. HAGEMEISTER: The State will argue, based on State vs Mahone, 699 S.W.2d, 60, that, "Evidence established the statement was made by the victim shortly before he died", which the State has established, "identifying those who shot him was a statement of fact", and it goes on to say that, "the

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victims's condition after the shooting made it unlikely that the assailants were identified to him by someone else, and the victim had ample opportunity to view the assailants", which has all been established.

It points out that the, "Requirement under dying declaration exception to the hearsay rule, that the declarant believes death is imminent and has abandoned all hope of recovery, that may be inferred from his condition and other circumstances which indicate apprehension of immediate death."

In this case there's obviously a gunshot wound that enters in his left chest that he can feel, that the medical examiner told the Court went through his heart, which the Court can infer that he could feel, that he was gasping for every ounce of breath, that at the time that he made the statement anybody in that situation would believe that death was imminent.

The fact is and in the case of State vs. Proctor, I'm sorry, that in State vs. Carr, that where a person under the circumstances cannot make the express statement that he believes death is imminent, or "such statements of such belief are vague or subject to differing interpretation or unreasonable in light of the circumstances", which in this case is mumbling of words that could not be understood, would

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be vague, the "declarant's belief in imminent death maybe inferred from his condition, which indicates apprehension of immediate death."

I pointed out to the Court he did die seconds after he made the statement, at most a minute or a couple minutes. And if the Court does not believe that, it can infer from the fact that he was shot through the heart and that it is a dying declaration, in the alternative it would be an excited utterance.

On State vs. Mahone, "Excited utterances are admissible if the subject has been subjected to -- "if the declarant has been subjected to a startling event and he makes a statement before there is time to fabricate, such statement relates to the circumstances of the startling occurrence."

THE COURT: "And the declarant is cognizant and his intellect is operating under the stress of the traumatic event."

MR. HAGEMEISTER: I would argue there was a startling event, he was shot through the heart. That he had an opportunity just prior to being shot through the heart, with illumination present, and with the angle of observation, with the fact that the witnesses have declared that the shooter, Carlos Wade, was not

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covered in any way, with the fact that as he lie there he is suffering the stress from the event which Mr. Wade participated in inducing, that he can make a statement with regard to the cause of that event and that in fact was his statement, the cause of that event was Carlos.

I rest primarily on the dying declarations exception to the hearsay rule, because in this case there is no condition, there is an indicia of the liability of lack of time to fabricate, and there is more than sufficient evidence for the Court to infer that he believed his death was imminent.

THE COURT: Thank you. Miss Beimdiek?

MS. BEIMDIEK: Judge, my brief review of Mahone is distinguishable. The victim has been transported in an ambulance and was being attended to. In addition, he was specifically asked by the police, who shot you, and was able to give an answer. The Court allowed that in under those circumstances.

In this situation there's no testimony that this witness inquired of the witness who shot. The witness did -- the victim did not say, Carlos shot me. There's been nothing to suggest that the victim had given up his hope of living. I don't think there's anything to suggest the witness knew he had been shot

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through the chest.

THE COURT: Excuse me a moment. Pardon the interruption. Proceed.

MS. BEIMDIEK: Essentially that's my argument. I don't think there's anything to show that the victim knew that his death was imminent or that he abandoned any hope.

THE COURT: Thank you. Miss Moore-Dyson?

MS. MOORE-DYSON: Your Honor, my only observation is that the prosecutor's indicated that certain perspective being attributable to the victim himself, we have no evidence whatsoever of the victim's perspective.

The cases indicate what's on the declarant's mind, what are the declarant's beliefs, and that would have been the victim. The testimony of the evidence that we have at this point is relative to two other persons, both who indicated at the time they didn't know where the other was at that particular time, so they would not be competent to testify as to what the declarant observed and what he believed.

MR. HAGEMEISTER: May I respond?

THE COURT: Briefly.

MR. HAGEMEISTER: I want to point out to the Court State vs. Proctor 269, 624, State vs Carr 610,

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296, State vs. Boyland 728, 583, all cases I have brought to the Court in chambers, also State vs. Bowler, 892, 717, and State vs., I believe, Geebler.

In all of these court cases, especially the last which are '94 cases, the primary decision is whether it can be inferred. I don't believe this is a question that goes to the admissibility of the evidence, rather to the weight of the evidence as it is proper to make the inference, a juror could make the inference that at the time he was shot through the heart and lying there trying to get a breath, it was obviously struggling --

THE COURT: We've been through this before. The Court finds this repetitious. The Court is aware of that. Do you have anything further?

MR. HAGEMEISTER: Nothing. I would go through each of these cases if the Court would give me time.

THE COURT: No, you have -- Counsel brings this up and at the time you are requested by the Court to produce any authority for your position, you have not.

Let the record show at your request the Court granted you a recess. And that thereafter you provided the Court with your position based on the

cases you've cited.

Now, is it stipulated and agreed that if this witness, Mr. Bell, is permitted to testify and answer the last question that his testimony would be that the deceased said one word, Carlos?

MR. HAGEMEISTER: No. The deceased was attempting to make statements to him and that he could not make out most of the defendant's -- the declarant's statements, but he did make out the word Carlos.

THE COURT: I thought that's just what I said.

MR. HAGEMEISTER: It wasn't just --

THE COURT: The witness would testify that he heard the deceased say Carlos?

MR. HAGEMEISTER: Yes.

THE COURT: The rest was mumbled?

MR. HAGEMEISTER: Yes.

MS. BEIMDIEK: I agree, Your Honor.

MS. MOORE-DYSON: That's essentially it, Your Honor.

THE COURT: All right. Let the record show that the Court, in deference to the prosecutor, has given him an opportunity to provide the Court with authority. The Court has reconsidered its prior

ruling. The Court's prior ruling remains the same. The objection is sustained. Bring down the jury.

MS. BEIMDIEK: Your Honor, I ask the State be instructed to move on from this area in light of the Court's ruling.

THE COURT: Well, I certainly expect that, but I won't dictate to the prosecutor how she -- how he should try this case.

MR. HAGEMEISTER: May I ask the Court what element of the foundation the Court believes the State has failed to provide?

THE COURT: The Court has ruled and the Court has devoted quite a bit of time to your particular issue and the Court won't go back.

MR. HAGEMEISTER: I appreciate the recess. Thank you.

(The following proceedings were had in the presence of the jury.)

THE COURT: Proceed.

MR. HAGEMEISTER: The State recalls Johnnie Bell.

THE COURT: You may proceed, Mr. Hagemeister.

BY MR. HAGEMEISTER

Q Was there any time when you had ever had an

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altercation or fight with --

MS. MOORE-DYSON: Objection, Your Honor, leading.

THE COURT: I'll reserve ruling until I've heard the question.

BY MR. HAGEMEISTER

Q -- either of these two subjects?

A Yeah.

Q When was that?

A I believe Monday before they did that.

Q Before they did what?

A Before they killed my partner.

MS. MOORE-DYSON: Your Honor, I object due to my previous motion.

THE COURT: Miss Moore-Dyson, your objection is overruled. I didn't hear the witness' last answer. Will you repeat your answer.

THE WITNESS: It was about a month before they killed my partner.

THE COURT: Your objection is overruled.

BY MR. HAGEMEISTER

Q Where was that?

A On Martin Luther King.

Q Where on Martin Luther King?

A In front of the shop.

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Q What shop?
A Car shop.
Q What shop?
A Bill's Auto Shop.
Q What happened then?
A They pulled up and got out they car and walked down there and said -- called us some sissies --
Q We have to back up. Who is they?
A Carlos, Tyrone, and another dude.
Q Do you know his name?
A I think his name Demetrius.
Q Who did they come up on?
A Me and John.
Q John who?
A Allen.
Q All right. And what did they do when they came up on you?
A Called us some sissies. Then they want to fight so they -- Carlos hit John, they started fightin'; and Tyrone hit me, so we started fightin'.
Q The Tyrone you're talking about that was fighting you on that date, do you see him in the courtroom today?
A Yeah.

Q Where is he sitting and what's he wearing?
A A white striped shirt with like a brown tie.
MR. HAGEMEISTER: Can the record reflect that the witness has identified the defendant Tyrone Morant?
THE COURT: The record may so reflect.
BY MR. HAGEMEISTER
Q When you fought him on that date, did he look the same as he looks today?
A No he had a Fro, like some kind of, I don't know how to describe his hair, but wasn't like that. It was like a Fro.
Q All right. Had you guys done anything to start that fight?
A No, we was just standin' up there.
Q Just standing up on Martin Luther King?
A Yeah.
Q When you guys finish fighting, how did that end up?
A After we, after Carlos couldn't whip my partner, Demetrius tried to help. I ran to get a chair. When I ran with the chair and tried to hit them with a chair, they ran across the street and one of them went to the car and opened they trunk and got a jack out and tried --

Q Let's talk about what Carlos and Tyrone did.
A All right. Well, after that, they ran across the street and they stood over there for a while and they took us back in the auto shop and they come back and tried to come in the shop. They wouldn't let them in the shop, so we got in the car and left.
Q That was the only time you had any problem with Tyrone?
A Yeah.
Q And all those other shootings you were talking about Tyrone had nothing to do with?
A Huh-uh.
Q When you talked about the other shootings and Carlos, were you talking about the same Carlos all the time?
A Yeah.
Q When you talked about the other shootings and where you guys actually had guns and shoot back, why did you guys carry guns?
A Because they told us --
MS. MOORE-DYSON: Objection, relevance.
THE COURT: Sustained.
BY MR. HAGEMEISTER
Q So when you, so when you were in this

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neighborhood -- I'm sorry. Strike that. Did you call the police after the fight at the auto shop?
A No.
Q I'm going to show you a photograph I marked as State's Exhibit No. 23.
MS. BEIMDIEK: Can I see it? What is that?
BY MR. HAGEMEISTER
Q What is that a picture --
A The auto shop.
Q The same one you had a fight in front of?
A Yeah.
MR. HAGEMEISTER: State's Exhibit 20, 21, 22, and 23, I ask they be admitted into evidence.
MS. BEIMDIEK: What was 20?
MR. HAGEMEISTER: 20 was the photo of --
THE COURT: The house on Aldine.
MR. HAGEMEISTER: Carlos Wade's house. 22 are Betty Hickman's, and 22 the bullet holes painted over, and 23 is the auto shop.
MS. BEIMDIEK: I do object. This is improper foundation as to these photographs.
THE COURT: Objection overruled as to State's Exhibit 20, it's admitted into evidence. Overruled to State Exhibit 21, it's admitted. Defendant's objection to State's Exhibit 23 is

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overruled, it's admitted in evidence. What's your objection to State's Exhibit 22?

MS. BEIMDIEK: Again, improper foundation, Your Honor; in addition, pursuant to the previous motion that I filed with the Court.

THE COURT: Please elucidate the Court as to how the foundation is insufficient.

MS. BEIMDIEK: I don't recall the witness saying the photograph fairly and accurately depicted the way --

THE COURT: Very well. Objection sustained as to 22.

BY MR. HAGEMEISTER

Q With regard to State's Exhibit 22, can you take that photograph? Does that picture fairly and accurately depict the wall of Betty Hickman's porch as it was when we went up to that scene a week or two or three ago?

MS. MOORE-DYSON: Your Honor, I object. His previous answer was it was not, there was an alteration.

MR. HAGEMEISTER: I am not saying it depicts how it looked --

THE COURT: Just a moment. State your legal objection.

MS. MOORE-DYSON: I'll withdraw the objection for right now.

THE COURT: Very well.

BY MR. HAGEMEISTER

Q Is that how it looked when we went up and looked at it?

A Yeah.

Q And those marks on the wall, they didn't look like that at the time that they were originally shot?

A No.

Q But you can still see the marks where the bricks or concrete blocks had been?

MS. MOORE-DYSON: Objection as to leading.

THE COURT: Objection sustained.

BY MR. HAGEMEISTER

Q Can you see marks?

A Yeah.

Q Are the bricks and concrete in the same condition as they were before Carlos shot at you when you were on that porch?

A No.

Q And how did his shooting at you while you were on that porch affect the condition of those bricks or concrete blocks?

MS. MOORE-DYSON: Objection, leading.

THE COURT: Overruled. He may answer.

A They got holes in the wall, like four or five of 'em.

BY MR. HAGEMEISTER

Q When you say holes, do those holes go all the way through the wall?

A I'm not sure if they go all the way through the wall.

Q Okay. But there's marks?

A Yeah, these's marks there.

Q It doesn't look like it looked right after they shot?

A No.

MS. MOORE-DYSON: Your Honor, I object to the prosecutor constantly leading.

THE COURT: Objection sustained to the last question.

BY MR. HAGEMEISTER

Q You've already said it doesn't look the same. I'm trying to get to my next point, which is after they shot, how did it look different from that picture?

A You could tell it was bullet marks at first before it got painted over.

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Q Thank you.

MR. HAGEMEISTER: I ask that State's Exhibit 22 be admitted into evidence.

MS. MOORE-DYSON: Your Honor, may I inquire?

THE COURT: Yes.

MS. MOORE-DYSON: Can you state for a fact that those bullet, those marks that you see on that picture now are the exact same marks that were made when -- during that shooting?

THE WITNESS: Yeah.

MS. MOORE-DYSON: Did you go up after the shooting and inspect and count them and see where they were located?

THE WITNESS: Yes, I seen them.

MS. MOORE-DYSON: Each one?

THE WITNESS: Each one.

MS. MOORE-DYSON: Every single one of them?

THE WITNESS: Yes.

MS. MOORE-DYSON: You did that after that shooting?

THE WITNESS: Yeah.

MS. MOORE-DYSON: Then you also did that when Mr. Hagemeister came over and looked at the building, is that correct?

THE WITNESS: Yeah.

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MS. MOORE-DYSON: You told him these are the number of bullet shots and these are exactly where they were on that particular day?

THE WITNESS: Yes.

MS. MOORE-DYSON: That is what you told him?

THE WITNESS: That's what I told him.

MS. MOORE-DYSON: Nothing further.

THE COURT: Anything further?

MS. BEIMDIEK: Same objection to the photograph, Your Honor, I think it's unreliable as to the condition at the time of the shooting.

THE COURT: Overruled. Defendant's objections to State's Exhibit 22 -- may I see that -- are overruled. State's Exhibit 22 is admitted in evidence.

BY MR. HAGEMEISTER

Q Now lets go back to the night of the murder. How many times did they shoot out of that car?

A I'm not sure how many times they shot that night.

Q More or less than five?

A More than five.

Q How many people were shooting?

A Two of 'em.

Q How do you know?

A Cause I seen the fire coming from the guns.

Q Two different guns?

A Yeah.

Q Did you cooperate with the police that night?

A Not really.

Q Why not?

A Cause I didn't want to talk to 'em.

MR. HAGEMEISTER: I have no further questions.

THE COURT: Thank you. You may inquire, Miss Beimdiek.

MS. BEIMDIEK: Thank you, Judge.

CROSS-EXAMINATION

BY MS. BEIMDIEK

Q Mr. Bell, you testified on direct with Mr. Hagemeister that nobody in the whole world has ever called you a sissy before, is that right?

A Yeah.

Q Do you remember talking to the police several days after the shooting happened?

A Yeah, I remember talking to 'em.

Q And they tape-recorded a statement that you made to them?

A Yeah, I know that.

Q You know that?

A Yeah.

Q They asked you at the very end, in fact the tape was almost over and the officer asked if there was anything else you wanted to tell him, do you remember that?

A Yeah.

Q This was Det. Hornak?

A Uh-huh.

Q Do you remember that?

A Yeah.

Q Do you recall telling Det. Hornak that io, on that day in the daytime that three guys had called you sissy and said they were going to get you?

A I ain't say three guys called my -- I don't remember saying that.

Q You don't remember saying that?

A No.

Q You'd recognize your voice if you heard it on tape?

A Yeah, I recognize my voice if I heard it on tape.

MS. BEIMDIEK: At this time, Your Honor, I'd like to play that portion of the tape.

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THE COURT: Very well. For the record, what

is that exhibit?

MS. BEIMDIEK: I'll have it marked as Defendant's Exhibit E.

THE COURT: Thank you.

MS. BEIMDIEK: I'm sorry, it's not marked at this time.

(The Court Reporter marked for identification Defendant's Wade's Exhibit E)

(Tape played for jury)

THE COURT: Turn the volume up.

MS. BEIMDIEK: That's as loud as it will go.

THE COURT: Thank you.

(Tape played for jury)

BY MS. BEIMDIEK

Q Now I know that was hard to hear, but do you recall telling the detective that in the daytime you argued with three guys who hang with Carlos and that they called you a sissy?

A Yeah, I remember that.

Q Now you remember saying that?

A Yeah.

Q And that they said they were going to get you?

A Yeah.

Q So on direct when you told Mr. Hagemeister

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that nobody in the world has ever called you a sissy before, that was not the truth?

A Yeah, I guess not then, if you put it like that. I thought he was asking me was --

Q The question was you told him --

MR. HAGEMEISTER: Objection. I would ask that she give him an opportunity to answer the question.

THE COURT: Yes. You may finish your answer.

A I thought he was asking me did Carlos call me a sissy.

BY MS. BEIMDIEK

Q No, I think the question, if you remember --

A But I'm telling you that's what I thought he said.

Q Now you misunderstood?

A Yeah, I misunderstood what he said.

Q When he said anybody in the entire world, you misunderstood?

A Yeah.

Q You thought he was talking about Carlos?

A Isn't that what I just said?

Q You thought he meant it was all about Carlos, in the entire world?

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A Yeah.

Q Now, I understand completely. Now, these photographs that Mr. Hagemeister showed to you --

THE COURT: They're here, Miss Beimdiek.

MS. BEIMDIEK: Thank you, Judge.

BY MS. BEIMDIEK

Q You were present when State's Exhibit 21, 22 and 23 -- 20, 21, 22 and 23 were taken, weren't you?

A Yeah.

Q All right. Specifically as to State's Exhibit 22, the photograph of the brick wall, those photographs were taken last week, weren't they?

A Yeah.

Q You and Mr. Hagemeister went out just a week ago and took those pictures, right?

A Yeah.

Q You didn't tell Mr. Hagemeister come take those pictures right after the murder happened, did you?

A Nope cause I ain't talk to him right after the murder happened.

Q You talked to the police though, didn't you?

A Yeah, I talked to the police.

Q Didn't tell them?

A They didn't ask me.

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Q They didn't ask you, so you didn't tell?

A They asked me about the murder, that's all I told them about.

Q Didn't occur to you that this other shooting might some how tie into this?

MR. HAGEMEISTER: Objection, Your Honor. He can't be expected to know the rules of evidence.

THE COURT: Counselor, state your legal objection.

MR. HAGEMEISTER: Objection. She's asking him questions that he doesn't know the rules of. I don't believe that's a permissible question.

THE COURT: Well, I'll take it your objection is based on speculation, Counselor, and I'll sustain the objection.

BY MS. BEIMDIEK

Q Now, Mr. Bell, I want to talk to you about the night that John Allen was shot. Earlier in that evening you were at a house at Martin Luther King?

A Yeah.

Q Inside that house was Angela Hickman?

A Yeah.

Q You?

A Uh-huh.

Q John Allen?

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A Yeah.

Q Is that a yes?

A Yeah.

Q And you were smoking marijuana?

A Yeah.

Q What did you call the kind of marijuana or the way it was packaged?

A Blunts.

Q A blunt. What's a blunt?

A It's marijuana rolled in a blunt.

Q Which is a kind of cigar, right?

A Yeah.

Q You smoked?

A Yeah.

Q John Allen smoke?

A Yeah.

Q And Angela Hickman smoked?

A No.

Q Angela Hickman didn't smoke?

A No.

Q Page 37, line 23. You remember I took your deposition on August 9th of 1996?

A Yeah.

Q You were under oath?

A Um-hum.

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Q You, just like you raised your hand today to tell the truth, to testify truthfully, you did that at the deposition?
A Yeah.
Q I asked you, who was smoking? You answered, "I was smoking, John and Angela." Do you remember saying that?
A Yeah, I remember saying that. But the only reason -- well, at the time when yourself asking me those questions, I didn't know even want to, to be in the room anyway, so I wasn't paying attention, so I might have told you anything.
Q Do you remember at one point during the deposition I asked you if I was making you nervous and you said no?
A Yeah, but I don't like you.
Q You don't like me?
A I won't tell you nothin'.
Q Now, do you remember also telling me who brought the blunts to the house?
A I just told you, I would have told you anything because I don't like you.
Q You decided to make up --
A I didn't make up nothin', I was just sayin', I don't want them to go to jail no ways, just let 'em

walk.
Q You told me at the deposition that Angela was smokin' marijuana?
A How many times do I have to say? Are you not hearing me clearly?
Q I'm hearing you.
A Do you want me to make this up?
Q I'm hearing you just fine. Let me make a list. It's your testimony that you lied when you said Angela Hickman smoked, is that correct?
A Yep. If that's what you say.
Q That's what you say.
A No, that's what you say.
Q Do you remember my asking you who had the blunts?
A Yeah, I remember you asked me that.
Q I'm sorry?
A I remember you asked me that.
Q Your answer was Angela. I said, "She brought them with her?" You said, "Yeah." Now was that the truth?
A No.
Q So that's another lie?
A Yeah.
Q So we agree that those are the lies that you

told at the deposition?
A They're not lies.
Q They are not lies?
A You asked me a question, I gave you an answer. I don't have to say.
Q Let's do it this way. Is it true that Angela smoked marijuana that night?
A No.
Q Then it would be a lie?
A If that's what you say.
Q Is it true that Angela brought the blunts?
A No.
Q So you're telling me you lied under oath at the deposition?
A If that's what you say.
Q That's what I'm asking you.
MR. HAGEMEISTER: She's arguing.
THE COURT: Objection overruled, not timely made. Let's move on.
BY MS. BEIMDIEK
Q Now the night of the shooting the police came to the scene, is that right?
A Yeah.
Q You told them you didn't see who did the shooting?

A Yes.
Q You told them you didn't know anything, you couldn't give them any information, isn't that right?
A No.
Q I'm sorry?
A I could have, but I didn't.
Q You didn't tell them that it was Carlos Wade that did the shooting?
A I didn't tell them nothin'.
Q They asked you what kind of car was involved, do you remember them asking you that?
A Yeah.
Q Did you tell them it was a large four-door gray car?
A No, I didn't.
Q You never said that?
A No.
Q Do you remember telling Det. Hornak that it was the rear passenger who said, "There go them sissies?"
A Yeah.
Q You told Det. Hornak it was the person in the back who said that?
A I think I told him it was a person in the car that said, I don't know exactly where they was.

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Q You don't know where the person was in the car that said that?
A No.
Q You don't remember saying that the person was in the rear passenger seat?
A No, I don't remember that.
Q Do you remember telling Det. Hornak that you only saw muzzle flashes and you ran to the doorway?
A No, I don't remember telling him that either.
Q Now, I think on direct you indicated that it was Carlos who said there go those sissies?
A Yeah.
Q Do you remember telling Det. Hornak when your taped statement was being recorded that you heard a voice that you thought was familiar and you said, "I think it was Carlos?"
A I think I told him I was positive it was Carlos.
Q My question is do you remember using the words, "I think it was Carlos?"
A No.
MS. BEIMDIEK: Judge, I apologize, I need to rewind this to get back here.
THE COURT: That's quite all right,

Counselor.
BY MS. BEIMDIEK
Q Again I'm going to play the portion of the tape that was interviewed with Det. Hornak and you several days after the homicide happened and he asked you if you knew the voice that said sissies.
(Tape played for jurors)
MR. HAGEMEISTER: Judge, I'm objecting --
THE COURT: Just a moment.
BY MS. BEIMDIEK
Q Did you just hear from --
THE COURT: I'm sorry, I didn't mean to cut you off. What's your objection?
MR. HAGEMEISTER: I obviously don't have the entire tape memorized. If she wants to introduce the entire tape or just do parts of it, I don't like picking out little pieces.
THE COURT: That's up to Miss Beimdiek. Let's move on.
BY MS. BEIMDIEK
Q Did you hear you say the first time the police officer asked you if you heard a familiar voice and you said, "I think it was Carlos", did you hear those words come out of your mouth?
A Yes.

Q Did you hear him say, "How sure are you?" You said, "I'm almost positive."
A I'm positive. I made two tapes. If you play the second tape, I said I was positive.
Q When did you make the second tape?
A I think I made that tape before I made that tape.
Q You made a tape where you said you were positive first?
A I don't know which was, was made first.
Q Well, you made one tape on July 11th, 1996 with Det. Hornak, right?
A I'm not sure of the dates.
MR. HAGEMEISTER: I'll stipulate.
THE COURT: Stipulation accepted as to the date?
MR. HAGEMEISTER: Yes.
THE COURT: No, I'm asking Miss Beimdiek.
MS. BEIMDIEK: Am I accepting the stipulation there's a second tape?
THE COURT: No. Let's take it step by step. I believe the prosecutor stipulated that he was willing to stipulate that the tape was made on the date you stated. Was that your stipulation?
MR. HAGEMEISTER: Yes, Judge.

THE COURT: Do you accept the stipulation as to the date?
MS. BEIMDIEK: Could we go side-bar on this, Your Honor?
THE COURT: Very well.
(The following proceedings were had at the bench out of the hearing of the jury:)
THE COURT: Let the record show that the Court wasn't clear, Miss Beimdiek, that you heard the statement made by Mr. Hagemeister that he was willing to stipulate that the tape was made on the date you stated in your question to this witness. All the Court wanted to know is if you accept the stipulation.
MS. BEIMDIEK: Your Honor, the problem is I am unable to attach a date to this tape. The date in the police report is confusing. It has the 18th, which is a Tuesday and calls it a Thursday. The date and time of this tape is not intelligible on the tape by me, nor was it, I asked the State the same question.
MR. HAGEMEISTER: Wait.
THE COURT: Just a moment. That's why the Court wants to make sure before any attorney announces a stipulation that the other counsel agrees to it. Since there's no agreement, the stipulation will not

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be accepted.

MS. BEIMDIEK: The problem is, Judge, I don't know what day.

THE COURT: I understand.

MS. BEIMDIEK: It was even done several days after the homicide. The police dates don't coincide. It's unintelligible. I can't see what date. I'm afraid to agree to something I don't know what to agree to.

MR. HAGEMEISTER: Are you talking about the first tape or second?

MS. BEIMDIEK: The first. He's talking about the second tape. I'm guess the best we can agree --

MR. HAGEMEISTER: September 20th is what Hornak says.

MS. BEIMDIEK: Well, then I'll agree it was on the 20th.

MR. HAGEMEISTER: That tape. But the other one --

MS. BEIMDIEK: I am not talking about the second tape. This tape was made approximately on September the 20th.

MR. HAGEMEISTER: Fine.

THE COURT: I leave it to you. You may

state for the record what you are stipulating to. Right now.

MR. HAGEMEISTER: Judge, I'll stipulate that the tape she's holding --

THE COURT: And so the record is exact, Defendant Wade's Exhibit E.

MR. HAGEMEISTER: Was not made on the night of the crime or the next morning, it was made two to three days later, my best guess is September 20th.

THE COURT: Is the stipulation as to September 20th, 1995, approximately, accepted?

MS. BEIMDIEK: Yes.

THE COURT: Let's proceed.

(The following proceedings were had in the presence of the jury.)

BY MS. BEIMDIEK

Q Mr. Bell, you spoke to the police several days after John Allen was killed and you made a taped statement?

A Yeah.

Q That's the tape that I've been playing for you here, is that right?

A I don't know.

Q You don't know. Mr. Hagemeister has agreed to stipulate that in fact the tape that we've just

been playing, Defendant's Exhibit E, was made on approximately September the 20th.

A I'm not sure about that.

Q Well, he has agreed that it is.

A Okay, if that's what you say.

Q That's what I'm saying. On that day you told the police you were almost positive that it was Carlos' voice, is that right?

A Yeah.

Q Now is it your testimony that you made some taped statement before that day?

A I don't know, I'm not sure.

Q You don't know. Now, do you remember telling me at some point that you heard somebody from the back seat of the car say, "There go those sissy motherfuckers?"

A Do I remember telling you that?

Q Yes.

A Yes, I think I remember telling you that.

Q Do you remember telling me, page 47, that it was Tyrone who said, "There go those sissy motherfuckers?"

A No, I don't remember telling you that.

Q Page 47, beginning at line 3. Again the deposition that we took in my office while you were

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under oath. The question that I asked: "What were the little words exactly that you remember that they said?" Answer: "There they go, I think they said, there they go right there, there go them sissy motherfuckers."

A I couldn't told you cause I'm positive they said that.

Q So when you said the word, "I think", at your deposition --

A I, I didn't even sign that. I don't know what you put in there. I didn't sign it. You told me if I read it and then I sign it, I didn't read it, so I didn't sign it, so I don't know what you put in there.

Q Did you get a letter from the court reporter advising you to come to her office to review the deposition?

A No.

Q Did Mr. Hagemeister ever tell you that was something you needed to do?

A No.

MR. HAGEMEISTER: Objection, Judge. The depositions are prepared --

THE COURT: Objection overruled. Not timely made, the witness has already answered no. Move on.

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MS. BEIMDIEK: Thank you, Judge.

BY MS. BEIMDIEK

Q Is it your testimony that when -- let me ask this. The answer that you gave was, "I think they said, there they go right there, there go them sissy motherfuckers?"

A I didn't sign it, so I don't know what you put in there.

Q My question is to you --

A My answer to you is I didn't sign it, so I don't know what you put in there.

Q All right. Are telling, is it now your position that I've made up things?

A I don't know what you did. How do I know what you did? I wasn't there with you.

Q I was there.

A But I wasn't there with you so --

Q You weren't there when this deposition was being taken?

A I was there, but I ain't --

Q Do you remember --

A And I didn't sign it so --

Q So it's your testimony today that the court reporter who we hired to take your deposition has now typed up inaccurate statements in the deposition?

A I don't know. I can't say cause I don't know for sure. I know that I didn't sign it.

Q So that makes anything you said not true or not reliable because you didn't sign this?

A Yeah.

Q Is that your --

A I didn't sign it. I don't know what you all put. I didn't read, I ain't sign.

Q I am going to give you a portion to read. The portion I'm going to --

MS. BEIMDIEK: May I approach?

A I ain't reading.

BY MS. BEIMDIEK

Q You're not able to read?

A I'm not able to read. That ain't the one.

Q Why did you want to review it if you can't read?

A That ain't the one that the lady typed right there while I was sitting there, so how I am going to read that? That could be the one you did, so I don't know that for sure or not.

Q Is that right?

A If you let it read it the same day, I could tell.

Q Can you read shorthand from court reporters?

A If you give it to me.

MS. BEIMDIEK: Your Honor, I ask that he be given the shorthand of a court reporter. I think the court reporter has some testimony. He said he can read it. I ask that a portion of this transcript be provided to the witness.

A I said while I was sitting there, while I was recording.

BY MS. BEIMDIEK

Q Do you know how a court reporter even works?

A Don't ask me no questions that ain't got nothing to do with this case.

THE COURT: Your request is granted.

A He killed my partner and I know it.

MS. BEIMDIEK: Your Honor, I ask we take a recess to give the court reporter an opportunity to review a portion of this transcript.

A I still didn't sign it. How do I know if that's the one or not?

THE COURT: Request for recess is denied. He may step down and walk over here and read from the notes. Is that your position?

MS. BEIMDIEK: Sure, Your Honor.

THE COURT: Step down, sir. The court reporter will show you her notes. All the way around

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here.

MR. HAGEMEISTER: I think I would be safe in stipulating he will not be able to read the shorthand notes from the court reporter.

MS. BEIMDIEK: Let him try. He says he can.

THE COURT: Around here, Mr. Bell, and through this gate here. Let the record show the Court is directing the witness' attention to the court reporter's notes.

MR. HAGEMEISTER: I have to object to this, Judge.

THE WITNESS: How am I suppose the to read it?

MR. HAGEMEISTER: He's not understanding, it isn't typed, and she has not established --

THE COURT: Objection is overruled as not timely made.

BY MS. BEIMDIEK

Q Will you read --

A I can't read that. How I supposed to read that?

THE COURT: Thank you. You may retake the stand. You are not to speak unless you're addressed a question, Mr. Bell. Do you understand the Court's direction?

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THE WITNESS: Yeah, I understand the Court's direction.

THE COURT: Well, I'm glad that you do. Proceed.

BY MS. BEIMDIEK

Q Now, Mr. Bell, you were unable to read the shorthand of the court reporter, isn't that right?

A Yeah, you right.

Q You're not trained as a court reporter to read the way they type things up?

A I still don't know what you all put in there. I ain't sign it. So you can take that book --

Q That's settles it, right?

A No, that don't.

Q Are you able to read?

A Yeah, I'm able to read.

Q Earlier you told me you aren't. You are able to read?

A Yeah, but I ain't going to read it cause I ain't signed it.

MS. BEIMDIEK: Your Honor --

A My signature ain't on that.

MS. BEIMDIEK: I ask that the Court instruct the witness to read the document to himself.

THE WITNESS: The Court can't instruct me

shit.

THE COURT: Since the witness has refused to read the deposition, you may read the pertinent parts of what you're relying.

MS. BEIMDIEK: Thank you, Your Honor. I ask that the witness be instructed not to interrupt me as I'm reading.

A How can she be? I didn't sign that paper, how do you know?

BY MS. BEIMDIEK

Q All right, Mr. Bell, I am going do read this. I'm going to ask you to listen to what I am reading.

A I will listen, but --

Q You said, "There they go, I think they said" --

MR. HAGEMEISTER: What page?

MS. BEIMDIEK: Page 47, where we've been for the past five minutes.

MR. HAGEMEISTER: Sorry.

BY MS. BEIMDIEK

Q "There they go, I think they said, there they go right there, there go them sissy motherfuckers." I said, "Do you know who said that?" You said, "Tyrone said that."

Now, it's your position you don't know if the court reporter made that up or I somehow told her to doctor it up?

A Probably did.

Q I probably did?

A Yeah.

MR. HAGEMEISTER: Judge, I object to the defense attorney choosing parts of the deposition and taking them out of context.

THE COURT: Hearing no legal objection, Miss Beimdiek, you are to continue.

MS. BEIMDIEK: Thank you, Judge.

BY MS. BEIMDIEK

Q Now, do you know where Angela was when the shooting happened?

A Do I know where she was?

Q Yes.

A She was walkin'.

Q Was she -- do you remember which side of the car she was on when the shooting occurred?

A I wasn't trying to see where she was at, I was tryin' to run.

Q I'm showing you what's been marked Defendant's Exhibit A, which is an outline of the layout of the streets, Martin Luther King bounded by

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Whittier and Annie Malone, does that fairly and accurately depict the way the streets are laid out in that intersection?

A On Martin Luther King?

Q This is Martin Luther King, this is heading east.

A I --

Q Yeah?

A Yeah.

Q Okay. Now, as the car pulled up in front of where you all had come out of the building, you came out of 4236, is that correct?

A I don't know the address.

Q You don't know the address?

A No.

Q If we agreed it was approximately 4236 and the car pulled up in front of the building, would you disagree with it that it pulled up in front of the building you all had just exited?

A Yeah, it came up in front of the building.

Q Now, you were on the southside of the street when you came out of the building, is that right?

A Yeah.

Q All right. And if I can depict, would it be fair to say the car was in this general area that my

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finger is outlining in that area?
A Yeah.
Q Would that be fair?
A No, that's too close to the house.
Q A little further out?
A Yeah.
Q So if I put the border of the car as I'm drawing the line, would that be fair?
A Yeah.
Q If the car is depicted in this fashion, would that be fair?
A Yeah.
Q And if it was traveling this direction headed east, is that correct?
A Yeah.
Q All right. Now, is it your testimony today that you don't know where Angela was when the car pulled up and the shooting started?
A She was in front of me. She was close to the car than I was.
Q She was closer to the car than you were?
A Yeah.
Q Were you all on the same southside of the street?
A I'm not sure. I don't really know what she

was in.
Q You don't know where she was?
A No.
MR. HAGEMEISTER: May I see it again?
MS. MOORE-DYSON: Thank you.
BY MS. BEIMDIEK
Q I'm going to hand you what's been marked Defendant's Exhibit F. Do you recognize this?
A Yeah, I know this.
Q Do you remember that at the deposition we had you make some indications for us about where everyone was at the time of the shooting?
A Yeah.
Q And we allowed you to do that by pointing on the diagram and telling us where Angela was?
A Yes.
Q On that diagram do you remember indicating that Angela Hickman was on the northside of the street, on the other side of the car from the sidewalk?
A But I was -- I believe I told you I wasn't sure where she was at. I think I told you I thought she was over here, because I wasn't sure.
Q Page 48, line 3. The question that I asked was: "Where was Angela standing?" Answer: "She was

standing on the other side of the ear." Question: "I'm going to draw a box for a car." We were working on that diagram when we were doing that, weren't we?
A Yeah, I guess.
Q I haven't changed that document, have I?
A No, you ain't changed this.
Q That stayed the same?
A Yeah.
Q I didn't tamper with that?
A No.
Q I said, "I am going to put an X where you would be based on what you explained to me, is that fair?" Do you see an X?
A I can't tell what this is.
Q Did you put an X?
A That's an X?
Q That's an X and J for John Bell?
A Okay, that's right.
Q That looks like an X?
A Right here.
Q Well, right now I'm asking about where you said you were.
A Yeah.
Q To correspond on this diagram we'll put an X for a larger version of that that's between the

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sidewalk and on to the street in approximately this area, would that be fair, based on what's on that the smaller diagram?
A No, that's closer to the front of the car, I wasn't close to the front of the car.
Q All right. Well, on the diagram that you agreed to you were up, all the way up to the front of the car?
A I'm telling you where I was at. Was you there with me? I'm trying to tell you.
Q I am --
A Was you there with me? If you wasn't there with me, you can't tell me where I was at. I am trying to tell you right now where I was at.
Q Mr. Bell, let me it clear to you --
A Let me make it clear to you, I was telling you where I was stands.
Q I am asking you what you said at the deposition. I am not asking you now what your version of the facts is, I'm asking you what you told me under oath at a previous --
A I'm telling you where I was at now.
Q I'm asking you --
A I don't care what you said, I'm telling you where I was at now.

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Q We can talk about where you say you were now later.
A No, we can talk about it now.
MR. HAGEMEISTER: I object, she is arguing.
A Oh, fuck that. You take it.
BY MS. BEIMDIEK
Q Do you agree at the deposition you indicated that you were toward the front of the car, I'm mark --
A You misunderstood me or something. This little box can't be no more fuckin' car.
Q Tell us where Angela was.
A I don't know where she was.
Q When you told us she was on the other side of the car, I'm marking an X based on what the diagram reflects, and we marked AH, that was a lie, she was on the other side?
A I'm not sure where she was at.
Q Page 48 --
A You come here and let me shoot at you and you ask me to tell you where he was at.
Q Mr. Bell, the rules of the Court require that I ask you questions and you give me answer.
A Somebody shooting at me --
THE COURT: Mr. Bell, please wait until you're asked a question. Do you have a further

question of the witness?
MS. BEIMDIEK: Yes, Your Honor. Just a second.
BY MS. BEIMDIEK
Q Page 50, line 2. I asked you: "Now where was Angela Hickman standing?" Your answer, "On the other side." This was after we had gone through where you were and it's your testimony you were always on this side, the southside of the car, right?
A No, no, I wasn't right there. I tried to tell you where I was at.
Q I'm simply asking you --
A I'm simply telling you where I was at. I'm trying to tell you where I was at.
Q Mr. Bell, let me put it this way. There is the southside of the car and the northside of the car?
A I'm trying to tell you. You ain't listening how I answer your question, you ain't listening.
Q Go ahead.
A I wasn't right there. I'm trying to tell you where I was at.
Q You were farther back now?
A Yeah.
Q You were still on the southside of the car, can we agree with that?

A Yeah.
Q That's what I'm trying to ask you. Now I'm going to put you further back. Now are you ready to talk about where you said Angela Hickman was at the deposition?
A I don't know where she was, how I talk about where she was.
Q Do you remember at the deposition that I gave you the pen and I asked you to make a mark on that diagram?
A I, I didn't make the marks where I thought she was.
Q And you said she was on the --
A That is where I thought she was.
Q That was your testimony at the time?
A That's where I thought she was.
Q Thank you.
A I'm not sure where she was.
Q Now you don't remember. At the deposition you thought she was on the other side of the car, today you don't know?
A I'm not sure.
Q Fine.
A That is unless you want me to lie, then I can tell you she was anywhere.

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Q Well, I think you're doing a good job of that.
MR. HAGEMEISTER: Objection to the comments.
THE COURT: Objection sustained. Miss Beimdiek's statement is stricken from the record and the jury is to disregard it.
BY MS. BEIMDIEK
Q Now the shooting happened very quickly, didn't it?
A Yes, after they got through doing whatever they was doing.
Q You went down to the police station that night?
A Yeah.
Q And you spent some time with the police?
A Yeah.
Q You never told them that Carlos Wade was one of the shooters?
A No.
Q You and Angela left the station together that night?
A Yeah.
Q When you left, Angela told you that the person in the front seat was Tyrone?
A No, she didn't tell me that.

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Q You don't ever remember saying that? Page 61.

A I still didn't sign the book.

Q We established that you haven't signed the book, Mr. Bell. We got it.

A How am I sure?

Q I'm still going to ask you questions about it, okay? I'm going to go to page 84. "Question: Angela told you that Tyrone was the person in the front seat?" This was in context of when you were leaving the police station. Your answer was: "Yes, she said she knew him."

Do you remember saying that at the deposition, that as you left the police station that Angela told you that it was Tyrone who was in the front seat?

A She couldn't have told me that because she didn't know his name.

Q This was after you left the police station.

A She doesn't know his name.

Q When you said under oath at the deposition that Angela told you that it was Tyrone in the front seat, that was another lie?

A If that's what you say.

Q Let's add that to your list of lies.

THE COURT: Again, counsel --

MR. HAGEMEISTER: Objection to the commentary.

THE COURT: Counsel's statement not amounting to a question is ordered stricken from the record and the jury is instructed to disregard it.

BY MS. BEIMDIEK

Q You agree with me that wasn't true if you said that at the deposition?

A If that is what you got, I don't know, I didn't sign it.

Q If that's what is in the deposition, that's a lie?

A If that's what you say.

Q That's what I say. You also told the police you never saw the faces of the shooters?

A I ain't seen 'em.

Q That's the truth?

A Yeah, that's the truth.

Q Now, Mr. Hagemeister spent a lot of time talking to you about all the other alleged incidents or shootings or bad acts between you guys, between you and John Allen and Carlos Wade. I want to talk to you about those.

A Yeah.

Q From the start, you never called the police, despite the fact that they were shootin' at you, you say repeatedly?

A Um-hum.

Q You never called the police?

A No. Call the police for what?

Q You never -- to tell the police these guys were shooting at you?

A I'm in a gang. We don't call the police and tell the police, they shooting at me.

Q You also never retaliated against them on your own, you never sat and said, I am going to shoot at them, ambush them?

A No, because my partner grandmother stay across the street from them and I didn't want them to shoot up her house or nothing like that.

Q That is why you didn't bother to ever wait to a time when you could get them alone?

A So they can shoot up her house?

Q I'm going to ask you about the incidents that you went through with Mr. Hagemeister.

THE COURT: I believe we'll stop at this point.

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MS. BEIMDIEK: That's fine, Judge, this could be lengthy.

THE COURT: Any objection, Miss Beimdiek?

MS. BEIMDIEK: No, I don't at all.

THE COURT: You may stand down, sir. Ladies and gentlemen, we will have out luncheon recess at this time. You are toe to return to Division 11 at 2:00 p.m. Thank you.

(The Court duly admonished the jury and a luncheon recess was taken.)

(The following proceedings were had out of the presence of the jury:)

THE COURT: Counsel for the parties are advised that Juror No. 3, Annie M. Davis, Juror No. 752, approached the bailiff and made a statement to the bailiff that she believes she knows the witness Johnnie Bell.

Since there's a deafening silence on the part of counsel for the parties, the Court would suggest we call the juror down to determine whether her sudden, not sudden, but recollection at this time that she may know the witness would affect her ability to be a fair and impartial juror and follow the Court's instructions as to the law in this case.

MS. BEIMDIEK: That is fine, Your Honor.

MR. HAGEMEISTER: Judge, my silence was only because I usually expect you to give me permission to

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speak. I want to strike her for cause.

THE COURT: You want to strike her for cause?

MR. HAGEMEISTER: I ask that we put the alternate in her place and excuse her.

MS. MOORE-DYSON: I think the Court's original suggestion would be best, how she knows him, and we can determine she may be mistaken as to the fact that she knows him and we need to find out whether or not her knowledge is just having seen him or close --

THE COURT: Very well. Let the record show that the Court will reserve ruling on the State's challenge for cause of Juror No. 3 and will bring the juror down to determine if she can continue as a juror or not. Any objection on the part of any party?

MR. HAGEMEISTER: No, sir.

MS. BEIMDIEK: No, Your Honor.

MS. MOORE-DYSON: No, Your Honor.

THE COURT: Bring her down. We will conduct this at the side-bar. Let the record show the jury is not in the courtroom at this time.

(The following proceedings were had at the bench out of the presence and hearing of the jury:)

THE COURT: Good afternoon, ma'am.

JUROR DAVIS: Good afternoon.

THE COURT: For the record, you are Annie M. Davis, Juror No. 752?

JUROR DAVIS: Yes.

THE COURT: Miss Davis, during the luncheon recess did you approach the bailiff and make a statement to the affect that you may know the witness, Johnnie Bell?

JUROR DAVIS: Yes. Know of him.

THE COURT: Know of him?

JUROR DAVIS: Not know him personally.

THE COURT: Thank you. You may inquire, Mr. Hagemeister.

MR. HAGEMEISTER: What do you know of him?

JUROR DAVIS: Well, I know my second door neighbor, what she says, and he used to live about five doors down, his mother did. The community has that he is a drug pusher and stealer, somebody who steals and sells.

A couple of years ago he was, if this is the same one we're talking about, a police informer and he was kind of put in, out of town someplace. About a year or so ago she said that be wishful because he's back in town. I think this is the one.

MR. HAGEMEISTER: Okay. My first question

is, does that change your ability to look at him just like you look at anybody else you don't know anything about?

JUROR DAVIS: No, no, no, no. I thought after she put the J in and I saw it in writing --

MR. HAGEMEISTER: Okay.

JUROR DAVIS: -- it clicked.

MR. HAGEMEISTER: I have an obligation to ask you that if, if one person takes the stand, who you've never heard anything about, and another person goes up and takes the stand, and you heard he was a drug dealer and a thief and a police informer and somebody to look out for --

JUROR DAVIS: As far as your community for your protection.

MR. HAGEMEISTER: Yes, I guess I can't understand how you can give them both the same credibility.

JUROR DAVIS: Oh, because I'm not judging him on his character, but by the evidence that's presented.

THE COURT: Ma'am, the Court will interrupt, sua sponte. You're not required to give any witness credibility. The question is, based on these hearsay statements you've heard, would that affect your

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ability to be fair?

JUROR DAVIS: Oh, no.

THE COURT: And judge the testimony of this witness on the testimony he gives in court?

JUROR DAVIS: Yes.

THE COURT: Could you do that?

JUROR DAVIS: I could do that.

THE COURT: And keep out whatever you may have heard about him out of your mind?

JUROR DAVIS: Right, I could do that.

MS. BEIMDIEK: May I inquire, Your Honor?

THE COURT: If Mr. Hagemeister is finished.

MR. HAGEMEISTER: Well, I guess I want to go back to this. Secondly, I don't know of any time he has ever been out of town. Is there a chance you have the wrong person?

JUROR DAVIS: Yes, there is, because I said I'm not sure.

MR. HAGEMEISTER: Okay. So if you're not sure, can you even set what you already heard aside and assume it's not the same person?

JUROR DAVIS: Okay. I can do that.

MR. HAGEMEISTER: There's no record of him ever, what you say about the informer and all that, so I guess --

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JUROR DAVIS: There --

MR. HAGEMEISTER: -- is there a chance that you will think, because you, if you go down to the jury room you'll think, one, maybe it was that guy and, two, he was a bad guy, so therefore it's not possible that these people shot at him?

Or is it possible that you'll think he's a bad guy and if these guys are his enemies and they're shooting at him, that makes it more believable and therefore you're not able to give the defendants a fair trial?

Do you know what I mean? Because I think I see where he would have people shooting at him and I can see where these guys would be doing it. Do you think there's that chance?

JUROR DAVIS: No, there's not a chance that I would have that attitude or those thoughts.

MR. HAGEMEISTER: Okay. So you won't go either way as far as being totally fair?

JUROR DAVIS: No, no, I will not.

MR. HAGEMEISTER: All right. That is what I want to know.

JUROR DAVIS: I can be fair.

THE COURT: Thank you. Miss Beimdiek?

MS. BEIMDIEK: Briefly. Mr. Hagemeister

covered most of this. Can you decide this case based on what you hear in this courtroom and not on what your neighbor said to you about another person you're not certain is one of these witnesses?

JUROR DAVIS: Yes, I can. The only reason I brought it up is I didn't want something to happen and say later --

MS. BEIMDIEK: Sure, that you didn't bring it up.

JUROR DAVIS: To be a new trial because I didn't bring it up.

MS. BEIMDIEK: Thank you. I appreciate it.

MS. MOORE-DYSON: Can I ask you whether or not you discussed what your neighbor told to you with any of the other jurors?

JUROR DAVIS: Oh, no, no, no, no.

MR. HAGEMEISTER: You understand you're not to bring the prior experiences to the jury room and they are --

JUROR DAVIS: Right.

MR. HAGEMEISTER: -- your speculation?

JUROR DAVIS: I said I think I might have known him, and I was advised if I know him, tell you.

MR. HAGEMEISTER: Somebody else in the jury said that?

JUROR DAVIS: Yes.

MR. HAGEMEISTER: There's no problem with being fearful or anything like that?

JUROR DAVIS: No.

MR. HAGEMEISTER: I'm asking --

JUROR DAVIS: No, no, no.

MR. HAGEMEISTER: Good.

THE COURT: Ma'am, this may be repetitive, but the Court wants to make this clear for the record. You're certain that whatever you've heard, if this is the same individual or not, that you can be, put that completely aside and make your determination of facts based on the evidence as you hear it and the Court's instructions as to the law without any reference to what you may have heard before you were impaneled in this Court as a juror?

JUROR DAVIS: I am sure.

THE COURT: Thank you, ma'am.

JUROR DAVIS: Um-hum.

THE COURT: You may be seated in your -- in the jury box. Just a movement, Counsel. Any objection to the State's challenge for cause of Annie M. Davis, Juror No. 752?

MS. MOORE-DYSON: I object.

MS. BEIMDIEK: Yes, Your Honor. I think her

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answer indicated she's not certain it's the same person and she could set anything aside with respect to what she's heard.

MR. HAGEMEISTER: That's a lot to set aside.

MS. MOORE-DYSON: Having come forward to the Court indicates she wants to be fair by informing the Court and all parties involved of what she believes may have been said.

THE COURT: State's challenge for cause of Annie M. Davis, Juror No. 752, is overruled. Bring down the remainder of the jury.

(The following proceedings were had in the presence of the jury.)

THE COURT: You may proceed, Miss Beimdiek.

MS. BEIMDIEK: Thank you, Your Honor.

CONTINUED CROSS-EXAMINATION

BY MS. BEIMDIEK

Q Mr. Bell, before we broke for lunch I told you I wanted to talk to you about some of the other shootings you claim to have happened. You told Mr. Hagemeister that the first one that you remember happened at Fair and Ashland, is that right?

A Yeah.

Q Can you tell me what date that happened?

A I don't remember, I don't remember the date.

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Q I'm sorry?
A I can't remember the date.
Q You don't remember the date?
A Yeah.
Q Can you tell me if it happened during the daytime or the nighttime?
A Daytime.
Q It happened in the daytime? Can you tell me what month it happened in?
A I don't know what month it was.
Q Now, I want to ask you about the second incident that you told Mr. Hagemeister about, that was the incident where the porch, you say, got shot up --
A Yes.
Q -- at Miss Hickman's house? Do you remember testifying about that?
A Yeah.
Q Now, I believe you told Mr. Hagemeister that you thought that happened just a couple months before they, before they did this homicide?
A Yeah.
Q Is that right? Is that what your testimony is today?
A Yeah.
Q It happened just very, I think you said, let

me get exactly what you indicated to him, just a couple months before?
A Yeah.
Q Though you remember Det. Hornak interviewing you about these incidents in July of this year?
A Yes.
Q And your statements were tape-recorded at that time as well?
A Yeah.
Q Do you remember telling Det. Hornak that this incident on the porch happened one to two years before John Allen was killed?
A I might have told him that, I'm not sure.
Q Was that a lie?
A Was it a lie? I probably would have told him anything. I don't even want to be here today. I told him just let him go, we don't need all this.
Q Were you making incidents up when you were telling Det. Hornak that Carlos shot at the porch?
A I want him out. Let him out. Just let him --
Q You made it up?
A I ain't make it up. They did shoot up the porch. I can't say exactly when it was.
Q When you told him on tape that it was one to

two years before John Allen was killed, that was not correct?
A No, that wasn't correct. I just told you I don't know when it was.
Q Now your testimony was it was a few months before the killing happened, is that right?
A Yeah.
Q Back in July you told Det. Hornak it was one to two years before?
A I'm not sure if I told him that.
Q Okay. I'm going to mark Defendant's Exhibit F, the audiotape prepared on July 11th with Det. Hornak.
MR. HAGEMEISTER: I'll stipulate to its admission.
MS. BEIMDIEK: Thank you.
THE COURT: Very well. It's admitted.
MS. BEIMDIEK: I am not moving for admission at this time, I'm simply marking it for identification purposes.
MR. HAGEMEISTER: Judge, I object to her playing a piece of the tape rather than the whole tape as there is a tendency to take things out of context.
THE COURT: I don't know what Miss Beimdiek intends.

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MS. BEIMDIEK: At this point, Your Honor, I'm simply offering the portions of the tape I'm using to impeach the testimony of this witness.
THE COURT: State's objection is overruled.
MS. BEIMDIEK: Thank you.
BY MS. BEIMDIEK
Q Do you remember during that taped conversation with Det. Hornak, him asking you when the shooting happened?
A When the shooting happened? Yeah, he asked me that.
Q Now I'm going to play that portion of the tape and ask you to listen to what your answer was.
A All right.
Q Before I do that, I'm going to ask one more question. Did the shooting on the porch happen during the day time or the night time?
A Day time.
Q It happened in the day time?
A Yeah.
Q Thank you. You heard on the tape you told him it happened at night time?
A Like I said, I probably would have told him anything.
Q Just a second ago you told this jury it

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happened in the day time, right?
A Yeah.
Q Now I want to ask what your answer was to him about when this incident happened. Do you hear yourself saying it was a year or two?
A I didn't hear anything.
Q I'm sorry, I didn't mean to play such a short portion of it.
(Tape played for jury)
BY MS. BEIMDIEK
Q Did you hear yourself say a year or two that time?
A Yeah.
Q But your testimony now is that it happened just a month before the shootiog?
A Yeah.
Q And that it happened in the day time?
A Yeah, it happened.
Q Not in the night time like you said on the tape?
A Yeah.
Q Were you just making those answers up for Det. Hornak?
A Was I making up the shootings?
Q Were you making up the answers about that it

happened a year or two before?
A Yeah.
Q And it happened during the night time?
A Yes.
Q You made that up?
A Yes.
Q Now the third incident that you talked to Mr. Hagemeister about you said happened at Sarah and Martin Luther King?
A Yeah.
Q And that people arrived in a black truck?
A Yeah.
Q Did you tell Det. Hornak about that incident?
A Yeah, I told him about it.
Q You did? Do you know the date of that incident?
A No.
Q Do you know the time of that incident?
A No.
Q And you're certain you told Hornak about that one?
A I think I did, I'm not sure.
Q If you said it, do you think it would be oo this tape?

A I don't know.
Q Hum?
A I don't know if it was on the tape or not.
MS. MOORE-DYSON: Your Honor, could you ask the witness to speak into the microphone, I'm having a hard time hearing him.
MR. HAGEMEISTER: Scoot your chair over.
THE COURT: I suggest, since the witness speaks with a low voice, that you move over to the other table and, yes, if I can raise your voice, sir, we would appreciate it. Let's proceed.
BY MS. BEIMDIEK
Q Now, you told Mr. Hagemeister about a fourth incident you said that happened at Martin Luther King?
A What? Yeah.
Q All right. And it was at an auto shop?
A Yeah.
Q That's when you said you fired back 15 times?
A Yeah.
Q Do you know when that happened?
A I don't know the date. Am I supposed to know the dates? I don't look at the calendar everytime these people shoot at me.
Q So it wasn't important an event enough for

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you to remember when it happened?
A It was important, but I don't know, like, I wasn't going to report it to the police, I don't need to know the dates.
Q Do you know if it happened in the day time or night time?
A Happened in the day time.
Q What about the one at Sarah and Martin Luther King, did it happen during the day time?
A Which time?
Q The one with the black truck?
A Day time.
Q That was during the day time?
A Yeah.
Q Do you remember telling Det. Hornak at some point that one of these happened at 10:30 at night?
A What happened at? I don't remember.
Q You never told him that?
A No.
Q Now, you told Mr. Hagemeister on direct also that there was this fist fight over at Bill's Auto, is that right?
A Yeah.
Q You never told Det. Hornak about that incident when he asked you about other fights and

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disagreements you had with Carlos?

MR. HAGEMEISTER: Objection, Judge. There's no objection he asked about fights, he asked about shootings.

THE COURT: I didn't hear your objection.

MR. HAGEMEISTER: I object, she's saying Detective --

THE COURT: State your legal objection.

MR. HAGEMEISTER: Misstating Det. Hornak's statement.

MS. BEIMDIEK: Det. Hornak hasn't testified.

THE COURT: The objection is overruled. You may answer if you understand the question.

BY MS. BEIMDIEK

Q I'll rephrase it for you. Det. Hornak brought you down on July 11th, 1996 and asked you about all these other bad things that have been going on that you said had happened, right?

MR. HAGEMEISTER: Objection, misstating what Officer Hornak asked the witness.

THE COURT: Objection sustained to the form of the question.

BY MS. BEIMDIEK

Q Det. Hornak sat down with you and asked you questions?

A Yeah.

Q And you told him about times that there had been shootings with Carlos?

A Yeah.

Q You never mentioned to the detective about any fist fight taking place at Bill's Auto?

A He told me anything that I can remember. If I didn't tell him, I must not remembered it right then.

Q Back in July when Det. Hornak asked you all the incidents, you didn't remember about the fight at Bill's Auto?

A I didn't have to tell him nothing. I ain't tell him. I don't want them to go to jail, I want them out, like today.

Q I understand that.

A Right now, like today.

Q I understand that, but we have a trial here and you are a witness and you have to answer questions.

THE COURT: Let's proceed.

BY MS. BEIMDIEK

Q Can you do that? My question was: Did you not remember the Bill's Auto incident that you claim --

A Asked me about shooting, he didn't ask --

Q I understand what he asked. I'm asking whether you offered that information to him?

A Whether I offered it?

Q Right.

A I had to if he knew about it, how else he know about it?

Q Do you remember describing to Det. Hornak three times where you said there was a shooting at you by Carlos?

A Three times?

Q Tape on July 11th, three times, do you remember that?

A July 11th? Yeah, I remember that.

Q Now, for Mr. Hagemeister you described four incidents that you claim happened?

A Yeah.

Q Do you remember Det. Hornak, after you covered those three incidents you claim happened, do you remember telling him you didn't know of any other incidents after you described three?

A He told me could I remember anymore. If I did, to call him.

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Q Did you call him?

A No, I didn't. I don't want to call him.

Q He asked you if you remembered some incidents to call him and you didn't call him, is that right?

A No, I didn't call him.

Q Now it's your testimony today --

A I told him, I told him it should be on one of the tapes, or something I told him about it.

Q It should be, shouldn't it?

A It should be.

MS. BEIMDIEK: Could we approach, Your Honor?

THE COURT: Very well.

(The following proceedings were had at the bench out of the hearing of the jury:)

MS. BEIMDIEK: Your Honor, at this time I would intend to ask this witness about any prior convictions that he has. It's my understanding that the State currently has some running record as to that, with respect to that. The witness did disclose to us that he had some juvenile convictions.

THE COURT: Those will not be admissible.

MS. BEIMDIEK: I believe the statute has changed, whereby if they occurred within a certain period of time prior to this witness' testimony, they are admissible.

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However, I do not have the dates of those offenses and so I didn't want to ask him about it, because if they are outside the scope of the new statute, which I believe says within three years of their testimony in court --

THE COURT: This should have been done prior --

MR. HAGEMEISTER: Judge --

THE COURT: -- to -- we have had delay after delay, and on the part of, not necessarily on the part of the defendants, now you're asking further delay. If you have not determined the effective date of the statute, the Court is not going to take a further recess to do that now.

MR. HAGEMEISTER: I have a statement that might clear things up. I asked my investigator to double check to see if he had any convictions and I just got a note through the court clerk that he called back and said he didn't. Now, that would be on him checking the record that would be admissible.

I believe there was some time where he mentioned first juvenile. I'm not opposed to her going into that, just through an abundance of caution, just because of the fact that we were not able to provide her with the written. That's the only one I

want her to mention.

THE COURT: You're opposed or not?

MR. HAGEMEISTER: Not opposed to that one.

MS. BEIMDIEK: To just the tampering?

THE COURT: Very well.

MR. HAGEMEISTER: Yes.

THE COURT: Since it's by agreement as to that one incident, there's nothing for the Court to rule on then, is that correct?

MR. HAGEMEISTER: Correct.

MS. BEIMDIEK: Thank you, Judge.

THE COURT: Thank you.

(The following proceedings were had in the presence of the jury.)

BY MS. BEIMDIEK

Q Mr. Bell, do you have any convictions as a juvenile?

A Yes.

Q What is that for?

A Assault.

Q Any additional convictions from Juvenile Court?

A Tampering.

Q Do you know what degree?

A First degree.

Q Tampering first degree.

MS. BEIMDIEK: Thank you. That's all I have.

THE COURT: Thank you, Miss Beimdiek. You may proceed, Miss Moore-Dyson.

CROSS-EXAMINATION

BY MS. MOORE-DYSON

Q Mr. Bell, when you came in here today and you raised your hand and you were sworn to tell the truth --

A Yeah.

Q -- did you intend to?

A Yeah.

Q Have you been telling the truth today?

A Yes.

Q Okay. You know the difference between the truth and a lie, is that right?

A No, I'm stupid, I don't know the difference.

Q Okay. Prior to the shooting of your friend that night, did you know Tyrone --

A No.

Q -- Morant? Had you ever seen him before?

A Yeah, I seen him before.

Q Okay. Had you ever had any problems with him?

A Had a fight with him.

Q Do you know what lead up to that fight?

A No, I don't even know him.

Q So he came up to you and he fought with you for no reason, to your knowledge?

A Yeah.

Q That was in front of Bill's Auto, is that correct?

A Yeah.

Q That's on Dr. Martin Luther King, right across from where the shooting occurred, is that right?

A Yeah.

Q There were other people involved in that fight, is that correct?

A Yeah.

Q And do you know who those people were?

A His partners.

Q Whose?

A His.

Q When you're saying "his", could you give me a name?

A I don't know what other people you talkin' about.

Q In that fight in front of Bill's, what other

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people were involved in that fight, do you know those persons by name?

A Carlos, Tyrone, and I'm not sure who else.

Q Was it Demetrius?

A Yeah, it was Demetrius.

Q Can you describe Demetrius?

A Can I describe him?

Q Yes.

A Kind of tall, thin. He kind of, I'm not sure, I think he kind of brown skinned.

Q Is he heavy or slim?

A He heavier than me. I don't know. I don't know his weight. I can't tell you.

Q Okay. Now, do you know, can you describe Tyrone?

A Can I describe?

Q Yes.

A Back then?

Q Can you describe him now? Without looking at him, can you describe him?

A I ain't see him that many times to describe him.

Q Describe him, what you remember.

A I can't describe him.

Q What you remember.

A He had a Fro. He ain't have no -- his hair wasn't cut like that.

Q Can you tell me anything else about him?

A What else do you want me to tell you about him?

Q I want you to tell me what his face looks like, how heavy was he? Tell me something that lets me know that you know him from anybody else.

A He heavier than I am.

Q What else about him?

A I said he got a Afro.

Q What about his face, anything distinguishable?

A I wasn't trying to see his face.

Q But the night of the shooting, did you see his face that night?

A No.

Q You didn't see his face that night?

A No.

Q You didn't see Tyrone that night at all, is that correct?

A No.

Q Okay. But you told the police that you did, didn't you?

A Yeah, I told them I did.

Q Why did you tell him that?

A Why did I tell him I seen him?

Q Yes.

A I ain't tell him -- well, I did tell him. I don't remember though.

Q But you didn't see him that night?

A No, I ain't seen him.

Q You're telling the truth today?

A Yeah, I'm telling the truth.

Q When the shots rang out, the car drove up, is that right?

A Yeah.

Q You got out of there in hurry, is that correct?

A After they started shootin'.

Q The way that the -- was there anything about the way that the car approached that kind of made you know something was up?

A Yeah.

Q And how was it, what happened?

A It was coming fast and then it slowed down.

Q So did it turn a corner?

A No, it stopped right in front of me.

Q When you first saw it, was it coming around a corner or coming straight?

A Coming around a corner off Annie Malone.

Q Coming fast around that corner, correct?

A Yeah.

Q Were the tires squealing?

A No.

Q They weren't? But you saw that car when it was coming around the corner?

A Yeah.

Q Did you yell out anything to your partner?

A I didn't know what was going to happen at the time.

Q But then you felt like something was about to happen?

A Yeah.

Q Did you start to make your break at that point?

A No, I just stopped and stood there.

Q You stopped and stood there?

A Yeah.

Q And as soon as they got around the corner, they yelled something out, is that correct?

A No, they didn't until they got in front of me.

Q They slowed down at that point?

A Yeah.

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Q You heard what they said, is that correct?
A They stopped right in front of me.
Q All right. Did you tell them, did you tell the police officers that it was Tyrone that was in the back seat?
A Did I tell -- I didn't talk to the police that night.
Q You didn't talk to the police that night. Did you ever tell them that it was Tyrone in the back seat?
A I'm not sure.
Q Not sure? Do you remember telling Miss Beimdiek?
A I don't think I could have said it was Tyrone in the back seat cause I ain't never, I ain't even know his name, so I couldn't told him that.
Q On page 46 of the deposition a question, line 3, a question was asked, "Could you see who was in the back seat?" Answer, your answer is, "Yes." Would that be correct?
A I guess.
Q And said, "Who was in the back seat?" And your answer is, "Tyrone?"
A I, I didn't wants to be in the room for the deposition, so I probably would have told them

anything.
Q Another question asked: "Did you know Tyrone?" And your answer: "No, I didn't." Did you say that?
A Yes, I said that.
Q Even when that fight was going on?
A I ain't --
Q You didn't know who Tyrone was?
A No.
Q You had no beef with a Tyrone, is that correct?
A I ain't knowing him.
Q You never seen him before?
A Yeah, I seen him before.
Q You'd seen him before, but you never had a problem with him?
A I never had no problems with him.
Q Never had a conversation with him?
A No.
Q He didn't have any reason, to your knowledge, to want to do anything to you, is that right?
A No.
Q Now, you told him that Tyrone was in the back seat, is that correct?

A I just told you I don't know. I couldn't see in the car. I can't tell you who was in the front or back.
Q You were lying that day, is that correct?
A How many times do I have to tell you, when I was there, I didn't want to be there. I would have told you all anything.
Q On that same day, on page 53, you indicated that, line 14, said, "Now a minute ago when you said it was Tyrone in the back seat, who said that, why did you tell me that?" Okay? And you indicate, "Because I had to think about it." Is that right?
A Have to think about what?
Q Had to think about who was sitting in the back seat.
A Yeah, I guess. I don't know. I had to read it to tell you.
Q Do you want to look at that and look at the whole page. Then look up here as well. You said Carlos was in the back seat on page 53 --
A Yeah.
Q -- with Demetrius?
A Now I tell you I didn't say either one of them, so I can't tell you who was in the front seat, I can't tell you who was in the back seat. I can just

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tell you what I heard.
Q So on page 46 -- page 53 -- 46 where you say Tyrone was in the back seat, page 53 you said Tyrone was in the front seat?
MR. HAGEMEISTER: This was asked and answered, Judge.
THE COURT: Sustained.
MS. MOORE-DYSON: Page 52.
THE COURT: Restate your question, Counselor, and not make it --
MS. MOORE-DYSON: I'm getting ready to ask.
THE COURT: You're making it compound.
BY MS. MOORE-DYSON
Q On page 52 you said, "I think it was Carlos in the back seat?"
A I'm telling you I'm positive it was Carlos in the back seat.
Q Okay. But you also are positive you didn't see either one of them, is that correct?
A Well, I put it like this. I'm positive he was in the car.
Q But you didn't see him, is that right?
A No, but I heard his voice. I know his voice.
Q Did you ever tell the police that you

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thought it was Tyrone's voice?
A No.
Q Never told the police when you went down to the station that it was Tyrone who yelled out, "Sissy motherfuckers?"
A I might have told him anything, I'll put it like that, just so they leave me alone.
Q Okay. The night of the shooting, you didn't cooperate with the police at all?
A No, didn't want to cooperate with the police.
Q You were mad at them, weren't you?
A Yeah.
Q Why were you mad at them?
A Cause they don't do nothing, they let him lay there and die like that.
Q How long did it take the police to get there that night?
A I'm not sure, I wasn't trying to see how long.
Q Was it a short period of time or long?
A It was a long period of time.
Q And you felt like -- did you feel if they had gotten there earlier, they could have helped him?
A Yes.

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Q Did you see which way the car went?
A Straight down Martin Luther King.
Q Did you tell the police that?
A No. For what? They don't got to do nothin'. I don't want them to do nothin'.
Q Did you argue with the police that night?
A Yes.
Q What were you arguing with them about?
A Cause I told them they ain't have to do nothin'.
Q What did you tell them you were going to do?
A I didn't tell them I was going to do nothin'.
Q Why did you feel they didn't have to do anything?
A Cause. They don't have to. I don't need them.
Q On page 69 you weren't -- at first you were not going to tell the police anything, is that right?
A Nope.
Q On page 69 of the, your deposition, you indicated you changed your mind, is that right?
A Yeah.
Q You went down there a couple days later, is that correct?

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A Yeah.
Q And when you told the police who did it, you told them it was those guys around the corner, is that correct?
A Yeah.
Q And when you, they asked you to give them some names, is that correct?
A Yeah.
Q You understood them to be talking about who did the shooting, is that correct?
A No.
Q You didn't understand they were asking you who shot?
A They said give some names of the guys around the corner.
Q You gave them the names of Carlos, Tony and Dwight, is that correct?
A Dwight?
Q Dwight.
A Yeah.
Q You didn't tell them anything about Tyrone?
A I didn't know how I am going -- I didn't know his name, how am I going to tell them?
Q Did you tell them, Carlos, Tony, Dwight and some other guy I didn't know?

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A I didn't see nobody in the car, so how am I going to say I heard them and a voice? How am I tell you that I'm going to get his name, but I didn't see nobody? How I give somebody name when I ain't see nobody?
Q You're here today testifying against Tyrone Morant and you didn't see him that night? You didn't hear his voice that night, is that correct?
A Nope.
Q You're telling the Court today that Tyrone Morant is the person you could say was --
A Yeah.
MR. HAGEMEISTER: Objection.
A I ain't seen never.
MR. HAGEMEISTER: He never said he saw --
THE COURT: Objection overruled. He may answer.
A I just told them I ain't see nobody. Do you want me to lie and tell you? If you want me to lie, I can do that for you.
BY MS. MOORE-DYSON
Q Why are you here today if you didn't see anything?
A They want me to be here today.
Q You are not a witness?

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A I say I heard this man voice.
Q You were there that night and shot at?
A Yeah.
Q You didn't get shot?
A I didn't get shot.
MR. HAGEMEISTER: Objection, badgering the witness.
THE COURT: Objection overruled.
A If I got shot, I wouldn't be siting here now, right?
BY MS. MOORE-DYSON
Q That's correct.
A Well, then --
Q Cause you were getting out of the way?
A Yeah.
Q Did you tell -- you were there, you saw something that happened, okay, you saw what happened before and you saw, you know, what happened after he got shot, is that correct?
A Yeah.
Q You told Miss Beimdiek that Angela was on the other side of the car, is that correct?
A I might have told you all anything at the time.
Q After you went to the police station, you

indicated a couple of times the reason why you came up with Carlos and Tyrone's names was because Angela told you about that, isn't that --
A I didn't say that.
Q Okay. I'd like to direct your attention to page 46 -- 84 and 85. I'm going to ask you, before we get to those pages, what did you do after the shooting? Where did you go?
A To the police station.
Q You went straight down to the police station that night?
A Yeah.
Q Did you talk to Angela that night?
A No.
Q You didn't take to her at all?
A No.
Q Okay. When you, on page 46, line 13, when you were asked, "Did you know Tyrone?" Line 8, your answer was, "No, I didn't."
Question No. 10, "How did you know his name?" Answer was, "How did I know his name?" Her question was, "Right." You said, "Because Angela knew Tyrone." "Did she say his name?" Your answer is, "Yeah." "When did you first hear the name Tyrone?" Your answer is, "When she told me that." "And when

was that?"
THE COURT: Please read what is written, Counselor.
BY MS. MOORE-DYSON
Q "When did you first hear the name of Tyrone?" Your answer was, "When she told me his name." Question after that is, "When was that, after the shooting?" You answered, "Yeah."
A I told you I don't know. I don't know.
Q You don't know if you talked to Angela after the shooting?
A I didn't talk to her.
Q You did not?
A The same night?
Q Yes.
A No.
Q Did you talk to her the next morning?
A No -- yeah, I think I did talk to her the next morning. Yeah, the next morning.
Q On page 84 --
THE COURT: Let's proceed.
MS. MOORE-DYSON: Okay.
BY MS. MOORE-DYSON
Q Question was, "Angela told you that Tyrone was the person in the front seat?" The answer is,

A-400

"Yeah, she said she knew him." Question was: "You said before, about one hour or two hours before you smoked two blunts" -- skip past that.
MR. HAGEMEISTER: Objection.
BY MS. MOORE-DYSON
Q Line 21. "At any of the three prior shootings that you spoke about earlier, was Tyrone at any of those three shootings?" You said, "I'm not sure." Is that correct?
A Yeah.
Q On page 85, line 8 and 9. You indicate, "That is the only time I talk to them after I gave them, I had to talk to Angela first or I wouldn't have never told them in the first place." The question, "You talked to Angela first?" Your answer was, "Yes." Question: "She told you the person in the front was named Tyrone?" The answer: "She said that his name was Tyrone." Isn't that correct?
A Like I told you, I probably would have told you all anything.
Q Did you pick Tyrone's picture out of some pictures down at the police station that night?
A How I pick his picture out? They didn't show me his picture to pick out.
Q But in the deposition you told them that you

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did pick his picture out of some pictures?
A Like I said, I would have told you anything. They didn't show me no pictures of him.
Q You didn't pick him out at the police station?
A No.
Q Your testimony today is that you never saw Tyrone that night?
A That night?
Q That night.
A No.
Q Never heard his voice that night?
A No.
MS. MOORE-DYSON: I have nothing further.
THE COURT: Anything further of this witness?

REDIRECT EXAMINATION

BY MR. HAGEMEISTER
Q When you first found out that John Allen had been killed, what did you want to do?
A Kill them.
Q Why didn't you kill them?
MS. BEIMDIEK: Objection --
MS. MOORE-DYSON: Objection, Your Honor.
THE COURT: Sustained. The jury is

instructed to disregard the last question.
MR. HAGEMEISTER: Judge, they've asked why he's changed his story, I'm asking why --
MS. MOORE-DYSON: Not relevant.
MR. HAGEMEISTER: That's the whole cross-examination.
THE COURT: Counselor, I've told you before, you are to state your legal reason. The Court has ruled on your objection. It's overruled.
MR. HAGEMEISTER: Judge, my legal reason is that when a witness is cross-examined on an issue --
THE COURT: The Court -- the jury is instructed to disregard counsel's remark not amounting to an objection. Move on.
BY MR. HAGEMEISTER
Q Did you at some point decide you would go ahead and talk to the police?
A Yeah.
Q What changed between the time --
MS. MOORE-DYSON: Objection, Your Honor.
MS. BEIMDIEK: Objection.
THE COURT: Reserve ruling until I've heard the question.
BY MR. HAGEMEISTER
Q What changed between the time you wanted to

go kill them and the time you decided to talk to the police?
MS. MOORE-DYSON: Your Honor, I object. He's trying to elicit the same information as before.
THE COURT: State your legal objection.
MS. MOORE-DYSON: Relevance.
THE COURT: Sustained.
BY MR. HAGEMEISTER
Q When you first saw John Allen dead, did you want to talk to the police?
A No.
Q Did you tell them anything at that time?
A No.
Q Did you later tell them something?
A Yes.
Q Why?
MS. BEIMDIEK: Objection, Your Honor.
MS. MOORE-DYSON: Relevance.
THE COURT: Sustained.
MR. HAGEMEISTER: Ask for a side-bar.
THE COURT: Denied.
MR. HAGEMEISTER: Judge --
THE COURT: Did you hear me?
MR. HAGEMEISTER: I did.
THE COURT: Move on.

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BY MR. HAGEMEISTER
Q They asked you about the conversation you had with Angela. Miss Dyson asked you about whether or not she told you who it was that was in the car, is that correct?
A Yes.
Q Did she tell you who she saw in the car?
A Yes, she told me who she saw in the car.
Q Did you believe her?
A Yeah.
MS. BEIMDIEK: Objection.
MS. MOORE-DYSON: Objection as to relevance.
THE COURT: Sustained.
BY MR. HAGEMEISTER
Q Did you tell the police what you believed to be the truth?
A Yes.
MS. BEIMDIEK: Objection.
MS. MOORE-DYSON: Objection as to what he believed.
THE COURT: Overruled.
A Yes.
BY MR. HAGEMEISTER
Q Did you know that you hadn't seen anybody in the car for real?

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A Yes.
Q What did you know about what was going on in the car?
A They was talking and I know I heard his voice.
Q All right. So you went and you tried to make the case better?
A Yeah.
Q Why did you do that?
A Cause I --
MS. BEIMDIEK: Objection, relevance.
THE COURT: What is the question? Repeat your question, sir.
MR. HAGEMEISTER: Why did he go in and tell the police something to make the case better?
THE COURT: Objection is sustained.
BY MR. HAGEMEISTER
Q She asked you about who was in the back seat, this is on page 46. Did you not tell them it was Tyrone in the back seat?
A Yeah, I think I did, but I probably thought --
Q Where would you have gotten that information if you didn't see?
A From Angela.

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Q So Angela told you he was in the back seat?
A Yeah.
Q And that was after she found out his name?
A Yes.
Q It wasn't that night?
A No, it wasn't that night.
Q She didn't give you a name that night?
A No.
Q It was later she gave you the actual name of the person in the back seat?
A Yeah.
Q They asked you that point black, who was in the back seat, and you said Tyrone?
A Yes.
Q And then would it be fair to ask that, did you enjoy the deposition?
A No, I didn't want to be there.
Q Did you get more and more tired of --
A Yeah.
Q Then when they asked you the question later on they say, "Did Angela tell you that she had told the police the names of Carlos and Tyrone?" And you said, "No, she told me she -- I didn't know -- she didn't tell me that she told them the names, she said that she -- I don't know, I don't remember exactly."

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MS. BEIMDIEK: What page?
MR. HAGEMEISTER: Page 69.
BY MR. HAGEMEISTER
Q Page 85, close to page 86 --
MR. HAGEMEISTER: Could it be stipulated 86 is the last page?
MS. BEIMDIEK: Yes.
BY MR. HAGEMEISTER
Q Page 85, second to the last page, is when they say, in the question, "And she told you the person in the front was named Tyrone, she said his name was Tyrone", is that what you said or do you remember?
A I don't remember.
Q Okay. And when it came to, I'm going to page 68, you said, "What names did you give them," this is exactly what Miss Moore-Dyson was asking you about, "What names did you give them? Carlos and Tyrone." Where had you gotten Tyrone's name?
A Angela.
Q You didn't know his face before that?
A No, I knew his face.
MS. BEIMDIEK: Excuse me. I object to his not reading the question.
MR. HAGEMEISTER: I'm sorry.

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BY MR. HAGEMEISTER
Q "Question: You didn't know his name before that?"
THE COURT: Sustained.
BY MR. HAGEMEISTER
Q "No, I knew his face." Question from Miss Beimdick. "Why, the next day, is this the next day that you gave them the names of Carlos and Tyrone?" Answer: "Yes."
MS. BEIMDIEK: Judge, I object. I think the same line of questioning the Court has ruled on is not relevant if the --
MR. HAGEMEISTER: It was taken out of context when she cross-examined.
THE COURT: What line are you on?
MR. HAGEMEISTER: Line 24 of page 68. I've just gone through 17 through 23, which is what Miss Dyson went through.
MS. MOORE-DYSON: Your Honor, I object to --
THE COURT: I can't hear you, Counselor.
MS. MOORE-DYSON: I'm going to object as to relevance as to same objection as before. Has nothing to do with this particular incident.
THE COURT: You're referring to the question on, appearing on line 24, on page 68, and the answer

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appearing on line 2 of page 69? Answer the question. Just a moment. I'm addressing my remarks to the prosecutor. Is that correct, sir?

MR. HAGEMEISTER: And the questions and answers after that. I would like to be able to go through the questions before that to put everyone back in context as to what Miss Dyson was asking about.

THE COURT: Well, now that's not what you requested at first. You directed the Court's attention to the question appearing at line 24 on 68.

MR. HAGEMEISTER: And subsequent questions.

THE COURT: The objection is overruled, since that was opened up by defense counsel, from page 68 line 24 through 25 and page 69, 1 through 2.

MR. HAGEMEISTER: And to put it in context, 3 through 11.

MS. MOORE-DYSON: I object to that, Your Honor.

THE COURT: Well, it's a bit repetitious, objection overruled to the question appearing on line 3.

MR. HAGEMEISTER: Through 11.

THE COURT: And the objection is sustained as to the question appearing on line 6.

MR. HAGEMEISTER: Ask for a side-bar.

THE COURT: Denied. Well, Counselor, I'll withdraw the prior ruling. What ruling of the Court are you asking a side-bar on? I just made three rulings, I believe?

MR. HAGEMEISTER: I want the question on line 6, which puts all the two cross-examinations in context in evidence.

THE COURT: Line 6 on page?

MR. HAGEMEISTER: Page 69.

THE COURT: Approach the bench.

(The following proceedings were had at the bench out of the hearing of the jury:)

THE COURT: Let the record show that the question appearing at line 6 on page 69 is what made you change your mind? "Answer: Because Angela said if I killed Carlos, she was going to tell the police." What's the defendant's objection?

MS. MOORE-DYSON: My objection is that that is reference to a crime that the witnesses say that he was going to commit. It has nothing to do, it doesn't bear on his credibility, it has nothing to do with this case. My objection is relevance.

MR. HAGEMEISTER: Judge, the purpose of that question is to show that when he changed -- their entire cross-examination was how he changed his story

from the night of the police where to later on when he talked to the police and to now. That one question explains why he changed his mind and changed his story.

That's the whole reason. Not only that, but it also explains why Mr. Bell was a person who shows he did not want to come in and prosecute. It's a prior consistent statement indicating he did not want to prosecute and why he ended up working with the police. It's the purpose of rehabilitation questions for probably 15, to 20 different questions they asked.

THE COURT: Objection sustained. The offer of proof is overruled and denied. Let's move on.

(The following proceedings were had in the presence of the jury.)

BY MR. HAGEMEISTER

Q They ask you the question, "Why, the next day, is this the next day you gave them the names of Carlos and Tyrone?" You say, "Yes."

MS. BEIMDIEK: What page, please?

MR. HAGEMEISTER: The bottom of page 68. I'm doing the ones said we're okay to do. "Why is the next day, is this the next day that you gave them the names of Carlos and Tyrone?" Answer, "Yes." "Why did you give those names on that day?" "Because I changed

my mind."

Now I'm going to ask, not reading from the deposition, they've asked you did I change your story, your answer is?

A Did I change my story about what?

Q About what you saw? Did you tell them you saw stuff?

A Yeah.

Q That you didn't really see?

A Yeah.

Q Did you offer to talk to the police or did you comply with somebody's wish?

A Yes.

Q Whose wish was it?

A Angela and Annie.

Q Okay. You stopped deciding that you want to kill them --

MS. MOORE-DYSON: Objection, Your Honor.

MS. BEIMDIEK: Objection.

THE COURT: Sustained.

BY MR. HAGEMEISTER

Q Did you?

THE COURT: Just a moment. The jury is instructed to disregard the prosecutor's last remark.

BY MR. HAGEMEISTER

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Q Did you earlier state that you wanted to kill him?
A Yes.
MS. BEIMDIEK: Judge, I object. I think the Court ruled on this and has been very clear.
THE COURT: Objection overruled, not timely made, the witness has answered. Let's move on.
BY MR. HAGEMEISTER
Q And then did you comply with their wish to go talk to the police?
A Yes.
Q And when you went and talked to the police, you told them that you had seen them?
A Yes.
Q Why?
MS. BEIMDIEK: Objection, relevance.
THE COURT: Sustained.
BY MR. HAGEMEISTER
Q Did you --
THE COURT: Mr. Hagemeister, I don't share your humor. I find this redirect to be repetitive and you are to move on. Proceed.
MR. HAGEMEISTER: I'm checking my notes.
BY MR. HAGEMEISTER
Q Page 69 -- I'm sorry, page 47. On page 47

they pointed out for you and I objected to it being out of context --
THE COURT: The Court again instructs the jury that the comments of the prosecutor not amounting to the question are stricken from the record and you are to ignore them.
BY MR. HAGEMEISTER
Q They asked the question as to who said what. They say, "What were the little words you remember that they said?" And you said, "There they go, I think they said there they go right there, there go them sissy motherfuckers." "Question: Do you know who said that?" You're saying, "Tyrone said that at that point." They said, "You can tell the voice was coming from the back of the car?" You say, "Yes." Did they ask you that question during cross-examination?
A Yes.
Q Going back to page 40, seven pages before this, the same person was asking you questions, correct?
A Yes.
Q She says, "As you walked out, tell me what happened?" And you say, "The car pulled, turned around the corner, and Tyrone, or really somebody in

the car said, there are them sissy motherfuckers?"
A Yeah.
Q So were you telling the truth on page 40?
A Yeah.
Q And when they asked you the thing on page 47, was that right after you had that whole conversation about Tyrone on page 46 with Angela telling you his name and all that?
A Yes.
Q And then you just go ahead and say, yeah, whatever, it was Tyrone?
A Yes.
Q Miss Beimdiek asked you, didn't you tell us it was a four-door car, in her cross-examination, is that correct, she asked you that question?
A Yes, she asked me that question.
Q You said, I don't know, whatever?
A Yes.
Q But on page 48 it clearly says you said it was a two-door car, is that correct?
A Yes. It's a two-door car.
Q She asked you if you made up the shooting. She said, when Miss Moore-Dyson asked you about whether or not you had made up the dates as to the shootings, do you remember when the shootings were,

all of them?
A Not exactly the dates.
Q Okay. Are you making up the fact that you were shot at?
A No.
Q Or are you taking a guess at the date?
A Taking a guess at the date. I don't know the exact day.
Q Okay. Did you go up and chisel those bullets marks in that porch?
MS. BEIMDIEK: Objection, leading.
THE COURT: Sustained.
BY MR. HAGEMEISTER
Q How did those marks get there on that porch?
A They shooting.
MS. BEIMDIEK: Object, asked and answered.
THE COURT: Overruled.
BY MR. HAGEMEISTER
Q What?
A They was shootin' at us.
Q Uh-huh. You said Carlos has a lot of associates?
A Yes.
MS. BEIMDIEK: Objection, relevance.
THE COURT: Overruled, not timely made, the

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witness has answered.
BY MR. HAGEMEISTER
Q Do you know where those associates live?
A Not all.
MS. BEIMDIEK: Objection, relevance.
THE COURT: Sustained.
BY MR. HAGEMEISTER
Q Do you have to go back on the street?
A Yes.
MS. BEIMDIEK: Objection, relevance.
MR. HAGEMEISTER: Goes to lack of bias.
THE COURT: Overruled, not timely made, the witness has answered.
BY MR. HAGEMEISTER
Q Do you fear those associates?
A No.
MS. BEIMDIEK: Objection, relevance.
THE COURT: Sustained.
BY MR. HAGEMEISTER
Q Has Carlos ever threatened you in the past?
A Yes.
MS. BEIMDIEK: Objection, relevance, over broad.
MR. HAGEMEISTER: Motive and intent.
THE COURT: Overruled.

MS. BEIMDIEK: May we approach?
THE COURT: Yes.
(The following proceedings were had at the bench out of the hearing of the jury:)
MS. BEIMDIEK: Judge, I believe the Court has limited any prior bad acts to actual shootings perpetrated by Carlos. Any of these threats now are going to open the door to any other incidents where Carlos may have been present, according to this witness, and I think that is beyond the scope of this Court's ruling as to my Motion in Limine.
MR. HAGEMEISTER: This isn't the prior uncharged crimes. This is a prior statement by the defendant that both defense attorneys are aware of.
THE COURT: What do you anticipate the witness to say that Carlos said?
MR. HAGEMEISTER: Not to come up on his street, and he said he was going to kill him. They're both in the deposition. I'll lead him.
THE COURT: The objection is overruled. The Court finds that if such a statement would have been made or found to have been made by the trier of fact, it would have a bearing and be proof of premeditation and intent.
MS. BEIMDIEK: If I may, Your Honor? It's

beyond the scope of any cross-examination covered by me or Miss Tyson.
MR. HAGEMEISTER: It goes to how --
THE COURT: Overruled.
MS. BEIMDIEK: Thank you.
(The following proceedings were had in the presence of the jury.)
BY MR. HAGEMEISTER
Q Mr. Bell, has Carlos ever told you not to come up on that street?
A Yes.
Q Has he ever threatened to kill you prior to this time, this night?
A Yes.
Q You said when the first car came by, the car they shot out of, the tires didn't squeal as they went around the corner?
MS. MOORE-DYSON: Objection, Your Honor, prosecutor is misstating the evidence.
THE COURT: Overruled on that ground. You may answer.
A When they was coming around the corner to shoot or after?
BY MR. HAGEMEISTER
Q When they coming around the corner to shoot.

A-405

A No, they didn't.
Q After the shooting was there another car?
A Yeah, two cars.
Q Did that one squeal?
A Yes.
Q What were you doing when that one squealed?
A Running back away. At first I was with John, until I heard the car. Then I ran back up there.
Q And what about Angela, what was she doing when the car was squealing?
A She was running.
Q That's the second car?
A Yeah.
Q So the only person you got information from was Angela?
A Yes.
Q Plus what you heard on your own?
A Yeah.
Q Was there anybody else besides Carlos and his associates that called you sissy?
A That day --
MS. BEIMDIEK: Objection, relevance.
A -- or --
THE COURT: I didn't hear you.

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MS. MOORE-DYSON: Objection, relevance.
THE COURT: Overruled.
BY MR. HAGEMEISTER
Q Carlos and the guys that hang out with cars, was there any other people that called you sissy?
A Not in my face.
Q Not what?
A Not to me. They might have said it but --
Q You never heard anybody else call you that?
A No.
Q All right. And I guess my last question, when you went down and talked to the police department, you made statements that you admit now weren't really true?
A Yes.
Q You made statements that you saw things that you really didn't see?
A Yes.
Q Did you want to see them prosecute them?
MS. BEIMDIEK: Objection, relevance.
THE COURT: Sustained.
BY MR. HAGEMEISTER
Q Why did you lie?
MS. MOORE-DYSON: Objection, relevance.
THE COURT: Sustained. Anything further of

this witness?
MR. HAGEMEISTER: Judge, I have to ask for a side-bar.
THE COURT: Denied. You said that was your last question three questions ago. Do you have a further question?
MR. HAGEMEISTER: Judge, I have to make an offer of proof on the record.
THE COURT: Approach the bench.
(The following proceedings were had at the bench out of the hearing of the jury:)
MR. HAGEMEISTER: Judge, my concern is that he's been cross-examined as having lied to the police department. His statement that the reason he went to the police department was because he couldn't take things into his own hands because of Miss Hickman.
THE COURT: How many times have I ruled that issue against you? At least 15?
MR. HAGEMEISTER: And I still --
THE COURT: The offer of proof is overruled and denied. The Court finds that the Court has been over this again and again. The Court believes its rulings have been consistent and, therefore, the offer of proof is overruled and denied.
MR. HAGEMEISTER: Could I ask the Court for

a reason?
THE COURT: The Court's ruling it's not admissible why a person lies.
MR. HAGEMEISTER: If it explains a change in his story.
THE COURT: The Court will not take further time to argue with you on this. The Court's ruling has been consistent. You've made your record. I've overruled your offer of proof. The Court's objection -- the Court having ruled on the objection, the Court's ruling remains the same.
(The following proceedings were had in the presence of the jury.)
MR. HAGEMEISTER: Nothing further.
THE COURT: Anything further of this witness?
MS. BEIMDIEK: Yes, Your Honor, very briefly.
RECROSS-EXAMINATION
BY MS. BEIMDIEK
Q Have you threatened to kill Carlos' brother, Demarco Wade, in March of this year?
A Did I what?
Q Threaten to kill him this March?
A Yeah, I did, I threaten.

A-406

Q You didn't kill them now, did you?
A No.
MS. BEIMDIEK: Nothing further.
MR. HAGEMEISTER: This is out of the scope of direct examination.
MS. BEIMDIEK: Exactly, it is. He asked if my clients ever threatened to kill him. I think he can make threats he made.
THE COURT: The witness had answered. The objection is overruled. It was not timely made. You have nothing further?
MS. BEIMDIEK: Nothing further.
THE COURT: Anything further?
MR. HAGEMEISTER: No, Your Honor. I ask one last question.
FURTHER REDIRECT EXAMINATION
BY MR. HAGEMEISTER
Q Why didn't you kill anybody?
A Cause they wanted me to do it the right way.
Q Who did?
A Angela and Annie.
Q What did they say they had to do if you tried to kill somebody?
MS. MOORE-DYSON: Objection, relevance.
MS. BEIMDIEK: Hearsay.

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THE COURT: Sustained. Anything further of this --

MR. HAGEMEISTER: Nothing further.

THE COURT: Anything further of this witness?

MR. HAGEMEISTER: Nothing.

MS. MOORE-DYSON: No.

THE COURT: You may stand down.

Ladies and gentlemen of the jury, the Court will be in afternoon recess.

(The Court duly admonished the jury and a recess was taken.)

(The following proceedings were had in the presence of the jury.)

THE COURT: Call your next witness.

MR. HAGEMEISTER: George Taylor from the Evidence Technician Unit.

GEORGE TAYLOR

having been first duly sworn, testified:

DIRECT EXAMINATION

BY MR. HAGEMEISTER

Q State your name, please.

A George Taylor.

Q Officer Taylor, where are you assigned or where were you assigned on September 18th, 1995?

A Evidence technician.

Q What do the evidence technicians do?

A Seize evidence, fingerprints, take photographs.

Q On that date on September 18th of 1995, were you assigned to the 1500 block of Annie Malone to photograph a gray Honda?

A Yes.

MR. HAGEMEISTER: May I approach the witness?

THE COURT: You may.

BY MR. HAGEMEISTER

Q I show you State's Exhibits 11, 12 and 13. With regard to 11 and 12, first two?

A Um-hum.

Q Do those pictures fairly and accurately represent the exterior of the Honda as you observed it?

A Yes.

Q With regard to State's Exhibit 13, does that picture fairly and accurately represent the interior of that Honda as you observed it on that day?

A Yes.

MR. HAGEMEISTER: Ask that State's Exhibit 13 be admitted into evidence. The other two

are already in.

MS. BEIMDIEK: No objection.

MS. MOORE-DYSON: No objection.

MR. HAGEMEISTER: Nothing further.

THE COURT: Admitted.

THE COURT: Thank you. Miss Beimdiek?

CROSS-EXAMINATION

BY MS. BEIMDIEK

Q Officer Taylor, you processed the car that Mr. Hagemeister showed you?

A Yes.

Q You got there and began processing at about 5:40 in the afternoon?

A Yes.

Q You completed your assignment at 6:18 p.m.?

A Yes.

Q You spent, I can't do the math here, 38 minutes processing the car, is that right? If you started, if the report reflects you started at 5:40 and ended at 6:18, that's the amount of time, you don't disagree?

A Right.

Q In addition to taking photographs, you also inspected the inside of that car?

A Yes.

A-407

Q You didn't find any bullets?

A No.

MR. HAGEMEISTER: State will stipulate.

BY MS. BEIMDIEK

Q You didn't find any shell casings?

A No.

Q You didn't find any guns?

A No.

Q You didn't find any other evidence that suggested that any firearms had been discharged in that car?

A No.

Q Thank you.

MS. BEIMDIEK: Nothing further.

THE COURT: Thank you, Miss Beimdiek. You may inquire, Miss Moore-Dyson.

MS. MOORE-DYSON: Thank you.

CROSS-EXAMINATION

BY MS. MOORE-DYSON

Q Did you also lift prints from that vehicle?

A Yes.

Q These are latent prints?

A Yes.

Q You didn't analyze to determine whether or not they belonged to anybody, that's not your job, is

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it?
A No.
Q Were you the technician that reported to the scene the night of the homicide?
A No.
Q No gun powder in the car?
A No, not that I --
Q There was nothing in that vehicle that indicated to you that it was, had been used in a homicide, is that correct?
A That's correct.
Q I'd like to show you those pictures. Do you have them?
A Here they are.
Q These are the pictures that you took, is that correct?
A Yes.
Q And that car is a two-door?
A Yes.
Q Okay.
MS. MOORE-DYSON: I have nothing further.
THE COURT: Anything further of the witness?
MR. HAGEMEISTER: Yes, please.

REDIRECT EXAMINATION
BY MR. HAGEMEISTER
Q Describe, if you will -- first off, how many fingerprints, how many people have ever touched that car?
MS. MOORE-DYSON: Objection, Your Honor, this witness, it would be speculative. The witness wouldn't know that.
THE COURT: Sustained.
BY MR. HAGEMEISTER
Q Well, by your account of fingerprints, how many fingerprints did you get?
A About six.
MS. BEIMDIEK: Objection, no foundation, Your Honor. I think he got lifts. I don't think he can distinguish.
THE COURT: That's what the Court understood the witness to say, that he got six lifts, is that correct, Officer?
THE WITNESS: Approximately.
THE COURT: Objection overruled.
BY MR. HAGEMEISTER
Q Would anything refresh your memory as to how many lifts you got exactly?
A I didn't hear you.

Q Would anything refresh your memory as to exactly how many lifts you got?
A Yes.
Q What would?
A The report.
MR. HAGEMEISTER: May I approach?
THE COURT: You may.
A Okay.
BY MR. HAGEMEISTER
Q How many lifts were there?
A There was six.
Q And you -- does that mean that only six fingers have ever touched that car?
A No.
Q Well, if somebody touches a car, don't they leave a fingerprint?
A It's -- some surfaces we can get fingerprints off of and some we can't.
Q Okay. And --
A If you touch the seat, no, I couldn't get the fingerprint off the seat.
Q Is it possible to fingerprint a car that's been driven for five years and not find a single print?
A It's possible.

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Q Okay. So everytime somebody touches something, does it necessarily leave a print?
A No.
Q If a fingerprint -- a fingerprint -- can a fingerprint show that somebody touched something?
MS. MOORE-DYSON: Objection. I withdraw the objection.
THE COURT: Very well. You may answer, sir. If you understand the question.
A Repeat.
BY MR. HAGEMEISTER
Q Well, if you take fingerprints of this piece of paper, can you tell that I've touched it if my print's on it?
A Yes.
Q If this piece of paper was passed through a hundred different people and you find my fingerprint on it, does that mean I'm the only person that touched it?
A No.
Q Okay. Is it possible that the other 99 people you don't get a print from?
A Yes, it's possible.
MR. HAGEMEISTER: Thank you. Nothing further.

THE COURT: Thank you. Anything further, Miss Beimdiek?

MS. BEIMDIEK: No, Your Honor.

THE COURT: Miss Moore-Dyson?

MS. MOORE-DYSON: No, Your Honor.

THE COURT: May this officer be excused?

MR. HAGEMEISTER: Yes, Your Honor.

MS. BEIMDIEK: Yes, Your Honor.

MS. MOORE-DYSON: Yes, Your Honor.

THE COURT: You may step down, Officer. Thank you.

Ladies and gentlemen of the jury we will adjourn for the day at this time. The Court again reminds you what you were told at the first recess of the Court. Until you retire to consider your verdict, you must not discuss this case among yourselves or with others, or permit anyone to discuss it in your hearing. You should not form or express any opinion about the case until it's finally given to you to decide. Do not read, view or listen to any newspaper, radio, or television report of this trial.

You are released at this time and instructed to return to Division 11 Monday morning at 9:30 a.m. Thank you and good evening. Court's adjourned.

(The proceedings were adjourned for the day)

END VOLUME IV

(Nancy Kutta, Official Court Reporter, took over the proceedings beginning on November 18, 1996.)

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VOLUME V

(The following proceedings were had on January 10, 1997, the sentencing proceedings as to Carlos Wade. State was represented by Mark Hagemeister, Assistant Circuit Attorney. The defendant, Carlos D. Wade, was present in person and by Ms.Beverly Beimdiek, Special Public Defender)

THE COURT: Let the record show the matter before the Court bears Cause No. 951-4326A, State of Missouri vs Carlos D Wade. This defendant was convicted of six felonies in verdicts returned in this Court on November 22nd, 1996. The matter before the Court at this time is the defendant's Motion for New Trial. You may be seated, Mr. Wade.

Ms. Beimdick, are you ready to proceed on your motion?

MS. BEIMDIEK: Yes, Your Honor.

THE COURT: Is the State ready to proceed?

MR. HAGEMEISTER: Yes, Your Honor.

THE COURT: You may proceed.

MS. BEIMDIEK: Thank you, Judge. I'll rest primarily on the grounds in the written motion filed December 17th, 1996. The only argument I make at this time are the points contained in Paragraph 2, and that's the argument that deals with the Court's ruling

which allows the State to offer evidence of other alleged shootings outside the date of September 17th, 1995.

It's my feeling that allowing that evidence in allowed the jury to convict the defendant using evidence of uncharged crimes, and I think that the admission of that evidence violated Mr. Wade's right to due process and a fair trial as guaranteed by the United States and Missouri constitutions.

I have cited some cases. I won't go through them at this time. But I stand on the Motion for New Trial as its written.

THE COURT: Thank you, Miss Beimdiek. You very ably briefed and argued that point prior to and during the course of this trial. The Court had the benefit of the legal position of the State and took the time during the course of the trial to consider that point of law carefully.

Accordingly, I feel that while the Court did limit the prior uncharged acts that were introduced in evidence, the Court was, during the course of the trial, prior to the trial, and now, convinced that those prior uncharged acts indicated motive and intent and were therefore admissible.

Accordingly, the defendant's Motion for New

Trial, unless the State has something to add, will be deemed heard and submitted.

MR. HAGEMEISTER: I have nothing at this time.

THE COURT: Very well. Defendant's Motion for New Trial having been heard and submitted is hereby overruled. Please prepare a memorandum for the clerk.

Now we'll proceed to sentencing hearing. Anything on behalf of the State before we proceed?

MR. HAGEMEISTER: With regard to the State's recommendations? Your Honor, the State would just ask the Court to note the recommendations made by the jury in this case. The jury recommended life without possibility of probation or parole on Count I, recommended 30 years on armed criminal action, 15 years on assault first, 30 years on armed criminal action, 15 years on assault first, and 30 years on armed criminal action.

The State believes this was indicative of the jury's intent not to just follow the law and just sentence the defendant to the minimum, but to in fact assess actual periods of time for each count, fully intending those times to be added up to the total, which I believe is 120 years, consecutive to a life

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without possibility of probation or parole.

It is the State's wish that the Court would recommend, or the Court would sentence the defendant thusly because we don't know what affect any later legislative change or Board of Probation or Parole rule change may have with regard to allowing somebody to be paroled, or to be put in a less than maximum security situation, and I believe it was this jury's intent to give him life without parole plus 120 years, indicating that they did not intend for Carlos Wade to have a possibility of being released from a maximum security institution.

THE COURT: Ms. Beimdiek?

MS. BEIMDIEK: Judge, I ask the Court to run the sentences concurrently. I think it's relatively mute. Life without means life without. There's no indication that the legislation will change as to that. The statute is very clear and I think, as I said, if life means life without, there's absolutely no reason to run any sentences consecutively.

THE COURT: Well, I agree with you, Counselor, that it's mute, life without eligibility for probation or parole renders the subsequent sentences, if not mute, subject to question as to whether they would be served, which obviously they

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would not, given the only punishment under the law on a count of murder in the first degree where the State has waived the death penalty.

Anything further before we proceed to sentencing?

MS. BEIMDIEK: No, Your Honor.

MR. HAGEMEISTER: Your Honor, may I have one second, please? Thank you. Nothing further from the State.

THE COURT: Sheriff, bring the defendant forward.

Carlos D Wade, you have been found guilty by a jury of murder in the first degree, a Class A felony, in a verdict returned in Count 1 in this Court on November 22nd, 1996. Do you have any legal cause to show why judgment and sentence should not now be pronounced against you in Count I?

THE DEFENDANT: Yes.

THE COURT: What legal cause do you have, sir?

THE DEFENDANT: I feel that I did not have a fair trial because I -- when I requested my attorney that the jurors was up there asleep during my trial, she did not bring it back to your attention.

THE COURT: Very well. Anything further?

THE DEFENDANT: No, sir.

THE COURT: Miss Beimdiek, do you have any legal cause to show why judgment and sentence should not now be pronounced against this defendant in Count I?

MS. BEIMDIEK: Other than those stated in the Motion for New Trial, no, Your Honor.

THE COURT: Hearing no legal caose to show why judgment and sentence should not now be pronounced against the defendant, it is the judgment and order of this Court that you, Carlos D. Wade, are hereby sentenced to imprisonment in the Missouri Department of Corrections for life without eligibility of probation or parole.

Carlos D. Wade, you have been found guilty by a jury in Count II of armed criminal action in a verdict returned in this Court on November 22nd, 1996. Do you have any legal cause to show why judgment and sentence should not now be pronounced against you in Count II?

THE DEFENDANT: The same cause that I just said.

THE COURT: Miss Beimdiek, do you have any legal cause to show why judgment and sentence should not now be pronounced against this defendant in

Count II?

MS. BEIMDIEK: Other than those in the Motion for New Trial, no, Your Honor.

THE COURT: Hearing no legal cause to show why judgment and sentence should not now be pronounced against the defendant in Count II, it is the judgment and order of this Court that you, Carlos D. Wade, are hereby sentenced to imprisonment in the Missouri Department of Corrections for a term of 30 years.

The sentence imposed herein shall run consecutively to the sentence imposed in Count 1. Probation is denied in both Counts I and II. Jail time is allowed as to both counts.

Carlos D. Wade, you have been found guilty by a jury in Count III of assault first degree, a Class B felony in a verdict returned in this Court on November 22nd, 1996. Do you have any legal cause to show why judgment and sentence should not now be pronounced against you in Count III?

THE DEFENDANT: The same cause I just said about 1 and II.

THE COURT: All right, sir. Miss Beimdiek, do you have any legal cause to show why judgment and sentence should not now be pronounced against you in Count III?

MS. BEIMDIEK: None other than the motion.

THE COURT: Hearing no legal cause to show why judgment and sentence should not now be pronounced against the defendant in Count III, it is the judgment and order of this Court that you, Carlos D. Wade, are hereby sentenced to imprisonment in the Missouri Department of Corrections for a term of 15 years. Probation is denied. Jail time is allowed.

The Court further orders -- strike that. The sentence imposed herein in Count III shall run consecutively to the sentence imposed in Count II.

Carlos D. Wade, you have been found guilty by a jury in Count III of armed criminal action, a Class A felony, in a verdict returned in this Court on November 22nd, 1996. Do you have any legal -- did I say Count IV, Miss Vagen? The Court withdraws its former reference to Count III, this is Count IV. Let me repeat that.

Carlos D. Wade, you have been found guilty by a jury in Count IV of armed criminal action, a Class A felony. Do you have any legal cause to show why judgment and sentence should not now be pronounced against you in Count IV?

THE DEFENDANT: The same reasons for the other three counts.

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THE COURT: Miss Beimdiek, do you have any legal cause to show why judgment and sentence should not now be pronounced against this defendant in Count IV?

MS. BEIMDIEK: Other than those in the Motion for New Trial, no, Your Honor.

THE COURT: Hearing no legal cause to show why judgment and sentence should not now be pronounced against the defendant in Count IV, it is the judgment and order of this Court that you, Carlos D. Wade, are hereby sentenced to imprisonment in the Missouri Department of Corrections for a term of 30 years. Probation is denied, jail time is allowed.

The sentence imposed herein in Count IV shall run consecutively to the sentence imposed in Count III.

Carlos D. Wade, you have been found guilty by a jury in Count V of assault first degree, a Class B felony, in a verdict returned in this Court on November 22nd, 1996. Do you have any legal cause to show why judgment and sentence should not now be pronounced against you in Count V?

THE DEFENDANT: Same reason.

THE COURT: Miss Beimdiek, do you have any legal cause to show why judgment and sentence should

not now be pronounced against the defendant in Count V?

MS. BEIMDIEK: None other than those set forth in the Motion for New Trial.

THE COURT: Hearing no legal cause to show why judgment and sentence should not now be pronounced against the defendant in Count V, it is the judgment and order of this Court that you, Carlos D. Wade, are hereby sentenced to imprisonment in the Missouri Department of Corrections for a term of 15 years.

The sentence imposed herein in Count V will run consecutively with the sentence imposed in Count IV. Probation is denied. Jail time is allowed.

Carlos D. Wade, you have been found guilty in Count VI of armed criminal action, a Class A felony, in a verdict returned in this Court on November 22nd, 1996. Do you have any legal cause to show why judgment and sentence should not now be pronounced the depend you in Count VI?

THE DEFENDANT: Same reason.

THE COURT: Miss Beimdiek, do you have any legal cause to show why judgment and sentence should not now be pronounced against this defendant in Counts VI?

MS. BEIMDIEK: None other than those set

forth in the Motion for New Trial.

THE COURT: Hearing to legal cause to show why judgment and sentence should not now be pronounced against the defendant in Count VI, it is the judgment and order of this Court that you, Carlos D. Wade, are hereby sentenced to imprisonment in the Missouri Department of Corrections for a term of 30 years.

The sentence imposed herein in Count VI shall run consecutively to the sentence imposed in Count V. Probation is denied, jail time is allowed.

It is the further order and judgment of the Court that judgment be and is hereby entered in favor of the State of Missouri and against the defendant, Carlos D. Wade, in the sum of $408 to be deposited in the Crime Victims' Compensation Fund. Costs of these proceedings are assessed against the defendant.

Carlos D. Wade, you are hereby notified that you have the right, pursuant to the laws of the State of Missouri, to appeal the judgments and sentences of this Court entered this date in Cause No. 951-4326A. If you do not have the money to pay the costs of the appeal, you have the further right to apply to this Court for leave to appeal as a poor person. Do you understand that?

THE DEFENDANT: Yes, sir.

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THE COURT: And have you discussed that matter with Miss Beimdiek?

THE DEFENDANT: Yes.

THE COURT: All right. Madam Clerk, please swear the defendant.

CARLOS D. WADE

having been sworn, testified:

EXAMINATION OF THE DEFENDANT

THE COURT: Mr. Wade, I'm required by law to advise you at this time of your right to proceed under Supreme Court Rule 29.15. This is a postconviction remedy rule and this rule provides you with the right to file a motion in this Court to vacate, set aside or correct the judgments of convictions, conviction or sentences imposed by the Court if you claim that, one, your convictions or the sentences imposed violate the constitution and the laws of this state or the constitution of the United States, or, two, this Court was without jurisdiction to impose the sentences, or, three, the sentences imposed were in excess of the maximum sentences authorized by law.

This rule provides you with the exclusive, that is the only procedure by which you may seek relief in this Court for the above claims. The form to be used is in the form of Criminal Procedure Form

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No. 40. This form will be made available to you upon application by the Circuit Clerk of the City of St. Louis. No cost deposit is required. You don't have to pay anything to file this motion.

Now, you're required to file your motion within 90 days after you're delivered to the Missouri Department of Corrections, however, you've indicated you've talked to Miss Beimdiek about appealing, is that correct?

THE DEFENDANT: Yes.

THE COURT: And you desire to appeal?

THE DEFENDANT: Yes.

THE COURT: Then if you appeal, you have until 90 days after the mandate of the Appellate Court --

MS. BEIMDIEK: I think it's 30 days, Judge.

THE COURT: 30?

MS. BEIMDIEK: I believe so.

THE COURT: Did I say 90? Yeah. It's 90 days after you're delivered to the Missouri Department of Corrections. Counsel approach the bench. I have here the '96 rule book, I'm quoting from 29.15(B), "If an appeal of the judgment sought to be vacated, set aside was taken, the motion shall be filed within 90 days after the mandate of the Appellate Court was

issued."

MS. BEIMDIEK: I thought it was shorter. That's fine.

THE COURT: Unless there has been an amendment.

Pardon me, Mr. Wade, but I wanted to be sure, since we weren't in agreement to the number of days. Let me repeat that for you. Since you stated you want to have an appeal, which is your right, but I want you to understand. Do you know what a mandate is?

THE DEFENDANT: No.

THE COURT: Well, when your case goes on appeal, when it is decided, the Court will issue its opinion and mandate. A mandate is like an order. Now as soon as you have notification of that from your attorney as to what the Appellate Court has done with your case, you have 90 days after the date of that mandate or order to file your motion. Now I want you to understand that.

THE DEFENDANT: That's the 40, Form 40 motion?

THE COURT: Yes. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: Okay. Now, if you don't file

within the time, whether or not you take an appeal, it's 90 days if you don't take an appeal after you're delivered to the Department of Corrections, 90 days after the Appellate Court issues its mandate if you do. Is that clear in your mind?

THE DEFENDANT: Yes.

THE COURT: You're right, it's Criminal Procedure Form 40. Now you understand, you stated you've understood what I've explained to you about the time limits. If you do not file your motion within that time, that counts as a waiver of your right to file the motion. In other words, the motion, you will not be permitted to file it or have it heard, do you understand that?

THE DEFENDANT: Yes.

THE COURT: If you file such a motion, you shall include every ground known to you for vacating, setting aside, or correcting the judgments or sentences. If you are indigent and file your own motion, counsel will be pointed for you.

Let the record show that this Court has heretofore found this defendant to be indigent. So you see, do you understand the burden is on you to first file your motion?

THE DEFENDANT: Yes.

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THE COURT: Then when I get that motion, I will appoint an attorney for you, do you understand that?

THE DEFENDANT: Yes.

THE COURT: All right. If you file the motion, I would suggestion to you that you, at the same time, file a request for an evidentiary hearing if you wish to have one. If you do not timely file a request for an evidentiary hearing, no hearing will be held.

Now I know that we've gone over quite a bit and maybe I haven't explained it as well as I could have, so if you have any questions at all, I'll be happy to go over them with you.

THE DEFENDANT: I don't have any questions. I just feel I didn't have a fair trial.

THE COURT: Well, and you've already stated for the record the reason you feel you didn't have a fair trial is that one of the jurors was sleeping, you say?

THE DEFENDANT: Several of the jurors.

THE COURT: Um-hum. I know I'm being repetitious, I'll ask you one more time, do you fully understand your right to file in this Court a postconviction motion?

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THE DEFENDANT: Yes.
THE COURT: All right. Now, I'm required by law to also ask you questions concerning the representation you've had during the trial of your case. What is your name?
THE DEFENDANT: Carlos DeAndre Wade.
THE COURT: How do you spell your middle name?
THE DEFENDANT: D.
THE COURT: D, what? D-E?
THE DEFENDANT: Yes.
THE COURT: Capital A?
THE DEFENDANT: Capital A.
THE COURT: Just spell your middle name for me. Do you understand my question?
THE DEFENDANT: Yeah, I understand it.
THE COURT: Can you spell?
THE DEFENDANT: Yeah, I can spell it.
THE COURT: All right.
THE DEFENDANT: D-E-A-N-D-R-E.
THE COURT: And is the A capitalized?
THE DEFENDANT: However you want to put it.
THE COURT: You normally write it D-E-A-N-D-R-E?
THE DEFENDANT: Capitalize the A.

THE COURT: Capitalize the A. All right. I hope you understand --
THE DEFENDANT: I understand.
THE COURT: I'm required to do this or I wouldn't be bothering with you. We need to know your middle name. I knew your middle initial was D.
Now, are you the same Carlos D. Wade who was found guilty of murder in the first degree, three counts of armed criminal action, and two counts of assault first degree on, in verdicts returned in this Court on November 22nd, 1996?
THE DEFENDANT: Yes.
THE COURT: And as a result of being guilty, were you sentenced to serve a term of life in prison without eligibility for probation or parole, plus 120 years consecutive prison terms for the other five felonies?
THE DEFENDANT: Yes.
THE COURT: And those sentences took place today, which is the 10th day of January, 1997, is that correct?
THE DEFENDANT: Correct.
THE COURT: And is your attorney in this case Ms. Beverly Beimdiek?
THE DEFENDANT: Correct.

THE COURT: And has Ms. Beimdiek represented you since you were arrested or shortly after you were arrested?
THE DEFENDANT: Shortly after I was arrested.
THE COURT: And did Miss Beimdiek conduct your defense at trial in Cause No. 951-4326A?
THE DEFENDANT: I don't understand what you're saying. I don't understand it.
THE COURT: Well, when I say conducted your defense, was she your trial attorney?
THE DEFENDANT: Yes.
THE COURT: And that trial lasted, I don't recall, was it over a week or a week?
MS. BEIMDIEK: It was over a week.
MR. HAGEMEISTER: Began on November 12th, ended November 22nd.
THE COURT: Yes, it was my recollection the trial went for more than a week.
MS. BEIMDIEK: That's correct.
THE COURT: Is that correct?
THE DEFENDANT: Correct.
THE COURT: Now, did Miss Beimdiek call witnesses to testify in your behalf or on your behalf?
THE DEFENDANT: Yes.

THE COURT: And did the Court give you sufficient opportunity during the course of the trial to talk to your attorney when you wished to talk to her?
THE DEFENDANT: Yes.
THE COURT: And you did in fact talk to your attorney during the course of the trial?
THE DEFENDANT: Yes.
THE COURT: And you were present throughout the trial, were you not?
THE DEFENDANT: I was.
THE COURT: Did your attorney do the things you asked her to do before the trial? In other words, did she investigate your case?
THE DEFENDANT: Yes, she investigate.
THE COURT: During the trial did she do the things you asked her to do?
THE DEFENDANT: Not all of 'em.
THE COURT: Well, what things are you -- what things are you stating she did not do?
THE DEFENDANT: Bring it to your attention that several of the jurors was sleep.
THE COURT: Anything other than that?
THE DEFENDANT: No.
THE COURT: All right. Now, was your

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attorney assisted by an investigator, as far as you know?

THE DEFENDANT: Could you repeat yourself?

THE COURT: Did someone help your attorney, an investigator, as far as you know, or did you talk to any investigator?

THE DEFENDANT: No.

THE COURT: All right. Let me ask you, are you satisfied with the services rendered by your attorney, Ms. Beimdiek, whether or not you're satisfied with the outcome of this case?

THE DEFENDANT: No.

THE COURT: Now, I've explained, all right, explained to you your right to appeal as a poor person. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: You told me you understood that.

THE DEFENDANT: I understand it.

THE COURT: All right. Now I want to add one more thing that I didn't want to confuse you with at the time. You have ten days from today to file your notice of appeal to a higher court. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: How many days?

THE DEFENDANT: Ten days.

THE COURT: All right. Do you desire an appeal, do you want an appeal?

THE DEFENDANT: Yes.

THE COURT: Is there anything you wish to add concerning the assistance you've received from your attorney?

THE DEFENDANT: No.

THE COURT: Let the record show that the defendant, having been advised of his right to proceed under Rule 24 -- I'm sorry Rule 29.15, and having been sworn and examined by the Court on the record as to the assistance of counsel received by him, and the Court being fully advised in the premises, the Court now finds there is no probable cause to believe that this defendant has received ineffective assistance of counsel.

Anything further, Miss Beimdiek?

MS. BEIMDIEK: Judge, I make an oral motion he be granted leave to appeal as a poor person and I'll present a written order to you in the next several days.

THE COURT: Very well. Mr. Hagemeister?

MR. HAGEMEISTER: Nothing further.

THE COURT: Anything with respect to the

oral motion?

MR. HAGEMEISTER: No, Your Honor.

THE COURT: Let the record show that defendant's oral motion to proceed in forma pauperis is hereby sustained.

Let the record show that prior to this hearing, the Court conferred with counsel and the Court asked counsel to review the report of the trial Judge required by law to be forwarded to the Supreme Court. Have you reviewed that report?

MR. HAGEMEISTER: Yes, I have, Judge, thank you.

THE COURT: Miss Beimdiek?

MS. BEIMDIEK: Yes, Your Honor.

THE COURT: Now, having reviewed the report, do you wish to attach any comments, or if you have any comments, please advise the Court at this time in order that I may remit this report to the Supreme Court of Missouri.

Does the State have any comments?

MR. HAGEMEISTER: It does not.

THE COURT: Does the defendant's counsel have any comment?

MS. BEIMDIEK: No, Your Honor.

THE COURT: Oh, Mr. Wade, one thing I meant

to ask you and I forget. How far did you go in school?

THE DEFENDANT: To the tenth grade.

THE COURT: Did you finish your sophomore year in high school?

THE DEFENDANT: No.

THE COURT: So the last grade you completed was the ninth grade?

THE DEFENDANT: Yes.

THE COURT: At what high school?

THE DEFENDANT: Last high school I attended to was Beaumont High.

THE COURT: Beaumont. Defendant is remanded to the custody of the Sheriff of the City of St. Louis to be transported and delivered to the Missouri Department of Corrections. Good luck to you.

(The proceedings were adjourned for the day)

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(The following proceedings were had on January 10, 1997, the sentencing proceedings as to Tyrone Morant. State was represented by Mr. Mark Hagemeister, Assistant Circuit Attorney. The defendant, Tyrone D. Morant, was present in person and by Ms. Sandra Moore-Dyson, Attorney at Law.)

THE COURT: Let the record show the matter before the Court bears Cause No. 951-4326B, State of Missouri vs Tyrone Desante Morant. The matter before the Court is the defendant's Motion for Judgement of Acquittal Not Withstanding the Verdicts of the Jury or in the Alternative for a New Trial. Is the defendant ready to proceed, Miss Dyson?

MS. MOORE-DYSON: Yes, Your Honor.

THE COURT: Miss Dyson, do you prefer Moore-Dyson or just Dyson?

MS. MOORE-DYSON: It doesn't matter.

THE COURT: Is the State ready to proceed?

MR. HAGEMEISTER: Yes, Your Honor.

THE COURT: You may proceed, ma'am.

MS. MOORE-DYSON: Yes, Your Honor. We've filed a Motion for Judgment of Acquittal Not Withstanding the Verdict of the Jury or in the Alternative for a New Trial on the basis we believe the Court erred to the prejudice of the defendant by

refusing to grant the Motion to Sever the trial.

One of the bases, and I think the Court made a determination at that time that evidence that was to be presented against the defendant Carlos Wade, that was not to be presented against the defendant Tyrone Morant, was not of such a nature that the jury could not compartmentalize, in other words determine that with proper jury instruction they should consider that evidence only against Carlos Wade and not Tyrone Morant.

As the case developed, and from the rulings of the Court, I mean from the verdict of the jury, it's quite apparent that the jury was not able, in fact, to do that.

Evidence that was presented with regard to Tyrone Morant being involved in a fight, which was the only pre -- used as a motive for his involvement in this case was later disproved during the trial. Therefore, if the trial had been severed, I believe that the jury would have been able to determine that Tyrone Morant in fact was not guilty of all of the charges that were presented.

Also we believe that the Court's decision not to suppress evidence with regard to the identification on the street showup, and I believe

subsequent there was a ruling during the trial where they were not allowed to discuss the showup in the police station, but I think prior to us beginning trial that was not --

THE COURT: That's right. The Court's ruling, because there was no identification of your client at the police station.

MS. MOORE-DYSON: That's correct. That was subsequent to that. And that was with regard to Johnnie Bell's identification. I don't believe that the witness Angela Hickman identified him at the station at all, either.

I believe that also that the Court erred in not declaring a mistrial when the witness Johnnie Bell blurted out information regarding his involvement in a gang and I believe some instances where the defendants were also involved in a gang.

Also the, I believe that the Court erred in not granting, in overruling our Motion for Judgement of Acquittal at the close of the case because I don't believe that the prosecution made an admissible case as against the defendant Tyrone Morant.

There was also instances within the trial where the prosecution several times, though not using the word gang, used such terminology and such wording

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to allow the jury to fully understand or infer or imply that this was a gang related incident. I believe that was to the err of the Court as well, the err of the Court and to the prejudice of my client as well, I mean.

I also believe that the Court's ruling, erred also in overruling our general objections to the Court's instructions, and I did not identify the specific ones.

MR. HAGEMEISTER: Judge, first of all, with regard to the Court's rulings with regard to objections in instructions, the experience and knowledge of the Court is well-known throughout this circuit.

With regard to the gang references, they were not with regard to Tyrone Morant. If my recollection serves me, they were with regard to Carlos Wade. It wasn't they, it was one isolated incident which was brushed over and was not at all prejudicial to even Carlos Wade, much less Tyrone Morant.

With regard to the showup, the -- there was, I believe, a lineup of Angela Hickman, which we did not go into at the request of the defense. The showup was conducted properly by the police department.

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The prior bad acts of this defendant, excuse me, bad act, was covered properly as indicative of motive and intent. It was proven by at least one witness, and the acts committed by Carlos Wade were delineated as solely having been committed by Carlos Wade and others not including Tyrone Morant.

The Court was proper to allow that as evidence and the Court made efforts, and I know I went to great lengths, especially in my closing argument, if you refer to it, that they cannot hold the prior bad acts of Carlos Wade against Tyrone Morant.

There was nothing in any of the jurors' questions or verdicts that indicated they misused any of that evidence. I don't know how she can argue that it is apparent that they did, because there is no indication in any way from the jury that they held any of the evidence against Carlos Wade against her client.

With regard to the terminology that was used, it was terminology that could equally be used against any single person or group of people whether they were in a gang or not. And there was a possibility that a jury could infer that he was associated with a group of people, but that's unavoidable and it's not something that can be avoided

in any case where a person is affiliated with a group of people. There was no argument made to that extent, however. I don't have anything further.

THE COURT: The defendant's Motion for Judgement of Acquittal Not Withstanding the Verdicts of the Jury or in the Alternative for New Trial heard and submitted on behalf of the defendant?

MS. MOORE-DYSON: Yes, Your Honor.

THE COURT: Is it heard and submitted on behalf of the State?

MR. HAGEMEISTER: It is.

THE COURT: Let the record show that the defendant's Motion for Judgement of Acquittal Not Withstanding the Verdicts of the Jury or in the Alternative for a New Trial having been heard and submitted is hereby overruled. Will you please prepare the necessary memorandum before we proceed.

MS. MOORE-DYSON: Yes, sir.

THE COURT: Anything further on behalf of the defendant before we proceed to sentencing, counsel?

MS. MOORE-DYSON: No, Your Honor.

THE COURT: Please bring the defendant forward. Please swear the defendant, Madam Clerk.

TYRONE DESANTE MORANT

having been sworn, testified:

EXAMINATION OF THE DEFENDANT

THE COURT: Tyrone Desante Morant, you have been found guilty in Count I by a jury of murder in the first degree, a Class A felony, in a verdict returned in this Court on November 22nd, 1996. Do you have any legal cause to show why judgment and sentence should not now be pronounced against you in Count 1?

THE DEFENDANT: Yes, I do.

THE COURT: You may state your legal reasons.

THE DEFENDANT: I feel like I was convicted of crimes I took no part in whatsoever.

THE COURT: Anything further?

THE DEFENDANT: Yes, I have reason is cause, like, I know the prosecutor was getting false evidence against me being in prior shootouts and fights with the victim and the witness.

THE COURT: The Court does not recall any evidence of you being involved in prior shootings.

THE DEFENDANT: Not --

THE COURT: But the Court does recall there was some evidence that you were involved in a fist fight or altercation at some point, date. Anything

further?

THE DEFENDANT: No, Your Honor.

THE COURT: Thank you. Miss Tyson, do you have any legal cause to show why judgment and sentence should not now be pronounced against this defendant in Count 1?

MS. MOORE-DYSON: Other than those presented in my motion, no, Your Honor.

THE COURT: Hearing no legal cause to show why judgment and sentence should not now be pronounced against the defendant in Count 1, it is the judgment and order of this Court that you, Tyrone Desante Morant, are hereby sentenced in Count I to imprisonment in the Missouri Department of Corrections for a term of life without eligibility for probation or parole. Probation is denied. Jail time is allowed.

Tyrone Desante Morant, you have been found guilty by a jury in Count II of armed criminal action, a Class A felony, in a verdict returned in this Court on November 22nd, 1996. Do you have any legal cause to show why judgment and sentence should not now be pronounced against you in Count II?

THE DEFENDANT: No, sir.

THE COURT: Miss Tyson, do you have any

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legal cause to show why judgment and sentence should not now be pronounced against this defendant in Count II?

MS. MOORE-DYSON: No, Your Honor. I just renew my post-trial motion.

THE COURT: Hearing no legal cause to show why judgment and sentence should not now be pronounced against the defendant in Count II, it is the judgment and order of this Court that you, Tyrone Desante Morant, are hereby sentenced in Count II to imprisonment in the Missouri Department of Corrections for a term of 30 years.

The sentence imposed herein in Count II shall run consecutively with the sentence imposed in Count I. Probation is denied. Jail time is allowed.

Tyrone Desante Morant, you have been found guilty by a jury in Count III of assault first degree, a Class B felony, in a verdict returned in this Court on November 22nd, 1996. Do you have any legal cause to show why judgment and sentence should not now be pronounced against you in Count III?

THE DEFENDANT: No, sir.

THE COURT: Miss Tyson, do you have any legal cause to show why judgment and sentence should not now be pronounced against the defendant in

Count III?

MS. MOORE-DYSON: No, Your Honor.

THE COURT: Hearing no legal cause to show why judgment and sentence should not now be pronounced against the defendant in Count III, it is the judgment and order of this Court that you, Tyrone Desante Morant, are hereby sentenced in Count III to imprisonment in the Missouri Department of Corrections for a term of 15 years.

The sentence imposed herein shall run consecutively with the sentence imposed in Count II. Probation is denied. Jail time is allowed.

Tyrone Desante Morant, you have been found guilty by a jury in Count IV of armed criminal action, a Class A felony, in a verdict returned in this Court on November 22nd, 1996. Do you have any legal cause to show why judgment and sentence should not now be pronounced against you in Count -- Carol, what Count am I in?

MR. HAGEMEISTER: IV. Can I go off the record?

THE COURT: Just a minute. Have we finished III?

MR. HAGEMEISTER: That's what I'm asking her about, I wanted her to check something.

THE COURT: What did you wish the court reporter to check? We do not go off the record on a sentencing, every word is --

MR. HAGEMEISTER: Your Honor, I, I beg the forgiveness of the Court. I lost my train of thought for a second and I did not know if you mentioned if Count III was concurrent or consecutive.

MS. MOORE-DYSON: He said consecutive.

MR. HAGEMEISTER: That's all I want to know and I apologize.

THE COURT: No apology necessary.

MR. HAGEMEISTER: Thank you. And we are on Count IV.

THE COURT: The Court will not request the court reporter to go back. The Court sentenced this defendant in Count III to a term of imprisonment in the Missouri Department of Corrections for 15 years. The sentence imposed in Count III is to run consecutively to the sentence imposed in Count II.

MR. HAGEMEISTER: Thank you, Your Honor.

THE COURT: Now, let's go back to Count IV. Let me ask you again, Mr. Morant, you've been found guilty by a jury in Count IV of armed criminal action, a Class A felony, in a verdict returned in this Court on November 22nd, 1996. Do you have any legal cause

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to show why judgment and sentence should not now be pronounced against you in Count IV?

THE DEFENDANT: No, sir.

THE COURT: Miss Dyson, do you have any legal cause to show why judgment and sentence should not now be pronounced against this defendant in Count IV?

MS. MOORE-DYSON: No, Your Honor.

THE COURT: Hearing no legal cause to show why judgment and sentence should not now be pronounced against the defendant in Count IV, it is the judgment and order of this Court that you, Tyrone Desante Morant, are hereby sentenced in Count IV to imprisonment in the Missouri Department of Corrections for a term of 30 years.

The sentence imposed herein in Count IV shall run consecutively to the sentence imposed in Count III. Probation is denied. Jail timed is allowed.

Tyrone Desante Morant, you have been found guilty by a jury in Count V of assault in the first degree, a Class B felony, in a verdict returned in this Court on November 22nd, 1996. Do you have any legal cause to show why judgment and sentence should not now be pronounced against you in Count V?

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THE DEFENDANT: No, sir.
THE COURT: Miss Tyson, do you have any legal cause to show why judgment and sentence should not now be pronounced against this defendant in Count V?
MS. MOORE-DYSON: No, Your Honor.
THE COURT: Hearing no legal cause to show why judgment and sentence should not now be pronounced against the defendant in Count V, it is the judgment and order of this Court that you, Tyrone Desante Morant, are hereby sentenced in Count V to imprisonment in the Missouri Department of Corrections for a term of 15 years.
The sentence imposed herein in Count V shall run consecutive to the sentence imposed in Count IV. Probation is denied. Jail time is allowed.
Tyrone Desante Morant, you have been found guilty by a jury in Count VI of armed criminal action, a Class A felony, in a verdict returned in this Court on November 22nd, 1996. Do you have any legal cause to show why judgment and sentence should not now be pronounced against you in Count VI?
THE DEFENDANT: No, sir.
THE COURT: Miss Tyson, do you have any legal cause to show why judgment and sentence should

not now be pronounced against this defendant in Count VI?
MS. MOORE-DYSON: No, Your Honor.
THE COURT: Hearing no legal cause to show why judgment and sentence should not now be pronounced against the defendant in Count VI, it is the judgment and order of this Court that you, Tyrone Desante Morant, are hereby sentenced in Count VI to imprisonment in the Missouri Department of Corrections for a term of 30 years.
The sentence imposed herein in Count VI shall run consecutively to the sentence imposed in Count V. Jail time is allowed. Probation is denied.
The Court further orders, adjudges, and decrees that judgment be and is hereby entered in favor of the State of Missouri and against the defendant in the sum of $408 to be deposited in the Crime Victims' Compensation Fund. Costs of this proceeding is assessed against the defendant.
Tyrone Desante Morant, you are hereby notified that you have the right, pursuant to the laws of the State of Missouri, to appeal the judgments and sentences of this Court. If you do not have the money to pay the costs of appeal, you have the further right to apply to this Court for leave to appeal as a poor

person.
The Court will also advise you at this time that you have ten days to file your Notice of Appeal. That is ten days from today. Do you understand what I've explained to you?
THE DEFENDANT: Yes.
THE COURT: Do you have any questions about your right to appeal?
THE DEFENDANT: No, sir.
THE COURT: Now, Miss Dyson, you have advised the Court prior to this hearing that while you are, you have represented this defendant as retained counsel, either by the defendant or his family, that he presently does not have money, I believe you told me, to prosecute an appeal, is that correct?
MS. MOORE-DYSON: That's correct, Your Honor.
THE COURT: Mr. Morant, prior to your arrest for these charges, were you working?
THE DEFENDANT: No, sir.
THE COURT: And I believe you are a young man 20 or 21 years of age?
THE DEFENDANT: No, sir, I'm 18 years old.
THE COURT: 18?
THE DEFENDANT: Yes, sir.

THE COURT: And how far did you go in school?
THE DEFENDANT: Ninth grade.
THE COURT: Did you finish the ninth grade?
THE DEFENDANT: No, sir.
THE COURT: So the highest grade you completed is the eighth grade?
THE DEFENDANT: Yes, sir.
THE COURT: What high school did you attend?
THE DEFENDANT: Sumner High School.
THE COURT: And after you left, what year did you leave high school?
THE DEFENDANT: 1994.
THE COURT: And did you work?
THE DEFENDANT: I had a summer job over the summer.
THE COURT: So is it fair to say that from the date you left Sumner High School until today that your history of employment is quite primarily part-time or temporary work?
THE DEFENDANT: I guess so.
THE COURT: Well, don't you understand my question?
THE DEFENDANT: No, sir, I don't.
THE COURT: Let me ask you again. After you

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left high school, did you ever have a permanent job?

THE DEFENDANT: No, sir.

THE COURT: Okay. So what work you did do was work you could get and that would last for a short time?

THE DEFENDANT: It was a job from this city.

THE COURT: Okay.

THE DEFENDANT: It was a Slate job.

THE COURT: All right. Do you have any cash money that's in a bank account in your name?

THE DEFENDANT: No, sir.

THE COURT: Do you own any real estate?

THE DEFENDANT: No, sir.

THE COURT: Do you have any funds, and by funds I mean money, to pay an attorney to appeal this case for you?

THE DEFENDANT: No, sir, I do not.

THE COURT: Let the record show that the Court interprets Miss Dyson's statement to be an oral motion to determine whether or not this defendant is indigent. The Court finds the defendant to be indigent and is entitled to appeal the judgments and sentences entered by this Court in this cause as a poor person.

Miss Tyson, you're to prepare the necessary

Notice of Appeal and a written motion to appeal as a poor person within the time prescribed by law.

MS. MOORE-DYSON: Yes, Your Honor.

THE COURT: Mr. Morant, I'm required by law to at this time advise you of your right to proceed under Supreme Court Rule 29.15. You were seated here in the courtroom when Mr. Wade was sentenced, were you not?

THE DEFENDANT: Yes, sir.

THE COURT: Did you hear my explanation to him of this rule?

THE DEFENDANT: I heard, but I didn't understand.

THE COURT: Well, we'll go over it again. We've already talked about your right to appeal, do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: The rule I'm talking about is separate from your right to appeal.

THE DEFENDANT: Okay.

THE COURT: You stated that you feel you did not receive a fair trial, right?

THE DEFENDANT: Yes, sir.

THE COURT: That your constitutional rights were violated?

THE DEFENDANT: Yes, sir.

THE COURT: This rule permits you to file a motion in this Court to determine those questions and it's separate from the appeal we've just discussed, is that clear in your mind?

THE DEFENDANT: Yes, sir, it's clear.

THE COURT: This motion I'm talking about is generally called a postconviction remedy, or a PCR, provides you with a right to file a motion in this Court to vacate, set aside, or correct the judgments of conviction or the sentences I imposed here today if you claim that, one, your convictions or the sentences imposed violate the constitution and the laws of this state, or the constitution of the United States, or, two, this Court was without jurisdiction to impose the sentences, or, three, the sentences imposed were in excess of the maximum sentences authorized by law.

Do you understand that much now?

THE DEFENDANT: Yes, sir.

THE COURT: You've already told the Court that you feel you were denied a fair trial and that would be a violation of your constitutional rights, right?

THE DEFENDANT: Okay. Yes, sir.

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THE COURT: So, that gives you a basis,

since you believe that, to file this motion. And this rule is the exclusive, the only procedure by which you may seek relief in this Court for the claims we've just discussed. The form to be used is in Criminal Procedure Form 40. In other words, by that I mean it's already preprinted and you fill in the blanks.

THE DEFENDANT: Yes, sir.

THE COURT: You can get that from Miss Mavis Thompson, Clerk of the Circuit Court of the City of St. Louis. You may request it yourself. Now, if you request this, you fill this in without the help of an attorney, do you understand?

THE DEFENDANT: Yes, sir.

THE COURT: The form will ask you to explain the reasons why you feel that your constitutional rights were violated, okay?

THE DEFENDANT: Yes, sir.

THE COURT: Now, no cost deposit is required to file this motion.

THE DEFENDANT: Okay.

THE COURT: You've indicated you intend to appeal. You heard my explanation to Mr. Wade that it's 90 days if you don't appeal after you're delivered to the Department of Corrections. You don't file within that time, you may not file.

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THE DEFENDANT: Okay.
THE COURT: If you appeal, it's 90 days after the Appellate Court determines your case. Do you understand that?
THE DEFENDANT: Yes. So if, if I appeal, right, then I have to wait for somebody, I have to get word back or something?
THE COURT: You've got, you have the right idea. The appeal and the motion are separate, do you understand that?
THE DEFENDANT: Yes, sir.
THE COURT: So the appeal is one you have ten days to file your Notice of Appeal. That's the first thing, right?
THE DEFENDANT: Okay.
THE COURT: That must be given attention to.
THE DEFENDANT: Okay.
THE COURT: Then the case goes to the higher court. After the higher court decides it, they issue a mandate or order. Then you have 90 days from the date that's issued to file your motion under this rule.
THE DEFENDANT: From before it, right?
THE COURT: Right. If your appeal goes up and the Court of Appeals says McBride was wrong, the

judgment will be erased and there will be no need to file a motion, would there?
THE DEFENDANT: I think not.
THE COURT: No. Because in that event it would probably come back to be retried. But I want to be sure that you understand because these matters are important, the difference between your appealing and your right to proceed under this rule on the grounds that your constitutional rights were violated. Now if you've got any further questions, ask me now.
THE DEFENDANT: I don't have no further questions about that Form 40 appeal.
THE COURT: How many days do you have after the appellate court issues its mandate or order?
THE DEFENDANT: 90 days.
THE COURT: 90 days. What's the number of the form you ask Miss Thompson for?
THE DEFENDANT: Form 40.
THE COURT: Good. Now, if you file a motion, you should state in your own words every ground known to you for vacating, setting aside or correcting the judgments or sentences. If you are indigent and file your own motion, counsel will be appointed for you. I've determined today that you are indigent and your attorney is going to give me a

written memorandum showing the order, finding an order of the Court that you are indigent, which means once you file your motion, I will appoint an attorney for you since you do not have the funds to hire an attorney. Do you understand that?
THE DEFENDANT: Yes, sir. So that would be after the ten days?
THE COURT: No, you go back to the appeal. What are we talking here? We're talking the rule, the hearing on your alleged violation of constitutional rights, right?
THE DEFENDANT: Right.
THE COURT: We're talking about something completely separate from the appeal.
THE DEFENDANT: Okay.
THE COURT: Okay? Now, a written request for a hearing must be timely made. In other words, if you want a hearing on your motion, you must request it in writing. Do you understand that?
THE DEFENDANT: Yes, sir.
THE COURT: Now, I guess the best way I can tell you to keep these things separate in your mind is the appeal and motion. The appeal is basing your attorney's arguments that the Court made errors in the trial and therefore you were prejudiced and your

convictions should be reversed. Do you understand that?
THE DEFENDANT: Yes, sir.
THE COURT: That's the appeal.
THE DEFENDANT: That's the appeal.
THE COURT: Now think of the motion, what does the motion involve? Your contention that you were deprived of constitutional rights, right?
THE DEFENDANT: Right.
THE COURT: Yes, sir. Appeal. Motion. Got those in your mind?
THE DEFENDANT: Yes, sir.
THE COURT: All right. Now, I know that's a lot to absorb in a few minutes. I've done my best to explain it to you. I know it's complicated. Maybe I didn't explain it all that well, so if you have any questions, I'll answer them if you want me to; if there's any part of it you're not clear on, I'll go over it again.
THE DEFENDANT: I have a good understanding.
THE COURT: All right. Now, Mr. Morant, I'm also required by law to ask you certain questions in an effort to determine the quality of representation. What is your name?
THE DEFENDANT: Tyrone Desante Morant.

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THE COURT: Are you the same Tyrone Desante Morant who was found guilty in Count I of murder in the first degree?

THE DEFENDANT: Yes, sir.

THE COURT: And also found guilty in -- of three counts of armed criminal action and two counts of assault first degree?

THE DEFENDANT: Yes, sir.

THE COURT: And these verdicts were returned in Division 11 of the Circuit Court of the City of St. Louis on November 22nd, 1996?

THE DEFENDANT: Yes, sir.

THE COURT: And as a result of the jury's verdicts finding you guilty of those offenses, did I sentence you to serve a term of life imprisonment without eligibility for probation or parole plus 120 years to be served consecutively this 10th day of January, 1997?

THE DEFENDANT: Yes, sir.

THE COURT: And is your attorney in this matter Miss Sandra Moore-Dyson?

THE DEFENDANT: Yes, sir.

THE COURT: Now, she represented you throughout the trial of this case, did she not?

THE DEFENDANT: Yes, she did.

THE COURT: And how long had she represented you before the trial, do you recall?

THE DEFENDANT: Before the trial? I can't recall. I can't recall.

THE COURT: Okay. But she was the only attorney that conducted your defense in the trial that went approximately, I don't recall the number of days, eight or nine days back in November of last year?

THE DEFENDANT: Yes, sir. I had a --

THE COURT: I believe we started on the 12th of November and ended on the 22nd of November?

THE DEFENDANT: That's correct.

THE COURT: Did Miss Dyson, was she your attorney throughout that trial?

THE DEFENDANT: Yes, sir.

THE COURT: All right. Now, did she call witnesses to testify in your behalf?

THE DEFENDANT: Yes, sir.

THE COURT: Did you have sufficient opportunity to talk to your attorney before the trial began?

THE DEFENDANT: I talked to her about once or twice before the trial began.

THE COURT: Okay. Now, did you have an opportunity to talk to your attorney during the trial?

THE DEFENDANT: Yes, sir.

THE COURT: All right. Any time that you requested -- did I ever refuse you an opportunity to talk to your attorney if you requested it?

THE DEFENDANT: No, sir.

THE COURT: Were you present throughout the trial?

THE DEFENDANT: Yes, sir.

THE COURT: Now, what other attorneys represented you before the trial?

THE DEFENDANT: I had a Public Defender, Katrina Jones.

THE COURT: And do you remember Christine Kerr, did she appear with you at arraignment or early on in the case?

THE DEFENDANT: No, I don't remember a arraignment. I don't remember arraignment.

THE COURT: Would you say that you were represented from the very beginning of the case up until now by two or three attorneys?

THE DEFENDANT: I would say two. I don't know about a third attorney.

THE COURT: All right.

THE DEFENDANT: I didn't never really get a chance to talk to Katrina Jones. I didn't ever talk

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to her until --

THE COURT: Thank you. Miss Tyson, do you recall when you entered your appearance in this case without me going through that?

MS. MOORE-DYSON: Not right off the bat. I think it was toward the end of September.

THE COURT: September of?

MS. MOORE-DYSON: 1996.

THE COURT: Okay. Now, did your attorney, Miss Dyson, do the things you asked her to do during the trial as the trial went on day by day?

THE DEFENDANT: I feel she did some of the things I asked her to do.

THE COURT: What things did you ask her to do that she didn't do?

THE DEFENDANT: Really nothing. I just thought she would do better than what she did. That's all I feel.

THE COURT: And are you satisfied with the services rendered by Miss Dyson as your attorney, whether or not you're satisfied with the outcome of the case?

THE DEFENDANT: No, sir.

THE COURT: Any appeal from the Court's judgments and sentences in this case must filed no

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later than, how many days?

THE DEFENDANT: Judgment?

THE COURT: Appeal.

THE DEFENDANT: Ten days.

THE COURT: All right. Motion?

THE DEFENDANT: 90 days after.

THE COURT: Okay. Do you want to appeal?

THE DEFENDANT: Yes, sir.

THE COURT: All right. So there's no mistake in the record, you're not released, Miss Dyson, in any way until I have signed the motion permitting this defendant to appeal as a poor person. I won't inquire your presence for that, will I Mr. Hagemeister?

MR. HAGEMEISTER: No.

THE COURT: All right. Anything you want to add? Anything else you want to say at this time?

THE DEFENDANT: No, sir.

THE COURT: I'll give you another opportunity. If I in any way have not fully explained these matters to you, I will repeat them.

THE DEFENDANT: I feel you explained them to me.

THE COURT: All right.

MR. HAGEMEISTER: Judge, if I have a PCR, I

would like to know what he thinks his attorney should have done.

THE COURT: Well, no, I'm not -- if you're requesting to interview the defendant, it's denied.

MR. HAGEMEISTER: No, I --

THE COURT: Anything further on behalf of the State?

MR. HAGEMEISTER: No, sir.

THE COURT: Anything further on behalf of the defendant?

MS. MOORE-DYSON: No, Your Honor.

THE COURT: Tyrone Desante Morant, you are hereby remanded to the custody of the Sheriff of the City of St. Louis to be transported and delivered forthwith to the Missouri Department of Corrections. Good luck to you.

THE DEFENDANT: Okay.

THE COURT: Let the record show that the Court finds no probable cause to believe that the defendant has received ineffective assistance of counsel. That will be contained in the Court's judgment and sentence. Counsel are to remain until the paperwork is completed.

MR. HAGEMEISTER: Thank you, Judge.

(The proceedings were adjourned for the day)

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CERTIFICATE

I, Carol A. Vagen, Registered Professional Reporter and Official Court Reporter of the City of St. Louis, State of Missouri, do hereby certify that I was present and reported all the proceedings had in the case of State of Missouri, Plaintiff, vs. Carlos Wade, Defendant, Cause No. 951-4326A, and State of Missouri, Plaintiff, vs. Tyrone Morant, Defendant, Cause No. 951-4326B.

Carol A. Vagen

CAROL A. VAGEN, RPR, CCR

SC93248

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(original)

MISSOURI COURT OF APPEALS
EASTERN DISTRICT

STATE OF MISSOURI, Plaintiff (Respondent), v. CARLOS WADE, Defendant (Appellant).	Mo. Ct. of Appeals No. 71991 Circuit Court of the City of St. Louis, Mo., No. 951-4326A, Div. 11
STATE OF MISSOURI, Plaintiff (Respondent), v. TYRONE MORANT, Defendant (Appellant).	Mo. Ct. of Appeals No. 71966 Circuit Court of the City of St. Louis, Mo., No. 951-4326B, Div. 11

TRANSCRIPT OF RECORD ON APPEAL FROM THE CIRCUIT COURT OF THE CITY OF ST. LOUIS, STATE OF MISSOURI, DIVISION NO. 11 THE HON. FLOYD McBRIDE, JUDGE, PRESIDING

VOLUME I

FILED
JUL 25 1997
DEIRDRE O. SMITH
CLERK, MISSOURI COURT OF APPEALS
EASTERN DISTRICT

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NANCY KUTTA
OFFICIAL COURT REPORTER
TWENTY-SECOND JUDICIAL CIRCUIT
ST. LOUIS, MISSOURI

Exhibit 5

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FORM SEL 711 REPORTERS PAPER & MFG. CO. 800-626-6313

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VOLUME I

STATE'S EVIDENCE (CONT'D.)

(The following proceedings took place on November 18, 1996, before the Hon. Floyd McBride, Judge of the Circuit Court of the City of St. Louis, State of Missouri, with Mark W. Hagemeister, Assistant Circuit Attorney, appearing for the State of Missouri; Beverly A. Beimdiek, Special Public Defender, appearing for Defendant Carlos D. Wade; and Sandra Moore-Dyson appearing for Defendant Tyrone Morant.

Defendants were present throughout all proceedings reported by this reporter, Nancy Kutta, with the exception of those occurring in the judge's chambers.)

THE COURT: Good morning. You may be seated. You may call your next witness, Mr. Hagemeister.

MR. HAGEMEISTER: Your Honor, the people call the 8th District police officer, Michael Strong.

MICHAEL STRONG, being sworn, testified:

DIRECT-EXAMINATION by Mr. Hagemeister:

THE COURT: Proceed.

Q State your name, please.

A Officer Michael Strong.

Q Officer Strong, were you called to a crime scene on September 17, 1995, shortly after 11:30 p.m.?

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A During that time I was monitoring that radio channel and I responded to that location.

Q So you were nearby, your district?

A I was -- we monitored the 6th, 7th and 8th District so that was one of my districts too.

Q Did you respond to the 4200 block of Dr. Martin Luther King?

A Yes, I did.

Q Is that location in the City of St. Louis, city limits?

A Yes, it is.

Q When you got there what did you find?

A We found a black male lying in the 4200 block of Dr. King lifeless.

Q And did you have an opportunity to speak to anybody at that scene?

A Yes, I did.

Q Who did you speak with?

A I spoke to a black female victim who stated she was standing outside --

MS. BEIMDIEK: I object.

THE COURT: Sustained.

MR. HAGEMEISTER: That goes to explain his subsequent conduct, and it also is a prior inconsistent statement.

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THE COURT: Approach the bench.

(The following proceedings took place at the bench outside the hearing of the jury:)

THE COURT: What do you anticipate the officer will say?

MR. HAGEMEISTER: He will testify that the victim, Angela Hickman, told him who it was that did the shooting, going to show that she did, in fact, say it there at the crime scene.

THE COURT: The offer is overruled and denied. The Court's ruling remains the same.

(Proceedings resumed within the hearing of the jury as follows:)

Q (By Mr. Hagemeister) Did you interview the victim?

A Yes, I did.

Q In that interview did you get a lead on who the suspects werethat did the shooting?

A Yes, I did.

MS. BEIMDIEK: I object. Calls for hearsay.

THE COURT: Sustained.

Q Without telling us what the victim said were you givena name or a description or both?

A Yes, I was. Yes, I did.

Q Okay. Were you given a last name?

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MS. MOORE-DYSON: Objection, Your Honor, hearsay.

THE COURT: You're going to have to speak up so the Court can hear you.

MS. MOORE-DYSON: Objection, Your Honor, asking for hearsay again.

THE COURT: Sustained.

Q (By Mr. Hagemeister) I don't want you to tell us what somebody else said to you but you said you were given a name. Were you given a last name?

MS. BEIMDIEK: Same objection. I believe the Court's ruled.

MR. HAGEMEISTER: Goes to explain why he does what he does afterwards, Judge.

THE COURT: Sustained.

Q Officer, were you given a -- how many people did you get descriptions of?

A Two.

Q Okay. And how many people did you get names of?

A One.

Q Okay. And from the name and the description that was given to you -- well, strike that question, please. Are you familiar with that neighborhood?

A Yes, I am.

Q How are you familiar with it?

A I did six years in uniform in that district.

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Q Okay. And would it be fair to say as a uniformed officer you make it your business to know what's going on in the neighborhood?

A Yes.

Q When you were given this name of the one subject and the two descriptions did you have an idea as to who you should look for?

A Yes.

Q How -- who did you decide to go look for?

MS. BEIMDIEK: Judge, I object. Can we approach?

THE COURT: Yes.

(The following proceedings took place at the bench outside the hearing of the jury:)

MS. BEIMDIEK: Your Honor, I believe that this line of questioning is being offered to suggest that the defendant had prior police contact which is inadmissible evidence of other crimes. If this officer knows or was aware of either of the defendants I don't know which defendant it is because none of this is contained in any of the discovery provided by the State.

MR. HAGEMEISTER: Your Honor, the State has had this witness endorsed for a very long time. This witness is listed in the original police report as being the police officer who arrests Tyrone Morant on that night. The defense attorneys have gone

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to great lengths to bring out cross-examination and testimony from Angela Hickman that -- she testified she gave the name, Carlos, and that she described the second subject with him. They've brought out in cross-examination that they've tried to make it look like she didn't say that or see that or describe that. This person corroborates her testimony that she did in fact say that at the scene, that she gave a name, that she gave a description, and it goes to -- shows that, one, rehabilitates that witness, it's a prior consistent statement and also goes to explain why he goes out and looks where he looks and picks up who he picks up.

THE COURT: So the Court understands, your purpose -- one of your purposes in calling this witness is to establish that this witness arrested the defendant Morant?

MR. HAGEMEISTER: Yes.

THE COURT: What's before the Court at this time?

MS. BEIMDIEK: The objection.

THE COURT: I sustained the objection. What else is before the Court at this time?

MS. BEIMDIEK: Nothing if the objection was sustained.

(Proceedings resumed within the hearing of the

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jury as follows:)

Q (By Mr. Hagemeister) Did you go looking for somebody after you spoke with Angela Hickman at the crime scene?

A I did.

Q Who did you go look for?

A I --

MS. MOORE-DYSON: Objection, Your Honor, as to who he went to look for.

THE COURT: Sustained.

Q Did you look for the two people that she described?

MS. BEIMDIEK: Objection, Your Honor, if she -- the question is as to relevance. How -- if she gave a description how would this officer know specifically who to look for if she did not give the names.

THE COURT: State your objection. This question was based on description. What's your objection to this question?

MS. MOORE-DYSON: My objection as to competence as to being able --

THE COURT: I can't hear you.

MS. MOORE-DYSON: Objection is as to relevance.

THE COURT: Overruled on that ground.

Q (By Mr. Hagemeister) Did you go look for people?

A Yes, I did.

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Q Who do you look for? Who did you look for?

A Carlos Wade and Tyrone Morant.

Q Why is it that you went to look for those two?

MS. BEIMDIEK: Objection, hearsay.

THE COURT: Sustained.

Q Well, let me ask you this. When she gave you the name did you recognize the name just from --

MS. BEIMDIEK: Same objection.

Q -- just from working in that neighborhood?

THE COURT: Sustained.

Q Did you know of somebody who matched the description of the second person she gave that hung around with somebody who had the same name as the first person whose actual name she gave?

A Yes.

MS. BEIMDIEK: Objection, vague.

THE COURT: That's sustained.

The jury is instructed to disregard the witness's answer.

Q (By Mr. Hagemeister) Okay, well, let's make sure I understand. You told us that she gave you a name and you told us that she gave you descriptions of both people, is that correct?

A Correct.

Q Okay. And, the names she gave you, name she gave

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you, was that a name of somebody in that neighborhood that you knew from previous --

MS. BEIMDIEK: Objection. This is the third objection I've made as to this question.

THE COURT: Sustained. And you're instructed to move on.

Q When you got this name and this description what was the description?

MS. BEIMDIEK: Objection, hearsay.

THE COURT: Sustained.

Q Did you find somebody that matched that description?

MS. BEIMDIEK: Objection, calls for conclusion.

THE COURT: Overruled.

Q Did you find somebody that matched the description that was given?

A Yes.

Q Who did you find?

A Tyrone Morant.

Q Okay. Do you see that Tyrone Morant in the courtroom today?

A Yes, I do.

Q Can you point him out and tell us where he's sitting.

A That's the black gentleman sitting at the defense table sitting in the -- left.

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Q There's two gentlemen sitting at the defense table.

A The subject sitting at the end of the table on the left.

MR. HAGEMEISTER: All right. Can the record reflect the witness has identified the defendant Tyrone Morant?

THE COURT: The record may so reflect.

Q How long -- well, let me ask you this. After -- she gave the description and the name where was it that she gave you those?

A At the crime scene.

Q Okay. And this is while John Allen was lying there dead?

A Correct.

Q And who went out to look for the people that she named or described?

A With myself?

Q Yes.

A My partner, Donnell Janksley, and a couple other officers.

Q Where did you go after you spoke to the victim?

A In the general area.

Q Okay. Was there any place in particular that you checked first?

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A Yes, on Aldine.

Q Where on Aldine?

A I think it's the 4200 block of Aldine.

Q Why did you go there first?

A Because I knew one of the subjects lived in that location.

Q Okay. And, did you find anybody there?

A Nor in the area, no.

Q All right. Where did you go next?

A I think along the North Market, Cote Brilliante, 4200 block.

Q Did you find anybody there?

A Later we did, yes, we did.

Q Who did you find?

A Tyrone Morant.

Q Did you pick him up as a suspect?

A Yes, we did.

Q Was he with anybody else?

A Yes, another black male, first name I know was Kenneth.

Q What did you do with those two subjects you picked up?

A We took them to a location.

Q Which location did you take them to?

A I believe in the area of Dr. King and Whittier.

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Q All right. And why did you take them there?

A I was advised by -- to do so.

Q And when you got there what happened there?

A They did an identification.

Q All right. And when you do that identification how did it happen, I mean -- how did the victim come to that location, where was the victim when the identification took place?

A Where was the victim?

Q Yeah.

A I believe the victim was on Whittier.

Q Well, when the victim made the identification how was -- how is she situated and how were the two suspects you arrested situated?

A The subjects were taken from the vehicle, we placed lights on the subjects, bright lights.

Q Was either of those two subjects identified?

A One was.

Q All right. And the second subject was not identified?

A No.

Q And, just as a matter of routine or during your police work I guess by the book what do you do with both of those subjects after that?

A The subjects were taken down to homicide.

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MR. HAGEMEISTER: Okay. And may I approach the witness? May I approach?

THE COURT: For what purpose?

MR. HAGEMEISTER: To show him some photographs.

THE COURT: Have you seen the photographs?

MS. BEIMDIEK: Yes.

MS. MOORE-DYSON: Yes.

MR. HAGEMEISTER: Have you seen the photos?

THE COURT: Yes.

Q (By Mr. Hagemeister) I'll show you what's marked State's Exhibits 4, 5, 6, 7 and 8. Do you recognize those photos, sir?

A Yes, I do.

Q What are they photographs of?

A Of the victim.

Q The victim that was lying in the street?

A Correct.

Q And do they accurately represent where the body was situated and how the crime scene appeared on the evening in question?

A Yes.

MR. HAGEMEISTER: Ask State's Exhibits 4 through 8 be admitted in evidence.

MS. BEIMDIEK: I may have an objection to one or two if I may examine them.

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May we approach, Your Honor?

THE COURT: You may.

(The following proceedings took place at the bench outside the hearing of the jury:)

MS. BEIMDIEK: Your Honor, my objection is that most of these are cumulative. Some are too gruesome. State's Exhibit No. 4 I think is -- depicts what may be body organs on the sidewalk, not an issue in this case. I think it's simply offered to inflame the passions of the jury. There are other photographs that depict the victim that are slightly less gory. State's Exhibit 5 I don't have objection to.

THE COURT: Let's go the other way. Which are you objecting to?

MS. BEIMDIEK: To 4, to 6, and I think 7 is cumulative. I don't think both of them have to be in.

MS. MOORE-DYSON: Your Honor, Defendant Wade would also join in those same objections.

THE COURT: If I understand your joint objection -- the joint objection of the defendants it's to State's Exhibits 4 and 6, is that correct?

MS. MOORE-DYSON: Yes.

MS. BEIMDIEK: And that 7 and 8 are cumulative. The -- I think the State should elect between one of those two photos.

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MR. HAGEMEISTER: Do you want argument from me? Judge, the State believes all of the photographs are relevant and necessary. They all go to show the state of mind of the other two victims at the time of the police interviews to show what they saw and why they were acting in shock and disbelief hysterically at the time the original police officer comes up to the scene. They also give different perspectives as to where he was in the street. State's Exhibit 8 shows an address in the background. State's Exhibit 4 shows exactly how far his feet are from the curb and that's the best photograph of that. The photograph that's sitting here, State's Exhibit No. 6, is the best photograph to show where the entrance wound is on the victim. The other photographs also show perspectives which the jurors might find helpful. And I've already weeded out photographs that I thought were redundant. Those were the photos I found to still be of aid to the Court and the fact finder.

THE COURT: Defendants' objection to State's Exhibit 4 is sustained. Defendants' objection to State's Exhibits 5, 6, 7 and 8 overruled. State's Exhibits 5, 6, 7 and 8 are admitted in evidence.

(Proceedings resumed within the hearing of the jury as follows:)

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Q The person she named actually gave you the name of the victim at the scene, do you see that person in the court room today?

MS. BEIMDIEK: I don't think this witness has any ability to make this identification. This witness isn't able to do that.

THE COURT: Sustained.

Q (By Mr. Hagemeister) Did she tell you where the person who she named lived?

MS. BEIMDIEK: Objection, hearsay.

MR. HAGEMEISTER: Goes to explain his subsequent conduct.

THE COURT: Sustained.

Q Why did you go immediately to the 4200 block of Aldine?

MS. BEIMDIEK: Objection, going to call for hearsay, Your Honor.

THE COURT: And it's repetitious. Sustained.

Q Without telling us what she said were you given information as to where one of the two shooters lived?

MS. MOORE-DYSON: Objection.

MS. BEIMDIEK: Objection; asked and answered.

THE COURT: Sustained.

MR. HAGEMEISTER: Not asked and answered; objected to and sustained on a different form.

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THE COURT: The Court's ruling remains the same. Proceed.

Q Besides a name and two descriptions of their physical appearance did that victim give you any other information about either of those two people without telling us what that information was, without saying what words she said was any other information about where to find him or how to find him given to you?

A Yes.

Q And was it an address, a location, without telling us what the location was?

A Yes.

Q Thank you. And the --

MR. HAGEMEISTER: I have no further questions.

THE COURT: Thank you.

You may inquire.

CROSS-EXAMINATION by Ms. Beimdiek:

Q Officer Strong, the homicide detectives in charge of this case arrived shortly before you or after you?

A I believe after me.

Q After you. And at some point it became -- the scene was relinquished to the control of the homicide detectives?

A Yes.

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Q And the two detectives who were commanding this operation or investigation were Detective Hornak and Detective Pappas?

A I believe so, yes.

Q And you were an assisting officer?

A Yes.

Q Part of your job is to gather what information you can gather?

A Yes.

Q And then provide that information to the detectives who are in charge of the homicide investigation?

A Yes.

Q And did you speak to Detective Hornak about any of the information you gathered?

A Did I speak to him?

Q Yes.

A I believe I did, yes.

Q You did. Did you do that that night?

A I can't recall.

Q Do you know exactly what time it was that you spoke to him?

A No.

Q Did you tell him that you went to an address on Aldine?

A To an address?

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Q Did you tell Detective Hornak that you went to a particular address on Aldine?

A I did not go to a particular address.

Q That you went to a hundred block on Aldine?

A I believe I did.

Q You mentioned that to Detective Hornak?

A I believe I did.

Q You're not certain you told him that information?

A Correct.

Q He was, in fact, the lead detective on the case though, wasn't he?

A Yes.

Q You're not certain you provided him with that information you had?

A No.

MS. BEIMDIEK: Thank you. That's all I have.

THE COURT: Thank you.

You may inquire, Miss Moore-Dyson.

CROSS-EXAMINATION by Ms. Moore-Dyson:

Q Officer Strong, you indicated you reported directly to Detectives Hornak and Pappas with regard to this investigation, is that correct?

A Yes.

Q When you were given any information by the victim, Angela Hickman, did you also give that information to

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Detective Hornak and Pappas?

A I believe I did, yes.

Q Did you give any names or descriptions to Detective Hornak or Pappas?

A I believe I did.

Q You didn't prepare a report for this investigation, did you?

A No.

Q If I were to show you the report that was prepared, it did not contain any information regarding description or names, would that be an accurate report?

A Can you repeat the question, please?

Q If the report prepared by Detective Hornak and Pappas does not contain any description or names with respect to Tyrone Morant, would that be an accurate report?

A I do not know.

Q Okay. Now, you indicated earlier when Mr. Hagemeister questioned you that you were answering the radio, is that correct? Were you at the police station or were you in a car at the time that you heard the radio dispatch?

A I do not recall.

Q Okay. You don't recall if you were at the police station or your car?

A No.

Q At some point you left the police station or --

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and you arrived at the scene, is that correct?

A Correct.

Q There were other officers already there, is that correct?

A Correct.

Q Would it be fair to say there was a state of confusion at that scene?

A A state of confusion?

Q Yes.

A Amongst who?

Q The people there screaming, excited, the officers trying to obtain information, the paramedics trying to do what they had to do with regard to the person injured.

A You say was there confusion?

Q Yes, was there chaos at the scene?

A I will not say chaos, no.

Q It was orderly?

A It was orderly?

Q I'm asking you. Yes.

A I believe so, yes.

Q Was anybody else talking to Angela Hickman or Johnnie Bell at that time?

A No.

Q No one else was talking to them?

A Was not talking to her, no.

Q Where was Angela at the time when you arrived?

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A I believe she was with the officer but the officer was not speaking to her.

Q Was she standing or sitting?

A I believe she was standing.

Q Okay. Now, when you received the information what did you do at that point?

A I went off the air.

Q Okay. What vehicle were you driving in?

A I was in an unmarked police vehicle.

Q What color was it?

A Maroon Skylark.

Q Was it four door or two door?

A Four door.

Q Okay. Now, where exactly was it that you stopped Tyrone Morant and the other young man?

A I believe at North Market and Billups.

Q Would it be fair to say -- could it have been Cote Brilliante and Billups?

A Yes. It was Cote Brilliante.

Q What were they doing when you stopped them?

A Walking.

Q And, when you stopped them did they attempt to run?

A No.

Q Did they appear excited in any way?

A No.

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Q Did they try to hide anything?

A No.

Q Did you tell them why you were stopping them?

A I might have, yes.

Q And you asked them to get into the car?

A Yes.

Q Did you tell them they were under arrest?

A They were not under arrest, no.

Q Were they free to leave?

A Yes.

Q They could have turned around and said, "No, we're not coming with you," and you would have allowed them to leave?

A Yes.

Q You would have allowed Tyrone Morant to leave at that point?

A Yes.

Q Okay. Now, did -- can you tell me what Tyrone was wearing that night?

A No, I cannot.

Q Can you tell me how he looked that night?

A What do you mean?

Q Give me a description of how he looked that night.

A I believe he had curly hair, short or medium length.

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Q Okay. Anything else about him?

A Heavy-set.

Q Uh-hum.

A That's about all.

Q Did you notice his gold teeth at that time?

A His gold tooth?

Q Teeth.

A Teeth, no.

Q You didn't notice he had four gold teeth across the front of his mouth?

A I mean he might have, might not.

Q You spoke to him though, is that correct?

A Yes.

Q Now, he wasn't under arrest at that point and he could have left so he volunteered to go with you, is that correct?

A Correct.

Q Okay. And you took him around to where, on Whittier, is that correct?

A Yes.

Q And you had him stand outside of -- where was it -- he got out of the car and he stood in front of the car, is that correct?

A I believe so, yes.

Q And you pointed lights on him?

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A Yes.

Q What type of vehicle was Angela Hickman in?

A I do not know.

Q You don't know what type of vehicle she was in when they brought her to view Tyrone and the other young man?

A No.

Q Okay. Do you know where she was positioned in that vehicle?

A No.

Q And you put the lights on him, is that correct?

A Lights were put on him, yes.

Q You indicated she picked one of them out, she picked Tyrone out, is that correct?

A Yes.

Q She didn't pick the other man out?

A No.

Q But did you advise Tyrone at that point that he was under arrest?

A I did not, no.

Q You didn't know --

A I did not, no.

Q Okay. Did someone else in your presence advise him of his rights?

A In my presence, no.

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Q Did you -- now, did you let the other young man go?

A No.

Q You took him down to the station as well?

A Correct.

Q Okay. When they arrived at the station did you advise them at that point they were under arrest?

A No.

Q Did you advise them of their rights at that time?

A No.

Q So at that time Tyrone still could have left, is that right?

A Tyrone was not in my presence.

Q But you took him down there, is that right?

A No.

Q Who took him to the station?

A I believe other officers took him down.

Q You didn't take them down?

A I did not take Tyrone down, no.

Q Do you know where Tyrone lives?

A No.

Q Did you ever go to his house?

A I might have went to his house in the past.

Q Did you go to his house on that night, September 18th?

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A I believe no.

Q Okay. Did you go -- did you go in -- on his block to find him?

A I can't recall where he lives.

Q You weren't really specifically looking for Tyrone, were you?

A Yes.

Q You were looking for someone matching a certain description, isn't that correct?

A Yes.

Q So -- 'cause if you were looking for Tyrone you would have gone to his house, isn't that right?

A I don't know where Tyrone lives.

Q You indicated you had some leads but you didn't get that lead, had you, is that right?

A Correct.

Q Now, when at no point -- you stopped him, wasn't doing anything, he didn't do anything suspicious, is that correct?

A Correct.

Q You didn't arrest him for violation of curfew, is that right?

A Correct.

Q So you suspected him and took him to the police station, is that right?

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A I did not take him to the police station.

Q So at the time you picked him up you didn't know he was a suspect, is that right?

A Did I know he was a suspect?

Q Yes.

A No.

MS. MOORE-DYSON: Okay. I have no further questions.

THE COURT: Thank you.

Anything further of this officer?

REDIRECT-EXAMINATION by Mr. Hagemeister:

Q Did you know anybody else from your six years in that district that lived in that neighborhood --

MS. BEIMDIEK: Objection, relevance.

MR. HAGEMEISTER: I'm not --

THE COURT: I'll reserve ruling.

Had you finished the question?

MR. HAGEMEISTER: No.

Q -- that matched the description of being a chubby brown-skinned guy with curly hair that also hung out with the guy by the name given by the victim at the scene?

A I --

MS. BEIMDIEK: Objection, leading now.

THE COURT: Sustained.

Q (By Mr. Hagemeister) Well, did you -- when the

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victim named the name at the scene and named the location where that person lived, were you familiar with who she was talking about?

MS. BEIMDIEK: Objection, leading.

THE COURT: Sustained.

Q Did the person name a name?

MS. BEIMDIEK: Objection; asked and answered.

THE COURT: Sustained.

MR. HAGEMEISTER: Excuse me, Judge.

Q (By Mr. Hagemeister) Did the address -- were you familiar with the house of the person that the victim described?

MS. BEIMDIEK: Objection. The witness has indicated he went to a block, not to a house.

THE COURT: Sustained.

Q Did the victim describe a house or a block?

A She described a block in the general area where the house was.

Q All right. Did you recognize the name she gave you?

A Yes.

MS. BEIMDIEK: Objection; asked and answered.

THE COURT: Sustained. The jury will disregard the witness's last statement.

Q (By Mr. Hagemeister) Did you go to that area

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and look for that person?

MS. ZELMDICK: Objection, asked and answered.

THE COURT: Sustained.

MR. HAGEMEISTER: It's redirect with regard to -- I'll rephrase.

Q This person that she named did you know some of his friends?

MS. DYSON: Objection, Your Honor. Improper redirect. There was no testimony elicited on direct or redirect with regard to other people.

THE COURT: Objection sustained.

Q (By Mr. Hagemeister) Did you know the person that you picked up, Tyrone Morant?

A Yes.

Q Had you ever seen him in your six years?

MS. MOORE-DYSON: Your Honor, objection, as to relevance as to whether or not this officer had ever seen him before, has nothing --

THE COURT: I'll reserve ruling.

Finish your question.

Officer, you're not to answer till the Court rules.

Q (By Mr. Hagemeister) Had you ever seen him during your time in that neighborhood with the person that has the same name as the actual name given to you by the

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victim?

MS. MOORE-DYSON: Objection.

THE COURT: Objection sustained.

Q (By Mr. Hagemeister). When you picked up Mr. Morant at Cote Brilliante and Billups was he carrying a grocery bag or any type of food items?

A No.

MR. HAGEMEISTER: Nothing further.

THE COURT: Thank you.

MS. BEIMDIEK: Nothing further.

MS. DYSON: Nothing further.

THE COURT: May this officer be excused?

MS. DYSON: Yes, Your Honor.

THE COURT: You may stand down, Officer.

oOo

THE COURT: Call your next witness.

MR. HAGEMEISTER: Your Honor, the State has no further witnesses.

THE COURT: Does the State rest?

MR. HAGEMEISTER: State rests.

Ask that all State's exhibits, 1 through 23, be admitted in evidence if they haven't already with the exception of State's Exhibit No. 4, the one that was just not admitted.

MS. BEIMDIEK: I believe the Court's ruled as

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to the admission of those. The same objection as to any others would still apply.

THE COURT: Well, the State at this time will not go over twenty-four exhibits unless counsel requests it because -- has the Court ruled on each and every one of your tenders of State's exhibits, Mr. Hagemeister?

MR. HAGEMEISTER: I believe it has, Judge. I'm just being cautious.

THE COURT: If you request it I'll go over them. Approach the sidebar, get all the exhibits together.

MR. HAGEMEISTER: I request it.

(The following proceedings took place at the bench outside the hearing of the jury:)

MR. HAGEMEISTER: Exhibits 1 and 2 --

THE COURT: State's Exhibits 1, 2 and 3, the Court's recollection is these were offered without objection, is that correct?

MS. BEIMDIEK: Yes.

MS. MOORE-DYSON: Yes.

THE COURT: Admitted.

MR. HAGEMEISTER: Three through 9 admitted. I don't know if you admitted on the record.

THE COURT: Yes, and they are admitted.

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MS. HAGEMEISTER: 9A through 9D.

THE COURT: 9A through 9D?

MS. BEIMDIEK: Objection would be the same as to admission of those pursuant to my motion to suppress ID and I believe the Court has instructed the State to redact portions of those photographs.

THE COURT: My recollection was that I in effect sustained your objections in part, overruled it in part. They were admitted to show the fact that there was an array of four photographs exhibited to the witness by the police and that the State's witness identified one, is that correct?

MR. HAGEMEISTER: Correct.

THE COURT: And the Court at the time of the admission of these indicated that B, C and D were admitted for the clarity of the record to show the photographs that were exhibited and that this Exhibit A is to be viewed by the jury, that A, what the Court believes to be a mug shot, that it will have to be altered in a manner agreed to by counsel.

Anything further with respect to these exhibits?

MS. BEIMDIEK: No.

MS. MOORE-DYSON: No.

MR. HAGEMEISTER: Exhibit 10, the map.

THE COURT: Any objection to 10?

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MS. BEIMDIEK: No, Your Honor.

MS. MOORE-DYSON: No.

THE COURT: Admitted.

MR. HAGEMEISTER: 11 through 13, photographs of the car.

THE COURT: I believe these were previously admitted without objection.

MS. BEIMDIEK: Yes.

THE COURT: Admitted.

MR. HAGEMEISTER: State's Exhibit 14, audio tape of 911 call.

THE COURT: That's already in evidence, been played and I believe --

MS. BEIMDIEK: Yes, Your Honor.

MR. HAGEMEISTER: State's Exhibits 15, 16 and 17, photographs of the street lights.

THE COURT: I believe it's the Court's recollection these were admitted by the Court without objection.

MS. BEIMDIEK: Yes, Your Honor.

THE COURT: 20 and 21, pictures of the two residences on Aldine and 22 --

THE COURT: Admitted without objection.

MS. BEIMDIEK: Yes, Your Honor.

MR. HAGEMEISTER: 22 --

MS. BEIMDIEK: 22 I did have an objection to,

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THE COURT: Let the record show 22 was admitted over defendants' joint objection.

MR. HAGEMEISTER: Defendant's -- State's Exhibit 23.

MS. DYSON: No objection.

THE COURT: Thank you, Mr. Hagemeister. Now, is that --

MR. HAGEMEISTER: Yes.

THE COURT: -- the entirety of the State's exhibits?

MR. HAGEMEISTER: Yes.

THE COURT: All right, thank you.

Anything further at this time?

MS. BEIMDIEK: Yes, Your Honor, at this time I have a motion for judgment of acquittal at the close of the State's case. The State has failed to make a submissible case based on the evidence that's been offered thus far.

MS. MOORE-DYSON: Defendant Tyrone Morant would join in that motion. I will prepare a memorandum later to submit to the Court.

THE COURT: Defendant Carlos Wade's motion for judgment of acquittal at the close of the State's case is overruled.

Defendant Morant's oral motion for judgment of

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acquittal at the close of the State's case is overruled.

MS. SEIMDIEK: Your Honor, I believe I have a couple of witnesses in the hall. I'm not asking for a recess, if I can just have two minutes to run out there.

THE COURT: Yes.

(Proceedings resumed within the hearing of the jury as follows:)

MR. HAGEMEISTER: Can I take this opportunity to publish the photographs?

THE COURT: Yes.

MR. HAGEMEISTER: You want the witnesses -- I'm sorry, the jurors to pass them as they're through with each one individually?

THE COURT: Yes. And in view of the number you might divide them into two groups. Start one at one end and one at the other.

MR. HAGEMEISTER: I'll publish all but State's Exhibits 9A through 9D at this time and ask to publish those at a later time.

THE COURT: Request is granted as to 9A.

(At this time the aforementioned State's exhibits were passed to the jury.)

THE COURT: You may proceed, Miss Seimdiek.

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MS. BEIMDIEK: I believe the jury's looking at exhibits. Maybe we should wait till they're finished.

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DEFENDANT CARLOS WADE'S EVIDENCE

MS. BEIMDIEK: At this time I call Patricia Lane.

PATRICIA LANE, being sworn, testified:

DIRECT-EXAMINATION by Ms. Beimdiek:

Q Officer, will you tell the jury your name, please.

A My name is Officer Patricia Lane.

Q How are you employed?

A At the St. Louis City Police Department.

Q How long have you been employed at the Police Department?

A For almost nineteen years.

Q And, on the evening of September the 17th, 1995, were you in the area of Martin Luther King?

A Yes.

Q And, did you actually get flagged down by a person?

A Yes.

Q Do you know the name of the individual that flagged you down?

A Mrs. Hickman.

Q Was her first name Angela?

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A According to the report it was.

Q Did you refresh your memory this morning with the report?

A Yes.

Q And what steps did you take after you were flagged down by Miss Hickman?

A I jumped out of the car, she was screaming and hollering, and saw what she was directing my attention to.

Q Was that to an individual who appeared to have been shot?

A Yes.

Q Did you make any effort or ask her who had done the shooting?

A Yes.

Q What answer did she give you?

A Well, at that particular time she was gasping for words and appeared hysterical and in a semi-state of shock and she didn't say anything at first and I asked her again.

Q Did you give her a little bit of time to try and calm down?

A A second or two.

Q At some point did she give you an answer to your question about who had shot her nephew?

A Well, she said that some guys were in a car and

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fired shots at the victim and her while they were outside.

Q Was she able to give you the names of any of the people who had done the shooting?

A No, not at the time, no.

Q Was she even able to give you an address of somebody who had done the shooting?

A No.

Q At some point then were your duties directed to other matters in the course of this investigation?

A Yes, to secure the scene.

Q Okay.

MS. BEIMDIEK: Thank you. Nothing further.

CROSS-EXAMINATION by Ms. Moore-Dyson:

Q Officer Lane, you were not there in response to a radio call, were you?

A No.

Q You had not heard this particular incident being radioed across the area yet, had you?

A No.

Q You just happened to be in the area and saw Angela Hickman waving her arms and waving you down, is that correct?

A Well, actually I was responding on another call.

Q Okay.

A And she flagged me down.

Q So at that point you were not aware by way of the

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radio transmission that had -- this had even occurred, is that correct?

A That is correct.

Q Now, while you were there did Officer Strong come to the scene, do you recall?

A Yes.

Q You do recall him being there?

A Vaguely.

Q Okay. Do you know what type of vehicle he came in?

A Marked patrol vehicle I believe.

Q A marked one?

A I believe.

Q Okay. Not sure?

A No.

Q Now, did he -- did you ever see him talking to Angela?

A No.

Q Was he one of the officers who was dealing with the victim and the witnesses in the area -- as far as asking them questions and so forth?

A Yes, he was. I believe he was, yes.

Q Okay. But you never saw him talking directly to Angela, is that correct?

A No, there were too many officers and too many people on the scene. I didn't direct my attention to one

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specific person.

Q Was the scene when you arrived was it chaotic or orderly?

A Extremely chaotic.

Q When you left were -- you were the person who was trying to put some order -- you and maybe a couple of other officers were trying to put some order in there, is that correct?

A Myself.

Q Just you alone?

A Just myself.

Q So when Officer Strong arrived did he assist you in that duty?

A Well, if I'm not mistaken when he arrived there were other officers already on the scene too.

Q Had the scene become more orderly at that point?

A Yes.

Q Okay. How long if you can recall did Officer Strong stay on that scene?

A I don't know.

Q Do you know how long you had been there before he arrived?

A Several minutes.

Q Several minutes. So you were there quite some time, is that correct?

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A Yes.

MS. MOORE-DYSON: Okay. I have nothing further.

CROSS-EXAMINATION by Mr. Hagemeister:

Q When you got there was there still a chance of saving the boy in the street?

MS. MOORE-DYSON: Objection, Your Honor. This witness is not a doctor and could not --

THE COURT: State your legal objection.

MS. MOORE-DYSON: My objection is --

MS. BEIMDIEK: No foundation.

MR. HAGEMEISTER: I'll rephrase the question. With the Court's permission.

THE COURT: Very well.

Q (By Mr. Hagemeister) Did you make attempts to save the boy in the street?

A Yes, by giving directions -- because -- paramedics directions because there was someone already there applying pressure to the wound.

Q Okay. So who was applying pressure to the hole?

A All I know it was a female.

Q Okay. Is this the same female that was gasping for air and hysterical?

A To be honest I really don't know, I don't know.

Q Okay. Well, I guess my question to you is is this person that you say said some guys came by and shot,

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was she sitting there and in an interview room when she told you this?

A No. Oh, no.

Q Where was she?

A She was out standing on the sidewalk walking back and forth and I'm following her asking her who did it just as I asked the other witnesses that were at the scene, and everybody was screaming and hollering and, you know, just gasping for air, trying to put his body back together, the victim's body back together.

Q Okay. So did you ever try to interview her later when she had a chance to catch her breath?

A No. I left that up to the detectives.

Q Okay. So, for all you know would it be fair to say when she finally got a chance to catch her breath she may have -- she may have talked for two hours about it?

A She --

MS. BEIMDIEK: Objection; calling for speculation.

MS. MOORE-DYSON: Objection.

THE COURT: Sustained.

Q (By Mr. Hagemeister) Do you know if she did or not?

MS. BEIMDIEK: Objection, speculation.

A No.

Q Okay. And, in your experience when somebody

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has just been shot down in front of a witness is it sometimes hard to get testimony out of that witness right away?

A From my professional --

MS. BEIMDIEK: Objection.

THE COURT: Sustained.

MR. HAGEMEISTER: I have nothing further.

THE COURT: Thank you.

Anything further?

MS. BEIMDIEK: No, Your Honor.

THE COURT: Thank you, Officer.

May this officer be excused?

MS. MOORE-DYSON: Yes, Your Honor.

THE COURT: You may stand down.

oOo

THE COURT: Call your next witness.

MS. BEIMDIEK: Detective Hornak.

KENNETH HORNAK, being sworn, testified:

DIRECT-EXAMINATION by Ms. Beimdiek:

Q Would you tell the jury your name, please.

A Kenneth Hornak.

Q How are you employed?

A I am a police officer with the St. Louis Metropolitan Police Department.

Q And, what section are you currently assigned to?

A I am an investigator in the homicide division.

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Q Were you assigned to the homicide division on September 17th of 1995?

A Yes, I was.

Q Did you receive a call to respond to a scene in the 4200 block of Martin Luther King?

A Yes, I did.

Q And, did you do that?

A Yes, I did.

Q Now, at some point did you interview an individual by the name of Angela Hickman?

A Yes, I did.

Q And, was this at the scene?

A I believe the interview with her was primarily at the homicide office. I may have talked to her at the scene also. I don't recall.

Q Your interview was at the homicide office after there had been a street identification of another person, is that right?

A That's correct.

Q And, at some point did she tell you that somebody in the car had said the words, "There go those sissy mother fuckers"?

A That's correct.

Q And, do you remember without looking at your report who it was that she said said that or do you need to

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refresh your memory by looking at your report?

A I'd like to review the report if I could.

Q I think it's page 4 of your report.

A Do you know about what paragraph?

Q Right in the middle of the page. (Indicating).

A Oh, okay.

Q Did she tell you who it was that said, "There goes those sissy mother fuckers" or "sissy nigger mother fuckers," I think is the way it is in your report?

A Yes, she did identify an individual.

Q Who did she say said that --

A Tyrone Morant.

Q -- as it is in your report? Did she also describe the shooters in this case leaning out of windows of a car doing the shooting?

A That's correct.

Q And again on the same page of your report -- if you need to refresh your recollection, the second to last paragraph -- did she tell you how they were looking out of the windows, if it was more than one window?

A More than one window.

Q All right. In fact did she say they were both leaning out both of the rear windows of the car or the rear side windows of the car?

A According to the report it indicates the passenger

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front and rear windows.

Q Okay. That's the information she gave you that night at the homicide office?

A Correct.

Q Did you also make a tape recorded interview with her that evening or early morning hours after the shooting happened?

A I believe the tape recorded interview was with Detective Pappas and I don't recall if I was present for that or not.

Q Do you recall her telling you that the car that had been involved in the shooting was a four door car?

A Yes.

Q Now, did you also escort Miss Hickman to the warrant office for the Circuit Attorney's Office during the daytime hours on the 18th of September?

A Yes, I did.

Q And at that time while you were sitting in the warrant office did Miss Hickman mention another car that she believed was involved in the shooting?

A Yes, she did.

Q Was that the first time you had heard about that second car?

A To my recollection, yes, it was.

Q And, did she describe that car?

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A I believe she did. I'd have to reflect to the report for the description.

Q Page 6 and 7, bottom of page 6 and on to page 7 of your report. I'll give you a minute to refresh your memory. Okay. Does that refresh your memory?

A Yes.

Q How did she describe the second car that she said drove by after the shooting?

A In refreshing my memory I recall she described the vehicle as a smaller vehicle having a black shutter on the rear of the vehicle window.

Q Okay. Did she also tell you she thought she had seen Carlos Wade in that car before?

A I believe -- yes, I believe she had.

Q Did you also after you completed the interview with Miss Hickman conduct an interview with Mr. Bell?

A Yes, I did.

Q Did you also ask him to describe the car that was used in the shooting?

A I'd have to go back to the report to see if he gave the description.

Q Page 5, third paragraph down.

A I'm sorry, page 5, third paragraph down?

Q Right, if you're counting that top line as a paragraph, first, second, third.

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A Okay.

Q Did Johnnie Bell describe the car that he said was involved in the shooting?

A Yes.

Q And what description of the car did he give you?

A Large gray four door.

Q Did he also tell you who it was that used the language, "There goes those sissy-assed niggers"?

A I recall him making that statement but I don't recall him naming who -- who identified them as saying that.

Q Did he also tell you that all he saw were muzzle flashes when the shooting started?

A Correct.

Q Now, you made two taped statements with Mr. Bell, is that right?

A That is correct.

Q You made the one several days after the shooting happened?

A Yes.

Q And then you made one in July of 1996 at the request of the Prosecutor's Office?

A Correct.

Q Those were the only two taped statements that you made with him?

A Yes.

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Q Now, on September 20th of 1995, did you have occasion to return a car to an owner in relation to this case?

A Yes. I believe the name was Dancy or Yancy, Eina was the first name I believe.

Q I'm going to show you what's been marked and received as State's Exhibit 12. Do you recognize that?

A Yes, I believe this is the vehicle that was returned.

Q All right. And that was returned three days after the shooting happened?

A That's correct.

Q Now, on July 11th of 1996, we talked a minute ago you made another tape recorded statement with Johnnie Bell, did you not?

A Yes, I did.

Q That was at the request of the Circuit Attorney's Office?

A Correct.

Q And on that tape I believe you asked Mr. Bell to tell you about any other incidents he had been involved in in some shootings?

A Correct.

Q And specifically you covered only three incidents?

A The -- as I recall the question I asked was

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incidents involving the defendants.

Q All right. And he was able to give you some details about three incidents?

A That is correct.

Q He didn't tell you anything about an incident that happened at a Bill's Auto Store on Martin Luther King?

A No, not --

Q Now, I --

A No.

Q -- I want to just briefly ask you about the night of the investigation that was being conducted. Were you, in fact, the lead detective responsible for the preparation of the police report in this case?

A I wouldn't necessarily say lead detective. What I would say I scribed the report.

Q And by scribing it you simply wrote the report that was prepared in connection with this case?

A Correct.

Q And, would your function as the scribe be to gather information from any other officers who may have conducted any investigation in this case?

A Correct.

Q Does your report reflect that a Detective Strong received a last name of a suspect or that he went to a particular address or a block to conduct an investigation in

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this case?

A Not to my recollection.

Q If you had received the information that he had gone to a particular block and had received the name of a suspect would you have included that in your police report?

A Possibly.

Q Well, you're trained at the Academy to write reports, are you not?

A Correct.

Q And, you're trained to include the important details of a case?

A Correct.

Q And, if a witness had given the name of a suspect that would be something you would consider to be important?

A A name of a suspect, yes, that is important.

Q And address or a block where they would live, that would be something you would consider to be important?

A It's important information to the investigation. However, there again I don't -- I don't put every single name -- a lot of police officers --

Q This wasn't an extraneous name, was it? If this was a suspect you wouldn't consider that to be just another name out there?

A If it -- no, but I wouldn't necessarily -- I don't necessarily put every single thing into the report

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is what I'm saying.

Q Do you know if Detective Strong shared any information about his investigation with you?

A I talked to Detective Strong as well as other detectives that night and --

Q And you knew --

A Different ones had different information about possible suspects and so forth.

Q You knew you were the person at that point who was going to be writing the report?

A It would have either been myself or my partner.

Q Detective Pappas?

A Correct.

Q And, so between the two of you it was your responsibility to gather the information that was provided to you and prepare the final report?

A Correct.

MS. BEIMDIEK: Thank you. That's all I have.

THE COURT: Thank you.

You may inquire, Mr. Hagemeister.

CROSS-EXAMINATION by Mr. Hagemeister:

Q Did you or your partner interview Angela yourselves?

A Yes.

Q Did you get all the information that Angela had from her?

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A To the best of my recollection we did, yes.

Q When she told you a name what name did she tell you?

A As far as the first name?

Q Yes.

A Carlos.

Q All right. And she -- did you have an opportunity to have her identify the second person?

A Yes, we did.

Q Okay. And who was that?

A Carlos Wade.

Q The second person -- did she ever identify the second person?

A She made an identification the first night and then she made an identification the second day.

Q Okay. The first night who did she make an identification of?

A That was Mr. Morant.

Q Do you see those two individuals in the courtroom today?

A Yes, I do.

Q Can you tell the Court where they're sitting and what they're wearing.

A Mr. Morant is facing the jury, has on a white shirt. Mr. Wade is facing me and he too has on a white

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shirt.

MR. HAGEMEISTER: May the record reflect the witness has identified Tyrone Morant and Carlos Wade?

THE COURT: The record may so reflect.

Q When a witness gives you a statement it was Carlos and -- has already identified somebody else do you go back and figure out everybody that was at the crime scene and ask everyone of those people whether or not they also heard her say it?

MS. MOORE-DYSON: Objection, Your Honor, relevance.

THE COURT: Sustained.

Q (By Mr. Hagemeister) Well, Miss Beimdiek just asked you if you got that information from Officer Strong. When you -- when you've spoken with a witness yourself would you say, you and your partner have, would you say you got the information firsthand from that witness?

A As far as the name? That was --

Q Whatever information she has.

A Sure.

Q And do you try to do as exhaustive an interview as you can at the time?

A Yeah, it's -- at times it's difficult because of the emotions that some of the witnesses are going through

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then.

Q Okay. When you interview somebody do you go back and check with every single police officer that arrived at the homicide scene to see if any one of them got anything from that witness that you didn't get?

A Yes.

Q And -- did you speak to Officer Lane?

A I spoke to numerous officers that night. I couldn't specifically tell you which specific officers I spoke to that night. I know it was --

Q Let me rephrase the question. If you found out somebody from those officers that you didn't find out in your interview would that be on the report?

A Possibly. It depends on the information.

Q Okay. And what if all ten officers tell you that the witness said the same thing that she told you?

MS. BEIMDIEK: Objection.

THE COURT: Sustained.

Q (By Mr. Hagemeister) Well, is the purpose of the report to write down the name of the guy the witness says did it or is the purpose of the report to write down everybody that was within earshot when that witness said what she said? Do you understand the question?

A Um-hum.

MS. MOORE-DYSON: I object to the question as

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being irrelevant.

MS. MOORE-DYSON: The purpose of the report --

THE COURT: Let the record show the objection will be overruled since this was opened up under direct-examination of this witness.

You may answer, sir, if you understand the question.

THE WITNESS: Thank you.

A I believe I do, sir. The purpose of the report would be to incorporate the name that was given by that witness, not who was standing around at the time when that name was given.

Q (By Mr. Hgemeister) And, in fact when you finally do a report that report is basically a compilation of information given to you from different police officers, correct?

A That is correct.

Q I mean is it written right as those police officers are telling it to you? Do you write out the actual paragraphs with the officers right there?

A No, I do not.

Q How do you do it?

A I -- sometimes I take notes, sometimes it's when I'm in the middle of something else and I try to retain everything that's told to me. But it gets hectic at times.

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Sometimes you do two or three or four different things as part of the investigation; and, no, I don't retain everything.

Q All right. Now, let me ask you this. When the witness describes to you that the front and rear passengers were shooting you weren't there for the shooting, correct?

A No, I was not.

Q If I tell -- when the witness in this case tells you there's a front and rear passenger shooting out the window and you're trying to picture it in your own mind so you can write a report about it, do you picture the back seat passenger shooting up out the front window or do you picture him shooting out of his own window?

MS. MOORE-DYSON: I object to the leading nature of the question.

THE COURT: Sustained.

MR. HAGEMEISTER: It's cross-examination.

Q How do you picture it?

MS. MOORE-DYSON: Your Honor, my objection is the same, still asking the same question.

MS. BEIMDIEK: I think it's irrelevant as to how this officer pictures it.

THE COURT: Sustained.

Q Okay. If a witness tells you that the front and rear passenger were shooting and you have to write a

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report about it you assume that the rear passenger is shooting --

MS. MOORE-DYSON: Your Honor, objection. That is not the evidence that has been adduced.

THE COURT: Counselor, again you're to state your legal objection. The Court will disregard counsel's speaking objection and the Court has not heard the full question.

MS. MOORE-DYSON: The objection is leading.

THE COURT: It's overruled on that ground. This is cross-examination, counselor. Now, let me go back. Restate the question.

Q (By Mr. Hagemeister) My question is is when the witness tells you that both the front passenger side and the rear passenger side were shooting and you weren't there you picture the rear passenger shooting out of a window, correct?

MS. BEIMDIEK: Objection, relevance as to what this officer pictures.

THE COURT: Sustained.

Q Do you sometimes get your report -- you sometimes have a problem understanding what the witness is trying to tell you?

A Sure.

Q Okay. And if a witness tells you both the front

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and rear seat passengers were shooting is it possible you figured it's a --

MS. BEIMDIEK: Objection, speculation.

THE COURT: Sustained.

COURT REPORTER: I didn't hear the last two words of the question.

THE COURT: The Court has sustained the objection, sustained on the basis of speculation. You don't have to have the question.

Q (By Mr. Hagemeister) How much later did you write that report?

A Probably six to seven days later.

Q And in fact by the time you get all of your different information from your different sources the report gets printed up on November 30th in this case, is that correct?

A Yes, it should be indicated.

Q And where is it indicated?

A This is on the upper lefthand corner.

Q Okay. And what is that date?

A November 30, 1995.

Q That would put it two and a half months after the crime?

A On the final copy, yes.

Q And you do some in between drafts?

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A That's correct.

Q The tape you made in July with the witness, Johnnie Bell, what was the purpose of that?

A That --

MS. BEIMDIEK: Objection, relevance.

THE COURT: The question is what is the purpose --

MR. HAGEMEISTER: Of making that tape.

THE COURT: Sustained.

Q (By Mr. Hagemeister) Did you find out about prior instances where Carlos had done things to John Allen and Johnnie Bell before?

A Yes.

Q Okay. Did you ask them about that when you first talked to them?

A I don't recall. I don't.

Q You described Johnnie Bell was co-operative the first time you talked to him?

A On the -- which -- on the first interview?

Q The very first interview?

A He made a brief statement on the first interview.

Q Okay. And then comes back two or three days later and makes a full statement?

A Correct.

Q Okay. And did you ask him to tell you about shootings in the past or did you ask him to tell you about

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anything that he had with those guys in the past?

A I believe I asked him about any type of confrontations including shootings.

Q Okay. Did you actually go to the crime scene?

A On the night of the incident?

Q Yes.

A Yes, I did.

Q Were you able to get an idea of how many shots were actually fired?

A I did not specifically do the scene.

Q And --

A And I do not recall what the estimate of shots fired were.

Q Well, if you refer to your report on page -- bottom of page 2.

A Page 2 of the narrative?

Q Yes. Second from the last paragraph. If you could refresh your memory from that paragraph down -- going on to page 3, four paragraphs down. Would you please tell me how many holes, dents, rifling marks and fragments were recovered on this or were located on this crime scene.

A If I counted this accurately I come up with at least five holes and two rifling indentations.

Q Would that indicate in your experience that

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Q And then there's three that describe everything that they did that night.

A Right.

Q Okay. Does that mean that if it's not in those three sentences in your report that it never happened, that those police officers never did anything besides in these three sentences?

MS. MOORE-DYSON: Objection, Your Honor, relevance and speculative.

THE COURT: Overruled. This was opened up on direct; therefore, the question -- the Court would normally sustain the objection but overrule it at this time.

You may answer.

A No, it does not.

MR. HAGEMEISTER: I have nothing further.

THE COURT: Thank you.

Miss Moore-Dyson.

CROSS-EXAMINATION by Ms. Moore-Dyson:

Q Detective Hornak, you've indicated that you wrote this report, the final report was probably produced in late October or November, is that correct?

A Late November.

Q Late November?

A Yes, ma'am.

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Q Prior to the final report being drafted there were probably several drafts, is that correct?

A Correct.

Q And, when you wrote the first draft you made that from your notes that you made contemporaneously with your investigation at the scene, was that correct?

A Correct.

Q And, subsequently when other officers came to you and gave their reports regarding this same investigation you also made notes at that point, is that correct?

A On some of the information, that's correct.

Q And you made sure that you took whatever information you believed to be important to the investigation, is that correct?

A Correct.

Q Now, when you wrote in your report that the victim described a four-door vehicle was that information that you had gotten from the victim and/or the other officers?

A I believe that information came from the victim.

Q Okay. And when you wrote in your report that the victim said that the shooters were hanging out of the front and the back windows that information came directly from the victim, is that correct?

A That's correct.

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Q That was not something that you believed based upon information she had given you, is that correct?

A That was information that would have been relayed to me from the victim's statements.

Q Okay. Now, also when you were later told that there was a second car that drove around, is that right?

A Yes, that's correct.

Q And they indicated that was a smaller car, the victim Hickman indicated that that was a smaller car, is that right?

A That's correct.

Q And she indicated that car had plastic louvers of some type on the back of that vehicle, is that correct?

A Correct. I believe the word she used was shutters.

Q Did the victim indicate anyone from that vehicle shot from the car?

A No, she did not.

Q In fact that car just drove around, is that right?

A It drove past, correct.

Q There was no action or statements or anything that came from that particular vehicle, is that correct?

A Not that I recall being told.

Q Now, does that match the description of the second vehicle that she described?

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THE COURT: For the record what have you handed the witness?

MS. MOORE-DYSON: The witness has been handed State's Exhibit 12.

A Yes, this -- yes, ma'am.

Q Does not match the description of the vehicle where the -- that the victim described the shooters shot from, is that correct?

A That's correct.

Q Now, when you talked to Johnnie Bell you talked to Johnnie Bell -- did you talk to him at the scene?

A There again I may have briefly spoke to him at the scene and I spoke with him at the homicide office.

Q And, when you spoke to him at the homicide office did he identify anyone at all?

A No, he did not.

Q And, did you conduct a lineup?

A On what occasion?

Q Ever.

A An actual lineup, physical lineup, no.

Q And when -- on page 3 of your report, those statements that are attributed to Officer Strong, doesn't it indicate there that he was patrolling the area?

A Yes.

Q And that he saw two people standing there,

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is that correct?

A Yes.

Q Doesn't indicate he was looking for anybody in particular, does it?

A No, it does not.

MR. HAGEMEISTER: Judge, I object, misstating what it says in the report.

MS. MOORE-DYSON: The officer's answered the question.

THE COURT: No comment necessary, counselor. Let the record show the objection is not timely made, therefore, overruled.

Let's move on.

Q (By Ms. Moore-Dyson) Detective Hornak, did you finally read -- let -- advise Tyrone Morant he was under arrest?

A Yes, he was.

Q Okay. Was that you who told him that?

A I believe it was either myself or Detective Pappas.

Q When he first arrived at the police station he was not under arrest?

A At the time that myself and Detective Pappas interviewed him I know we informed him he was being charged. I don't recall who placed him under arrest at the

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scene.

Q Okay. And did you read him his rights finally?

A Yes, he was advised of his rights at the homicide office.

Q Do you know whether or not in the entire investigation whether you or any of the other officers ever went to his home on Cote Brilliante in the 4200 block of Cote Brilliante?

A I know I didn't. I don't believe my partner at that time, Detective Pappas, did. As far as any other officers I'm not aware.

Q Did Tyrone Morant make any statement to you?

THE COURT: Just a moment. Approach the bench.

(The following proceedings took place at the bench outside the hearing of the jury:)

THE COURT: Now, before we proceed further along this line the Court would like to know, counselor, what do you anticipate the witness's answer to be?

MS. MOORE-DYSON: That he made a statement that he didn't know anything about this incident.

MR. HAGEMEISTER: What's your foundation for that? What's your basis for that?

MS. MOORE-DYSON: The police report indicates the witness said that.

THE COURT: Let's proceed.

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(Proceedings resumed within the hearing of the jury as follows:)

MS. MOORE-DYSON: I'll withdraw that question and ask a more specific question.

Q (By Ms. Moore-Dyson) Did you ever speak with Miss -- Mrs. Hattie Morant?

A Not that I recall.

Q Did you ever go to her home -- do you recall whether or not she called while Tyrone was in the interrogation room?

A I do not recall speaking with her.

Q Did you ever go to her home or to investigate to see whether or not there was any evidence, any physical evidence that might have been related to this incident?

A I did not, no.

Q Do you know whether or not -- where Tyrone was arrested is less than half a block from his home?

A No, I do not.

Q You indicated that Angela told you that it was Tyrone who said "sissy mother fuckers" and he was sitting in the front seat, is that correct?

A If that's what the report reflected.

Q Page 4.

A Paragraph, ma'am?

Q Third paragraph, toward the end of that paragraph.

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I correct -- says and the front seat passenger --

THE COURT: Please restate your question. I don't understand your question.

Q (By Ms. Moore-Dyson) The witness, Angela, indicated that it was Tyrone who stated sissy nigger mother fuckers, is that correct?

A It --

THE COURT: Just a moment. Your objection, counselor?

MR. HAGEMEISTER: No, that's fine.

THE COURT: Very well. The answer may stand.

Q Had she indicated to you before that she knew Tyrone at all?

A I don't recall.

Q Okay. But she told you that night, early that morning, that the -- that that was Tyrone that said that, is that correct?

A That's what's reflected in the report.

Q Now, in your entire report is there a description given that's attributable to Angela Hickman, is there any place in that report where she indicates any type of description of Tyrone Morant?

A I know she did give me a description. I recall the description but I don't know if it's indicated in the report.

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Q Okay. Now, what description did she give?

A She described him as having a large Afro and being very large in weight.

Q Did she tell you anything about any gold teeth in his mouth?

A I don't recall that -- I'd have to reflect back to the statement.

Q Did she give you that description at the scene or at the police station?

A I believe that was at the homicide office.

Q At the office?

A Correct.

Q This is after she's seen Tyrone at -- on Whittier, is that correct?

A Correct.

Q Now, the number of holes that Officer -- that -- Mr. Hagemeister asked how many holes you saw. There were quite a few, is that correct?

A Yeah, as I indicated I did not do the specific scene and go back and count specific holes but I'm just going by what is in the report.

Q Was there ever a determination as to how many guns were used?

A Not that I know of.

Q Don't know whether or not it was one or two or

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three, is that correct?

A That's correct.

Q Do you know what types of guns they were?

A If -- it would be indicated if there were any projectile or shell casings recovered at the scene.

Q Do you know were the gunshots distributed along a certain area?

A Yes.

Q Were they at a particular height?

A It's probably indicated in the report.

Q Okay.

A As far as the holes, where the holes are.

Q Was there anything about the physical evidence that you retrieved from the scene, from this vehicle, that would lead you to -- that was -- that can be specifically identified or attributed to either -- to Tyrone Morant? Did you find any fingerprints relative to Tyrone Morant?

A No, we did not.

Q Did you find anything that would lead -- any clothing or anything that would lead you to believe that Tyrone was even at that scene that night?

A As far as physical evidence, no.

MS. MORE-DYSON: I have nothing further.

THE COURT: Thank you.

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Anything further of this witness?

MS. BEIMDIEK: Briefly, Your Honor.

REDIRECT-EXAMINATION by Ms. Beimdiek:

Q When you interviewed Angela Hickman that night --

MR. HAGEMEISTER: I don't know what order you want us to go. I don't want you to say I didn't speak up. Is it my turn now or her turn?

THE COURT: No, I believe you cross-examined the witness after Miss Beimdiek, cross-examination followed by Miss Moore-Dyson; and, now this is redirect by Defendant Wade. Is that correct, counselor?

MS. BEIMDIEK: My understanding, Your Honor.

MR. HAGEMEISTER: I agree.

Q (By Ms. Beimdiek) When you interviewed Miss Hickman at the homicide office she was unable to give the last name of the suspect she named as Carlos, is that correct?

A That is correct.

Q This is sometime around two o'clock in the morning at the homicide office?

A Correct.

Q And, in fact, Carlos Wade wasn't arrested until sometime after five o'clock in the afternoon on the 18th of September, is that right?

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A Would have been -- we interviewed her at 2:00 a.m. I believe he would have been arrested that day at 5:00 p.m.

Q Five o'clock, much later that afternoon?

A Much later that day, correct.

MS. BEIMDIEK: Thank you. Nothing further.

THE COURT: Thank you.

RECROSS-EXAMINATION by Mr. Hagemeister:

Q On page 4 Miss Moore-Dyson brought to your attention the statement by Angela regarding Tyrone Morant saying the comment and she said something about whether or not Angela placed Tyrone in the front seat. What is the next sentence after that sentence -- what does that state the witness said?

MS. BEIMDIEK: I'm not clear as to the question.

MR. HAGEMEISTER: She -- I'll rephrase.

THE COURT: Not necessary. He's in effect asking the witness to complete the statement allegedly made by the witness, Angela Hickman, is that correct?

MR. HAGEMEISTER: Yes, sir.

MS. BEIMDIEK: I object as to hearsay and I don't think being offered as impeachment so I don't think it's permissible.

MR. HAGEMEISTER: Prior consistent statement.

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THE COURT: Step down, Officer. Step out. You may step down.

I'll hear counsel during recess. We'll have a recess at this time.

Ladies and Gentlemen of the Jury, we'll have our morning recess.

(At this time the Court read MAI-CR3d 300.04(2) to the jury.)

We'll be in morning recess.

Counsel, approach the bench.

(The following proceedings took place at the bench after the jury had left the courtroom:)

THE COURT: May I see the report which the officer testified previously refreshed his recollection.

What sentence do you have reference to, Mr. Hagemeister?

MR. HAGEMEISTER: Well, she said, "Didn't Angela Hickman identify Tyrone as being in the front seat and I said, "Objection, misstating the evidence," and then she went in and started asking the questions; and, I don't think it was made clear that Angela never said at that point that Carlos was --

THE COURT: I still don't know what you're

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referring to.

MR. HAGEMEISTER: Right here, "And the front seat passenger who Hickman identified as Carlos, no further, began shooting at the victim." She tried to use that paragraph to imply that Miss Hickman had stated that Tyrone was in the front seat. I'm clearing it up --

MS. MOORE-DYSON: Your Honor, when I went back and I read it I read it in its entirety, said, "and the person in the back seat."

MR. HAGEMEISTER: I don't believe when she said -- after I made the objection she said something to the jury along the lines that's just Tyrone, and; and everyone sitting there with the report understood what she was saying but I don't think the jury understood what she was saying.

MS. MOORE-DYSON: I read the entire after that -- as a matter of fact he even withdrew the objection, I believe he did.

THE COURT: Let the record show so we know where we are -- the police officer did indicate that the report had refreshed his recollection and we're dealing with the last sentence in paragraph four on page 4 of the report. Now, let me read it in its entirety and understand where you're coming from.

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"The vehicle abruptly -- traveling east on Dr. Martin L. King the vehicle abruptly stopped directly in front of her and the subject identified as Tyrone M. stated, 'sissy',"etc., "at which time Tyrone M. and the front seat passenger who Hickman identified as Carlos, no further, began shooting at the victim." Now, where are we?

MR. HAGEMEISTER: Miss Moore-Dyson asked Detective Hornak, "Didn't Angela tell you that Tyrone was in the front seat?" I objected as misstating the police report.

THE COURT: Where is there anything about the front seat?

MR. HAGEMEISTER: There isn't. That was her question of the detective. She said, "Didn't she say that Tyrone was in the front seat?" I did an objection. She looked at it again and realized that she'd misread it. I'm not alleging bad faith; I'm just saying she realized she misread it when she said -- she looked at it, said that says Tyrone and the front and that's all I got out of her as an explanation to the jury after having impeached my witness with the earlier leading question on cross-examination which was, "Didn't she say that Tyrone was in the front seat?" She never backed

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off and said, "Now that I read it it really does say Carlos was in the front seat; I misstated that last question," and made it look like she said Tyrone was --

MS. MOORE-DYSON: The question I was asking was not to even deal with the positioning of the persons but what was said and said by whom. When I read it and then I reread it -- as a matter of fact he withdrew his objection at that time. I reread it where it indicated not that Tyrone was in the front seat but Tyrone and the front seat driver. I read it in its entirety.

THE COURT: That's correct.

MS. MOORE-DYSON: My purpose was that she said that Tyrone had said something.

THE COURT: And the objection is as to the re-reading of the same sentence.

MS. BEIMDIEK: Yes, Your Honor.

THE COURT: Or sentences.

Objection will be sustained.

You may, Mr. Hagemeister, in view of the fact that there's been some confusion, and you're correct, Miss Moore-Dyson did reread the portion and the second reading was not exactly the same as the first, direct your question to the officer again

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as to what statement was made.

MR. HAGEMEISTER: That's all I was trying to do.

THE COURT: But you were referring to the police report.

MR. HAGEMEISTER: Okay. Thank you.

THE COURT: And that's already been read, pertinent part.

oOo

(Subsequent to the recess the following proceedings took place:)

THE COURT: Mr. Hornak, will you retake the stand, sir.

You may proceed, Mr. Hagemeister.

DETECTIVE KENNETH HORNAK (Recross-examination by Mr. Hagemeister continued:)

Q Mr. Hornak, I want to ask you on page 4, the fourth paragraph, and the statement made and the very next sentence in that paragraph do you not state that Angela Hickman told you that"at which time Tyrone M. and the front seat passenger whom Hickman identified as Carlos, no further, began shooting at the victim?" Is that the statement you put in the report?

A Yes, it is.

Q That was the sentence right after the sentence she asked you about?

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A Correct.

Q When you say "Carlos , no further," what does that mean?

A No further as far as description.

Q No further as far as last name or no further as far as description?

MS. MOORE-DYSON: Objection, Your Honor. The question has been answered.

THE COURT: Overruled. You may answer.

Q (By Mr. Hagemeister) "Carlos, no further" as in name or "Carlos, no further," as in description?

A It could be interpreted either way, both --

Q Did she tell you which Carlos she was talking about at any point?

A She's referring to the Carlos that she was -- had told me about or Detective Pappas.

Q Okay. Did she tell you where that person lived?

A No, she did not.

Q Did she ever tell you on the evening in question about him living across the street from her?

MS. BEIMDIEK: Object. Asked and answered.

THE COURT: Sustained.

Q Did you ever find out about him living across the street from her?

A Yes, we did.

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Q How did you find that out?

A Through her.

Q And when -- did you ever go to that location or did anybody ever get sent to that location to look for him or how did it come about that he was arrested?

MS. BEIMDIEK: Objection, compound question.

MR. HAGEMEISTER: I'll rephrase.

Q How did Carlos get arrested?

A He was seen over near or on the Aldine location by the witness.

Q And how did she come to be at that Aldine location?

A She was with officers, detectives, in an under-cover vehicle. We were attempting to locate the vehicles or suspects that was involved in this investigation and she was being driven around the neighborhood pointing out locations where these subjects hang out.

Q Okay. So was it her directing where the van went or was it somebody else?

A It was her.

Q Okay. And did she ever find that subject when she went around in the van?

A Yes, she did.

Q Did she spot the car when she was in the van?

MS. BEIMDIEK: Objection unless this witness was present. I don't know whether he was or not.

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I think that needs to be established. Lack of foundation.

THE COURT: Sustained.

Q Refer you to your report on page 8 and going into page 9. Does she identify Carlos and the car --

MS. BEIMDIEK: Your Honor, again I renew my objection. This is hearsay unless this witness was present.

THE COURT: Sustained.

MR. HAGEMEISTER: The defense attorney asked him questions off of the report. I'm merely doing the same thing.

THE COURT: The Court's ruling remains the same.

Q (By Mr. Hagemeister) Did your office get photographs of the car she identified as being the car involved in the shooting?

A Yes, we did.

MR. HAGEMEISTER: May I approach the witness?

THE COURT: Yes.

Q Are those the cars referred to in those reports?

A Yes.

Q That's State's Exhibits 11 and 12. Thank you. At the crime scene were any shells recovered out in the street?

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A I'd have to reflect back to the report to see.

Q Would you please.

A The only thing I see is a copper jacket of a projectile.

Q That would be a fragment of the actual bullet?

A Correct.

Q What's the difference between a shell and a bullet?

A Shell casing is what contains the bullet.

Q Okay. If you shoot a bullet out of a revolver what happens to the shell casing?

A It remains inside the weapon.

Q Okay. If I reach out and I shoot at somebody outside of a car with a revolver does the shell casing get left at the scene?

MS. BEIMDIEK: Objection, relevance, Your Honor.

THE COURT: Did you say "if"?

MR. HAGEMEISTER: When.

THE COURT: I believe you did. The objection will be sustained.

Q (By Mr. Hagemeister) When a person shoots somebody with a revolver does the gun eject the shell that used to have the bullet in it?

A No, it does not.

Q Okay. In your experience when revolvers have -- revolvers have how many cylinders?

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A Six.

Q And if there were seven shots fired plus a shot that went -- were you including the shot that killed the victim?

A No, I was not.

Q Okay. So that would make eight, correct?

A Correct.

Q And you might have eight bullets in a gun if it's a semi-automatic, is that a fair statement?

MS. BEIMDIEK: Objection, speculation.

THE COURT: Sustained.

Q Do you have a semi-automatic?

A I do.

Q Can it fire more than six shots?

MS. BEIMDIEK: Objection, relevance as to what his weapon can do.

THE COURT: Sustained.

Q (By Mr. Hagemeister) If a person is shooting a semi-automatic out of a car would those shells be left at the scene?

A Could be.

Q Unless they bounce back into the car, all of them?

A Correct.

Q Okay. So if you don't find any shells at the scene what conclusion do you make of that?

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MS. MOORE-DYSON: Objection, Your HOnor, speculation.

THE COURT: Sustained.

Q (By Mr. Hagemeister). Okay. When you handled this case you had -- it was your original report, correct, or your -- you did the main report?

A Yes.

Q If anybody was ever to have a problem or come forward with witnesses who would they be referred to?

A Myself.

Q Did anybody ever come forward later with a -- as a witness or saying that they -- that they were with either of these two subjects?

MS. BEIMDIEK: Judge, I object, this calls for hearsay.

THE COURT: Sustained.

Q (By Mr. Hagemeister). Did you ever speak to anybody who was a witness that wasn't listed in the report?

A No, I did not.

Q Okay. And, finally, did -- when you have a person that's arrested you allow them to make phone calls, correct?

MS. MOORE-DYSON: Objection, Your Honor, relevance.

THE COURT: Sustained.

MR. HAGEMEISTER: Goes to the opening statement, Judge.

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THE COURT: The Court's ruling remains the same. Move on.

Q (By Mr. Hagemeister) Do you have pay phones or regular phones in your office?

MS. BEIMDIEK: Objection, relevance.

MS. MOORE-DYSON: Objection.

THE COURT: Sustained.

MR. HAGEMEISTER: Nothing further.

THE COURT: Thank you.

You may inquire, Miss Moore-Dyson, if you have anything further.

MS. MOORE-DYSON: Just one question.

RECROSS-EXAMINATION by Ms. Moore-Dyson:

Q There was no determination as to what type of gun was used that night, was there?

A Not that I'm aware of.

Q Okay. So you have no idea how many, what type of, according to this report, is that correct?

A Yes, ma'am.

Q There were no bullets, casings or anything that even indicated that a gun had been used from this vehicle, State's Exhibits 11, 12 and 13, found in that vehicle the next day, was there?

A Not that I'm aware of.

Q And -- but the witness, Angela Hickman, did say

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that that was the vehicle that was -- that the shooting took -- that the shooters used, is that correct?

A I'd have to reflect back to the report if you don't mind. You're talking about when she identified the vehicle?

Q Right. Did she later say --

THE COURT: Just a moment, counselor. The witness is attempting to answer your question.

A Okay, I found it, page 9 in the middle of the page.

Q Is that the vehicle she said was used?

A Yes, it is.

Q Originally, however, that doesn't match the description of the one she said was used, does it?

A Does not.

Q And -- okay.

MS. MOORE-DYSON: I have nothing further of this witness.

THE COURT: Anything further?

MS. BEIMDIEK: No, Your Honor.

MR. HAGEMEISTER: No, Your Honor.

THE COURT: May the officer be excused?

MS. BEIMDIEK: Yes, sir.

MR. HAGEMEISTER: Yes, sir.

THE COURT: You may step down.

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THE COURT: You may call your next witness.

MS. BEIMDIEK: Thank you. Sandy LaRose.

SANDRA LaROSE, being sworn, testified:

DIRECT-EXAMINATION by Ms. Beimdiek:

Q Would you tell the jury your name, please.

A Sandra LaRose.

Q How are you employed?

A As a free lance court reporter.

Q Okay. And, are you a certified court reporter?

A Yes, I am.

MR. HAGEMEISTER: I'll stipulate to her qualifications.

THE COURT: Is the stipulation accepted?

MS. BEIMDIEK: With one additional question, Your Honor.

THE COURT: Very well.

Q For how many years have you been working as a certified court reporter?

A Nineteen years.

Q Did I hire you to take some depositions in a matter that we conducted depositions on on August 6th of 1996?

A Yes, you did.

Q Did we conduct depositions of Angela Hickman and Johnnie Bell?

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A Yes.

Q Very briefly can you describe how a court reporter transcribes a deposition. As briefly as you can. I know it's complicated.

A Okay. Everything is pretty computerized now. There's a disk in the machine that we write with. Take the disk, put it into the computer. It does a translation. We, however, have to run through it because computers don't think and make sure that everything was done right, key in proper names and things like that, proofread it, print it.

Q Are you required to take down word for word the testimony given at a deposition?

A Yes.

Q And, is that part of an oath that you take as a certified court reporter?

A Yes.

Q Now, I asked you over the weekend I think to look at the deposition of Angela Hickman. Did you do that at my request?

A Yes, I did.

Q I specifically asked you to look for any time that I interrupted her or did not allow her to give a full and a complete answer and did you review the deposition and find any instances where there -- where that might have happened?

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A Yes, I did.

Q Were you able to find any instances where I cut her off and did not let her actually -- fully answer a question?

A No, it appeared to be that everytime there was an interruption by you it was maybe for a clarification or just trailing off of an answer or indicating on a diagram that you were working with.

Q Okay. Now I want to refer you specifically to that deposition, page 36, and beginning at line 14 on page 36 would you please read the question that I asked and then the answer given by Ms. Hickman. And, if we could back up this was in context of talking about an identification made at or near the scene.

MR. HAGEMEISTER: Page 36, what line?

MS. BEIMDIEK: Beginning at line 14.

A "Q So, that was the first -- after they had Tyrone the first time you named Carlos was at that time?

"A Yes."

Should I continue?

MS. BEIMDIEK: That's fine for now.

MR. HAGEMEISTER: Objection, she's only read one-tenth --

MS. BEIMDIEK: I'll be happy to have her read the entire answer.

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Q You can go -- read the entire answer.

A "Because they was talking to me then but they wouldn't talk to me at first. They seen that I was real upset. When I seen the car go past I told them that that was one of the cars they always drive in."

Q Thank you.

Now, I want to ask you about the deposition of Johnnie Bell which we also conducted on that day. Do you have a copy of that as well?

A Yes, I do.

Q And I refer you to page 37, line 24, of that deposition. I'm sorry, line 21.

A Okay.

Q Beginning at line 23. I'm sorry, jumping around here. Would you read the question that I asked of Johnnie Bell and the answer that he gave at line 23 and line 24.

A "Q Who was smoking?

"A I was smoking, John and Angela."

Q Now I'll ask you to turn to page 39 and read the question appearing at line 5, the answer at 6, question at 7, answer at line 8, so 5 through 8, please.

A "Q Who had the blunts?

"A Angela.

"Q She brought them with her?

"A Yeah."

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Q Now I'd like to have you look at page 47 of that deposition. Beginning at line 3 and will you read through line 9, please.

A "Q What were the little words exactly that you remember that they said?

"A 'There they go --' I think they said, 'There they go right there, there go them sissy mother fuckers.'"

"Q Do you know who said that?

"A Tyrone said that."

Q Thank you. And, finally, if you'll look at page 84 of that deposition and this is at line 5 reading through the answer to line 7.

A "Q Angela told you that Tyrone was the person in the front seat?

"A Yeah. She said she knew him."

Q Thank you. Now, after you actually transcribed these depositions -- on -- on August 6th at my request did I contact you to advise you about how to prepare the contents of this deposition or any changes or comments I wanted youto insert in the deposition?

A No.

Q Would that be proper?

A No.

Q Would you do it if I asked you to?

A No.

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Q I'm going to hand you what I have marked as Defendant's Exhibit H.

MS. BEIMDIEK: Judge, did you want to see it?

THE COURT: No.

Q And could you tell me what that is.

A It's a copy of the letter I sent to the Circuit Attorney's Office, Mr. Hagemeister.

Q And what is the date of that letter?

A August 15th of 1996.

Q And --

MR. HAGEMEISTER: I'll stipulate to the letter.

Q (By Ms. Beimdiek) Why did you send that letter to Mr. Hagemeister?

A To advise him that the depositions were prepared and I needed his clients to contact me so that they could review their depositions and make any corrections that they felt necessary.

Q Now, I think we indicated we took the deposition on August 6th of 1995 and you sent that letter on August 15th of '96 -- I'm sorry -- we took the deposition on August 6th of 1996 and you sent that letter on August 15th of 1996?

A That's correct.

Q Were you ever contacted either by Mr. Hagemeister or by Johnnie Bell or by Angela Hickman?

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A No.

Q Thank you.

MS. BEIMDIEK: Your Honor, at this time I move the admission of Defendant's Exhibit H.

MR. HAGEMEISTER: Not opposed.

THE COURT: Then this is Defendant Wade's Exhibit what?

MS. BEIMDIEK: H.

THE COURT: Admitted.

MS. BEIMDIEK: I have no further questions.

THE COURT: Thank you.

You may inquire, Mr. Hagemeister.

CROSS-EXAMINATION by Mr. Hagemeister:

Q Do you have original drafts of those two depositions?

A They're not the originals, they're the copies I ran for the witnesses to read for their signature.

MR. HAGEMEISTER: All right. May I approach?

THE COURT: Yes.

Q I'm going to mark the copy of -- both of them in one?

A No.

Q This is STate's Exhibit 24; this would be Johnnie Bell. State's Exhibit 25 would be Angela Hickman. Is that correct?

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A Yes.

MS. BEIMDIEK: Your Honor, may we approach?

THE COURT: Very well.

(The following proceedings took place at the bench outside the hearing of the jury:)

MS. BEIMDIEK: Your Honor, I anticipate that the State is going to in the presence of the jury move for the admission of these depositions. I don't want that done at thistime because I don't want to have to make an objection in front of the jury. I think it's improper. I think there's lots and lots of information contained in those depositions that has been ruled --

THE COURT: Is that the purpose?

MR. HAGEMEISTER: Your Honor, the defense attorney has opened the door with the question about whether or not she's interrupted the witnesses. I believe it's up to the jury to determine if it was interrupting to clarify or interrupting because she didn't like the answer that was being given.

MS. BEIMDIEK: Well, if I may, Your Honor? I asked this witness to run her computer. She uses a system, dash, dash, to reflect interruption. If that's the question she's able to go through each and every one of those with him. She has her notes with

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respect to that. I don't have any problem with his doing that but there's certainly no reason to introduce the entire deposition.

MR. HAGEMEISTER: Well, Judge, the dash may have been the court reporter's indication that they were stopped in mid-word or mid-sentence; but, there are plenty of places where a sentence isn't finished and it's possible for the jury to look at it and say there was more than that would have been said there but --

THE COURT: Let the record show that the depositions of the State's witnesses, Angela Hickman and Johnnie Bell, have been filed in this court, were filed in this court on August 15, 1996. Your objection is premature, Miss Beimdiek. The witness identified the depositions you had marked. Have the other marked and if you're going to offer them I'll make a ruling on the admissibility.

MS. BEIMDIEK: Thank you, Judge.

THE COURT: Do that now.

MR. HAGEMEISTER: I've already marked the other one.

(Proceedings resumed within the hearing of the jury as follows:)

THE COURT: Will you bring them here.

(The following proceedings took place at the bench

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outside the hearing of the jury as follows:)

THE COURT: The -- is the State offering Exhibits 24 and 25 at this time?

MR. HAGEMEISTER: Yes, Your Honor.

THE COURT: Your objections?

MS. BEIMDIEK: They contain hearsay. In their totality they're not admissible. If the State feels there are areas where I did in fact interrupt a witness then I think the State is entitled to find those portions in the transcripts and ask the court reporter about those and read those portions. However, to allow the entire deposition into evidence when it contains lots of hearsay, matters that have been ruled inadmissible, I think it's improper, denies my client due process rights and right to a fair trial.

MS. MOORE-DYSON: Your Honor, I join her with respect to issues regarding those items that the court reporter was questioned about and that was simply interruptions and -- with regard to certain incidents. I also believe that certain information that is hearsay and would not be admissible pursuant to the Court's prior rulings.

MR. HAGEMEISTER: It's not the State that has been bringing up the two depositions throughout the

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trial; it's the defense attorneys that have. I would ask that they be admitted because of the fact that there have been many places where the defense attorneys have asked questions out of context and providing the entire deposition would allow the jury to have a context in which to read the different questions and the cross-examination questions that were asked from those instead of just taking out one sentence and that has nothing to do with maybe that portion as happened in cross-examination.

MS. MOORE-DYSON: Your Honor, I believe --

THE COURT: That's enough. Unless -- are you going to repeat something further or is this something new?

MS. MOORE-DYSON: No, I'm not going to repeat anything else.

THE COURT: If you have anything additional go ahead.

MS. MOORE-DYSON: I was basically saying he has had ample opportunity to direct a question and clarify those things and I think he has --

THE COURT: Let the record show the Court has made a cursory examination of State's Exhibits 24 and 25 with the deposition of the subject witnesses filed with this Court. The only difference the Court

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is able to discern is that in each of the depositions filed with the Court there's one additional page relating to deposition costs. Accordingly the State's -- the defendants' objections are sustained. The offer of State's Exhibits 24 and 25 is denied.

MS. BEIMDIEK: Thank you, Your Honor.

THE COURT: Thank you.

(Proceedings resumed within the hearing of the jury as follows:)

Q (By Mr. Hagemeister) I'm going to ask you to pick up the deposition for Angela Hickman. I believe that's the one with 25 on the top. Page 14, line 25. There's an answer there, "No, when it pulled up I seen the lights come on but they wasn't --" is that sentence finished?

A No, it isn't.

Q Why isn't it finished?

A The witness quit speaking.

Q It's not because a question was asked by the defense attorney?

A It could have been in that place. I'm sorry, I must have missed this one.

Q I mean I'm just -- I'm not going through the whole thing, first one I found.

A Okay.

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Q Is that an interruption?

A It could be.

Q Could she have been ready to say ten important things right there?

MS. BEIMDIEK: Objection, calls for speculation.

THE COURT: Sustained. Sustained to what she may have intended to say.

Q Go to page -- are you saying there's only interruption where there's a dash? Page 29. Line 2.

A No, I'm not -- I'm sorry, I didn't mean to say that if that's what I said. If a witness changes their thought in the middle of a sentence and just speaks a phrase and then changes their mind or trying to explain themselves kind of like I'm doing now --

Q So you really don't know if the person was going to say another two sentences on any one of these single questions, do you? Let me ask you just so I understand what you're saying. If somebody asks me if this sky is blue and I say, well, I think the sky is blue and I'm thinking and I'm about to say but sometimes it's pink and sometimes it's orange and sometimes it's gray but I don't get any of that out because the defense attorney then asks another question --

MS. BEIMDIEK: Sorry to interrupt. It's a lengthy question. I was trying to wait till the end

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but it is clearly calling for speculation on the part of this witness.

MR. HAGEMEISTER: Goes to her definition of an interruption.

THE COURT: Overruled. Miss Beimdiek, since you brought this up on direct I'll permit the answer.

Do you understand the question?

THE WITNESS: I'm not sure I do.

Q (By Mr. Hagemeister) If I say one sentence and then I'm looking because I'm pausing because I'm thinking because I want to say the right answer, be truthful, and before I can do that even though I finished that last sentence but before I can add to it another is -- another question is asked, by your definition your machine wouldn't pick that up as an interruption, would it?

A If you had started to speak I wouldn't have any idea if you were going to add anything else.

Q Well, so, on every single one of these answers where maybe she ended with one sentence do you know if she was going to say another sentence before the next question came up?

A I wouldn't have any way to know that. If she didn't start speaking I would have no way to know that.

Q Okay. At the end of every question she didn't

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say, "Is your answer complete?"

A No, not at the end of every question.

Q Because people don't do that, do they?

THE COURT: Approach the bench.

(The following proceedings took place at the bench outside the hearing of the jury:)

THE COURT: Let the record show that Miss Beimdiek as attorney for Defendant Wade was permitted in view of the testimony of the State's witness, Johnnie Bell, that the -- that Miss Beimdiek interrupted him during the course of the deposition by Ms. Beimdiek, to ask certain questions of the court reporter's recollection, having viewed the -- having reviewed the transcript as to interruption, and she expressed an opinion without objection as to what she felt were an absence of interruption; and, I feel the Court has allowed the defendant sufficient time to -- and -- to cross-examine with respect to this question and we're now getting into repetitive answers so I'll just ask you to move along so we can get the trial --

MR. HAGEMEISTER: Can I ask you a question?

THE COURT: I'm not cutting you off; I'm just telling you that I feel the last few questions you have established that there were in effect

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instances in the transcript that could be attributed to interruption. All I'm asking is that the last few questions have been repetitive. If we can get on with it so the jury can go to lunch I think it would be in everyone's best interest. But, if you have remaining questions you feel are necessary you may, of course, ask them.

MR. HAGEMEISTER: I have a couple. Thank you, sir.

(Proceedings resumed within the hearing of the jury as follows:)

Q (By Mr. Hagemeister) That deposition would take forever if after every time she finished answering she would say, "Are you done answering the question"?

A I don't think it would take forever but it would take longer than it usually does.

Q So your little computer doesn't show the times where the witness may have been finishing one sentence and getting ready to say another sentence and then there was a question?

A No, not unless a word is actually spoken.

Q Okay. There was a point in the -- page 48, line 18 --

THE COURT: Which deposition are we on?

MR. HAGEMEISTER: This is still on Angela Hickman.

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Q "Q Did he tell you if he had told the police the names of the people who did it?"

This is when she's talking to Angela about Johnnie.

"A He said he wasn't goin to tell them nothing because --"

And then does it have one of your little dashes right there?

A Yeah, but it -- she goes on to finish it eventually.

Q Do you know what she was going to say there?

A Not until she said it.

Q Well, you assume that was her finishing it later on but do you know what she was going to say there before she was interrupting -- interrupted?

A No, I didn't, no.

Q And I'm just --

A I'm sorry, maybe I misunderstood your question a while ago but I know that she may have been interrupted in this place but it wasn't like she didn't get the chance to complete the answer. I thought that's what --

Q Do you know what she was going to say?

A No.

Q Do you know if she had one thought on her mind then and maybe she was sidetracked to another thought?

A No, I didn't know that.

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Q Do you know if on any of these single questions had she been given a long enough pause before the next question if she might have said more?

MS. BEIMDIEK: Objection. Asked and answered.

THE COURT: Overruled one more time.

Q (By Mr. Hagemeister) On any one of these questions do you know if she would have said more had she been given more time?

A Not unless she said something.

Q So you don't really know?

A No, I don't know.

Q I'm not saying you said -- I'm just asking you do you know and you say you don't?

A No.

Q With regard to the letter you sent to the State saying that they should look over their depositions the rule -- does the rule say you must submit the depositions to the people who were deposed so that they can read them?

MS. BEIMDIEK: Objection. No foundation. If she's aware of the rule, fine; but, I don't think he's established that.

THE COURT: Are you aware of the rule, ma'am?

THE WITNESS: I'm aware of what I'm taught in school and what I'm supposed to do.

THE COURT: Objection sustained. Let's move on.

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Q (By Mr. Hagemeister) Sandy, did you send those depositions to the people?

A No, because when I -- when the transcript was finished I had no address for the witness or the telephone number and I knew that you would know how to contact your witnesses. I had no way to contact them.

Q Did you call me and say, "I need to get these out to them, I'm supposed to get them to read -- get them to them so they can read them in time"?

A I may have tried to contact you, got your voice mail and thought the letter was the best way to go because you guys --

Q When you sent the letter did you say, "These are the two depositions we did the other day. Can you get these to these people"?

A No.

Q You didn't send them the depositions; you didn't send me the depositions?

A You didn't order a copy of the deposition.

Q Well, did the people who took the depositions ever get a copy to look at?

A No, but it's my understanding that they are supposed to contact me -- they have to appear before myself to read it.

Q Does the rule say you're supposed to submit a copy

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to them?

A No, I don't believe so. I don't know the rules. I know --

Q I'm sorry. I didn't mean to interrupt.

A I'm sorry. I know what I was taught.

Q Okay.

A And that's my procedure.

THE COURT: I'll ask you to move on.

MR. HAGEMEISTER: I ask the Court to take notice with regard to the civil rules of procedure with regard to depositions and they say they are to be submitted to the people.

THE COURT: The Court declines to take notice of that very general statement with regard to depositions.

Again I'll ask you to move on.

Q (By Mr. Hagemeister) Did you send copies to the defense attorneys?

A They ordered them and paid for them. Yes, I did.

Q Then the ones that did the -- they were the ones that did the depositions, correct?

A Yes.

Q And they were the ones that were responsible for making sure the people signed them?

A No, that's my responsibility.

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Q So it's not my responsibility?

A No, I just thought you could help me out.

Q I understand but if there's a letter sent and -- did you follow up on the letter?

A No.

Q Did you send -- did you do anything besides rifle off that letter?

MS. BEIMDIEK: Objection to the word "rifle off" the letter.

THE COURT: I can't hear you.

MS. BEIMDIEK: Objection to the use of the word "rifle". I think it's argumentative.

THE COURT: Objection is sustained.

Q (By Mr. Hagemeister) Okay. I want to direct your attention to the deposition of Johnnie Bell. The bottom of page 68, line 18. "What names did you give him?"

MS. BEIMDIEK: Judge, I object. This is hearsay. It's beyond the scope of direct.

MR. HAGEMEISTER: Miss Beimdiek --

THE COURT: What line are you on?

MR. HAGEMEISTER: Line 18.

THE COURT: Sustained.

MR. HAGEMEISTER: Line -- page 69, line 3.

MS. BEIMDIEK: Judge, again I object. This is clearly beyond the scope of any direct-examination.

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MR. HAGEMEISTER: Your Honor, she went through and picked out portions --

MS. BEIMDIEK: They were offered for impeachment purposes alone.

MR. HAGEMEISTER: This is offered for rehabilitation alone.

THE COURT: Sustained.

MR. HAGEMEISTER: Judge, I ask that the State's Exhibits 24 and 25 as a whole be admitted in evidence.

THE COURT: Denied. The Court has already ruled on 24 and 25.

Any further questions of this witness?

Q (By Mr. Hagemeister) Johnnie Bell when he came in to do his deposition would you describe him as being co-operative?

A He answered the questions. I mean -- I don't really have an exact memory. I do lots and lots of these.

Q I understand that. Did you tell me in the hallway that you thought he was smart-alecky and he didn't want to have anything to do with the system because he wanted to handle it himself?

A No, I did not tell you that.

Q When -- we -- when we just talked in the hallway?

A Mark, you misunderstood me. I said that my

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impression just from some of the things he said in the deposition but I didn't tell you that he was unco-operative on the deposition. I never said that and I told you when you walked away you were misunderstanding what I said.

Q Let me ask you this. Did I ask you to describe how he was being at the deposition?

A I think you asked for my impression of him.

Q And did you say you thought he was smart-alecky?

A No.

Q Were those your words or my words?

A My words were that it was my impression -- not the way that he was acting at the deposition but that's the impression I got from some of his answers.

Q I misunderstood.

A That he could be smart-alecky.

MR. HAGEMEISTER: I have nothing further.

THE COURT: Thank you. Anything further of this witness?

MS. BEIMDIEK: I have briefly two questions, Your Honor.

REDIRECT-EXAMINATION by Ms. Beimdiek:

Q Sandy, would you look at Johnnie Bell's deposition, page 79, line 19 through line 21. Would you please read that.

A "Q Are there any questions that I didn't give

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you a chance to fully and completely answer?"

Q What answer did he give?

A "A No."

Q Now, Angela Hickman's deposition, page 53, lines 5 through 8. Would you please read the question and the answer.

A "Q Are there any questions that you had additional information but I cut you off and didn't give you a chance to fully answer?" The question.

"A No."

MS. BEIMDIEK: Thank you. Nothing further.

THE COURT: Anything further of this witness?

MR. HAGEMEISTER: No, Your Honor.

MS. BEIMDIEK: No, Your Honor.

oOo

THE COURT: Ladies and Gentlemen of the Jury, we'll have our luncheon recess at this time.

(At this time the Court read MAI-CR3d 300.04(2) to the jury.)

You're released at this time and instructed to return to Division 11 at 2:15 p.m.

(Subsequent to the luncheon recess the following proceedings took place:)

MARLON MITCHELL, being sworn, testified:

DIRECT-EXAMINATION by Ms. Beimdiek:

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Q Tell the jury your name, please.

A My name is Marlon Mitchell.

Q Marlon, where do you live?

A 1810 --

THE COURT: Sir, will you move closer to the microphone, please.

A -- Annie Malone.

Q I'll ask you to speak up and speak slowly so everybody can hear you. You live at 1810 Annie Malone?

A Yes.

Q Do you know Carlos Wade?

A Yes.

Q How do you know Carlos Wade?

A We stayed on North Market together right across the street from each other for some years, more than ten.

Q Okay. You consider him a friend?

A Yes.

Q Now I'm going to show you what's been marked State's Exhibit 11 and ask if you can identify that for me. Do you recognize that?

A Um-hum.

Q What is that?

A Car.

Q Do you know whose car it is?

A Yes, I do.

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Q Who owns that car?

A Eina Dancy.

Q Is that E-I-N-A, Eina, Dancy, D-A-N-C-Y?

A Um-hum.

Q Thank you. Who's Eina Dancy?

A Girlfriend.

Q And, did she sometimes let you drive her car?

A Yes.

Q On September 17th of 1995 did she let you drive her car?

A Yes.

Q Did you drive it?

A Yes.

Q Did CArlos Wade ever ride in that car with you on September 17th?

A No.

Q What did you do during the evening hours of September 17, 1995?

A Well, I was out in the County for a little while over my girlfriend's mother's house. She stayed over there. I laid down for a little while. When it got dark I got up and left.

Q All right. At some point did you drive past 4236 Martin Luther King in that car?

A I rode that way.

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Q All right. Is that right near where you live?

A Yes.

Q If you live 1810 Annie Malone -- I'm going to show you what's been marked Defendant's Exhibit A. Stay there. Can you see the exhibit?

A Um-hum.

Q I'll give you a second to familiarize yourself with the layout of the streets. If this is Martin Luther King bounded by Whittier, Annie Malone and Aldine running the same way as Martin Luther King, does that accurately depict the layout of the streets in that area?

A Yes.

THE COURT: I didn't hear your answer.

A Yes.

Q If you would briefly step down for me and indicate where on this map you lived on Annie Malone if you're able to do that with the Court's permission --

THE COURT: Yes.

Sir, if you will stand with your -- will you move, Miss Beimdiek. Will you stand with your back to the door and face the jury sideways. That's it. Thank you.

Q Approximately where on this map did you live?

MR. HAGEMEISTER: I don't believe the alternates can see with him standing there.

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THE COURT: The alternates may stand if they care to do so and move over or if you can see, fine, remain where you are. I'll leave it to you.

Now are we ready to proceed?

MS. BEIMDIEK: Yes, Your Honor.

THE COURT: Proceed.

Q (By Ms. Beimdiek) Can you tell me where on Annie Malone your house was?

A Annie Malone here?

Q Yes. If this is Martin Luther King, this is Aldine and this is Cote Brilliante --

A Cote Brilliante -- my house between Cote Brilliante and Garfield.

Q Okay. So would your house even be further north on Annie Malone?

A Um-hum.

Q All right. So it's not necessary -- necessarily reflected on this map but it's the general area?

A Yes.

Q Okay, thank you. You can have a seat.

Now, you said you drove by the intersection of Martin Luther King and Annie Malone on that evening?

A Yes.

Q Did you see anything unusual when you drove by?

A No.

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Q Did you drive by a second time?

A Um-hum.

Q Did you see anything unusual when you drove by the second time?

A Police.

Q Did you stop?

A No. I slowed down, kind of looked.

Q All right. What did you do after you drove by and kind of looked?

A I went to the liquor store.

Q All right. After you went to the liquor store what did you do?

A I went to the liquor store, came back out, went down Martin Luther King going east and then I see the police car driving out behind me and stuff. I pulled over and let them go on down.

Q Was anybody in the car with you when you were driving around that area?

A No.

Q Did anybody do any shooting out of that car that night?

A No.

Q Carlos wasn't with you at all during that evening?

A No.

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Q Do you know if Carlos shot anybody out of that car on the evening of September 19 -- excuse me, September 17th?

A No.

Q Now, on September 18th were you with Carlos Wade when he was arrested?

A Yes.

Q Were you driving the car that I previously showed you marked State's Exhibit 11?

A Yes.

Q Was anybody else in the car with you when you got stopped?

A Yes.

Q Who else was in the car?

A Carlos' brother, Ivory.

Q Ivory Wade was in the car with you also?

A Yes.

Q What street were you all on when you got stopped?

A Annie Malone and Martin Luther King.

Q Did you all get taken into custody?

A Yes, and they towed the car.

Q And they towed the car?

A Yes.

Q Did you go down to the Police Department?

A Yeah.

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Q At some point did the police tell you that that car was suspected about being involved in a murder?

A Yes.

Q What did you tell the police about whether that was possible?

A I just said it couldn't have been, I had the car and I ain't did nothing to nobody.

Q Did you also indicate whether Carlos was with you?

A Carlos -- I told them Carlos wasn't with me.

Q Do you know who it was that you spoke to at the Police Department that you told that to?

A A detective. I don't remember his name.

Q Now, did Eina Dancy get her car back a few days later?

A Yes.

Q Now, have you ever pled guilty to a felony?

A Yes.

Q What was that?

A Possession.

Q Possession of cocaine?

A Yes.

Q And did you -- what sentence did you receive?

A Two years paper.

Q And by paper you mean probation?

A Yes.

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Q All right. You had a suspended imposition of sentence?

A Um-hum.

Q Is that yes?

A Um, what that mean?

Q SIS and they put you on probation for two years?

A Yes.

Q Did you successfully complete your probation?

A Yes.

MS. BEIMDIEK: Thank you. That's all I have.

CROSS-EXAMINATION by Ms. Moore-Dyson:

Q Was Tyrone with you that day?

THE COURT: No, just a moment.

Pardon me. I believe cross-examination is with the prosecutor at this point.

CROSS-EXAMINATION by Mr. Hagemeister:

Q You been friends with Carlos a long time?

A Yes.

Q What about Tyrone?

A Yes.

Q Do you see Carlos and Tyrone in the courtroom right now?

A Yes.

Q Where are they?

A Right over there.

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Q Can you tell me where they're sitting exactly?

A That's Tyrone and Carlos sitting by the lady there.

MR. HAGEMEISTER: May the record reflect the witness has identified the defendants, Tyrone Morant and Carlos Wade?

THE COURT: The record may so reflect.

Q This is the same Tyrone Morant and Carlos Wade you were good friends with?

A Yes.

Q You're still good friends with them?

A We still friends.

Q You want to see them go to jail?

A No.

Q Why are you driving down Martin Luther King going east that night?

A Because I was coming from the liquor store.

Q All right. Which liquor store?

A Martin.

Q Where is Martin's Liquor Store?

A Where is it at?

Q Yeah.

A On Billups and Martin Luther King.

Q Well, where are you coming from?

A Where I'm coming from?

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Q Yes.

A The liquor store.

Q No. When you first come up into this neighborhood where had you left from?

A The County, past Vince's on Page.

Q What was there?

A A house. I was over my girlfriend's mother's house.

Q Who is your girlfriend?

A Eina Dancy.

Q 5624 Delmar?

A Um-hum.

Q Which would be west --

A Right, she was at her mother's house; she wasn't over her house.

Q She went over and that's still west?

A Um-hum.

Q And then you're coming by here and you go by once, you don't see anything going on in the street you said?

A No.

Q How is it you happen to come by a second time?

A I came by the second time because I rode down the street, went back to the liquor store. When I came back from the liquor store I saw police car, I was coming

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east, they was going east behind me. I heard the sirens and I moved out of the way.

Q All right. So did you go back by the same place going east on Martin Luther King again?

A No.

Q Well, then, you only went by once? I'm not trying to put words in your mouth. I heard something about you going by there twice. Did you go by there once or twice?

A Probably twice.

Q Well, the first time you were going where?

A I don't really remember.

Q Well, you testified you remembered to the defense attorney. What is it you do remember?

A Well, when I first got in the neighborhood I stopped at my house and then I left again to go to the liquor store. When I came back from the liquor store that's when the police was rushing behind me and I pulled over and let them go.

Q So you're saying the first time you went by -- is that the first time you went by or after?

A The first time. The first time I came past I was coming down Martin Luther King, made a left on Annie Malone.

Q So you didn't really go past?

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A No.

Q So when you testified on direct-examination that you drove past you didn't really drive past?

A No.

Q So you're coming down Martin Luther King from west going east and you say you took a left on Annie Malone?

A Um-hum.

Q Okay. Because it wouldn't make sense for you to go past if you're going to your house?

A Right.

Q So now you're saying you really took a left now?

A Made a left, went down Martin Luther King, made a left on Annie Malone. I stayed left.

Q You didn't go past?

A No.

Q You stayed there at Annie Malone?

A I didn't stay there. I told you I went home, I came back out, got the money, came back out, left again, went to the liquor store, came back the same way.

Q So did you go past?

A Made a left.

Q You never went past that place right across the street from Bill's Auto where the kid was laying in the street?

A Huh-uh.

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Q When you said on direct-examination you went past twice you just meant you were in the neighborhood twice?

A I don't understand what you're saying.

Q When before she showed you the map and you said you were going east --

A Um-hum.

Q And you kind of did like this I thought, is that right, with your arm kind of going east?

A East.

Q Yeah, but what you're saying now you never actually went past this little corner here of Martin Luther King and Annie Malone at all that night?

A I made a left on Annie Malone.

Q So you didn't really go down there?

A No.

Q So there's no way your car would have been seen going by there?

A If you make a turn -- I seen the police officer over there. It's right on the corner. The police right on the corner.

Q Okay. After you got home up here --

A Um-hum.

Q -- you say you went down to the liquor store?

A Yeah, I went home, went in the house.

Q How old are you?

A-551

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A Twenty-three.

Q And at the time you'd have been twenty-two so you could have bought something. Did you buy something?

A Yes.

Q What did you buy?

A I bought a pack of cigarettes, beer and some gum.

Q And that would have been April of '96 that you came forward as a witness in this case, is that correct?

A Well, yeah.

Q I mean you talked to the police that night but you didn't --

A That night? I didn't see the police until --

Q The next --

THE COURT: Let the witness finish his answer.

A I didn't see the police until we got pulled over.

Q Okay.

A I got up that morning, went to Good Will where I had to go, my parole officer had me going to, later on that day that's when I saw Carlos walking down the street by a store or something, he had his brother with him, they say drop them off.

Q I made a mistake. It was the next day you talked to the police?

A Yes.

Q The next day you told the police that you were

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coming east and that you had your girlfriend's car driving east on Dr. King, stopped at a liquor store. You did drive by the scene is what you told the police. Are you saying that's not really true, you didn't drive by?

A You can see everything when you go there and turn.

Q And then the liquor store on Martin Luther King is actually on the west side of Annie Malone,isn't it?

A Um-hum.

Q So what you want the jury to believe you never drove by this area at all?

A Right.

Q Okay. Even though on direct-examination you said you did twice. All right. Or was that just a misunderstanding?

A Yeah, misunderstanding.

Q You know that liquor store wasn't really even open on Sundays back in September of '95, was it?

MS. MOORE-DYSON: Your Honor, I object to the prosecutor testifying basically. I mean it's a leading question. If he wants to ask him that --

THE COURT: Overruled.

You understand the question?

THE WITNESS: No.

THECOURT: Repeat the question. The witness states he does not understand the question.

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Q You're talking about Martin's Package Liquor, 4324 Martin Luther King and Billups?

A Yes.

Q You're telling the jury it was open about eleven o'clock in September of '95?

A They were open on Sunday.

Q They didn't open up in April or May of '96 on Sundays and you think they were open because they are now? That's not what happened, is it?

A Yes, it is.

Q I didn't phrase that well. The fact is they are open on Sundays now, aren't they?

A Um-hum.

Q They have been ever since April or May of 1996, haven't they?

A I don't know when they started opening but they was open.

Q They were open in September of '95?

A Um-hum.

MR. HAGEMEISTER: I have no further questions.

THE COURT: Thank you.

You may inquire, Miss Moore-Dyson.

CROSS-EXAMINATION by Ms. Moore-Dyson:

Q On September 17th did you see Tyrone Morant?

A No, not that I know of.

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Q He wasn't with you at all, was he?

A No.

Q Was he with you on the 18th?

A No.

MS. MOORE-DYSON: No further questions.

THE COURT: Anything further of this witness?

MS. BEIMDIEK: Nothing further, Your Honor.

THE COURT: You may step down.

Call your next witness.

MS. BEIMDIEK: Thank you, Your Honor.

oOo

HATTIE ALBERTY, being sworn, testified:

DIRECT-EXAMINATION by Ms. Beimdiek:

Q Would you tell the juryyour name, please.

A My name is Hattie Alberty.

Q Miss Alberty, do you know Carlos Wade?

A Yes, ma'am, that's my son.

Q He's your son?

A Yes.

Q Where do you live?

A 4205 East Aldine.

Q I'm going to show you what's previously been marked Defendant's Exhibit A, slide it up for you. Give you a chance to look at that. Do you recognize the layout of the streets as they're depicted here, Martin Luther King

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bounded by Whittier and Annie Malone, Aldine and Cote Brilliante?

A Yes, ma'am, I do.

Q All right. And I'll ask you if you would with the Court's permission to step down and indicate for me on this diagram where 4205 Aldine is.

THE COURT: You may step down.

THE WITNESS: Thank you.

A Aldine right here.

Q Where would 4205 Aldine be with respect -- where is your house, the relationship to Whittier, Annie Malone and --

A Closer to the Whittier side.

Q This is the corner of Aldine and Whittier. How many houses are between your house and the corner of Whittier and Aldine?

A How many houses?

Q Yes.

A Here's Whittier, then house there on Whittier and my house is next.

Q So if I indicate somewhere in this area would that be fair for where 4205 would be?

THE COURT: Let the witness indicate where her residence is. Haven't we agreed to this before?

MS. BEIMDIEK: Yes, Your Honor. I'm sorry.

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THE COURT: You may give her the pen.

Q Okay, if you would mark on there, make a box in the area that you've indicated 4205 Aldine would be.

A Okay.

Q Okay, thank you. You can have a seat and I'm going to put 4205 beyond the block that you have just indicated.

How long have you lived at that address?

A Going on three years.

Q Now, on the night of September 17th did you hear anything unusual at your house at 4205 Aldine?

A Yes, I did.

Q What did you hear?

A Shooting.

Q Do you know approximately what time you heard that shooting?

A Well, I can't say, probably I say between 11:30 and something to twelve, somewhere along there.

Q Were you paying close attention to the time at that point?

A No, ma'am, I really wasn't.

Q Approximately how many shots do you think you heard?

A Hm, maybe about nine to ten, maybe nine to ten, around there.

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Q What was your reaction when you heard those shots?

A I jumped up and I asked my friend would he go and check through the house and make sure that all of my children were inside.

Q What's your friend's name?

A Lawrence McGee.

Q Is he somebody who also lives at your house with you?

A Yes, ma'am.

Q Did he in fact go and look through the house for you?

A Yes, he did.

Q Did you also go look through the house?

A Right behind him.

Q As you looked through the house,what room were you in?

A I was in my bedroom.

Q As you came out of your bedroom what room would you have walked into?

A As I came out of my bedroom?

Q Yes.

A There's a little hallway and then in the front room.

Q Did you go into the front room?

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A Yes, ma'am, I did.

Q And who was in the front room?

A My son, Carlos, and my son, Ivory Wade.

Q Was anybody else in the front room?

A No, ma'am.

Q Did you then begin to account for everybody else in the house?

A Yes, I did.

MR. HAGEMEISTER: Objection. She's putting words in the witness's mouth.

THE COURT: Sustained.

Q (By Ms. Beimdiek) Did at some point you realize one of your children wasn't in the house?

A Yes, I did.

Q Who was missing?

A Italo.

Q Did that cause you any concern?

A Yes, I was. I was worried.

Q Now, after the shooting happened did anything else unusual happen at your house?

A Anything unusual?

Q Okay. Did --

A Behind the shooting I heard a knock at the door.

Q Did you open the door?

A No, ma'am, I did not.

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Q Did you look outside to see who was at the door?

A I peeked through the curtain.

Q Did you recognize who was at your door?

A Edwon.

Q Do you know Edwon's last name?

A Harris I think that is.

Q Did you let him in the house?

A No, ma'am, I did not.

Q Did Italo return home at some point?

A Yes, he did. He was up there on Martin Luther King making a phone call and he heard the shooting and he come home immediately to check and make sure that everyone was at home and all right.

Q Eventually did everybody go to bed that night?

A Yes, ma'am.

Q Now, the next day in the afternoon of September 18th did you have occasion to witness Carlos' arrest?

A Yes, I did.

Q And what steps did you take to find out why he was being arrested?

A I asked the officers that was arresting him what was he being arrested for. They wouldn't give me no answer, no answer, they wouldn't tell me anything.

Q What was the next thing you did?

A Okay. I had my daughter step in and try to get

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us a lawyer because the lawyer was extremely too high.

Q What was the name of the lawyer you all hired initially?

A Doris Black if I'm not mistaken.

Q You made some arrangements with her at least very early on in this case?

A Yes.

MR. HAGEMEISTER: Objection. The defense attorney is putting words in the witness's mouth.

THE COURT: Sustained.

Q (By Ms. Beimdiek) Did Doris Black stay the lawyer on this case?

A For a while, short while.

Q At some point was she not the lawyer any more?

A Right.

Q Why was that?

A Because we couldn't afford her.

Q Now, did Carlos shoot anybody on September 17, 1995?

MR. HAGEMEISTER: Objection.

THE COURT: State your objection.

MR. HAGEMEISTER: Calls for speculation.

MS. BEIMDIEK: She can answer, Your Honor.

MR. HAGEMEISTER: She wasn't --

THE COURT: Objection will be sustained.

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Q (By Ms. Beimdiek) Miss Alberty, do you know if Carlos was home on September 17th at 11:35?

A Yes, ma'am, I do.

MS. BEIMDIEK: Thank you. I have nothing further.

THE COURT: Thank you.

CROSS-EXAMINATION by Mr. Hagemeister:

Q Do you know if he was home at 11:25?

A We were there watching TV.

Q Do you know if he was there at 11:25?

A Yes, sir, we were there watching TV.

Q Well, then you didn't need to get up and go see if he was around, do you?

A I had my old man, Lawrence McGee, to go and check and make sure everyone was in the house because my son -- I'm concerned about my son out there making this call.

Q You're concerned --

A About my oldest son.

Q Why?

A The shooting, all of that shooting.

Q Why were you concerned about your oldest son and not everybody?

A Because he was out there at the time, sir.

Q You're talking about Italo Wade?

A Yes, sir.

Q When you -- if your son Carlos Wade wasn't home

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right at the time of the shooting would you come in and tell the jury that?

A He was there.

Q If he wasn't there would you tell them?

A No, I wouldn't lie for him.

Q You understand your son's looking at going to prison for the rest of his life?

A I wouldn't say that. I wouldn't lie. I'm telling the truth.

Q Have you spoken with him since then about coming in and being a witness for him?

A Have I talked with my son?

Q Yeah, Carlos.

A No, I haven't but I was a witness -- no, I talked with Carlos frequently but he didn't know if I was going to be a witness or whatever.

Q He didn't say, "Mom, you know I was home that night. Why don't you do something about it"?

A We did.

Q What did you do?

A The lawyer tried to get -- tried to get the lawyer to work with him because I know he was there at the time, at the present time, sir.

Q So you went down to the police station and told them --

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A I questioned the police on the September the 18th, the day they picked him up, because that's when they picked him up, the next day.

Q So you -- what did you do?

A I asked the police that was arresting him what was he being arrested for. They wouldn't tell me anything so that's when I told my daughter to get in contact with us a lawyer because they wasn't telling us anything.

Q So what did you do next?

A Got the lawyer, sir. Tried to work with us.

Q What kind of work did you try to do?

A What kind of work did I try to do?

Q Your son's been arrested for something you know he's absolutely not good for it, what did you do?

A There wasn't anything I could do. The police officers wouldn't listen to me, sir.

Q So you just went home and said --

A No, I did not just go home and say --

Q I'm asking you what you did.

A After calling around -- like I keep telling you, sir, we called the police. My daughter she talked with them, we still couldn't get, you know, no answer what was what so that's when we got Doris Black, sir.

Q Okay. And, so, what did you do with Miss Black?

A After we couldn't hire her that's when I turned

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to the Public Defender.

Q What did you -- what did you tell Miss Black to do?

A To see if she can help my son, sir.

Q Did you say, "Look, he was home"?

A He was home.

Q And you told her that?

A Yes, sir, I did.

Q You didn't go to the Police Department yourself and make sure everyone knew your sweet little boy was -- wasn't out shooting up people and killingthem, that he was sitting home watching television? Did you do anything like that?

A No, I did not. I know that that's where he was, sir.

MR. HAGEMEISTER: Thank you, ma'am.

THE COURT: Thank you, sir.

You may inquire, Miss Moore-Dyson.

MS. MOORE-DYSON: I have no questions, Your Honor.

THE COURT: Anything further of the witness?

MS. BEIMDIEK: Nothing further of the witness.

THE COURT: You may stand down, ma'am.

THE WITNESS: Thank you.

THE COURT: Call your next witness.

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TASHA JORDAN, being sworn, testified:

DIRECT-EXAMINATION-by Ms. Reimdiek:

THE COURT: Proceed.

MS. REIMDIEK: Thank you.

Q Can you tell the jury your name, please.

A My name is Tasha Jordan.

THE COURT: You're going to have to move closer to the microphone, Miss.

A My name is Tasha Jordan.

Q Tasha, how do you know Carlos Wade?

A I grew up with him. He's my boyfriend.

Q Back in September of 1995 where were you living?

A I was living on Aldine.

Q What was the address on Aldine?

A 4205 East Aldine.

Q Okay. And who lived there with you?

A His mother and his brothers and sisters.

Q Now, on the evening of September 17, 1995, did you hear or see anything unusual?

A That night, yes, I did.

Q That night what did you hear or see that was unusual?

A Well, I heard some shooting that night.

Q Where were you when you heard the shooting?

A I was downstairs of the house.

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Q Was anybody else with you downstairs?

A No, ma'am.

Q When you heard the shooting what did you do?

A I had ran upstairs in the living room with Carlos Wade and Ivory Wade was.

Q Did anybody else come into the room where you were after the shooting was going on?

A You mean downstairs or upstairs?

Q Up in the front room after you came upstairs.

A Yes, ma'am, his mother, Hattie, and her boyfriend, Lawrence McGee.

Q And, did anything happen at that point while they were -- came in the front room?

A Yes, they was just checking on everyone that was in the house.

Q And --

MR. HAGEMEISTER: She's leading the witness.

THE COURT: Objection overruled. Not timely made. The witness has answered.

Q (By Ms. Beimdiek) Was everybody in the house?

A Yes, ma'am.

Q Was there anybody missing from the house?

A Yes, ma'am, Italo Wade.

Q Where -- do you know where Italo Wade was?

A Yes, ma'am, he was at the pay phone at the time.

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Q Did he return to the house?

A Yes, ma'am, after the shooting happened.

Q Now, after the shooting stopped was there anything else unusual that happened at the house?

A Yes, ma'am.

Q What was that?

A Someone by the name of -- I heard someone knocking on the door, the front door, and --

Q Did they say anything?

A Yes, ma'am.

Q Did you recognize the voice?

A Yes, ma'am.

Q Who was out there?

A It was a person by the name of Edwon Harris.

Q What -- was he making any requests?

A "Let me in the house, let me in the house."

Q Did he ever get to come into the house?

A No, he did not.

Q Now, did you learn that Carlos had been arrested the next day?

A Yes, I had.

Q And, did you make any effort to do anything to help him?

A No, his sister by the name of Valerie did.

Q Did you leave it to the family or did you take it

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upon yourself to do anything more?

A No, I just let her handle it.

MS. BEIMDIEK: Thank you, I have nothing further.

CROSS-EXAMINATION by Mr. Hagemeister:

Q Did you find out what he was arrested for?

A Yes.

Q Did you find out when that was supposed to have happened?

A Yes.

Q And you found out that it was for the night before?

A Yes.

Q How did you respond when you found that out?

A I mean I just said, "Why was he locked up".

Q You just asked why he was locked up?

A Yeah, I asked his sister that.

Q And, did you say anything else to his sister?

A No, after that happened.

Q Did you say anything else to anybody else?

A No.

Q You don't want to see Carlos go to jail, do you?

A No, I do not.

Q Would you lie for him?

A No, I would not.

Q Carlos friends with Tyrone?

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A Excuse me?

Q Is Carlos friends with Tyrone?

A I don't know.

Q Whose boyfriend are you?

A I'm Carlos's girlfriend.

Q Do you know Tyrone?

A I know him but I don't associate with his friends.

Q You don't associate with Carlos's friends?

A No, I don't.

Q Why not?

MS. BEIMDIEK: Objection, relevance.

THE COURT: Sustained.

Q (By Mr. Hagemeister) Do you know Demetrius?

MS. BEIMDIEK: Objection, relevance.

THE COURT: Overruled. She may answer if she knows.

A No.

THE COURT: I didn't hear the answer.

THE WITNESS: No.

THE COURT: Thank you.

Q (By Mr. Hagemeister) Did Carlos and his family get you to come down here and testify for him?

A Excuse me?

Q Did Carlos and his family get you to come down here and testify for him?

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A Yes.

Q Did you want to testify?

A Yes, because I was in the house with Carlos.

Q When you found out he had been arrested for something from the night before you didn't do anything for your boyfriend?

A No, I just -- his sister handled all that.

Q Were you upset, were you outraged, he's been arrested for something, he's in jail for murder, and you're thinking there's no way he could have possibly done it, he was with me the whole night, it's wrong, it's wrong? Are you doing that?

A (No answer.)

Q Are you doing that?

A Yeah, kind of.

Q Kind of aren't because you know he wasn't really there that whole night, aren't you?

A He was there that night with me.

Q Yeah. And what was he doing there with you?

A Watching TV, played a game. That's about all.

Q What game were you playing?

A Nintendo.

Q You and Carlos were in the same room playing the game?

A Excuse me?

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Q You talked -- you and Carlos were in the same room playing that game?

A Earlier that day before this happened, earlier that day.

Q Let's not talk about earlier that day. Let's talk about when the shooting happened. Where's Carlos then?

A Well, he was upstairs with his brother by the name of Ivory Wade.

Q You could see through the ceiling and --

A No, I was downstairs.

Q So you don't know if he got there five minutes after the shooting, ten minutes after the shooting?

A (No answer.)

Q Do you?

A He was in the room with his brother.

Q Do you know if he got there five minutes after the shooting, ten minutes after the shooting?

A (No answer.)

Q Ma'am? Do you know?

A Carlos was in the house at the time, sir.

THE COURT: I didn't hear you. Speak up.

A Carlos was in the house at the time, sir.

MR. HAGEMEISTER: I have no further questions.

THE COURT: Thank you.

You may inquire.

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CROSS-EXAMINATION by Ms. Moore-Dyson:

Q Was Tyrone at that house with you all?

A No, he wasn't.

Q Did Tyrone come to that house that evening?

A No, he did not.

Q Had you seen Tyrone that day?

A No, I did not.

MS. MOORE-DYSON: Nothing further.

THE COURT: Anything further of this witness?

MS. BEIMDIEK: Just briefly.

REDIRECT-EXAMINATION by Ms. Beimdiek:

Q Tasha, did you ever call me while this case has been going on at my office?

A Yeah.

Q Call me on the phone?

A Yes, I have.

Q And, do you know about how many times you called me?

A No, I do not. I didn't look at the time.

Q I meant -- I didn't mean the time of day; I mean the number of times you called me. Would you say it's been more than five?

A I don't know, ma'am.

Q Would it be fair to say youcalled me a number of times cause you're concerned about this case?

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MR. HAGEMEISTER: Putting words in the witness's mouth.

THE COURT: Sustained.

Q (By Ms. Beimdiek) When you called me did we talk about the weather?

A Sometimes.

Q When you called me why are you calling me?

A Concerning my boyfriend.

Q Thank you. Nothing further.

RECROSS-EXAMINATION by Mr. Hagemeister:

Q Would you do anything you thought she wanted -- would you say anything you thought she wanted you to say to help out Carlos in this case?

A No.

Q So when she says when you called me did we talk about the weather you answered yeah because you really talked about the weather or was that because you thought that's what she wanted to hear?

A No.

Q Do you have a child by Carlos?

A Yes, I do.

Q Do you want to see him go to jail so your child never sees his father?

A No.

MR. HAGEMEISTER: I have no further questions.

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THE COURT: Anything further of this witness?

MS. BEIMDIEK: Nothing further, Your Honor.

THE COURT: Thank you. You may stand down.

Call your next witness.

MS. BEIMDIEK: Ivory Wade.

oOo

IVORY WADE, being sworn, testified:

DIRECT-EXAMINATION by Ms. Beimdiek:

THE COURT: Proceed.

MS. BEIMDIEK: Thank you.

Q Tell the jury your name, please.

A Ivory Wade.

Q All right. And, Ivory, do you know Carlos Wade?

A Yes, ma'am. That's my brother.

Q Are you older than Carlos or younger?

A I'm older.

Q How old are you?

A Twenty-one.

Q Back in September of 1995 where did you live?

A 4205 East Aldine.

Q And who lived at that house with you?

A My family except Valerie.

Q She's a sister of yours?

A Yes.

Q Where was she living at that time?

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A Nextdoor.

Q Now, on the night of September 17, 1995, did anything unusual happen at your house?

A We heard some shooting. Then a couple minutes later somebody came knocking at our door.

Q Okay. When you heard the shooting what part of the house were you in?

A Me and Carlos we was in the front room looking at a TV show.

Q Do you remember the name of the TV show you were watching?

A No, I don't.

Q When the shots rang out what did you do?

A Me and Carlos we got away from the front door and got on the other side of the room.

Q How long did you stay -- did you get down on the ground or stay on the other side of the room?

A I got on the ground.

Q Do you know what Carlos did?

A He stayed up. He got on the other side of the room.

Q At some point did -- did you see anybody else in the front room of your house?

A With me and Carlos?

Q Yes.

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A No, ma'am.

Q Did anybody ever come into the house after the shooting stopped?

A No, ma'am, because my mother, she said, "Don't open the door for nobody."

Q All right. Did you see your mother at any time after the shooting happened?

A Her and Lawrence came through the house checking on everybody.

Q Now, you said somebody knocked at the door. Do you know who it was that knocked at the door?

A No, ma'am.

Q Now, the next day did you learn that your brother was arrested?

A I was with him when they locked him up.

Q Who was driving the car when he got locked up?

A Marlon Mitchell.

Q Did you get taken down to the police station?

A Yeah, all three of us.

Q At some point did you learn that your brother was charged with the murder that happened the night before?

A They told me they were fixing to put a murder on him, give him a murder case.

Q Did you say anything to the police when they told you what he was charged with?

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A No, ma'am.

Q At some point did you get released from the police station?

A Yes, I did.

Q Did you take any steps then to let anybody know what you knew aboutthis case?

A I had went back and told my mother and them they had just locked Carlos up for murder.

Q Do you know what night or what day they said the murder was supposed to have happened on?

A The night before they locked us up.

Q Do you know if Carlos committed a murder on September 17th at 11:25 p.m.?

A He didn't do it. He was in the house.

MS. BEIMDIEK: Thank you.

Nothing further.

THE COURT: Thank you.

You may inquire.

CROSS-EXAMINATION by Mr. Hagemeister:

Q Did you tell the police on that day he was in the house the day before?

A No, sir.

Q And you're friends with him and Marlon and a lot of his friends?

A Sir?

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Q You consider Carlos a friend of yours as well as your brother?

A Yeah, he is.

Q And his friends, they're friends of yours?

A Yes, sir.

Q And, how would it look if you went and told the police and said, "Yeah, he wasn't home"? How would it look to the rest of your family and all your friends if you were the one turned in your own brother?

A He didn't do it. That's what I'm trying to say. We was in the same room.

Q Would you say you're loyal toyour friends?

A What you mean?

Q Are you loyal to your friends?

A Yeah.

Q Are you loyal to your friends to the point where you could get up and say something for three minutes on the stand that might save their lives?

A No, I wouldn't.

Q I'm sorry?

A No, sir.

Q You don't have that kind of loyalty to your brother or your friends?

A (Nods negatively.)

Q Did you talk with Carlos about what you were going

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to say in this case?

A No, no, I did not. I talked to him over the phone but I had already knew what was going on.

Q Well, did you and your family ever go over what you all were going to say?

A We talked about it.

Q What did you guys do Sunday night?

A Sunday night. That's the night of the murder or the night after?

Q The day of the murder.

A After the shooting was over, after everybody got in the house, we went to sleep.

Q What were you doing before?

A Me and Carlos in the room looking at TV.

Q How do you know Angela Hickman?

A She used to live across the street from us.

Q Friendly with her?

A Who?

Q Were you friends with her?

A I used to talk to her.

Q Nice girl?

A She seemed pretty cool but --

Q Did she get involved in any of the problems anybody had on those streets?

A She used to try and connect stuff up with our

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family and her family.

Q Do what?

A Connect stuff.

Q What do you mean?

A Tell her people stuff we be saying about them.

Q She tried to stop you guys from arguing or she was trying -- you're saying she would actually try to stir it up?

A She was trying to stir it up.

Q Do you think she enjoyed everybody shooting or doing anything to each other?

MS. BEIMDIEK: Objection. Speculation and irrelevant.

THE COURT: Sustained.

Q (By Mr. Hagemeister) Well, what makes you say she's a person that likes to stir things up?

A 'Cause she used to do all type of stuff trying to get her people to come and shoot up in our house and stuff.

Q She wanted people to shoot up her house?

A Up in our house.

Q Well, were you ever with Carlos when he ever shot at John Allen or Johnnie Bell before?

A No, sir.

Q Were you ever with him when he had a gun and talked

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about shooting up one of them before?

A I ain't never seen him with no gun.

Q You say -- what time do you think Carlos got home that night?

A Around 9:30, something to ten.

Q What makes you remember that so well?

A Huh?

Q Why do you remember that so well?

A 'Cause I was -- at the time he came in the house I had just looked at the clock and it was around that time.

Q Well, so you're saying from a year and two months ago you remember him coming home at 9:30?

A I had studied -- you know, since then I been studying it. I wrote it down.

Q You wrote it down?

A Yes, sir.

Q Who got you to do that? Who told you to do that?

A All of us had made a statement.

Q Did you talk to anybody about the statement you were going to write down?

A I made my own statement.

Q When did you write down that statement?

A The day I got out of jail, the day they locked me up with Carlos.

Q You and the family didn't get together and try to

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remember how it was?

A The rest of my family did but I writing on my own.

THE COURT: You may inquire, Miss Moore-Dyson.

MS. MOORE-DYSON: No further questions.

THE COURT: Any further questions?

MS. BEIMDIEK: No, Your Honor.

THE COURT: You may stand down.

Call your next witness.

MS. BEIMDIEK: Lawrence McGee.

oOo

THE COURT: Counsel, approach the bench.

(At this time there was a discussion at the bench outside the hearing of the jury and off the record, after which proceedings resumed as follows within the hearing of the jury:)

THE COURT: At this time we'll be in afternoon recess.

(At this time the Court read MAI-CR3d 300.04(2) to the jury.)

(Subsequent to the recess proceedings resumed as follows:)

THE COURT: You may call your next witness.

MS. BEIMDIEK: Thank you. Lawrence McGee.

LAWRENCE McGEE, being sworn, testified:

DIRECT-EXAMINATION by Ms. Beimdiek:

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(At this time a woman entered the courtroom and stated: "Excuse me.")

THE COURT: Just a moment.

Sheriff, will you see what the woman wants.

Will you step out in the hall, ma'am, and talk to the sheriff.

Let the record show the woman unknown to the Court entered the courtroom with an infant in her arms and the Court not knowing who she was or whether she's a witness in this case told her to step outside.

Proceed, Miss Beimdiek.

Q (By Ms. Beimdiek) Will you tell the jury your name, please.

A Lawrence McGee.

Q Mr. McGee, are you working?

A Yes, I am.

Q Where do you work?

A I work for Union Plaza Corporation.

Q Where do you live?

A 4205 East Aldine.

Q And who lives there with you?

A Mrs. Hattie Alberty.

Q Anybody else?

A Yes. Ivory Wade, Carlos Wade, Demarco Threlkell, Angela Threlkell, Jason Threlkell, Ivory Wade.

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Q And, how long have you lived at 4205 Aldine?

A About two years.

Q Do you know Carlos Wade?

A Yes, I do.

Q How is it that you know him?

A That's my lady friend's son.

Q Did you live at 4205 East Aldine back on September 17, 1995?

A Yes, I did.

Q Do you remember that night?

A Yes, I do.

Q Did anything happen -- anything unusual happen late that night?

A Well, between 11:25 and 11:45 me and Hattie heard some gunshots outside.

Q After you heard the shots what did you do?

A Well, I got up and looked outthe window to see if I see anybody moving around, and Hattie said -- Hattie said, "Check the house and make sure all my kids are in the house."

Q Did you do that?

A Yes, I did.

Q Where did you go to begin checking?

A I went to the living room and I saw Ivory Wade and Carlos Wade and they were looking at TV, and then his girlfriend was coming up out of the basement.

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Q What's his girlfriend's name?

A Tasha.

Q Was there anybody who wasn't in the house as you began looking?

A Talo.

Q Talo. Is that a nickname you call him?

A Yes.

Q What's his real name?

A I only know him by Talo Wade.

Q Did you later find him?

A Yeah, he did come back.

Q Did anything else unusual happen at the house that night?

A Well, we heard a knocking at the front door.

Q Did you go to the front door?

A No, someone else did but Hattie had instructed everybody not to let anybody in that night 'cause they had friends coming over.

Q Did you stay in the house the rest of the night?

A Yes, I did.

Q Did anybody else leave the house that night?

A No.

Q Did you learn later on that Carlos Wade had been arrested?

A Yes, it was the next day.

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Q Now, do you know if Carlos Wade committed murder on September 17th at 11:25 p.m.?

A Yes.

Q Do you know if Carlos Wade shot anybody on September 17th at 11:25 p.m.?

A No, he couldn't have.

Q Why not?

A Because he was in the house.

MS. BEIMDIEK: Thank you. Nothing further.

THE COURT: Thank you.

You may inquire.

CROSS-EXAMINATION by Mr. Hagemeister:

Q How long have you lived in that house?

A Two years.

Q How long have you seen Hattie Alberty?

A How long have I seen her?

Q How long have you had a relationship with her?

A We been together about three years, going on four years.

Q And, the other children that were there that weren't hers, yours -- did you have any of your own children at that house?

A No.

Q So, who are the Threlkells?

A The Threlkells, they're my kids, all of them my

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kids. I accept them all.

Q All of them your kids -- I'm just trying to find out what the relationships are. Was she --did she -- are they like half-brothers or half-sisters? Is that why they have a different name?

A Well, I'm sure there were other mens before me.

Q Did you have any children with Hattie?

A No.

Q But when you went into that house you accepted them all as your own?

A Right.

Q Okay. You say there were shots fired and you walked and -- in the house -- what did Hattie do? Did she stay in the room, go with you, go somewhere else?

A When me and Hattie heard the shot we were both in the room talking about something and then I say, "Did you hear that," and she said, "Yeah, sound like some shooting," and I looked out the window. Then she say, "Go check the house, make sure all my kids are in the house."

Q All right. And did you check the house?

A I did.

Q And it's your testimony you checked the house and everyone was there except for Italo?

A Yes.

Q Did you report that back to Hattie?

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A Yes, I did.

Q So did Hattie ever leave that room?

A Yeah, she did. She went to check it herself too, after I came back and told her who all were in the house she left the room.

Q So you guys are watching TV when this shooting happens?

A Yeah, we were, we was sitting in the room kind of looking at TV off and on and conversationalizing.

Q Is this a bedroom?

A Bedroom.

Q Okay. So she asks you to check and you walk around the house and you walk downstairs and you walk back up, you've checked each room and you've done your count, and you're realized there's one missing?

A Right.

Q You come back in and you tell that to Hattie?

A Yeah, I told her Talo had left.

Q So then she says, "Well, I don't really believe you so I'm going to go ahead and count everyone myself"?

A She didn't say that. She just got up and left the room and like she was going to the bathroom in the kitchen.

Q So you don't know if she walked around the house or not?

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A No. I know she left the bedroom and once you leave the bedroom we got a little short hallway and then the next is the living room, living room.

Q All right. Then there's a downstairs?

A Right, there's a downstairs basement.

Q Do you know if she went downstairs?

A No, I don't.

Q When you walked around and you saw Carlos and Ivory what room were they in?

A They were in the living room looking at TV.

Q What were they doing, watching TV?

A Right.

Q Were they asleep?

A No, they weren't asleep.

Q If Hattie said they were sleeping that was wrong?

A They weren't asleep when I went in there.

Q And so you -- it's your testimony that some guy knocks on the door. Do you have some rule against allowing people into the house?

A Well, at certain times she don't allow them in, to have company.

Q So if somebody comes over, it's a friend of Carlos's or somebody else's, according to how you say things happened and knock on the door --

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A They won't get in.

Q Can you walk out and stand and talk on the porch with them?

A They won't get in and nobody will get out.

Q Can't even open the door and have a conversation?

A When she says something that's it.

Q So somebody who's a friend of the family comes and knocks on the door at 11:30, 11:45, whatever time it was you say this happened, you're saying that nobody will ever even acknowledge that they're there?

MS. BEIMDIEK: Objection. Relevance, Your Honor.

THE COURT: Sustained.

Q (By Mr. Hagemeister) There wasn't anybody that really knocked on that door that night, was there?

A Yeah, I did hear a knock.

Q Could it have been a door opening and shutting?

A I doubt it because the door's right near me and Hattie's bedroom.

Q All right. Well, do you think maybe -- what happens when the door knocks, does anybody open it, you hear the door open?

A Well, somebody answer it, you know, or sometimes possibly they might not answer it.

Q I'm not talking about sometimes, other times. I'm talking about the night that this boy was killed. When

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there was a knock on the door that's right next to your room did somebody answer it?

A I don't know whether they answered it or not. I mean I was in the room and they say somebody came and knocked on the door.

Q Who said that?

A I said that.

Q You said they said somebody came and knocked on the door.

A I say somebody came and knocked on the door.

Q You said that? I'm sorry.

A Right, September 17th.

Q Well, I want to get this straight. So when just a minute ago you said they said somebody came and knocked on the door you didn't really hear the knock yourself?

A Yeah, I did hear the knock.

Q Who was telling you that somebody came and knocked on the door? Who told you that that's what they wanted you to testify to?

A No, I was telling myself that I heard somebody knocking on the door because the bedroom door's right near our room.

Q So how do you respond when you hear somebody knock on the door?

A Sometime I sit there, somebody else may answer

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the door.

Q All right. Well, did somebody else answer the door?

A Maybe they did. I mean I can't recall.

Q Well, would you hear the door open if somebody else answered the door?

A Yeah, I would.

Q Did somebody else answer the door?

A Well, sometime somebody will knock on the door and if nobody comes to answer the door they'll just leave.

Q Okay. So this was just a short knock and a leave?

A Yes, sir.

Q I see. Nobody yelled through the door, "Who is it," and nobody on the other side yelled, "It's Edwon"?

A Right, right.

Q You would have heard that?

A Right.

Q And if all the lights are on in the house on a night like this or if there's activity in the house, would it be fair to say somebody knocking on the door would be able to realize there's people at home?

A Yes, I'm sure they would.

Q Okay. So would it be fair to say they'd probably knock again?

MS. BEIMDIEK: Objection, calls for speculation.

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THE COURT: Sustained.

Q (By Mr. Hagemeister) Did they knock again, did this person?

A I only heard it one time.

Q Okay. Is your family in the habit of walking to the window, looking out and seeing somebody they know knocking on the door and not responding in any way whatsoever?

A No, sir.

Q But are you saying that that's what happened that night?

A No, I'm not saying that's what happened that night, sir.

Q Well, did somebody respond after the door was knocked on?

A Nobody answered the door and whoever was at the door left.

Q This house is locked up so that person couldn't have let himself in? I mean did she say to lock up the house, Hattie?

A Beg your pardon, sir?

Q Did Hattie tell you to lock up the house, "Don't let anybody in, don't anybody go out"? Is that what the testimony was that I heard?

A Hattie told me that, "Don't let anybody in the

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house," and nobody could go out of the house.

Q Do you leave the door unlocked is my question?

A Did I leave the door open -- unlocked?

Q Yeah, I mean there's a shooting, there's a guy knocking on the door. Was the door locked or unlocked at that time?

A The door was locked.

Q Okay. So after somebody knocks on the door then what happens?

A Knocked on the door and I heard the knock, no one responded to the knock and they were -- and then they just left.

Q Okay. Did you hear anything else?

A No, that was it, sir.

Q What happens after the person just left? Did you go to bed or did you stay up for an hour or --

A Just sit there in the room and relax a little and looked at TV.

Q When was it that Italo finally came home?

A I can't remember, sir.

Q Do you remember it was between 11:25 and 11:45 the shots were fired?

A I know he had left the house but I don't know -- I don't remember exactly when he returned.

Q Isn't the fact really that you all got together

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to say, "Hey, Carlos was home at that time, that's the most important thing we have to remember"? Did you all get together and say that?

A No, sir.

Q All the other little things about how this doesn't make sense with Edwon knocking on the door or when Italo got home you all didn't realize we need to get together on all that too?

A No, sir, that's wrong, sir.

Q When somebody knocked on the door did you get up and go, "It's Italo, is it Italo, is he save, is he safe, he's home, he's in one piece"? Did you do that when somebody knocked on the door?

A (Nods negatively.)

Q Nobody really knocked on that door, did they?

A (No answer.)

Q It's not that unusual to hear shots in that neighborhood, is it?

A Talo stays downstairs in the basement. He has his own key to the basement door. That's where his room is at.

Q Well, did you sit up and wait for him to get back?

A I don't know when he returned. I was upstairs.

Q You had both gotten out of bed and did run-throughs on the house to make sure everybody is safe. Does

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everybody go to sleep not knowing if Italo is dead in the gutter or safe at home?

A I'm sure somebody stayed up to make sure he stayed safely in the house.

Q You're quite sure of it so you're able to say who it was?

A Hattie.

Q Hattie did?

A Yes.

Q You just stayed in the room with Hattie is what you testified to earlier, you stayed in the room and talked and that was it for the night?

A I didn't say that.

Q I'll give you a chance to correct that. What part did I miss?

A I said Hattie told me to make sure all her kids were in the house safely and I checked the house and came back and told her that Talo was gone. Then Hattie left the room.

Q Okay. Andthen yousaid she came back and you don't know if she was going to the bathroom, the kitchen or doing a house check?

A No, sir, I don't.

Q Then she came back you said and you said you were in the room, both of you, when there was a knock. Did she

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jump up and go, "It's Italo, he's safe," and run to the door and check to see if her missing son from the attendance card was at the door trying to get in?

A (No answer.)

Q Want me to rephrase the question?

A Yes.

Q When there was a knock at the door did Hattie run -- go and checkif it was her son she hadn't accounted for yet?

A No, she didn't do that.

Q Well, was she in the same room that you were in when there was a knock at the door?

A I remember her saying, "I don't want anybody opening my door for anybody."

Q Including her son that wasn't accounted for according to your story?

A She know her son had the key to get in.

Q And what time had Italo left the apartment -- the house?

A I don't remember what time he left.

Q After this shooting you say everyone was home for --

A I do know he left before the shooting.

Q You do know that?

A Yes.

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Q Because when you walked around you didn't see him?

A Right.

Q You really didn't see Carlos either but you want to believe Carlos was home?

A I did see Carlos.

Q Who runs that house?

A Hattie Alberty.

Q Carlos really run that house?

MS. BEIMDIEK: Objection, Your Honor. Relevance.

THE COURT: Sustained.

Q (By Mr. Hagemeister) Are you or Hattie intimidated by Carlos?

A No.

Q Is Hattie intimidated by Carlos?

A No, that's her son.

Q Do either one of you fear Carlos?

A No.

Q Carlos has never been --

MS. BEIMDIEK: Objection, relevance. Asked and answered.

MR. HAGEMEISTER: Goes to bias.

THE COURT: Reserve ruling; haven't heard the question.

Q Has Carlos been physically abusive to you or

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Hattie?

A No.

THE COURT: Sustained.

Q Ever chase you around in the neighborhood?

A No.

MS. BEIMDIEK: Same objection, Your Honor. I think this is redundant, irrelevant and --

THE COURT: Sustained.

Q You wouldn't testify -- strike that. Anybody ever shot at that house?

A Have anybody ever shot at that house? Yes, they have.

MS. MOORE-DYSON: Objection.

THE COURT: Objection overruled. Not timely made. The witness has answered.

Q (By Mr. Hagemeister) Have you called the police on that?

A Yeah, I believe Hattie did call the police.

Q How long had you all lived in that house?

A Two years.

Q The people across the street, did you know them?

A No, I didn't.

Q Do you know when they moved?

A No.

Q Do you know that they did move?

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A Yeah. I know that they did move.

Q You didn't move, you've all stayad there?

A Right.

Q The people across the street ended up moving, is that fair?

A (Nods affirmatively.)

Q You have to answer outloud.

A Would you repeat the question?

Q You all stayed there, you're still there?

A Yes.

Q It's the other people that moved away across the street?

A Okay, yes.

Q Did you know Angela Hickman?

A No, I didn't.

Q Was Ivory friends with Carlos's friends?

MS. BEIMDIEK: Objection, no foundation, and irrelevant.

MR. HAGEMEISTER: I'll rephrase.

Q Do you know who Ivory was friends with?

A No, I do not.

Q Do you know Tyrone Morant?

A No.

Q But you know this Edwon Harris?

A No, I didn't know him.

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Q You never even saw this person at the door?

A No, I haven't.

Q So for all you know there never really was anyone there?

A (Nods affirmatively.) Right.

Q Thank you. You want to see Carlos go to prison?

A No, I do not.

Q Would your situation with Hattie change if you came in and told this jury that Carlos really wasn't there?

A I wouldn't lie for Carlos under no circumstances, I saw what I saw on September 17th.

Q I'm going to ask you to answer the question. Would you still have the same relationship with Hattie if you came in and testified against Carlos?

A (No answer.)

Q Would it change?

A Yes.

Q It wouldn't change your relationship?

A Wouldn't change my relationship because I would be telling the truth.

Q If you came in and testified against Carlos?

A Against him.

MR. HAGEMEISTER: I have nothing further.

THE COURT: Thank you.

You may inquire.

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CROSS-EXAMINATION by Ms. Moore-Dyson:

Q You said that if you testified against Carlos you would have the same relationship with Hattie, is that correct?

A (No answer.)

Q You're saying that wouldn't affect your relationship with Hattie, is that what you're saying?

A I'm saying it wouldn't affect my relationship if I was telling the truth.

Q If you were telling the truth?

A Right.

Q Okay. But the truth is that Carlos was at home?

A The truth is that Carlos was at home that night.

Q And you testified a little earlier you don't even know Tyrone, is that correct?

A I don't know him.

Q Ever seen him before today?

A I've never seen him before.

THE COURT: Anything further?

MR. HAGEMEISTER: No.

THE COURT: You may step down, sir.

Call your next witness.

MS. BEIMDIEK: Carlos Wade.

THE COURT: Counsel, approach the bench.

(The following proceedings took place at the

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bench outside the hearing of the jury:)

THE COURT: I'm not going to start the testimony of the defendant on direct and cross, redirect, at 4:20 in the afternoon. Any objection?

MR. HAGEMEISTER: No.

MS. MOORE-DYSON: No.

MS. BEIMDIEK: I have none.

THE COURT: I'd also at the conclusion of these proceedings today like to have a preliminary discussion with counsel about instructions.

MR. HAGEMEISTER: Judge, the instructions aren't here. I can have them brought over right away.

THE COURT: Well, very well. You will be asked to remain. I want to go over certain things with you. Is it agreeable we do that off the record? Let the record show it's the Court's normal practice in an A or B felony case to have a preliminary discussion as to instructions before going on the record. So what I'm trying to determine now if there's any objection by any party to this lawsuit.

MS. BEIMDIEK: I don't have a problem with that, Your Honor. I would like to say on the record despite the Court's ruling and the State's agreement to provide me with a copy of the proposed instructions on the Friday prior to trial the State has not done so.

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I have not yet seen any copy of any State's instructions. While I'll do my best to participate in the informal discussion I feel as if I need an opportunity to review the instructions submitted by the State and make the specific objections that I deem necessary upon careful review of those instructions.

MR. HAGEMEISTER: Your Honor, I would respond to that in that I agree that they were not provided on Friday. On Monday I told her I would make them available to her as soon as -- at which time she informed me she wanted to know what address and time I was putting in there. I told her what address and time I was going to put in there and I believed her to indicate to me that that was basically what she needed. I will, of course, give her a copy of it tonight if the Court --

THE COURT: That was not what was agreed to prior to trial. It was agreed that the State would deliver --

MR. HAGEMEISTER: I thought I was relieved of that by defense.

THE COURT: Well, at any rate you're going to be here and we're going to go over the instructions generally.

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MS. BEIMDIEK: That's fine.

(Proceedings resumed within the hearing of the jury as follows:)

THE COURT: Ladies and Gentlemen of the Jury -- Counsel, be seated, please.

(At this time the Court read MAI-CR3d 300.04(2) to the jury.)

You're recessed at this time and instructed to return to Division 11 tomorrow morning at 9:30 a.m.

Thank you and good afternoon.

Counsel, remain in the courtroom.

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(The following proceedings took place subsequent to the jury leaving the courtroom:)

THE COURT: Let the record show the jury has left the courtroom and the Court has already discussed with counsel the Court's intention to hold a preliminary conference this afternoon realizing full well that the State has not delivered to the Court or defense counsel any verdict directors in this cause. This discussion is for the benefit of the Court and of counsel in order to save time but is not -- will not be binding and we will go on the record for instructional conference at or near the time of the completion of evidence in this cause or thereafter.

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Is that agreeable? And no record will be kept of this particular proceeding.

Any objection on the part of the State?

MR. HAGEMEISTER: No, Your Honor.

THE COURT: Any objection on the part of defense counsel?

MS. BEIMDIEK: No.

MS. MOORE-DYSON: No.

THE COURT: Thank you.

oOo

(The following proceedings took place on the next day, November 19, 1996:)

THE COURT: Will counsel approach the bench?

(The following proceedings took place at the bench outside the hearing of the jury:)

THE COURT: Let the record show before the commencement of these proceedings the Court asked questions about certain instructions the parties were preparing.

Is that correct, counsel?

MR. HAGEMEISTER: Yes.

MS. BEIMDIEK: Yes.

MS. MOORE-DYSON: Yes.

THE COURT: The Court was advised by the prosecutor that as to the counts on armed criminal

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action which the State has alleged against these defendants that he was probably going to submit not acting with another but straight, is that correct?

MR. HAGEMEISTER: Correct.

THE COURT: That the Court would point out I'm basing this on my recollection that in order to use a separate definition of the instruction regarding criminal responsibility for the act of another all counts submitted must be based on accessorial liability. I think you'll find that in the notes on use. Therefore, if you were to submit "X" number of counts on acting with another and "Y" number of counts on not charging accessorial liability then it's the Court's recollection notes on use would not permit the giving of a separate instruction. It would have to be given on those counts concerning --

MR. HAGEMEISTER: I understand that.

THE COURT: I just wanted to let -- Mr. Hagemeister, I'm not dictating to the State. I just wanted to let counsel know that if you did pursue that course of action and submit such an instruction and it was given by the Court that would change our instructions in that -- change many of the instructions because as I read that note on use you would not be permitted to give a separate definition.

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MR. HAGEMEISTER: I understand and I'd like two minutes to run back in the office and make a phone call so I can have it being done for us right now.

THE COURT: Very well.

(Proceedings resumed within the hearing of the jury as follows:)

THE COURT: You may proceed, Miss Beimdiek.

CARLOS WADE, being sworn, testified:

DIRECT-EXAMINATION by Ms. Beimdiek:

Q Carlos, will you tell the jury your name.

A My name is Carlos Wade.

THE COURT: Put the microphone in front of you and move closer to it, sir.

A My name's Carlos Wade.

Q How old are you, Carlos?

A I'm nineteen years old.

Q Back in September of 1995 where did you live?

A 4205 East Aldine.

Q Who lived there with you?

A My family, my mother and my brothers and sisters.

Q Now, on the night of September 17, 1995, can you tell me where you were?

A I was at home with my family.

Q Did you hear anything unusual that night?

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A Yes, I did.

Q Did you hear --

A I heard gunshots.

Q Where were you when you heard the gunshots?

A I was in the house with my oldest brother in the front room.

Q Which brother was that?

A Ivory Wade.

Q Was he the one that came in here and testified yesterday?

A Yes, ma'am.

Q When you heard the shots what did you do?

A Me and my brother got to the floor. I stepped to the other side of the room and got out of the way of the windows.

Q Why did you get to the floor on the other side of the room?

A To get out of the way of the windows, bullets come through windows.

Q Could you tell how close the shots were?

A No, I couldn't tell but it sound like it was very close.

Q After the shooting what happened in your house?

A Me and my brother got up and then my stepfather he came through the house making a head count and my mother

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came and talked to me. She made a head count behind him and then my mother told us, "Don't open the door," and a couple minutes after the incident occurred someone came and knocked on our door.

Q Were you in the front room when somebody knocked on the door?

A Yes, I was.

Q Do you know who it was that knocked on the door?

A Yes, I do.

Q How do you know who it was?

A Because my mother had answered the door and told him to go away.

Q Did she actually open the door?

A No, ma'am.

Q Did you hear a voice from outside?

A Yes, I did.

Q Did you know that voice?

A Yes, I did.

Q Who did you believe that voice was?

A Edwon Harris.

Q And, you said there was a head count in the house, is that right?

A Yes.

Q Was there anybody not in the house?

A Yes, it was.

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Q Who was not in the house?

A My oldest brother.

Q What's his name?

A Italo Wade.

Q Do you know where he was?

A He said he was fixing to go use the pay phone several minutes before the incident occurred.

Q And, did he come back home?

A Yes, he did.

Q Did he come home before the shooting or after the shooting?

A He came home after the shooting.

Q Do you know how soon after the shooting he came back?

A No, ma'am.

Q Did you ever go outside after the shooting?

A No.

Q What did you do for the rest of that night?

A I stayed in the house. I watched TV. Then I waited till I seen my oldest brother come in. He stays next to my room. And I went to sleep with my fiance.

Q What is your fiance's name?

A Tasha Jordan.

Q Did she also testify here yesterday?

A Yes.

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Q Now, the next day did you get arrested?

A Yes, I did.

Q And, do you remember what time of day that was?

A Probably about -- I'm not positively sure, about 4:30, close to five though.

Q And whose car were you in when you were arrested?

A Marlon Mitchell.

Q Was anybody else with you when you got arrested?

A Yes.

Q Who was?

A My oldest brother, Ivory Wade.

Q Did the police at that time tell you what they were arresting you for?

A No. They just said I was a suspect in a homicide.

Q Where did they take you after that?

A Down to the homicide office.

Q At some point did you find out what they were charging you with?

A Yes.

Q Did you tell them anything about whether you committed any crimes?

A I told them I didn't have any knowledge of anything. I heard shots but I was at home.

Q Did they let you go?

A No, ma'am.

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Q Did you know John Allen?

A I don't know him personally. I know of him.

Q Did you have any reason to dislike him or be in any arguments with him?

A No.

Q Did you know Johnnie Bell or do you know him?

A I don't know him personally. I know of him like I know John Allen.

Q Did you have any disagreements or misunderstandings with Johnnie Bell?

A No.

Q Did you know Angela Hickman?

A I know of her.

Q How do you know of her?

A She stayed across the street from my mother's house.

Q Did you have any disagreements with her?

A No, ma'am.

Q Now, you heard Johnnie Bell talk about these other shootings he says you did?

A Yes.

Q Did you ever shoot at Johnnie Bell or John Allen?

A No, ma'am, I don't have any knowledge of nothing he's talking about.

Q Did you ever fire shots at the Hickmans' porch?

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A No.

Q Did you ever indicate -- did you ever chase him down a gangway with a gun?

A No.

Q Did you ever fist fight with anybody at Bill's Auto?

A No.

Q Did you have any fights with anybody that led to this killing?

A No, ma'am.

Q Did you kill John Allen?

A No.

Q Did you shoot at Angela Hickman?

A No.

Q Did you shoot at Johnnie Bell?

A No.

Q Where were you when the shooting happened?

A At home with my love woman.

MS. BEIMDIEK: I have nothing further.

THE COURT: Thank you.

You may inquire.

CROSS-EXAMINATION by Mr. Hagemeister:

Q Did you go over all those answers with Miss Beimdiek before you took the stand?

A No.

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Q She never asked you what questions she was going to ask you?

A Huh?

Q She didn't tell you what questions she was going to ask you?

A She just told me she going to ask me in front of the jury did I shoot anyone.

Q So she didn't go over every one of those questions

MS. BEIMDIEK: I object. I think there's an attorney-client privilege.

THE COURT: Overruled. He may answer without divulging what the conversation was about.

You understand the question?

MR. WADE: Yes.

THE COURT: You may answer.

MR. WADE: Could you repeat yourself, please.

Q (By Mr. Hagemeister) Did you practice your testifying?

A No.

Q Did you tell her what you were going to say to her questions?

A No.

Q You're looking at a charge of murder in the first degree and you're saying your attorney never went over with you what you were going to say on the stand?

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A No, sir.

Q You've had a year and two months to come up with what you wanted to say on the stand in this case, is that correct?

A I knew what I was going to say the first time they said they was going to bring me to trial because I didn't do it.

Q So Johnnie Bell and John Allen have no reason to be shot by you, is that your testimony?

A That's correct.

Q They have no reason to say you're the shooter?

A That's correct too.

Q They just thought, you know, John Allen's dead, we may as well get that kid that lives down the street that we don't really know very well?

A I don't know why they said that.

Q Are you in school?

A No.

Q You work?

A I had a job before this incident occurred.

Q What was it?

A At Ron's Steak House.

Q Where is that?

A Out I-270. I don't know exact street it's on.

Q Did you ever go there?

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A Yes.

Q Ron's Steak House?

A Yes.

Q How long did you work there?

A About three weeks, close to a month.

Q I'm sorry, I should have said I mean a job that you actually held for any period of time.

A Longest job I held for a period of time I worked for the State like a summer job.

Q What was that?

A I worked at a correctional center.

Q Where?

A Tandy's Correctional Center.

Q Can you spell it?

A T-A-N-D-N-E-Y.

Q T-A-N-D-N-E-Y?

A Tandy's.

Q When did you work there?

A About '94, probably in '94.

Q What?

A Probably in '94. I'm not sure.

Q Was it longer than three weeks?

A Yes, it was longer than three weeks. I completed the summer job.

Q It was a summer job?

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A Yeah, it was a summer job.

Q Have you ever had any job for any period more than a summer?

A No, sir.

Q And, would it be fair to say you don't really have a school record to be proud of?

MS. BEIMDIEK: Judge, I object. I don't think there's any foundation for that question.

THE COURT: Sustained.

Q (By Mr. Hagemeister). If you don't go to school you don't have a school record to be proud of, is that a fair statement?

A I went to school.

Q How long did you go through school?

A At that time 10th grade.

Q Which would have put you how old?

A Hum?

Q How old were you?

A How old was I?

Q When you dropped out of high school.

A I think -- I'm not for sure. I think I was fixing to turn seventeen.

Q All right, so you stopped going to high school?

A Yes.

MS. BEIMDIEK: Objection to relevance, Your Honor.

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THE COURT: Sustained.

Q The fact is -- what do you do with your days?

MS. BEIMDIEK: Objection, relevance.

THE COURT: Sustained.

Q (By Mr. Hagemeister), Isn't it really true that all you have to do with your time is to hang out with your friends?

A No.

Q All you have to do is to try to somehow get some kind of respect from some way that -- not your school, not your job, it's got to be --

MS. DYSON: Objection, Your Honor, relevance.

THE COURT: Overruled. I haven't heard the question.

Restate your question.

Q (By Mr. Hagemeister), The only way you get respect is on the street?

A No, that's not the only way I get respect.

Q Do you go out with your friends and hang out with your friends?

A On several occasions.

Q What do you mean by that?

MS. BEIMDIEK: Judge, I object. It's irrelevant.

THE COURT: Overruled. He may explain his answer to his last question or what he meant by his last

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answer since there was no objection to that question.

MR. MADE: Could you repeat yourself?

Q (By Mr. Hagenbaker), I asked you if you go out with your friends. You said on several occasions. I said what does that mean.

A On several occasions, every once in a while.

Q Once a day, once a week, once a month?

A Every once in a while.

Q I don't know what that means. You're the only person that can answer that question. Every once in a while could mean different things to different people. Can you narrow that down for the jury, please.

A I seen them on several occasions, basically every other day.

Q Is Tyrone a friend of yours?

A Yes.

Q Is Demetrius Adams a friend of yours?

A No.

Q He's not a friend of yours?

A I know of him. He's not a friend of mine like Morant.

Q He didn't go out and hang out with you?

A No.

Q So you weren't upset when he was shot on September

MS. MOORE-DYSON: Objection, relevance.

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MS. BEIMDIEK: Objection.

THE COURT: Finish the question. I'll reserve ruling.

MS. BEIMDIEK: Can we approach, please?

THE COURT: Yes.

(The following proceedings took place at the bench outside the hearing of the jury:)

MS. BEIMDIEK: Your Honor, I believe the Court has ruled that the incidenr that Mr. Hagemeister is seeking to elicit has been ruled inadmissible by the Court.

MR. HAGEMEISTER: In my case in chief.

MS. BEIMDIEK: I don't believe it was limited to that. My recollection of the record that was made pretrial where the State alleged that person named Demetrius was shot the same night as this case was ruled inadmissible by this Court. I don't think this Court's ruling has changed. I ask the State be instructed to avoid this area, that the jury be instructed to disregard the last comment.

MR. HAGEMESTER: Your Honor, the Court excluded particular prior acts that could not be shown were committed by Carlos. This is not an act that I'm saying Carlos committed. This is an act against one of Carlos's friends who was shot that same day

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which goes to explain why they were on the lookout for the victims in this case. If he admits that it's somebody he knew and that he was upset by it it goes to motive.

THE COURT: The objection is sustained, offer of proof overruled and denied. The Court's ruling remains the same as it was pre-trial.

MS. BEIMDIEK: Thank you, Judge.

(Proceedings resumed within the hearing of the jury as follows:)

Q (By Mr. Hagemeister) So these friends you have in this neighborhood would you say that you're a good friend of them?

A Could you repeat yourself?

Q Are you a good friend to have? Are you a loyal friend?

A To who?

MS. BEIMDIEK: Objection, relevance.

THE COURT: Overruled. The witness has answered. Not timely made.

A To who?

Q Any of your friends, Tyrone, Marlon Mitchell.

A To a certain extent.

Q And I -- you expect that same loyalty back to you?

A Yes, I do.

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Q And, in fact you earned that loyalty among your friends, haven't you?

MS. BEIMDIEK: Judge, I object, relevance.

MR. HAGEMEISTER: Goes to bias of witness, Marlon Mitchell.

THE COURT: The objection will be sustained.

Q (By Mr. Hagemeister) Why -- do you know any reason why Marlon Mitchell would get up on the-- excuse me -- when Marlon Mitchell got up on the stand and told us this story about driving that car up and down the street was he lying for you?

MS. MOORE-DYSON: Objection.

MS. BEIMDIEK: Objection.

A He wasn't lying when he said I was not in that car.

Q Did you say something -- .

MS. BEIMDIEK: I'll withdraw the objection.

Q So --

THE COURT: Will you withdraw the objection?

MS. MOORE-DYSON: I objected because it was calling for speculation on the part of this witness as to what Marlon Mitchell would have been thinking.

THE COURT: Sustained as to what Marlon Mitchell would have been thinking. Otherwise overruled.

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Q (By Mr. Hagemeister) When Marlon Mitchell testified that you weren't in that car that night and the only reason the car was seen was because he was in that neighborhood -- you were here for that testimony?

A That's correct.

Q Says the only reason he was in that neighborhood for the car to be seen was he was going to that liquor store that night; you were here for that testimony?

A He said that.

Q You didn't get him to come in to testify to explain how that car was in the neighborhood?

A No, sir, I didn't.

Q You and Marlon and Tyrone and your other friends don't call John Allen and Johnnie Bell sissy?

A I never called that man a sissy a day in my life.

Q You wouldn't call him a sissy because you don't really know him, it's not because they don't come back and fight back when you guys do?

A I don't -- I never had a fight with that young man. I don't have any reason to call him a sissy.

Q How many friends do you think you have that come over and hang out at your house?

MS. BEIMDIEK: Objection, relevance.

THE COURT: Sustained.

Q (By Mr. Hagemeister) You say you've never told

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John Allen and Johnnie Bell that was your neighborhood, for them not to come into that neighborhood; how many people do you have to back that up that that's your neighborhood.

MS. BEIMDIEK: Objection, irrelevant. Defendant has no burden of proof.

MR. HAGEMEISTER: The witness told the jury that this witness said, "Don't come into my neighborhood."

THE COURT: The objection is sustained for several reasons among which it's a compound question.

Q (By Mr. Hagemeister) Do you have any area that you frequent in that neighborhood?

MS. BEIMDIEK: Objection, relevance.

THE COURT: Overruled. He may answer.

MR. WADE: Could you repeat yourself, please.

Q Is there an -- a certain area that you and your friends generally hang around in the area of Martin Luther King, Aldine, Whittier and Cote Brilliante?

A No, unless they over my house giving me company, besides that, no.

Q And they all hang over at your house?

A Not everyone.

Q The friends you do have?

A Yes.

Q They look up to you?

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A No.

MS. BEIMDIEK: Objection, relevance.

THE COURT: Sustained.

Q (By Mr. Hagemeister) Where is Italo Wade today?

MS. BEIMDIEK: Objection, relevance.

MR. HAGEMEISTER: He's a family member who was present on that evening at the house at some point that can --

THE COURT: The objection is sustained.

MR. HAGEMEISTER: Ask for sidebar.

THE COURT: Yes.

(The following proceedings took place at the bench outside the hearing of the jury:)

MR. HAGEMEISTER: Judge, this is a witness that's been endorsed by the defense and she didn't call him and I'm asking this witness to establish where he is to explain why he was never called as a witness. He's somebody that can establish that Mr. Wade was at home later that evening and that he was at the -- that he returned home immediately after the shooting.

MS. BEIMDIEK: Your Honor, if I may, I think it's been established that the witness is unable to establish any kind of alibi for the defendant. We don't have a burden of proof here and I don't

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know that if the testimony of that witness would even be relevant or admissible in this case.

MR. HAGEMEISTER: The State has the burden of proof and I agree with that entirely. Part of that burden is to show that there's a person that could have been called that wasn't called. That's how I get over my reasonable doubt. I'm not putting the burden on her.

THE COURT: Offer of proof is overruled and denied. The Court's ruling remains the same.

(Proceedings resumed within the hearing of the jury as follows:)

Q (By Mr. Hagemeister). When you were brought down to the police station were you given an opportunity to call your parents?

A Been so long ago I don't remember.

Q Well, you're being arrested for something you absolutely had nothing to do with, it's a murder first degree, armed criminal action, assault first, armed criminal action, assault first, armed criminal action, and, according to your testimony you had nothing to do with it?

A Correct.

Q Were you upset?

A Yes.

Q Did you think maybe I should call my family

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because I was home last night?

A When I was at the police station they didn't tell me I was under arrest for nothing. They just told me I was a suspect in a homicide. They let me sit in the room for several hours, then they came out and told me -- after they told me what I was arrested for then I probably did call my love woman.

Q Probably?

A (Nods affirmatively.)

Q You don't remember?

A Been so long ago I don't remember.

Q You weren't crying on your phone to your mom or anybody saying --

MS. BEIMDIEK: Objection. Asked and answered.

THE COURT: Sustained.

Q (By Mr. Hagemeister) When did you have your first contact with all the people that knew you were at home?

A Been so long ago I don't remember.

Q Well, describe it for the jury.

A Hum?

Q Describe how it happened.

A How what happened?

Q Well, I mean at some point you've got to be reunited with your family either in phone or in person.

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A I'm sure the first time I got in contact with them was over the phone.

Q And how long was it after you were told what you were charged with?

A Could you repeat yourself?

Q How long was that after you were told what you were charged with?

A Been so long ago I don't remember.

Q You're going through what you're describing as just this nightmare and you're not immediately trying to get ahold of everybody to show that you were at home that night?

MS. BEIMDIEK: Objection, asked and answered.

THE COURT: Sustained. Move on.

Q (By Mr. Hagemeister). You don't remember it because the fact is that you knew you were good for it, wasn't a big deal, just later on deciding I've got to get some people to come in as witnesses --

MS. BEIMDIEIK: Objection.

A That's not it.

THE COURT: Overruled.

Q The reason you called them sissies they wouldn't play your little version of cowboys and indians out on the street with real guns --

MS. BEIMDIEK: Objection, argumentative,

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irrelevant.

THE COURT: Sustained.

MR. HAGEMEISTER: I don't have any other questions, Judge.

THE COURT: Thank you.

You may inquire.

MS. MOORE-DYSON: I don't have any questions.

THE COURT: Anything further of the defendant?

MS. BEIMDIEK: Nothing further, Your Honor.

THE COURT: Mr. Wade, you may step down, sir.

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(END OF VOLUME I)

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VOLUME II

THE COURT: Call your next witness.

MS. BEIMDIEK: Your Honor, may we approach at this time.

THE COURT: Very well.

(The following proceedings took place at the bench outside the hearing of the jury:)

MS. BEIMDIEK: Judge, I have no further witnesses; however, I did want to move to admit several exhibits and the first one is Defendant's Exhibit A which is the map that's there.

MR. HAGEMEISTER: Unopposed.

THE COURT: Admitted.

MS. BEIMDIEK: The next one would be, and I must say I misnumbered an exhibit, so for purposes of clarifying the record for identification purposes I originally marked the audio tape statement of Johnnie Bell that was made on July 11th of '96 as Exhibit F. It should have been Exhibit G. However, I'm not moving to admit it at this time. I just wanted to clear the record up as to that. I am moving to admit Defendant's Exhibit F which was the diagram prepared at the deposition and referred to during Johnnie Bell's testimony.

THE COURT: Admitted.

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MR. HAGEMEISTER: There wasn't an adequate foundation, Judge. There was a question with regard to where that "X" was placed and had she gotten into it I would have brought it out in the deposition. That wasn't the witness but Miss Beimdiek that placed that "X" on the map and I made a big issue about how she put it there and the witness didn't and how it was not where he was pointing.

THE COURT: Let the record show that contrary to the Court's suggestion counsel for the State and counsel for the defendants have put markings on exhibits after testimony of a witness. This was true in the State's exhibit of the area, I forget the number --

MR. HAGEMEISTER: 10.

THE COURT: -- and Defendant Wade's Exhibit A. The Court feels there was a sufficient foundation laid for Defendant's Exhibit F so the State's objections are overruled. As I say part of the reason for the Court's ruling is the doctrine of curative admissibility. Both parties have done that and it's my recollection that Mr. Bell did lay the foundation for the admission of this exhibit.

MS. BEIMDIEK: Finally, Your Honor, --

MR. HAGEMEISTER: Judge, there were no objections

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objections when I was putting the houses up to where it was being located. Both the witnesses on this map and on the map that she drew at the time said that's not right.

THE COURT: Sir, you persist in beating dead horses and in addition to the reasons the Court has already given all of these exhibits each party has waived any objection because they've been presented to and viewed by the jury.

MS. BEIMDIEK: Finally, Your Honor, I believe Exhibit H may have already been admitted.

THE COURT: It was admitted. The State had no objection to that letter, so stated, and it's admitted, has been admitted.

MS. BEIMDIEK: That concludes the defendant's case. I will formally rest in front of the jury.

THE COURT: Very well.

(Proceedings resumed within the hearing of the jury as follows:)

THE COURT: Anything further on behalf of the Defendant Wade?

MS. BEIMDIEK: Your Honor, the Court having admitted Defendant's Exhibit A, F and H the Defendant Wade hereby rests.

THE COURT: Thank you.

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MISSOURI COURT OF APPEALS
EASTERN DISTRICT

STATE OF MISSOURI, Plaintiff (Respondent), v. CARLOS WADE, Defendant (Appellant).	Mo. Ct. of Appeals No. ~~71991~~ ED76932 Circuit Court of the City of St. Louis, Mo., No. 951-4326A, Div. 11
STATE OF MISSOURI, Plaintiff (Respondent), v. TYRONE MORANT, Defendant (Appellant).	Mo. Ct. of Appeals No. 71966 Circuit Court of the City of St. Louis, Mo., No. 951-4326B, Div. 11

TRANSCRIPT OF RECORD ON APPEAL FROM THE CIRCUIT COURT OF THE CITY OF ST. LOUIS, STATE OF MISSOURI, DIVISION NO. 11
THE HON. FLOYD McBRIDE, JUDGE, PRESIDING

VOLUME II

FILED
JUL 25 1997
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ST. LOUIS, MISSOURI

Exhibit 6

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DEFENDANT TYRONE MORANT'S EVIDENCE

THE COURT: You may proceed, Miss Moore-Dyson.

MS. MOORE-DYSON: Your Honor, ask for two minutes to check and see if my witnesses are in the hall.

THE COURT: Yes, ma'am.

MS. MOORE-DYSON: Your Honor, may we approach?

(At this time there was a discussion off the record at the bench outside the hearing of the jury, after which the following proceedings took place on the record at the bench outside the hearing of the jury:)

THE COURT: Let the record show that the Court has been advised by counsel for Defendant Morant that she intends to call a witness whose testimony she anticipates will be that he was with the defendant, Defendant Morant, at a different place when the alleged shootings -- homicide and assaults took place. I further have been advised by Miss Moore-Dyson that this witness is represented by the Public Defender's Office, in what I understood to be an entirely unrelated charge.

MS. MOORE-DYSON: Correct.

THE COURT: And that she contacted the witness's attorney, Miss Haines, Assistant Public

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Defender, and you advised the Assistant Public Defender that you intended to call this person as a witness, is that correct?

MS. MOORE-DYSON: That's correct.

THE COURT: And when -- that you would probably call him to the stand sometime this morning.

MS. MOORE-DYSON: Yes.

THE COURT: Did she indicate she would be here?

MS. MOORE-DYSON: Yes.

THE COURT: What time did you tell her to be here?

MS. MOORE-DYSON: She indicated she was on her way. I believe the clerk said she was on her way. That was about an hour ago.

THE COURT: Well, evidenly if that's correct she got sidetracked.

MR. HAGEMEISTER: Should call her boss. Oh, wait --

THE COURT: What's before the Court at this time?

MS. BEIMDIEK: I think Miss Moore-Dyson was making a record. The only request I would have is if the pending case is somehow elicited the State be prohibited from indicating that he is currently represented by a lawyer on my staff.

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THE COURT: I hope I don't have to get to hornbook law 101 that an arrest of a defendant on another charge is not admissible to impeach his credibility. I assume the State knows who this witness will be, is that correct, sir?

MR. HAGEMEISTER: Knows what -- who the witness is. I've got the name.

THE COURT: All right. Is any party asking that we take a recess at this time to enable Miss Haines to get here?

MS. BEIMDIEK: Well, Your Honor, I guess -- I did speak with her about this. She indicated she wished to be present. I think in my capacity as her supervisor I have a duty to advise the Court that's the concern she expressed to me.

THE COURT: We all have wishes, quite a few unfulfilled. If she's been given an hour to get here and she's not here are you --

MS. BEIMDIEK: I understand.

THE COURT: -- are you suggesting to the Court that we should delay until she makes an appearance?

MS. BEIMDIEK: Perhaps we can contact the office and determine what the circumstances are.

MS. MOORE-DYSON: She's to be my first witness. One of my witnesses apparently has not shown. She's

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under subpoena but her testimony in essence could be duplicative because he was present when she arrived as well.

THE COURT: Give it some quick thought. If you're asking for a recess at this time I'll grant it.

MS. BEIMDIEK: I would make that request.

THE COURT: One last effort to contact Miss Haines, Assistant Public Defender.

THE COURT: Very well. Thank you.

(Proceedings resumed within the hearing of the jury as follows:)

THE COURT: Ladies and Gentlemen of the Jury, we'll have our morning recess at this time.

(At this time the Court read MAI-CR3d 300.04(2) to the jury.)

THE COURT: We'll be in temporary recess. Thank you.

oOo

(The following proceedings took place in the courtroom without the presence of the jury:)

THE COURT: Let the record show that prior to the recess Miss Beimdiek, attorney for Defendant Wade, requested a continuance because it's the Court's understanding that the first witness to be called by Defendant Morant is represented by Miss

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Haines, Assistant Public Defender, on an unrelated matter. And we thank Miss Haines for arriving.

And, may I inquire, ma'am, if you had an opportunity to talk to your client?

ELIZABETH HAINES: Yes, Your Honor.

THE COURT: Now, is what the Court announced on the record essentially what has happened in the interim?

Mr. Hagemeister?

MR. HAGEMEISTER: Yes.

THE COURT: Miss Beimdiek?

MS. BEIMDIEK: I believe, Your Honor, yes.

THE COURT: Miss Moore-Dyson?

MS. MOORE-DYSON: Yes.

THE COURT: Are we ready to proceed?

MS. MOORE-DYSON: Yes, Your Honor.

THE COURT: Bring the jury down.

(At this time the jury was brought to the courtroom and the following proceedings took place:)

THE COURT: You may proceed, Miss Moore-Dyson.

MS. MOORE-DYSON: I'd like to call Anthony Rhodes.

ANTHONY RHODES, being sworn, testified:

DIRECT-EXAMINATION by Ms. Moore-Dyson:

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Q Will you state your name for the record, please.
A Anthony Rhodes.
Q And, Anthony, how old are you?
A Nineteen.
Q Where are you currently residing?
A 3212 Rex.
Q Where is that located?
A Breckenridge.
Q Is that in the County of St. Louis?
A Yes.
Q Now, Anthony, I'd like to direct your attention back to September 17th of 1995. Do you recall that evening?
A Is that the evening that the incident took place here?
Q Yes.
A Yes.
Q Okay. I'd like you to tell the Ladies and Gentlemen of the jury what were you doing that evening.
A At the beginning of the day?
Q Evening.
A Well, I went to a football game, then after the football game went to a barbecue.
Q About what time did you arrive at the barbecue?
A Around four, four in the afternoon.
Q Was that -- was it still daylight when you got

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there?

A Yes.

Q Now, who was giving that barbecue?

A Bryan Jackson and Aaron Jackson.

Q How do you know them?

A Relatives.

Q They're relatives of yours?

A Yes.

Q How are they related to you?

A Well, my cousin has a baby by one of their cousins.

Q Kind of distant cousins?

A Right.

Q When you arrived there did you -- what did you do and did you happen to see anybody, a lot of people there?

A Well, when I arrived there the barbecue was already started, everybody was eating and conversating.

Q Did you by any chance have an occasion to see Tyrone Morant there?

A Yes.

Q And, what, if anything, did you and Tyrone do?

A When I got there went up to Tyrone and we start conversating, eating some barbecue and everything.

Q Okay. Did you all talk and eat together for

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some time there?

A Basically the whole barbecue we was together eating and talking, conversating.

Q Did you stay in one place the entire time?

A Well, you know, we moved around the barbecue in the backyard where the barbecue was we was moving around talking to people, conversating.

Q Keep your voice up and talk a little slower. The court reporter has to take down what you say. All right?

A All right.

Q All right, now, did you -- did you ever see Tyrone leave that barbecue?

A Not to my knowledge.

Q Okay. And for the most part when you all were there you and he were talking and having the conversation, is that correct?

A Yes.

Q Okay. Now, I'd like to ask you was there a time when you left the barbecue?

A When we were going over to his house.

Q Okay. That was when you left the barbecue, you left with him?

A Right.

Q Was there anybody else with you?

A No, ma'am.

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Q Okay. And where did you go when you left the barbecue?

A We went to Tyrone's house.

Q And the barbecue was being held where?

A On North Market.

Q And North Market is -- Tyrone lives where?

A On Cote Brilliante.

Q Okay. How far from the barbecue is Tyrone's house?

A About two blocks.

Q About two blocks?

A Yes.

Q How did you go to Tyrone's house? Did you drive or what?

A We walked.

Q You didn't have a car that night?

A No.

Q Did you see Tyrone have a car?

A No.

Q Okay. And about how long did it take you to get to Tyrone's house?

A About three minutes, a little less.

Q Now, you went directly there, is that right?

A Right.

Q Now, do you know about what time it was when

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you left?

MR. HAGEMEISTER: Did you say you walked?

THE WITNESS: Yes.

MR. HAGEMEISTER: Sorry.

Q (By Ms. Moore-Dyson) Do you know about what time it was when you left the barbecue?

A Had to be around about eight, eight or nine, somewhere around there.

Q Did you look at a clock or anything?

A No.

Q So how are you arriving at the time, eight or nine o'clock?

A When we got there it was daylight. When we left it was night time.

Q So you had been there for a few hours?

A Right.

Q When you got to Tyrone's house do you know who was there? Was anybody else there?

A I don't really know who was there.

Q What did you do when you got there?

A We sat at his home conversating for a while.

Q Okay. At any point that evening did you see anybody else at Tyrone's house?

A Yes.

Q Who was that?

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A His mother.

Q You saw her. About how long after you got there did you see her?

A About thirty minutes, something like that, around about that time.

Q You don't know exactly how long but it wasn't that long?

A No, it wasn't that long.

Q Okay. Now, what did you do when she arrived?

A Well, she spoke to us, I spoke back, you know, conversating basically.

Q What else did you and Tyrone do?

A He had to go in his basement and get some clothes so I went to the basement, finished talking with him. We stayed down there for a minute and his mother came down there, grabbed some clothes, so we went back upstairs, and she went in the kitchen, was cooking, whatever.

Q Okay. And Tyrone's bedroom -- where his bedroom is located could you see his mom?

A Yes.

Q Could you see where the basement door was?

A She could see where she was.

Q I'm asking what you could see.

A His room is right here, the kitchen right here.

Q You mean within some feet?

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A Right.

Q Okay. Now, did Tyrone leave while you were there?

A No.

Q Leave the house I'm asking you.

A No.

Q How do you know that?

A 'Cause basically I wasn't alone by myself for him to go anywhere.

Q He did leave the room a few times while you were in the room?

A Probably to use the bathroom.

Q Did he --

MR. HAGEMEISTER: Objection, putting words in the witness's mouth.

THE COURT: Overruled.

Q (By Ms. Moore-Dyson) Did he leave the room?

THE COURT: You may answer. Did he leave the room?

A Probably to go to the bathroom, something, wasn't that long.

Q Just gone a couple seconds?

A Right.

Q Now, --

THE COURT: Excuse me. Will you approach.

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I believe the witness is having trouble hearing your questions, Counselor.

MS. MOORE-DYSON: Okay.

THE COURT: Thank you.

Q (By Ms. Moore-Dyson) Now, do you know about how long you stayed at Tyrone's house?

A I say basically around about three, four hours, somewhere around that time.

Q Okay. Now, did anything unusual occur while you were in that house?

A Not to my knowledge.

Q Okay. So you didn't hear anything or see anything unusual, is that right?

A No.

Q Okay. And, there was nothing unusual about yours and Tyrone's action? I mean you were talking and listening to the radio or some music, is that correct?

A Right, yeah.

MR. HAGEMEISTER: Objection, she's leading the witness.

THE COURT: Objection is overruled; not timely made. The witness has answered.

Q (By Ms. Moore-Dyson) Okay. At some point do you know about what time you left that house?

A About twelve.

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Q How do you know it was about twelve?

A 'Cause, you know, basically, you know, I knew around about what time it was 'cause we was there for those amount of hours.

Q So, now, when you left how did you leave, out of what door?

A Front door.

Q And, what happened when you left?

A When we got outside he was talking to Kenny 'cause Kenny asked did we want to go to the store.

Q Kenny had -- had Kenny been in the house with you then?

A No, he had came up to the door.

Q Kenny had walked up to the door?

A Right.

Q Where were you at the time when Kenny walked up?

A We were coming out.

Q Coming out the door?

A Right.

Q What happened when Kenny walked up?

A He asked to go to the store. I said, "No, I'm going to stay here."

Q He asked both you and Tyrone to go to the store?

A Yes.

Q Keep your voice up.

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A All right.

Q You indicated that you were not going to go, is that right?

A Yes, ma'am.

Q What did you do?

A So I sat there and then the lady nextdoor she had came and a bus was coming down the street.

Q Slow down. You said something happened, a bus came down Cote Brilliante?

A Yes.

Q Does that bus normally come down Cote Brilliante?

A Not normally. That's why I was like --

Q Why you remember the bus going down the street?

A Yes.

Q Anything else unusual occur?

A Lot of traffic, cars coming down the street.

Q A lot more traffic than usual coming down Cote Brilliante?

A Right.

Q You say a lady came up. Do you know this lady?

A From speaking to her, say Hi, bye, I seen her a couple times.

Q What did she do?

A Dropped off her kids.

Q Dropped off her kids at Tyrone's house?

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A At the house nextdoor.

Q Are you sure of that?

A It's been a while, you know what I'm saying. I remember her coming up, dropping her kids off.

Q And then did you notice where Tyrone and Kenny went, in which direction?

A Right, they start walking down the street going to the store.

Q Do you know whether or not that was east or west?

A Downtown is going east. I say going west.

Q And where is the store from Tyrone's house?

A Around the corner.

Q Do you know exactly where it's located?

A On Dr. Martin Luther King and Billups.

Q Is that -- Dr. Martin Luther King and Billups, is that what you're saying?

A Yes.

Q Did they get to the store?

A No, they got a couple of feet down.

Q A couple of feet down. Did they make it to the corner?

A No.

Q What happened before they made it to the corner?

A Car pulled up, some detectives or whatever hopped out, started patting them down.

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Q Okay, and then what happened?

A And they arrested them.

Q And, when you say they arrested them you saw them put them in the car?

A Yes.

Q Was anybody outside with you at that time?

A No, I was standing there by myself.

Q What did you do after they arrested him?

A Went on about my business down to a girl's house.

Q To a young lady's house?

A Yes.

Q Didn't you think it unusual for them to be arresting them or anything?

A Basically --

MR. HAGEMEISTER: Objection, she's leading the witness.

THE COURT: Sustained.

Q (By Ms. Moore-Dyson) Did you do anything with regard -- did you phone his mother?

A Basically, you know what I'm saying, police always coming through, probably just -- just messing with them. That's what I'm thinking it was, that's -- I was like they fixing to get right out, I was thinking basically nothing to it so I just went on, went on to the girl's house.

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Q Now, did you find out at some time later that Tyrone had been arrested and it wasn't just -- what did you call it -- get right out?

A Right. The police told me the next day, you know, Tyrone locked up for murder. They said they was locked up for murder. I said, "For a murder." I said, "How come? What did you all lock them up for," and, you know, just looked at me and laughed. I said, "You know they ain't guilty for that." They just drove off then, left.

Q Did you try and contact anybody after this to find out first of all when the murder was supposed to have occurred?

A No, I really didn't 'cause for real I wasn't really interested for real what happened for real.

Q But you're here today to testify for Tyrone, is that correct?

A Yes.

Q Did you at some point find out when it occurred?

A And then I had told his mother if she ever needed me to be a witness to where he was I be there, you know.

Q And did you tell her that because you -- did you tell her you would come and lie for Tyrone?

A No, you know what I'm saying; wouldn't make any sense to lie for him.

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Q You're here because you were there with him that day?

A Right.

MR. HAGEMEISTER: Objection. She's interrupting him and then leading him.

THE COURT: Sustained. The jury will disregard the last answer of the witness.

Q (By Ms. Moore-Dyson) Why are you here today?

A To tell where he was.

Q Are you telling the truth today?

A Yes, ma'am.

Q Now I'm going to ask you, Anthony, have you ever been convicted of a crime before?

A No.

Q You're Tyrone's friend, is that correct?

A Yes.

Q Are you lying for him today?

A No, ma'am.

MR. HAGEMEISTER: Objection. Asked and answered, bolstering, self-serving.

THE COURT: Overruled.

Q (By Ms. Moore-Dyson) I have --

THE COURT: The witness has answered. Move on.

MS. MOORE-DYSON: I have nothing further.

THE COURT: You may inquire.

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CROSS-EXAMINATION by Mr. Hagemeister:

Q So you left this barbecue about eight or nine o'clock, you don't remember which?

A No.

Q Could it have been seven o'clock?

A Couldn't have been seven o'clock.

Q Because it was dark?

A Basically. I knew it wasn't seven o'clock. I know around what time it was, eight, eight or nine.

Q You said you didn't check your watch. Could it have been 7:30 and still dark September of the year?

A Could have been but it wasn't.

Q You're sure it was past then?

A Right.

Q You're sure you stayed over at his house for three or four hours?

A Yes.

Q What's mom doing in the house?

A Minding her business, cooking her food. She was in the kitchen.

Q She was cooking your food?

A Cooking her food.

Q Her food?

A Right.

Q She didn't cook any for you guys?

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A No.

Q Do you remember eating? Do you remember walking downstairs, you remember walking down into the laundry room? Do you remember sitting down at a meal?

A I just got done with eating at a barbecue.

Q So she didn't need to cook for you and Tyrone then?

A Right.

Q According to your testimony, so she didn't cook for you but Tyrone was still hungry?

A I ain't told you that.

Q I'm asking did Tyrone come out and say, "Mom, you got anything for me?"

A Why would he do that? He just got through eating.

Q I'm not asking -- that's a good question. And did he ever come out and say, "Well, since you didn't cook anything for me I'm going to have to go to the store myself and go get some food"?

A No.

Q So he wasn't planning on leaving to go to the store because his mom didn't cook him food?

A Say that again.

Q If anybody says --

MS. MOORE-DYSON: Your Honor, I'm going to object because he's asking this witness what Tyrone was planning on doing.

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THE COURT: State your legal objection, Counselor.

MS. MOORE-DYSON: The legal objection would be as to relevance or competency. He's calling for a speculation on the part of this witness.

THE COURT: Sustained on the latter ground.

Q (By Mr. Hagemeister) While you're inside the house -- you guys are going out. Now, if you left at eight o'clock -- I'm sorry, scratch that. You were at the house for three or four hours you said?

A Um-hum.

Q Could it have been five hours?

A No, it couldn't have been no five hours.

Q Could it have been two hours?

A No, it couldn't have been two hours.

Q Could it have been two hours and forty-five minutes?

A No.

Q It was three to four?

A It was three to four.

Q Okay. Two hours and fifty-five minutes?

A No.

Q But you didn't look at your watch?

A Right.

Q And you can narrow it down to being at his house

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three to four hours but it couldn't have been two hours and forty-five minutes?

A I be on the street, you know what I'm saying? I know what time, around what time it was. You know what I'm saying?

Q I want to make sure I understand it.

A All right.

Q You know it was between three and four hours you were at his house because by your math he's there when the shooting happens but you don't know if it was two hours and forty-five minutes?

A I don't know when the shooting happened so I don't know.

Q Have you talked about the case with Tyrone and his mom, his attorney?

A This man been locked up. I haven't talked to him.

Q Have you talked to his mother, his attorney, about what you were going to say when you took the stand?

A Telling -- I'm telling the truth. I know what was on my mind. I'm telling the truth. I know what I witnessed.

Q When did you first talk to his mom?

A I told her if she need me I be there.

Q Which was when?

A I don't know the date.

Q You know between three and four hours on that day.

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Can you give me an idea if it was the next day, the next month, six months later?

A As soon as I knew he might need me.

Q Which puts it how long after the murder?

A I don't know.

Q Well, is it more or less than a month?

A Can't remember been so long.

Q Well, how long did it take for you to find out he was being arrested for a murder the night you say you were in his room talking to him?

A When I found out, the next day.

Q So then you don't know how long it was until you told him you'd be a witness?

A No, been so long.

Q Can't give me a rough idea if it was in hours or a year later? Which is it closer to?

A (No answer.)

Q Well, okay. You came -- you were listed as a witness in this case in August of 1996. Is that a fair statement?

A Well, if that's what you got wrote down.

MS. MOORE-DYSON: Your Honor, I'm going to object to the prosecutor attempting to elicit from this witness as to when he was listed. Again this is asking him to speculate from something that somebody else did.

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If you want to ask him whether or not he knew whether or not he was listed at that point that's one question but to determine when somebody else was listed -- when somebody else listed him as a witness he won't know that.

MR. HAGEMEISTER: Object to the speaking objection.

THE COURT: Objection to speaking objection sustained. The jury is instructed to disregard Miss Moore-Dyson's statement. If the witness answered the question I did not hear the answer. I will ask you to restate your question and if you have an objection to the question, ma'am, please make it.

Q (By Mr. Hagemeister) If the attorney for Mr. Morant listed you as a witness in August of '96 would that reflect to you about the time that you came forward as a witness?

A You say August of '96?

Q Yeah, I'm asking.

A Do you know what, it was way before then. I don't know when she wrote me down to be a witness, you know what I'm saying, because, you know what I'm saying, but I been told before then.

Q I'm trying to narrow it down to when you came forward.

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A I can't tell you the exact date and time.

Q But it was before August of '96 is what you're saying?

A Yes.

Q Could it have been June of '96?

A That's what I just told you I don't know but I know it was before August. My birthday in August. I know it was before that.

Q Could it have been June of '96?

A I don't know. I just told you that.

Q It could have been possible?

A It ain't possible.

Q Then you do know. I'm not trying to throw you off. Either you do not or do know.

MS. MOORE-DYSON: I think the question's been asked and answered, several times.

THE COURT: Restate your objection.

MS. MOORE-DYSON: Repetitive.

THE COURT: Sustained. Move on.

Q (By Mr. Hagemeister) Let's just say that however long it was afterwards that you thought back to the day of September 17th and you remembered it being eight or nine o'clock you left the barbecue because it was dark?

A No, when they told me the next day that he was locked up for murder I knew where he was basically the whole

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day.

Q All right.

A So, therefore, I knew what I had to do.

Q So then you came forward right then and told everybody right then?

A I didn't just tell you that.

Q Well, I'm asking -- you said no, couldn't have been, he was with me till eight or nine, we went to the house, then I remember we went down into the laundry room and we talked for a while, and we went back upstairs and I think he went to the bathroom once or twice or something along that line -- did you say that then?

A Repeat your question.

Q Did you say right away that's how it happened?

A I don't understand what you're saying.

Q Well, you said you found out right away.

A I found out the next day.

Q And then you said you said right then you were with him?

A No, you mixing everything up.

Q Well, fix it then. I'm not trying to put words in your mouth.

A That's what I'm saying. I already said what I have to say. You know what I'm saying too.

MS. MORE-DYSON: I object to the form of the

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question. He said, "Well, fix it then."

THE COURT: Sustained.

Q (By Mr. Hagemeister) What am saying wrong?

A Everything.

Q So when was it that you told everybody about this eight to nine o'clock leaving the barbecue and about staying at the apartment for three or four hours?

A Didn't I just tell you I don't know. You can't make me know what I don't know.

Q What I'm asking, you've said -- did you find out the next day he was charged for the murder that night?

A Right.

Q And it wasn't until later on you came forward and said all the stuff you're saying today, is that true?

A It's like this. It's like this. I came up to tell what I knew.

Q When did you --

A I came, that's what I'm telling you. I don't know. I came up in time enough.

Q Was it the next day when you found he was charged with a murder on the 17th or was it closer to August of '96?

A That's what I'm telling you. I don't know.

Q You don't know which one it was closer?

A It wasn't too long after he needed me.

Q What is not too long is all I'm asking for, for

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Anthony Rhodes, is -- is that a month, a week, three months? What is not too long by your definition?

A Got no definition for it.

Q I'll move on. So when you're inside the residence, and, just for the record if you left the barbecue at eight o'clock and you were at the residence for three hours, that puts you leaving that house at eleven o'clock, doesn't it?

A I said we left the barbecue at eight or nine.

Q But you're saying it could have been eight?

A Could have been nine.

Q All right. Well, let's just say it's eight for the purposes of this question. You said three or four hours. Let's say three for the purposes of this question.

A See, well, let's just say nine and then let's just say three, let's just say eight, and then let's say four.

Q I'm going to ask this question. This is the way we work in this trial. Eight and three makes eleven, doesn't it?

A Right.

Q So you could have left that house at eleven o'clock even by your own testimony?

A What is eight and four, twelve.

Q Are you saying it was four?

A I told you what I told you. You know what I'm saying.

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Q Eight and three is eleven, nine and four is one o'clock in the morning. So you agree you left the house between eleven and one?

A No, I don't agree to that.

Q Well, what do you say now?

A I say we left the barbecue at eight or nine.

Q All right.

A We was at his house for three or four hours.

Q All right, so that's --

A Nine and three is twelve, so --

Q What are you saying you did at his house for this three or four hours?

A Conversating.

Q About what?

A Numerous amounts of things.

Q Sat and talking? Sat around talking?

A Yeah.

Q And it wasn't because his mom didn't feed him that he went to the store? Did he say,"I'm going to the store because I got to get some food"?

MS. MOORE-DYSON: Objection. That question has been asked and answered.

THE COURT: One more time, overruled.

You may answer. Did he say that?

MR. RHODES: Re-ask your question.

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Q (By Mr. Hagemeister) When you guys were getting ready to leave the house where were you going before you ran into Kenny?

A He knocked on the door. We fixing to go out there and talk to him.

Q I thought you said you left the house and he was walking up?

A I didn't tell you anything like that.

Q I misunderstood. When he knocked on the door according to your testimony --

A No.

Q -- you guys you're going to go to the store?

A No, I wasn't going to the store.

Q They decide they're going to go to the store?

A Kenny asked him to go to the store so he was going to the store.

Q So Kenny asked Tyrone to go to the store?

A Right.

Q It wasn't Tyrone saying to Kenny, "Hey, you know my mom just --"

A Kenny asked Tyrone to go to the store.

Q Tyrone never said anything about how he was going to go get food himself?

A Kenny asked Tyrone to go to the store.

Q Okay. And they were going to walk to the store?

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A They didn't have no car so they was going to walk.

Q Didn't have no car?

A It's right on the corner.

Q What's Tyrone wearing?

A I don't know. It was a long time ago.

Q Well, when he was down there folding the laundry and you watched all that did you see him take some of that, piece of clothing, put it on himself?

A Did I tell you what kind of clothes was down there? I don't know. He could have went and got his momma's clothes. I don't know whose clothes he went and got but he went down there.

Q You're testifying you remember some things but you don't remember his clothing?

A It was a long time ago.

MR. HAGEMEISTER: May I approach the witness?

THE COURT: Yes, sir.

MS. MOORE-DYSON: Let me see.

Q (By Mr. Hagemeister) I'm going to hand you what I've marked State's Exhibit 26. Who is that a photo of?

A What did you say?

Q Who is that a picture of?

A Tyrone.

Q Is that what he was wearing that night?

A I don't know.

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Q You don't remember?

A No.

Q Well, is that how his face and his hair looked on that night?

A I don't know.

Q Were you drunk or were you --

MS. MOORE-DYSON: Your Honor, I'm going to object to that line -- to the question. He's asked -- he's asked the question, he's answered the question.

MR. HAGEMEISTER: I'll rephrase.

THE COURT: Very well.

Q (By Mr. Hagemeister) You're saying you don't remember how he even looked on that day but you remember all that other stuff?

A If I see you right now don't mean I ain't going to forget your face -- I ain't going to remember what you had on but I remember your face.

Q Is that his face the way it looked then?

A I -- that's how he looked. I don't know if that's how he looked that day but that's how he looked ever since I been knowing him.

MR. HAGEMEISTER: I ask State's Exhibit No. 26 be admitted in evidence.

MS. MOORE-DYSON: I object to the picture as to relevance with regard to a couple of things. Maybe

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we can do a sidebar on this.

THE COURT: Let me see the exhibit.

Let the record show the Court had trouble hearing the witness's last answer. Is there any dispute, counselor, that he identified this photograph as the photograph of the defendant Morant? That's what I understood him to say.

MS. MOORE-DYSON: There's no dispute there.

THE COURT: I don't -- are you offering this at this time?

MR. HAGEMEISTER: Yes, sir.

THE COURT: The State's Exhibit -- your objection is overruled; however, counsel for the parties are advised that as to a prior limitation it will be the same. Is that understood, counsel?

MR. HAGEMEISTER: I would just ask leave to have a discussion about that later, Judge.

THE COURT: There won't be any discussion about it. The Court's already ruled. Do you understand that the Court is admitting this over defendant's objection with the limitation I heretofore discussed with counsel?

MR. HAGEMEISTER: Yes.

THE COURT: That's all I require is either we did discuss it or we didn't discuss it, is that correct,

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counsel?

MS. MOORE-DYSON: We did.

MS. BEIMDIEK: Yes, Your Honor.

THE COURT: Counsel understand the Court's ruling?

MR. HAGEMEISTER: I do.

THE COURT: Proceed.

Q (By Mr. Hagemeister) And is that how he appeared on that night?

A I don't know.

Q When you -- when you went to that house you said you didn't know if anybody else was there?

A Yeah.

Q You were there for three hours; you didn't hear any creature stirring in the house?

A That's not what I said.

Q I'm asking --

A This is what I'm telling you. When we got there I don't know who was there but I know a little while later his mother spoke to me.

Q And then that would have been thirty minutes after mom -- after you guys got there which would have made it is this fair to say according to your testimony 8:30 to 9:30 that mom arrived?

A Yeah.

Q And, did she see what time you guys left?

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A I don't know what she saw.

Q Did she see you leave?

A She saw us leave.

Q Did you tell her you were going to the store?

A I don't know what he told his mother.

Q Were you there then?

A I was there the whole time. I don't know what he told his mother.

Q You're friends with Carlos and Tyrone, aren't you?

A Yes.

Q And Marlon Mitchell?

A Who?

Q Marlon Mitchell. He's a friend of yours too, Elijah's brother?

A Yes.

Q He's a friend of all yours?

A Yes.

Q Friends look out for each other, don't they?

A That's what friends are for, ain't it?

MR. HAGEMEISTER: I have no further questions.

THE COURT: Thank you.

REDIRECT-EXAMINATION by Ms. Moore-Dyson:

Q At any point if you left the house at eleven or twelve o'clock did you see what happened after you left the house?

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A Like what?

Q After you left the house was Tyrone arrested?

A Yes.

Q A few minutes after he walked from his mother's gate, is that correct?

A Yes.

Q That was the only time that you left that house, is that correct?

A Right.

Q So if it was at eleven o'clock Tyrone was arrested at eleven something, is that correct?

A So for real what I'm saying whatever time we did leave out the house he was arrested right after that.

Q That's the last thing you saw that happened to Tyrone when he left that house, is that correct?

A Right.

Q Did you see Carlos that day?

A Can't recall.

Q Okay. Did you hang out with Carlos that day?

A Can't recall.

Q From the time that you and Tyrone got together was Carlos with you all?

A Can't recall.

Q Okay. He wasn't at the house with you, was he?

A No, he wasn't at the house with us.

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Q Was Kenny inside the house with you?

A No.

Q It was just you and Tyrone, is that correct?

A Yes.

Q Now, you indicated that the police told you the next day that Tyrone had been arrested for the murder, is that right?

A Right.

Q Did you tell them then he couldn't have been involved in it?

A Yes.

Q Then you later on talked to his mother, is that correct?

A Yes.

Q Did you tell her --

MR. HAGEMEISTER: Judge, she's testifying. He's agreeing.

THE COURT: Objection is not timely made. The witness already answered.

MR. HAGEMEISTER: Object to her next question. She started another one.

THE COURT: I'll reserve ruling until I heard the question.

Q (By Ms. Moore-Dyson) When you told Tyrone's mother that you would come forward and testify for him, is that right?

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A Yes.

Q Did you tell her exactly what you were going to say word for word?

A No.

MR. HAGEMEISTER: Objection, she's --

THE COURT: The objection to the --

MR. HAGEMEISTER: -- leading.

THE COURT: -- the prior question -- well, what was the last question, Miss Kutta?

MR. HAGEMEISTER: Well, I'll withdraw it, Judge.

THE COURT: No. You want a ruling we'll get a ruling.

(At this time the question: "Did you tell her exactly what you were going to say word for word?" was read by the reporter.)

THE COURT: Objection is overruled.

What is your answer?

A I didn't tell her.

THE COURT: Let's proceed.

Q (By Ms. Moore-Dyson) And, Tyrone had another attorney before I was his attorney or do you know?

A No.

Q You never talked to that attorney?

A Not to my knowledge.

Q And, when you -- but you knew that you were going

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to be a witness prior to my talking to you, is that correct?

A Right.

Q And, did I tell you what to say?

A No.

Q Did you tell me what you remember from that night?

A Yes.

Q And is that -- you told me essentially what you told this jury today?

A Yes.

MS. MOORE-DYSON: I have nothing further.

THE COURT: Thank you.

Any further of this witness?

MR. HAGEMEISTER: Briefly.

RECROSS-EXAMINATION by Mr. Hagemeister:

Q When you talked to the defense attorney did you always say that it was right as Tyrone left the residence that he was arrested?

A What?

Q Have you always maintained all along that it was right --

A What I'm telling you right now? Is that what you saying? What I'm telling everybody right now is that the same I been saying?

Q Is that what you told the policeman?

A That's what happened.

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Q That's what you told the policeman?

A I didn't tell them nothing. I told them they weren't good for it. They pulled off laughing.

Q And if you were out on the street hanging out with those guys before they started coming in looking for people to arrest would you testify against your friend, Tyrone?

MS. MOORE-DYSON: Objection, relevance, Your Honor.

A What?

THE COURT: Just a moment. What's your objection?

MS. MOORE-DYSON: Relevance.

THE COURT: Sustained.

MR. HAGEMEISTER: Nothing further.

THE COURT: Anything further of this witness?

MS. MOORE-DYSON: No, Your Honor.

THE COURT: You may stand down.

Approach the bench.

(At this time there was a discussion at the bench off the record and outside the hearing of the jury, after which proceedings resumed within the hearing of the jury as follows:)

THE COURT: Ladies and Gentlemen, we'll have our luncheon recess at this time.

(At this time the Court read MAI-CR3d 300.04(2) to the jury.)

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THE COURT: We'll be in luncheon recess. You're to return to Division 11 at 1:30 p.m.

oOo

(Subsequent to the luncheon recess the following proceedings took place:)

THE COURT: You may call your next witness, Miss Moore-Dyson. Proceed.

MS. MOORE-DYSON: Like to call Hattie Morant.

HATTIE BEA MORANT, being sworn, testified:

DIRECT-EXAMINATION by Ms. Moore-Dyson:

Q Will you state your name for the record, please.

A Miss Hattie Morant.

Q Do you know Tyrone?

A Yes, I do. I'm his mother.

Q How do you know him?

A I'm his mother.

Q I'd like to direct your attention back to the evening of September the 17th, 1995. Could you tell the Ladies and Gentlemen of the jury and this Court what you were doing that evening.

A Me and my sister and I went to play bingo about five that evening because it start at 5:45 on Manchester in Maplewood.

THE COURT: Raise the microphone, please, and repeat your last answer, please.

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A My sister and I had want to play bingo at the Maplewood Lion's Club located on Manchester.

Q And, when did you leave bingo?

A We left bingo at 9:15 that -- that night, supposed to let out at nine o'clock so, therefore, they was running late so we got out of there at nine o'clock -- I mean we got out of there at 9:15. We usually get out at nine o'clock.

Q What did you do after you left bingo?

A Me and my sister proceeded down Manchester to Taylor. As we proceeded down to Taylor the metro-link was coming so we had to stop and -- on Taylor and Bowens.

Q The metro-link crossed the street?

A Crosses, so, therefore, we couldn't go across.

Q Then what did you do?

A As the metro-link went across we proceeded down Taylor. I told my sister I needed some cigarettes. We were going to stop at the Taylor-Easton Drug Store on Martin Luther King but they were closed when we got there.

Q What did you do then?

A We decided to go to this other store on Newstead and Martin Luther King that's -- and that's what we did. I got my cigarettes and went home.

Q Do you know the people that own the store on Newstead and Martin Luther King?

A Yes, they are my relatives.

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Q You purchased the cigarettes?

A I purchased the cigarettes.

Q Then what did you do?

A I purchased the cigarettes. I said good-bye to them, went home. I proceeded to go home, my sister and I.

Q How far do you live from the Taylor and Newstead store?

A I stay -- from Martin Luther King and Newstead you mean?

Q Yes.

A I stay three blocks -- approximately -- let me see, about three or four blocks.

Q You and your sister were driving?

A Yes. My sister were driving. I was riding with her.

Q What did you do when you got home?

A When I went home me and my sister pulled up to the front of the house. We was already -- listening to a cassette in the car so, therefore, I had popped out the cassette that was in the car.

Q Do you know what time it was when you arrived home?

A Yes, it was ten o'clock.

Q How do you know that?

A When I popped the cassette out her car -- it belongs

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to me -- the digital clock came on; therefore, it was ten o'clock.

Q What did you do when you got home?

A Opened the door up. I entered the house, heard music playing. I went to my room to put my bingo bag in my room.

Q Where is your room located in respect to your house?

A Located at the front door.

Q I'm going to hand you what's marked as Defendant's Exhibit GG. Do you recognize that?

A Yes, this is the front of my house.

Q Okay.

MR. HAGEMEISTER: Judge, I object to these photos as being untimely. They weren't even shown to me until probably fourteen minutes ago. Fifteen.

THE COURT: Let the record show the Court finds your objection is premature. The exhibit has not been offered in evidence at this point.

Q (By Ms. Moore-Dyson) Okay. You said that's the front of your house?

A Yes.

Q And where in relation -- does it depict your front door?

A Yes, it does.

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Q Where would your bedroom be if you were to walk inside that door?

A As soon as I come inside this door my bedroom would be to my left.

Q Right at the front?

A Right at the front.

Q Okay. And you went into your bedroom at that time?

A Yes, I did.

Q What did you do?

A Put my bingo bag down, went to check on my other children because I have four children.

Q Okay. And where did you go to check on them?

A Started in my daughter's room. When I enter the house my daughter's room is straight down the hallway. If I was standing at my front door my daughter's room would be straight ahead of my room like diagonal.

Q Diagonal from your room?

A Um-hum.

Q And did you check on her?

A I checked on them. They were asleep so I proceeded to go to the back of the house where music was coming from and Tyrone and Anthony was there.

Q Okay. Tyrone is your son?

A Yes, Tyrone's my son.

Q Anthony is a friend of his?

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A Yes, he is.

Q And what did you do at that point?

A So I saw Tyrone and Anthony in there listening to the radio. I spoke as I was -- I went down -- I'm nervous -- I never been on trial before so I -- I spoke to Tyrone and Anthony, then I went down, went down to the basement to turn -- 'cause I had the wash -- my children had to go to school, I went to bingo, I was going to do that when I came back home, I sorted me some clothes. I turned on my wash machine as I was sorting the clothes. By the time I got through sorting the clothes out I put my water in.

Q Okay.

A I mean my clothes in.

Q Okay. Slow down so the court reporter can take you.

A Okay, I'm sorry.

Q So that took you about how many minutes or so -- can you guess?

A That took me about thirty minutes.

Q Okay. And then what did you do?

A Then I put my clothes in, I came back upstairs and I went back to my room.

Q Okay. Now, when you were in the basement could you see Tyrone?

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A No, I couldn't see Tyrone but I could hear Tyrone and Anthony up there laughing and talking. Where my basement is located Tyrone's room is right over the basement so, therefore, I -- I can hear him and Anthony up there talking.

Q Was there any reason for you to be keeping an eye on Tyrone that night?

A No.

Q When you finished washing your clothes what did you do at that point?

A I went back upstairs after I put the water in, I went back to my bedroom.

Q What did you do there?

A When I went back to my bedroom I turned on the television. I wanted to watch Renegade. It come on that time of night. When I came up from the basement.

Q And when you -- do you play bingo every Sunday?

A Every Sunday, Wednesdays and Sundays.

Q And, when you come home in the evening, do you know what time Renegade comes on?

A Yes.

Q What time?

A Renegade comes on at 10:30.

Q Then was it about that time when you sat down in your bedroom to watch?

A Yes, it was.

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Q Did you, in fact, watch that show?

A Yes, I did. I sat down and watched the whole show. It went off at eleven o'clock.

Q You're in your room, you're watching TV. Is the music still going on in the back?

A Still going on back there.

Q Is it real loud?

A No, not loud. My children was sleeping. No reason to blast music that time of night, somebody sleeping.

Q Now, you were in your room watching TV now. Did Tyrone leave while you were watching TV?

A No, he did not.

Q How do you know that?

A Because Tyrone in order -- in order for Tyrone to leave my house he have to enter through my hallway to the front door. That's the only way Tyrone can enter out my house or anybody.

Q But you got a back door, is that correct?

A Yes, I have a back door but my back door is not in use. I have locks and I have bolt locks on my back door so, therefore, -- plus I don't have any back steps and I have to keep it locked because I babysit. I don't want children going out on the porch.

Q So your back steps were broken?

A Yes, and they still is.

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Q So you bolted that back door?

A I bolted the back door. The only entrance to my house is through my front door. There's no other entrance to my house.

Q So, did you see -- did he leave while you were watching Renegade?

A No, he did not.

Q Did you finish watching Renegade?

A Yes, I did.

Q Then what did you do?

A I went down to the basement to take -- put my clothes inside the dryer. As I was putting my clothes in the dryer Tyrone came down to get his clothes, his clothes he supposed to put up earlier that day from another wash that we had done.

Q Okay. And was anybody with him when he came downstairs?

A No, he came downstairs by hisself, got his clothes.

Q What, if anything, did he do at that point?

A Went back up to his room and as he was walking back up the steps I could hear him walking, my house is older house, you can hear when somebody walk on the floors, my floors crinkle.

Q Anybody come in the house while you, Tyrone and Anthony were there?

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A No.

Q How would you know that?

A If somebody was to come in my house I would have heard them knock on the door.

Q You didn't hear anybody knock that night?

A No, I did not.

Q When you finished putting the clothes in the dryer then what did you do?

A Came back upstairs, went into my kitchen, fixed me something to eat that night 'cause I was --

Q Okay. I'm going to hand you what's been marked Defendant's Exhibit HH and LL. Can you tell me what they depict.

A HH is my kitchen where you can see Tyrone's room and the basement.

Q Is that picture taken from what room?

A From my living room.

Q Your living room is located where?

A In the middle of the house.

Q Okay. And from your living room you can see the -- Tyrone's bedroom door?

A Yes.

Q You can see the kitchen door?

A Yes.

Q You can see the basement door?

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A Yes, I can.

Q All those doors are right together?

A That's right, they right together.

Q You went to your kitchen and you were cooking that night, is that correct?

A Um-hum.

Q Could you see Tyrone's bedroom from where you were in the kitchen?

A Yes, I can 'cause it's right -- this is my kitchen. This is Tyrone's room right next to the kitchen.

Q Okay. And the doors --

A His door was open, not closed.

Q Now, did he leave -- could you have -- could he have left his bedroom and walked out without you knowing it?

A He could not have done that because the way my kitchen is if anybody -- if he come through any part of the house I could see him. If he came through any part of the house. No, he was still in his room talking.

Q Now, when you -- how long did it take you to prepare your food?

A Well, that night what I was cooking was some shrimps and me some Tater Tots. I had totake the shrimps out of the ice-box.

THE COURT: Did you hear the question? How long did it take you to prepare the food. Listen

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to the question and answer the question.

A About thirty minutes.

Q Now, what happened after you prepared the food?

A After I prepared the food I went -- after I got through cooking my food -- I make my own tartar sauce and stuff like that -- after I prepared the food Tyrone entered the kitchen and asked me for some of my food and I said no.

Q Was Anthony with him when he came into the kitchen?

A No.

Q What did you do?

A I said no. I went to my room to eat my food.

Q Your room is again at the front of the house, is that correct?

A Right.

Q Do you know around or about what time it was after -- you ate your food, is that correct?

A Yes, I did.

Q Do you recall what was on TV at that time?

A When I came back I wasn't interested what was on the TV at that time because I was interested in my food because I already watched what I wanted to watch.

Q At some point did you see Tyrone leave the house?

A No, he did not leave the house.

Q At some point did you see him leave the house?

A At a point in time I seen him leave the house.

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It was twelve when he left the house.

Q How do you know it was twelve o'clock?

A Mary Love -- I babysit for Mary Love so Mary Love supposed to bring her children over there which as she did it was twelve o'clock.

Q What happened at that point? Had Tyrone left at that point?

A He had just left. Yes, he left at twelve, yes, he did.

Q Okay. And when he left out did she arrive at the same time?

A She came because the way my bedroom -- the way my bedroom is my bed was located at my window. I can see on the front and where my window were my bed was -- is right at the window so, therefore, when Mary pulled up in her truck I could see her coming into the house. Her and Tyrone was -- Tyrone was on his way out the gate. She said something to Tyrone. I don't know what she said to him. She came in the house to bring her children in the house.

Q I'm going to show you what's marked Defendant's Exhibit KK. It's kind of a blurry picture but can you tell me what that picture depicts.

A This picture depicts me standing at the side of my bedroom window taking a picture out the front of the

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front of my house.

Q You took that picture yourself, is that correct?

A Yes.

Q Just took it a couple of days ago?

A Right.

Q But for the time of the year is everything the same as it was on September 17th?

A Yes, nothing changed on here.

Q Okay. Now, you said Mary and Tyrone stopped at the gate?

A Uh-huh, they was talking.

Q And then what happened?

A And then Mary brought her children on in the house and I put the children to bed. I didn't pay attention to nothing else and then they left.

Q Mary left?

A Yes, Mary left.

Q Did you see Tyrone any more that night?

A No, I did not.

Q Okay. Did you hear from him that night?

A I heard from Tyrone that night. It was two o'clock in the morning.

Q Okay. And, how did that come about?

A Because I had a phone call -- I had a phone call. I went to bed. I put the children to bed and I was tired after I ate so, therefore, I had went to bed. I just must

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have drifted off, whatever, I went to sleep; therefore, like two o'clock in the morning I had got a phone call over the phone.

Q Who was on the phone?

A At that particular time I didn't know who was on the phone because my son's friends make collect calls. That's what I thought it was. When I picked up the phone I thought it was a collect call coming through my phone. When I answered the phone the voice said "Tyrone". I hung it up; therefore, the phone rung again. I picked it up and hung it up. My children have a phone in their room for them to answer but when nobody answered that night --

Q Then what did you do at that point? You got two phone calls and then you hung it up and then what did you do?

A I just -- I laid there. Something say get up. I got up. I proceeded to Tyrone's room to see why he wasn't picking up the phone in his room.

Q Then what happened?

A When I got back there he was not back there. When -- on my way back to the front of the house to my bedroom the phone rung again so when I answered it it was a recording on the phone, say, "Would you accept a collect call from Tyrone," so that's what I did.

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Q Okay, and you spoke to him that evening?

A Yes, I did.

Q Then what did he tell you?

A He called on the phone. He said --

MR. HAGEMEISTER: Object, hearsay, self-serving.

THE COURT: Sustained.

Q (By Ms. Moore-Dyson) Did you find out that he was -- he had been arrested at that point?

A Yes, I did.

Q And, then what did you do at that point?

A When Tyrone called, told me he was locked up, I was thinking he was out because it was past curfew. Told me he was getting something to eat. I thought maybe he was just out past curfew.

Q What did you do?

A What I did, then I say, "Well, you should have come back in the house." "No, ma'am, it's not that. I'm locked up for murder." I was like "murder", I got hysterical.

Q Then what happened?

A And then after that I was like, "No, you locked up for murder," I was like, you know, I'm thinking it occurred after he left out the house because he wasn't in my vision then.

Q And then did you try to tell somebody?

A Yes, when he was telling me that on the phone

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I asked him was there an officer or something present so I could talk to someone and there was one present but they did not get on the phone to talk to me.

Q Then what did you do?

A At that point in time I got off the phone and I called his father and I told his father Tyrone was being held for murder and I was all disturbed so I had got on the phone and asked the police -- I called the police station again to ask them for the arresting officer. They told me it was Detective Pappas.

Q Did you ever try to contact Detective Pappas?

A Yes, I did. They even gave me Detective Pappas's pager message number. I called Detective Pappas. I left messages on his pager. Detective Pappas never called me back.

Q At some point were you able to see Tyrone the next day?

A No, I was not.

Q Did you go to the police station to tell them that you knew where Tyrone was?

A Tyrone -- I mean Tyrone's daddy and I went down to Central police station. That's where they was holding him at. We went there the next day. I went down there to see if I could see my son. I could not see him because they say they was holding him in the interrogation room.

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Q At that point did you talk to anybody relative to why Tyrone was being held or try to give them information about the time they were talking about?

A The officer gave me the interrogation room to call which as I did make a call to the interrogation room down at Central.

Q Okay, then what happened?

A When I called the interrogation room the officer answered the phone and I told them I was calling concerned about my son. It was visiting hours like five, I should have been able to see him from the morning till five o'clock to see what was going on because I did not know.

Q What happened?

A When I called to the interrogation room they told me I had no business calling up to the interrogation room. I said I was calling -- I wanted to find out what's going on with my son because no one telling me nothing so I wasn't --

MR. HAGEMEISTER: I object. This is all hearsay. I mean I'm trying to be liberal but --

THE COURT: The objection is sustained.

Q (By Ms. Moore-Dyson) What did you do after you went down to the police station?

A After I went down to the police station me and his daddy came back home. His daddy and I came back home.

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Then that's when I realized I needed to find me a lawyer so I started looking in the phone book trying to find me a lawyer.

Q Now, did the police ever -- you left a message with Detective Pappas?

A Detective Pappas.

Q Did any police officer ever come to your home and ask you any questions at all?

A No, no police -- no police, nobody have never came to my house, asked me nothing, said nothing or done nothing.

Q Did they -- they never came to your house to search the house?

A No, they did not.

Q Do you know what Tyrone was wearing that night?

A Yes, I do because I had -- when I took his court clothes they released me his clothes he was wearing. That's how I found out what he was wearing that night.

Q They gave you his clothing back?

A Just last week.

Q They're not holding his clothing?

A No, I have his clothing.

Q Okay. Miss Morant, are you telling a lie about where your son was that night?

MR. HAGEMEISTER: Objection, self-serving,

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improper bolstering.

THE COURT: The objection will be sustained as to the phrasing of the question.

Q (By Ms. Moore-Dyson) Are you telling the truth?

MR. HAGEMEISTER: Same objection.

A Yes.

THE COURT: Overruled.

MS. MOORE-DYSON: I have nothing further of this witness.

THE COURT: You may inquire.

CROSS-EXAMINATION by Mr. Hagemeister:

Q So what did youdo the next day?

A Which day?

Q The night after he was arrested.

A The next night I couldn't do nothing. I sit around to wait to see what the police could tell me about what was going on with my son. The next night when the night came they told me my son had -- a warrant was issued on my son.

Q Okay. I want you to answer the questions that I'm asking just so --

THE COURT: Let's proceed. Just stop instructing the witness and ask your next question.

Ma'am, again I'll ask you to listen to the question and answer the question that's put to you. Do you

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understand?

A Yes, sir.

THE COURT: Thank you.

Q (By Mr. Hagemeister) The next night did you -- do you remember any of the specific actions that you did about your house?

A Did about my house? Could you --

Q You're testifying on direct about September 17th. You can remember sitting down a make-up bag.

A No, I did not say a make-up bag. I said my bingo bag.

Q Okay. I misunderstood. You can remember setting down things, every specific little action you took. I'm asking you what you did the next day -- the next night.

MS. MOORE-DYSON: I object to relevance.

MR. HAGEMEISTER: Goes to her ability to remember.

THE COURT: Overruled. She may answer.

Do you understand the question?

A He can repeat it again.

THE COURT: The question was what did you do the next night.

Was that your question?

MR. HAGEMEISTER: Yes.

A I was upset, I was terrified.

Q Do you remember what you ate the next night?

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A I didn't eat nothing.

Q Do you remember who you talked to?

A I was with my family members the next night.

Q Did they eat?

A No, I did not say they ate.

Q Did you eat the next night?

A I didn't eat the next night. I didn't have no appetite to eat the next night.

Q All I'm asking is do you remember the next night as clearly as that twenty minutes you used in describing December -- September 17th?

A I can remember the next night. I didn't do nothing the next night.

Q You just sat?

A What else was there for me to do?

Q I'll rephrase the question. The night before September 17th what did you do that night?

A The night before September 17th what did I do that night? I'm not sure what I did that night before September 17th.

Q Could you -- do you remember?

A I could have been laying down all day the night before September 17th.

Q Do you remember what you ate the 16th?

A No, I don't.

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Q Do you remember exactly where Tyrone was?

A I probably don't remember what I ate yesterday.

Q But you remember what you ate on the 17th?

A Because I remember what I ate on the 17th because I knew I ate some shrimps because I'm crazy about shrimps so I know that's what I ate. I ain't never going to forget that because that's something I like eating.

Q All right.

A That's my favorite food.

Q Do you remember the last time you did your laundry before the 17th?

A I haven't done my laundry. That's my purpose of washing their clothes because I haven't done my laundry.

Q You said something about having some relatives you went to get your cigarettes.

A No, I didn't say I had no relatives I sent to get no cigarettes.

Q I'm sorry.

A Me and my sister was together coming from bingo.

Q Where did you get the cigarettes?

A From New Kings Market located on Martin Luther King and Newstead.

Q So it was you and your sister that went, it wasn't some relative's store?

A The people is my relatives at the market.

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Q That's what --

A That ain't how you phrased it.

Q I'm sorry, what kind of relatives are they?

A My cousins.

Q How long do they stay open on Sunday night?

A Till eleven o'clock -- I mean -- yeah, eleven o'clock because it's a confectionery store.

Q That's what -- what's the name of that market?

A New Kings Market.

Q Now, you testified that after you found out that he had been charged with murder you figured it occurred outside -- when he was outside of the house. Did I get that part right?

A I figured when he -- could you repeat that question?

Q When he told you he was charged with murder what did you think?

A I thought it was after he was out of the house, yes, after he was out of the house, and that was after twelve o'clock.

Q You thought he killed somebody?

A No, I didn't say I thought he killed nobody. This was the crime he was accused of doing. I didn't say he killed nobody.

Q You say no one knocked on the door that night?

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A No, no one knocked on the door that night.

Q So you never heard Kenneth Wagner knock on the door?

A No, I did not.

Q When did you realize that Tyrone had left?

A After he came in my room at twelve o'clock.

Q He came to your room at twelve o'clock and said he was leaving?

A He came to indicate he was going to get something to eat at twelve o'clock because I did not give him none of my food. Yes, he did.

Q Was Anthony with him?

A Yes, Anthony was.

Q When they went outside you said you looked out the window and saw this Mary Love coming over?

A Yes.

Q Did you see Kenneth Wagner?

A No.

Q Never heard him knock on the door?

A No.

Q Never saw him hook up with them right out on the sidewalk?

A No, because once Mary Love brought her children I proceeded to put them to bed.

MR. HAGEMEISTER: I object. Not responsive.

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Ask the Court to instruct the witness to answer the question.

THE COURT: The Court will reserve ruling.

Had you finished your answer?

THE WITNESS: Yes, sir.

THE COURT: Overruled. Move on.

Q (By Mr. Hagemeister) So Mary Love is the only person here that's not good friends of Tyrone's or a family member of Tyrone that can establish he was leaving the house at midnight?

A Yes, she is.

Q Have you talked to Mary Love since then to have her come down?

A I haven't been able to contact Mary Love.

Q You've had a year and two months to try to contact her as the sole unbiased --

A Mary --

Q -- I'm sorry, I'm questioning -- as the sole unbiased witness to vindicate your son and you haven't been able to locate her?

A Mary Love is a professional dancer so, therefore, she's in and out of town so it's just hard to catch up with her because I no longer babysit her children. Her mother babysits her children. She's not home. She's out of town on the road because she's a professional dancer.

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Q Where was she working then?

A At a club across the water then.

Q Do you know the name of it?

A No, it's a strip club. I'm not into strip clubs.

Q Do you know what time she went on duty? Was it at midnight?

A She brought her children over at twelve. Mary always have to be at work at 12:30.

Q When you had a -- you testified that when you -- when he left he was going to the store. Do you know what store he was going to?

A I didn't say he was going to the store. He was supposed to be going to get him something to eat.

Q Do you know whether he was going?

A Tyrone is a fast food person. It's various places where he might wantto eat. He could have went to White Castle or Rally's, any place he wanted to go. Because my son love to eat, it don't matter --

Q You haven't any reason to lie to keep your son out of going to prison the rest of his life?

A I don't have no reason to lie for my children. I don't lie for any of my children. I'm only here today to tell what I know about that night only.

Q If you thought all you had to do was sit down and tell twelve people a story --

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A That's --

Q -- I'm in the middle of the question, ma'am. I'm sorry. All you had to do was sit down and tell twelve people a story for twenty minutes to keep your son out of prison for the rest of his living days would you do that?

A No, I would not. I have no reason to do that.

Q After he went outside there's been testimony that he was arrested. You say you don't know anything about that?

A I didn't have no knowledge of that till Tyrone called me.

Q And, he was arrested right there at the corner. How many houses down is that?

A It's a house nextdoor to me and a big lot so the corner would be a big lot, not a house on that lot.

Q Like two lots down, would that be fair?

A Not two blocks. He's still in the same block.

Q Okay. So you're saying -- not block -- you're saying there's a house, a lot and that's where he would have been arrested?

A Right.

Q And Mary Love left after dropping off her kids. Did she come back in and say, "Hey, there's a couple police-men arresting your son"?

THE COURT: I see some flickering eyelids.

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I want to see your eyeballs. Everyone up.

Counsel, approach the bench.

(The following proceedings took place at the bench outside the hearing of the jury:)

THE COURT: Mr. Hagemeister, the Court will again advise you the Court finds your cross of this witness again to be repetitious and over and over repetitive questions; so, I'm going to ask you to move on after you have asked whatever questions without repeating them time after time. Thank you.

MR. HAGEMEISTER: Thank you.

(Proceedings resumed within the hearing of the jury as follows:)

THE COURT: Be seated.

Q (By Mr. Hagemeister) After Mary Love dropped off these children you testified as your story of what happened did she come back inside and say, "Your son's being arrested right there on the corner. I don't understand why. He just walked outof the house."

A No, 'cause he could have been already arrested before she came back out of the house after bringing them in.

Q How did you know that?

A Because she didn't come back in the house to let me know.

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Q Did Anthony Rhodes who had just left with Tyrone come back to the door and say, "Miss Morant, Miss Morant, the police just pulled over Tyrone, they're putting him in the car, they're arresting him"? Did he say that after he left that night?

A No, he did not cause as far as my concern Anthony Rhodes and Tyrone was gone.

Q 'Cause the fact is they didn't really leave at twelve o'clock; they were gone much sooner than that.

A No, they was not.

Q When they left you don't know what time it really was, you don't know what they were doing on the streets that night?

A I know what time they left. It was twelve o'clock. I know twelve o'clock.

MR. HAGEMEISTER: I have nothing further.

THE COURT: Thank you.

You may inquire.

MS. BEIMDIEK: No questions.

MS. MOORE-DYSON: I have no further questions.

THE COURT: You may stand down, ma'am.

oOo

THE COURT: Call your next witness.

MS. MOORE-DYSON: Call Tyrone Morant.

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TYRONE MORANT, being sworn, testified:

DIRECT-EXAMINATION by Ms. Moore-Dyson:

Q Will you state your name for the record, please.

A Tyrone Desante Morant.

Q Tyrone, where do you currently reside?

A 4258 West Cote Brilliante.

Q West Cote Brilliante?

A Yes.

THE COURT: Please move closer to the microphone.

Q Now, Tyrone, I'm going to direct your attention back to September 17th of 1995, the evening of September 17th, okay?

A Okay.

Q Now, I'd like for you to tell the jury what, if anything, you were doing that evening.

A That evening I was at a barbecue on 4200 North Market.

Q Did you go there alone?

A Yes, when I went there, yes, I went alone.

Q While you were there did you happen to meet anybody?

A Yes, I seen -- I seen Anthony there. I been seeing him all that day. I seen him there. Me and him was there talking and we was just moving around the barbecue.

Q Did you eat while you were there?

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A Yes, I ate, I ate earlier when I first came there.

Q Okay. And there was music playing, is that correct?

A Yes.

Q Girls there?

A Yes.

Q Okay. So you just basically --

A Yes.

MR. HAGEMEISTER: Objection, Your Honor. The defense attorney is testifying. He's merely agreeing with her testimony.

THE COURT: The objection is overruled; not timely made. The witness already answered.

But, I will advise you, counsel, I have at least -- never mind -- proceed.

Q (By Ms. Moore-Dyson) How long were you there?

A I was there about -- from about five o'clock till about -- about 8:30, nine o'clock, 9:30.

Q Was it light -- how do you know about what time it was?

A It was dark, when we left it was dark.

Q When you say we left who left with you?

A Me and Anthony Rhodes.

Q Then what did you do?

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A We proceeded to my house.

Q Then what did you do at that point?

A We walked over to my house. We went in my house, we went in my room. We were sitting there listening to the radio and talking.

Q Was anybody home when you got there that you know of?

A I know my little brother and my sisters was there.

Q Okay. And did they come in your room?

A No, but I seen them when I come home. I seen them there.

Q What did you do at that point?

A Me and Anthony we stay in my room.

Q Okay. Anything unusual happen while you were there?

A Unusual?

Q Yes.

A No.

Q Nothing out of the ordinary?

A No.

Q You all sat there in your room for about how long?

A When we first came we sat in the room -- we sat in there for about a good thirty minutes.

Q Okay. Then what happened?

A I got up. I went in the basement, I went in

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the basement. I got some clothes out of the dryer. I got the clothes, sat them on the table, when I got those clothes sat them on the table.

Q What table?

A There's a table in our basement.

Q Did you take anything upstairs?

A No.

Q Okay. What did you do at that point?

A Me and Anthony went back up.

Q Okay. Now, would you go -- how long were you at home that evening?

A How long was I at home?

Q Yes.

A I was there from about -- from the time I left the barbecue till the time I left out, I got locked up.

Q Did you see your mom at any time that evening?

A Yes, I seen her a little later there.

Q Okay. Where was she when you saw her?

A When I seen her she came in, she appeared to be just to be coming in. She wasn't there when we first came.

Q You know she wasn't there?

A Yes, I know she wasn't there.

Q Then what -- did you see her any other time that evening?

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A Did I see her any other time that evening?

Q Yes.

A Yes.

Q What was she doing?

A She was just basically walking around the house and just basically walking around the house. Then a little later I seen that she was cooking.

Q Okay. And what, if anything, happened at that point?

A Excuse me?

Q What happened at that point?

A She was cooking. I went back in her room and I came back and I was like, "Let me get some of that."

Q Okay. What happened at that point?

A She was like, no, but she was like, no, so I left after that and I told her I was going to go get something to eat.

Q Do you know about what time that was?

A It was around -- by that time it was about, it was about eleven something then.

Q Eleven something, 11:30, 11:45?

A I think it was past eleven.

Q Past eleven?

A Yes.

Q Okay. And when you left was anybody with you

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when you left?

A Yes, me and Anthony Rhodes left together.

Q Did you see anybody else when you left the house?

A When I was leaving -- as I was leaving I seen Mary, she was coming in, and by the time I hit the steps Kenneth Wagner, he was coming up the steps too so I talked to Kenneth Wagner --

Q Who is Kenny Wagner?

A He's a guy I know.

Q Another friend of yours?

A Yes.

Q Okay. Then what happened?

A He was like -- he going -- he say he was going to the store so I was like -- me and Anthony we was just leaving -- I didn't get to tell them that -- we was just leaving. By the time we left out Kenny and I going to the store and me too.

Q Did Anthony go to the store with you?

A No, he didn't. He said he was going to stay there.

Q At your house?

A Yes.

Q And did he go back inside or did he stay outside?

A No, he didn't go back out -- I mean he didn't go

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back in.

Q He was just sitting outside?

A We was walking down the street. I looked back and I seen him leaving when we was going towards the corner but we didn't make it.

Q Why didn't you make it to the corner?

A 'Cause about three minutes -- about three minutes after I left out of the yard some detectives swooped on me, detectives stopped me, jumped out with their guns, tell me, "Who did I kill, who did I shoot?" I said, "I didn't shoot at nobody, I didn't kill nobody."

Q Then what happened?

A They handcuffed me.

Q Did they tell you you were under arrest for anything?

A No, they did not. They just said, "Who did you shoot, who you been shooting at today?" I said, "I ain't been shooting at nobody.

Q Then what happened?

A They put me in their car and they took me around the corner.

Q Now, you say they. Was it one of the officers you saw testify in court?

A Yes, it was one of them.

Q Which one?

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A It was the first detective who testified.

Q The black detective?

A Yes, the black detective, yes, ma'am.

Q And, what happened after that?

A They took me around Martin Luther King and Whittier.

Q Okay. Then what happened?

A They told us to get out of the car.

Q You say us. Who was with you?

A Me and Kenneth Wagner.

Q Was there a third person?

A No, just me and Kenneth Wagner.

Q Did they take you out one at a time?

A They took both of us out.

Q At the same time?

A Yes.

Q What, if anything, happened at that point?

A They told us -- detectives told us to stand at the back of the car and there was a police van in front of us shining lights in our face.

Q Okay. And then what happened?

A Then they told us, "We fixing to take you out to the homicide office."

Q Did they tell you at that point you were going to be arrested for anything?

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A No, they told me, "Not trying to say -- we're not trying to say you did nothing to nobody but we just want somebody to pick you out, want to show you, put you in a lineup or something."

Q Were you ever put in a lineup when you got down there?

A No, ma'am.

Q Now, do you recall when you were first allowed to call somebody?

A Yes, I do.

Q Do you know about what time that was?

A It was a lot later after they took me down there. It was about two or three hours after I was took to the homicide office.

Q At that point had they told you you were under arrest for anything?

A No, ma'am, they didn't tell me I was under arrest till the next day.

Q About what time was that?

A About five o'clock the next evening.

Q Did they ever put you in a lineup they said they were going to put you in?

A No, they did not. They just had me sitting in the room.

Q On that day tell me what's different about your

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appearance today than from on the 17th.

A Only thing different about my appearance is that I had a big Afro.

Q An Afro?

A Yes, ma'am.

Q Not curl?

A Not a curl, an Afro.

Q You have how many gold teeth in your mouth?

A I have three gold teeth in my mouth.

Q How long have you had those gold teeth?

A I had these gold teeth since I was about thirteen.

Q I'm going to show -- I'm going to ask you a couple other questions. Do you know John Allen?

A No, I do not.

Q Do you know Johnnie Bell?

A No, ma'am.

Q Do you know Angela Hickman?

A I seen her before. I don't know her. I just seen her in the neighborhood before. I do not know her.

Q You ever have a fight with Johnnie Bell or John Allen?

A No, ma'am.

Q Never?

A Never.

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Q You ever had a problem with either one of those persons?

A No, ma'am, I didn't even know them.

Q Okay.

A I never seen them before.

Q When -- did the police ever tell you who you were supposed to -- they finally told you you were under arrest, is that correct?

A Yes, they told me that the next day. The next day after I got took to the homicide office.

Q Okay. Did you tell them at that time that you couldn't have done that, where you were?

A Yes, ma'am.

Q Did you tell them who you were with?

A Yes, yes, ma'am.

Q You told them you were at home?

A Yes, I did.

Q You told them you were with your mom?

A I told them I was on my way to the store and I didn't never get to go to the store. I wasn't even -- about -- I wasn't even fifty feet away from my house, not even fifty feet, no sooner I left out of the gate.

Q Were you excited when the police first grabbed you?

A No, I just thought they just -- see, in my

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neighborhood usually they just pull up, they just -- they see you walking, they pull up, start searching you for no reason anyway so I just thought that's what it was.

Q You found out the next day it was a lot more serious than that?

THE COURT: Counselor, that's the third time you've asked that question and received an answer. The Court sua sponte is going to advise you to move on.

Q (By Ms. Moore-Dyson) You finally called your mom, is that correct?

A Yes, ma'am.

Q You told her what was happening?

A Yes, ma'am.

Q And did you ever see your mother the next day?

A No, ma'am.

Q Were you allowed to see anyone the next day?

A No, ma'am, I didn't see my mother or none of my family members till I was took to the City Jail.

Q Did you -- did you tell the detectives -- did the detectives ask you to submit to any type of tests?

A Yes, yes, ma'am.

Q What type of test was that?

A They asked me did I want to take a test to see was it gun powder on my hand, on my hands. I told them

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yes because I hadn't been shooting a gun.

Q Did they ever perform that test?

A No, ma'am.

THE COURT: Thank you, Miss Moore-Dyson.

You may inquire, sir.

CROSS-EXAMINATION by Mr. Hagemeister:

Q Did you know that the St. Louis Metropolitan Police Department hasn't conducted powder tests for ten or fifteen years?

A No, sir. No, sir.

Q You know they have no reliability whatsoever?

A No, sir.

MS. MOORE-DYSON: I object to this line of questioning.

THE COURT: Sustained.

Q (By Mr. Hagemeister) After you kill somebody do you go up and brag about it to your friends in that neighborhood?

A I never killed anybody.

MS. MOORE-DYSON: Your Honor, objection.

THE COURT: Overruled. The witness has answered.

Q (By Mr. Hagemeister) Do you go up in rank?

A I never killed anybody.

Q When you walked down the street just after

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leaving your house according to your testimony this would all have been after the shooting, correct?

A I do not know, sir.

Q Well, are you saying that you walked down the street and the police officers pulled up slow, fast, what?

A No sooner I got a couple feet from my house the detectives pulled up.

Q Screeching tires?

A No, it wasn't screeching tires.

Q They hop out and point their guns at you you said?

A Yes, they did.

Q Got their flashlights on you?

A Don't recall flashlight.

Q How many people had guns on you?

A All four of the detectives.

Q Four policemen standing there behind their guns on you and Kenneth?

A No sooner they hopped out of the car they said, "Freeze, don't go nowhere."

Q All four had guns out?

A Yeah, and they started searching. They started searching.

Q Anthony, you were here for his testimony. He said he saw that. Is that the way it normally happens

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when the police officers walk up and check a guy?

A Yes, that usually goes on in that neighborhood. That ain't the first time I seen that.

Q Not one of these deals where they drive up, ask you to get out of the car, check your pockets, do that kind of stuff? They normally in your neighborhood come -- pull up, jump out, pull their guns and train them on you, all four of them?

A Yes, police usually do that around there.

Q That's how they usually do it?

A Not all the time but that wasn't unusual. You know what I mean.

Q You didn't say to Anthony, "Get my mom"?

A By that time Anthony was down the street, he was going down the street. For a minute they came out, they was talking to us. After they put their guns up they was talking to us. "Who did you kill, who did you all shoot?" I said, "We ain't shot nobody. I just came out of the house."

Q Nobody -- you never had Anthony check with your mom?

A No, sir.

Q Anthony saw these cars pull up and the policeman come out and aim their guns at you -- did you go over what you were going to say with Anthony ever?

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A No, sir.

Q You never talked to Anthony at all about how he was a witness?

A No, sir. I talked to him before but not about -- it wasn't about this. He just told the truth. He told you the truth. What he told you is the truth. What I'm telling you is the truth.

Q The question is did you go over with him what he was going to say?

A No, sir.

Q The one man that's your alibi witness who was with you the entire evening, for the whole barbecue, the three hours you were in the house, and you never spoke with him about what he was going to say?

MS. MOORE-DYSON: That question has been asked and answered.

THE COURT: Overruled. You may answer.

THE WITNESS: Would you repeat the question, sir?

Q (By Mr. Hagemeister) You never talked with him about you going to testify for me?

A No.

Q "Hey, you going to testify for me"?

A No, sir.

MR. HAGEMEISTER: May I approach the witness?

THE COURT: Yes, sir.

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Q (By Mr. Hagemeister) Let me show you State's Exhibit 26. Do you remember that photograph being taken?

A Yes, sir.

Q When was that taken?

A This was taken the night I was locked up.

Q Is that how you looked that night?

A Yes.

Q Is that what you were wearing that night?

A Yes, sir.

Q Thank you.

THE COURT: Turn that photograph over.

Q (By Mr. Hagemeister) How well do you know Marlon Mitchell?

A Excuse me. Would you repeat the question?

Q How well do you know Marlon Mitchell?

A I know him -- I don't know him real well but I know him.

Q Mr. Morant, would it be fair to say that Carlos had more of a problem with John Allen and Johnnie Bell than you did?

MS. MOORE-DYSON: Objection, Your Honor, asking him to speculate as to what Carlos had a problem, he doesn't know --

THE COURT: Sustained.

Q (By Mr. Hagemeister) Well, have you ever seen

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Carlos talk about or heard him talking about having a problem --

MS. MOORE-DYSON: Objection, hearsay. He's calling for hearsay.

THE COURT: Sustained.

Q (By Mr. Hagemeister) Have you ever heard Carlos brag about anything he has done with John Allen?

MS. MOORE-DYSON: Objection, calling for hearsay.

MR. HAGEMEISTER: That would be an exception.

THE COURT: Sustained.

Q Have you ever heard him make threats?

MS. MOORE-DYSON: Same objection, Your Honor.

THE COURT: I have not heard the full question. I don't know, is that the end of your question?

Q Isn't it true you and Carlos hang out with the same group of guys?

MS. MOORE-DYSON: Objection, Your Honor, relevance.

THE COURT: Overruled. He may answer.

THE WITNESS: Could you repeat the question, sir?

Q You and Carlos hang out with the same group of guys?

A No, no, sir.

Q You don't?

A No, sir.

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Q You have an individual group of friends and he has a different group of friends?

A I don't have a lot of friends. It's just guys who I know.

Q So you're saying you know the same guys as Carlos?

A Almost. We live in the same neighborhood. I know everybody in the neighborhood.

Q Okay. Well, if you -- do you ever go over and hang out at Carlos's house?

A I been over there a few times.

Q Are there other guys hanging out at Carlos's house?

MS. MOORE-DYSON: Your Honor, I object as to relevance.

THE COURT: Sustained as to other guys.

Q Do you call the guys you hang out with your friends?

A Not all of them.

Q John Allen and Johnnie Bell never were aggressors against you to your knowledge?

A Sir, I don't know Johnnie Allen and Johnnie Bell.

Q You never had a fight with them at the auto shop because of this ongoing dispute?

A No, sir, I never seen Johnnie Allen and I didn't see Johnnie Bell till he came up on this stand to testify.

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That was my first time of seeing Johnnie Bell in my life.

Q What you're saying then is Angela Hickman and Annie Hickman and Johnnie Bell have all come down here and picked you at random to be the person to go to prison for life?

A To my knowledge, yes.

Q Does that upset you?

A Yes. Wouldn't you be upset somebody lying on you trying to get you sent away for life? Yes, I was upset that he was lying on me, got on the stand and lied. I was upset from that.

Q Where were you going to go to this store with Mr. Wagner?

A Where was I going to go?

Q Yes.

A I was, yeah, I was going to try to get a ride from somebody, try to go get somebody to go get something to eat.

Q Going to walk around, look for somebody to give you a lift, maybe the car that just dropped you off after the shoot --

MS. MOORE-DYSON: Objection, Your Honor.

A Wasn't no car --

THE COURT: Compound question.

Which question do you wish him to answer first?

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MR. HAGEMEISTER: Well --

THE COURT: Let's do it this way. You ask a single question. Then we'll proceed.

MR. HAGEMEISTER: Thank you.

Q (By Mr. Hagemeister) The night of the shooting -- after the shooting does everyone go back up to their homes?

MS. MOORE-DYSON: Objection.

A I didn't know anything about a shooting.

MS. MOORE-DYSON: Objection, Your Honor.

THE COURT: Overruled. The witness has answered.

Q (By Mr. Hagemeister) Do you wish you hadn't been involved in that shooting?

MS. MOORE-DYSON: Objection, Your Honor.

THE COURT: The Court hearing no specific objection you may answer if you have an answer.

A Sir, I wasn't involved in any shooting.

Q Did you make any attempts to have Kenneth Wagner come down and testify for you?

MS. MOORE-DYSON: Objection, relevance, Your Honor.

MR. HAGEMEISTER: He was there.

THE COURT: Overruled on that ground.

A I didn't talk to Kenneth Wagner much after that

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'cause I been locked up for a long time. I never got in touch with him.

Q He could say you just walked out --

MS. MOORE-DYSON: Objection to what -- the prosecutor stating what Kenny Wagner could say.

THE COURT: Sustained.

Q (By Mr. Hagemesiter) Did you not tell us that he walked away from your house with you?

A Yes, sir, he did.

Q And he could if he were there -- he can hear and see, can't he?

MS. MOORE-DYSON: Objection, speculation.

MR. HAGEMEISTER: I'll rephrase.

Q When you walk -- do you have to help him walk down the sidewalk or can he see the sidewalk?

A He can see the sidewalk.

Q When you talk to him do you talk to him in sign language or talk to him and he hears you?

A I talk to him. I talk to him just like I'm talking to you.

Q So he can hear and see, can't he?

A Yes, sir.

Q So he knew everything that was happening on that night according to your story?

MS. MOORE-DYSON: Objection.

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THE COURT: Sustained.

Q (By Mr. Hagemeister) Would you like to stay out of prison the rest of your life?

A Yes, sir.

MR. HAGEMEISTER: Nothing further.

THE COURT: Thank you.

MS. BEIMDIEK: No questions.

THE COURT: Anything further?

MS. MOORE-DYSON: No, Your Honor.

THE COURT: You may stand down, sir.

oOo

THE COURT: Call your next witness.

MS. MOORE-DYSON: Your Honor, Defendant Tyrone Morant would rest at this point. I'd like to offer my exhibits.

THE COURT: I heard you say Defendant Morant rests. I didn't hear the rest of it.

MS. MOORE-DYSON: We rest at this point.

THE COURT: Anything further?

MS. MOORE-DYSON: No, Your Honor. I'd like to offer my exhibits. I think I've already offered AA through GG. They've been admitted. I'd like to offer HH through LL.

THE COURT: AA through GG are admitted -- what is H?

MS. MOORE-DYSON: H is the picture from the living

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room showing the kitchen door and basement door.

THE COURT: Is this H or HH?

MS. MOORE-DYSON: HH.

THE COURT: Any objection to HH?

MR. HAGEMEISTER: I object to all of the photographs as being irrelevant.

THE COURT: Overruled.

MR. HAGEMEISTER: Object to the photographs as being surprise.

THE COURT: The Court has already admitted A through G. Your objections to H are -- or AA through GG. Your objections to HH are overruled.

MS. MOORE-DYSON: II again shows another picture of the --

THE COURT: Any objection to Defendant Morant's Exhibit II?

MR. HAGEMEISTER: No, Judge.

THE COURT: JJ?

MS. MOORE-DYSON: JJ depicts the front of the house, porch and front door area.

THE COURT: Admitted.

MS. MOORE-DYSON: KK is a kind of blurred picture view from Mrs. Morant's bedroom window.

THE COURT: Admitted.

MS. MOORE-DYSON: And LL is a picture from the

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living room depicting the doorways.

THE COURT: Admitted.

MS. MOORE-DYSON: Nothing further, Your Honor.

THE COURT: Anything further on behalf of Defendant Morant?

MS. MOORE-DYSON: No, Your Honor.

THE COURT: Does the Defendant Morant rest?

MS. MOORE-DYSON: Yes, Your Honor.

THE COURT: Anything further on behalf of the State?

MR. HAGEMEISTER: Yes, Your Honor. The State anticipates it will be calling rebuttal witnesses. The testimony of the last two witnesses went quicker than expected but I have a witness in the hallway right now. I think we should have a sidebar.

THE COURT: Call your next witness if you have one if you're going to have rebuttal.

MS. BEIMDIEK: Your Honor, can we go sidebar, please?

THE COURT: Yes.

(The following proceedings took place at the bench outside the hearing of the jury:)

THE COURT: Why are you requesting again a sidebar conference?

MS. BEIMDIEK: Your Honor, are you asking me or

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the State?

THE COURT: I'm asking all of you. Why are we up here?

MS. BEIMDIEK: I believe the State intends to offer Mr. Mitchell's testimony in an effort to establish that he has an additional prior conviction. The State did not inquire on cross-examination about the prior conviction. I think they're barred on rebuttal from offering information they easily could have offered when they cross-examined the witness and for whatever reason neglected to do so; so, I think it's improper rebuttal evidence.

MR. HAGEMEISTER: Mr. Mitchell on direct-examination says that -- if he says on direct a car is white and I fail to ask him if it was green it does not necessarily prevent me from recalling him to elicit testimony that it might have been green. She --

THE COURT: Let's answer the question that Miss Beimdiek poses. Are you calling this witness to impeach his credibility further or by -- with a conviction you did not cover when he was called?

MR. HAGEMEISTER: No, it was by a conviction she did not cover that I did not have time to get.

THE COURT: Let the record show that the

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defendant's objection is sustained. That would not be rebuttal.

MR. HAGEMEISTER: Judge, it goes to her question as to whether his only conviction was possession.

MS. BEIMDIEK: I did not say --

MR. HAGEMEISTER: That was her question. "Is that your only conviction?" He said no -- he said that was his only conviction which is wrong and I can rebut that and I have the court files to rebut it.

MS. BEIMDIEK: Judge, this witness was endorsed by the State. They had ample opportunity to run his record. They have greater access to the record checks of any witness and so for them to have neglected to have done that in the course of an entire year and now they want to say, well, I forgot to run his record, didn't have time, now I want to bring him back on, ask the same question that I could have asked when he was being cross-examined, it's not proper rebuttal.

MR. HAGEMEISTER: Judge, if he says on direct-examination that his only prior conviction is a possession, I don't need to cross-examine him on that that he's gotten it. He's said solidly that's his only one so what can I do? I can order the court records and come back on rebuttal and if it's

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-- it's not through him. All I'm going to establish through him that he's the same person. I'll have the court reporter be the rebuttal witness.

THE COURT: For the record how long have you known Mr. Mitchell was going to be a witness in this case?

MR. HAGEMEISTER: I had him listed as a potential alibi rebuttal witness. I never had an opportunity to speak with the man till this week.

THE COURT: I asked you how long.

MR. HAGEMEISTER: He was on an endorsement memo. That doesn't mean I have to -- at the point where he's saying on the stand that that's his only conviction and then I go and find out he has an unlawful use of a weapon that he did not mention on the stand I can come back and show that that was a lie and that's what rebuttal is, it's impeaching earlier statements of defense attorneys' witnesses in their case in chief.

THE COURT: Let the record show we'll have our afternoon recess at this time.

Madam Court Reporter, you're to go to the witness, Mitchell's, testimony to determine if upon direct or cross he stated under oath that he only had the one prior conviction.

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Thank you, you --

(Proceedings resumed within the hearing of the jury as follows:)

THE COURT: Ladies and Gentlemen of the Jury, I thank you for your attention for a period after lunch. That's the harder part of the day to keep your attention. I appreciate your co-operation. We'll have our afternoon recess at this time.

(At this time the Court read MAI-CR3d 300.04(2) to the jury.)

Thank you, we'll be in afternoon recess.

(During the recess the following proceedings took place in the courtroom without the presence of the jury:)

THE COURT: Let the record reflect that I have reviewed my notes on the testimony of the witness, Mitchell, and the court reporter has reviewed the court record with respect to the witness's testimony. It's the Court's understanding that the prosecutor wishes to call Mr. Mitchell for the sole purpose of determining whether he has a prior felony conviction, a weapons charge, is that correct?

MR. HAGEMEISTER: Yes, sir.

THE COURT: That's the sole purpose for calling this witness?

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MR. HAGEMEISTER: Yes, sir.

THE COURT: Let the record show that the Court has determined from the record that Miss Beimdiek did not inquire of Mr. Mitchell on direct-examination as to whether the possession of a controlled substance, felony, was his only conviction. It's my recollection he testified that he was given an SIS and placed on probation. If my recollection serves the term of two years. Is that your recollection, counsel?

MR. HAGEMEISTER: Yes, sir.

MS. BEIMDIEK: Yes, Your Honor.

THE COURT: That the question as to his only conviction was never asked by Miss Beimdiek nor was further inquiry made by the prosecutor on cross-examination. Accordingly, the defendant's objection is sustained.

Is there further evidence to be offered on behalf of the State?

MR. HAGEMEISTER: Yes, Your Honor. The State has to call Detective Hornak because of the issue as to the powder testing. That will be the only issue I will call him as to the fact they don't do powder tests.

THE COURT: Is he here?

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MR. HAGEMEISTER: Either in the hall or on his way to the hall. And we also have a witness by the name of G. W. Wells who will testify that Tyrone and Carlos were in fact in a fist fight with John Allen and Johnnie Bell.

MS. MOORE-DYSON: I would object. I don't think that's proper rebuttal.

MR. HAGEMEISTER: They both denied they were fist fighting and he will rebut that.

THE COURT: Any objection to Detective Hornak's testimony?

MS. MOORE-DYSON: I object. I don't believe that issue is probative of anything in this particular case; whether or not they do it or not does not mean that they wouldn't say to a suspect that -- can we run the test on you because they're doing it for a different reason at that particular point. They might tell them that just to think that that's a possibility to see how they react. The fact they do or do not perform the test has nothing to do with it.

MR. HAGEMEISTER: Also ask him if he ever told him that.

THE COURT: The Defendant Morant's objection is sustained in part and overruled in part. Mr. Morant testified that the arresting officers

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offered him to take the test, the gun residue test, and then did not have the test performed. That's the Court's recollection of the defendant's testimony on that point. Either counsel, prosecutor or counsel for the Defendant Morant, contest the Court's recollection?

MS. MOORE-DYSON: No, Your Honor, that's correct.

MR. HAGEMEISTER: That he said that he was asked to take the test?

THE COURT: Yes.

MR. HAGEMEISTER: And that he volunteered to take it. That was his testimony.

THE COURT: And it wasn't given.

MR. HAGEMEISTER: It was not given.

THE COURT: So as to how many years they have or have not performed the test is not probative of the issues in this cause and to that extent it's -- objection is sustained.

MR. HAGEMEISTER: Well, if I ask him if he ever made that statement, he says he didn't, I ask him --

THE COURT: I can't hear you.

MR. HAGEMEISTER: If I ask him if he ever made that statement and he says he did not make that statement to this defendant and then I ask him why he did not make that statement --

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THE COURT: That's just what I finished stating. I sustained the objection as to that. The issue is is the rebuttal testimony going to rebut the testimony of the Defendant Morant that he was offered the test and then they didn't give it to him.

MR. HAGEMEISTER: If a witness gets on the stand and says that they asked for his fingerprints in a certain situation and the rebuttal witness says --

THE COURT: Counselor, I'm not going to go over -- not my duty as Judge to be of-counsel for the State so I'm not going to indulge in your flighty hypotheticals. I have ruled. The detective will not be permitted to testify to what the policy is or was not on September 17, 1995, but to rebut the testimony if such evidence is available of Officer Hornak and the other arresting detectives -- to rebut the defendant's sworn testimony that he was offered the gun residue test and it was never performed.

That's the Court's ruling.

Do you understand the Court's ruling?

MR. HAGEMEISTER: I'd like to make an offer of proof.

THE COURT: Proceed.

MR. HAGEMEISTER: If the witness is questioned

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about whether or not he recalls that statement he can remember how come he never made that statement. It goes to his memory as to whether or not he ever made the statement if I ask him if he ever makes the statement and he says no.

THE COURT: Makes what statement?

MR. HAGEMEISTER: Offering a powder test. If he says no, I don't remember ever having made that statement and I say how is it that you can recall. Then as a matter of habit he can say I as a matter of habit do not ever ask for that test and why.

THE COURT: That is just what the Court ruled you're not permitted to do. I believe the testimony, what, three -- I believe four detectives that Mr. Morant testified to who arrested him on the street there that evening or early that morning.

MS. MOORE-DYSON: None was Hornak.

THE COURT: He said Mr. Hornak was not there.

MR. HAGEMEISTER: He was the arresting officer. He made the arrest. It's in the report. He made the arrest. He was the one back at the station. He was the one asking him the questions according to the witness. It was the detective that was there asking him the questions, that would be Hornak. It wasn't the police officers that picked him up and

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transferred him to homicide.

THE COURT: The Court has ruled. Your offer of proof is overruled and denied. If you recall Detective Hornak he will be permitted to testify as arresting officer to rebut the defendant's statement that the defendant -- or you anticipate or be no point in calling him -- Detective Hornak or no officer in his presence offered this defendant a gun residue test.

Now, what's the next point?

MR. HAGEMEISTER: G. W. Wells.

THE COURT: You anticipate Mr. Wells would testify that both defendants participated in the fist fight in front of Bill's Auto or Al's Auto?

MR. HAGEMEISTER: Bill's Auto, yes.

THE COURT: Any objection?

MS. MOORE-DYSON: I object, Your Honor.

THE COURT: Overruled.

Now, are you clear on the Court's ruling?

MS. BEIMDIEK: If I can just let the record indicate I do also object.

THE COURT: Noted and overruled.

MR. HAGEMEISTER: I have one last rebuttal witness who will be very short who will testify that there's no way Mr. Mitchell could have gone to the

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liquor store to get a beer on that night because that liquor store was closed.

THE COURT: That witness is available here this afternoon?

MR. HAGEMEISTER: Yes.

MS. BEIMDIEK: If I may, Your Honor, I have objection to that. I believe, a, it is collateral; and, b, if the State was aware of this information it had a duty to disclose it in rebuttal to an alibi.

THE COURT: That will be overruled. The Court recalls Mr. Mitchell very clearly testified that -- on direct-examination that the liquor store was open that Sunday on September 17th.

Now, have I ruled on all the objections?

MR. HAGEMEISTER: Yes, sir.

THE COURT: Very well, bring the jury down. Thank you.

MR. HAGEMEISTER: May I ask you to postpone; my rebuttal witnesses are not here.

THE COURT: While you're waiting for them, counsel, approach the bench.

(At this time there was a discussion at the bench off the record; and, thereafter, proceedings continued in open court without the presence of the jury as follows:)

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THE COURT: Let the record show that the prosecutor has asked leave of Court to make a further record. Leave is granted. You may proceed, sir.

MR. HAGEMEISTER: Yes, Your Honor. Miss Beimdiek, not that it was up to me, she was interviewing the owner of the liquor store and it came to my attention that she was asking her questions about what other liquor stores in that neighborhood may have been open and I would do a motion to exclude any reference to any other liquor stores because according to her own witness's testimony it was Martin's Package Liquor he went to that night and not any other liquor store; and, I made a point on my cross-examination to make sure that that was the same store that he went to at Billups and Martin Luther King. And if she's to go into that I believe that would be irrelevant and collateral and not --

THE COURT: What's before the Court at this time?

MR. HAGEMEISTER: I want to have the Court exclude Miss Beimdiek from asking any questions of that witness about whether other stores in the area existed or were open.

THE COURT: Let the record show that the defendant's oral motion and/or request is denied.

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The Court will not put a prior restraint on counsel. The Court has done its best to indicate that the testimony of the manager/owner or whomever of Martin's Liquor Store will be confined to the issue in question and that is the testimony that Mr. Mitchell made a purchase at that establishment on September 17th, a Sunday, and that the store was open.

MR. HAGEMEISTER: I would ask the defense attorneys be limited likewise.

THE COURT: The Court will not limit counsel -- let the record show the Court considers your motion to be a motion in limine.

MR. HAGEMEISTER: Yes, sir.

THE COURT: Motion in limine means a motion to restrict or limit, is that correct, counselor?

MR. HAGEMEISTER: Yes, sir.

THE COURT: You agree, Miss Beimdiek?

MS. BEIMDIEK: Yes, sir.

THE COURT: You agree, Miss Moore-Dyson?

MS. MOORE-DYSON: Yes.

THE COURT: That's incorrect. The Latin phrase, in limine, means at the threshhold. We passed the threshhold a week ago when this trial started. Pardon the lesson in Latin but --

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MR. HAGEMEISTER: This issue wasn't before us at that time. That's why I'm making the motion now.

THE COURT: I will -- you may object at the appropriate time and the Court will endeavor to rule upon your objection.

MR. HAGEMEISTER: Thank you.

THE COURT: Anything further before we proceed with the State's rebuttal?

MS. BEIMDIEK: No, Your Honor.

MS. MOORE-DYSON: No, Your Honor.

THE COURT: Bring the jury down.

oOo

(At this time the jury was brought to the courtroom and proceedings resumed as follows:)

THE COURT: You may proceed.

STATE'S REBUTTAL EVIDENCE

MR. HAGEMEISTER: Your Honor, for the State's first rebuttal witness the State will call G. W. Wells.

G. W. WELLS, being sworn, testified:

DIRECT-EXAMINATION by Mr. Hagemeister:

THE COURT: Proceed.

Q State your name, please.

A G. W. Wells.

Q All right. I want to direct your attention back

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to the months of August or September of 1995. Where did you work at that time?

A Jones Brothers Auto Parts.

Q Is that near Bill's Auto Shop?

A Right across the street.

Q All right. Do you know John Allen and Johnnie Bell?

A Yes.

Q How do you know them?

A John Allen is my cousin and Johnnie Bell just a friend.

Q Okay. And did you ever see them get into a fight in front of that Bill's Auto Shop?

A Yes.

Q Do you know who it was that was fighting with them?

A Yes.

Q Who was it?

A I don't know by the name, just the face.

Q You just know the faces?

A Yes.

Q Do you see any of those people in the courtroom today?

A Yes.

Q Point them out, tell us where they're sitting.

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A Right here, this is the one I've seen.

Q What's he wearing?

A A white shirt and I can't see, I don't know what color tie.

Q No stripes in his shirt?

A I can't see that far.

Q Okay. Well, can I ask the witness to step down?

THE COURT: You may.

Q You want to take a closer look?

A Yes.

(At this time the witness approached defense table.)

A That one.

Q So the person you just identified is one of the people involved in that fight?

A Yes.

MR. HAGEMEISTER: May the record reflect the witness has identified Carlos Wade?

THE COURT: The record may so reflect.

Q Did you recognize anybody else in this courtroom from that fight?

A No.

Q Okay. And would it be helpful at all for you to get a closer look at anybody?

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MS. MOORE-DYSON: Objection, Your Honor. Already identified the person, already came down and looked and answered the question.

THE COURT: He may step down if he cares to do so for a closer look. Let the record show that the blinds are all closed and lighting in this courtroom is poor in the opinion of the Court.

Let the record further reflect the witness had an opportunity to step down from the stand.

A No.

THE COURT: What is your answer, sir?

A No.

Q (By Mr. Hagemeister) Can the record reflect you looked down and looked over at Tyrone Wade -- I'm sorry, Tyrone Morant?

A No.

Q I'll ask you to look at the --

MR. HAGEMEISTER: May I approach the witness?

THE COURT: You may.

Q I'll show you State's Exhibit 26. Does that person look familiar?

A No.

Q Okay. Then when you were at that street on that day how many people came up and fought with John Allen and Johnnie Bell?

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A It was three.

Q And where were you standing in relation to John Allen and Johnnie Bell?

A I was standing next to John.

Q John?

A John Allen.

Q And who was the person fighting with John Allen?

A That guy (indicating).

Q The guy you pointed out earlier?

A Yes.

MR. HAGEMEISTER: Let the record reflect the witness pointed again to Carlos Wade.

THE COURT: The record may so reflect.

Q (By Mr. Hagemeister) The other two people, did you know them?

A No.

Q Do you know if you'd even recognize them if you saw them again?

A Yep.

Q And, when you had one person fighting with John Allen right next to you was that the person you could see the best?

A Yes.

Q With regard to the other two people where were they?

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A They was -- one was fighting Johnnie Bell and then a few minutes later it was another one fighting with John Allen.

Q So there was actually two?

A Two fighting with him.

Q All right. And were you close to the guy that was fighting with Johnnie Bell?

A No.

MR. HAGEMEISTER: I have no further questions.

THE COURT: Thank you.

You may inquire, Miss Beimdiek.

CROSS-EXAMINATION by Ms. Beimdiek:

Q You and Mr. Allen were cousins, is that right?

A Right.

Q When you saw this fight you didn't call the police?

A No.

Q After your cousin was killed did you ever tell the police about this fight you said you saw?

A I mentioned it to one of them that there was fighting, it was like, I don't know particular day that they was fighting but I know they was fighting.

Q Do you know when it was you told the police about this?

A It was that night that --

Q Do you know which police officer you said that to?

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A No.

Q You don't know the date of this fight that you said you saw?

A No.

Q Do you know if it was daytime or night time?

A It was day.

Q And, again, you don't know the date?

A No.

Q Do you know the month?

A No.

MS. BEIMDIEK: Nothing further.

THE COURT: Thank you.

You may inquire.

CROSS-EXAMINATION by Ms. Moore-Dyson:

Q You've only identified one person in this courtroom today that you saw in that fight, correct?

A Yes.

Q You only see one person that you saw that day, is that correct?

A Yes.

Q You did indicate if you saw the other people you would know them, is that correct?

A Correct.

MS. MOORE-DYSON: I have nothing further.

THE COURT: Anything further?

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REDIRECT-EXAMINATION by Mr. Hagemeister:

Q Do you have any problem seeing?

A Yes.

Q What can you see -- what's the problem you have?

A Near blind in one eye.

Q Then you sure it was Carlos Wade that was fighting with John Allen?

A Yes, 'cause I was close to him.

MR. HAGEMEISTER: Nothing further.

THE COURT: Anything further of this witness?

MS. BEIMDIEK: Nothing further.

THE COURT: You may stand down.

Call your next witness.

oOo

ANN MARTIN, being sworn, testified:

DIRECT-EXAMINATION by Mr. Hagemeister:

THE COURT: Proceed.

MR. HAGEMEISTER: With the Court's permission.

Q State your name, please.

A Ann Martin.

Q Miss Martin, are you familiar with Martin's Package Liquor at 4324 Martin Luther King at Billups?

A Yes, I am.

Q How are you familiar with it?

A Co-owner past twenty years.

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Q You've been a co-owner the past twenty years?
A Yes.
Q Your last name is Martin?
A Um-hum.
Q When did that store start opening on Sunday?
A Sometime this year.
Q Do you recall approximately when?
A Sometime after January.
Q Okay. And, do you have any store hours prior to at least January of 1996 in the previous twenty years where you were ever open on a Sunday?
A No.
Q And so you're open now on Sundays?
A Now.
Q How late are you open now?
A Eleven o'clock. On Sundays now you mean?
Q Yeah.
A (Nods affirmatively.)
Q Is there any question in your mind that you weren't open on Sunday, September 17th, of 1995?
A No, we were not open.

MR. HAGEMEISTER: I have nothing further.

THE COURT: Thank you.

You may inquire.

CROSS-EXAMINATION by Ms. Beimdiek:

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Q Miss Martin, you said your store has been in the neighborhood for twenty years?

A Yes.

Q You're aware of your competitors?

A Yes.

Q There are other liquor stores?

MR. HAGEMEISTER: Object to the relevance of any other liquor stores.

THE COURT: Sustained.

MS. BEIMDIEK: May we approach?

THE COURT: You may.

(The following proceedings took place at the bench outside the hearing of the jury:)

MS. BEIMDIEK: Your Honor, I'd like to make an offer of proof of the testimony I would elicit from the witness in this area. She says she's been there twenty years and she knows the area. I would ask her if there are other liquor stores, particularly one named Cross located at Vandeventer and Martin Luther King; another one named Pat's located at Taylor and Page; and, the third store named Beasley located at Martin Luther King and Taylor. I would further ask whether she knows whether these stores have Sunday hours. I would anticipate her testimony would be she thinks they do. That would be

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the extent of my offer of proof.

THE COURT: It's the Court's recollection that Mr. Mitchell testified that he went to Martin's Liquor Store. Isn't that correct?

MS. BEIMDIEK: That's what he said. I think given the fact that he's a human being and capable of making a mistake I'm allowed to elicit that that was not the only liquor store in that neighborhood that he could possibly have visited.

MR. HAGEMEISTER: And I asked him several times if it was Martin's at Billups and Martin Luther King and he said it definitely was.

THE COURT: I'll permit you to ask the question if she knew of other liquor stores open in the area, if she knew, and --

MS. BEIMDIEK: Okay.

THE COURT: -- and then -- let's proceed.

Let the record show the offer of proof is accepted, prior ruling is withdrawn.

(Proceedings resumed within the hearing of the jury as follows:)

Q (By Ms. Beimdiek) Miss Martin, I think I was asking if you knew of other liquor stores in the general neighborhood where yours is located.

A Yes.

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Q Is there one located at Vandeventer and Martin Luther King named Cross Liquor Store?

A Yes.

MR. HAGEMEISTER: Objection. No testimony anybody ever went to one at Martin Luther King and Taylor.

THE COURT: The objection will be sustained. The Court indicated it would permit a question -- since she's already stated there were other liquor stores I believe I indicated in the sidebar what question you would be permitted.

MS. BEIMDIEK: Thank you, Judge.

Q (By Ms. Beimdiek) Do you know if any of those other liquor stores are open on Sunday night?

A I do not.

MS. BEIMDIEK: Nothing further.

MR. HAGEMEISTER: Nothing further.

THE COURT: Any further?

MS. MOORE-DYSON: I have no questions.

THE COURT: Further questions?

You may stand down, ma'am.

oOo

MR. HAGEMEISTER: Your Honor, the State has no further rebuttal.

THE COURT: Does the State rest?

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MR. HAGEMEISTER: Yes.

THE COURT: Anything further on the part of the Defendant Wade?

MS. BEIMDIEK: No, Your Honor.

THE COURT: Does Defendant Wade rest?

MS. BEIMDIEK: Yes.

THE COURT: Anything further on behalf of Defendant Morant?

MS. MOORE-DYSON: No, Your Honor.

THE COURT: Does the Defendant Morant rest?

MS. MOORE-DYSON: Yes.

THE COURT: Thank you, Counsel.

Ladies and Gentlemen of the Jury, the Court will release you at this time.

(At this time the Court read MAI-CR3d 300.04(2) to the jury.)

Since there are matters that will take the Court's attention tomorrow morning I'm going to have you return at 10:30 tomorrow morning. I suggest you have a hearty breakfast. All right.

oOo

(END OF VOLUME II)

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MISSOURI COURT OF APPEALS
EASTERN DISTRICT

STATE OF MISSOURI, Plaintiff (Respondent), v. CARLOS WADE, Defendant (Appellant).	Mo. Ct. of Appeals No. ~~71991~~ ED76932 Circuit Court of the City of St. Louis, Mo., No. 951-4326A, Div. 11
STATE OF MISSOURI, Plaintiff (Respondent), v. TYRONE MORANT, Defendant (Appellant).	Mo. Ct. of Appeals No. 71966 Circuit Court of the City of St. Louis, Mo., No. 951-4326B, Div. 11

TRANSCRIPT OF RECORD ON APPEAL FROM THE CIRCUIT COURT OF THE CITY OF ST. LOUIS, STATE OF MISSOURI, DIVISION NO. 11 THE HON. FLOYD McBRIDE, JUDGE, PRESIDING

FILED
JUL 25 1997
DEIRDRE O. SMITH
CLERK, MISSOURI COURT OF APPEALS
EASTERN DISTRICT

VOLUME III

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NANCY KUTTA
OFFICIAL COURT REPORTER
TWENTY-SECOND JUDICIAL CIRCUIT
ST. LOUIS, MISSOURI

Exhibit 7

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VOLUME XII

PRELIMINARY INSTRUCTION CONFERENCE

THE COURT: Let the record show we will now proceed to instructional conference. We've had a preliminary instruction conference off the record. All reference shall be to MAI Criminal Instructions, Third Edition.

Counsel, as we go through these I expect you to hand me a clean copy and an annotated copy. I want to do them in order because of the number. I do not want to get them confused.

Let the record show the Court has prepared instructions to be given by the Court and counsel for the parties have had a prior opportunity to examine these instructions. Any objection to these instructions that I have distributed to you?

MS. MOORE-DYSON: No, Your Honor.

MS. BEIMDIEK: General objection and a specific objection to the reasonable doubt instruction submitted by the Court. I think it improperly defines reasonable doubt.

THE COURT: Very well. But I'm talking about as far as the instructions -- is it agreed by counsel Instructions 1 through 4 and the last two instructions are taken and are correct as far as our instruction

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book is concerned?

MS. BEIMDIEK: I don't disagree they come out of MAI, no, Your Honor.

THE COURT: That's why I gave them to you. Not to preclude you from making any record but to see if there were any typographical errors, inappropriate choice of words in the instruction. Have you had a chance to examine them for those purposes?

MS. BEIMDIEK: Yes, Your Honor.

THE COURT: All right.

Instruction No. 1 will be 302.01, given by the Court.

I expect to hear from counsel if you have an objection to any instruction.

Instruction No. 2 will be 302.02, given by the Court.

Instruction No. 3 will be 302.03, given by the Court.

Instruction No. 4 will be 302.04, given by the Court.

MS. BEIMDIEK: Judge, I have an objection to 302.04 as I think it improperly and wrongfully defines reasonable doubt.

THE COURT: Miss Moore-Dyson?

MS. MOORE-DYSON: I'm going to review it.

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I will join her in that objection, Your Honor.

THE COURT: Objections of defendants noted and overruled. That will be given as Instruction No, 5, rather 4.

Now, Instruction No. 5 is the State's instruction if all counts to be submitted are based on accessorial liability. If all counts are so based we must give a separate instruction. We've been over this before, have we not? The Court brought this to your attention.

MS. BEIMDIEK: Yes, Your Honor.

THE COURT: Any objection to 304 -- I'm sorry, yes, 304.04, submitted by the State?

MS. BEIMDIEK: Yes, Your Honor, general objection by Defendant Wade.

THE COURT: Overruled.

Instruction No. 5 should be the verdict director in Count I, the first named defendant.

MS. BEIMDIEK: Six, Your Honor.

THE COURT: You're correct. The last instruction will be given is Instruction No. 5.

Let the record show that the Court has received 313.02, modified by 304.04.

MR. HAGEMEISTER: Judge, the -- bear with me for one second. Here you go. That's --

(At this time there was a discussion off the

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record after which proceedings resumed on the record as follows:

THE COURT: Again, this is Instruction 313.02, modified by 304.04.

Any objection, Miss Beimdiek, to 213.02? 313.

MS. BEIMDIEK: Yes, Your Honor, I do. I have a general objection and I would also note again for the record that despite my request for all of the State's instructions to be provided to me the Friday prior to trial that request at -- that request was not met. I did not receive the State's final draft of instructions until approximately one o'clock this afternoon at the end of the lunch break; and I think the statute that has now been enacted requires specific objections to the instructions unfairly applies to a defendant in a case such as this where there are multiple counts, multiple verdict directors, and the instructions are not given to me in a timely manner to carefully review them.

At this time my objection would simply be a general objection to 313.02, modified by 304.04.

THE COURT: The general objection of Defendant Wade is noted and overruled. You will be granted additional time -- it is now approximately four o'clock -- until 10:30 tomorrow morning to review

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this, this and other instructions.

Is Defendant Wade offering a converse to the State's verdict director?

MS. BEIMDIEK: No, Your Honor.

THE COURT: Instruction No. 7 as indicated by the Court in our informal conference was to be the second degree murder instruction as to this defendant in Count I.

The Court has received from the prosecutor Instruction 313.04, modified by 304.04.

Any objection on the part of Defendant Wade to this submission?

MS. BEIMDIEK: Yes, Your Honor, pursuant to the record general objection I previously made and I had a typo in my copy. I'd like to see the Court's copy to see if the typo is corrected.

MR. HAGEMEISTER: The typo is still there. It was not in the last draft.

THE COURT: Which line?

MS. BEIMDIEK: Right in the middle, second, Carlos Wade knew or was aware his conduct was causing or practically certain to cause the death of John Allen and then you're instructed, that and should be deleted.

THE COURT: Which and?

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MS. BEIMDIEK: The and following John Allen in the paragraph that begins with the word, second.

MR. HAGEMEISTER: I don't oppose that.

THE COURT: We're talking about the last clause or portion of the sentence before the submission second --

MR. HAGEMEISTER: No, I'm talking about in paragraph second right after the word, John Allen, at the very end.

THE COURT: I see it, yes.

MS. BEIMDIEK: I think it can be cured with white-out; not a major mistake.

THE COURT: I just want to check the instruction book. I'll ask counsel to examine the instructions submitted to the Court. The conjunction, and, prior to the word, the clause, then you're instructed, has been removed.

MS. BEIMDIEK: Thank you.

MR. HAGEMEISTER: Thank you.

THE COURT: General objection of Defendant Wade is noted and overruled.

This will be given as Instruction No. 7.

The next instruction if the Defendant Wade is offering no converse to this instruction will be the verdict director in Count I as to first degree

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murder against Defendant Morant.

The Court has received 313.02, modified by 304.04.

Any objection to this instruction?

Hearing no objection to this instruction this will be given as Instruction No. 8.

Instruction No. 9 then should be the second degree murder instruction against Defendant Morant.

MS. MOORE-DYSON: Your Honor, Defendant Morant will be offering a converse for first degree murder.

THE COURT: Very well.

MS. MOORE-DYSON: And I don't have the converses on the other three charges but I'm having those prepared. I can have them tomorrow. Going to offer a converse on each one of the counts.

THE COURT: What do you want in the blank, as submitted in Instruction No. --

MR. HAGEMEISTER: 8.

MS. MOORE-DYSON: Was it 8?

MR. HAGEMEISTER: Yes.

MS. MOORE-DYSON: 8.

THE COURT: Do you want me to insert that, Counselor, or do you want to do it?

MS. MOORE-DYSON: You can do it. I trust you.

THE COURT: I'm inserting at your direction, 8.

Any objection to Defendant Morant's 308.02?

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This will be given as Instruction No. 9.

MR. HAGEMEISTER: Judge, I would ask for an opportunity to reserve the right to make an objection after I've checked it against MAI.

THE COURT: Use it or lose it.

MR. HAGEMEISTER: Object it does not follow the form of MAI even though it might 'cause I just got it and haven't had a chance to check it.

THE COURT: You'll have the same opportunity to -- that --

MR. HAGEMEISTER: That's all I ask, Judge. Thank you.

THE COURT: -- I extended to Miss Beimdiek; however, we'll take the time now if that's your only concern --

(At this time there was a discussion off the record, after which proceedings resumed on the record as follows:)

THE COURT: I believe I sustained your objection. This converse does not follow the verdict director.

MS. MOORE-DYSON: I'll correct it.

THE COURT: It has knowingly caused. It does not mirror the element first that on or about September 17, 1995 --

(At this time there was a discussion off the

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record, after which proceedings resumed on the record as follows:)

THE COURT: Carlos Wade or Tyrone Morant caused the death of John Allen by shooting him.

MS. MOORE-DYSON: I'll correct that, Your Honor.

THE COURT: Are you withdrawing it?

MS. MOORE-DYSON: Yes, until in the morning then and --

THE COURT: All right. Now, I want to make clear -- I thought last night you said you weren't offering converses. Did I hear you say you're going to offer a converse to each verdict director submitted against your defendant?

MS. MOORE-DYSON: Last night I said I had the one with me. I wasn't certain at that time --

THE COURT: I want to know if it's -- if your present intention is to offer a converse on each count submitted against your defendant.

MS. MOORE-DYSON: Yes, Your Honor, it is.

THE COURT: Thank you. The only reason I ask is for purpose of numbering. I told counsel to have their instructions ready yesterday.

Any objection to MAI 313.04, modified by 304.04, Miss Moore-Dyson?

MS. MOORE-DYSON: General objection only, Your Honor.

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THE COURT: Thank you. Will you please speak up.

THE COURT: Overruled. This will be given as Instruction No. 10.

Instruction 11 would be the defendant's converse which we do not have. I'm going to advise counsel you have these first thing in the morning or they will not be given.

MS. MOORE-DYSON: Yes, Your Honor.

THE COURT: Now we go to Count II.

Anything further with respect to Count I?

MS. MOORE-DYSON: No, Your Honor.

MR. HAGEMEISTER: No, sir.

THE COURT: The Court has received on Count II, the charge against the Defendant Wade, on armed criminal action, 332.02, modified by 304.04.

Any objection to this instruction?

MS. BEIMDIEK: General objection, Your Honor.

THE COURT: Both of you proofread it?

MS. BEIMDIEK: I have.

THE COURT: Very well. This will be given as Instruction 12. These numbers are tentative.

Instruction No. 13 will be the defendant's converse.

MR. HAGEMEISTER: Judge, did you want to wait and

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fill out the blanks in the body of these until the end when you determine if they're really going to -- there really are converses 'cause that one has a blank that needs to be filled in. That one should refer back to the Instruction No. 6.

THE COURT: Well, this is going to delay everything because of counsel's failure to follow the directions of the Court. I'm not filling that blank in now.

MR. HAGEMEISTER: Okay, thank you.

THE COURT: You're correct.

MR. HAGEMEISTER: Just checking.

MS. BEIMDIEK: I think you said 13 was a converse. I'm not submitting a converse so --

THE COURT: Then I was mistaken, wasn't I?

MS. BEIMDIEK: In light of the fact that we went murder first, murder second, I think it should be the ACA as to murder second.

MR. HAGEMEISTER: You're absolutely right. Thank you.

Can I get that back, 13?

THE COURT: We're not finished with Count I.

MR. HAGEMEISTER: This is 13.

THE COURT: I've already overruled the general objection to this instruction. This is armed criminal action against Defendant Wade on -- in

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first degree murder, is that correct?

MR. HAGEMEISTER: Second degree.

THE COURT: Yes, I'm sorry.

MS. BEIMDIEK: General objection.

THE COURT: Overruled.

MR. HAGEMEISTER: Now, to the armed criminal action for murder first degree on Defendant Morant, Instruction No. 14, and I gave you all three --

THE COURT: This is --

MR. HAGEMEISTER: They're all the same. I just gave that bottom copy back. Because of the length they couldn't fit the --

(At this time there was a discussion off the record, after which proceedings resumed on the record as follows:)

THE COURT: This is again -- again is 332.02, modified by 304.04, armed criminal action against the Defendant Morant on the charge of first degree murder -- murder in the first degree.

Any objection to this instruction?

MS. MOORE-DYSON: Objection -- general objection only, Your Honor.

THE COURT: Overruled.

MR. HAGEMEISTER: I have that as Instruction No. 14, is that right?

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MS. BEIMDIEK: Um-hum.

MR. HAGEMEISTER: And then 15 would be a converse if you're going to do one.

MS. MOORE-DYSON: Yes.

THE COURT: Then that takes us to --

MR. HAGEMEISTER: Armed criminal action with regard to murder second on Defendant Morant.

THE COURT: Yes. The Court has received from the prosecutor 332.02, modified by 304.04.

Any objection, Miss Moore-Dyson, to this instruction?

MS. MOORE-DYSON: No, Your Honor.

THE COURT: It's to be given as --

MR. HAGEMEISTER: Instruction 16.

THE COURT: 16.

MR. HAGEMEISTER: 17 would be a converse.

THE COURT: 18 then should be the Count III, is that correct?

MR. HAGEMEISTER: Yes, assault first degree.

THE COURT: Against Defendant Wade.

MR. HAGEMEISTER: On victim Bell.

THE COURT: The Court has received 319.08, modified by 304.04.

MS. BEIMDIEK: General objection from Defendant Wade.

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THE COURT: The Court notes that it contains the phrase, serious -- caused serious physical injury or serious physical injury. That phrase has to be defined.

MR. HAGEMEISTER: Yes, Your Honor. I thought it was the Court's wish that instead of reading that definition in each of the four instructions involving assault first degree that it read it one time at the conclusion of all the verdict directors and I have that printed up on a separate sheet.

THE COURT: No, it's not the Court's wish; it's the Notes on Use. If any of these terms are used in more than one instruction the paragraph defining that term need not be included in each instruction. In that case such terms must be defined in a separate instruction. Is that understood?

MR. HAGEMEISTER: Yes, and we have that separate.

THE COURT: 319.08, modified by 304.04 and it's the State's verdict director as to the assault. The assault first degree upon one Johnnie Bell.

Any objection to this instruction?

MS. BEIMDIEK: Yes, general objection.

THE COURT: Noted and overruled.

MR. HAGEMEISTER: If it's by Defendant Wade it's

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18. I believe that is.

THE COURT: Is that agreed, Counsel?

MS. BEIMDIEK: Yes, Your Honor.

THE COURT: The next verdict director should be the assault charge against Johnnie Bell, Count III, as to the assault charge against Morant for the alleged assault first degree on Johnnie Bell, is that correct?

MR. HAGEMEISTER: Yes, sir.

THE COURT: And this would be 19?

MR. HAGEMEISTER: Yes, sir.

THE COURT: The Court has received from the prosecutor 319.08, modified by 304.04.

Any objection, Miss Moore-Dyson, to this instruction?

MS. MOORE-DYSON: General objection, Your Honor.

THE COURT: Overruled. It will be given as Instruction 19.

Instruction 20 would be the defendant's converse.

The next instruction would be Instruction 21.

The Court has received from the prosecutor the verdict director as to Count IV on the charge of armed criminal action against Defendant Wade. This instruction is 332.02, modified by 304.04.

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Any objection?

MS. BEIMDIEK: General objection.

THE COURT: Noted and overruled.

Again, this will be Instruction 21.

The Court has received from the State Instruction 332.02, modified by 304.04. This is the count of -- Count IV, the charge of armed criminal action against the Defendant Morant.

Any objection to this instruction?

MS. MOORE-DYSON: General objection, Your Honor.

THE COURT: The general objection is overruled and as stated by the Court will be given as Instruction No. 22.

Instruction 23 will be the defendant's converse.

That takes us to Count V, is that correct?

Miss Beimdiek, I notice, and Miss Moore-Dyson, you're making notes, is that correct?

MS. MOORE-DYSON: Yes.

MS. BEIMDIEK: Yes.

THE COURT: Did I say 24 or 25?

MR. HAGEMEISTER: This should be 24.

THE COURT: All right. 24. The Court has received from the prosecutor 319.08, modified by 304.04. This is the charge in Count V against the Defendant Wade.

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Any objection?

MS. BEIMDIEK: General objection.

THE COURT: Noted and overruled. This will again be given as Instruction 24.

Instruction 25 will be the same charge against the Defendant Morant. The Court has received the same instruction, 319.08, modified by 304.04, as to Count V.

Any objection to this instruction?

MS. MOORE-DYSON: General objection only, Your Honor.

THE COURT: General objection is overruled. At least I think that's what you're saying. This will be given as Instruction No. 25.

The defendant advised the Court you would offer a converse to this verdict director. That will be 26.

Instruction 27 is Count VI against Defendant Carl Wade -- Carlos Wade, assault in the first degree. I'm sorry, this is the armed criminal action, Count VI, against Defendant Carlos Wade. According to my count this should be Instruction No. 27, is that correct?

MR. HAGEMEISTER: Against Wade, yes.

MS. BEIMDIEK: General objection to that

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instruction.

THE COURT: Very well, the instruction tendered is 332.02, modified by 304.04. Defendant Wade's general objection is overruled.

Instruction No. 8 is --

MR. HAGEMEISTER: 28.

THE COURT: Did I say 8? Pardon me. 28, you're correct. The same charge, Count VI, against the Defendant Morant, and, again, the instruction tendered is numbered 332.02, modified by 304.04.

Any objection as to this instruction, Miss Moore-Dyson?

MS. MOORE-DYSON: General objection only, Your Honor.

THE COURT: Noted and overruled.

The next instruction is a definition, Instruction 333 -- is it agreed by the parties that the only term requiring definition under Notes of Use on all these instructions is the term, serious physical injury?

MS. BEIMDIEK: I believe that's correct, Your Honor.

MS. MOORE-DYSON: That's my understanding from my review so far.

THE COURT: This would be 30.

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MR. HAGEMEISTER: Yes. If she does a converse that would be 30.

MS. MOORE-DYSON: I'm not going to converse that.

MR. HAGEMEISTER: I'm talking about to 28.

MS. MOORE-DYSON: I will be conversing 28.

THE COURT: Thank you.

Well, that's thirty instructions.

MS. BEIMDIEK: Before you do that --

I'm trying to determine why you gave me 304.12 and 304.18.

MR. HAGEMEISTER: I forgot that they were going to submit alibis, Judge.

THE COURT: Well, what's that have to do with anything?

MR. HAGEMEISTER: Well, I assumed that 304.12 or 304.18 were -- or maybe both would be applicable at some point.

THE COURT: No, 304.18 is the one used when you have multiple defendants.

MR. HAGEMEISTER: I would call two multiple in my definition; but, if I'm wrong, wouldn't be the first time.

THE COURT: You wouldn't call two multiple?

MR. HAGEMEISTER: I would call two multiple.

THE COURT: Yes, so would I.

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Let's go to 304.18 in the book.

MR. HAGEMEISTER: Do you have your alibi instructions?

MS. BEIMDIEK: I think --

MR. HAGEMEISTER: The alibi should go next.

THE COURT: Oh, yes, I understand that but I want to determine while I have this instruction before I forget it, the prosecutor is under mistaken thought that, I guess, that I would give 304.12 and 304.18.

MR. HAGEMEISTER: One or the other or both.

THE COURT: Do either of you agree with him?

MS. BEIMDIEK: I do. I think I'm looking at Notes on Use.

THE COURT: What does it say, one defendant, multiple counts, separate verdicts. Do we have one defendant here?

MS. MOORE-DYSON: No.

MR. HAGEMEISTER: No, Judge, that's why I prepared 304.18 even though it was not prepared as a matter of course by my office because I thought 304.18 was more applicable.

THE COURT: Well, yes, not only more applicable but it would be error to do otherwise.

All right, but as Miss Beimdiek pointed out to

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me we have other bridges to cross before we get get to that particular instruction.

MS. BEIMDIEK: You want the alibi?

MS. MOORE-DYSON: Here's my alibi.

THE COURT: Is this where you want them to go in the course of things?

MS. BEIMDIEK: Yes, Your Honor.

THE COURT: Very well. Let the record show that 308.04 has been submitted by Defendant Wade and is there any objection to this instruction?

MR.HAGEMEISTER: It was just handed to me. I would state that I'll object to it if it does not follow MAI.

THE COURT: Well, you're not -- none of you are going to be given that luxury since you were to have these instructions yesterday.

MS. BEIMDIEK: For the record I indicate I offered this instruction to Mr. Hagemesiter several hours ago. He declined it because --

MR. HAGEMEISTER: She's right, I did. But I wanted to save myself time in case I found something tonight that I didn't approve of.

THE COURT: Well, you're going to be on a pretty slippery slide tomorrow morning.

What is this, 31, Miss Beimdiek?

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MS. BEIMDIEK: That's my numbering.

THE COURT: You agree, Miss Moore-Dyson?

MS. MOORE-DYSON: Yes, Your Honor.

THE COURT: Hearing no objection from the State the Defendant Wade's alibi instruction, 306 -- 308.04 will be given as Instruction 31.

MS. MOORE-DYSON: Your Honor, I'm not sure if this would be the appropriate place, I have a limiting instruction with respect to the prior shootings.

THE COURT: I just asked you if you wanted your alibi to go now.

MS. MOORE-DYSON: Yes, I do, this I want to go after that.

THE COURT: Well, I apologize. I'm slow. I can only consider one thing at a time.

MS. MOORE-DYSON: I'm sorry.

THE COURT: I'm just finishing the alibi instruction offered by Defendant Wade.

Now, if you'll give me a moment -- have I given you the number? I believe it's 308.04, be given as Instruction 31.

The Court has received 308.04 from Defendant Morant. Any objection to this instruction?

MS. MOORE-DYSON: No, Your Honor.

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MR. HAGEMEISTER: I haven't seen it.

THE COURT: Well, take a look at it.

Did you give Mr. Hagemeister a copy, Miss Moore-Dyson?

MS. MOORE-DYSON: I gave it to him yesterday.

THE COURT: Hearing no objection this will be given as Instruction 32.

Now, the State has received from -- the Court has received from Miss Moore-Dyson, attorney for Defendant Morant -- I thought I had --

MS. MOORE-DYSON: The limiting --

THE COURT: I don't see it, limiting instruction.

MS. MOORE-DYSON: I didn't hand it to you.

THE COURT: I did get your alibi. Thank you.

Any objection to this instruction?

MS. BEIMDIEK: Yes, Your Honor, I do. I believe as it's drafted it's confusing, the language, testimony of any prior shootings by Defendant Carlos Wade may be considered by you only for the purpose of a common plan or scheme and shall not be considered by you for any other purpose. I don't understand that sentence. I don't,don't think it's necessarily in conformity.

THE COURT: Objection sustained. Instruction refused. Be marked A by the Court.

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MS. MOORE-DYSON: Your Honor, I'll see if I can't submit a conformity instruction in the morning.

THE COURT: The next instruction assuming counsel is going to have a correct limiting instruction will be Instruction No. 34 I believe.

Is that correct, the number, Miss Beimdiek, Mr. Hagemeister, Miss Moore-Dyson, 34 are we on?

MS. BEIMDIEK: Yes, Your Honor.

MR. HAGEMEISTER: Yes.

MS. BEIMDIEK: If we can go back for a moment to Instruction No. 32.

THE COURT: Yes.

MS. BEIMDIEK: I just received -- I did not receive a copy of Miss Moore-Dyson's alibi instruction. But I think that I have to make an objection that it's not in conformity from MAI, it varies from the one I submitted. I'm concerned about lack of consistency. I think the final paragraph should not include the address where it's alleged the defendant was but the address where the offense is alleged to have been committed.

THE COURT: You're correct, Counselor.

MS. MOORE-DYSON: Your Honor, I apologize. I had my secretary preparing these at the beginning of the case. I been preparing witnesses in the

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evening. I haven't had a chance to review if they're correct. I'll correct them; have them back to you tomorrow.

THE COURT: The Court will withdraw its prior ruling that this will be given as Instruction 33 -- 32; remark this B. This instruction is also refused.

That takes us to Instruction 34 I believe.

MS. BEIMDIEK: Yes.

THE COURT: It's the Court's opinion that the only applicable instruction in that series is 304.18, not 304 --

MR. HAGEMEISTER: I'll withdraw 304.12.

THE COURT: -- .12, since 304.12 is specifically when you're trying one defendant who has multiple counts submitted against him. Here we're trying multiple defendants and multiple counts. Agreed?

MS. BEIMDIEK: Yes, Your Honor.

THE COURT: I want you to check this. The Court does not expect you to accept the Court's reading.

MS. BEIMDIEK: I've looked at the Notes on Use. I agree.

THE COURT: But I'll mark this 34 and if there's no objection that will be given as Instruction 34 and that instruction again is 304.18, tendered by

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the State.

MS. BEIMDIEK: I would just have a general objection to that.

THE COURT: Noted and overruled.

Instruction 35 will be 302.05 prepared by the Court and examined by counsel. As you undoubtedly are aware the only change on that is to make the singular form plural to forms. Has the Court done that, counsel?

MS. BEIMDIEK: Yes.

MR. HAGEMEISTER: Yes.

THE COURT: Any objection to that, to Instruction 35?

MR. HAGEMEISTER: No.

MS. BEIMDIEK: Just a general objection.

THE COURT: Noted and overruled.

And the last instruction should be 36, 302.06.

Any objection to the Court's instruction, 302.06?

MR. HAGEMEISTER: No.

MS. BEIMDIEK: General objection.

THE COURT: Noted and overruled.

So it seems we have somewhere in the vicinity of thirty-six instructions, is that correct, counsel?

MR. HAGEMEISTER: Yes.

THE COURT: I'll expect all additional

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instructions to be submitted to counsel tomorrow morning no later than nine o'clock and we will go back on the record briefly to finish our instruction conference.

MR. HAGEMEISTER: Judge, I'll show the verdict forms to the defense.

THE COURT: I'm almost there if you'll bear with me.

Have you examined the verdict forms?

MS. BEIMDIEK: Briefly did but I'll look at them again.

THE COURT: Are the verdict forms acceptable to the State?

MR. HAGEMEISTER: Yes, Your Honor.

MS. BEIMDIEK: I have reviewed the verdict forms. I have no objection as to Carlos Wade.

THE COURT: Thank you.

MS. MOORE-DYSON: I have reviewed those as to Tyrone Morant and I don't object to them.

THE COURT: Very well. How much time are you asking for oral argument?

MS. BEIMDIEK: Thirty minutes.

MR. HAGEMEISTER: That would put me about an hour, Judge.

THE COURT: How do you want to divide your time,

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sir?

MR. HAGEMEISTER: I would divide it in half unless I have to have thirty-one minutes in my first half, Judge, and then I would like two minute warnings. I'm sorry, three minute warnings on each side with the right to encroach.

THE COURT: You want to divide it fifty-fifty, is that it?

MR. HAGEMEISTER: Yes, sir.

THE COURT: And a three minute warning?

MR. HAGEMEISTER: And the right to encroach and warning that I'm encroaching.

THE COURT: Warning that you're encroaching. I normally do not give any warning after the three minutes.

MR. HAGEMEISTER: That's fine.

THE COURT: Initial closing if you want me to I'll tell you when the thirty minutes is up.

MR. HAGEMEISTER: Yeah, I would prefer that, Judge, just so that the jury understands that I'm -- I can explain what I'm doing.

THE COURT: Then I'll deduct any minutes you go over from your rebuttal.

MR. HAGEMEISTER: Thank you.

THE COURT: Will a three minute warning suffice

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for you, Miss Beimdiek?

MS. BEIMDIEK: That's fine.

MS. MOORE-DYSON: I'd like a five minute warning.

THE COURT: Anything further?

MS. BEIMDIEK: At this time I have a motion for judgment of acquittal at the close of the entire case. The State has failed to prove their case sufficiently as to all counts and I'd ask that the case be directed out at this time.

THE COURT: Defendant Wade's motion for judgment of acquittal at the close of the entire case is overruled.

MS. MOORE-DYSON: Your Honor, I also have one as to Tyrone Morant.

THE COURT: Defendant Morant's motion for judgment of acquittal at the close of all the evidence is overruled.

Again, counsel, you're to confer and go over the remaining instructions tomorrow morning at nine o'clock and then to be here at 9:30 so that we may conclude our instructional conference.

Court's adjourned for the evening.

oOo

(The following proceedings took place on the next day, November 20, 1996, in the courtroom

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without the presence of the jury:)

THE COURT: Is there any need to make a further record -- let the record show this instructional conference is a continuation of the conference held yesterday outside the presence and hearing of the jury. We'll go over the instructions one more time because the Court does not have a complete list of instructions and the numbering is uncertain at this time.

Is there any need to go over Instructions 1 through 4 given by the Court? As the Court recalls it defendant's objection to the burden of proof instructions has already been made and overruled, is that correct?

MS. BEIMDIEK: That's correct. Nothing further needs to be on the record at this time.

THE COURT: Instruction 5 is 304.04 and it is given separate from the verdict directors because all counts being submitted against the defendants are based on accessorial liability, is that correct?

MS. BEIMDIEK: Yes.

MS. MOORE-DYSON: Yes.

THE COURT: I'm going to go over these quickly since we've been over them once so if you have any further objection or any comment to make with regard

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to the instructions please let me know and -- so we do not have to go over them for the third or fourth time.

Instruction 6 is murder first degree, the charge in Count I against Defendant Wade.

Anything further with respect to that instruction?

MS. BEIMDIEK: Nothing further.

THE COURT: Instruction 7 against the same defendant is the lesser included offence of murder second degree.

Anything further with respect to that instruction?

MS. BEIMDIEK: No, Your Honor.

THE COURT: Instruction 8 is the submission, Count I, against Defendant Morant on the charge of murder first degree.

Anything further with respect to that instruction?

MS. MOORE-DYSON: Nothing further, Your Honor.

THE COURT: Is the Defendant Morant going to offer a converse to that instruction?

MS. MOORE-DYSON: We decided to withdraw the offer of converses.

THE COURT: The instruction I just referred to is 9.

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THen we would go to Instruction 10 which is the second degree murder submission against Defendant Morant.

Any objection to that instruction?

MR. HAGEMEISTER: I show that as being 9 now.

MS. BEIMDIEK: That's right.

MS. MOORE-DYSON: That's correct.

THE COURT: Let's see. Yes, that's correct.

The Court withdraws its prior comment that the first degree murder submission against Defendant Morant is Instruction 9. It is Instruction 8. The second degree murder submission against Defendant Morant is 9.

Now, is this true with respect to all counts against Defendant Morant, Miss Moore-Dyson, that defendant is not offering a converse to the State's verdict directors?

MS. MOORE-DYSON: That's correct, Your Honor.

THE COURT: Very well. Then Instruction 10 is Count II against Carlos Wade on armed criminal action, correct?

MS. BEIMDIEK: Yes, Your Honor. As to murder first.

THE COURT: What goes in the blank?

MS. BEIMDIEK: 6.

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THE COURT: Agreed?

MS. BEIMDIEK: Yes.

THE COURT: Let's move -- I -- is 6 correct?

MR. HAGEMEISTER: Yes. If I --

THE COURT: I expect to hear from the prosecutor and the defense attorney.

MR. HAGEMEISTER: If I disagree I'll speak up.

THE COURT: Well, the Court will advise counsel I expect a response for the record.

MR. HAGEMEISTER: Yes, sir.

MS. BEIMDIEK: I think I did respond.

THE COURT: You did. All I'm saying I don't want silence. We have thirty or more instructions and that's why I'm taking the time to do this. So that the verdict director against Carlos Wade of murder in the first degree is 6, is that agreed?

MR. HAGEMEISTER: Yes.

MS. BEIMDIEK: Yes.

MS. MOORE-DYSON: Yes.

THE COURT: That should go in Instruction 10 in the blank. Are there any other blanks in that instruction other than the first submission, the first element?

MS. BEIMDIEK: No, Your Honor.

THE COURT: Very well, we go to Instruction No.

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11 and that is armed criminal action against the same defendant on the charge of murder second degree, correct?

MR. HAGEMEISTER: Yes.

MS. BEIMDIEK: Yes.

MS. MOORE-DYSON: Yes.

MS. BEIMDIEK: And the blank should be No. 7.

MR. HAGEMEISTER: Yes.

THE COURT: Agreed.

That takes us to the instruction, Count II, as to Defendant Morant on armed criminal action with respect to first degree murder. Is that 8 that goes in the blank, Miss Moore-Dyson?

MS. MOORE-DYSON: Yes, Your Honor.

MR. HAGEMEISTER: Yes.

THE COURT: Yes. It's 8. And this instruction is 12, is it not?

MR. HAGEMEISTER: Yes.

THE COURT: Anything further -- any further blanks in that instruction?

MS. MOORE-DYSON: No, Your Honor.

THE COURT: Instruction 13 would be as to Count II and that's armed criminal action in connection with the offense of murder second degree, correct?

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MR. HAGEMEISTER: Yes.

MS. BEIMDIEK: Yes.

MS. MOORE-DYSON: Yes.

THE COURT: That should be No. 13?

MR. HAGEMEISTER: Yes.

MS. BEIMDIEK: Yes.

MS. MOORE-DYSON: Yes.

THE COURT: And the blank is 9?

MR. HAGEMEISTER: Yes.

MS. MOORE-DYSON: Yes, Your Honor.

THE COURT: Is that correct, Miss Moore-Dyson?

MS. MOORE-DYSON: That's correct.

THE COURT: The next instruction is to Count II, -- Count III, will be Instruction 14.

MS. BEIMDIEK: That's right. There are no blanks.

MR. HAGEMEISTER: Yes.

THE COURT: And that's a submission of assault first degree against Defendant Wade, correct?

MS. MOORE-DYSON: Yes.

MS. BEIMDIEK: Yes.

THE COURT: And 15 is the same submission in Count II as to Defendant Morant?

MR. HAGEMEISTER: Yes.

MS. MOORE-DYSON: That's correct.

THE COURT: No blanks to be filled in in that

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one either?

MS. MOORE-DYSON: That's correct.

THE COURT: Is that correct?

MS. MOORE-DYSON: Correct.

THE COURT: Sixteen then takes us to Count IV. This is the submission of assault in the first degree against Defendant Wade.

MS. BEIMDIEK: That's right, the blank should be No. 14, Your Honor.

MR. HAGEMEISTER: Yes.

THE COURT: Instruction is 16 and the blank is --

MS. BEIMDIEK: 14.

THE COURT: 14.

Instruction No. 17 --

MR. HAGEMEISTER: Yes.

THE COURT: Count IV, assault against the Defendant Morant.

MS. MOORE-DYSON: Yes.

THE COURT: Armed --

MR. HAGEMEISTER: Armed criminal action, yes.

THE COURT: Armed criminal action, underlying felony being assault, correct?

MS. MOORE-DYSON: Yes.

THE COURT: What goes in the blank?

MS. MOORE-DYSON: 15.

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MR. HAGEMEISTER: Yes.

THE COURT: 15. Agreed, 15?

MR. HAGEMEISTER: Yes.

THE COURT: The next instruction will be numbered 18 as to Count V, submission against Defendant Wade on assault, is that correct?

MS. BEIMDIEK: Yes, Your Honor.

MS. MOORE-DYSON: Yes.

MS. BEIMDIEK: No blanks on 18.

THE COURT: And then 19 is the same instruction essentially except it's against the Defendant Morant, correct?

MS. MOORE-DYSON: Correct.

THE COURT: No blanks.

MR. HAGEMEISTER: Correct.

MS. MOORE-DYSON: Correct.

THE COURT: Twenty is to Count VI, is that correct -- the Court's numbering correct up to this point? This is the twentieth instruction and we are now in Count VI?

MR. HAGEMEISTER: Yes, sir.

THE COURT: This is armed criminal action based on the preceding verdict director on assault against Defendant Wade, correct?

MR. HAGEMEISTER: Correct.

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THE COURT: What goes in the blank?

MR. HAGEMEISTER: Eighteen.

THE COURT: Agreed, Miss Beimdiek?

MS. BEIMDIEK: Yes, Your Honor.

THE COURT: Instruction 21, same submission against Defendant Morant?

MR. HAGEMEISTER: Yes.

THE COURT: I did say 21, didn't I?

MR. HAGEMEISTER: Yes.

THE COURT: What goes in the blank, 19?

MR. HAGEMEISTER: Yes.

THE COURT: Agreed, Miss Moore-Dyson?

MS. MOORE-DYSON: Yes, Your Honor.

THE COURT: Instruction No. 22 then will be the definition instruction.

MS. BEIMDIEK: That's right.

THE COURT: Defining serious physical injury. Have you followed the Court's direction and examined the instructions and Notes on Use in MAI-CR3d to determine if any further terms are required to be defined?

MS. BEIMDIEK: I don't believe there are any, Your Honor.

MR. HAGEMEISTER: When I prepared the instructions I didn't see any.

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THE COURT: Thank you.

That takes us to Instruction 23. Correct?

MR. HAGEMEISTER: Yes.

THE COURT: This is the Defendant Wade's alibi instruction.

MS. BEIMDIEK: That's correct.

THE COURT: Let the record show the Court is not repeating the numbers of the instructions. These were already on the record from yesterday. If you wish me to repeat them --

MS. BEIMDIEK: No need for that.

THE COURT: -- I'll expect counsel to so indicate. We are missing Instruction No. 24, are we not?

MS. MOORE-DYSON: Yes, Your Honor.

THE COURT: Let the record show the Court has received from Defendant Morant 308.04, Defendant Morant's alibi instruction. Any objection to this instruction, Mr. Hagemeister?

I believe the wording is the same -- I just quickly looked at it -- as the submission by Defendant Wade, is it not?

MS. BEIMDIEK: That's correct, Judge.

MR. HAGEMEISTER: No objection.

THE COURT: Very well. This will be given as

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Instruction 24.

MR. HAGEMEISTER: Yes.

THE COURT: Let the record show that the Court has heretofore refused Instructions A and B submitted by Defendant Morant and has filed those. Other than those two instructions the Court has given each and every instruction offered by the parties, is that correct?

MS. MOORE-DYSON: That's correct.

MR. HAGEMEISTER: Yes.

THE COURT: Any further instructions to be offered or tendered by any party to this lawsuit?

MS. MOORE-DYSON: Yes, Your Honor. I'm tendering Instruction No. 25. That is the instruction limiting the use of testimony regarding --

THE COURT: The limiting instruction is 310.15 received from the Defendant Morant.

Any objection to this instruction?

MS. BEIMDIEK: Yes, Your Honor, I would have an objection. I believe it unfairly highlights the testimony against Defendant Wade and specifically testimony to which I have objected throughout the course of this trial.

MR. HAGEMEISTER: No objection from the State.

MS. MOORE-DYSON: This is a situation where

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in our motions to sever this is one of the reasons why I requested that the trials be separated because this -- there was information that against one defendant not to be used against my client; and, you indicated that in your decision to keep the trials together that the jury would be able to compare mentally those things to be used against one defendant and not the other; and, I think that instruction will insure that.

THE COURT: Yes,that was the Court's opinion prior to trial and remains the opinion of the Court. The Court having examined the tendered instruction finds that it is in accordance with the evidence. The Court recalls the evidence and that the testimony of the witnesses with respect,primarily of the State's witness, Johnnie Bell, to prior shootings did not involve the defendant, Carlos Wade.

MS. MOORE-DYSON: Tyrone Morant.

THE COURT: Did involve the defendant according to the testimony, Carlos Wade, but not -- did not involve the defendant, Tyrone Morant.

Is there any other objection that the -- on the part of the Defendant Wade that the instruction is not in proper form?

MS. BEIMDIEK: I'm looking, Your Honor.

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THE COURT: I'm relying on my memory but I believe that you're given a choice of evidence or testimony. The appropriate word here would have been testimony, would it not?

MR. HAGEMEISTER: I don't object to its present form.

MS. BEIMDIEK: I think it was testimony and not evidence.

THE COURT: Since we have to put -- or we cannot put square pegs in round holes with our slavish devotion to -- imposed with respect to patterned instructions let's take a look at the Instruction No. 310.15.

MS. MOORE-DYSON: Says evidence or testimony.

THE COURT: The Court realizes that the Court is being picky but there was no physical evidence of prior shootings.

MS. MOORE-DYSON: There was one picture of some bullet holes in a building.

MR. HAGEMEISTER: That's correct.

THE COURT: You're correct. I stand corrected. State's Exhibit 22.

MS. MOORE-DYSON: I did not want to unfairly highlight, you know, any of those. That's why I left it as broad as it was and to use -- I elected

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to use evidence rather than testimony because in order to use testimony then it would have involved me having to use another instruction dealing with prior convictions of that particular person who was testifying as well and I chose not to go that far.

THE COURT: Thank you, counselor. Your recollection was correct. The Court was in error. There was testimony and physical evidence if believed by the trier of fact. Does the State have any objection to this instruction?

MR. HAGEMEISTER: No, sir.

THE COURT: Defendant Wade's objection is overruled. This will be given as Instruction No. what?

MS. BEIMDIEK: Twenty-five.

MR. HAGEMEISTER: Yes.

THE COURT: Twenty what?

MS. BEIMDIEK: Twenty-five.

THE COURT: Thank you.

Any further instructions to be tendered by either defendant?

MS. BEIMDIEK: Your Honor, I thought we had already submitted --

MR. HAGEMEISTER: Separate counts.

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MS. BEIMDIEK: -- 304.18.

THE COURT: We're not to that yet.

MS. BEIMDIEK: Okay.

THE COURT: That must precede the penultimate instruction by the Notes on Use. What I'm trying to establish before we get to the last three instructions if there are any further instructions to be offered by the defendant or the State.

MS. BEIMDIEK: None, Your Honor.

MS. MOORE-DYSON: No, Your Honor.

MR. HAGEMEISTER: No, Your Honor.

THE COURT: Have you at my direction considered the Court's statement yesterday that 304.18 is a proper instruction to give to this jury and not 304.12 or any other instruction and only one instruction should be given? So --

MR. HAGEMEISTER: Yes.

MS. BEIMDIEK: Yes.

MS. MOORE-DYSON: Yes.

THE COURT: So that instruction should be 26, correct?

MS. BEIMDIEK: Yes.

MS. MOORE-DYSON: Correct.

THE COURT: And now we get to the penultimate instruction, 302.05, given by the Court. Have you

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examined that instruction?

MS. MOORE-DYSON: Yes, Your Honor.

MS. BEIMDIEK: Yes.

THE COURT: Any objection to 302.05?

MS. BEIMDIEK: General objection.

THE COURT: Overruled.

MS. MOORE-DYSON: No objection.

THE COURT: Further -- any further objection?

MS. MOORE-DYSON: No, Your Honor.

MR. HAGEMEISTER: No.

THE COURT: That will be 27. And the last instruction given by the Court, 302.06. Any objection to that instruction? That will be Instruction No. 28.

MS. BEIMDIEK: General objection.

THE COURT: Noted and overruled.

MR. HAGEMEISTER: No objection.

MS. MOORE-DYSON: General objection.

THE COURT: Noted and overruled.

Now, have we gone over each and every instruction we --

MS. BEIMDIEK: Yes.

MR. HAGEMEISTER: Yes.

THE COURT: Have you had your say with respect to the instructions and made any objection you felt

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necessary on behalf of your clients?

MS. MOORE-DYSON: Yes, Your Honor.

MS. BEIMDIEK: Yes.

THE COURT: Anything further with instructions before we get to the verdict forms?

MR. HAGEMEISTER: No.

MS. BEIMDIEK: No, Your Honor.

THE COURT: Now, the Court is directing its attention to the verdict forms. I don't know if you have a copy of these but let's take up the group of verdict forms with respect to the first named defendant, Carlos Wade. Count I, guilty of murder in the first degree as submitted in Instruction No. what, what number goes in there, counsel?

MS. BEIMDIEK: No. 6.

MR. HAGEMEISTER: 6.

THE COURT: Agreed; I'm inserting 6. Second degree submission against Defendant Wade. What number goes in the verdict form?

MS. BEIMDIEK: 7.

MS. MOORE-DYSON: 7.

THE COURT: Correct?

MR. HAGEMEISTER: Yes.

THE COURT: Count II, armed criminal action with respect to the charge of murder submitted in

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Instruction what?

MR. HAGEMEISTER: 10.

THE COURT: Agreed, Miss Beimdiek?

MS. BEIMDIEK: There are two blanks.

THE COURT: I'm at the one in the first paragraph.

MS. BEIMDIEK: I have to look at it to make sure, Your Honor.

THE COURT: As to Count II, we, the jury, find the defendant --

MS. BEIMDIEK: That's right, No. --

THE COURT: 10, isn't it?

MS. BEIMDIEK: Yes, 10.

THE COURT: Let's double check it.

MS. BEIMDIEK: It is. I've got my notes here.

THE COURT: Is that agreed? I believe Mr. Hagemeister indicated it was 10 and you agree?

MS. BEIMDIEK: Yes.

THE COURT: Now let's go down to the bottom page, unless you find defendant guilty of murder in the first degree as submitted in Instruction No. 6?

MS. BEIMDIEK: 6.

THE COURT: -- you may not complete this verdict finding defendant guilty of armed criminal action as submitted in Instruction No. 10?

MR. HAGEMEISTER: Yes.

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MS. BEIMDIEK: 10.

THE COURT: Miss Beimdiek, you may remain here. Have I put 10, 6 and 10?

MS. BEIMDIEK: Yes.

THE COURT: All right. Now we go to Count II. This is ACA with regard to murder second degree as submitted in Instruction --

MS. BEIMDIEK: 11.

THE COURT: And we go back to the bottom as -- the second degree murder instruction as submitted in what number?

MS. BEIMDIEK: 7.

THE COURT: Correct?

MR. HAGEMEISTER: Yes.

THE COURT: Thank you. And we repeat 11 again?

MR. HAGEMEISTER: Yes.

MS. BEIMDIEK: Right.

THE COURT: Have I done that?

MS. BEIMDIEK: Yes.

THE COURT: Count III, assault in the first degree as submitted in Instruction No.?

MS. BEIMDIEK: 14.

MR. HAGEMEISTER: Right.

THE COURT: 14. Count IV, armed criminal action in connection with assault first degree as submitted

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in Instruction --

MS. BEIMDIEK: 16.

MR. HAGEMEISTER: Yes.

THE COURT: What goes in the number here?

MS. BEIMDIEK: In connection --

MR. HAGEMEISTER: 14 and 16.

THE COURT: Miss Beimdiek, have I inserted those numbers on the verdict form?

MS. BEIMDIEK: Yes, Your Honor.

THE COURT: Now we go to Count V. This is the verdict form in connection with the charge against the defendant, Defendant Wade, of assault in the first degree as submitted in Instruction No. --

MS. BEIMDIEK: 18.

MR. HAGEMEISTER: Right.

THE COURT: 18. And, Count VI, armed criminal action, in connection with assault in the first degree --

MS. BEIMDIEK: 20.

MR. HAGEMEISTER: Right.

THE COURT: 18 and 20 again?

MS. BEIMDIEK: That's right.

MR. HAGEMEISTER: Yes.

THE COURT: Have I inserted those numbers in the verdict form, Miss Beimdiek?

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MS. BEIMDIEK: Yes, Your Honor.

THE COURT: Thank you for your help.

Now, the verdict forms with respect to Defendant Morant. Count I, murder first degree, submitted in Instruction No. --

MS. MOORE-DYSON: 7.

MR. HAGEMEISTER: Correct, 7.

MS. BEIMDIEK: No, 8.

THE COURT: 8 I believe it is.

MS. MOORE-DYSON: That's right.

THE COURT: All right. Count I, second degree submission, is 9.

MR. HAGEMEISTER: Right.

THE COURT: Is that correct?

MS. MOORE-DYSON: That's correct.

THE COURT: No further blanks?

MS. MOORE-DYSON: No, Your Honor.

THE COURT: Count II, armed criminal action in connection with the charge of murder. What number?

MR. HAGEMEISTER: 12, 9 and 12.

THE COURT: Is that agreed?

(At this time there was a discussion off the record, after which proceedings continued on the record as follows:)

MR. HAGEMEISTER: 12, 8, 12.

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MS. MOORE-DYSON: 12, 8 and 12.

THE COURT: 12, 8?

MS. BEIMDIEK: That's right.

MS. MOORE-DYSON: And 12.

THE COURT: 12. The next verdict form, Count II, armed criminal action, with respect to the charge of murder in the first degree as submitted in Instruction No. --

MR. HAGEMEISTER: 13 and 9 and 13.

THE COURT: Is that agreed?

MS. MOORE-DYSON: That's correct, Your Honor.

THE COURT: 9 and 13, bottom of the page?

MR. HAGEMEISTER: Yes.

THE COURT: The next verdict form is as to Count III, assault first degree, submitted in Instruction No. --

MR. HAGEMEISTER: 15.

MS. MOORE-DYSON: 15.

THE COURT: Agreed, Miss Moore-Dyson?

MS. MOORE-DYSON: That's correct, Your Honor.

THE COURT: You did say 15, did you not?

MR. HAGEMEISTER: I did.

THE COURT: No further blank is -- needs completion on that verdict form.

The next verdict form is Count IV, armed

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criminal action in connection with assault first degree. What number goes in that blank?

MR. HAGEMEISTER: 17. 15 and 17 at the bottom.

THE COURT: You say 15 goes in the first blank?

MR. HAGEMEISTER: 17, 15, 17.

THE COURT: Thank you. I'm sorry. You were very clear and I've got it crossed again.

MR. HAGEMEISTER: 17 is the instruction for armed criminal action, 15 is the underlying assault first.

THE COURT: Is that agreed, counsel?

MS. MOORE-DYSON: That's correct.

THE COURT: Count V, assault first degree, as submitted in Instruction No. --

MR. HAGEMEISTER: 19.

MS. MOORE-DYSON: 19.

THE COURT: 19. Count VI, armed criminal action, connected with the assault --

MR. HAGEMEISTER: 21, 19, 21.

MS. MOORE-DYSON: That's correct.

THE COURT: 21, 19, 21?

MS. MOORE-DYSON: Correct.

THE COURT: That's correct?

MR. HAGEMEISTER: Right.

THE COURT: Let the record show that we have been

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over all verdict forms, have we not, with respect to the charges submitted?

MS. MOORE-DYSON: That's correct, Your Honor.

MR. HAGEMEISTER: We have, Judge.

THE COURT: Anything further?

MR. HAGEMEISTER: Judge, I plan to cut out the portions of these photographs on the mug shots that indicate the names and dates on both State's Exhibit 26 and State's Exhibit 9A and I was not sure if the Court required the same to be done on 9B, 9C and 9D.

THE COURT: It's not necessary to cut them as indicated by the Court unless the jury requests to see them.

MR. HAGEMEISTER: Okay, if they want to see them I should cut all of them?

THE COURT: Before we send them to the jury room. The Court has explained this on the record before. The law -- Missouri law is clear a mug shot may not be admitted in evidence and --

MR. HAGEMEISTER: Understood.

THE COURT: And I -- it is this Court's practice and has been for twenty years on a mug shot to admit in evidence when it's been identified by a witness after the identifying material has been excised from

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the photograph; so, there's no need to do that until such time as the jury would request those particular exhibits.

Anything further?

We've covered the time of argument, one hour, State dividing its time thirty/thirty with a three minute warning and indication when you've completed thirty minutes, and you will be permitted to encroach. The Court will deduct that from your rebuttal. Three minute warning for Miss Beimdiek and a five minute warning for Miss Moore-Dyson, is that correct?

MS. MOORE-DYSON: That's correct.

MS. BEIMDIEK: That's right.

THE COURT: Anything further?

MS. BEIMDIEK: No.

THE COURT: Thank you, counsel.

MS. MOORE-DYSON: Your Honor, I would like to have the opportunity to have the jury view my exhibits.

THE COURT: Well, you've closed your case. Are you asking the Court for -- making an oral motion to re-open your case?

MS. MOORE-DYSON: They have not seen any of them.

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THE COURT: Well, ma'am, why didn't you request that prior to the close of evidence?

MS. MOORE-DYSON: It slipped my mind.

THE COURT: The Court will grant your oral motion. You're to exhibit to Mr. Hagemeister the exhibit letters you intend to display to the jury so he's satisfied they are exhibits that have been admitted in evidence.

MS. BEIMDIEK: Your Honor, in light of the fact Miss Moore-Dyson is re-opening her case I'd make the same motion with respect to my two paper exhibits and to move the map up so the jury may view that, Defendant's Exhibit A, as well.

MR. HAGEMEISTER: With regard to Defendant's Exhibit H I believe it contains hearsay and even though it's part of the record there's a difference between being part of the record and actually publishing it to the jury similar to police reports.

THE COURT: What is H?

MR. HAGEMEISTER: Letter.

MS. BEIMDIEK: Letter from the court reporter that was admitted.

THE COURT: As I recall, Mr. Hagemeister, you not only had no objection to the admission of that but stipulated to its admission.

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MR. HAGEMEISTER: There's a difference between stipulating to the admission of medical records or business records and permitting them to go to the jury where there's hearsay material.

THE COURT: Let the record show that no such reservation was made and so that any objection has been waived. The exhibit was admitted in its entirety so objection is overruled. I'll give you a few minutes in order to -- I'm sure you prepared your closing arguments but to take care of logistics in order that we may proceed.

ooo

A short time later the following proceedings took place in the courtroom outside the presence of the jury:

THE COURT: Let the record show that the State has requested to make a further record.

You may proceed.

MR. HAGEMEISTER: Your Honor, we had a juror that during the State's case in chief I believe it was told the bailiff that she believed she recognized the State's witness, Johnnie Bell. She indicated that she knew him.

THE COURT: Briefly, Counselor, I have a jury waiting.

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MR. HAGEMEISTER: She indicated she knew him to be a person involved in stealings and in drug dealing --

THE COURT: That was not my recollection of what she said but go ahead.

MR. HAGEMEISTER: She indicated that although she knew him and knew of his history she thought she could look at the evidence impartially. I'm asking the Court to strike that juror and replace her with one of the two alternates that we still have present. The alternates have -- there's no question before the Court as to whether they can be totally neutral. There's a question with regard to the juror in the first row, third seat, and for that reason the State would ask that she be replaced with an alternate at this time.

THE COURT: Any objection?

MS. BEIMDIEK: Yes, Your Honor.

MS. MOORE-DYSON: Yes, Your Honor.

MS. BEIMDIEK: I think the juror indicated upon questioning by all parties that, first, she wasn't certain if it was the same person, that she would be able to certainly set that aside. She brought it to the Court's attention out of an abundance of caution. The Court at that time found she was able to perform her duties as a juror

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and allowed her to remain in the case.

MS. MOORE-DYSON: Your Honor, I --

THE COURT: What is the name of the juror and number for the record?

MS. BEIMDIEK: Miss Davis.

THE COURT: I'm sorry?

MS. BEIMDIEK: Miss Davis, No. 752.

THE COURT: Any further?

MS. MOORE-DYSON: No, Your Honor. I'll just join Miss Beimdiek in her objection.

THE COURT: Let the record show that defendant's objections are sustained. The State's oral motion to replace Juror No. 752, Miss Davis, is overruled and denied.

Bring the jury down.

Counsel are instructed to listen carefully to the reading of the instructions particularly with respect to the numbers inserted at your direction in the instructions. Do not hesitate if I inadvertently or incorrectly give the wrong number for the instruction insertion. Is that clear?

MS. BEIMDIEK: Yes.

As a reminder I think we're going to do the exhibits very quickly.

THE COURT: You're to start yours with the

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fourth juror; you're to start yours with the first alternate.

MS. BEIMDIEK: Fourth juror?

THE COURT: Passing.

MS. BEIMDIEK: Okay.

(At this time the jury was brought to the courtroom and the following proceedings took place:)

THE COURT: Good morning, Ladies and Gentlemen. Defense -- the defendants' request to pass their exhibits to the jury has been granted.

You may do so, Counsel.

MS. BEIMDIEK: Thank you, Judge. I'll leave Defendant's Exhibit A up for viewing if anyone wishes to step up and see it.

THE COURT: Do not hold on to the exhibits. After you have examined one exhibit, pass it on.

(At this time the exhibits were passed to the jury.)

THE COURT: Anything further on behalf of Defendant Wade?

MS. BEIMDIEK: No, Your Honor.

THE COURT: Does Defendant Wade rest?

MS. BEIMDIEK: Yes, Your Honor.

THE COURT: Anything further on behalf of Defendant Morant?

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MS. MOORE-DYSON: No, Your Honor.

THE COURT: Does Defendant Morant rest?

MS. MOORE-DYSON: Yes, Your Honor.

THE COURT: Does the State rest?

MR. HAGEMEISTER: Yes, Your Honor.

Can I move this?

MS. BEIMDIEK: I have no objection. I just had them view it for purposes of the exhibits. I have no objection to it being removed.

THE COURT: Very well.

MR. HAGEMEISTER: Thank you.

THE COURT: You're welcome.

Ladies and Gentlemen of the Jury: The Court will now further instruct you as to the law.

I want one sheriff at that door. No one is to come in while I'm reading instructions.

Let the record show that with the number of people in the public section of the courtroom continuing opening the door, exiting, entering of citizens is disruptive to the Court in reading the instructions.

Pardon me, Ladies and Gentlemen of the Jury. Let me proceed.

(At this time the Court read Instructions 3 through 12. After the Court read the first two

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paragraphs of Instruction No. 13 the following proceedings took place:)

MR. HAGEMEISTER: Can I approach?

THE COURT: You may not approach.

(The following proceedings took place at the bench outside the hearing of the jury:)

THE COURT: Let the record show with respect to Instruction 9 there was a superfluous conjunction, and, after John Allen, comma, before the phrase, then you're instructed. The Court whited that out and read it correctly?

MR. HAGEMEISTER: Yes.

MS. BEIMDIEK: Yes.

THE COURT: There was an error in Instruction 12 that had Tyrone Wade. Let the record show that the Court reread that in its entirety correctly, is that correct, Miss Beimdiek?

MS. BEIMDIEK: Yes, Your Honor.

MR. HAGEMEISTER: Yes.

THE COURT: Miss Moore-Dyson?

MS. MOORE-DYSON: Yes.

THE COURT: The Court did not catch this error in Instruction 13. The parties are reversed in paragraph Third.

MR. HAGEMEISTER: There is no -- I don't believe

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that that's the problem in that one though. The problem is, then you're instructed the offense of murder in the second; and, it should really read armed criminal action.

THE COURT: Yes, but this is the submission against Tyrone Morant.

MR. HAGEMEISTER: And they are reversed.

THE COURT: Paragraph Third.

MR. HAGEMEISTER: None of us caught that. I'm not opposed to writing it in.

MS. BEIMDIEK: At this point --

THE COURT: Okay.

(Proceedings resumed within the hearing of the jury as follows:)

THE COURT: The jury may stand and stretch.

(The following proceedings took place at the bench outside the hearing of the jury:)

THE COURT: Let the record show the Court understands that the parties stipulate and agree the first paragraph was incorrect; that following the word, connection, the prepositional phrase should be, with the offense of armed criminal action.

MR. HAGEMEISTER: No, that's correct.

THE COURT: He's guilty of armed criminal action. It's not there. It is, then you're

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instructed the offense of murder in the second degree occurred.

MR. HAGEMEISTER: That's where it isn't correct.

THE COURT: That should read, the offense of armed criminal action has occurred, correct?

MR. HAGEMEISTER: Yes.

THE COURT: Let the record show at counsel's request I am whiting out murder in the second degree.

The Court further noted that the names of the defendants have been transposed or, if not transposed they're incorrectly placed. Is it agreed Third should read, that with the purpose of promoting the commission of -- Mr. Hagemeister, may I have your attention, sir? Is it agreed that the Third should read that, with the purpose of promoting or furthering the commission of that --

MR. HAGEMEISTER: Armed criminal action.

THE COURT: Yes.

MR. HAGEMEISTER: Armed criminal action.

THE COURT: So is it stipulated and agreed murder in the second degree should be whited out and armed criminal action put in there?

MS. MOORE-DYSON: That's correct.

MR. HAGEMEISTER: Yes.

THE COURT: It should be Tyrone Morant here

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where it says Carlos Wade and the name should be --

MR. HAGEMEISTER: Yes, sir.

MS. BEIMDIEK: I think we have the same problem with respect to Instruction 11.

THE COURT: The Court is now not sure as to whether the instruction previously read on armed criminal action is correct. I have not had -- does it suffer the same deficiency?

MS. BEIMDIEK: Yes, it does.

THE COURT: It's the Court's proposal that we take a recess at this point and the parties are to tender me a proper instruction. I have no objection to your whiting out and putting in the correct term but is it agreed we better not have the jury waiting?

MS. BEIMDIEK: That's fine.

MR. HAGEMEISTER: Yes.

THE COURT: Let therecord show that the Court should have caught these errors; however, I did request counsel to go over these instructions last night in order that they were proofread correctly. That doesn't relieve the Court of the primary responsibility and I did not catch the errors in the armed criminal action instructions; so, let the record show that for the first time in twenty years

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I'm going to interrupt reading the charges to the jury in a criminal case with a recess.

(Proceedings resumed within the hearing of the jury as follows:)

THE COURT: Ladies and Gentlemen of the Jury, we're going to have a morning recess at this time. Yes, it is still morning.

(The Court read MAI-CR3d 300.04(2) to the jury.)

We'll be in morning recess.

(The following proceedings took place at the bench outside the hearing of the jury:)

THE COURT: For the record I suggest -- I won't have time to retype, you're going to have to white out; and, all three of you sit down and -- I never understand how the attorneys can come to Court without an instruction book but -- so they do it. This involves Instruction 13.

MR. HAGEMEISTER: Can I see 10, 11 and 12?

THE COURT: Give me -- just put these down. No, I'm not going to give the originals -- have a hopeless confusion. These are the copies, twenty-eight instructions. You're to go over particularly the armed criminal action instructions on the annotated copies to determine, first, which instructions need to be modified or amended --

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MR. HAGEMEISTER: Thank you.

THE COURT: Then we'll -- I want to take them one at a time.

(At a later time the following proceedings took place in the courtroom outside the presence of the jury:)

THE COURT: Let the record show while reading the jury the instructions the Court determined that Instruction No. 13 was not a correct statement of the law in accordance with MAI-CR3d. With the express stipulation and agreement of counsel we took a recess and counsel for the parties were instructed to examine the second set of the Court's instructions submitted by the parties and to make the necessary corrections.

Have you done that?

MS. BEIMDIEK: Yes, Your Honor.

MS. MOORE-TYSON: Yes, Your Honor.

THE COURT: Now, does the Court have Instruction 8 -- I don't see the error in 8.

MR. HAGEMEISTER: I don't see the error in 8.

MS. MOORE-DYSON: It was just a transposing of the names.

THE COURT: May it be stipulated and agreed rather than to read again the instruction -- counsel

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for the Defendant Morant points out that in the first element Carlos Wade -- the Court read Carlos Wade first rather than Tyrone Morant before the disjunctive, or, is that correct?

MS. MOORE-DYSON: That's correct.

THE COURT: Is Defendant Morant requesting the Court read Instruction 8?

MS. MOORE-DYSON: Yes, Your Honor.

THE COURT: Very well.

MR. HAGEMEISTER: Judge, I don't believe that that's necessary to change that but if the Court wishes to -- it's correct as it's done. It's just that Tyrone Morant isn't listed first in the or. Either way it has the same meaning. The sentence does not change meaning.

THE COURT: Well, that's true but as it's well known any deviation from MAI-CR is presumtively erroneous, prejudicial effect to be determined. This is the submission against the defendant Morant on the charge of murder first degree. If defendant's counsel wants it reread the Court will reread it. I need an answer.

MS. MOORE-DYSON: Yes, Your Honor. He indicated to me 9 is the same way as well so just need to change the names on both 8 and 9.

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THE COURT: I didn't hear you.

MS. MOORE-DYSON: I need to transpose the names on 8 and 9. He has 9 the same way.

THE COURT: And so that 9 should read -- where's my white-out -- Tyrone Morant first and then Carlos Wade, is that correct? Are you requesting that 9 be reread?

MS. MOORE-DYSON: Yes, Your Honor.

THE COURT: The State's objections are overruled. At Defendant Morant's request the Court will reread those two instructions but that necessitates that the instruction submitted to the jury the names will be inked in rather than typed. You understand that?

MS. MOORE-DYSON: Yes, Your Honor.

THE COURT: Do you waive any objection to that?

MS. MOORE-DYSON: No. Yes, I do.

THE COURT: Thank you.

Now, Miss Moore-Dyson, I'm going to ask you to examine Instructions 8 and 9 and has the Court made the corrections you've requested in ink?

MS. MOORE-DYSON: Yes, Your Honor.

THE COURT: Thank you.

Now, have you made the corrections to Instruction No. 11?

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MS. BEIMDIEK: Yes, Your Honor.

THE COURT: Have you checked it with the book, Counsel?

MS. BEIMDIEK: Yes.

THE COURT: And the other instruction involved was 13?

MS. BEIMDIEK: Yes.

THE COURT: The instructions -- amendments to that and corrections been made on the Court's second copy?

MS. BEIMDIEK: Yes, Your Honor.

MS. MOORE-DYSON: That's correct, Your Honor.

THE COURT: So the Court now has Instructions 8, 9, 11 and 13?

MS. BEIMDIEK: Yes.

MS. MOORE-DYSON: Yes.

THE COURT: Let the record show the parties have stipulated and agreed by and through their respective counsel that Instructions 11 and 13 will be retyped in accordance with the amendments and changes made on the second copy and submitted to the jury retyped.

MS. MOORE-DYSON: That's right.

MS. BEIMDIEK: Yes, Your Honor.

THE COURT: Thank you.

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Bring the jury down.

MS. BEIMDIEK: Are you able to read my handwriting on the portion you're going to be reading?

THE COURT: Very clear. Thank you for your help, Counsel.

MS. BEIMDIEK: Okay.

(At this time the jury was brought to the courtroom and the following proceedings took place:)

THE COURT: Ladies and Gentlemen of the Jury, the Court has previously read to you Instructions 8, 9, 11 and 13. You're to disregard the Court's reading of those instructions. The Court will now reread those instructions to you.

(At this time the Court read Instructions 8, 9, 11 and 13, and 14 through the end of the instructions.)

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THE COURT: You may proceed, Mr. Hagemeister.

MR. HAGEMEISTER: Thank you, Your Honor.

CLOSING ARGUMENT ON BEHALF OF THE STATE

MR. HAGEMEISTER: Miss Beimdiek, Miss Moore-Dyson, Your Honor, Ladies and Gentlemen of the Jury:

MR. HAGEMEISTER: Can I have everyone stretch quickly, Judge, before this?

Thank you, Your Honor.

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MR. HAGEMEISTER: First of all let me on behalf of everybody in the court system thank you for coming down and fulfilling your duty as a citizen, for hearing and sitting through all the procedures that take place in criminal court. We all understand they're all -- there are rules for all of the things that we do. We appreciate your patience.

We will now have an opportunity to sum up our case. The State and defense are given an equal amount of time. The State goes first and last so the time is split in half. Everything is fair.

You have undertaken a very solemn duty, a task, a burden of citizenship that is something that every citizen should and must do.

In this case you happen to have been picked for a trial of two young men who murdered somebody. It will be your decision to decide if justice is done. And as much as the police and the prosecutors and the judges and even the press to some extent want to deny it, don't want to point it out, people get away with murder on the streets of St. Louis every day.

Jurors come in, they see cases on T.V., that a five year old could decide, they see cases in movies, in the news, where there's evidence piled on evidence, piled on evidence, and they get unrealistic expectations as to what

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normal criminal cases are like. And the real world people don't come forward, people don't always tell the police what they saw and in the real world you shouldn't get away with murder just because you were in a car and were able to drive away and hide the gun.

Why do murderers go free? Because while there may have been a person who stood there and witnessed the entire crime when the police come he didn't see. "Did you see him? "I didn't see him." Not worth the risk. Not worth the --

MS. BEIMDIEK: I object, arguing facts not in evidence.

THE COURT: Sustained. The jury will disregard the hypothetical about a person concerned about risk.

MR. HAGEMEISTER: In this case the police came to this neighborhood. Someone saw and this person said right away I saw. Despite any risk, despite any fear, despite the trouble and the badgering and the hassle and the attacks and the accusations that she has to go through, she saw. She told the police officer at the scene that night what she saw. She went down to give an audio statement of what she saw. She came down to the prosecutor's office in the warrant application. She went out on the street the next day to find the second murderer. She went through interviews at the prosecutor's office, depositions where she was questioned by defense attorneys; and, not pleasant

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experiences for somebody who was just trying to do the right thing. She's come into court, she's sat, she's taken the stand, she's taken time off from all of her other life, her other activities, because she saw and she's a person that believes that when yousee you come in and you say what you saw. She had no idea what she was in for but she stayed with it solid, steadfast and true the entire way through the case. "These two committed murder, I'm right, I know what I saw. They killed my nephew."

And there's no reason for her to lie. There's no reason for her to go through all of this trouble, to go through all of these attacks and this badgering and this victimizing the victim that --

MS. BEIMDIEK: Objection, Your Honor, arguing facts not in evidence.

THE COURT: Sustained as to the victimization of the witness. The jury's to disregard it.

MR. HAGEMEISTER: The defense attorneys taking a person's words and asking them questions over and over and over till they don't understand what the question is and twisting the answers --

MS. BEIMDIEK: Objection to the improper personalization, Your Honor.

THE COURT: Sustained.

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MR. HAGENMEISTER: You heard Miss Moore-Dyson bring up to you the question, from the attorney, Miss Reimdiek, "Did you recognize anybody in the car when you saw that car?" She said, "Only Carlon. That's the only person." And then I objected, I objected and I objected. And I came back on redirect and I said, "What are you talking about in that part of the deposition, go back to the question two questions before that. 'So this gray car, had you seen it before on Aldine before John Allen was shot? When was the last time you had seen that car?" "Probably earlier that day or the day before." "Do you know who was driving it when you saw it?" "I don't know the person driving the car." "Did you recognize anybody when you saw that car?" They're talking about a totally different day or earlier that day. They're not talking about the time of the shooting. If that's not twisting the answers of a witness then nothing is. When you take questions out of context and when you ask the same question over and over and when they ask a question and the witness says, "I think I heard the sound coming from the back seat where Tyrone was" or "I heard it coming from the back seat. I don't know for sure if it was Tyrone but it was from the back seat." They come back later on, "And then you knew it was Tyrone sitting in the back seat?" That's not what the witness said three

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questions earlier. That witness doesn't know a defense lawyer is going to come into trial and say, "Now you're solid on it." And it's my job to point out that earlier he said his real answer; it's just later on when the defense lawyer put the words into his mouth --

MS. BEIMDIEK: Objection again to the improper personal attacks.

THE COURT: Overruled. The jury will be guided in their deliberations by the evidence as they remember it.

MR. HAGEMEISTER: This is what has come to define the criminal justice system in the latter part of the 20th century. And it's unfortunate but beyond all that bickering and arguing among the attorneys and going back and forth and making sure the jurors aren't misled, please remember one thing. That this entire case is the story of one young woman, an amazing young woman, courageous young woman, who steps forward from the silent masses of our population and spoke up and said what she saw with no reason to make up a story, no reason to lie, knowing the effect her testimony could have on these young men with no grudge, no particular personal animosity towards these people except for the fact she knows they've killed her nephew.

When all is said and done don't let it be forgotten that she did that and that she deserved recognition and

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applause for taking that step. Were it only everyone would do that same thing. If you look at her evidence, her testimony, objectively and you look at it without all the smoke and dirt and everything that's blown around in this trial; and if you say she's making this up she must have made it up while she was crying, watching him lie dead in the street, because she told the police officer right there at the scene everything exactly the same all the way through the case. That's the first time --

MS. BEIMDIEK: Objection. Misstatement of the evidence.

THE COURT: Objection is overruled. The jury again will be guided in your deliberations by the evidence as you remember it.

MR. HAGEMEISTER: It was Carlos and it was Brown, chubby guy -- the Afro that she saw sticking his head out the back of that car, closer than I am to the people in the back row in a well lit area, and that's a face that she recognizes, it comes up out of the back window this close, if not closer, and she sees that face and she knows that face, it's not a face she's seen for the first time and it's a memorable face and it's memorable hair; and, Carlos is in the front seat this close looking at her in a well lit street and she knows Carlos, she's known him for six or seven months. She's seen him across the street.

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These aren't people that are strangers.

I mean if you picture somebody that you sometimes run into at your coffee break and you think, "I may not know his name, I know I've seen him, that's the guy I run into on my coffee break," it doesn't take you but three seconds to see that person sitting in the car and say, "I know that guy, I know him from my coffee breaks," just like she recognized him. "I know that guy. He hangs out with Carlos and those guys across the street."

She doesn't have to know the name. The fact that she doesn't know his name means even more. She doesn't have a grudge against this person. Why make up a story about some guy you don't even know his name, you don't even care enough about in the world from your past experiences to even know him. How can you dislike somebody that much you're going to get on the stand and send him to prison for the rest of their life. She can't. That's the whole point. The whole point is that this woman said what she saw and that's all you can ask. When a woman, Mrs. -- puts herself on somebody's list of enemies, when she puts herself and her family at risk, when she moves from her residence --

MS. BEIMDIEK: I object to this argument. It's improper and I would request a sidebar.

THE COURT: State specifically your objection

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to this argument.

THE COURT: She stated she moved.

MS. BEIMDIEK: I'd rather state it sidebar, Your Honor.

THE COURT: Very well. Approach the bench.

(The following proceedings took place at the bench outside the hearing of the jury:)

MS. BEIMDIEK: Your Honor, the argument from the State was that she put herself on a list of enemies of the -- people involved in this case and that she moved; clear argument suggesting propensity of the defendant to commit future crimes. It's improper and I move for a mistrial.

MR. HAGEMEISTER: Goes to lack of bias; incorrect inference.

THE COURT: I believe it's in evidence, isn't it, that she moved?

MS. BEIMDIEK: I'm not disputing she moved. In the context of also saying she put herself on a list of enemies that is in connection with the fact she moved that suggested that there will be some retaliation upon her for this case in the future.

THE COURT: Let the record show that the Court heard no objection, no objection was made till he got to the moving of the witness, Angela Hickman, --

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I believe that's to whom you're referring, this indefinite feminine pronoun -- is that who you mean?

MR. HAGEMEISTER: Yes, Hickman's family moved.

THE COURT: The objection is overruled, denied as to the moving. No objection made to the preceding argument of counsel. The oral motion of Defendant Wade for a mistrial is overruled. And, you are warned, I want no inference drawn since there's nothing in evidence that there was any threat made to this witness.

MR. HAGEMEISTER: Yes.

MS. BEIMDIEK: Thank you, Judge.

(Proceedings resumed within the hearing of the jury as follows:)

THE COURT: The Court having sustained your objection in part and overruled in part, the jury is instructed to disregard the prosecutor's phrase, enemies list. Otherwise the objection is overruled. You're to disregard that.

Let's move on.

MR. HAGEMEISTER: Okay.

MR. HAGEMEISTER: When she talks to the police she's not on a witch hunt, not saying, "Yeah, I looked in the car and it was Carlos and Demetrious and Otis," or any of

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the other names she gave you of people she knew that hang out with that group. She admitted, "I couldn't see the driver." If she's making up the story all she's got to do is say, "I looked in the car. I saw all four of them," and name all four people; but, that's not what happened. All we can ask a witness is to come in and describe what happened. And when the witness comes in and described what happened and it makes perfect sense, "I walked up, was talking." She doesn't say, "Yeah, I saw the car. I saw them walking up, had their headlights on, I could see the two front seat passengers at that point. I could see the guy in the back seat peeking around. They pulled up right in front. I was staring at them the whole time. I could watch them." She doesn't say that. That's not how it happened. She's telling the truth. She gets up there and tells the truth. She says, "I was looking back at my friend's car pulled up and I thought what's going on; and then I heard some mumblings." And there's that time period where she's got a few seconds and she can see into the car; and, she can't see the driver because she's looking down. That doesn't mean you can't see the people on your side of the car. It makes sense she can't see the driver and it shows she's telling the truth. And it makes sense she doesn't know if there's a back seat passenger because she didn't get down like this because she's sitting there

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looking at Carlos and the guy that she knows and she's saying, what's going on. And she has time to recognize them.

And this isn't a guy in a mask at forty miles an hour shooting at people. This isn't a case where the person didn't have an ability to see a face or they didn't have their bifocals on or they were four hundred feet away. This is a case where somebody is almost to the point where they can reach out and touch the car and you can't make a person have to measure that before you can find somebody guilty.

Sure, the defense lawyers want to throw in confusion anywhere they can. "You said it was this far but didn't you say it was five feet before?" Who cares? You can still see the car. And the day that you'll hold a witness to the burden of having to remember exactly how many feet they were from the car that killed their family member before you can find somebody guilty is the day we should all just throw up our hands and give up on the system because that's not a lie, that's not her making up a story; it's just something that they shoveled sand in your eyes and one of you gets confused, one of you thinks there's been enough of this stuff shoveled at me I think there's a reasonable doubt, one of you for one second does that and they don't both get convicted for murder first degree,

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they win. If you find them guilty of murder in the second degree they win. Justice is not being served.

You look at the witness, and you saw everything she said. She didn't make it better, she said what she saw, she said how it happened. It all makes sense. And then she has to lie in the street and play dead to save her very skin. And then she goes to see what she can do to help. She thinks he's playing dead; and, then she goes to call the police and again they cross-examine her, "Did you tell the police officer that it was Carlos, did you describe the other guy?" And every single one of you sat here and listened to that tape and you all heard how frantic, how worried, how fearful she was, because as she's on that tape he is bleeding profusely. You can see the blood in the photographs. And, by the way, there are photographs showing where the street lights are. You all know how bright those street lights are. And they're staggered. You look at those and see she had an opportunity to see.

Back to what I was saying on the tape she says,"Get the police, get the police, guy laying in the street," so excited; and, you can ask to hear the tape again when you go in the jury room. She doesn't sit there and describe everything. You understand why? And the day we put that burden on somebody when they're making a 911 call to save a relative and whilethey're worried 'cause they hear the

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squealing tires and feel like death, death is about to come by and take another pass at her, she's not going to give a full interview, full deposition, on a 911 call because she heard death coming around the corner, what she believed to be the killers making another pass. Don't let death loose. She comes to realize that there's a car coming and she runs. And no one can blame her.

And then when she goes down after describing the people and after the police officer goes and finds Tyrone, they bring him down and, sure, he's returned back to the area. He's home where he feels safe. He's just killed somebody. And, true, there's another car that comes by because when you kill somebody it's more valuable the more people that see it. When you're among a group of friends that kill people for the reasons --

MS. BEIMDIEK: Your Honor, objection. Arguing facts not in evidence and inflammatory.

MS. MOORE-DYSON: I'll join in that objection.

THE COURT: The objection is sustained as to the phrase, group offriends who kill people, and the jury's instructed to disregard that phrase.

MS. HAGEMEISTER: These two kill people because a guy comes into their neighborhood and they were with friends and you know that to impress their friends -- these aren't the preacher taking them home from midnight basketball.

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You can figure that much out. So they're killing somebody in front of their friends. You know another car from that group hangs out across the street. Come by taking another pass to see what the body count is, to see what the damage is, to see the gore, to take down the statistics for posterity.

MS. BEIMDIEK: Objection, arguing facts not in evidence.

THE COURT: Overruled. Again the jury is instructed to disregard, to be guided by the evidence as they remember it.

MR. HAGEMEISTER: You have to understand that's the mindset you're dealing with in this case. That's the people that were driving that other car, they were their friends, they recognized that car. So they go and they find the friends back up in the street. Tyrone was not coincidentally leaving to go get something to eat at that time. He had been hanging out on that street after the shooting. Of course, all his friend has to say is "Yeah, we were up there." And they're hanging out in the street and all they have to do is to try to get him to go free is say, "Well, we've just left the house then." And that's supposed to be enough for the jury to say he should go free. But when he gets down to the hours and the times he doesn't know. And when he says he didn't talk to anybody

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about what his testimony would be, anybody buy that? Anybody believe that? I'll have more about that. They bring Tyrone down to the scene. She comes down to the scene, to the corner at Whittier and Martin Luther King, this person who is making all this stuff up, who can make the case better by saying, "Yeah, that was Tyrone and that guy with him was the guy driving the car," or "was the guy in the back seat." She knows he hangs out with those guys. If she's enemies with everyone here, got some mission, some witch hunt she's on, why exculpate him? Why let him go? Because she told the truth. She said what she saw and she no more wants to send an innocent person to prison than anybody but she knows she's sustained by her knowledge, by her God-given knowledge, memory that she was standing there that night; and he and -- and he stuck guns out of the -- he and he -- stuck guns out of the car and shot at them.

She was in a position where she could see, she had a reason to look, she was wearing her contacts, she was able to see, they were not covered, their faces were not covered. They were bold because they didn't think, one, that any of them would be walking away from that street that night; and, two, if any of them did nobody would ever come and testify against them because nobody calls the police, nobody called the police. Carlos knows Johnnie Bell doesn't call the police and Johnnie Bell trying to keep

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his own self-respect shares their dislike for the police. And you can look at Johnnie Bell -- you say he's no sterling citizen and he comes in here and he testifies. Nobody's saying that he is. That doesn't mean he can't be a victim of a shooting and just -- you -- don't value, don't put a scorecard on the person that's being shot at in determining whether or not two people have committed a crime against society, committed a crime period against the people of the State of Missouri. You don't look at the person. We talked about it earlier. If he was some priest he probably wouldn't have been shot at by these guys. They have a reason to dislike him. He does come up into his neighborhood. He thumbs his nose at them when they say, "We told you not to come in this neighborhood, we told you we'd kill you." By being there he's thumbing his nose at them. He inhibits their power. Carlos Wade threatened him, shot at him. The guy still comes back in the neighborhood. He's the thorn in Carlos' side. Carlos will not get respect from anybody as long as this guy he keeps shooting at, trying to intimidate will not be intimidated. What is Johnnie Bell to do? Submit fully, unconditionally or try to earn their respect by standing up to them? Standing up to them wouldn't work with Carlos Wade. Carlos Wade required unconditional submission. No truce.

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MS. BEIMDIEK: Your Honor, I object. Arguing facts not in evidence.

THE COURT: Overruled.

MR. HAGEMEISTER: Johnnie Bell, who doesn't like to call the police, didn't want to work with the police, that makes sense. We know how Johnnie Bell is. Johnnie Bell didn't want to work with the police at all. And the amazing woman, Angela Hickman, kept this vengeful youth from retaliating, kept him from taking an eye for an eye, and street justice, and said, "No, you're going to do the right thing."

And, Annie Hickman said, "No, my son that died, you're going to do the right thing."

MS. BEIMDIEK: Objection. Absolutely no evidence of this.

MR. HAGEMEISTER: His last statement, Bell's on the stand, Angela and Annie said that I had to do it the right way.

MS. BEIMDIEK: Objection, Your Honor.

THE COURT: The objection is sustained as to what he may have intended. What may have been intended by Mr. Bell has been sustained throughout the trial. You're to disregard that -- what he intended to do. I'm referring to Mr. Bell. Was that your objection, counsel?

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MS. BEIMDIEK: Yes.

MR. HAGEMEISTER: Johnnie Bell didn't see the faces 'cause he knew the car, as soon as it was coming up he knew it was bad news. He knows Carlos had been gunning for them so he's the first one to hit the street, turn a-round and run, and that makes perfect sense and he knows its Carlos, some of Carlos' friends. They call him the sissy-assed mother fucker and all that stuff; and, as soon as he hears something about sissy and as soon as he sees that car he knows, "I don't think I want to be here right now," and he's gone.

If Angela is part of this why is she standing there? Why does John Allen have to come up and say --

THE COURT: Three minutes.

MR. HAGEMEISTER: -- that run, run, 'cause she doesn't have anything to do with this. She no more knows these people are going to pull out guns and try to end her life in the next five seconds than she knows what's the next movie coming out at your theater. She has no idea and she's -- she stands there and John Allen comes up -- and it's too bad that John Allen can't take the stand and tell you about everything he wanted to do with his life and what he saw 'cause he's dead, too bad he can't get up and testify, but bad saying, the offices of the lawyers downtown, a murder case is just like an assault case but with one less witness.

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In this case you can't hold against the State's case what John Allen could have told you, you can't hold that against the victims in this case.

MR. HAGEMEISTER: Can I see the instructions?

MR. HAGEMEISTER: You listened to all the instructions being read. You'll see an instruction for murder first degree on Carlos Wade. The only difference between the murder first degree and murder second degree instruction is the element of cool reflection for a period of time no matter how brief.

THE COURT: Thirty minutes.

MR. HAGEMEISTER: Yeah, I'd like to borrow some time from my second half, please.

THE COURT: Proceed.

MR. HAGEMEISTER: With regard to the cool reflection element, no matter how brief, you have to look at the facts, you have to say was he being hot headed then, was he unable to think about what he was doing when he pulled out a gun, knew it was loaded, leveled it at close range and aimed and fired not once, not twice, but he and Tyrone fired at least eight times assuming they found all the little fragments. You look at those pictures. It's hard to find little fragments in those pictures and little dents and ricochets but at least eight times between them; and, the shells didn't go out which means they were

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revolvers which means that they're probably six shots which means at least both of them were shooting. That's why that came into evidence. If you decide to pull out a gun and shoot at somebody that's cool reflection. Not a scuffle, somebody's shot, isn't a situation where somebody's on some kind of drugs or something and they don't know what they're doing. That's cool reflection. That's murder first degree. And if you find they were there shooting and the other two are in the target range that's assault first degree; and, assault first degree, and the armed criminal actions are just extra punishment made by the law because you're using a weapon when you commit this felony and applies in other cases -- I won't get into that -- armed criminal actions is did you commit the crime with a deadly weapon; you're killing somebody it's by definition a deadly weapon.

So when you look at the evidence you know Carlos has a motive. When Johnnie Bell gets on the stand he's trying to help, he's trying to help, comes down to the deposition. He doesn't know how the system works, wanting to be helpful; and, he knows it was these two because he knows, one, that Carlos is the guy that's been gunning for him; another, that that's the car that they use; another, that Angela told him the guy in the back seat was the chubby, brown-skinned guy with the Afro, later found out was Tyrone,

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and told him Tyrone; and, he didn't see him but he wants to help so what does he do? Comes in and in trying to help, hurts and everybody agrees thatin him trying to help he hurt. But when he finally got down here he said what he really remembered, that he heard the voice and he figured it was Carlos, he was sure it was Carlos. He admitted, "I didn't see him." It's not up to the State, the prosecutor, the person who merely presents the evidence, to decide, well, you know, he's trying to help but he's really hurting. I'm not going to call him as a witness, because there isn't that type of adversarial relationship. The prosecutor puts on the evidence and you decide is that person telling the truth, are they lying, are they mistaken, and I have to put him on. There's no other way. You'll hear about the history between the two. And find out the events that led up to this, the motivations and intentions of at least Defendant Carlos Wade, and you heard about the fight, and Tyrone Morant was there.

Tyrone Morant may not have the history that Carlos Wade does but he's a friend of Carlos Wade's and enemy of my friend -- the enemy of my enemy is my friend. The -- Carlos Wade has a problem with this group, Carlos is his friend, he takes on that problem. And he is loyal to his friends just like Marlon Mitchell and Anthony Rhodes. All those guys are loyal to each other. They'll do anything

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for each other because that's what they have on the street. They don't have pride in their school work or in their jobs. They have their unit that they belong to, that group, and --

MS. BEIMDIEK: Your Honor, I object to arguing about a group.

THE COURT: Overruled. The jury again is instructed to be guided in your deliberations by the evidence as you remember it.

MR. HAGEMEISTER: The only thing that they have to hold on to is the respect they get on the streets, the respect that they have among their peers. Because they're not getting satisfaction from their grades or pay checks or promotions; they're getting satisfaction from the guys that they hang out with. And they have nothing better to do but than to try to be the man and try to earn the respect. That's sadly the fact of the nineties. Some areas that's all that they have to do.

When you look at the evidence you have to say what is a person that comes into that neighborhood to do? Johnnie Bell and John Allen have to say they're never going to visit their friends and relatives on those streets, have to cower and beg for the right to walk on the street. No, they should not have to do that. But to prevent them from coming up and killing them that's what they'd have to do. They didn't bow down and they had to

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pay for it.

THE COURT: Thank you, Mr. Hagemeister.

You may proceed, Miss Beimdiek.

MS. BEIMDIEK: Thank you, Your Honor.

oOo

CLOSING ARGUMENT ON BEHALF OF DEFENDANT WADE

MS. BEIMDIEK: Good afternoon.

Carlos Wade didn't kill John Allen. And Carlos Wade didn't shoot at Angela Hickman and Carlos Wade didn't shoot at Johnnie Bell. And you heard from witness after witness, members of Carlos' family, people that he knew told you he didn't do it because he was at home about a block away when the shots were fired. But you know what, you don't even need Carlos' family to tell you that he didn't do it because you have to go to that jury room and decide for yourself if the State's evidence has left you convinced beyond a reasonable doubt that Carlos is guilty. And the State's evidence is so full of holes and so inconsistent and so full of lies that like we talked about on jury selection you can't return a verdict of guilty when you're not convinced beyond a reasonable doubt by the State's evidence.

I want to go through it with you. The State's witnesses were smoking marijuana on the night of the murder. And the State asks you to accept what they have

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told you despite the fact that they were high on marijuana. They want you to use that testimony to send Carlos to the penitentiary for the rest of his life. What do we know about that? We know that John Allen was smoking marijuana. And how do we know that? That was the medical examiner, the very first witness in this case, and I said, "Do you remember doing the toxicology tests --" fancy word for just testing blood and urine. He said yes. I said, "Was there anything -- any controlled substance in John Allen's urine?" "Yes, there was. There was the presence of marijuana." So we know John Allen was smoking marijuana that night.

Johnnie Bell, yes, was smoking marijuana that night. He told you that. Johnnie Bell also told us at the deposition that Angela was smoking marijuana on that night. Not only did he say she was smoking marijuana that night she brought the blunts which was their terminology for stuffing marijuana in a cigar. Use your common sense about the size of a cigar and the amount of marijuana that would be in a cigar. And ask yourself how you can rely on the testimony of people who were high on marijuana at the time of the shooting to send Carlos to the penitentiary for the rest of his life. Now, Johnnie said, well, you know that wasn't true about Angela smoking marijuana. That's what he decided to tell you at trial. But why would he have

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lied about Angela not only smoking but bringing the marijuana back at the time of his deposition when he was under oath? Or maybe that's when he told the truth and maybe he lied when he tried to help her out and retract that damaging statement that she not only smoked it but that she brought it.

You've got to be able to rely on their testimony before you can send Carlos to the penitentiary for the rest of his life.

Let's talk for a minute about the events -- the event itself. Let's just briefly go through that. What do we know about the events? We know it happened very fast. Everybody says they walked out the door, a car pulled up, somebody called them a sissy, that shots were fired, they drove off. Very quickly, 11:25 at night, obviously dark outside. The lights on the car were off. Nobody was able to get the license plate off of the car and nobody's able to give a clothing description of anybody in the car. That's the best they can do when they describe the actual event that happened so very quickly.

What else do we know? These shots are fired and what is human nature, one of the strongest instincts is that of self-preservation, you hear a shot or you see a gun and you take cover, you protect yourself. And that's what Angela did and that's what Johnnie Bell did; and, that's

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why they couldn't see who was doing the shooting that night.

Now, let's go through how they described the event afterwards to the police. Angela -- and in fact in her testimony said it was the driver who talked about the sissies, it was the driver of the car. That was Angela's testimony. And what else do we know? We know that Johnnie said that Angela was on the driver's side of the car.

MR. HAGEMEISTER: Objection, Judge. That was the defense attorney placing that "X" on that map. The record -- the deposition reflects it.

THE COURT: The objection is overruled. Again the Court will tell the jury that you're to be guided in your deliberations by the evidence as you remember it.

MS. BEIMDIEK: Defendant's Exhibit A is essentially a blow-up of Defendant's Exhibit F which you all had a chance to see again. While we're on the topic you'll be able to ask the Court to provide exhibits for you while you deliberate; so, if you feel the need to examine these exhibits please do so. I encourage you to ask for them. But Defendant's Exhibit F, you'll look at it. Johnnie Bell wanted to argue with me that the little notation at the deposition wasn't an "X"; and, you look at it and decide for yourself.

MR. HAGEMEISTER: Objection, again the attorney

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placed the "X" on that map and on this map.

THE COURT: Overruled.

MR. HAGEMEISTER: Was not placed by the witness.

THE COURT: Overruled. Let's move on.

MR. BEIMDIEK: Johnnie Bell at his deposition was asked to point on this map to the place where Angela Hickman was and, yes, I took my pen and made the marks but Johnnie Bell agreed that where I placed the mark was accurate. And if you think I put down a mark that was inaccurate or did not reflect what that witness said, don't you think for just a moment that Mr. Hagemeister wouldn't have been all over the --

MR. HAGEMEISTER: Objection, Judge.

MS. BEIMDIEK: -- at the deposition.

MR. HAGEMEISTER: It's in the deposition where I was all over it.

THE COURT: The objection is sustained. If you're referring to the deposition or Mr. Hagemeister would have been all over it at trial?

MS. BEIMDIEK: No, at the deposition, Your Honor. That's the argument that I'm making.

THE COURT: The objection will be sustained as to the statement about Mr. Hagemeister -- Mr. Hagemeister's reaction during the deposition; and, the jury's instructed to disregard counsel's comment.

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MS. BEIMDIEK: Does the State come to you with any other exhibits or diagrams that Johnnie Bell said it was any way other than that Angela Hickman was on the driver's side of the car? If they had it you'd hear about it.

So, we know that Johnnie Bell who said that Angela is on the driver's side of the car; and, we know that at his deposition Johnnie Bell initially said it was Tyrone who called them sissies. And we also know that at his deposition Johnnie Bell said as they were leaving the police station that night after they had been interviewed by the police that Angela told them Tyrone was in the front seat of the car. Now Johnnie Bell comes into trial and he tells you, "I am positive that it was Carlos who called us sissies." The night or shortly -- days after the shooting. I said to Johnnie Bell, "Do you remember the police asking you about that?" "Yes." "Did you say you heard a voice that you thought was Carlos?" And he just argued with me a little bit about that. I said, "Did you say you were almost positive?" He said, "No, I'm positive now." I said, "But back then when the police recorded your statement did you say you were almost positive?" And I think he finally agreed to it. It's hard to remember because we disagreed a lot; but, the fact of the matter is memories don't improve like wine; they do not get better with time. Memories fade and that's why we have to look

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back to what these people said earlier on in the events of this case and factor those in as you make your decision because during jury selection you'll all remember I said they're all going to get on the witness stand and they're going to point and make accusations. And I said, "Can each one of you consider how we got to this point and consider all of the circumstances," and each one of you told me you could do that. And I'm going to hold you to your promise that you would do that.

Now, one of the big things in this case is that Carlos's name is not mentioned immediately after the shooting happens.

MR. HAGEMEISTER: Objection. Misstates the evidence.

THE COURT: Overruled. Move on.

MS. BEIMDIEK: When Angela Hickman ran to the phone and called 911 I'll grant you she was hysterical, I'll grant you what she saw was a horrible thing. I'm not going to take anything from her on that. When the 911 operator said who's shooting it would be just as easy for her to say, "It's the kid from across the street. I can't believe he just shot at us." And she didn't say it. And if that were it perhaps I wouldn't be bringing this argument. But then she flags down Officer Lane, the woman police officer who we brought in, and, again, the woman police officer says,

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"Who did this?" And she says, "It was some boys." Does she say, "It was the kid from across the street right over there; if you go over there I can show you that's where his house is"? Do we hear anything of that? No.

Now, Detective Strong came in and said, "Well, I had the last name of Carlos Wade and I went to the 4200 block of Aldine."

MR. HAGEMEISTER: I'm sorry. What did you say?

THE COURT: Proceed.

MR. HAGEMEISTER: Misstating the evidence. First name.

MS. BEIMDIEK: No, that's not what he said.

THE COURT: The jury will disregard counsel's statements.

MS. BEIMDIEK: Detective Strong said he had a last name.

MR. HAGEMEISTER: Objection.

MS. BEIMDIEK: Might have said first and last name. I'm not disputing that. But he said he had a last name.

THE COURT: Overruled.

MS. BEIMDIEK: What do we know about the lead detective, Hornak, in the case? He said, "We didn't have a last name" when he wrote the police report, Carlos, no further. Didn't have a last name and didn't have an address. And Detective Strong says, "Well, I drove through that

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block, didn't go to a specific house; so, where he's getting how to get there and who it was is beyond me. His little excursion isn't reflected in any of the police reports.

But how do you know most of all that she didn't say it was Carlos, the kid from across the street, right away? Because what time did Carlos get arrested? Five o'clock the next afternoon. The shooting happens at 11:25 on the Sunday night. Angela Hickman is interviewed by the police in the early morning hours, two o'clock in the morning. She's released. She goes home that night and not until five o'clock the next afternoon did the police bother to drive by and make an effort to locate Carlos Wade.

MR. HAGEMEISTER: Objection, misstating the evidence.

THE COURT: Overruled.

MS. BEIMDIEK: We also know that at her deposition Angela said, and we read that portion for you, and I think I had the court reporter read it as well, she -- that she didn't give Carlos's name until after Tyrone Morant had been identified. That was what she said under oath at the deposition. You have to be able to rely on the testimony of the State's witnesses to send Carlos to the penitentiary for the rest of his life.

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I want to talk about this car we spent a lot of time going over and see if I can clear some of that up. What do we know about this car? We know that Angela and Johnnie both on the night of the shooting described a four door large car, both of them told that to the police that that was the car that did the shooting. And we know that Angela --

MR. HAGEMEISTER: Objection, misstating the evidence. There was a second car.

THE COURT: Overruled. The jury is instructed to be guided in your deliberations by the evidence as you remember it.

MS. BEIMDIEK: We also know that Angela told Detective Hickman that they were shooting -- I mean Detective Hornak -- that they were shooting from the front and the rear window of that car. And Mr. Hornak tried to make it look like, well, Detective Hornak was making this interpretation about the windows in the car and how many doors it had and whatever. But Detective Hornak said, "No, that's what she told me, they were leaning out the windows." Well, you've all had a chance to look at State's Exhibit 11 and you'll have a chance to look for that in your jury room; but that -- this is a two door car that Angela Hickman was responsible for doing -- says was responsible for doing the shooting. And you'll also notice that these back windows don't come

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down in the rear window of the car and that was why we know Angela now came into court and testified that suddenly this four door car became a two door car.

MR. HAGEMEISTER: Objection, Judge. It was covered in the deposition. She said two door car.

THE COURT: The objection is overruled.

MS. BEIMDIEK: At the night of the shooting when the incident was freshest in her mind Angela Hickman tells the police it was a four door car. She may later have changed her testimony to conform with this photograph; but, the fact of the matter is she's stuck with the words she said to the police before she saw any photograph. When she told them it was a four door car and they were hanging out of both of the windows shooting.

We know the next day Detective Hornak said he's at the warrant office with Angela Hickman and that's when she describes this second car and then -- she says it was a smaller car with shutters on the rear windows. Looks like the car, the second car, not the car that did the shooting. She says this is the car that drove by or this fits the description of the car that she tells Detective Hornak drove by after the shooting. Who owns this car? Eina Dancy. Who had that car on September 17, 1995? Marlon Mitchell. You heard from him. He said, "I was in that car. I drove near that scene. Carlos Wade wasn't in that car with me.

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Nobody shot out of this car." What else do we know about this car? Three days later the police give it back to its rightful owner. This car that everybody wants you to believe was used in a murder is returned to the owner three days later.

MR. HAGEMEISTER: Objection, Judge.

MS. BEIMDIEK: After it's --

MR. HAGEMEISTER: That's not any evidence of anything.

MS. BEIMDIEK: Is that an objection?

MR. HAGEMEISTER: Yes, that's an objection.

THE COURT: Overruled.

MR. HAGEMEISTER: Irrelevant.

MS. BEIMDIEK: The police inspect this car, they look for guns, bullets, weapons of any sort, shell casings of any sort, any physical evidence that suggests any shooting took place in that car; and, there's none 'cause if they had it you'd have heard about it.

But you have to rely on the witnesses who describe these varying cars, these changing cars, these -- this testimony that begins to conform to the evidence that the State has that they want you to use to convict. You have to rely on that kind of testimony to send Carlos Wade to the penitentiary for the rest of his life.

Now, Mr. Hagemeister wants to talk to you about

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these prior incidents that he claims happened, these shootings at Johnnie Bell or John Allen. Johnnie Bell can't tell the same story twice about those shootings that he claims happened, those shootings where he never called the police, no reports were ever filed, nobody was ever charged or arrested. Doesn't even mention them until months after John Allen is killed and then all of a sudden oh, by the way, in case the State's evidence in this case isn't enough, well, here's some more stuff for you to consider. And Detective Hornak interviewed him about those claims and asked him for some specifics and when he came in here and testified he couldn't tell the same story twice. Remember the shooting that he says happened at the Hickman's porch and they had the photographs, bullets had been painted over, went out last week and took these pictures. He told Detective Hornak that that shooting happened one to two years before Johnnie Allen -- John Allen was killed. He comes here and tells you that happened about a month before John Allen was killed. Pretty big difference.

There was an incident; and, I don't remember now which one it was because it was hard to keep track of them. He told you it happened in the daytime on one occasion. Later he said it was the night time. Pretty easy thing to remember. If you get shot at you're going to remember is it

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dark out, light out, pretty simple. I don't think it's asking too much, not to mention that he can't remember any dates, years, any other information, and his story is totally uncorroborated except for, of course, his photograph of the porch taken at a house last week or two weeks ago. Now new residents live at that house.

MR. HAGEMEISTER: Objection.

THE COURT: Overruled.

MS. BEIMDIEK: He's the one that said they moved from that house. And now you're supposed to say, oh, well, then let's pile that evidence on and convict Carlos. Well, you're not even asked to decide about any of that stuff; but, think of the source when you decide whether or not you can even use that in this case. Who's your source? The Honorable Johnnie Bell.

And the problem with Johnnie Bell is that he got this lie down about these other incidents -- let's just say there were more things so Carlos really had a reason to want to get us; but, you know, when you tell a lie maybe you get the big part down but it's the details you can't tell the same story on twice. And we caught him in these lies before your very eyes. They are ever-changing and ever-growing.

He tells Detective Hornak, "There were three incidents I can remember, yeah, it was three." He comes to you and

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comes up with a fourth incident he doesn't mention to get -- doesn't mention to Detective Hornak. "And, by the way, there's this fist fight over at Bill's Auto," and that was another time, yeah, that's another reason they would want to get us." The ever-growing, ever-changing testimony of Johnnie Bell.

Let's talk for a minute about Johnnie Bell. He told you on direct when Mr. Hagemeister said to him, "Has anybody in the entire world ever called you a sissy before?" You all remember that. He said Carlos is the one. "It's Carlos that called me a sissy. And he's the only person in the entire world who's ever called me a sissy." The very first question I asked him on cross-examination, "You're telling this jury Carlos is the only one who's ever called you a sissy? Do you remember, Mr. Bell, telling Detective Hornak that the very day that John Allen was killed that three other guys called you a sissy and said they were going to get ya"? And he hemmed and hawed, and I played the tape for him and he knew he was caught. You saw him get caught in lie after lie after lie before your very eyes; and, yet Mr. Hagemeister says send Carlos Wade to the penitentiary for the rest of his life with the likes of the testimony of Johnnie Bell.

Now, we spent a lot of time talking about these depositions, probably way more than any of you ever wanted

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to hear about; but, the fact remains each one of those witnesses got caught changing their stories and when they got caught changing their stories suddenly they wanted to shift the blame from their inability to tell the same story twice to me. "Well, you cut me off and you didn't let me answer all of my questions. I wanted to give more information but you just wouldn't let me." You know, the blame lies elsewhere on this one.

Ladies and Gentlemen, you heard from the court reporter, she told you each witness was given an opportunity to completely answer the questions that were put to them. If there were interruptions they were to clarify and the witness was then allowed to continue on with their answer. But you don't even need her observation. The words of the witnesses themselves told you at the beginning of the deposition, did I ask you or tell you, "If I cut you off tell me, stop me, I want to give you a chance to fully answer the question. Will you do that?" They all agreed. At the end of the deposition, "I -- Did I cut you off and not allow you to fully answer the questions?" "No." But, you know, you don't even have to take that example for yourselves because each of you, I'm sure, will remember the day -- I know it's been a long trial -- but the day Angela Hickman and I stood right here and we struggled with an exhibit that I was trying to draw and I wanted to

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do it one way and Angela wanted it done a different way; and, she won because she stood up to me and she stood her ground. She didn't allow me to put a single word into her mouth when we struggled with that exhibit. And so she's no shrinking violet when it comes to telling what she wants to tell; and, you saw an example of that right before your very eyes. And Johnnie Bell wants it now to be this big conspiracy that somehow I've altered these depositions, and, don't you just know that if the State has one shred of evidence that either the court reporter took information incorrectly down or there was some other defect in the way those witnesses were treated at the deposition you'd have heard about it.

And the court reporter isn't -- she sent Mr. Hagemeister the letter about these depositions saying contact your witnesses, have them review these. Mr. Hagemeister says, "Well, did you follow up your letter with a phone call?" How much does it take? How dare him turn the tables and place the blame on anybody but his witnesses.

MR. HAGEMEISTER: No burden whatsoever on the State on any of that. Miss Beimdiek knows that. Miss LaRose knows it. The procedure followed was incorrect.

THE COURT: Overruled.

MS. BEIMDIEK: His witnesses wanted to wiggle out of

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the words they gave under oath by claiming somehow that they were treated unfairly.

THE COURT: Three minutes.

MS. BEIMDIEK: Thank you, Judge.

MS. BEIMDIEK: Don't buy into it. Mr. Hagemeister wants you to talk about Angela Hickman, the hero, the woman among the boys I think is the term he used during opening statement. Who's she hanging with on the Sunday night at 11:25? Who's she hanging with? The likes of Johnnie Bell. And Johnnie Bell said something very telling. He said, "Well, at the depositions I didn't want to be there; I'd have told you all anything." I think he told you all anything during the last week of testimony. He told you all anything. Lies, lies and lies. And the STate's case again rests on the testimony of Johnnie Bell and Angela Hickman to send Carlos Wade to the penitentiary for the rest of his life.

And, contrast for a moment if you will the testimony of the State's witnesses with Carlos's witnesses. They came in, they told the truth; and Mr. Hagemeister is going to say, "Well, it was his family; of course, they're going to come in and they're going to tell all kinds of stories to help their loved one." The reality is it's 11:25 on Sunday night. That's who we're with. We're not with strangers. That would be lovely if I could find witnesses

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who were completely impartial. Human nature says on Sunday night, 11:25 p.m., you're going to be with your family and that's who you heard from.

I want to take a quick opportunity to thank you for your attentiveness and your patience. If I've done anything in that case that has caused you to have any hostility, please hold it against me and not against Carlos. You have a huge task, a huge task in your hands here. You will decide Carlos Wade's future. I know you take it seriously. I've watched each of you during this trial and I know how seriously you take this. You have to decide Carlos's future. I'm asking you to end this nightmare for Carlos, to end this nightmare for Carlos's family. I'm asking you to listen to all of the evidence and to return verdicts of not guilty.

Thank you.

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THE COURT: The jury may stand and stretch.

You may proceed, Miss Moore-Dyson.

MS. MOORE-DYSON: Your Honor, I need the microphone. It's not working.

THE COURT: Try it again.

CLOSING ARGUMENT ON BEHALF OF DEFENDANT MORANT

MS. MOORE-DYSON: Good afternoon, Ladies and Gentlemen of the Jury. I'm using the microphone because I lost my

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voice last night. I'm going to try as best I can to say what I've got to say because it's very important to me and to Tyrone Morant that you hear me and understand.

I want to try and hold this steady.

Mr. Hagemeister is amazing. He has the burden of proof here to prove to you that on September 17, 1995, these two young men, and I'm talking about Tyrone Morant, that's my client, killed John Allen and assaulted Angela Hickman and Johnnie Bell. But what does he tell you about? Fairy tales. That's not what you came here to hear about. That wasn't what the evidence was.

Remember at the beginning of the trial you were instructed that evidence is what you hear coming from that witness stand. That's the evidence. What I say, what Mr. Hagemeister says, what Miss Beimdiek said, that's not evidence. We're asking the questions, we're presenting the evidence. That's our job.

Okay, now, I've watched all of you. You've been very attentive. You've listened. You've -- you looked -- I've watched -- by your expressions sometimes you didn't like some of what all of us were doing or saying; and, again, I'd like to say to you if I've done or said anything that has angered you don't hold it against Tyrone. This young man is on trial for his life. I am not going to minimize the fact that another young man lost his life on September

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17, 1995. That is a fact that was not an issue for you to decide. That was a fact.

What you have to determine is whether or not you have competent evidence, you have evidence that will convince you beyond a reasonable doubt that these two young men committed that crime, not their associates; they're not here, people out on the street; those people aren't here. We're talking about Tyrone Morant.

Okay, let's look at the evidence that you heard about Tyrone Morant. Angela Hickman got on the stand and she testified. Now, I want you to understand she testified on the stand, she testified at a deposition, she did give statements to the police, the prosecuting attorney's office, okay. You're to consider what she said on the stand; but, one thing else you're supposed to consider about her, consider the time that the incident occurred, consider her ability to see what she said she saw. Okay? It wasn't a calm situation like in this courtroom. It may be trying but having bullets firing at you, that's not a calm situation. It does not give you an opportunity to stand back and go, "Oh, hum, I guess it was the front seat driver, maybe it was the back seat driver." Doesn't give you a chance to do that. Bullets are flying at you, okay? Now, you had evidence that she was extremely excited that night. You can draw your -- from your own common sense. You don't

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have to leave that at home. Draw from your own common sense that when something like that is happening you're not standing observing, you're not concerned about what you're going to say in a courtroom today. You're concerned about saving your life; your life; you're that concerned. And we have evidence that she was excited, she was extremely excited that night. The 911 tape, you heard that, you could hear her tone, you could hear how excited she was. She was hyperventilating and she couldn't tell the 911 person she saw Tyrone Morant shoot her nephew or shoot at her. She couldn't tell them -- not to say she wouldn't have wanted to at that time, but she couldn't tell them, she was too excited.

You also heard Officer Lane come in. Now, she was called by Miss Beimdiek, not Mr. Hagemeister. She was the first officer on the scene. The first officer. And she did not come in response to the radio broadcast. They had not even broadcast it yet. She just happened to be going down the street going to another call and Angela is in the street waving somebody down. She's all excited. This is to be understood. She stopped and she tried to calm her down. She asked her who did this. "Some dudes, some guys," but at this point -- Angela told you herself, "At this point I'm concerned about my nephew. He's lying there and he's shot." She had been trying to administer paramedic procedures

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on him that she knew and then the officer attempted to do the same, okay? This is what's going on at this point. Her thoughts have gone from preserving my own life to being concerned about her nephew; and this is the time when it's just happening; and, this is reasonable for you to understand that that's how she's thinking at that point. She's not thinking about coming to this courtroom and telling anybody who did it, she's not -- she's concerned at that point saving my life.

And Johnnie Bell tells you the car swung around the corner. He looked. He saw it. Johnnie Bell was gone. You hear me? Johnnie Bell was not down on the ground. Johnnie Bell had made it back into the building from whence they had come, all right?

Angela says that she's walking ahead of them. I knew you'd remember that. If I made straight anything I want you to remember what you heard. I'm not trying to misguide you. I think all of you are intelligent, and I know you heard the evidence. She was walking in front of him. She turned around, they were having a conversation. She had just turned around to say something to him, then she heard John say, "Run." She looked back and she run -- ran. Now, when she looks back now from the positioning as I understood it -- let your own eyes guide you -- they were behind her this way, the street was in front of her, so

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if she's looking back listening to John and John Allen -- when John says run she's looking back at them and naturally, -- you know, she didn't get hit, she wasn't standing there when these bullets fly. The police officer testified it was nine, ten bullets. They weren't going, you know, picking out anybody. These bullets are spraying across that little area there close enough.

We know Johnnie -- Johnnie Bell didn't get hit because he made it to the building. She didn't get hit because she hit the ground. She hit the ground and she put her face toward the curb and played dead. Now, if you're playing dead you're certainly not looking up trying to see what's going on. Her most -- the point where she could see the most was when that car drove up and she saw those bullets -- those hands come out and those guns come out and people start shooting, she was out of there at that point. You better believe that, okay? I'm not saying anything bad about Angela Bell Hickman. I'm not saying anything bad about her. That's what you do under circumstances like that.

Now, Mr. Hagemeister said consistently, and Johnnie Bell said it too, and I kind of want to use this phrase, let's make the case better. How we going to make the case better? Okay.

She said it was a four door car, the windows were

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rolled down, and then they were hanging out the car. "That's how I got a good look at their faces." Then she told you she was standing right here, the car was right there, she was standing right here. You remember her saying that. Now, they're hanging out with a gun. That doesn't leave a whole lot of room to be hanging. Ask yourself why she didn't get shot. She also told at deposition, she said five or six feet, but she thought maybe that wasn't good enough. Let me make the case better. They were hanging out the window when they did that. She can't tell you whether or not she didn't notice any guns or anything like that, all right? They're shooting.

Now, I'm going to tell you right now it is important that you understand the witnesses' ability, their competence to testify and see what they saw. You have to understand where were they, what were they doing, what was the circumstances and the environment they were in at the time they were making that observation. It's dark outside. Yes, there are lights on the street; but, then this is a very excited type situation going on there. Zooming around the corner, people are shooting, she's getting away.

As much as she would want to, as much as she would have liked to, she didn't see who shot at her and she didn't see who shot her nephew.

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She didn't tell anybody on that scene that she saw Tyrone Morant shoot anybody. As a matter of fact she said, "I didn't recognize him. I don't know him."

Now, you heard the 911 tape. There was no description. She didn't give a description to Officer Lane. As a matter of fact, she said, "I never described anybody." She said that herself.

But then we get Officer Strong. He's making the case better. He said, "Yeah, she gave me a description. I was looking for Tyrone Morant." Okay? The police report which was drafted finally in November, two months later, the police had a good opportunity to reivew those notes very carefully. What did they say? One sentence as to Detective Strong. He was patrolling, patrolling. And what was he patrolling for? Johnnie Bell said he was angry with those police officers. Do you recall that? You know why he was angry? It took them so long. My partner laying down there dying and it took them so long and they ain't doing nothing, okay? Officer Strong can't even tell you where he was when he got the call, whether or not he was in the car or at the station. So he gets there later. Now, he's patrolling and he's looking for Tyrone Morant. He's not looking for Tyrone Morant. He's looking for young teenage boys. He's going to grab a bunch of them and see if anybody can identify them. That's

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their job. What would be more reliable though? Grab some, take them down to the station. That's what he told Tyrone when he picked him up he was going to do. "We going to put you in a lineup down at the station." They didn't tell them, "You're under arrest, you're a suspect in a murder. We're going to take you down to the station, put you in a lineup." But they took him down to the station. Did they do that? No, they didn't do that.

As a matter of fact he took him around the corner, put Angela in a car. Now, imagine this. Again now a few minutes have passed. Time has passed. Angela now knows her nephew is dead. You better believe she's still traumatized seeing that, trying to help him out, couldn't help him out. Now, the police are going to take this fragile, traumatized young lady in a car and, "We're going to drive you around the corner and we want you to confront the people you saw. We got somebody." She didn't know Tyrone's name. She told you she didn't know his name. She found out his name from them the next day down at the station. She didn't know who he was.

How did she pick him out? Now, no description was made to anybody. And you got to wonder, she said -- she had seen him before, she saw him over at Carlos Wade's house, so, when you see somebody here, you're on the street, you're traumatized, you see somebody, you know

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this person, maybe she knew that he was associated with somebody she believed -- now, your belief is not competent evidence, your belief --

MR. HAGEMEISTER: Misstatement.

MS. MOORE-DYSON: Your belief coupled with what you actually saw --

MR. HAGEMEISTER: Objection.

THE COURT: Overruled.

MS. MOORE-DYSON: What you feel, okay, and what you hear, that is evidence. You can believe in a lot of things that are unseen, that I know most of us do, but that is not what you're called here to do. You're called here today to judge whether or not what they're saying on this stand is in fact the truth. And you can look at motive, motivation. Yeah, Angela -- and my heart goes out to them; they want justice done; but, in reality they don't know who shot their nephew.

Angela said Tyrone says it, Carlos said -- I mean Johnnie Bell said Carlos said, "You sissies." Angela places them in the front seat. They moved where -- the person who was saying whatever is moved from place to place. Why is that important? It is important because if you say this person, if she says -- and I think more testimony -- Tyrone's in the back seat and he's hanging out the window. Look at that -- she couldn't tell you whether or not the

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back -- window of the hatchback Honda could roll down but she thought about that. She said the other person had his hand up around, looking like that. Look at those two young men. Look at how big they are. That would really -- not saying that criminals are smart but that doesn't seem right, okay? Now, the four door, that seems more right. Now, there are -- if you look at those pictures -- you saw those pictures -- there are marks, tread marks on the streets, skid marks. You heard the officer, George Taylor, get up here and say, "I examined the car and processed it." He didn't find anything in that car that would have led him to believe there had been a shooting in it, nothing. So basically the car was useless to them. That's why they gave it back. There's a discrepancy about the car. She even testified that the burgundy car, that's one of the cars they used. That was the detective's car, the car they took Tyrone out of when they showed him to her on the street. So she was really confused. Nothing wrong with that type of confusion --

MR. HAGEMEISTER: Objection.

THE COURT: Overruled.

MS. MOORE-DYSON: -- at that particular point.

Now, they have to go on, we have to make this case better. All right. Now we have to find a reason why Tyrone Morant would want to shoot Johnnie Bell and Angela

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Hickman. Johnnie Bell says -- I mean Angela Hickman says, "I don't really know him, seen him across the street at Carlos's house," okay?

Johnnie Bell says he had a fight with him but sitting here on the stand I asked him, "I said, "Can you describe him without looking at him? Can you describe him?" Only thing, "He's heavy-set and he had a big Afro at that time." How many people do you think had a big Afro and was heavy-set in that age group? That's what he said. "You fought with this person, you were close, one on one. You ought to be able to describe that person. Okay. You've seen him more than one time." One of the most remarkable descriptions about that young man for whatever reason they do it he's got gold teeth from almost from ear to ear. If he's doing all this talking and this observing, they're trying to determine who's saying what, why is nobody saying that this person had four gold teeth? That could be something else for the police to go on.

The prosecutor got to make his case even better. We still talking about the fight. He brings G. W. in. G. W. is a relative of the Hickmans. G. W. isn't -- he sits up here, can't see too good; so, "Okay, come down and look at him," so he goes over to the table and he identifies one person. Okay, from here he said he saw that guy and he described Carlos; but, the prosecutor wanted to

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make sure he saw them both. He said, "Come down." He looked at Carlos again. He came back up. Said, "Yeah, I recognize that person."

MR. HAGEMEISTER: Objection to what Miss Moore-Dyson thinks I wanted.

THE COURT: Sustained. The jury instructed to disregard the speculation as to what the prosecutor wanted.

MS. MOORE-DYSON: So he goes back, he comes back to the stand, and then asked, anyone else in that room that was involved in that fight that night, that afternoon; and, he comes back down and he walks over to Tyrone and he says no. He said, "Well, do you know who those other people are?" And he said yes. "Would you be able to identify them if you saw them again?" "Yes." It wasn't -- he didn't say, "I'm not sure if it's Tyrone." He said, "No, there's no one else in this room that was involved in that fight." Okay. Now, we've just thrown away the one thing that they say was enough reason for Tyrone to be riding around trying to kill somebody that night.

Their witness, Annie Hickman, she's John Allen's mother, my heart goes out to her. She was told a week before she testified by Mr. Hagemeister about the fight that Johnnie Bell has told her about and asked her if she could remember the fight. Okay, now this is something

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that -- she didn't know these young men. She said when she saw them in the paper she thought it was the first time she saw their faces. Then she said when he told her about the fight she could remember the fight. She said Tyrone was there. If that had been significant she knows the police had these young men she could have come forth long before; said, "Those two guys were fighting with my son one day." Mr. Hagemeister did that to make the case better.

Now, with Johnnie Bell, no time spent on Johnnie Bell. Johnnie Bell said two things to me that were the most important things he said. He said, "I'm lying." "Why -- then why are you here?" "'Cause they want me to be here." "Who wants you to be here?" "Miss Hickman. They want me to be here. They want me to make the case better." But she admits --

MR. HAGEMEISTER: Judge, --

MS. MOORE-DYSON: She --

MR. HAGEMEISTER: Judge, I'm sorry. I'm objecting. She said that Miss Hickman, they wanted him to make the case better. That is a pure fabrication by this attorney.

THE COURT: State your legal objection.

MR. HAGEMEISTER: Misstating the evidence.

THE COURT: The objection is sustained as to the

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phrase, making the case better, and the jury's instructed to disregard it.

MS. MOORE-DYSON: You recall what you heard. The identifications. Johnnie Bell, finally he says he never met anybody, never -- he never saw anything. "How do you know, JOhnnie, it was Tyrone?" "Angela told me." He says three times, "Angela told me." And how did Angela know who Tyrone was? The police told him who he was. The police told her. According to his evidence the bullets, the bullet hole went from up to down, front to back. Mr. Hagemeister, and that's not evidence, asked the question as to whether or not it would occur from a person leaning forward. Indicated that was a possibility. That goes further to corroborate people were getting down. If Johnnie was on his way down at that particular point and he got shot Angela who didn't get shot was already down at that point. Draw your conclusions.

Now, this part of the trial is basically for us to help you to gather the evidence and look at it, basically give you an outline. The instructions will tell you what you're supposed to do. That's the law. Now there's -- the instruction indicates Carlos -- if Carlos or Tyrone Wade did something. That's the acting with another instruction. That does not say if you find Carlos guilty that you have to find Tyrone guilty. That if you find Tyrone

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guilty you have to find Carlos guilty. It says that those are the options, just that these people were acting with somebody else if you believe that. I'm saying to you that they have not given you motive, they have not given you ample or competent evidence that Carlos was identified -- I mean Tyrone was identified properly. Detective Hornak told you, "We never put him in a lineup. We never let you know for sure if this person knew who she was choosing." There's no reason --

MR. HAGEMEISTER: Judge --

MS. MOORE-DYSON: -- no reason --

MR. HAGEMEISTER: I object. Mr. Hornak described the lineup and the defense attorney was the one made sure I didn't get into it in court.

MS. MOORE-DYSON: There was no lineup.

THE COURT: The speaking objection is overruled. The jury is instructed to disregard it. You're to be guided in your deliberations by the evidence as you remember it.

Move on.

MS. MOORE-DYSON: I submit to you that based upon what you heard here in the last couple of weeks the prosecutor has not met his burden of proof. It's too sketchy, too sketchy. You're not to be guided simply by emotion. Not to say you can't feel sorry for someone

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but your job is to make sure that the prosecutor, the State, they have the burden of proving to you beyond a reasonable doubt that Tyrone Morant was at 4200 Dr. Martin Luther King at 11:25 and that he pulled any triggers whatsoever. Don't be misguided either by the fact that only family members or a friend who happened to be with you at the time can come in and tell where you were at that time.

THE COURT: Five minutes.

MS. MOORE-DYSON: Even if he had left earlier we all know he was arrested a half a block down the street. Okay? So it had to be after the incident occurred 'cause we know Detective Strong wasn't looking for anybody till after that and we know he was arrested at that point.

We don't go home to strangers; we go home to our loved ones; and, if something happens, somebody accuses you of it, nine times out of ten that's who's going to have to testify that you were where you were at that particular time.

It's the State's burden to prove that they were there beyond a reasonable doubt. There are several areas of reasonable doubt here. Her ability to see, her demeanor -- not demeanor but the fact that she was excited at the time that this matter was going on; bullets flying, she's protecting herself. She never told anybody. The police officers aren't even telling the truth. She said, "I

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never described him, I never described him." The cars they were in. Big difference. We don't know which car it was. The car that they finally sat on is the car settled on. It's impossible for it to have happened the way she described it.

Listen to the evidence as it was presented to you and remember it. This is a big burden. They're asking you to send Tyrone Morant to prison for the rest of his life on evidence like that.

I submit to you that he's not guilty and ask that you return a verdict of not guilty.

Thank you.

THE COURT: Thank you, Miss Moore-Dyson.

You may proceed, Mr. Hagemeister. You have twenty-three minutes remaining.

MR. HAGEMEISTER: Thank you.

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CLOSING ARGUMENT ON BEHALF OF THE STATE

MR. HAGEMEISTER: Miss Beimdiek, Miss Moore-Dyson, Your Honor, Ladies and Gentlemen of the Jury: You're going to catch me reading in this second half because I have a lot of issues. This isn't a case where some drunks run over some kid that runs into the street, not an accidental death. This is two kids who carry guns, who use guns on this night and end somebody's life; three

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people that all they wanted to do was go home and go to bed, no weapons on any of those victims.

And they described that car, they described that car consistently when the police officers asked them which car drove by, drove by; not the drive-by shooting car which car drove by. They told them it was a four door and --

MS. BEIMDIEK: Objection. Misstatement of the evidence.

THE COURT: Objection is overruled. The jury is instructed to be guided in their deliberations by the evidence as they remember it.

MR. HAGEMEISTER: If there was ever any confusion, if any of you still have any confusion about that issue, Angela goes out on the street the next day, sees Carlos, goes further down the street, sees the car. She's not putting them together at that point but in front of her two friends, the driver of the van, the police officer of the van, she says, "That's the car, that's the one they used in the shooting." So if anybody was ever confused earlier in any of the earlier reports it's cleared up -- and 'cause she had it right there, said it right there. And you can bet that if she didn't say it they would have called the police officer, the other two witnesses and the driver, to say, "No, she didn't say that

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was the car; she said that was the second car." No, she said at the time that was the car used in the drive-by.

But you pick some little piece out from some little deposition out of six hundred questions and you pick one that because of a misunderstanding --

MS. BEIMDIEK: Objection, that's a misstatement. She told the police on the tape that it was a four door car, Your Honor.

MR. HAGEMEISTER: That drove by.

THE COURT: Just a moment, counselors. You're to make legal objections. You understand me?

MS. BEIMDIEK: Misstatement of the evidence.

THE COURT: The objection is sustained as to counsel's -- prosecutor's use of the phrase, picking out, and the jury's instructed to disregard that.

Move on.

MR. HAGEMEISTER: On the tape she's asked what car drives by and that becomes the car --

MS. BEIMDIEK: Misstating the evidence.

THE COURT: Overruled.

MR. HAGEMEISTER: Another question, this is the part we went over earlier, question, Miss Beimdiek, "What's the first thing you noticed when they drove up?" "Mumbling something." "Who was mumbling something?" "The guy on the driver's side, I don't know who it was, telling

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them to get out of the car." This is when she sees them during the conversation not after they start shooting. Everyone agrees everyone's hitting the deck when they start shooting. "The person driving was telling I guess the one in the back, Tyrone, to get out of the car. He was like there them sissies is right there. I guess he couldn't see us at first."

MS. BEIMDIEK: I object. He's going beyond the scope of any evidence submitted to this jury.

MR. HAGEMEISTER: This was covered in the examination I think by Miss Beimdiek.

THE COURT: Was that portion of the deposition read in evidence?

MR. HAGEMEISTER: Yes, sir.

MS. BEIMDIEK: I disagree, Your Honor.

THE COURT: May I see what you're reading from?

MR. HAGEMEISTER: Your Honor, I put brackets -- can I have credit for my time -- I put brackets around the portions to be covered during the testimony and then I put boxes around the portions that were to be covered in closing arguments.

MS. BEIMDIEK: Page, please?

MR. HAGEMEISTER: Twenty-four.

THE COURT: Page 23, lines 12 through 21, is marked; and, you're saying this was not read into

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evidence?

MS. BEIMDIEK: May I approach? If you could bracket it out for me.

THE COURT: Yes, ma'am.

(The following proceedings took place at the bench outside the hearing of the jury:)

MR. HAGEMEISTER: Ask for credit, Judge, for -- remember the mumbling part?

(At this time there was a discussion off the record, after which proceedings resumed on the record as follows:)

MS. BEIMDIEK: Judge, I disagree.

(At this time there was a discussion off the record, after which proceedings resumed on the record as follows:)

MS. BEIMDIEK: That portion I remember. The preceding question I disagree. Let the Court rule.

THE COURT: Objection sustained as to the portion -- state for the record what portion you stated was not read, Miss Beimdiek.

MS. BEIMDIEK: Page 23, lines --

THE COURT: Give me the lines.

MS. BEIMDIEK: I'm trying to, Your Honor.

THE COURT: Well, we'll proceed. The objection is sustained. Move on.

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MS. BEIMDIEK: 16, 17 and 18.

(Proceedings resumed within the hearing of the jury as follows:)

MR. HAGEMEISTER: Why would she say all that -- strike that. There's a portion that's objected to but during the examination we did go over all the different things that were said in the car before the guns were pulled out and you recall that; and, that was the time period that she had to look at the witness's faces and that was also the point where there were interruptions, there were interruptions throughout, and, you have to say, are we going to hold people to a standard in every single case of having to remember every single detail and having to repeat every single detail at every single point; because if you ask a person a question four different times and that person thinks you're talking about this one time, this another time, this another time, and they don't repeat everything they've said so far, a good defense lawyer is going to use that on the stand to make it look like you didn't see or if you had you would have said it right then. I don't think that any of you are going to fall for this trick but I have to cover it just in case.

MS. BEIMDIEK: I object to the improper personalization of trickery.

THE COURT: The objection is sustained as to

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tricks, that a trick would have been committed by defense counsel; jury instructed to disregard it.

Can we get on with your closing argument, counselors, with respect to the evidence in the case.

MR. HAGEMEISTER: When a person has a diagram and they put on that diagram a square and they draw it on there, the attorney does instead of the person drawing it on there, it's not a trick, it's the defense attorney providing evidence instead of the witness; and, then they turn the page to the next page and they do the same thing before the witness can say, "No, that's not where it was," and then they present that to you of evidence of where the witness says it was, maybe you don't call it a trick but it's not what the witness was testifying to.

Briefly when we talked about Johnnie Bell's testimony Johnnie Bell also provided you with the fact that no other enemies wanted him or John Allen dead or were shooting at him. That was relevant. Is he making that up? He also testified that he didn't know that prior shootings could be used as evidence until after he talked to --

MS. MOORE-DYSON: Objection.

MS. BEIMDIEK: Objection.

MS. MOORE-DYSON: Objection, Your Honor, counsel is arguing law to the jury.

THE COURT: The objection is overruled as to what

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the witness, Johnnie Bell, may or may not have known. You're to determine that from the evidence, Ladies and Gentlemen.

MR. HAGEMEISTER: Are you going to expect him to know that under the law prior shootings is admissible in this case? If he doesn't realize it until later on and then goes in and tells them what happened are you going to say he's lying just because he didn't know what the rule of law was? Johnnie Bell got up here and said he didn't want to testify. He's torn and confused. The fact is he didn't want them back on the street any more than anybody else does. He can't say that on the stand because --

MS. BEIMDIEK: Objection, arguing facts not in evidence.

THE COURT: Sustained.

MR. HAGEMEISTER: You can understand why he wouldn't say that. You can understand that he would appear weak if he said that. You can understand that he has to return to those same mean streets after he testifies and you can understand why he doesn't want to say --

MS. BEIMDIEK: Your Honor, I object pursuant to the record I made at sidebar earlier about the same line of argument.

THE COURT: Objection sustained.

MS. BEIMDIEK: It's improper.

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THE COURT: Jury instructed to disregard counsel's last remarks.

THE COURT: Move on.

MR. HAGEMEISTER: Officer Hornak told you that neither one of the families has anybody contact them. Angela -- I'm sorry, Marlon Mitchell puts the car there because he knows that the car was seen that night because he was in the car but he's not going to admit that he was driving the car when it did the shooting because then he'd be putting himself in on a murder charge. So, what does he say? He comes up with some cockamamy story about how it is that car is on that street that night. It's because he was going to the liquor store. And it's the one thing that, lo and behold, lucky for the people of the State of Missouri, could actually be proven was a lie because it didn't rely on another family member or another friend, it relied on an independent party. The one time they made testimony that could be disproven by any independent party, not a family member or friend, sure enough it was disproven. It was shown to be an outright lie. It's not a great burden for somebody to get a family member or friend to testify for them, to get up and say some words is not great risk to these people who have loyalty and reason to be loyal but they have -- or a person that thinks maybe they believe Carlos when he tells them he didn't do it,

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maybe mom says, "I don't want to believe my son's a killer so when he tells me he didn't do it even though I know he was out on the streets that night I believe him."

MS. BEIMDIEK: Misstating the evidence.

THE COURT: Overruled.

Let's move on.

MR. HAGEMEISTER: Or maybe she says, "He was stupid, he made a mistake, he didn't understand, I don't want him to go to jail for the rest of his life so I'm going to say whatever it takes." What mother wouldn't? Can you blame the mothers? You think it's a joy for the prosecutor to have to cross-examine family members, it isn't; but, you have to say that when they talk about not having gone over it, talk about how they wouldn't lie for them, that those are lies in themselves. And, if you look at the case and you say if this -- you say how in the world did Carlos Wade get on the stand and be so stone cold, and you have a right and a responsibility to look at his demeanor and to look at him and see him sitting here looking at the jury that's about to decide that he committed a murder and in his mind if you believe them he is being wrongfully accused and facing a life in prison for something he had absolutely nothing to do with and he sits here calmly and coldly without emotion answering questions. And why is that? Why is it that the family members are

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able to sit here and not have this, "You don't understand. He had nothing to do with this." Because they all know that this is the moment that they have to convince you and they didn't realize that part of it and they're just trying to slip one by you, trying to pull the wool over your eyes, and you look at their demeanors and you say, "Jesus, can you imagine being in that position and being as stone cold on the stand, as stone cold as he was that night when he killed John Allen." You have to say there's no way they would have that demeanor, any of those defense witnesses, if this was such a horrendous everyone's making it up to make this guy go to jail, this guy and this guy, who say that nobody who came in here and testified who's been on the line for the last fourteen months on this case even know him, even had any reason to lie about him. They say they don't have a single reason to be doing all this because that's the safest story for them.

The system doesn't work if all you have to do is have family members or friends take the stand because they want to give him another chance. John Allen isn't getting another chance. John Allen won't be able to visit his family members in prison. This case is the story of one voice, one voice ringing loud and clear. "I know what I saw and they did it." One voice with no reason to lie, one voice that has been solid all the way through

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the case. It was these two right here behind those guns that shot those bullets that burrowed through John Allen's heart. And, while nobody can show which one actually was the better shot at point blank range out of the car they both knew what was going on, they both were shooting, and even if you believe that Tyrone didn't have the beef that Carlos did he was shooting too. And even if you believe he was aiming away, which there's no evidence of because they denied they were even there or that they had any problems with any of these people, somebody comes up with that out of thin air even though all the shots were in the wall right behind where the people were, at least right behind where the targets were, you still get to murder first because he's aiding Carlos in committing the crime and he knows what's going on. And they're still guilty of armed criminal action and assault first and armed criminal action and assault first and armed criminal action.

And as you sit here today and you look at them in the courtroom with their suits on and their demeanors, as they sit here on trial for murder don't picture them that way. Picture them in their dark colors in their car, 11:30 at night, pulling up. "There's those mother fucker sissy niggers right there. Get them." "Where, where." And Angela seeing their faces before she has to duck, before

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she realizes she's in danger. She's not hysterical then. And the fact that she doesn't remember telling Officer Strong about who it was just goes to show you how hysterical she still was. Does that mean she didn't tell them? For you to find them not guilty you have to believe she didn't tell them, she didn't say it was them, and that Officer Strong -- and you saw Officer Strong, he's going to come in here and testify that these two people did this crime? Or that she says that these two people did it. He's that kind of person. Do you believe he's going to get up here and lie and say she said something that she didn't? He's got nothing to do with this case. He was doing his job that night. He was on the beat. He took her information and he went out and we arrested him. He has no reason to lie too. To find them not guilty you have to believe he's lying, that Angela didn't give him the name and the description, that he came in here and just said that, just because he was in the mood to imprison two guys he had nothing against, had no reason to dislike.

And Ivory tells you he was home, he has loyalty, and Ivory says, oh, that Angela, she's always trying to stir things up. Angela's family that ended up moving. And it's Angela he used to go and have conversations with. Do you go and have conversations with somebody that's

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always trying to stir people up against you? No. They were friends.

MS. BEIMDIEK: Objection. No evidence of that.

MR. HAGEMEISTER: Angela testified they used to talk.

THE COURT: Overruled.

MR.HAGEMEISTER: And Tyrone in his testimony has his mother testifying and she remembers that night just better than I remember two hours ago and she says he was just walking out of the house instead of he was out of the house for two hours.

And, where is Kenneth Wagner? And Mary Love? And Italo Wade?

MS. BEIMDIEK: Objection. Defendant has no burden of proof, Your Honor. Mr. Hagemeister knows that.

MR. HAGEMEISTER: They choose to put on evidence, you can ask why they didn't put on all the evidence.

THE COURT: Objection sustained; jury instructed to disregard the prosecutor's remark.

MR. HAGEMEISTER: And he says he was going out, he was going to get something to eat at -- he claims he just went out at midnight after he had eaten going on till eight or nine and he didn't have a car. Stores weren't open. Have to go to a restaurant he had to drive to but

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he was going to find somebody with a car. He was going to randomly run into somebody on the street who was going to give him a ride up to this place.

There's one witness in this case who has been sustained throughout the entire trial, if -- and if defense attorney all they have to do is put on a family member or a friend and they can be as inconsistent or as coached as any family would be after fourteen months and say things for the first time and claim that they tried to call the police, called on the pager after my son was wrongfully accused of murder first, he never returned the page so I left it at that. I know he was home at the time of that murder. I went down there. I couldn't talk to anybody so I left it at that. I made a phone call or two when my son was facing the rest of his life in prison but I couldn't get through to anybody and I left it at that.

And you take that testimony, it points to guilt, it shows that he's guilty. The demeanor of the defendants show that they are guilty.

THE COURT: Three minutes.

MR. HAGEMEISTER: It's evidence that you can use in determining that they are guilty, lies of defense witnesses go to show guilt. It's consciousness of guilt and lies of the defendants. And when you go down to the jury room you can't be sympathetic because the law does not allow

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for sympathy; not up to you to determine these people are evil or good; it's up to you to determine did they commit the acts listed in the instructions that were given to you that you've sworn an oath to follow.

They decided their own fate on September 17th at 11:25. Their own fate. The law caught up with them, citizenry, the witness, the one voice spoke up, came forward and jumped through every single legal hoop and put up with every single question and attack and accusation and abuse, and said he's a killer, "He's a killer," and they deserve to be punished for it. They deserve to be convicted. So convict them, please.

THE COURT: Thank you, Mr. Hagemeister.

oOo

THE COURT: Ladies and Gentlemen of the Jury, I appreciate your patience and I apologize to the late lunch. We'll have our luncheon recess at this time.

(At this time the Court read MAI-CR3d 300.04(2) to the jury.)

THE COURT: We'll have our luncheon recess at this time and you'll return to Division 11 at 3:30. Thank you.

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(After the luncheon recess the following proceedings took place in the courtroom outside

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the hearing of the jury:)

THE COURT: Let the record show that the Court has received from the prosecutor Instructions No. 11 and 13. Counsel for the defendants have indicated they reviewed these instructions and they're in proper form.

MS. BEIMDIEK: They are, Your Honor. I believe.

THE COURT: Are they in accordance with what I read, the handwritten annotations made in the second set?

MS. BEIMDIEK: Yes, Your Honor.

MS. MOORE-DYSON: That's correct.

THE COURT: The Court will also advise counsel that I am directing your attention to Instruction No. 12. The Court while reading that noted Tyrone Wade and the Court read that Tyrone Morant and whited out Wade and put Morant.

Are the jurors all back?

SHERIFF: I was going to go and take a head count.

THE COURT: If they're all back bring them down.

(At this time the jurors were brought to the courtroom and the following proceedings took place:)

Ladies and Gentlemen of the Jury, you have heard the evidence in this case, the Court's instructions of

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law and closing arguments of counsel. The case is now submitted to you for determination. You may retire to the jury room. The bailiff will deliver to you the Court's instructions and verdict forms. Will the alternate jurors please remain seated.

(At this time the sheriff was sworn.)

(The jury retired to deliberate at 3:35 p.m. on November 20, 1996.)

(At 4:45 p.m. the jurors were brought to the courtroom and the following proceedings took place:)

THE COURT: Ladies and Gentlemen of the Jury, the Court has received your request that you be permitted to separate and return tomorrow and continue deliberations. That request is granted.

The case will -- has been given to you to decide. However, since we are separating after such submission you're not to discuss any subject connected with the trial among yourselves or form or express any opinion about it after you're released this evening and you're not to continue deliberations until all of you, all twelve, have re-assembled tomorrow morning in the jury deliberation room at 9:30 a.m. And the foreman is to insure that no deliberations are resumed until all twelve

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jurors are present. When all twelve jurors are present tomorrow morning the foreman is to buzz the bailiff and the instructions and verdict forms will be returned to you. After that the foreman may see that deliberations are resumed.

You're again reminded that you're not to discuss the case with anyone over the period of separation and you are not to view, listen or read any radio, television or newspaper report of the trial. And as indicated by the Court you are to return to Division 11 tomorrow morning at 9:30 a.m.

Thank you and good evening.

(After the jury left the courtroom the following proceedings took place:)

THE COURT: It will not be necessary for counsel to be present tomorrow morning at 9:30; however, at 9:30 if you're not present I want it understood if there's a request for exhibits admitted in evidence they will be delivered to the jury in your absence with the exception of the tape. Is that understood?

MS. MOORE-DYSON: Yes, Your Honor.

MS. BEIMDIEK: Yes, Your Honor.

MR. HAGEMEISTER: Yes, Your Honor.

MS. BEIMDIEK: Not waiving any objection -- I

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understand the Court's ruling as to providing those items -- I'm not waiving any previous objection to the admission of those items.

THE COURT: I'm talking about logistics.

MS. BEIMDIEK: Right.

THE COURT: The possibility jurors may request the exhibits and I want it understood that I'm not going to wait for all three of you to re-assemble here before I send them the photographs and such, the other plats. The only other exhibit I recall is the tape.

MS. BEIMDIEK: That's correct.

THE COURT: And that the Court has excepted from submission without your presence and as you indicated, Miss Beimdiek, this has nothing to do with your prior objections and rulings of the Court. I have received from Miss Beimdiek her pager number. Counsel for the State and counsel for the Defendant Morant are to leave with me your telephone number where you can be reached tomorrow morning at 9:30 if you do not intend to be here.

Is that understood?

MR. HAGEMEISTER: Yes.

THE COURT: Thank you.

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(The following proceedings took place on the next day, November 21, 1996, at 4:55 p.m. in the courtroom:)

THE COURT: Ladies and Gentlemen of the Jury, your request to separate for the evening is granted. The Court again reminds you of what you were instructed the very first recess of the Court and at adjournment yesterday evening. You're not to discuss this case among yourselves or with others or continue deliberations until you return to the jury room tomorrow morning at 9:30. Again your foreperson is directed at that time when all members of the jury are present to buzz the bailiff in order that he may return the Court's instructions of law and the verdict forms. After that you may resume deliberations.

Thank you for your attention and you're released at this time, instructed to return to Division 11 tomorrow morning at 9:30 a.m.

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CERTIFICATION OF REPORTER

I, Nancy Kutta, CCR, Official Court Reporter, do hereby certify that I was the reporter during the second week of trial of Cause Nos. 951-4326A and 951-4326B; that I prepared the within transcript of the record on appeal, Volumes I - III, and that said transcript is a correct transcript of all proceedings occurring from November 18 to November 21, 1996. The cost of an original and five copies is as follows:

492 pages at $1.50 per page (original):	$738.00
2460 pages at .20 per page (copies):	492.00
TOTAL:	$1230.00

This transcript was completed July 18, 1997, and attorneys for defendants were notified of said completion on July 18, 1997.

Nancy Kutta

NANCY KUTTA, CCR
Official Court Reporter
22nd Judicial Circuit
St. Louis, Mo.

oOo

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A-911

AKU032A-OPN
Time - 12:50:35

Missouri Department of Corrections
BOARD OF PROBATION AND PAROLE

Page - 1
Date - 10/06/20

DOC ID: 525825 Cycle: 19970115
DOC Name: MORANT, TYRONE D

4A-204

Exhibit B

Institution/Housing Unit SECC/004

Minimum Mandatory Release Date N/A

RELATING TO RELEASE CONSIDERATION

X 1. You have been scheduled for a parole hearing 03/00/2051.

___ 2. At your request, your case has been closed to further parole consideration.

___ 3. You have been given parole consideration in a parole hearing . You will be scheduled for a reconsideration hearing .

___ 4. You have been scheduled for release from confinement on .

Actual release depends upon continued record of good conduct and an acceptable release plan. The release decision is:

___ Guideline ___ Below Guideline ___ Above Guideline

Special Conditions of release are:

Strategy Stipulation Date:

___ 5. Your previously set release date has been cancelled.

___ 6. Your conditional release date has been extended to .

___ 7. The Board has reviewed your appeal. It is the decision of the Board to your appeal.

___ 8. You have been scheduled for a Conditional Release Extension hearing on .

The reasons for the action taken are:

**THIS DECISION IS NOT SUBJECT TO APPEAL.

Based on your petition, you have been scheduled for a hearing pursuant to 558.047. Due to your consecutive sentence structure, which includes consecutive sentences for Murder First, ACA, Assault First, ACA, Assault First, and ACA, your minimum eligibility for release is 07/25/2051. You have been scheduled for a hearing 4 months prior to this date, based on the Board's hearing schedule. Per Court order, you will receive access to your parole file no less than 180 days prior to your hearing.

RECEIVED NOV - 5 2021

Exhibit 8

A-912

Electronically Filed - SUPREME COURT OF MISSOURI - December 12, 2022 - 11:05 AM

DOC No: 525825 Cycle: 19970115 DOC Name: MORANT, TYRONE D
LEGAL Name:

PRESENT CONVICTIONS

Seq: 1 CC/CS: Rel Seq: 0 S&J Name: MORANT, TYRONE DESANTE
Cause No: 951-4326B Mo Code: 565.020-001Y19840999.0 NCIC: 0999 Type/Class: F A
OCN: Special Ind: Circuit/Div: 22/11 Amd Class:
TC: MURDER FIRST DEGREE (LIFE WITHOUT PAROLE)
Offense Date/County: 09/17/1995
Sentence Date/County/Length: 01/10/1997 ST. LOUIS CITY Life
Received Date: 01/15/1997 Return Date/Desc:
Credit Time: 485 Non-Credit Time-Inst: 0 Parole: 0 Probation: 0
Calculation Start: 09/18/1995 Death Sentence: N Remand Count: 0 Percent Required: 0%
Sen Rel Date/Type: 99/99/9999 Life Max Rel Date: 99/99/9999
Sentence Status: Active Parole Inel Yrs: 25

Seq: 2 CC/CS: CS Rel Seq: 1 S&J Name: MORANT, TYRONE DESANTE
Cause No: 951-4326B Mo Code: 571.015-001Y19755299.0 NCIC: 5299 Type/Class: F U
OCN: Special Ind: Circuit/Div: 22/11 Amd Class:
TC: ARMED CRIMINAL ACTION
Offense Date/County: 09/17/1995
Sentence Date/County/Length: 01/10/1997 ST. LOUIS CITY 30 yr
Received Date: 01/15/1997 Return Date/Desc:
Credit Time: 0 Non-Credit Time-Inst: 0 Parole: 0 Probation: 0
Calculation Start: 99/99/9999 Death Sentence: N Remand Count: 0 Percent Required: 0%
Sen Rel Date/Type: 99/99/9999 Conditional Release Max Rel Date: 99/99/9999
Sentence Status: Future Parole Inel Yrs: 3

Seq: 3 CC/CS: CS Rel Seq: 2 S&J Name: MORANT, TYRONE DESANTE
Cause No: 951-4326B Mo Code: 565.050-002Y19791399.0 NCIC: 1399 Type/Class: F B
OCN: Special Ind: Dangerous Felony Circuit/Div: 22/11 Amd Class:
TC: ASSAULT FIRST DEGREE
Offense Date/County: 09/17/1995
Sentence Date/County/Length: 01/10/1997 ST. LOUIS CITY 15 yr
Received Date: 01/15/1997 Return Date/Desc:
Credit Time: 0 Non-Credit Time-Inst: 0 Parole: 0 Probation: 0
Calculation Start: 99/99/9999 Death Sentence: N Remand Count: 0 Percent Required: 85%
Sen Rel Date/Type: 99/99/9999 Conditional Release Max Rel Date: 99/99/9999
Sentence Status: Future Parole Inel Yrs:

Seq: 4 CC/CS: CS Rel Seq: 3 S&J Name: MORANT, TYRONE DESANTE
Cause No: 951-4326B Mo Code: 571.015-001Y19755299.0 NCIC: 5299 Type/Class: F U
OCN: Special Ind: Circuit/Div: 22/11 Amd Class:
TC: ARMED CRIMINAL ACTION
Offense Date/County: 09/17/1995
Sentence Date/County/Length: 01/10/1997 ST. LOUIS CITY 30 yr
Received Date: 01/15/1997 Return Date/Desc:
Credit Time: 0 Non-Credit Time-Inst: 0 Parole: 0 Probation: 0
Calculation Start: 99/99/9999 Death Sentence: N Remand Count: 0 Percent Required: 0%
Sen Rel Date/Type: 99/99/9999 Conditional Release Max Rel Date: 99/99/9999
Sentence Status: Future Parole Inel Yrs: 3

A-913

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DEPARTMENT OF CORRECTIONS
ADULT INSTITUTIONS
FACE SHEET

DOC No: 525825 **Cycle:** 19970115 **DOC Name:** MORANT, TYRONE D
LEGAL Name:

Seq: 5 **CC/CS:** CS **Rel Seq:** 4 **S&J Name:** MORANT, TYRONE DESANTE
Cause No: 951-4326B **Mo Code:** 565.050-002Y19791399.0 **NCIC:** 1399 **Type/Class:** F B
OCN: **Special Ind:** Dangerous Felony **Circuit/Div:** 22/11 **Amd Class:**
TC: ASSAULT FIRST DEGREE
Offense Date/County: 09/17/1995
Sentence Date/County/Length: 01/10/1997 ST. LOUIS CITY 15 yr
Received Date: 01/15/1997 **Return Date/Desc:**
Credit Time: 0 **Non-Credit Time-Inst:** 0 **Parole:** 0 **Probation:** 0
Calculation Start: 99/99/9999 **Death Sentence:** N **Remand Count:** 0 **Percent Required:** 85%
Sen Rel Date/Type: 99/99/9999 Conditional Release **Max Rel Date:** 99/99/9999
Sentence Status: Future **Parole Inel Yrs:**

Seq: 6 **CC/CS:** CS **Rel Seq:** 5 **S&J Name:** MORANT, TYRONE DESANTE
Cause No: 951-4326B **Mo Code:** 571.015-001Y19755299.0 **NCIC:** 5299 **Type/Class:** F U
OCN: **Special Ind:** **Circuit/Div:** 22/11 **Amd Class:**
TC: ARMED CRIMINAL ACTION
Offense Date/County: 09/17/1995
Sentence Date/County/Length: 01/10/1997 ST. LOUIS CITY 30 yr
Received Date: 01/15/1997 **Return Date/Desc:**
Credit Time: 0 **Non-Credit Time-Inst:** 0 **Parole:** 0 **Probation:** 0
Calculation Start: 99/99/9999 **Death Sentence:** N **Remand Count:** 0 **Percent Required:** 0%
Sen Rel Date/Type: 99/99/9999 Conditional Release **Max Rel Date:** 99/99/9999
Sentence Status: Future **Parole Inel Yrs:** 3

A-914

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DOC No: 525825 **Cycle:** 19970115 **DOC Name:** MORANT, TYRONE D
LEGAL Name:

COMMENTS

MORANT, TYRONE D 525825

03-22-2002: UPDATED MEDICAL CONTACT INFORMATION. CRCC
05-22-2003: UPDATED MEDICAL CONTACT. CRCC
07-22-2003: UPDATED EMERGENCY ADDRESS. MSP/JCCC
01-07-2011: UPDATED RELIGIOUS PREFERENCES. PCC/dr
05-01-2015: CORRECTED S&J NAME ON SEQ. 1,2,3,4,5 & 6. SECC/ksc
12-18-2018: UPDATED MEDICAL/EMERGENCY CONTACT INFORMATION. SECC/trr
04-24-2020: SEQ. 1 CAUSE # 951-4326B: UPDATED PAROLE INELIGIBLE YEARS PURSUANT TO RSMO. SECTION 558.047. THIS OFFENDER WAS SENTENCED TO LIFE WITHOUT PAROLE FOR AN OFFENSE COMMITTED WHILE UNDER 18 YEARS OF AGE. THEREFORE, THE OFFENDER IS ELIGIBLE TO PETITION FOR PAROLE AFTER SERVING 25 YEARS OF THE SENTENCE AND SHOULD BE TREATED AS BEING ELIGIBLE FOR PAROLE ON THAT DATE. SECC/JSB

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IN THE SUPREME COURT OF MISSOURI

STATE OF MISSOURI EX REL., TYRONE DeSANTE MORANT,	)	
Petitioner,	)	
vs.	)	SC93248
IAN WALLACE, in his capacity as Superintendent, Southeast Correctional Center,	)	
Respondent.	)	

AFFIDAVIT

I, Tyrone DeSante Morant, hereby assert on my oath and affirmation the following facts:

1. I am the Petitioner in this case.

2. At my sentencing proceeding in St. Louis City on January 10, 1997, my attorney did not present any evidence or argument on my behalf. To the best of my recollection, my attorney did not inform me that I could present mitigation and argument. I believe that this was due to the mandatory life without parole sentence for the first-degree murder conviction.

3. I had loved ones present at my sentencing, including: Hattie Morant, my mother; Demetrious Davis, my father; Mary Morant, my grandmother; and Linda Morant, my aunt. If called by my attorney, those relatives would have been willing to testify at my sentencing on my behalf. My mother testified at my jury trial.

4. At the sentencing proceeding, there was available mitigation to present, through my loved ones present at the sentencing, including (but not limited to) the following:

When I was born, my mother was 14 years old and my father was 15 years old. Because they were still children, I was raised by my paternal

Exhibit 9 A-916

grandparents, Nettie and Phil Davis. Nettie and Phil Davis had adopted my father and were elderly when they raised me. My grandparents were good people, and Phil Davis was a pastor. They tried to provide the best for me. I would help my grandfather with projects around the house and had hoped one day to be in the construction and home remodeling/repair business. I attended school but had some difficulties due to a learning disability. When I was in the fifth grade, my grandmother arranged to send me to Forder Elementary School, in the Mehlville School District, and I began to improve and do better at school.

When I was 15 years old, my grandmother, Nettie Davis, who I had called "mom" and loved as my mother, died. Nettie's passing was traumatic for me. At that time, my grandfather, Phil Davis, was elderly and blind. Because of that, my mother, Hattie Morant, moved in and began raising me.

My mom, Hattie Morant, and my younger siblings, moved into the home owned by Nettie and Phil Davis. Nettie and Phil Davis owned a home on Cote Brilliante in The Ville neighborhood of St. Louis, Missouri. When I was really young, the neighborhood was middle class, but the neighborhood began to deteriorate. By the time that I was in junior high school, there were gangs, crime, violence, guns, and drugs everywhere. I saw family members and friends abuse alcohol and drugs, and drugs were constantly around me. It was a high stress environment where I did not feel safe and felt on guard at all times. If you had anything nice, someone would try to fight you and take it from you. My best friend was killed just before I was arrested when I was 17 years old (for the underlying charges).

I began smoking marijuana when I was a teenager and was suspended from high school for smoking marijuana at school. When I was arrested for the underlying charges, I was in the process of trying to get back into school. (I have since completed by G.E.D. and have completed some college courses.)

I have no prior felony convictions or pleas of guilty.

I was given a plea offer from the State of 15 years imprisonment if I testified against my co-defendant. I have maintained my innocence and could not provide helpful testimony and proceeded to jury trial.

Although my father, Demetrious Davis, passed away in January of this year, he had told me on numerous occasions that he wished that he

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had been more present and provided more guidance to me as I was growing up. He also always told me that he loved me, so I know that he would have so testified at the sentencing hearing.

My current attorney has interviewed some of my living relatives. My other relatives and my mother would have told the sentencing court that I had begun to attend school again and wanted to graduate high school. They would have stated that I was friendly with a lot of the kids in the neighborhood but had a few close friends. They would have stated that I was supportive and tried to help my younger siblings. They would have stated that I had a big heart and was always respectful.

Although I maintain my innocence, I would have expressed sorrow for the loss of the victim, John Allen.

5. If this Court were to grant a new sentencing hearing, my attorney would be able to present documentation of numerous programs that I have completed in the Department of Corrections. My attorney would also present testimony from relatives, who would provide a home for me, if I were to be released, including my mother, Hattie Morant, and my stepmother, Tracy Davis. I would like to try to find training and employment in construction or home remodeling and repair.

Further, Affiant sayeth not.

I, Tyrone DeSante Morant, hereby swear that the above facts are correct and accurate according to my knowledge and belief.

Tyrone DeSante Morant

11/15/22
Date

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STATE OF MISSOURI
COUNTY OF MISSISSIPPI

I, Richard Trout, notary public in Scott County, Missouri, hereby affirm that Tyrone DeSante Morant appeared personally before me and verified that the information above is true and accurate, and affixed his signature thereto.

IN TESTIMONY WHEREOF, I have hereunto set my hand affixed my official seal, at Charleston, Missouri, the day and year first written above.

Notary Public

My commission expires: 3-13-24

NOTARY PUBLIC NOTARY SEAL STATE OF MISSOURI

RICHARD TROUT
My Commission Expires
March 13, 2024
Scott County
Commission #12308573

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